



## Ninth Schedule

**For Prelims:** Reservation, Supreme Court, Constitution (First Amendment) Act, 1951.

**For Mains:** Ninth Schedule of the Constitution.

### Why in News?

The Jharkhand Assembly has cleared two Bills, but these changes will come into force only after the Centre carries out amendments to include these in the **Ninth Schedule of the Constitution**.

### What are these Bills?

- **Jharkhand Reservation of Vacancies in Posts and Services (Amendment) Bill, 2022:**
  - It raises reservations to 77%.
  - Within the reserved category, the Scheduled Castes will get a quota of 12 %, up from 10%; 27% for OBCs, up from 14%; 28% for Scheduled Tribes, a 2 % increase; and **10% for Economically Weaker Sections (EWS)**.
- **Jharkhand Local Persons Bill, 2022:**
  - It aims at granting **local residents “certain rights, benefits, and preferential treatment”** over their land; in their stake in local development of rivers, lakes, fisheries; in local traditional and cultural and commercial enterprises; in rights over agricultural indebtedness or availing agricultural loans; in maintenance and protection of land records; for their social security; in employment in private and public sector; and, for trade and commerce in the state.

### Why is there need to Include in Ninth Schedule

- The 77 % reservation breaches the 50 % ceiling set by the **Supreme Court** in the 1992 **Indra Sawhney v Union of India verdict**.
- However, placing a legislation in the Ninth Schedule **shields it from judicial scrutiny**.
- Previously, the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (**Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993**, reserved 69 % of the seats in colleges and jobs in the state government.

### What is the Ninth Schedule?

- The Schedule contains a list of **central and state laws which cannot be challenged in courts** and was added by the [Constitution \(First Amendment\) Act, 1951](#).
  - The first Amendment added **13 laws to the Schedule**. Subsequent amendments in various years have taken the number of protected laws to 284 currently.
- It was created by the new Article 31B, which along with Article 31A was brought in by the government to protect laws related to **agrarian reform and for abolishing the Zamindari system**.

- While Article 31A extends protection to ‘classes’ of laws, Article 31B shields **specific laws or enactments**.
- While most of the laws protected under the Schedule concern agriculture/land issues, the list includes other subjects.
- Article 31B also has a retrospective operation which means that if laws are inserted in the Ninth Schedule after they are declared unconstitutional, they are **considered to have been in the Schedule** since their commencement, and thus valid.
- Although Article 31B excludes judicial review, the apex court has said in the past that even laws under the Ninth Schedule would be **open to scrutiny if they violated Fundamental Rights or the [basic structure of the Constitution](#)**.

## Are Laws in the Ninth Schedule completely Exempt from Judicial Scrutiny?

- **Keshavananda Bharati v. State of Kerala (1973):** The court upheld the judgement in Golaknath and introduced a new concept of “**Basic structure of the Indian Constitution**” and stated that, “all provisions of the constitution can be amended but those amendments which will abrogate or take away the essence or basic structure of constitution which included **Fundamental Rights are fit to be struck down by the court**”.
- **Waman Rao v. Union of India (1981):** In this important judgement, the SC ruled that, “those amendments which were made in the constitution before 24th April 1973 (date on which judgement in Keshavananda Bharati was delivered) are valid and constitutional but those which were made after the stated date are open to being challenged on the ground of constitutionality.
- **I R Coelho v. State of Tamil Nadu (2007):** It was held that every law must be tested under Article 14, 19 and 21 if it came into force after 24th April 1973.
  - In addition, the court upheld its previous rulings and declared that any act can be challenged and is **open to scrutiny by the judiciary if it is not in consonance with the basic structure of the constitution**.
  - In addition, it was held that if the constitutional validity of any law under the ninth schedule has been upheld before, in future it cannot be challenged again.

## Way Forward

- Although reservation is necessary, it should **also be open to judicial scrutiny** in order to ensure any abrupt or irrational policy initiative by the Executive or the Legislature.
- Any loophole or shortcomings in reservation policy **must be addressed by involving various stakeholders**. The need of the hour is not to go to extremes of either scrapping or shielding reservation policy, rather a rational framework on this **contentious policy must be developed**.

## UPSC Civil Services Examination Previous Year Question (PYQ)

### Prelims

#### Q1. Consider the following statements: (2018)

1. The Parliament of India can place a particular law in the Ninth Schedule of the Constitution of India.
2. The validity of a law placed in the Ninth Schedule cannot be examined by any court and no judgement can be made on it.

#### Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: (a)

**Q2. The Ninth Schedule was introduced in the Constitution of India during the prime ministership of (2019)**

- (a) Jawaharlal Nehru
- (b) Lal Bahadur Shastri
- (c) Indira Gandhi
- (d) Morarji Desai

**Ans: (a)**

### **Mains**

**Q.** What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution? **(2016)**

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