REVENUE COMMISSION, PUNJAB.

OPINION
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During deliberations and discussions of the Commission a question that arose for consideration was as to whether where amendments and/or insertions, substitutions or even repeals are to be effected; or amendments and/or insertions, substitutions have been made to an enactment which is in the Ninth Schedule of the Constitution of India would these require the assent of the President of India as the initial enactment was put in the Ninth Schedule with his assent?

The Punjab Land Reforms Act, 1972 (Punjab Act 10 of 1972) ('1972 Act' - for short), and the Punjab Security of Land Tenures Act, 1953 (Punjab Act X of 1953) ('1953 Act' - for short) enacted by the State Legislature are in the Ninth Schedule of the Constitution. This means that these are not be deemed to be void, or ever to have become void, on the ground that they are inconsistent with, or take away or abridge any of the rights conferred by, any provision of Part III of the Constitution i.e. relating to 'Fundamental Rights'.

The State legislature in view of Article 246 (3) read with List-II of the Seventh Schedule of the Constitution has the exclusive power to enact the same. The subjects mentioned in List-II form the 'State List' in respect of which the State has the exclusive power to make laws. Entry 18 of the State List is as follows:

"18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant; and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

The said Entry is wide enough to cover the aforesaid two enactments i.e. the 1972 Act and the 1953 Act.
In Atma Ram v. State of Punjab, AIR 1959 SC 519, it has been said by the Supreme Court that Entry 18 in List II of Schedule VII read along with Article 246 (3) of the Constitution has vested exclusive power in the State to make laws with respect to "rights in or over land, land tenure including the relation of landlord and tenant...."

The 1953 Act is an Act to provide for the security of land tenures and other incidental matters. The purpose of the 1953 Act was said by the Supreme Court in Gurbax Singh v. State of Punjab, AIR 1967 SC 502, had been neatly summarized by the Financial Commissioner, Punjab in Karam Singh v. Angrez Singh, (1960) 39 Lahore Law Times 57; thus:

"The main purpose of that Act seems to be:
(i) provide a "permissible area" of 30 standard acres to a land-owner/tenant, which he can retain for self-cultivation,
(ii) provide security of tenure to tenants by reducing their liability to ejectment as specified in Section 9,
(iii) ascertain surplus area and ensure re-settlement of ejected tenants on those areas,
(iv) fix maximum rent payable by tenants, and
(v) confer rights on tenants to pre-empt and purchase their tenancies in certain circumstances."

The 1972 Act is an Act to consolidate and amend the law relating to ceiling on land holdings, acquisition of proprietary rights by tenants and other ancillary matters in the State of Punjab. Section 4 of the 1972 Act relates to 'permissible area'. It is provided that subject to the provisions of Section 5, no person shall own or, hold land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the 'permissible area'. 
Section 4 (2) of the 1972 Act defines 'permissible area', which is classified on the basis of the nature of the land.

The necessity to consider the aspect of requiring the assent of the President of India for repealing, amending, inserting, etc., the Acts which are in the Ninth Schedule of the Constitution has arisen, as during the course of deliberations and discussions of the Commission it was considered that the enactments with regard to the rights and liabilities of land-owners and tenants would require re-structuring and even amendments or may be even substituting them with a new enactment so as to work out a mechanism that maintains a balance between them. To effectuate the said purposes, the enactments which are in the Ninth Schedule of the Constitution would be affected. Therefore, it is required to be considered as to whether the assent of the President would be required if the said enactments which are in the Ninth Schedule of the Constitution were to be affected as these were inserted initially with his assent.

The tenants in the past were generally considered weak and in an unequal bargaining power vis-à-vis the land-owners. However, since bigger Companies, Cooperative Societies, Self Help Groups, partners and others are now desirous of taking agricultural land on lease; a need is felt to protect the rights and liabilities of the land owners as also the tenants in a manner that a balance is maintained between them. The Companies, Cooperative Societies, Self Help Groups, partners and may be even others would be desirous to cultivate large expanse of land rather than that restricted to ‘permissible area’ under the 1972 Act. Therefore, it is felt that in case any new Act is enacted which affects the provisions of the 1953 Act or the 1972 Act, which are in the Ninth Schedule of the Constitution then would the assent of the President of India be necessary.
A background to the Ninth Schedule of the Constitution may be noticed. The position is that initially there was no such Schedule in the Constitution when it came into force. After independence and enactment of the Constitution some of the States made an endeavour to have land reforms. The Legislative Assembly of the State of Bihar enacted the Bihar Land Reforms Act, 1950. A notification under Section 1 (3) of the aforesaid Act was issued in this regard on 24.09.1950 declaring that on the day following the estates and tenures of three leading 'zamindars' in the province, namely, Sir Kameshwar Singh, the Maharajadhiraja of Darbhanga; his brother Raja Bahadur Visheshwar Singh and Raja Bahadur Kamakshya Narayan Singh of Ramgarh should pass to and become vested in the State. In terms of the said Bihar Land Reforms Act, certain rights of proprietors and tenure holders were to be extinguished and other rights were to be modified. The rent payable by 'raiyats' to the proprietors of the estate or tenure holders was in future to be paid to the State and not to the proprietors or tenure holders. The said right of the proprietors and tenure holders to receive rent was extinguished.

The estate holders gave notice under Section 80 Civil Procedure Code of their intention to institute suits. They also applied to the Hon'ble Patna High Court for an injunction to restrain the Government of Bihar from taking possession of their property. Ad interim injunctions were granted and in due course, suits were filed. These were then withdrawn by the Patna High Court to be tried by it.

A Full Bench of the Hon'ble Patna High Court in Kameshwar Singh and others v. State of Bihar and another, AIR 1951 Patna 91, held that the subject-matter of the Bihar Land Reforms Act was subject matter within the legislative jurisdiction of the Bihar Legislature. The said Act was, however, held to be unconstitutional on the ground that it transgressed Article 14 of the Constitution and on no other ground.
Besides, clause (4) of Article 31 of the Constitution, it was said, did not debar the Court from intervening with the question of compensation in order to decide whether or not the impugned Act offended the fundamental rights under Article 14 of the Constitution. It was further said that as the impugned Act was an unconstitutional Act and the properties of the plaintiffs (estate holders) did not vest in the State. The plaintiffs were held entitled to decrees declaring that the Act was unconstitutional and to an injunction restraining the defendants from taking possession of their properties.

The said judgment primarily resulted in the Constitution (First Amendment) Act, 1951 which came into effect on 18.06.1951. Two explanatory Articles i.e. Articles 31A and 31B, as also the Ninth Schedule were *inter alia* added to the Constitution by the said amendment. According to the 'Statement of Objects and Reasons' of the Constitution (First Amendment) Act, 1951, it was stated that Article 31 had resulted in un-anticipated difficulties as the validity of agrarian reforms measures passed by the State Legislatures in the last three years preceding the Constitution (First Amendment) Act, 1951 had 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 important measures, affecting large number of people, had been held up. The main object of the said Constitution (First Amendment) Act was to amend Article 19 for the purposes as mentioned in the 'Statement of Objects and Reasons'; besides, to insert provisions for fully securing the Constitutional validity of 'zamindari' abolition laws in general and certain specified State Acts in particular.

The Fundamental Right to Property conferred by Article 31 was modified by the First, Fourth, Seventeenth, Twenty-fifth, and Forty-second Constitution Amendments Acts. Lastly by the Constitution (Forty-fourth) Amendment Act, 1978, Article 31 relating to 'Compulsory Acquisition of Property' together with the preceding subject-heading 'Right to Property' stands omitted from Part III of the Constitution relating to Fundamental Rights w.e.f. 20.6.1979. It is now a 'Constitutional Right' under Article 300A, which is under Chapter IV of the Constitution.
Article 31 before its omission from the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978, provided that no person shall be deprived of property save by authority of law. It further provided that no property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles upon which, and the manner in which, the compensation is to be determined and given. It inter alia primarily envisaged that no person shall be deprived of his property save by authority of law. It was in fact similar to Section 299 of the Government of India Act, 1935. Sub-section (1) of Section 299 thereof embodied the general principle that no person was to be deprived of his property save by authority of law. Sub-section (2) provided that neither the Federal nor a Provincial Legislature shall have power to make any law authorizing the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined. Sub-section (3) envisaged that no Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor General in his discretion, or in a Chamber of a
Provincial Legislature without the previous sanction of the Governor in his discretion.

Article 31A of the Constitution, as it then had been inserted, provided for 'Saving of laws providing for acquisition of estates etc.' It has since been amended by the Constitution (Fourth Amendment) Act, 1955 w.e.f. 27.04.1955. The said amendment, amended Articles 31, 31A and 305 as also the Ninth Schedule to the Constitution by which after Entry 13 certain more enactments up to Entry 20 were added. Article 31A was further amended by the Constitution (Seventeenth Amendment) Act, 1964 on 20.06.1964 with retrospective effect. Articles 31A and 31B of the Constitution reads as under:

3[31A. Saving of laws providing for acquisition of estates, etc.-

4[(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

Clause (2) of Article 31 was substituted to the effect: "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

Inserted by the Constitution (First Amendment) Act, 1951, s. 4 (with retrospective effect).

Substituted by the Constitution (Fourth Amendment) Act, 1955, s. 3, for cl. (1) (with retrospective effect).
(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by 5[article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

6[Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation; it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under

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5 Substituted by the Constitution (Forty-fourth Amendment) Act, 1978 Sec.7, for "article 14, article 19 or article 31" [w.e.f. 20.06.1979]

6 Inserted by the Constitution (Seventeenth Amendment) Act, 1964, Sec.2 (i) [w.e.f. 20.06.1964].
any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]

(2) In this article,—

[(a) the expression "estate" shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(i) any jagir, inam or muafí or other similar grant and in the States of "[Tamil Nadu] and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, [raiyat,
under-raiyat] or other intermediary and any rights or privileges in respect of land revenue.]

31B. Validation of certain Acts and Regulations.—Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.]

The provisions of Article 31-A, therefore, relate to 'Saving of laws providing for acquisition of estates, etc.' It is provided that notwithstanding anything contained in Article 13, no law providing for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights etc., shall 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 or Article 19. The first proviso envisages that where such law is a law made by the Legislature of a State, the provisions of Article 31-A shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent. The second proviso to Article 31-A that was inserted by the Constitution (Seventeenth Amendment) Act, 1964 further envisages that where any law makes any provision for the

Inserted by the Constitution (First Amendment) Act, 1951, sec.5 (w.e.f. 18.06.1951).
acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of 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 appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

Article 31-B *inter alia* provides that none of the Acts and Regulations specified in the Ninth Schedule of the Constitution nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision was inconsistent with or had taken away or abridged any of the rights conferred by Part-III of the Constitution, i.e. the part relating to fundamental rights. Besides, the Ninth Schedule of the Constitution, as already noticed, was added by the Constitution (First Amendment) Act, 1951, in terms of Section 14 thereof w.e.f. 18.06.1951. As many as thirteen Acts were inserted in the Ninth Schedule at that time.

The Constitution (First Amendment) Act, 1951 was subject matter of consideration and challenge before the Supreme Court in Shankari Prasad Singh Deo and others *v.* The Union of India and others, AIR 1951 SC 458. The provisions of Articles 31A and 31B of the Constitution were held in the said decision to be *intra vires* the Constitution. It was contended on behalf of the petitioners that before these Articles were inserted by the Constitution (First Amendment) Act, the High Courts had the power under Article 226 of the Constitution to issue appropriate writs declaring the 'Zamindari' Abolition Acts unconstitutional as contravening fundamental rights and the Supreme Court could entertain appeals from orders of the High Courts under Article 132 or Article 136. The new Articles, however, deprived the High
Courts as well as the Supreme Court of the power of declaring the said 
Acts unconstitutional. It was, therefore, submitted that the newly 
inserted Articles required ratification under the proviso to Article 368, 
which relates to power of Parliament to amend the Constitution and 
procedure therefor. The proviso thereof envisages that if such 
 amendment seeks to inter alia make any change to the Article and 
Chapters of the Constitution mentioned therein it shall also require to 
be ratified by the Legislatures of not less than one-half of the States by 
resolution to that effect passed by these Legislatures before the Bill 
making provision for such amendment is presented to the President for 
his assent.

The Supreme Court held that the argument proceeded on a 
misconception. The said Articles i.e. Articles 31A and 31B inserted in 
the Constitution did not either in terms or in effect seek to make any 
change in Article 226 or in Articles 132 and 136. Article 31A aimed at 
saving laws providing for compulsory acquisition by the State of a 
certain kind of property from the operation of Article 13 read with other 
relevant Articles in Part-III of the Constitution i.e. the part relating to 
fundamental rights, while Article 31B purported to validate certain 
specified Acts and Regulations already passed, which, but for such a 
provision, would be liable to be impugned under Article 13. It was 
further held that it would not be correct to say that the powers of the 
High Court under Article 226 to issue writs 'for enforcement of any of 
the rights conferred by Part III' or of the Supreme Court under Articles 
132 and 136 to entertain appeals from order issuing or refusing such 
writs were in any manner affected. They remained just the same as 
they were before: only a certain class of cases had been excluded from 
the purview of Part III and the Courts could no longer interfere, not 
because their powers were curtailed in any manner or to any extent, 
but because there would be no occasion thereafter for exercise of their
power in such cases. It was further said that the new Articles being essentially amendments of the Constitution, the Parliament alone had the power of enacting them. The laws thus saved related to matters covered by List II.

Articles 31A and 31B of the Constitution thus protected the Acts specified in the Ninth Schedule from challenge on the ground of violation of fundamental rights and these were not to be deemed to be void on the ground that these were inconsistent with or had taken away or abridged any of the rights conferred by Article 14 or Article 19. Besides, any of the provisions thereof were to be deemed to be void or ever to have become void, or ever to have become void on the ground that these were inconsistent with or had taken away or abridged any of the rights conferred by Part III.

The position after the Constitution (First Amendment) Act, 1951 was that the basis for the challenge in Kameshwar Singh’s case (supra) no longer survived and the land reforms legislation could not be challenged on the ground of violation of rights conferred by Part III of Constitution i.e. fundamental rights.

The Supreme Court after decision in Shankari Prasad Singh Deo’s case (supra) decided cases relating to land reforms and three of them; namely State of West Bengal v. Mrs. Bella Banerjee, AIR 1954 SC 170; State of West Bengal v. Subodh Gopal Bose, AIR 1954 SC 92 and Dwarakadas Shrinivas v. The Sholapur Spinning & Weaving company Ltd. and others, AIR 1954 SC 119 are of some relevance.

In Mrs. Bella Banerjee’s case (supra), the High Court of Judicature at Calcutta declared certain provisions of the West Bengal Land Development and Planning Act, 1948 as unconstitutional and void. The said Act was passed on 01.10.1948 primarily for the settlement of immigrants who had migrated to the province of West Bengal due to communal disturbances in East Bengal. It provided for the acquisition
and development of land for public purposes including the purpose aforesaid. A registered Society was authorized to undertake a development scheme. The Government made over certain lands after acquisition to the said Society for purposes of a development scheme on payment of the estimated costs of acquisition. The owners of the acquired land instituted a suit against the Society for a declaration that the impugned Act was void as contravening the Constitution; besides, the proceedings taken there-under for the aforesaid acquisition were void and of no effect.

The suit was transferred to the High Court and heard by a Division Bench. It was held that the impugned Act as a whole was not unconstitutional, or void save as regards two of the provisions contained in Section 8. The controversy before the Supreme Court centered round the constitutionality of the 'condition' in proviso (b) to Section 8 limiting the compensation payable so as not to exceed the market value of the land on 31.12.1946.

It was held that while it was true that the legislature had been given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owners of every property appropriated, such principle must ensure that what was determined as payable must be compensation, that is, a just equivalent of what the owners had been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allowed free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such a principle had taken into account all the elements which make up the true value of the property appropriated and excludes matters which were to be neglected was held to be a justiciable issue to be adjudicated by the Court. Accordingly, the latter part of proviso (b) to Section 8 of the impugned Act which fixed the market value on
as the maximum compensation of land acquired under it, was held to offend the provisions of Article 31 (2), besides, being unconstitutional and void. Compensation for acquisition of land, it was said meant just equivalent or full indemnification.

The said case was followed in Subodh Gopal Bose’s case (supra) wherein Section 7 of the West Bengal Revenue Sales (West Bengal Amendment) Act, 1950 was assailed as abridging fundamental rights of respondent No.1 under Article 19 (1) (f) and Article 31. A Division Bench of the High Court after transferring the case to itself declared the said Amendment Act as unconstitutional. The respondent in the said case had purchased a certain property at a revenue sale. He acquired the right to avoid and annul all under-tenures and forthwith eject all under-tenants with certain exceptions under the said Act. A notice was issued for ejecting the tenants followed by a suit which was decreed against the second respondent, who preferred an appeal before the District Judge. While the appeal was pending, the Amending Act was passed. The object of the said Amending Act was that great hardships were being caused to a large section of the people by the application of Section 37 of the Bengal Land Revenue Sales Act, 1859 in the urban areas and particularly in Calcutta and its suburbs where phenomenal increase in land values had supplied the necessary incentive to speculative purchasers in exploiting the provision (S.37) of the law for unwarranted large scale eviction and it was, therefore, considered necessary to enlarge the scope of protection already given by the section to certain categories of tenants with due safeguards for the security of the Government revenue.

The respondent thus contended that Section 7 abridged his fundamental rights under Article 19 (1) (f) and Article 31 of the Constitution. The Hon'ble High Court held that the respondent’s right to annul the under-tenures and evict the under-tenants being a vested
right acquired by him under his purchase before Section 37 was
amended, the retrospective deprivation of that right by Section 7 of the
Amending Act without any abatement of the price paid by the
respondent at the revenue sale was an infringement of his fundamental
right under Article 19 (1) (f) to hold property with all rights acquired
under his purchase, and as such the deprivation was not a reasonable
restriction on the exercise of his vested right. Section 7 it was said was
not saved by clause (5) of that Article and was void.

The Hon'ble Supreme Court *inter alia* held that the
abridgment sought to be affected retrospectively of the rights of a
purchaser at a revenue sale is not so substantial as to amount to a
deprivation of his property within the meaning of Article 31 (1) and (2).
It was further said that Article 19 (1) (f) declared the citizen's right to
own property and had no reference to the right to the property owned
by him, which was dealt with in Article 31. The impugned law was held
to be valid by Hon'ble Judges of the Supreme Court though for different
reasons. In fact, the said case did not involve acquisition of property
and the impugned law related to landlord-tenant relation.

In the third case that was decided by the Hon'ble Supreme
Court, i.e., Dwarakadas Shrinivas v. The Sholapur Spinning & Weaving
Company Ltd. (supra), the Sholapur Spinning and Weaving Company
did good business and declared high dividends for some time; but in the
year 1949 there was accumulation of stocks and financial difficulties.
The Directors decided to close the Mills and gave a notice to the
workers pursuant to which the Mills were closed. This resulted in labour
problems and to solve them, the Government appointed a Controller
under the Essential Supplies Emergency Powers Act, 1946 to supervise
the affairs of the Mills. The Controller in order to resolve the deadlock
decided to call in more capital. He asked the Directors of the Company
to make a call of Rs.50/- per share on the preference share-holders, the
Directors refused to comply with the requisition, as in their judgment this was not in the interest of the Company. An ordinance was promulgated by the Governor General under which the Mills it was said should be managed and run by the Director appointed by the Central Government. Certain Directors were appointed by the Government of Bombay, who took over the assets and management of the Mills. A resolution was passed by them making a call of Rs.50/- of each preference share of the Company. The plaintiff who held preference shares was called upon to pay Rs.1,61,000/-. The plaintiff instead of meeting the demand filed a suit in a representative capacity on behalf of himself and other preference share-holders against the Company and the Director appointed by the Government of Bombay challenging the validity of the ordinance and questioning the right of the Director to make the call. It was alleged that the ordinance was illegal, ultra-vires and invalid as it contravened the provisions of Section 299 (2) of the Government of India Act, 1935 and all the provisions contained in Part III of the Constitution.

The principle question for consideration was whether the provisions of the Ordinance for taking over the management and administration of the Company contravened the provisions of Article 31 (2) and whether the Ordinance as a whole or any of its provisions infringed Articles 14 and 19 of the Constitution.

It was held that the Ordinance impugned therein in effect authorized deprivation of the property of the Company within the meaning of Article 31 without payment of compensation and it was held to be not covered by the exceptions in clause 5 (b) (ii) of Article 31. The Ordinance was held to violate the fundamental rights of the company under Article 31 (2).
The Parliament then promulgated the Constitution (Fourth Amendment) Act, 1955, which came into effect on 27.04.1955. In the Statement of Objects and Reasons, it was stated as follows:

"This Bill seeks to amend articles 31, 31A and 305 of, and the Ninth Schedule to, the Constitution.

2. Recent decisions of the Supreme Court have given a very wide meaning to clauses (1) and (2) of article 31. Despite the difference in the wording of the two clauses, they are regarded as dealing with the same subject. The deprivation of property referred to in clause (1) is to be construed in the widest sense as including any curtailment of a right to property. Even where it is caused by a purely regulatory provision of law and is 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, has to provide for compensation under clause (2) of the article. It is 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 results in "deprivation of property". This is sought to be done in clause 2 of the Bill.

3. It will be recalled that the zamindari abolition laws which came first in our 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 courts, 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 have 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: -

(i) While the abolition of zamindaris and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reform are 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.

(ii) The proper planning of urban and rural areas require the beneficial utilisation of vacant and waste lands and the clearance of slum areas.

(iii) 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. This is also necessary in relation to public utility undertakings which supply power, light or water
to the public under licenses granted by the State:

(iv) It is 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.

(v) The reforms in company law now 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., require to be placed above challenge.

It is accordingly proposed in clause 3 of the Bill to extend the scope of article 31A to cover these categories of essential welfare legislation.

4. As a corollary to the proposed amendment of article 31A, it is 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 will be their complete, retrospective validation under the provisions of article 31B.
5. A recent judgment of the Supreme Court in Saghir Ahmed v. the State of U.P. has 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 article 301, but left the question undecided. Clause (6) of article 19 was amended by the Constitution (First Amendment) Act in order to take such State monopolies out of the purview of sub-clause (g) of clause (1) of that article, but no corresponding provision was made in Part XIII of the Constitution with reference to the opening words of article 301. It appears 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 might have to be justified before the courts as being "in the public interest" under article 301 or as amounting to a "reasonable restriction" under article 304 (b). It is considered that any such question ought to be left to the final decision of the Legislature. Clause 4 of the Bill accordingly proposes an amendment of article 305 to make this clear.

The Constitution (Fourth Amendment) Act, 1955 brought about changes of substantial character to Article 31 by substituting clauses (2) and (2-A) for clause (2) as it was originally enacted. Clause (2) provided that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or.
requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate. Clause (2-A) provided that where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. Besides, Article 31-A of the Constitution was amended which amended provision has been reproduced above. Moreover, a new Article for Article 305 of the Constitution was substituted. Certain entries from entry 14 to 20 were added after entry 13 to the Ninth Schedule.

The effect of the Constitution (Fourth Amendment) Act primarily was that there was an obligation to make provision for compensation while taking private property by way of acquisition or requisition. However, where a person was deprived of his property other than by acquisition or requisition, there was no right to demand compensation or any legal obligation on the State to pay it; besides, the adequacy of compensation was not justiciable.

Article 31A which related to saving of laws provided for acquisition of estates, etc. was also amended and it was provided that notwithstanding anything contained in Article 13, no law providing for the eventualities as enumerated in clauses (a) to (e) of Article 31A shall be deemed to be void on the ground that these were inconsistent with, or had taken away or abridged any of the rights conferred by Articles 14, 19 or 31. The clauses (a) to (e) provided for acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights etc.
The Constitution (Fourth Amendment) Act, 1955, in effect recognized the State's power of *eminent domain* which Article 31 recognized subject to restrictions contained therein. The power of *eminent domain* connotes the legal capacity of the State to take private property of individual for public purposes or public use. It is the power of the State to take property upon payment of just compensation for public use and is an inherent attribute of sovereignty. The Ninth Schedule of the Constitution then containing thirteen Acts and Regulations were made immune from attack on the ground of violation of Part-III of the Constitution was enlarged by adding seven more Acts.

The Constitution (Fourth Amendment) Act, 1955 was followed by the Constitution (Seventeenth Amendment) Act, 1964. Certain legislative measures taken by various States for giving effective agrarian reforms were assailed.

In *Karimbil Kunhikornan v. State of Kerala*, AIR 1962 SC 725, the Kerala Agrarian Relation Act, 1961 was held to be invalid. The constitutionality of Madras Land Reforms (Fixation of Ceiling on Land) Act, 1961 was debated in *A.P. Krishnasami Naidu v. State of Madras*, AIR 1964 SC 1515 and the whole Act was declared invalid. Therefore, Parliament made further amendments to Articles 31-A and 31-B.

The Statement of Objects and Reasons of the Constitution (Seventeenth Amendment) Act, 1964 were stated as follows:

"Article 31A of the Constitution provides 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 is available only in respect of such tenures
as were estates on the 26th January, 1950, when the Constitution came into force. The expression "estate" has been defined differently in different States and, as a result of the transfer of land from one State to another on account of the reorganisation of States, the expression has come to be defined differently in different parts of the same State. Moreover, many of the land reform enactments relate 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 is, 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 are normally made in land reform enactments. It is 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 is 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 appurtenant 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.
2. It is 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.

3. The Bill seeks to achieve these objects."

In terms of the said Constitution (Seventeenth Amendment) Act, 1964 a proviso was added to Article 31-A, which was to the effect that where any law makes any provision for the acquisition by the State of any estate and whether any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as was within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof. In clause (2) of Article 31-A, for sub-clause (a), the sub-clause as mentioned therein was substituted which defined the expression "estate." Besides, entries 21 to 64 were added to the Ninth Schedule of the Constitution. These related to land reforms in various States. The 1953 Act of the State of Punjab was included in entry 54.

The validity of the Seventeenth Amendment Act of the Constitution was assailed in Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845. The petitioners in the said case were affected by one or the other Acts that had been added to the Ninth Schedule by the impugned Act. It was contended that the impugned Act being constitutionally invalid, the validity of the Acts by which they were affected could not be saved. In dealing with the question about the validity of the impugned Act, the provisions contained in Article 368 of the Constitution relating to Power of Parliament to amend the
Constitution and the procedure therefor, was considered. The Constitution (Seventeenth Amendment) Act, 1964 was upheld and it was held not to contravene Article 368 of the Constitution.

The question with which this Commission is concerned regarding the requirement of assent of the President of India for amending the Land Reforms Act, 1972 or any other Act which is included in the Ninth Schedule of the Constitution was also considered and it was said as follows (Para 35 of AIR 1965 SC 845):

There is one more point to which we would like to refer. In the case of Shankari Prasad, 1952 SCR 89: (AIR 1951 SC 458) this Court has observed that the question whether the latter part of Article 31-B is too widely expressed, was not argued before it, and so, it did not express any opinion upon it. This question has, however been argued before us, and so, we would like to make it clear that the effect of the last clause in Article 31-B is to leave it open to the respective legislatures to repeal or amend the Acts which have been included in the Ninth Schedule. In other words, the fact that the said Acts have been included in the Ninth Schedule with a view to make them valid, does not mean that the legislatures in question which passed the said Acts have lost their competence to repeal them or to amend them. That is one consequence of the said provision. The other inevitable consequence of the said provision is that if a legislature amends any of the provisions contained in any of the said Acts, the amended
Article 31-B of the Constitution envisages that none of the Acts and Regulations specified in the Ninth Schedule nor any provision thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provision of this Part, i.e. Part-III, and notwithstanding any judgment, decree or order of any Court or Tribunal to the contrary, each of the said Acts and Regulations shall subject to the power of any competent legislature to repeal or amend it, continue in force.

In Sajjan Singh’s case (supra), it was made clear that the effect of the last clause in Article 31-B was to leave it open to the respective legislatures to repeal or amend the Acts which had been included in the Ninth Schedule. The said Acts that had been included in the Ninth Schedule with a view to make them valid, it was said, did not mean that the legislatures in question which passed them had lost their competence to repeal them or to amend them. That was one consequence of the said provision. The other inevitable consequence of the said provision was that if a legislature amends any of the provisions contained in any of the said Acts, the amended provision would not receive the protection of Art. 31-B and its validity may be liable to be examined on the merits.

An Act or Regulation that has been specified in the Ninth Schedule of the Constitution can be repealed or amended by the legislature which passed the said Act and it did not lose its competence to repeal or amend them. However, if a legislature amends any of the provisions contained in any of the said Acts, the amended provision would not receive the protection of Article 31-B and its validity may be
liable to be examined on merits. The only consequence of amendment or repeal of any enactment specified in the Ninth Schedule of the Constitution would be that it would not be protected by Article 31-B of the Constitution i.e. its validity would be subject to challenge being in violation of Part III of the Constitution relating to fundamental rights.

The validity of the Constitution (Seventeenth Amendment) Act was subject matter of consideration in *Golak Nath v. State of Punjab*, AIR 1967 SC 1643. In the said case, the Financial Commissioner in revision against an order passed by the Additional Deputy Commissioner, Jalandhar Division held certain area of land of the petitioners to be surplus under the provisions of the 1953 Act. The petitioners alleged that the relevant provisions of the said 1953 Act by which their land was declared surplus were void on the ground that they infringed their rights under clauses (f) and (g) of Article 19; besides, Article 14 of the Constitution. The States of Punjab and Mysore contended before the Supreme Court that their Acts were saved from attack on the ground that they infringed the fundamental rights of the petitioners by reason of the Constitution (Seventeenth Amendment) Act, 1964, which, by amending Article 31-A of the Constitution and including the said two Acts in the Ninth Schedule thereto had placed them beyond attack.

The Supreme Court noticed that the decision in *Sajjan Singh*’s case (supra) was given in the context of the question of the validity of the Constitution (Seventeenth Amendment) Act, 1964. Two questions arose in the said case i.e. (1) whether the Amendment Act insofar as it purported to take away or abridge the rights conferred by Part-III of the Constitution fell within the prohibition of Article 13 (2), and (2) whether Articles 31-A and 31-B sought to make changes in Articles 132, 136 or 226 or in any list in the Seventh Schedule and, therefore, the requirements of the proviso to Article 368 had to be
satisfied. It was inter alia contended with reference to the debates in the Constituent Assembly that these clearly disclosed that it was never the intention of the makers of the Constitution by putting in Article 368 to enable the Parliament to repeal the fundamental rights, the circumstances under which an amendment that had been moved by one of the members of the Constituent Assembly, was withdrawn and Article 368 was finally adopted, supported the contention that amendment of Part III i.e. relating to Fundamental Rights was outside the scope of Article 368. It was held that the Constitution had given by its scheme a place of permanence to the fundamental freedoms. In giving to themselves the Constitution, the people had reserved the fundamental freedoms to themselves. Article 13, it was said, merely incorporated that reservation. It was briefly stated that the Constitution declares certain rights are fundamental rights, makes all the laws infringing the said rights void, preserves only the law of social control infringing the said the rights and expressly confers power on Parliament and the Defendant to amend or suspend them in specified circumstances. With regard to the decisions in Sankari Prasad's case (supra) and Sajjan Singh’s case (supra) it was said that if the said decisions laid down the correct law, it enabled the Parliament to abrogate them with one stroke, provided the party in power singly or in combination with other parties commands the necessary majority.

One of the contentions that was raised was based on the parliamentary debates that it was never the intention of the makers of the Constitution by putting in Article 368 to enable the Parliament to repeal the fundamental rights.

The Supreme Court primarily held that the Parliament had no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights. Besides, it was declared that the said decision would not affect the validity of the Constitution (Seventeenth
Amendment) Act, 1964 or other amendments made to the Constitution taking away or abridging the fundamental rights. Accordingly, the doctrine of prospective overruling was applied. This meant that the Parliament in future would have no power to amend Part III of the Constitution so as to take away or abridge the fundamental rights. It was concluded as follows:

(1) The power of the Parliament to amend the Constitution is derived from Arts. 245, 246 and 248 of the Constitution and not from Art. 368 thereof which only deals with procedure. Amendment is a legislative process.

(2) Amendment is 'law' within the meaning of Art. 13 of the Constitution and, therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void.

(3) The Constitution (First Amendment) Act, 1951, Constitution (Fourth Amendment) Act, 1955, and, the Constitution (Seventeenth Amendment) Act, 1964, abridge the scope of the fundamental rights. But, on the basis of earlier decisions of this Court, they were valid.

(4) On the application of the doctrine of 'prospective overruling', as explained by us earlier, our decision will have only prospective operation and, therefore, the said amendments will continue to be valid.

(5) We declare that the Parliament will have no power from the date of this decision to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined therein.
(6) As the Constitution (Seventeenth Amendment) Act holds the field, the validity of the two impugned Acts, namely, the Punjab Security of Land Tenures Act X of 1953, and the Mysore Land Reforms Act X of 1962, as amended by Act XIV of 1965, cannot be questioned on the ground that they offend Arts. 13, 14 or 31 of the Constitution.

The majority judgment, therefore, rejected the contention that Article 368 did not confer power on the Parliament to take away the fundamental rights guaranteed by Part-III. The Supreme Court differed with its earlier decisions and held that the Parliament had no power to abridge or abrogate the fundamental rights. Consequently, the decision put a serious check on the amending power of Parliament. The rule, however, was applied prospectively and hence did not affect the First, Fourth and Seventeenth Amendments. Insofar as the validity of the Punjab Security of Land Tenures Act, 1953 was concerned it was held that the same could not be questioned on the ground that it offends Articles 13, 14 or 31 of the Constitution.

What is necessary for the present purpose is that in Golak Nath's case (supra), the question regarding the Acts that had been passed by the State legislature and included in the Ninth Schedule, did not provide that the legislatures which passed the said Acts lost their competence to repeal them or to amend them. Besides, if a legislature repeals or amends any of the provisions contained in any of the said Acts, the amended provision would not receive the protection of Article 31-B and its validity could be examined on merits. Therefore, the decision in Sajjan Singh's case (supra) to the said extent stands.

Thereafter, in the Banks Nationalization case, i.e. Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 564, an Ordinance was promulgated on 19.07.1969. Then an Act known as the Banking
Companies (Acquisition and Transfer of Undertakings) Act, 1969 was promulgated, which was given retrospective effect from the date of the Ordinance. The Ordinance and the said Act provided for nationalization of 14 Scheduled Banks with deposits exceeding Rs.50.00 crores. The said Act laid down the principles for determining compensation to be paid for the acquisition of the Banks. The petitioner R.C. Cooper held shares in Central Bank of India Limited and was also its Director. He assailed the said Act on the ground that it was void for lack of legislative competence, since in any event a part of the Act fell within the exclusive competence of State Legislature; the Act deprived him the office of Director, Central Bank of India; the Act made hostile discrimination between Banks as a result of which the value of his interest in shares had been substantially reduced and his right to receive dividends had seized and he suffered financial loss; the Act was not passed for a public purpose and contravened Article 31 (2) and it violated Article 31 (2) because it did not lay down the principles for determining compensation. The petitioner did not challenge the Act on the ground that it violated the fundamental rights of the Banks but on the ground that it violated his own fundamental rights under Articles 14, 19 and 31.

The majority judgment declared the impugned Act as void and invalid. The action taken or deemed to be taken in exercise of powers under the said Act was declared unauthorized. The dissenting judgment held the said Act to be valid. The majority view *inter alia* held as follows:

“(a) the Act is within the legislative competence of the Parliament; but

(b) it makes hostile discrimination against the named banks in that it prohibits the named banks from carrying on banking business,
whereas other Banks-Indian and Foreign-are permitted to carry on banking business, and even new Banks may be formed which may engage in banking business;

(c) it in reality restricts the named banks from carrying on business other than banking as defined in Section 5 (b) of the Banking Regulation Act, 1949; and

(d) that the Act violates the guarantee of compensation under Article 31 (2) in that it provides for giving certain amounts determined according to principles which are not relevant in the determination of compensation of the undertaking of the named banks and by the method prescribed the amounts so declared cannot be regarded as compensation."

The said decision created an impasse for the Parliament to amend Part-III of the Constitution. In fact, in terms of Golak Nath's case (supra), the Supreme Court had held that the Parliament had no powers to take away or curtail any of the fundamental rights guaranteed by Part-III of the Constitution even if it became 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 the Parliament had powers to amend any provision of the Constitution to include the provisions of Part-III within the scope of the amending power.
This led to the passing of the Constitution (Twenty-fourth Amendment) Act, 1971, which restored the powers of Parliament to amend fundamental rights. It came into force on 05.11.1971. In the Statement of Objects and Reasons it was mentioned as follows:

"The Supreme Court in the well-known Golak Nath's case [1967, 2 S.C.R.762] 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 is that Parliament is 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 is, 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.

12 After Article 13 clause (3), the following clause was inserted, namely: "(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368". Besides, Article 368 of the Constitution was re-numbered as clause (2) thereof, and -(a) for the marginal heading to that Article, the following marginal heading shall be substituted, namely: "Power of Parliament to amend the Constitution and procedure therefor". Further, before clause (2) as so re-numbered, the following clause was inserted, namely: "(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article,". Besides, clause (2) as so re-numbered, for the words "it shall be presented to the President for his assent and upon such assent being given to the Bill", the words "it shall be presented to the President who shall give his assent to the Bill and thereupon" were substituted; (d) after clause (2) as so re-numbered, the following clause was inserted, namely: "(3) Nothing in Article 13 shall apply to any amendment made under this Article."
2. The Bill seeks to amend article 368 suitably for the purpose and makes it clear that article 368 provides for amendment of the Constitution as well as procedure therefor. The Bill further provides 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.

This was followed by the Constitution (Twenty-fifth Amendment) Act, 1971, which came into force on 20.04.1972. Its Statement of Objects and Reasons read as under:

"Article 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given shall be called in question in any court on the ground that the compensation provided by that law is not adequate. In the Bank Nationalization case [1970, 3 S.C.R. 530], the Supreme Court has 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 have virtually become justiciable inasmuch as the Court can go into the question
whether the amount paid to the owner of the property is what may be regarded reasonably as compensation for loss of property. In the same case, the Court has also held that a law which seeks to acquire or requisition property for a public purpose should also satisfy the requirements of article 19 (1) (f).

2. The Bill seeks 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" is sought to be omitted from article 31 (2) and replaced by the word "amount". It is being clarified that the said amount may be given otherwise than in cash. It is 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.

3. The Bill further seeks to introduce a new article 31C which provides that if any law is 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 provision to apply in the case of laws made by State Legislatures, it is necessary that the relevant Bill should be reserved for the consideration of the President and receive his assent."
Article 31 of the Constitution, as it then was, provided that no law providing for the compulsory acquisition or requisitioning of 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 was to be called in question in any court on the ground that the compensation provided by that law was not adequate. In Bank Nationalization case (supra), the Supreme Court held that the Constitution guaranteed the 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 the Legislature may lay down for determining the amount of compensation, became justiciable. The Court could go into the question whether the amount paid to the owner of the property was what may be regarded as reasonable compensation for loss of property. In the said case, the Supreme Court also held that a law which seeks to acquire or requisition property for a public purpose should also satisfy the requirements of Article 19 (1) (f).

The amendment was thus made to overcome the difficulties being faced in giving effect to the Directive Principles of State Policy by the aforesaid interpretation. The word "compensation" was omitted from Article 31 (2) and replaced by the word "amount". It was clarified that the said amount may be given otherwise than in cash. It was also provided that Article 19 (1) (f) shall not apply to any law relating to the acquisition or requisitioning of property for a public purpose. A new Article 31C was inserted, which provided that notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall 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; and no law containing a
declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy. In terms of the proviso it is envisaged that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent. Therefore, if any law was passed to give effect to the Directive Principles contained in clauses (b) and (c) of Article 39 and it contained a declaration to that effect then such law shall not be deemed to be void on the ground that it takes away or abridges any of the rights contained in Articles 14, 19 or 31 and that it shall not be questioned on the ground that it does not give effect to those principles. For this 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.

The Constitution (Twenty-fifth Amendment) Act, 1971 thus again amended clause (2) of Article 31; besides, clause (2-B) and Article 31-C was inserted.

The President of India had on 06.09.1970 passed an order one of which was served on Madhav Rao Jiwaji Rao Scindia Bahadur stating that he had ceased to be recognized as ruler of Gwalior. This order was passed in exercise of power under Article 366 (22) of the Constitution. The effect of the said order was that the allowances payable to the erstwhile rulers were discontinued. In fact, by virtue of Article 291\textsuperscript{13} of the Constitution there was an obligation on the part of the Union Government to pay and a corresponding right in the erstwhile ruler to require payment of 'privy purse'. The said order was assailed before the Supreme Court in Madhav Rao Scindia v. Union of India, AIR 28.12.1971.

\textsuperscript{13} Article 291 has since been repealed by the Constitution (Twenty-sixth Amendment) Act, 1971- Section 2, w.e.f. 28.12.1971.
AIM 1971 SC 530, known as the 'Privy Purse' case. It was held that the history of negotiations which culminated in the integration of the territories of the Princely States before the commencement of the Constitution clearly indicated that the recognition of the status of the Rulers and their rights was not temporary, and also not liable to be varied or repudiated in accordance with "State Policy". The relevant agreements in which the rights of the Rulers were recognized were not political agreements and were not liable to be set at naught by the unilateral act of the Union of India.

The said judgment led to the Constitution (Twenty-sixth Amendment) Act, 1971, which came into effect on 28.12.1971. The Statement of Objects and Reasons of the same were given as follows:

"The concept of rulership, with privy purses and special privileges unrelated to any current functions and social purposes, is incompatible with an egalitarian social order. Government have, therefore, decided to terminate the privy purses and privileges of the Rulers of former Indian States. It is necessary for this purpose, apart from amending the relevant provisions of the Constitution, to insert a new article therein so as to terminate expressly the recognition already granted to such Rulers and to abolish privy purses and extinguish all rights, liabilities and obligations in respect of privy purses. Hence this Bill."

The decisions of the Supreme Court in Bella Banerjee's case (supra) and Golak Nath's case (supra) that had led to the enactment of the Constitution (Twenty-fifth Amendment) Act, 1971; besides, the Privy Purse case, which led to the Constitution (Twenty-sixth Amendment) Act, 1971 and the majority judgments in Golak Nath's case (supra) and also to consider the validity of the amendments, a
thirteen Judge Bench of the Supreme Court was constituted in the case Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461. The judgment in Golak Nath's case (supra) was overruled by a majority of 9:4. Further by a majority of 7:6, the Bench laid down the doctrine of the basic structure of the Constitution.

To recount the background, it is to be noticed that the Supreme Court in Shankari Prasad Singh Deo's case (supra) held that a parliamentary Act passed under Article 368 relating to amendment of the Constitution shall be valid even if it curtailed the fundamental rights that are conferred by Part-III of the Constitution. This view proceeded on the premise that such an Act would not come within the expression 'law' as contained in Article 13 (2) of the Constitution. Such an expression, it was said, would be applicable to a legislative measure and not to a constituent measure as an amendment of the Constitution. This view was affirmed in Sajjan Singh's case (supra); however, in Golak Nath's case (supra), it was held that the word 'law' in Article 13 (2) would not only cover a legislative measure but also a constituent measure and that the Parliament had no power under Article 368 to make any law taking away or abridging any of the fundamental rights under Part-III of the Constitution; besides, it was said that Article 368 related only to the procedure for amending the Constitution but did not confer any power on the Parliament to take away or abridge any of the fundamental rights. To overcome the said decision in Golak Nath's case (supra), the Constitution (Twenty-fourth Amendment) Act was passed. It expressly empowered the Parliament to amend any provision of the Constitution including those relating to fundamental rights; besides, it made Article 13 of the Constitution inapplicable to an amendment of the Constitution under Article 368.

Therefore, the position was that in view of Golak Nath's case (supra), the validity of any amendment of the Constitution
affecting the fundamental rights under Part-III could be gone into. The Constitution (Twenty-fifth, Twenty-sixth and Twenty-ninth Amendment) Acts, adversely affected the fundamental rights. Writ petitions were filed by the affected persons questioning the validity of the said amendments including that of the Constitution (Twenty-fourth Amendment) Act.

The question in Kesavananda Bharati’s case (supra) before the Supreme Court was regarding the validity of the decision in Golak Nath’s case (supra) as to whether it was to be upheld or overruled. The majority view was that Golak Nath’s case (supra) was to be overruled. Article 368 relating to amendment of the Constitution, it was said, did not enable the Parliament to alter the basic structure or framework of the Constitution. The Constitution (Twenty-fourth Amendment) Act, 1971 was held to be valid. Section 2 (a) and (b) of the Constitution (Twenty-fifth Amendment) Act, 1971 was held to be valid. The first part of Section 3 of the Constitution (Twenty-fifth Amendment) Act, 1971 was held to be valid. The second part, i.e. “and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it did not give effect to such policy”, was held to be invalid. The Constitution (Twenty-ninth Amendment) Act, 1971 was held to be valid. It was said that Article 368 of the Constitution before the Constitution (Twenty-fourth Amendment) Act, 1971 contained both power and procedure to amend the Constitution and all Articles including those relating to fundamental rights could be amended provided that the basic structure and framework of the Constitution were not altered.

In Kesavananda Bharati’s case (supra), the Supreme Court, therefore, dissented from the judgment in Golak Nath’s case (supra) and declared that Article 368 though enabled the Parliament to amend the ‘law’ but it did not enable the Parliament to alter the basic structure
or framework of the Constitution. Although basic structure was not defined but some broad parameters were indicated.

The next case where the effect of the power of Parliament to amend the Constitution was considered, was in Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299. The Constitution (Thirty-ninth Amendment) Act, 1975 was passed. It contained three principle features. First was that Article 71 was substituted by a new Article 71 which stated that subject to the provisions of the Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President including the grounds on which such election may be questioned. The second feature was that Article 329-A was inserted in the Constitution. Clause (4) of the said Article was challenged. It stated that no law made by Parliament before the commencement of the Constitution (Thirty-ninth Amendment) Act, 1975 insofar as it related to election petitions and matters connected therewith, shall apply or shall be deemed ever to have applied to or in relation to the election of any such person as is referred to in clause (1) to either House of Parliament and such election shall not be deemed to be void or ever to have become void on any ground on which such election could be declared to be void under any such law and notwithstanding any order made by any Court, before such commencement, declaring such election to be void, such election shall continue to be valid in all respects and any such order and any finding on which such order is based shall be and shall be deemed always to have been void and of no effect. The Constitutional validity of clause (4) of Article 329-A was challenged on the ground that it destroyed and damaged the basic features or basic structure of the Constitution. Reliance was placed in support of the contention on the majority view of seven learned Judges in Kesavananda Bharati's case (supra). Clause (4) of Article 329-A of the Constitution was struck down in Indira Nehru
Gandhi's case (supra), on the ground that it violated the principle of free and fair election which was an essential postulate of democracy and which in its turn was a part of the basic structure of the Constitution inasmuch as it abolished the forum without providing for another forum for going into the dispute relating to the validity of the election of the appellant and further prescribed that the said dispute shall not be governed by any election law and that the validity of the said election shall be absolute and not consequently be liable to be assailed; besides, it extinguished both the right and the remedy to challenge the validity of the election.

In I.R. Coelho (dead) by LRs v. State of Tamil Nadu, AIR 2007 SC 861, a Constitution Bench of nine Judges determined the nature and character of protection provided by Article 31-B of the Constitution to the laws added to the Ninth Schedule by amendments made after the decision in Kesavananda Bharati's case (supra) on 24.04.1973. The broad fundamental question was whether after the decision in Kesavananda Bharati's case (supra) when the doctrine of basic structures was propounded, was it permissible for the Parliament under Article 31-B to immunize legislations from fundamental rights by inserting them into the Ninth Schedule and, if so, what was its effect on the power of judicial review of the Court. It was concluded as follows:

"(i) A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of the law, whether by amendment of any article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in exercise of judicial review power of the Court. The validity or invalidity would be tested on the principles laid down in this judgment."
(ii) The majority judgment in Kesavananda Bharati case (AIR 1973 SC 1461) read with Indira Gandhi case (AIR 1975 SC 2299) requires the validity of each new constitutional amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.

(iii) All amendments to the Constitution made on or after 24.4.1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them. To put it differently even though an Act is put in the Ninth Schedule by a constitutional amendment, its provisions would be open to attack claiming they destroy or damage the basic structure if the fundamental right or rights taken away or abrogated pertain or pertain to the basic structure.

(iv) Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by constitutional amendments shall be a matter of constitutional adjudication by examining the nature and extent of infraction of a fundamental right by a statute, sought to be constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Article 14 and
Article 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the articles in Part III as held in Indira Gandhi case (AIR 1975 SC 2299). Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such law(s) will not get the protection of the Ninth Schedule.


(v) 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 24.4.1973, such a violation/infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying thereunder.

(vi) Action taken and transactions finalised as a result of the impugned Acts shall not be open to challenge.”

A perusal of the above propositions evidently show that after the decision in Kesavananda Bharati's case (supra), a law that abrogates or abridges rights guaranteed by Part-III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of the law, whether by an amendment of any Article of Part-III or by an insertion in the Ninth Schedule, such law would have
to be invalidated in exercise of the power of judicial review. The judgments in Kesavananda Bharati's case (supra) read with Indira Gandhi’s case (supra) require the validity of each new constitutional amendment to be judged on its own merits. All amendments to the Constitution made after the judgment in Kesavananda Bharati's case (supra) by which the Ninth Schedule was amended by inclusion of various laws therein would have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them. Even though an Act is put in the Ninth Schedule by a constitutional amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights taken away or abrogated pertains or pertain to the basic structure. The justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by constitutional amendments would be a matter of constitutional adjudication by examining the nature and extent of infraction of a fundamental right by a statute sought to be constitutionally protected and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Article 14 and Article 19. If the validity of any Ninth Schedule law had already been upheld by the Supreme Court, it would not be open to challenge such law again on the principles declared in I.R. Coelho’s case (supra). However, if a law held to be violative of any rights in Part-III is subsequently incorporated in the Ninth Schedule after Kesavananda Bharati's case (supra), such a violation or infraction would be open to challenge on the ground 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. The action taken and transactions finalized because of the impugned Acts were, however, held to be not open to challenge. Therefore, after the decision in I.R. Coelho's case
(supra), the absolute bar to challenge an Act, which had been incorporated in the Ninth Schedule of the Constitution, has been siphoned and diluted inasmuch as after the decision in Kesavananda Bharati's case (supra), the same would be subject to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying thereunder. Therefore, whatever incorporated in the Ninth Schedule after the decision in Kesavananda Bharati's case (supra) is, now subject to challenge. If the law infringes the essence of any of the fundamental rights or any other aspect of the basic structure then it is liable to be struck down. However, the extent of abrogation and limit of abridgment shall have to be examined in each case. With respect to Sajjan Singh's case it was held as follows:

77. "There was some controversy on the question whether validity of Article 31-B was under challenge or not in Kesavananda Bharati. On this aspect, Chandrachud, C.J. has say to this in Waman Rao14:

"In Sajjan Singh v. State of Rajasthan the Court refused to reconsider the decision in Sankari Prasad with the result that the validity of the 1st Amendment remained unshaken. In Golak Nath, it was held by a majority of 6:5 that the power to amend the Constitution was not located in Article 368. The inevitable result of this holding should have been the striking down of all constitutional amendments since, according to the view of the majority, Parliament had no power

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to amend the Constitution in pursuance of Article 368. But the Court resorted to the doctrine of prospective overruling and held that the constitutional amendments which were already made would be left undisturbed and that its decision will govern the future amendments only. As a result, the 1st Amendment by which Articles 31-A and 31-B were introduced remained inviolate. It is trite knowledge that Golak Nath was overruled in Kesavananda Bharati in which it was held unanimously that the power to amend the Constitution was to be found in Article 368 of the Constitution. The petitioners produced before us a copy of the civil miscellaneous petition which was filed in Kesavananda Bharati by which the reliefs originally asked for were modified. It appears therefrom that what was challenged in that case was the 24th, 25th and the 29th Amendments to the Constitution. The validity of the 1st Amendment was not questioned. Khanna, J., however, held while dealing with the validity of the unamended Article 31-C that the validity of Article 31-A was upheld in Sankari Prasad that its validity could not be any longer questioned because of the principle of stare decisis and that the
ground on which the validity of Article 31-A was sustained will be available equally for sustaining the validity of the first part of Article 31-C (p. 744) (SCC p. 812, para 1518)."

78. We have examined various opinions in Kesavananda Bharati case but are unable to accept the contention that Article 31-B read with the Ninth Schedule was held to be constitutionally valid in that case. The validity thereof was not in question. The constitutional amendments under challenge in Kesavananda Bharati case were examined assuming the constitutional validity of Article 31-B. Its validity was not in issue in that case. Be that as it may, we will assume Article 31-B as valid. The validity of the 1st Amendment inserting in the Constitution, Article 31B is not in challenge before us."

In Glanrock Estate (P) Ltd. v. State of T.N., (2010) 10 SCC 96 the principle laid down in I.R. Coelho (dead) by LRs v. State of Tamil Nadu (supra) was further explained in the following manner: -

"Coelho principle

55. Coelho held that the object behind Article 31-B is to validate certain legislations, which otherwise may be invalid and not to obliterate Part III in its entirety or to dispense with judicial review of those legislations. The Court held that Article 21 confers right to life, which is the heart of the Constitution and when Article 21 read with Articles 14, 15 and 19 is sought to be eliminated not only the "essence of right" test but also the "right test" has to be applied, particularly when Kesavananda Bharati
and Indira Nehru Gandhi v. Raj Narain have expanded the scope of the basic structure to cover even some of the fundamental rights.

56. Further, it was also pointed out by the Court in Coelho case that there are certain parts or aspects of the Constitution including Article 15 and Article 21 read with Articles 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. The exclusion of the fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect the basic features of the Constitution. Referring to the "rights test" and the "essence of right" test, the Court held that there is a difference between both the tests and both form part of application of the basic structure doctrine.

57. The Court in Coelho case pointed out that the power to grant absolute immunity at will is not compatible with the basic structure doctrine and after 24-4-1973 the laws included in the Ninth Schedule would not have absolute immunity and thus validity of such laws could be challenged on the touchstone of basic structure as reflected in Article 21 read with Articles 14, 15 and 19 and the principles underlying in those articles.

58. Coelho expressed in clear terms that the functional validity based on the power of immunity exercised by Parliament under Article 368 is not compatible with the basic structure doctrine and, therefore, laws that are included in the Ninth Schedule
have to be examined individually for determining whether the constitutional amendments by which they are put in the Ninth Schedule damage or destroy the basic structure of the Constitution and, in that process, the Court has to examine the terms of the statute, the nature of the rights involved and in substance the statute violates the special features of the Constitution and, for doing so, it has first to find whether the Ninth Schedule law is violative of Part III. If, on such examination, the answer is in the affirmative; the further examination is to be undertaken whether the violation found is destructive of the basic structure doctrine and if, on such further examination, the answer is again in the affirmative, the result would be invalidation of the Ninth Schedule law."

In the afore-noticed circumstances, it may be summarized that:

(a) the judgment in Sajjan Singh's case (supra), insofar as it was made clear that the effect of the last clause in Article 31-B was to leave it open to the respective legislatures to repeal or amend the Acts which had been included in the Ninth Schedule, was not in any manner diluted or changed in the subsequent judgments or by the constitutional amendments;

(b) in Sajjan Singh's case (supra) it was also said that the fact that the Acts that had been included in the Ninth Schedule with a view to make them valid, did not mean that the legislatures in question which passed the said Acts had lost their competence to repeal them or to amend them. That was one consequence of the said provision. The other
inevitable consequence of the said provision, it was held was that if a legislature amended any of the provisions contained in any of the said Acts, the amended provision would not receive the protection of Art. 31-B and its validity may be liable to be examined on merit;

(c) the amendments, if any, to be made or having been made to the 1953 Act or the 1972 Act or even if these are to be repealed, it is to be done by the State Legislature as the subject matter of the said enactments are covered by Entry 18 of List II i.e. the State List of the Seventh Schedule of the Constitution. This includes lands, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization;

(d) a subject that is covered by the State List for its repeal or amendment cannot be subject to the control of the President of India, which means the Central Government that acts through the President. It is in fact the State Legislature by virtue of said Entry 18, which alone has the right to legislate;

(e) the legislation carried out by the State legislation cannot be subject to control of the Central Government. In fact, the State legislature is not subject to Union Parliament even. It is only if an Act is violative of the Constitution that it can be assailed in exercise of the writ jurisdiction of the High Court or the Supreme Court, as the case may be;

(f) the only effect of not taking the assent of the President while enacting a law would be that the law so enacted would not be put in Ninth Schedule of the Constitution and would
be amenable to challenge on the ground of violation of fundamental rights. The enactment otherwise would be valid;

(g) even otherwise, it would be subject to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying thereunder in view of the decision in I.R. Coelho’s case (supra). This in fact has been so held by the Supreme Court in Sajjan Singh’s case (supra);

(h) in case amendments are to be made in respect of Acts that are in the Ninth Schedule of the Constitution there is no need to obtain the assent of the President.

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