

# Land Revenue Sysytem in India: A Critique of Constitutional Provisions and Judicial Decisions

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## Abstract

Land Revenue is one of the oldest taxes on this planet. In India, it is a direct tax on annual produce of the land, which goes to the government treasury. Apart from its assessment and collection from landowners, land revenue system regulates different facets of agricultural sector e.g. making and maintenance of record-of-rights, hierarchy of revenue officers, land related disputes resolution mechanism, demarcation of boundaries of land, mutation in revenue record, and to name a few. Land being a state subject under the Seventh Schedule of the Constitution of India, every state has its own land revenue legislation, which governs almost all the aforesaid aspects with some minor variations. Notably, various provisions of our Constitution directly or indirectly dealing with this system, are interpreted by the higher Indian judiciary from time to time through its landmark judgements i.e. *Gajula Dasratha Rama Rao v. State of Andhra Pradesh and Others*, AIR 1961 SC 564, *N.M.C.S. Mills Co. Ltd. v. Ahmedabad Municipality*, AIR 1967 SC 1801, *His Holiness Kesavananda Bharti Sri Padagalavaru v. State of Kerala*, AIR, 1973 SC 1461, *Dalmia Cement (Bharat) Ltd. v. Union of India*, (1996) 10 SCC 104, *Bharat Petroleum Corporation Ltd. v. Maddula Ratnavalli*, (2007) 6 SCC 81, *Dr. Maya D. Chablani v. Smt. Radha Mittal & Ors.*, decided on June 24, 2021 etc. In this research paper, the researcher has made an attempt to delve into each and every point relevant to this topic .

**Keywords:** Land Revenue System, Constitutional Provisions, Landmark Judgements

## 1. INTRODUCTION

In common parlance, land revenue is a certain proportion of the annual produce of the land to which the “estate” is entitled. In other words, land revenue<sup>1</sup> includes assigned land revenue and any sum payable in respect of land by way of quit-rent<sup>2</sup> or of commutation for service to the Government or to a person to whom Government has assigned the right to receive the payment. Whenever any question arises relating to the making and maintenance of record-of-rights in land, assessment and collection of land revenue, tenancy<sup>3</sup> of land, agrarian reforms, consolidation of small land holdings<sup>4</sup>, mutations<sup>5</sup> in revenue record,

<sup>1</sup> . The Punjab Land Revenue Act, 1887, s. 3(6).

<sup>2</sup> . Land Administrative Manual, para 154 defines quit rent as an annual *nazrana* of a fixed amount which an assignee for life or perpetuity of the right to receive the revenue of a tract of land has to pay to the Government. Land Administration Manual, para 154.

<sup>3</sup> . The Punjab Tenancy Act, 1887, s. 4(8). Tenancy means a parcel of land held by tenant of a land under the lease or one set of conditions.

relief to the sufferers of natural calamities, all matters concerning the state boundaries, etc., then land revenue law comes into play. Planning and maintaining land-records is a pre-requisite for proper implementation of any land reform policies, for fair transactions of buying and selling of land parcels and for prevention of mischief in such transactions. Maintenance of proper land records is of utmost importance so that people could know about their ownership and proprietary rights especially in an agrarian country like India.<sup>6</sup> Nobody can avail the full benefit of right to property<sup>7</sup> without the existence of land revenue law because it protects ownership of land of the people. Due to the different types of land, methods of farming, general socio economic conditions and political objectives of different states in India, the land revenue rates vary from state to state and every state has its own land revenue law.<sup>8</sup>

Up till the end of British rule since ancient times, land revenue had been assuming great importance in the kingdom of almost every ruler in India. Later on, drawing an attention of the Constituent Assembly and getting a place by land revenue in final drafting of the Constitution of India has lent credence to the aforesaid fact. India's Constitution is a lengthy, elaborated and detailed document. It originally consisted of 395 Articles, 22 Parts and 8 Schedules. Presently, it contains nearly 450 Articles, 24 Parts and 12 Schedules.<sup>9</sup> Various Articles of the Constitution of India directly or indirectly deal with the land revenue system in India. Wherever the Constitutional validity of any provisions of the land revenue legislations of different states had been at issue, the role of Indian higher judiciary to resolve it has been commendable. Therefore, in this research paper, an attempt has been made to critically evaluate the Constitutional provisions pertaining to land revenue system in India and judicial decisions relating thereto given by the Indian higher judiciary from time to time.

## 2. Preambulatory Objectives

Preamble is a sort of introduction to the statute and many a times very helpful to understand the policy and legislative intent. It expresses "what had thought or dreamt for so long".<sup>10</sup> In *re Beruberi*<sup>11</sup> case, it was held that the Preamble to the Constitution is a key to open the mind of the makers, and shows the general purpose for which they made the several provisions in the Constitution. It sets out the main objectives which the legislation is intended to achieve.<sup>12</sup> "Liberty, Equality and Fraternity" which the Constitution seeks to secure for the people of India are to serve the primary objective of ensuring social, economic and political justice. Justice is the harmonious blending of selfish nature of man and the good of the society.<sup>13</sup>

4. *Supra* note 1, s. 3(3). Holding means a share or portion of an estate held by one landowner or jointly by two or more landowners.

5. O.P. Aggarwal, *Punjab Land Revenue Act 355* (Vinod Publications House, Delhi, 9<sup>th</sup> edn., 1995). Mutation (lit, change, alteration) simply means alteration of an entry in the revenue records with the object of bringing the later up-to-date, and making it represent the facts with regard to the respective rights and liabilities of persons as these at present are and not as they used to be.

6. "Modernisation of Land Record System in India" available at: [www.ipedr/vol71/003-ICCKS/2014-S00012.pdf](http://www.ipedr/vol71/003-ICCKS/2014-S00012.pdf) (last visited on August 24, 2024).

7. The Constitution of India (44<sup>th</sup> Amendment) Act, 1978, art.300-A. No person shall be deprived of his property save by the authority of law.

8. N. Long, *Introduction of the Sociology of Rural Development* 3 (Tavistock Publications, London, 1982).

9. Gaurav Mehta, *Universal's Master Guide to Judicial Service Examinations and other Law Competitive Examination* 336 (Universal Law Publishing Co., New Delhi, 3<sup>rd</sup> edn., 2015).

<sup>10</sup>. Sir Alladi Krishnaswami- Constituent Assembly Debates, 417 vol.10.

<sup>11</sup>. AIR 1960 SC 845.

<sup>12</sup>. *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

<sup>13</sup>. M.K. Gandhi, *India of My Dreams* 9-10 (Navajivan Publishing House, Ahmadabad, 1947).

The Supreme Court of India in *Lingappa Pochanna Appeluear v. State of Maharashtra*,<sup>14</sup> held that the expression “social and economic justice” used in the Preamble of the Constitution of India implies the removal of inequalities and rectifies the injustice emerged from dealings or transactions among un-equals in society. It comprehends more than waning of inequalities by differential taxation, providing debt relief or regulation of contractual relations; it also means the restoration of properties to those who have been deprived of them by unconscionable bargains; it may, further, take wealth as a mean of achieving a fair division of material resources among the members of society. Further in *Dalmia Cement (Bharat) Ltd. v. Union of India*,<sup>15</sup> the Apex Court of India observed that the ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality and of status-social, economic and political.

It is submitted here that the Central and the State governments have been trying to achieve this target by enacting land reforms legislations in their respective spheres. The laws regulating consolidation and ceiling of land holdings after the independence of India are a quintessential for diminishing inequalities among un-equals in line with expression “social and economic justice” embodied in the Preamble of the Indian Constitution.

### 3. Fundamental Rights and Land Revenue

The Fundamental Rights are enshrined in Part III of the Constitution of India from articles 12 to 35. This chapter of the Constitution has very well been described as the Magna Carta of India.<sup>16</sup> These rights are termed as fundamental, since they are most essential for the attainment by the individual or his full intellectual, moral and spiritual status. The negation of these rights will keep the moral and spiritual life stunted and his potentialities undeveloped.<sup>17</sup> Individual needs Constitutional protection against the state. The rights which are given to the citizens by way of Fundamental Rights are a guarantee against State action as distinguished from violation of such rights from private parties.<sup>18</sup> The Fundamental Rights relevant to the present topic are articles 13, 14, 15, 16, 19 (1) (f), 31, 31-A, 31-B and 31-C of the Constitution of India. By virtue of the 44<sup>th</sup> Amendment, articles 19(1) (f) and 31 have been deleted but articles 31-A, 31-B and 31-C remain in force.

Every law has to be made by lawmakers by keeping in view the protection of the fundamental rights from any kind of transgression. In *Yaqub Mohd. v. State of J & K*,<sup>19</sup> the Apex Court of India maintained that the land reforms legislations have been exempted from such limitation imposed by article 13(2) provided they have been enacted by invoking special articles other than articles 245-246 of the Constitution of India. The Hon’ ble Supreme Court of India in a very famous case of *Shankari Prasad Singh Deo v. Union of India*,<sup>20</sup> articulately said that legislations passed in view of articles 31-A to 31-C and listed under the Ninth Schedule of the Constitution have been kept out of the domain of article 13(2). By contrast, several enactments of different states i.e. Assam Acquisition of Land Food Control & Prevention of Erosion Act, 1955<sup>21</sup>, Bombay Land Tenure Abolition Law (Amendment) Act,

<sup>14</sup>. AIR 1985 SC 381.

<sup>15</sup>. (1996) 10 SCC 104.

<sup>16</sup>. V.G. Ram Chandran, *Fundamental Rights and Constitutional Remedies* 1 (vol. 1, 1964).

<sup>17</sup>. Dr. J. N. Pandey, *The Constitutional Law of India* 54 (Central Law Agency, Allahabad, 47<sup>th</sup> edn., 2010).

<sup>18</sup>. *Supra* note 9 at 340D-340E.

<sup>19</sup>. AIR 1968 SC 765.

<sup>20</sup>. AIR 1951 SC 458.

<sup>21</sup>. *Dy. Commissioner and Collector Kamarup v. Durga Nath Sharma*, AIR 1968 SC 394.

1958<sup>22</sup>, Section 65(1) of the Bombay Tenancy and Agricultural Land Act, 1961,<sup>23</sup> and Land Acquisition (Madras Amendment) Act, 1961<sup>24</sup> were held not preserved by Article 31-A.

While throwing light on the scope of article 14 of the Constitution of India, the Apex Court in *Khandige Sham Bhat v. Agriculture I.T.O.*,<sup>25</sup> opined that article 14 accords the right to equality to every person within the territory of India. This doctrine also applies on law of taxation. In this context, the Supreme Court in *N.M.C.S. Mills Co. Ltd. v. Ahmedabad Municipality*,<sup>26</sup> directed that any tax imposed in violation of article 14 without making any reasonable classification shall be struck down. Noting that land revenue, being a direct tax,<sup>27</sup> also falls under the criteria of this article. Moreover, different transactions with regard to land such as land reforms through different enactments, land lease contracts, protection of tenants from eviction and so forth have been protected by article 14 of the Constitution. While interpreting the provisions of the U.P. Consolidation of Holdings Act, 1954, the Top Court in *Attar Singh v. State of U.P.*,<sup>28</sup> asserted that a speedier procedure for the revision of land revenue than under the ordinary law may be adopted for such area. Here, the classification had logical link with the object of the statute. Further, in terms of land lease contracts between an individual and government, the Apex Court in *Raghunandan Panda v. State of Orissa*,<sup>29</sup> held that the application of the individual must be entertained in a fair manner. The state acting as a “landlord” or a “tenant” must not lose sight of fairness or reasonableness.<sup>30</sup>

In *Gazula Dasartha Rama Rao v. State of Andhra Pradesh and others*,<sup>31</sup> the Supreme Court of India was of the view that the appointment of only male lineal descendent as village headman under rule 17(ii) of the Punjab Land Revenue Rules, 1909 has been declared to have biased on the ground of hereditary claim of family and has violated the articles 14, 15, and 16 of the Constitution of India. Further in *Smt. Udham Kaur v. Munshi*,<sup>32</sup> the discrimination on the basis of gender in recruiting the woman Lambardar was held violating article 16 (2) of the Constitution.

Article 19 (1) (f) vesting right to acquire and hold property and clause II of article 31 were scrapped from Part III through the Constitution (44<sup>th</sup> Amendment) Act, 1978. Nowadays, the right to property is no longer a fundamental right, however, its nature has been converted into constitutional right under article 300-A of the Constitution of India. It is worthwhile mentioning that clause I of article 31 was transferred to article 300-A. The main characteristic attached to article 300-A is that it is not only available to citizens of India but also to every person including legal or juristic person.<sup>33</sup> Articles 31A<sup>34</sup>, 31B<sup>35</sup>, and 31C<sup>36</sup> still exist in Part III under the heading of “Saving of certain laws” in the Constitution of India governing the acquisition of estates etc., validation of certain Acts and Regulations and saving

<sup>22</sup>. *Jayavat Singh ji Rampal Singh Ji v. State of Gujarat*, AIR 1962 SC 821.

<sup>23</sup>. *Ramanlal Gulab Chnad Shah v. State of Gujarat*, AIR 1961 SC 168.

<sup>24</sup>. *Vajravelu, P. v. SP. Deputy Collector Land Acquisition, Madras*, AIR 1965 SC 1017.

<sup>25</sup>. AIR 1963 SC 591.

<sup>26</sup>. AIR 1967 SC 1801.

<sup>27</sup>. Jasvir Singh Arneja, *Agriculture Taxation in Punjab* 14 (ABS Publications, Jalandhar, 1987).

<sup>28</sup>. AIR 1959 SC 564.

<sup>29</sup>. AIR 1975 SC 434.

<sup>30</sup>. *Bharat Petroleum Corporation Ltd. v. Maddula Ratnavalli*, (2007) 6 SCC 81.

<sup>31</sup>. AIR 1961 SC 564.

<sup>32</sup>. (1965) 44 LLT 127.

<sup>33</sup>. *Darshan Dutt v. Union of India*, (2004) 1 SCC 712.

<sup>34</sup>. Ins. by the Constitution (First Amendment) Act, 1951, s. 4 (with retrospective effect).

<sup>35</sup>. *Id.*, s. 5 (w.e.f. 18-6-1951).

<sup>36</sup>. Ins. by the Constitution (Twenty- fifth Amendment) Act, 1971, s. 3 (w.e.f. 20-4-1972).

of laws giving effect to certain Directive Principles respectively. Dating back to the British era, zamindari settlement, ryotwari settlement, and mahalwari settlement had been the strong pillars of the land revenue system. However, in *Khajamian Estates v. State of Madras*,<sup>37</sup> referring to the object of article 31A, the Top Court made it clear that this article strives for, inter alia, validating the acquisition of zamindaries or abolition of the permanent settlement without the interruption of courts. In a bid to remove any ambiguity in regard to such acquisition, this article further defines the word “estate” including land held under raiyatwari settlement, janmam rights, jagirs, inams, muafis, etc. which were used to be given to the loyal persons of the British government. In addition, any rights and privileges pertaining to land revenue have also been defined under the impression “rights” by article 31 (2) (b) of the Constitution of India.

In a landmark judgement given in *His Holiness Kesavananda Bharti Sri Padagalavaru v. State of Kerala*,<sup>38</sup> the Supreme Court of India held that article 31B of the Constitution of India legalizes certain enactments contained in the Ninth Schedule. The history throwing the light on the journey of article 31B discloses that it has not been amended since 1951 but the Ninth Schedule has been amended many times, so that the number of Acts saved by it has come up from 13 in 1951 to 284 in 1995<sup>39</sup>

Article 31C safeguards certain laws which have been passed in order to give effect to all or any of the Directive Principles under Part IV of the Constitution. Such statutes cannot be challenged on the ground of transgression of articles 14 and 19 of the Constitution of India. Certain enactments giving effect to Directive Principles respecting land reforms are being discussed under following heading.

#### 4. Directive Principles and Land Reforms

Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51. They aim at providing the social and economic base of a genuine democracy. These principles are not enforceable through courts and are merely directives which the government has to keep in mind while framing policy.<sup>40</sup> Referring to the present study, Clauses (b) and (c) of Article 39<sup>41</sup> dealing with the Directive Principles of State Policy demand special evaluation.

The concept of land reforms may be interpreted and is actually defined by governments of different countries in different senses. In narrower sense, it may refer only to measures for redistribution of land ownership. In broader sense, it may refer to the improvement of agriculture and economic institutions such as land ownership and tenancy, agricultural credit and produce marketing organizations, and fiscal and monetary matters i.e. land revenue, taxation on agricultural income, and to policies for increasing agricultural production comprising agricultural technology, land utilization and development and so on.<sup>42</sup> Thus, there would be no deviation from the subject of the study if the researcher sheds some light on articles of the Indian Constitution which are apparently aimed to bring land reforms in India, since

<sup>37</sup>. AIR 1971 SC 161.

<sup>38</sup>. AIR 1973 SC1461.

<sup>39</sup>. The Constitution (78<sup>th</sup> Amendment) Act, 1995.

<sup>40</sup>. *Supra* note 9 at 344.

<sup>41</sup>. Article 39. Certain principles of policy to be followed by the State- The State shall, in particular, direct its policy towards securing-

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

<sup>42</sup>. K. Sain, *Land Reforms and Agricultural Development* 1 (Atlantic Publishers and Distributors, New Delhi, 1982).



land revenue is also a part of land reforms in its broader perspective.

In *Venkatarao Maddukuri v. State of A.P.*,<sup>43</sup> different legislations e.g. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, and the Bombay Tenancy and Agriculture land (Amendment) Act, 1956 pertaining to fixation of ceiling on land holdings and distribution of surplus land among landless people passed with a view to give effect to directives under article 39 (b) (c) were held to be valid. Further, the Apex Court of India in *State of T.N. v. Ambalavana Pandara Samadhi Adheenakartha*,<sup>44</sup> ruled that tenants and the tillers of the soil have a cardinal right to economic empowerment under Art.39 (b) and are entitled to ryotwari patta.

## 5. Fundamental Duties towards Protection of Land

The Constitution of India outlines the Fundamental Duties of the Indian Citizens, which were incorporated in the Constitution by 42<sup>nd</sup> Amendment Act, 1976. Ten duties have been specified in Article 51A. By 86<sup>th</sup> Amendment Act, 2002, one more Fundamental Duty was added to the list of ten.<sup>45</sup> It goes without saying that the definition of environment would be incomplete in the absence of its foremost element i.e. land. Fundamental duties, though, do not directly concern with land revenue system but one of these advocating for the preservation of environment under article 51A (g)<sup>46</sup> can be said to have impliedly referred to the safekeeping of land too, without which, the land revenue system of any country cannot be dreamed.

The Summit Court of India in *Animal Welfare Board of India v. A. Nagaraja*,<sup>47</sup> held that Part IVA of the Constitution assigns Fundamental Duty on every citizen of India, and one such duty imposed under article 15A (g) is to protect and improve the natural environment. It is observed that the expression “and to have compassion for living creature” of the said article is very extensive and crucial as it lays down the duty on every citizen to show kindness and love towards such non vocal beings.

Save Soil- a global movement initiated by Sadhguru (India), to address the soil crisis by bringing together people from around the world to stand up for Soil Health, and supporting leaders of all nations to make national policy towards increasing the organic content in cultivable soil is an appreciative step towards preservation of land.<sup>48</sup>

## 6. Distribution of Powers between the Centre and States

The powers of Centre and States are divided under the Constitution of India. They cannot enact laws outside their allotted subjects. It is true that a scientific division is not possible and questions constantly arise whether a particular subject falls in the domain of one or the other government. This duty in a federal Constitution is vested in the Supreme Court of India.<sup>49</sup> Article 246 makes the provisions providing for legislative powers to the Centre and States and by virtue of these powers they can make laws on subjects of their concerned spheres enlisted in the Seventh Schedule of the Constitution of India.

<sup>43</sup>. AIR 1975 AP 315.

<sup>44</sup>. (1997) 9 SCC 313.

<sup>45</sup>. *Supra* note 9 at 345.

<sup>46</sup>. It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

<sup>47</sup>. (2014) 7 SCC 547. see also: *Dr. Maya D. Chablani v. Smt. Radha Mittal & Ors*, decided on June 24, 2021, *Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission*, Civil Appeal No. 4417 of 2015.

<sup>48</sup> “Global Movement to #Save Soil”, available at: <https://consciousplanet.org> (last visited on May 9, 2024).

<sup>49</sup>. *Supra* note 17 at 639.

It is important to mention here that no tax can be imposed save by the authority of law.<sup>50</sup> The Apex Court in *Chhotabai Jethabai Patel v. Union of India*,<sup>51</sup> categorically said that an outlaw imposition of taxes attracts interference by courts. The word 'tax' as used in the aforesaid article, includes any 'impost'-general, special or local. It would, therefore, include not only 'taxes' but also duties, cesses or fees.<sup>52</sup> Tax illegally levied must be refunded. Doctrine of "unjust enrichment" has to be applied after having regard to the facts of each case.<sup>53</sup>

Article 285 of the Constitution imposes a restriction on the State to tax property of the Union. Clause (1) says that unless Parliament otherwise provides the Union property shall be exempt from all taxes imposed by a State or any authority within a State. Clause (2) saves the State's power to tax the property of the Union which was taxable by a State under law passed before the commencement of the Constitution, unless Parliament by law provides otherwise. In the similar vein, Article 289 exempts the property and income of a State from Union taxation.

While solving the question of mutual taxation by union and states, the Supreme Court of India in *New Delhi Municipal Committee v. State of Punjab*,<sup>54</sup> asserted that articles 285 and 289 attach immunity to property belonging to Union and States from mutual taxation. Both articles denote inter-governmental immunity from taxation that of the Union absolute but that of the State qualified. Importantly, the expression 'property' used in these articles, includes not only land and buildings but all forms of property.<sup>55</sup>

## 7. Property accruing by Escheat etc.

Escheat also known as Lapse, Bona Vacantia, or Res Nullius is another mode of ownership of property by the State under article 296 of the Indian Constitution. Constitution of India continues the ownership rights of the post Constitution Union and State governments over the property situated in the territory of India which, if this Constitution had not come into being, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or bona vacantia for want of a rightful owner.<sup>56</sup> Section 29 of the Hindu Succession Act, 1956 also makes the similar provisions in case of failure of heirs of Hindu male or Female. In the light of doctrine of escheat, the Hon'ble Supreme Court in *Peice Leslie & Co. Ltd. v. Violet Ouchterlong Wapshare*,<sup>57</sup> ruled that the government can acquire the entire property within its jurisdiction where its owner dies intestate and without legal heirs. The right of escheat belongs to the government only and applies to all types of rights in property of whatever nature. In common parlance, an occupant who first got any property which has no apparent owner can hold such property as its owner by using the right of bona vacantia. In India, the scope of bona vacantia is wider than that in England. A property which has no rightful claimant will in all cases be taken by the State. In England, the State's right to bona vacantia is limited only to treasures, whale or sturgeon, wreck, treasure trove, waifs or strays.<sup>58</sup>

<sup>50</sup>. The Constitution of India, 1950, art. 265.

<sup>51</sup>. AIR 1952 Nag.139 (144).

<sup>52</sup>. *Muhammad Bhai Khudabux Chhipa v. State of Gujarat*, AIR 1962 SC 1517.

<sup>53</sup>. *New India Industries v. Union of India*, AIR 1990 Bom 239 (FB).

<sup>54</sup>. (1997) 7 SCC 339.

<sup>55</sup>. *Ibid.*

<sup>56</sup>. *Supra* note 50, art. 296.

<sup>57</sup>. AIR 1969 SC 893.

<sup>58</sup>. Mahindera Pal Singh, *V. N. Shukla's Constitution of India* 881 (Easter Book Company, Lucknow, 12 edn., 2013).

The Doctrine of Lapse was an annexation policy followed widely by Lord Dalhousie when he was India's Governor-General from 1848 to 1856.<sup>59</sup> This doctrine applies to monetary transactions. In case a rightful owner fails to claim any fund e.g. court deposits within prescribed time limit, such fund will lapse and go into the government treasury. The principle applies to the saving accounts, fixed deposits etc. in banks.<sup>60</sup>

### 8. Adjudication of disputes relating to land revenue etc. by Tribunals

The new Chapter of Tribunals was added to the Constitution of India by the Constitution (42<sup>nd</sup> Amendment) Act, 1976. It consists of two articles i.e. Article 323A and 323B. So far as the latter article is concerned, it provides for the creation of Tribunals for the determination of disputes, complaints and offences with respect to tax matters, exports and imports, labour, and industrial disputes, service matters, supply of essential commodities, the elections to the Parliament and State Legislature.<sup>61</sup>

Land revenue is a direct tax on land produce in India.<sup>62</sup> An appropriate government may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences, in respect, inter alia, of levy, assessment, collection and enforcement of any tax; land reforms by way of acquisition by the state of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way; ceiling on urban property; rent, its regulation and control and tenancy issues including the rights, title and interest of landlords and tenants by enacting statutes for this purpose. The Act constituting such tribunals may spare the jurisdiction of all courts except the Apex Court of India under article 136 in regard to all or any of the matters falling under the jurisdiction of such tribunals.<sup>63</sup> Thus, by virtue of article 323B of the Constitution of India, the Punjab government may also set up special tribunal for the speedy disposal of complaints, disputes and offences with regard to land revenue and its other allied sectors. It is important to note that the government from time to time has set up many tribunals for this purpose.

### 9. After-effects of scraping of Articles 35A & 370 from Constitution on Land Laws in J&K

The constitutional aspect of the Jammu & Kashmir is very important to be discussed here owing to the withdrawal of the special status of this state and conversion of the same into two union territories i.e. Jammu & Kashmir<sup>64</sup> and Ladakh<sup>65</sup> with<sup>66</sup> and without<sup>67</sup> Legislative Assembly respectively by scrapping of articles 35-A<sup>68</sup> and 370<sup>69</sup> from the Constitution of India. It is being discussed here because such big step taken by the Central government has brought certain changes in these two Union Territories with regard to land related issues. Since the commencement of the Constitution of India till the removal of forgoing articles, non-citizens of erstwhile state of Jammu & Kashmir were not allowed to purchase the

<sup>59</sup>. Available at: <https://byjus.com> (last visited on June 23, 2022).

<sup>60</sup>. D D Basu, *Commentary on the Constitution of India* 721 (Lexis Nexis, 1952).

<sup>61</sup>. *Supra* note 17 at 703.

<sup>62</sup>. *Supra* note 27.

<sup>63</sup>. *Supra* note 50, art. 323B.

<sup>64</sup>. Jammu and Kashmir Reorganisation Act, 2019, s. 4.

<sup>65</sup>. *Id.*, s. 3.

<sup>66</sup>. *Supra* note 50, art. 239A.

<sup>67</sup>. *Id.*, art. 239.

<sup>68</sup>. Article 35-A was inserted in the Constitution of India through the Presidential Order, 1954. However, this Order with all amendments has been superseded by the Constitution (Application to Jammu & Kashmir) Order, 2019.

<sup>69</sup>. Through resolution passed on 5 August, 2019, under article 370 (3) read with clause (1) of the same article, the entire article 370 except clause (1) has been removed from the Constitution of India.



property in this state.<sup>70</sup> However, the removal of these articles has paved the way for outsiders to purchase the property in their names in the new formed Union Territories of Jammu & Kashmir and Ladakh. As per recent amendment made to the Jammu & Kashmir Land Revenue Act, Samvat, 1996, only agriculturists of these UTs can purchase agricultural land. No sale, gift, exchange, or mortgage of the land shall be valid in favour of non-agriculturist. Further, a land being utilized for agricultural purposes shall not be used for non-agricultural purposes without the permission of the District Collector. Furthermore, the Jammu and Kashmir Big Landed Estates Abolition Act, 1950 popularly known for “land to tiller rights” among 11 other land laws in practice in erstwhile J&K state has also been repealed by this Constitutional amendment.<sup>71</sup>

## 10. Land Revenue under Seventh Schedule

The Seventh Schedule to the Constitution of India defines and specifies allocation of powers and functions between Union and States. It consists of three lists i.e. Union List, State List and Concurrent List. Originally there were 97 subjects in Union List but now this number is 100.<sup>72</sup> And in the State List there were 66 subjects but now these are 61.<sup>73</sup> Similarly, in Concurrent List there were 47 subjects but now these are 52.<sup>74</sup> With context to the present study, Entry 54 of the Union List, Entries 18, 23, 30, 45, 47, 48, 49 and 65 of the State List, and Entry 13 of the Concurrent List have been taken into consideration.

Entry 18<sup>75</sup> of List II provides a broad definition of land. The Supreme Court of India, in its varied judgements, has made it clear that several matters i.e. land reforms and alternation of land tenures,<sup>76</sup> settlement of land disputes,<sup>77</sup> prevention and removal of encroachments on public lands<sup>78</sup> and unauthorized occupation of vacant lands,<sup>79</sup> consolidation proceedings of several parcels of land,<sup>80</sup> fixation of ceiling on land,<sup>81</sup> distribution of surplus land among landless,<sup>82</sup> resumption of jagirs,<sup>83</sup> reduction of liability of tenants for payment of rent<sup>84</sup> etc. are covered by this particular definition of land. The expression “whether land includes buildings” has been a debatable issue before several High Courts. Ultimately, the Summit Court of India in *Accountant & Secretarial Services Pvt. Ltd. v. Union of India*,<sup>85</sup> articulated that the expression “land tenure” used in this definition does not include

<sup>70</sup>. Article 35-A of the Presidential Order, 1954 empowered the state of Jammu and Kashmir to provide special rights to the people of this State by enacting legislation in this regard.

<sup>71</sup>. “Now, outsiders can buy land in J&K”, *The Hindu*, October 28, 2020.

<sup>72</sup>. Entry 2A was added to the Union List through the Constitutional (42<sup>nd</sup> Amendment) Act, 1942. Entries 92A, 92B and 92C were inserted in the Union List through Constitutional 6<sup>th</sup>, 46<sup>th</sup> and 88<sup>th</sup> Amendment Acts respectively.

<sup>73</sup>. The Constitution (42<sup>nd</sup> Amendment) Act, 1976, s. 57(c). Through this Amendment Act, five subjects i.e. education, forests, protection of wild animals and birds, weight and measures, and administration of justice, constitution and organisation of all courts except the Supreme Court and High Courts were transferred from State List to Concurrent List.

<sup>74</sup>. *Ibid*.

<sup>75</sup>. 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; and land improvement and agricultural loans; colonization.

<sup>76</sup>. *Atma Ram v. State of Punjab*, AIR 1959 SC 519.

<sup>77</sup>. *Luxminarayan Narayan Singh Nigam v. Chhotu Kalu Khangar*, AIR 1957 MB 63.

<sup>78</sup>. *Jilubhai Nanbhai Khachar v. State of Gujarat* 1995 Supp (1) SCC 596.

<sup>79</sup>. *State of Maharashtra v. Kamal Sukumar Durgula*, AIR 1985 SC 119.

<sup>80</sup>. *Supra* note 77.

<sup>81</sup>. *Jagannath Baksh Singh v. State of U.P.*, AIR 1962 SC 1563.

<sup>82</sup>. *Kunhikoman v. State of Kerala*, AIR 1962 SC 723.

<sup>83</sup>. *State of U.P. v. Moradhwaj Singh*, AIR 1960 SC 796.

<sup>84</sup>. *Khajamian Wakf Estates v. State of Madras*, (1970) 2 SCWR 916.

<sup>85</sup>. AIR 1988 SC 1708.

tenancy of buildings and of house accommodation, since such issues are dealt with by different entries of Concurrent List. In *Bhutya v. Radhakrishnlal Shioshankarlal izardar*,<sup>86</sup> it was held that the definition of land has been so interpreted by the Indian judiciary that ex-landlords and ex-tenants are included in such definition as well.

The Apex court of India in *Himigiri-Rampur Coal Co. v. State of Orissa*,<sup>87</sup> made it clear that by invoking Entry 23<sup>88</sup> of List II, the state legislature may make law for regulating the mines and mineral development; subject to the legislation made by Parliament under Entry 54 of List I provided such law of Parliament must be post-constitutional enactment. It is, however, germane to point out that the state legislature may abrogate the pre-constitutional central legislations.

In context to Entry 30<sup>89</sup> of State List, the Summit Court in *Vora Saiyadbhai Kadarbhai v. Saiyad Intajam Hussen Sedumiya*,<sup>90</sup> observed that the aforesaid Entry confers legislative powers on states to regulate all affairs regarding ‘relief of agricultural indebtedness’. It makes no difference that such debt is given for agricultural operations or otherwise. But it is mandatory to point out that the borrower should be engaged in agricultural activities.

Entry 45<sup>91</sup> of State List is quite important as it vests wide powers in state legislatures to enact laws for regulating the different aspects of land revenue. It is respectfully submitted here that the expression “assessment and collection of land revenue” used in above said Entry has no scope in majority of the States of India including Punjab due to its abolition nowadays. However, the phrase “maintenance of land records” mentioned in this Entry is of great importance in present times in many respects e.g. valid proof of ownership, availing of various schemes of governments relating to land reforms by land owners, decreasing of land disputes and so on. Likewise the definition of land, the term ‘land revenue’ has also been interpreted many times by the Apex Court of India and it has held that cess on royalty for carrying out mining operations is not land revenue.<sup>92</sup> Further, the expression ‘land record’ also includes title deeds and other documents relating to land resumed by the State, kept both before and after such resumption.<sup>93</sup> Referring to the link between Entry 18 and 45 of List II, the Supreme Court of India in *Amarsarjit Singh v. State of Punjab*,<sup>94</sup> asserted that both entries empower state governments to legislate in respect of resumption of jagirs. Entry No. 18, however, has a wider scope than Entry No. 45, as the former consists of remedial as well as the procedural provisions. It might be useful to pay heed on the point that such procedure applies only to matters specified in this particular Entry. The power to make provisions specifically as to civil procedure is provided via Entry 13<sup>95</sup> of List III.<sup>96</sup> Besides, Entry 65<sup>97</sup> of List II talks about creating and determining the powers and jurisdictions of courts with respect to all

<sup>86</sup>. AIR 1956 Nag. 50.

<sup>87</sup>. AIR 1961 SC 459.

<sup>88</sup>. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

<sup>89</sup>. Money-lending and money-lenders; relief of agricultural indebtedness.

<sup>90</sup>. AIR 1981 Guj. 154.

<sup>91</sup>. Land revenue including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

<sup>92</sup>. *Orissa Cement Ltd. v. State of Orissa*, AIR 1991 SC 1676.

<sup>93</sup>. *Rinarbai Rambad v. State of Bombay*, AIR 1962 Guj. 18.

<sup>94</sup>. AIR 1962 SC 1305.

<sup>95</sup>. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

<sup>96</sup>. *Uday Chnad Mehtab v. Samarendra Nath Misra*, (1947) 82 CLJ 1 (FC).

<sup>97</sup>. Jurisdiction and powers of all courts, except the Supreme Court of India, with respect to any of the matters in this List.

matters specified in State List,<sup>98</sup> land revenue, being a subject of List II, is no exception to this Entry. State governments enjoy powers to impose agricultural income tax by virtue of Entry 46 of List II. However, the agricultural income tax should not be confused with land revenue because both are absolutely different in nature. In addition, other different entries of State List i.e. 47, 48, 49 dealing with duties in respect of succession to agricultural land, estate duty on agricultural land, and taxes on land and buildings respectively cannot be left unnoticed because they also deal, in one way or the other, with land revenue system.

## 11. Sum Up

Ranging from the Preamble to the Ninth Schedule, land revenue, directly or indirectly, has been given prominent place in the Constitution of India. The Indian higher judiciary also has delivered various monumental judgements throwing light on the constitutionality of provisions of the land revenue legislations of different states of India, which play a role of cicerone in the days to come. On the basis of critical evaluation of Constitutional Provisions pertaining to land revenue and judicial decisions relating thereto, it can be concluded that land reforms legislations passed by different states of India making provisions for ceiling on land holdings are steps towards fulfillment of objective of “social and economic justice” specified in the Preamble. Further, land laws have also been kept out of the purview of article 13(2) of the Indian Constitution. With reference to assessment of land revenue and land lease contracts, right to equality should be taken into consideration. In the case of relationship of government with individual in the capacity of landlord and lessee respectively, the doctrine of natural justice should not be overlooked by the former. An appropriate authority has been directed to appoint the village headman/Lambardar by virtue of articles 14, 15 and 16 of the Constitution. Right to property is no more a Fundamental Right, but rather, it is a Constitutional Right under article 300A of the Constitution. Where there is no previous owner of any property, the doctrine of escheat, bona vacantia, or Res Nullius is adopted by the concerned governments in their respective domains by invoking article 296 of the Constitution. Even though, Zamindari Settlement was one of the strong pillars of the land revenue system during the British period, but article 31A of the Constitution validates the acquisition of zamindaries or abolition of permanent settlement without the interference by courts. Article 31B legalizes the land reforms legislations embodied in the Ninth Schedule of the Constitution of India. According to article 31C, certain laws, albeit land reforms legislations, giving effect to Directive Principles of State Policy, cannot be challenged on the ground of violation of articles 14 and 19 of the Constitution. Abolition of articles 35A and 370 of the Constitution has brought major changes in the Jammu and Kashmir Land Revenue Act, 1996. Apart from it, various Entries of State List, Union List, and Concurrent List of the Seventh Schedule, patently or latently, deal with land revenue system in India.

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<sup>98</sup>. *Megh Raj v. Alla Rakha*, 1947 FCR 77.