

## **1. Ninth Schedule**

**Prelims Syllabus:** Rights Issues

**Mains Syllabus:** GS-II Welfare schemes for vulnerable sections of the population by the Centre and States and the performance of these schemes; mechanisms, laws, institutions and Bodies constituted for the protection and betterment of these vulnerable sections.



### **Why in News?**

- Recently, the Chhattisgarh Chief Minister wrote to the Prime Minister seeking the inclusion of two amendment Bills allowing for a higher quota of reservation in jobs and educational institutions, in the Ninth Schedule of the Constitution.

### **What are these Bills?**

- In Chhattisgarh, the State Assembly unanimously approved the two amendment bills, creating a 76% quota for members of the Scheduled Caste, Scheduled Tribes, and Other Backward Classes.
- The Governor has not yet approved the bills.

### **Why is there a Need to include these Bills in Ninth Schedule?**

- The Ninth Schedule of the Constitution includes a list of Central and State laws that cannot be challenged in courts.
- Including the two amendment Bills in the Ninth Schedule would make them immune to legal challenges.

- Chhattisgarh government argues that including the amended provisions in the Ninth Schedule is crucial for providing justice to the backward and deprived classes in the State.
- Previously, the Chhattisgarh High Court had struck down a government order allowing 58% quota, stating that the reservation cannot exceed 50% as it unconstitutional.
- However, two amendment Bills were passed by the State Assembly to provide 76% quota for Scheduled Caste, Scheduled Tribes, and Other Backward Classes.

### **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.