Relevance of 9th Schedule in Contemporary India: Safeguarding Welfare or Encouraging Legal Immunity?

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Abstract: **The Ninth Schedule ensued from the Constitution Act 1951 to ensure that certain state and central laws cannot be challenged in courts. This was in response to the objective of the then-government to redistribute land in order to drive development toward agricultural and industrialisation in India. The Ninth Schedule started with thirteen statutes but has since been expanded to contain two hundred and eighty-four statutes. It was made to be a mechanism for achieving social justice, although it seems to have turned into a tool used in advancing political interests. The operationalisation of the Ninth Schedule thus presents an interesting point of discourse, especially when considering the situation attainable in other countries.**

It is against this backdrop that this article employs comparative analysis to explore the relevance of the Ninth Schedule in contemporary times in India compared to other nations. This is particularly as it concerns the influence of the courts in different case studies, with data gathered from secondary sources, as well as extracting information from the legal/constitutional documents of different countries.

The finding from this comparative study shows that the Indian scenario is a unique case, where an instrument such as the Ninth Schedule serves as an appendage to the Constitution. Nevertheless, a host of other countries have provisions to limit the influence of the court in invalidating constitutional statutes.

Keywords: **India, the Ninth Schedule, Judicial Review, Supreme Court, Legislature**

INTRODUCTION

The enactment of laws provides a framework of standards that state citizens refer to when maintaining order. These laws are notably preserved in a country's constitution, which may be reviewed from time to time. Cooter (2020) argued that constitutions should be tailored to the specific political, social, and other needs of a nation at a given time, hence the proposition to have a review through the efforts of various branches of government, including the judiciary. The judiciary plays a significant role in ensuring constitutional supremacy as checks and balances are established between the various departments of constitutional authority (Tushnet, 2000).

Salman, Sukardi, and Aris (2018) described judicial review as the control mechanism that a court uses in evaluating the constitutional system of separated powers. It gives judicial officers the amplitude for broadening their constitutional responsibility to partake in governance and democratic processes as a whole (Hasani, 2020). Judicial review can also be regarded as the process through which individuals, leveraging on the mechanism of the court, challenge the legality of the way public authorities use public power, even as it allows for the supervision of the use of this power (Carroll, 2011). Sathe (2002) expounded that judicial review underlines the dynamism and fluidity perceptible from interpreting the Constitution along with its spirit to enable continued adaptation within our ever-changing society and circumstances. Goel (2022) recounted that the spirit of judicial review in India preluded the framing and writing of its Constitution, with the origin of judicial review being traced to the United States. However, there have been instances where provisions or instruments are dedicated to the protection of extant laws (Khan and Nag, 2023). This means laws inserted into the provision will not be subjected to judicial review.

India's Ninth Schedule is one of such provisions. This particular provision has brought about some degree of contentions and controversies regarding its appropriateness in contemporary times. The Ninth Schedule was one of the elements that ensued from the Constitution Act 1951, with Article 31A and Article 31B highlighting that the Schedule encompassed the state and central laws that cannot be challenged in courts. Prior to its implementation, individual property rights were considered to be a hindrance to the agrarian reform and nationalization of key industries that the Indian government earmarked at that time (Ashok, Babie, and Orth, 2019). The letter of Article 31B is expressly quoted as follows:

"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 [Part III of the Constitution], 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".

Notably, the Ninth Schedule highlighted India's determination to break away from the Zamindari system, which was established by the British to enable intermediaries (Zamindars) to gain control over lands and also collect land revenues (Vishnuganth and Mahalingam, 2024). This explicates the expropriation rules which border on stripping an individual of part or all of the powers and privileges constituting his or her ownership of a property for redistribution or reallocation purposes, and this is usually against the individual's will (Harris 1996, cited in Ashok, Babie and Orth, 2019).

It is worth noting that the deployment of the Ninth Schedule was incident upon the judgments passed by various Indian courts in quashing specific government land reform policies and legislations on the basis of the violation of fundamental rights (Bhattamishra, 2023). One of such cases was Balmadies Plantations Ltd. v. State of TN[1] where the Court struck down the Petitioner's argument for the vesting of land because it violates the Constitution. The Petitioner would later successfully bypass the Court ruling through the instrument of the Ninth Schedule, wherein it was inserted as the Janmam Act. Another premise for the formulation and implementation of the Ninth Schedule related to the bankruptcy that stared the Indian State in the face amidst unsustainable compensation schemes for landowners in the course of land redistribution and feudal estate disintegration (Rajagopalan, 2021).

Influencing Parties

There are key stakeholders or interest groups to consider in the discourse on India's 9th Schedule. In general terms, this would pertain to the components or formation of government in India, whereby the focus is beamed on the Union and the State (Bhattamishra, 2023). The Union covers the areas supervised and controlled by the Central (Federal) Government, while the State is linked to the governance of India's twenty-eight states. The allocation of power or authorities is, however, more favourably tilted towards the Central Government (Bhattamishra, 2023).

India's bicameral legislature/parliament, consisting of the Rajya Sabha (Upper house) and the Lok Sabha (Lower house), is another critical element in constitutional matters. Burra (2010) noted that amendments to the Ninth Schedule have become a special species of constitutional amendment within the reach and deployment of India's Provisional Parliament. Chandrachud (2015) pointed out that the Parliament may decide to consider channelling a statute through the Ninth Schedule where a legislation has already been declared unconstitutional or where it (that is, the Parliament) aims to avoid the adverse effect of a judicial decision. The Ninth Schedule presumably functions as an override that politicians employ to limit or undo unfavourable implications of the court's decision (Larsson, 2021). Overrides basically speak to the act of altering, ignoring, limiting, modifying, overturning, reversing, or undoing the effects of a court case (Uribe, Spriggs, and Hansford, 2014). The proposition of the Ninth Schedule might have highlighted the loopholes in India's Constitution, as Mitra (2001) noted that it did not sufficiently define the country's core beliefs. The author further added that the Supreme Law did not provide consistent guidelines for states to support one another in a specific context, despite addressing issues on the rights of individuals and primordial groups.

That said, moves toward the amendment of most of the provisions in the Constitution can be primarily initiated by the Indian Parliament, and a minimum of a two-thirds majority of the members is required to vote for the next phase to be considered (Rajagopalan, 2021). However, amendments to entrenched provisions like the separation of powers and federalism will also require votes from not less than half of the state legislatures. The fact that

[1] (1972) 2 SCC 133.

fundamental rights are not part of these (entrenched) provisions means statutes violating the rights can be inserted into the Ninth Schedule without any ratification from the states (Rajagopalan, 2021). That said, state legislatures are considered to assume a lobbyist stance in the pursuit of having statutes classified as being unconstitutional inserted into the Ninth Schedule, and this is even more notable in light of how 88% (248) out of the 282 statutes in the Schedule were passed by state legislatures (Rajagopalan, 2021).

The Indian Judiciary is also a key component to consider in the discourse on the Ninth Schedule, even though the provision is intended to protect certain statutes from the ambit of the court. The Indian judiciary is an independent entity in its appointments and operations with regard to the enforcement of the Constitution and checking the activities of the legislature and executive (Gadbois, 2011). It should be noted that India runs an integrated federal court system, which means existing High Courts domiciled in various states are governed by the Supreme Court, with the Constitution of India being the sole legal/constitutional instrument in court proceedings and rulings (Bhattamishra, 2023). As such, courts that are lower than the Supreme Court and High Courts in India do not have the power to decide on cases involving the validity of constitutional statutes[2].

Furthermore, the declaration of unconstitutionality by India's Supreme Court is founded upon four premises, including: i.) That the legislature may not have been vested with the power to enact a disputed statute as a result of the scheme of legislative power distribution between the Union and the states; ii.) That the statute contravenes other justiciable provision(s) of the Constitution; iii.) That the statute may be observed to violate one fundamental right or another captured in Part III of the Constitution; iv.) That the statute may be invalidated due to inappropriately delegated legislative function to the executive or another authority (Chandrachud, 2015).

The Ninth Schedule and the Basic Structure Doctrine

Discourses on the Ninth Schedule have been consistently centred around the Basic Structure Doctrine, and this is sometimes done by echoing the position of the courts in a functional democratic setting to preserve and uphold the essence of constitutional identity (Choudhuri and Kabra, 2017). Lal and Gadhwal (2008) described the basic structure as "those fundamental, crucial and inalienable principles that form its very crux and are the foundation on which it has been erected" (p.2). Ashok, Babie, and Orth (2019) recounted that even though the Supreme Court of India established that the laws inserted in the Ninth Schedule cannot alter the basic structure of the Constitution, it has not defined the criteria or prerequisites that must be met to justify such insertions.

Mate (2017) asserted that basic structure cases have shown how the Court can initially acknowledge doctrinal principles to consequently ensconce them (that is, the principles) as basic features that serve as a guiding framework in later decisions. According to Singh (2021), the basic structure doctrine challenged the supremacy and absoluteness of Parliament's power to amend the Constitution, as vested by Article 368. To ensure proper constitutional alignment, Article 13(4) was inserted through the twenty-fourth Constitutional Amendment Act of 1971 to exempt the amendment act made under Article 368 from the provision of Article 13 (Mehta, 2016).

The case of Kesavananda Bharati v. State of Kerala[3] represented the very first instance where the matter of basic structure was brought to the limelight in India. The Supreme Court established that certain principles in the Constitution of India are inviolable and that the Parliament lacks the power to unamend them. The cases of L. Chandra Kumar v. Union of India[4] and Sambamurthy v. State of Andhra[5] are also worth citing as examples for the operationalisation of the basic structure doctrine in invalidating constitutional amendments (Yap, 2015). The first one had to do with the invalidation of two constitutional amendments seeking to empower state and federal legislatures to oust all other courts except the Supreme Court from interfering in decision of administrative tribunals while the second one concerned invalidating Article 371D(5) of the Constitution that granted state government the leeway to annul or modify any Administrative Tribunal order based on a special written order. Singh (2021) posited that the alteration of provisions in the Indian Constitution was considerably easier before

[2] A.I.R. 1997 S.C. 1125
[3] AIR 1973 SC 1461
[4] SCC 261, 1997
[5] 1987 SCR (1) 879

this case, as there was no express or implied limitation on amendment proceedings.

The Ninth Schedule in Contemporary View

Originally, there were thirteen laws on land reforms in the Ninth Schedule, but it has since been expanded to include two hundred and eighty-four laws bordering on trade, mines, industries, and reservation among other dimensions (Rajagopalan, 2021). This has led to the Schedule being tagged a "constitutional dustbin" (Dhavan, 2007). Dodeja (2016) buttressed that the Ninth Schedule provides leeway for unconstitutional laws to be granted fictional immunity.

Pandey (2024) pointed out that a court's standpoint to declare any statute violating fundamental rights or the law of the land as unconstitutional remains its strongest tool. The influence of the court, however, pales out in light of the Ninth Schedule's activation. Chutkow (2008) noted that stripping the court of the power to review statutes is aimed at regulating the influence of the judiciary when court preferences diverge from those of the other branches of government. Proponents of instruments like the Ninth Schedule often express concerns over how courts do not have the legitimacy to judicially arrogate power in light of setting aside the laid-down objectives of democratically accountable branches of government (Issacharoff, 2019). Fagbadebo and Dorasamy (2022) added that the court could have an overbearing authority that truncates the decisions of the majority, despite being a less democratic branch of government, considering the nature of its composition.

Furthermore, Deva (2016) posited that indiscriminate expansion of the Ninth Schedule, as well as the deviations from its original use [based on land reforms], was due to the dictatorial tendencies and policies of Prime Minister Indira Gandhi, a situation that eventually led to the Emergency. Although the use of the Ninth Schedule is noted to have largely dropped due to dormancy and lack of new additions since 1995 (Deva, 2016), it cannot be said to have been entirely phased out as a result of certain factors. For one, most political parties have often attempted to use the expansion of the Ninth Schedule to appeal to people since it supports populist demands like rent control, land redistribution, and reservation of jobs in educational institutions (Anshuman, 2019; Rajagopalan, 2021). Moreover, there have been formations of coalition groups and governments favouring the continued operationalisation of the Ninth Schedule (Chandrachud, 2017). By this, one can see how law may surrender to power struggle to the point of evolving into a constitutional void (Allan, 2023).

Theoretical Underpinning

Foundational Structuralism

Foundational structuralism becomes relevant in this present discourse, considering that the constitution may be defined in terms of structure, hinged on a fundamental foundation that encompasses the lifeblood and pillars for the interrelated provisions of a constitution (Roznai, 2014). Invariably, the concept of foundational structuralism is valuable in addressing the paradox stemming from unconstitutional constitution amendment acts, as the scenario involving the institutionalisation of the Ninth Schedule highlights. Based on foundational structuralism, constitutions go beyond being a formal document on the aspirations of citizens as they are expected to capture the essential philosophical, political, and social ideologies that form the character and quintessence of the constitution (Krishnaswamy, 2009).

Furthermore, foundational structuralism is incumbent on the elements of constitutional identity and constitutional values (Westover, 2005). Regarding constitutional identity, the constitution is seen as an interconnected whole based on several composite provisions, and as a result, it becomes erroneous to attempt to disaggregate the constitution by singling out provisions [as an autonomous entity] that appeal to a particular case – without taking a holistic view to the entire document (Austin, 1999). This could give a pointer to why the interpretation of constitutional provisions by the Courts in India was considered to be rigid prior to the emergence of the Ninth Schedule. The Constitution has since become highly flexible with 104 amendments reportedly passed within a 70-year period, from 1950 to 2020 (Stephenson, 2021), albeit the spirit of the Ninth Schedule still remains active. Embracing the constitution as a harmonious and living whole ultimately helps us appreciate the interconnectedness between constitutional values and provisions, and also contributes to the context-based development of legal practices and experiences (Kommers et al., 2018). Tushnet (2000) reasoned that relatively less constructive opinions of the Supreme Court sometimes retard progressive trajectories, even as the courts' ability to displace the authority of the parliament could result in members [of the parliament] paying little attention to constitutional matters or values.

Populist [anti]Constitutionalism

Constitutionalism relates to a political system framed by conventions or rules that are in place to determine who exercises power, as well as the associated processes and circumstances (Gardner, 2012). Waluchow and Kyritsis (2022) added that constitutionalism tends to legally limit a government in its power, ensuring that legitimacy or authority is expressed within the confines of these limitations. Harel and Shinar (2012) expounded that the probable conflict between the ideal of judicial supremacy and legislative supremacy represents a core element in constitutional democracy, wherein the former is usually saddled with defending constitutionalism. Bass and Choudhury (2013) surmised that disputes revolving around constitutional provisions are among the most sensitive political issues in different countries.

Populism has been defined as an ideology that stresses how politics should be based on the general will of the people, and it is forged on the separation of the society into two homogenous groups with antagonistic inclinations, thus setting "the pure people" against "the corrupt elite" (Mudde, 2004). It tilts at promoting and protecting the interests of the people, although it may be leveraged as a viable political tool by politicians. Dixon and Landau (2021) argued that populists adapt the concepts, designs, and principles that are founded in liberal constitutionalism to selectively achieve their objective in a manner that is at variance with the context or purpose for which the principles were originally defined.

Considering populism within the context of constitutionalism, we explore the trends of anti-establishment political predispositions whereby certain politicians claim to represent the voice of the people as they supposedly take a stand against conspiratorial and corrupt elite (Levitsky and Ziblatt, 2018). The concept of populist constitutionalism may fall apart in the face of the limitation of normative political liberalism (Halmai, 2018). However, the consideration of illiberal constitutionalism means the concept is not entirely infeasible (Blokker, 2019). Populist constitutionalism avails the leeway for its proponents to manipulate the constitutional framework for their interest – which hinges on what they conceive to be the ideas of a good state – even when the approach may be contrary to what is permitted within the confines of liberal democracy in the West (Bugaric, 2019).

Moreover, populists are known to be profoundly critical of liberal constitutionalism and the rule of law, pointing out the inherent depoliticization as people are removed from institutions that decide on socio-political matters (Gárdos-Orosz and Szente, 2021). These institutions are thus seen as a hindrance to the will of the people, which makes them (that is, the institutions) a prime target of populist government reforms in a bid to lessen their influence (Bugaric and Kuhelj, 2018). More notably, populism leaning towards anti-constitutionalism tends to reject the limitations posed by the constitution in the exercise of state power and protection of minority rights (Castillo-Ortiz, 2019). This is well exemplified in the Indian scenario, where the Ninth Schedule sidesteps the unconstitutionality that could have been spotlighted by constitutional provisions to implement statutes reflecting some degree of unconstitutionality. It is, however, important to note that populists are not necessarily anti-democratic (Fabbrizi, 2019) as they often push for constitutional provision that serves as a fulcrum for specific statutes. However, populists are more likely to discard or discredit the power of the court where they feel the court is no longer of use to their cause (Sadurski, 2019). Besides, populists may also disregard prevailing constitutional conventions and unwritten rules while going at length to create their own.

The Ninth Schedule is an instrument that partially restricts constitutional power, and there is a high probability that political stakeholders will continually leverage it to win over the majority. By the way, the populist ideology is far from riding on the notion that political parties that have won over the majority in a democratic setting have the legitimacy to partake in essential political decision-making (Mueller, 2019).

The Ninth Schedule through the lens of India's Judiciary

I.R. Coelho v. State of TN[6]

[6] (1999) 7 SCC 580

The case here was heard by the Supreme Court of India, with the Petitioner seeking to challenge the Tamil Nadu Reservation Act, as well as other state and central laws in the Ninth Schedule. The ruling has it that unconstitutionality in connection with the Ninth Schedule must be considered based on Basic Structure abrogation and the touchstone of the Constitution's PART III, which hinges on fundamental rights. This thus brought to the limelight the need for judicial review on the insertion of unconstitutional laws into the Ninth Schedule. More specifically, the Court ruled that "any law placed in the Ninth Schedule after April 24, 1973, when Keshvananda Bharati's case judgment was delivered will open to challenge, the court said that the validity of any Ninth Schedule law has been upheld by the Supreme Court and it would not be open to challenge it again, but if a law is held to be violation of fundamental rights incorporated in Ninth Schedule after the judgment date of Keshvanand Bharati's case, such a violation shall be open to challenge on the ground that it destroy or damages the basic structure of constitution".

Golak Nath v. State of Punjab[7]

The Petitioner in this case approached the Supreme Court to challenge the validity of the Punjab Security of Land Tenures Act, 1953, which tended to restrict the land size that the Petitioner initially held. Besides, the Petitioner challenged the insertion of this Act in the Ninth Schedule on the basis of the unconstitutionality of the Seventeenth Amendment, along with the First Amendment and the Fourth Amendment that abridged fundamental rights. The Court, however, established that the definition of an Amendment as a law is traceable to Article 13(2), and this encompasses all kinds of law – whether constitutional or statutory, thereby rendering any constitutional amendment contravening Article 13(2) void. Furthermore, the Court was quoted as saying: "The power of Parliament to amend the constitution is derived from Art.245, read with Entry 97 of list 1 of the Constitution and not from Art.368. Art. 368 only lays down the procedure for the amendment of the Constitution. Amendment is a legislative process." Ultimately, the Court posited that the Parliament does not have the power to curb fundamental rights. Conclusively, the Court overruled the Petitioner's case.

Waman Rao and Ors v. Union of India and Ors[8]

The petitioners, in a Bombay High Court, challenged how Article 31B can be used to immunize laws in the Ninth Schedule, thus making the whole Part III inapplicable, and this was in connection with the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 27 of 1961. It was further argued that the preceding stance thereby impugned the substance of Articles 14 and 19. This was, however, countered by the Court, which asserted that both Articles could not be enforced at that period as it was a time of emergency. Moreover, the Court ruled that the Ceiling on Holdings Act cannot be challenged on the grounds of violating Part III of the Constitution due to being included in the Ninth Schedule. Again, while the Court acknowledged that the Amendment that heralded entirely abrogates the guarantees conveyed by Articles 14 and 19 in their letter, it (that is, the Court) made recourse to the spirit of Article 31A, which emphasized the need to enact provisions on Zamindari abolition laws. The Court argued that the First Amendment rather strengthened the basic structure – not damaging it.

Sajjan Singh v. State of Rajasthan[9]

The Petitioner challenged the validity of the Seventeenth Amendment Act of 1964 in the Supreme Court in relation to the Ninth Schedule. The Court overruled the Petitioner's case, albeit with some reservations associated with the constitutionality of constitutional amendments and the basic structure doctrine. This premise consequently led to the following statement [from the Court]: "Before I part with this case I wish to make it clear that what I have said in this judgment is not an expression of my final opinion but only an expression of certain doubts which have assailed me regarding a question of paramount importance to the citizens of our country: to know whether the basic features of the Constitution under which we live and to which we owe allegiance are to endure for all time-or at least for the foreseeable future-or whether the yard no more enduring than the implemental and subordinate provisions of the Constitution. Petitions dismissed".

Significance of Study

The Constitution of any state is considered to be sacrosanct and pivotal to its political and institutional

[7] 1967 SCR (2) 762
[8] AIR 1981 SC 271
[9] 1965 AIR 845

stability. As such, discourses on constitutional matters are expected to carry significant weight amidst the divergent interests of various parties. This could even be broadened with debates over issues of unconstitutionality, in which case, the defining factors or elements may vary among the different branches of government. This is the reason for the introduction of the Ninth Schedule, which came to be around the time that we may regard as the formative years of the Indian Constitution. It would therefore not be out of place to broadly examine the relevance of this instrument – which has offered some degree of judicial bypass – in the annals of time, focusing on its influence in contemporary times. Here is where this article finds its significance. Moreover, this article adds to the body of knowledge on the subject matter, particularly as it concerns undertaking comparative studies on instruments or provisions supporting statutes that might have been tagged 'unconstitutional' by the Judiciary.

AIM AND OBJECTIVES

This article aims to explore the relevance of the Ninth Schedule in contemporary times.

The objectives are thus highlighted below:

- To examine the relevance of the Ninth Schedule in comparison with constitutional trends attainable in different countries.
- To explore the role of the Courts in India in invalidating statutes based on unconstitutionality in relation to the scenario in other countries.

METHODOLOGY

Comparative analysis was adopted to address the objectives of this article. By this, it was possible to highlight the key issues that ensured equivalence as it relates to the ability to gather valid data relevant for making comparisons between different contexts (Esser and Vliegenthart, 2016). As such, the comparable variables in terms of provisions encouraging constitutional bypass or deprivation of judicial supremacy were factored among countries such as Hungary, Canada, the UK, New Zealand, the Netherlands, and Switzerland in comparison to the Indian context. According to Wilson (2007), exploring the situations conceivable within the legal frameworks of foreign countries enables researchers to identify the benefits associated with a national legal system and to also make recommendations for future developments. It follows that, in this present article, the researcher broadened the scope of comparative analysis to capture the participation of the judiciary in constitutional reviews. This alignment with the argument of Banaker and Orucu (2009) that it may be difficult to find exact variables or factors to compare across different studies. That said, this article drew data from a host of secondary sources and the legal/constitutional instruments and documents of the aforementioned countries.

Hungary: Amendments to Fundamental Law

Alterations were made to the fundamental law in Hungary, based on the Fourth Amendment, to ensure that the Constitutional Court is bypassed per making reviews even when unconstitutionality is perceived. The main aspects affected include certain provisions on the protection of families, electoral law, prohibition of hate speech, regulation of the homeless in public spaces, and higher education.

Article 24 stipulates that incompatibility of statutes can only be reviewed within the lens of the fundamental law – which cannot be challenged by the court – while Article 9 states how the President of Hungary does not have to refer to the court where issues of constitutional non-compliance stems up. Article 37 also forbids the court from reviewing budgetary legislation in instances where the state debt does not exceed half of its GDP.

The United Kingdom: Primary Legislation

The UK's Primary Legislation concerns a group of statutes passed into law by the legislature, with the Court having no power to challenge it (House of Commons, 2014). Acts of the UK Parliament (Public General Acts), Acts of the pre-UK Parliaments, Church of England Measures, and Prerogative Orders (Orders of Council or Orders in Council) are examples of statutes under the Primary Legislation. The role of the court in constitutional matters is explicitly communicated in Section 3 of the Human Rights Act of 1998.

Canada: Charter of Rights 1981

Canada's Charter of Rights encompasses a group of statutes that can be enacted and re-enacted by the legislature even when the statutes are found invalid by the Supreme Court. Some statutes in the Canadian Charter of Rights include the Guarantee of Rights and Freedoms, Fundamental Freedoms, Democratic Rights, Mobility Rights, Legal Rights, and Equality, to mention just a few. This power is vested in the legislature through the procedure in the Charter's

Section 1 or by the invocation of the Notwithstanding Clause (Hogg et al., 2007).

New Zealand: Bill of Rights Act 1990

New Zealand's Bill of Rights is in place to protect, promote, and affirm fundamental freedoms and human rights. The Bill of Rights allows the Constitutional Court to interpret statutes on the basis of [in]consistency with the Bill of Rights. Based on Section 4, the Court lacks the power to invalidate the statutes where incompatibility is perceived. Ultimately, the Legislature reserves the right to legislate on the inconsistency of statutes with the Bill of Rights. Limitations on the rights are permitted provided such (limitations) are "demonstrably justifiable in a free and democratic society".

The Netherlands: Article 120 of the Constitution

Article 120 of the Netherlands' Constitution prohibits primary laws from being challenged in the court, thus limiting the judiciary's influence on judicial reviews. Nonetheless, there is a provision in Article 94 of the Constitution for the court to override statutes that contradict fundamental rights in contract laws.

Switzerland: Article 190 of the Constitution

The Swiss Supreme Court, by virtue of Article 190 of the Constitution, does not have the power to invalidate federal legislation due to its inconsistency with other parts [of the Constitution]. The Court is only permitted to interpret the Constitution within the purview of federal laws and international treaties (Epiney, 2013). Where inconsistency is observed, the Court can only invite the Parliament to facilitate necessary amendments (Hangartner et al., 2023).

India: The Ninth Schedule

India's Ninth Schedule is composed of several land reform provisions from different interest groups, including the legislatures at the state and federal levels. Besides these land reforms, there are statutes such as the Monopolies and Restrictive Trade Practices Act of 1969, the Foreign Exchange Regulation Act of 1973, the Smugglers and Foreign Exchange Manipulations Act of 1976, the Bonded Labour System Act of 1976, and the Essential Commodities Act of 1955, among others.

DISCUSSION

The case studies in the comparative analysis show that there is no country that has the exact same mechanism to provide legal support for statutes that could have been ordinarily deemed unconstitutional as India. This corroborates the submission of Krishnaswamy (2010), who once buttressed that the Indian Constitution is the only constitution that has protection against itself [through the introduction of the Ninth Schedule]. Nonetheless, there are countries that have some measures to restrict the influence of the court in the review of the Constitution. For one, both the UK and New Zealand only permit the Court to highlight instances where statutes are incompatible with other constitutional provisions without invalidating such statutes – which is unlike the Indian judiciary scenario. Kuo (2014) described the courts in New Zealand and the UK as having an interpretive mandate as far as acknowledging the inconsistencies between statutes and the Constitution is concerned. Additionally, Kavanagh (2015) buttressed that, in the case of the UK, the court has no influence on the validity or impact of the legislation and cannot place any legal obligation on the Parliament to change an incompatible law.

The observations above appear to serve as a pointer to how states frame or tailor their constitution to suit their political and social materiality over time. Interestingly, a host of scholars have embraced the fact that it is possible for reasonable disagreement on the meaning and interpretations of constitutional provisions to exist based on the prospect of cultural pluralism in many countries (Michelman, 2003). It follows that different constitutional departments – from state legislature to federal legislature, as well as the executives – have varying views about constitutional texts, and this serves as an indicator of the range of reasonable specification of abstract or general rights (Tushnet, 2000). Pluralism is fundamental to the Indian Constitution as it is fuelled by the diversity in culture, language, religion, and social dimensions, with federal and state legislatures having strong influence (Arushi, 2024).

That said, one commonality that is profound among all the case studies is the fact that most countries appear to be particular about preserving fundamental rights, which is similar to what the basic structure doctrine in India's Constitution is designed to guarantee. It can be argued that, in being drawn to encourage human dignity and social justice, countries make it a point of duty to have materials – basic structure doctrine, for instance – to sustain the integrity of the Constitution irrespective of the existence or operationalisation of other legal appendages.

On another hand, the need for the eventual introduction of the Ninth Schedule showed the strength of the Indian Judiciary in upholding the letter and spirit of the Constitution. The Supreme Court of India is considered to be among the most assertive and powerful high courts in the world (Mate, 2015). Mate (2010) highlighted how the Supreme Court of India influences judicial appointments, interferes in corruption practices within the government, and also contributes to certain policy decisions. This assertiveness is further exemplified in how the Supreme Court tends to consider statutory provisions that cannot be saved due to the plainness of their meaning to be unconstitutional.[10]. It follows that protecting legislation from being challenged constitutionally cannot be actualised by distorting or twisting statutory language (Noorani, 2013). Consequently, all these have led to the development of a strong judicial review mechanism in India (Mate, 2015). Tushnet (2013) acknowledged that the judicial interpretations of the Constitution under a strong review system are usually final and cannot be revised solely by a legislative majority.

According to Gardbaum (2001), the characteristics of such a mechanism involve the ability of the court to alter, invalidate or fail to apply legislation that is believe to be at variance with a higher law like a constitution, with the court's decisions widely accepted by other branches of government and the citizens of the country. Such can, however, not be said of the UK, where the judiciary does not have the power to invalidate Primary Legislation – which could register as a protected instrument of the Constitution. It is against this backdrop that the UK's judicial review system has been described as being weak. While the Ninth Schedule could be considered as pandering to a populist agenda, especially as it relates to side-stepping the court, it may not be seen in the same light as what is attainable in the case of Hungary. Halmai (n.d) drew attention to the way the Hungarian government is misusing the lack of constitutional culture in the country to undermine the values of constitutional democracy, even as there is no guarantee for fundamental rights and the separation of powers is not recognised.

The proposition and eventual implementation of the Ninth Schedule, coupled with the reference to basic structure doctrine, relate to the country's government's proactivity in dealing with constitutional matters. Sweet (2000) noted how some countries are given to ensuring constitutional issues are promptly resolved to address constitutional challenges associated with the implementation of unscrutinised legislation, thus achieving conformity between legislation and the Constitution.

In addressing the question raised in this article, the Ninth Schedule comes across as an instrument of social justice when viewed from the perspective of its original or founding objective. This is based on the fact that the then-government was attempting to decentralise wealth and promote industrialisation. The pattern of sustaining social justice through the aegis of the Constitution is also feasible in the other case studies. It would have been thought that the use of the Ninth Schedule would have been checked after it had accomplished the purpose for which it was originally created. It now appears that there is no limit to the 'unconstitutional' statutes that can be added, provided a two-thirds majority votes for their passage.

Again, the Ninth Schedule is not far from being a political contrivance due to the politically motivated expansion it has experienced over the years. This is contrary to the scenario observed in the countries involved in this comparative study. These countries were found to have provisions restricting the court from challenging certain statutes within an integrated Constitution – one whole document – compared to India. The political manipulation of the Ninth Schedule has ultimately become an anchor or evidence for its abuse or misuse.

Although the basic structure doctrine is often referred to by the court in India may serve as a form of restraint when passing statutes into the Ninth Schedule, having appendages [like the Ninth Schedule] to the Constitution could interfere with the court decision, thus the propensity to hamstring the delivery of sound justice. It may be argued that the Ninth Schedule does not diminish the veracity of the provisions in the Constitution, which remains a binding statutory document to guide the rule of law,

[10] A.I.R. 2003 S.C. 4278, 35. (2011) 2 S.C.R. 1087, 18

but it does water down the impact of the latter (that is, the Constitution) to some extent.

CONCLUSION

This comparative study shows the distinctive nature of judicial proceedings in India concerning the use of the Ninth Schedule, which seems to pander to some populist agenda. The Ninth Schedule now registers as an appendage to the extant Constitution – the Supreme law of the land – a feat that is not found in any other country across the world. Unlike India, several countries may not see the need to have an additional instrument [outside the Constitution] to restrict the influence of the Court in state or federal matters. The Ninth Schedule has been developed as a tool to achieve social justice, but it has since become a political device for immortalising statutes that are solely backed by the legislature. Nonetheless, it would not be out of place to consider addressing issues that have led to the Ninth Schedule being tagged a ‘constitutional dustbin’, a term that appears to emphasise its abuse or misuse by key (political) stakeholders. As such, it may be needful to carry out an extensive and comprehensive examination of the Ninth Schedule to determine the letter and the spirit of the statutes therein. This is an indirect call for future studies to focus more on each of the two hundred and eighty-four laws contained in the Ninth Schedule, as scholars and policymakers alike attempt to address the concerns over the misuse of the instrument. Such moves can set the tone for the incorporation of the content of the Ninth Schedule into the Indian Constitution [as being among the primary legislation that cannot be invalidated by the Supreme Court or High Courts], thus maintaining its significance as a whole, integrated, binding document.

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