

Impact on Ease of Doing Business with Special Reference to Section 118 (HPTLRA-1972) on Entrepreneurial Intentions

Lalit Jain*

Abstract

Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (HPTLRA) embodies a distinctive framework for land regulation, aiming to safeguard the rights of local agricultural communities while simultaneously supporting the State's developmental aspirations in this ecologically fragile hill terrain. Over the years, this provision has undergone several amendments, judicial scrutiny, and administrative refinements to maintain a balance between its original purpose and the need to encourage investment and economic growth. This paper examines Section 118's legal framework, incorporating recent judicial interpretations, legislative amendments, and procedural updates. Significantly, the Honourable Himachal Pradesh High Court and the Honourable Supreme Court have upheld the validity of Section 118 while providing clarity on its scope and limitations in specific cases. Concurrently, the State Government has introduced reforms, including streamlined approval processes, policy clarifications, and digital processing systems, to facilitate genuine investors in conducting business in Himachal Pradesh without compromising the law's objectives. This analysis presents an updated overview of the implementation of Section 118 and suggests recommendations to further harmonise regulatory compliance with the ease of doing business. The findings underscore that Section 118 functions not as a rigid impediment but as a flexible, adaptable framework. Its evolution offers valuable insights for other Indian states grappling with the dual objectives of local protectionism and economic liberalisation. The paper concludes that sustained policy innovation, legal

clarity, and institutional accountability are essential to realising the full potential of Section 118 as a tool for inclusive development.

Keywords: Ease of Doing Business, Entrepreneurship, Section 118, HPTLRA-1972, Land Reforms, Himachal Pradesh

Introduction

The Himachal Pradesh Tenancy and Land Reforms Act (HPTLRA), 1972 was enacted to implement land reforms and prevent agricultural land sales to non-residents in this hill State¹. Section 118 of the Act, in particular, was incorporated to provide for restrictions on the transfer of land in favour of a person who is not an agriculturist of the State (Kumar & Sharma, 2020). The primary legislative intent is to protect local agriculturists' and communities' interests by prohibiting indiscriminate land sales to non-agriculturists while ensuring that State development is not adversely affected. In practice, Section 118 has significantly impacted land transactions and investment in Himachal Pradesh, making the State one of the few in India with the most stringent regulations governing who may purchase or lease land (Verma, 2021).

Section 118 has become central to debates about balancing local land rights protection with external investment promotion. This provision, originally intended to protect the agrarian fabric of the State, has undergone multiple amendments and has been supported by executive instructions and supplementary rules aimed at refining its scope and application (GoHP, 2022). The Himachal Pradesh High Court has acknowledged the persistent legal disputes arising under Section 118. In a significant 2016 judgment, the Court empathised with long-standing Himachali residents' grievances. These residents, lacking ancestral agricultural land, remain classified as 'non-agriculturists' and cannot purchase land

* Director, Directorate of Census Operations, Haryana and Himachal Pradesh, C.G.O. Complex, B-Block, "HIMADRI", Longwood, Shimla, Himachal Pradesh - 171001. Can be reached at lalitjainiashp@gmail.com

freely in their own State. The Court noted that "a large population of non-agriculturist Himachalis has been denied their right to purchase property despite residing in the State for decades" (Verma, 2021). Although the Court attempted to nudge the legislature towards reform, its directive was ultimately overturned by the Supreme Court of India, which reaffirmed the limits of judicial authority in prompting legislative amendments (Kumar & Sharma, 2020).

This judicial and administrative struggle reflects a deeper public policy dilemma: how to maintain Section 118's protective purpose while preventing undue constraints on economic development and individual rights. Recent efforts by the Government of Himachal Pradesh have been directed toward improving the State's business environment, particularly in sectors such as tourism, industry, and infrastructure. In line with national objectives to enhance ease of doing business, the State has introduced administrative reforms to expedite approvals under Section 118 and issued clarifications to reduce legal ambiguities (Choudhary, 2018)^{2,3}. This paper represents a contemporary analysis of the evolving legal framework surrounding Section 118, drawing from recent judicial interpretations and administrative reforms up to 2021. It critically examines the legal and practical challenges that this section poses for investors, residents, and policymakers, and evaluates the effectiveness of reforms aimed at creating a more conducive investment climate without compromising local protections. This evolution of Section 118 through judicial interpretation and administrative reform demonstrates the law's adaptability. The following analysis examines how these changes have shaped the current legal framework.

Legislative Framework

Section 118(1) of the HPTLRA, 1972, imposes comprehensive restrictions on land transfers within the State to any person who is not an agriculturist of the State, as defined under the Act⁴. The provision overrides conflicting laws or private contracts. It mandates that no land transfer—including sale, gift, will, exchange, lease, mortgage with possession, tenancy creation, or transfers by any other means—to non-agriculturists shall be considered valid (Choudhary, 2018; Kumar & Sharma, 2020). In essence, unless an individual is classified as an agriculturist or belongs to a specifically exempted category, they are legally barred from acquiring land through any standard mode of transfer without violating the law (Verma, 2021). Furthermore, the Act goes beyond direct transactions and addresses indirect arrangements by defining them as transfers. Unambiguously, it prohibits benami transactions, where land is held in the name of

an agriculturist but for the benefit of a non-agriculturist, as well as authorisations such as powers of attorney or agreements that effectively place a non-agriculturist in possession "*as if they are the real owner*" (Rana & Negi, 2019). These provisions are deliberately constructed to close legal loopholes and prevent the circumvention of legislative intent through indirect means⁵. Having established the basic legal structure, the next section examines how specific exemptions and permissions operate in practice.

Sanctioned Land Transfers and Exclusions

Section 118(2) of the HPTLRA, 1972 outlines a list of exemptions that specify situations where the restriction on land transfers to non-agriculturists does not apply⁶. These exceptions are rooted in considerations of social justice and practical governance, recognising that certain categories of individuals, due to historical, occupational, or socio-economic conditions, should not be deprived of the opportunity to own land in the State. Among the notable exemptions are transfers permitted in favour of landless agricultural labourers, Scheduled Castes and Scheduled Tribes, village artisans and landless persons engaged in allied occupations (Choudhary, 2018). These provisions acknowledge the structural disadvantages faced by marginalised communities and aim to promote inclusive access to land ownership. Furthermore, individuals who lost their land due to tenancy reforms or public projects such as dam constructions or urban development schemes are also exempted, recognising their involuntary displacement from agricultural status (Verma, 2021; Jain, 2023).

A significant practical exemption is laid out under Clause (g), which allows non-agriculturists to acquire built-up properties or plots for residential or commercial use from state development bodies such as the Himachal Pradesh Housing and Urban Development Authority (HIMUDA). This clause facilitates property transactions by enabling even outsiders to buy housing units or developed plots without the need for prior permission under Section 118, thereby streamlining urban growth and addressing housing needs (Kumar & Sharma, 2020). Additionally, Clause (h) serves as a general enabling provision, granting the State Government discretionary power to permit land transfers for purposes defined in the rules, commonly including bonafide industrial, tourism, educational, or residential projects. This clause has become the primary legal channel through which businesses, educational institutions, and non-agriculturist individuals, whether from within or outside the State, seek permission to acquire land for legitimate and development-oriented purposes (Rana & Negi,

2019)⁷. These provisions collectively reflect the State's effort to balance protection of local land rights with the facilitation of targeted development, ensuring that essential infrastructure and investment needs are met without compromising the broader agrarian character of Himachal Pradesh. These exemptions require careful procedural compliance, as outlined in the following section.

Transfer Permissions: Terms and Safeguards

Transfers permitted under the exemptions outlined above, particularly those requiring Government permission under Clause (h) or direct exemptions such as Clause (g), are subject to strict conditions that ensure the land is used for its intended purpose within a reasonable timeframe⁸. According to the rules notified under Section 118, if a non-agriculturist who acquires land under an exemption or with government approval fails to utilize the land for the approved purpose within two years (extendable by one year), or diverts it to an unauthorized use, or transfers it further without permission, the land is liable to vest in the State Government free from all encumbrances. This forfeiture clause acts as a powerful deterrent against speculative landholding or misuse, ensuring that land granted under specific exemptions is used responsibly and not commodified by those outside the local agrarian economy (Choudhary, 2018; Verma, 2021). The proviso to Section 118 underscores that land obtained under Clause (dd) for bonafide development, Clause (g), such as through HIMUDA housing schemes, or government-approved transfers must be utilised strictly for the sanctioned purpose. If not, the government is empowered to resume the land, a measure that has been repeatedly upheld in judicial interpretations and policy clarifications (Rana & Negi, 2019).

In contrast to these restrictions, the Act excludes certain transactions from the definition of "transfer" to avoid unintended overreach. For example, inheritance is not treated as a transfer, even if the legal heir is a non-agriculturist, thereby allowing ancestral succession regardless of status⁹. Additionally, the Act excludes leases in municipal areas from its purview, meaning that a lease of land or a building in urban areas such as Shimla or Manali to a non-agriculturist is allowed without government approval (Verma, 2021). This exception is crucial for facilitating urban commerce, tourism, and real estate development, particularly in cities and hill stations that serve as commercial hubs. For instance, outsiders may lease apartments, shops, or hotels in urban municipal areas without triggering Section 118, promoting economic activity without compromising agrarian protections (Rana & Negi, 2019). These carefully

structured exemptions and conditions reflect broader policy intent to protect rural land and agrarian interests while allowing necessary urban development, public welfare, and commercial activity where appropriate.

Procedural Regulations and Governance

Rule 38-A of the Himachal Pradesh Tenancy and Land Reforms Rules, 1975, guides Section 118 implementation. This rule outlines application procedures for non-agriculturists seeking land purchase permission⁹. Applications must be routed through the Deputy Commissioner and include essential documents such as an up-to-date "Jamabandi" and a report by the local patwari confirming ownership and title clarity. This rigorous process aims to prevent fraudulent transactions and ensure regulatory compliance (Verma, 2021).

Overall, the framework enforces restrictions on land sales to non-agriculturists while allowing for legitimate needs via exemptions and permissions. It deters misuse through benami transactions or unauthorized possession and emphasises compliance even after the transfer is approved (Rana & Negi, 2019). However, these safeguards have also led to procedural complexity and litigation, highlighting the need for clear interpretation and balanced implementation.

Judicial Decisions and Clarifications

Section 118 of the HPTLRA, 1972 has been the subject of numerous judicial pronouncements that have clarified its constitutional validity, operational scope, and implementation mechanism. Courts have consistently upheld the law's constitutionality, emphasising the State's right to protect agrarian interests and prevent large-scale alienation of land to non-agriculturists¹⁰. The Honourable Himachal Pradesh High Court has repeatedly affirmed that the restrictions under Section 118 are reasonable and in line with Article 19(5) of the Constitution, which permits the state to impose restrictions in the interest of the general public¹¹.

Moreover, the Supreme Court has observed that while the judiciary may express concerns on legislative issues, it cannot direct amendments, as was clarified in the overruling of the High Court's attempt to compel legislative change in Section 118¹². These rulings underscore the balance between constitutional freedoms and the State's power to legislate in favour of local development and social justice (Verma, 2021).

Constitutional Legitimacy and Applicability

Section 118's land transfer restrictions potentially limit

individual rights, including property acquisition and trade, business, and movement freedoms. However, the Honourable Himachal Pradesh High Court has consistently upheld the constitutional validity of Section 118 against such challenges. In *Som Kirti alias Som K. Nath and Others v. State of H.P. & Others* (2013), a Division Bench of the Honourable High Court dismissed a plea that Section 118 was *ultra vires*, affirming that the provision falls within the legislative competence of the State and serves a public purpose¹³. The court, in this and other cases, observed that similar land protection laws exist in other hill States and tribal areas, and that the law reflects a policy decision of the legislature. Subsequent benches have treated the issue as settled. For instance, in *Geeta Devi v. State of H.P.* (2016), the Honourable High Court explicitly relied on the *Som Nath* judgment, stating that the Division Bench had “upheld the validity of Section 118 of the Act” and, therefore, there was “no occasion to examine the validity” afresh¹⁴. In other words, the constitutionality of Section 118 is well established, and it is regarded as a permissible regulation in the public interest.

Agriculturist Status: Criteria, Conflicts and Clarifications

A key question frequently arising under Section 118 is who qualifies as an “agriculturist of the State,” as only such individuals are permitted to acquire land without prior permission. The HPTLRA, 1972, defines an “agriculturist” to include persons who own agricultural land in the State, have acquired land through inheritance or are deemed agriculturists under specific exemptions HPTLRA, 1972, Section 2(2)). The Honourable Courts have addressed cases where individuals claimed agriculturist status to circumvent the restrictions of Section 118. One notable case involved purchasers of land through Central Government auctions, for instance, the purchase of “evacuee property” land in the 1980s by individuals who were not originally agriculturists of Himachal Pradesh. Years later, such purchasers or their heirs sought to be recognised as agriculturists, arguing that they now owned and cultivated the land¹⁵. The rationale is that an exemption or special mechanism granting land acquisition is a one-time permission and does not alter the individual’s underlying status for future transactions. This interpretation prevents a potential loophole whereby an individual could purchase a small plot through an auction and subsequently claim agriculturist status to acquire unlimited land. It aligns with the Act’s intent to ensure that only those with a genuine agricultural background in Himachal Pradesh or those explicitly exempted are recognised as agriculturists.

Another aspect clarified by the Honourable Courts and administrative authorities pertains to Himachali individuals who were previously agriculturists but lost that status. Clause (f) of Section 118(2) of the HPTLRA, 1972 provides relief to individuals who became non-agriculturists involuntarily, for instance, due to their land being acquired for a public project or vesting in tenants under land ceiling or tenancy reforms HPTLRA, 1972, Section 118(2)(f)). Such persons are permitted to acquire land without requiring prior permission under Section 118. The administrative interpretation of this clause has been formalised through instructions to revenue officers, directing that once it is verified that an individual’s land was acquired or vested in tenants, they are exempt from the permission requirement under Section 118 for purchasing land. This compassionate exemption has been upheld in both letter and spirit, ensuring that the law does not penalise individuals who relinquished their land for the greater public good.

Harmonizing State and Central Laws: The SARFAESI Act Case

An area requiring interpretation is the interaction between Section 118 of the HPTLRA, 1972 and Central laws, particularly those governing financial institutions and debt recovery. If a non-agriculturist owns land in Himachal Pradesh with the State Government’s permission, they may mortgage that land to a bank. In the event of a loan default, the bank would typically have the authority to auction the property to recover its dues under the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (SARFAESI Act). However, Section 118 appears to create a conflict, as an auction purchaser might be a non-agriculturist, and without State Government permission, such a transfer would be invalid (HPTLRA, 1972, Section 118). This issue gained prominence following a Supreme Court decision addressing a similar situation in Tripura. In *UCO Bank v. Dipak Debbarma* (2016), the Honourable Supreme Court examined a tribal land protection law, Section 187 of the *Tripura Land Revenue and Land Reforms Act, 1960*, which restricted the transfer of tribal land to non-tribals, and its conflict with the SARFAESI Act. The Tripura High Court had initially upheld the precedence of the State law (as it was listed in the Ninth Schedule), but the Honourable Supreme Court reversed this, ruling that a state law restricting land transfers must yield to the SARFAESI Act, a Central law governing banking, when a bank enforces its security¹⁶. The Court emphasised that banking, including the recovery of debts through the sale of mortgaged assets, falls under the Union List of the

Constitution and thus, the Central law prevails in cases of inconsistency¹⁷.

In light of this judicial precedent, the Himachal Pradesh Government sought the opinion of its Law Department and Advocate General on the applicability of Section 118 to land sales by banks under the SARFAESI Act. In June 2021, the State Government issued a clarification aligning with the Supreme Court's reasoning, acknowledging that "Banking" is a Union subject and that, in cases of conflict between Section 118 and a Central law like SARFAESI, the Central law shall prevail. The Government circular explicitly states that while Section 118 remains in force, it is "eclipsed" to the extent of any conflict, meaning that the restrictions of Section 118 do not apply to land transfers executed through a bank's auction under the SARFAESI Act. Practically, this enables banks to auction mortgaged properties in Himachal Pradesh to the highest bidder, even a non-agriculturist, without requiring the bidder to obtain separate permission under Section 118. In such cases, the auction purchaser assumes the land title of the original owner. However, the 2021 clarification specifies that such an auction purchaser remains a non-agriculturist for the Act, and a note to this effect must be recorded in the land records²². This ensures that the individual does not acquire agriculturist status by the auction purchase (consistent with the previously discussed position on auction purchases) and would require permission for any subsequent transfer to another non-agriculturist. This interpretation regarding SARFAESI is a significant development, as it resolves a major uncertainty for lenders and investors, ensuring that Section 118 cannot be invoked to hinder loan recovery or discourage banks from financing projects involving land in Himachal Pradesh. It reflects a harmonious construction wherein the State law yields in areas constitutionally reserved for Parliament.

Supplementary Legal Clarifications

The Honourable Courts and legal officers of the State have provided guidance on several nuances of Section 118 of the HPTLRA, 1972. One significant clarification, issued in 2014, addressed the applicability of Section 118 to mining leases. The issue was whether granting a mining lease to a non-agriculturist for mineral extraction constituted a "transfer of land" requiring permission under Section 118. The Law Department opined, and the State Government directed, that Section 118 is not applicable if there is no transfer of land per se. A mining lease, in strict legal terms, does not confer ownership or permanent rights over the land; it grants only a limited right to extract minerals. Consequently, it was clarified that a mining lease is essentially a "mining licence" and does "not attract the provisions of Section 118 of the

Act", as "only limited rights, i.e., mining of minerals, are conferred and not any other right of ownership" over the land¹⁸. Although this clarification did not emanate from a judicial pronouncement, it is consistent with established legal principles, as a licence does not constitute a transfer of property under the Transfer of Property Act, 1882 (Tripathi, 2020). This guidance provided significant relief and clarity to the mining industry, affirming that companies could obtain mining leases in Himachal Pradesh without undergoing the cumbersome permission process under Section 118, provided the land itself is not sold or leased in a manner conferring possession beyond the mining activity.

Clarification on HIMUDA Properties: Another point of interpretation pertains to properties acquired under exemptions, such as those from the Himachal Pradesh Housing and Urban Development Authority (HIMUDA)¹⁸. In January 2015, the State Government issued a clarification stating that when a non-agriculturist purchases a plot or flat from HIMUDA under the exemption provided in Section 118(2)(g) of the HPTLRA, 1972, they may subsequently resell the property without requiring fresh permission under Section 118 if the buyer is an agriculturist. However, if the subsequent buyer is also a non-agriculturist, the restrictions under Section 118 apply, as the sale is no longer executed by HIMUDA but between private parties, necessitating permission for the new buyer¹⁹. In essence, the initial sale by HIMUDA is exempt; subsequent transactions are subject to Section 118 based on the buyer's status. This interpretation prevents an unintended perpetual exemption for properties initially sold under HIMUDA, closing the potential loophole where a property might be traded indefinitely in the open market following the first exempt sale. It also reinforces that each transaction is independently evaluated under Section 118. The Honourable Courts have upheld the constitutional validity of the law while interpreting it to prevent absurd or unjust outcomes, such as automatic forfeiture despite no fault on the part of the purchaser or obstructing legitimate banking operations by acknowledging the precedence of the SARFAESI Act²⁰. They have also endorsed a strict interpretation to curb attempts to circumvent the law through indirect means, such as *benami* transactions (Pathania, 2019). These interpretations provide a crucial framework for understanding the challenges that persisted and the reforms initiated by the State Government in response.

Streamlining Procedures and Single-Window Clearance

The State Government significantly streamlined Section 118's permission process by integrating it into a single-

window clearance system for investors. In September 2014, as part of efforts to enhance the investment climate, the Revenue Department issued comprehensive guidelines to “streamline and expedite the process of granting permission u/s 118”, with the explicit objective of facilitating investors through a hassle-free and transparent platform. These reforms mandated that all authorities strictly adhere to Rule 38-A(2) of the Himachal Pradesh Tenancy and Land Reforms Rules, 1975, which stipulates that any deficiencies in an application be communicated “at one time” rather than in a piecemeal manner. This consolidated checklist approach was designed to eliminate the iterative correspondence that previously hindered approvals. Furthermore, Deputy Commissioners must personally oversee Section 118 case processing and submit monthly reports on pending applications. This ensures accountability and minimises district-level delays.

Crucially, the 2014 reforms were aligned with the establishment of Single Window Clearance mechanisms in Himachal Pradesh for industrial and other investments. A dedicated online module for processing applications under Section 118 of the HPTLRA, 1972, was developed and integrated into the single-window portal. This enables investors to submit applications online, track their progress, and receive communications electronically. By transitioning to an online system, the State Government aimed to enhance transparency and accelerate the process. Although manual procedures, such as physical verification of land details, remain necessary, the single-window approach reflects a new investor-centric model (World Bank, 2020). Anecdotal evidence suggests that these reforms have significantly reduced processing times, with many bonafide cases now being cleared within a few months or even sooner, compared to the indefinite delays experienced previously²¹. The single-window clearance authority also consolidates various departments onto a single platform, allowing investors seeking multiple approvals, such as those for pollution control, power supply, building plans, and land under Section 118, to progress concurrently, thereby reducing the overall timeline for initiating a project²².

Clarificatory Policies and Consistency

The State Government has issued several clarifications to ensure uniform interpretation of Section 118 of the HPTLRA, 1972 and to address ambiguities that could impede projects. Several such clarifications were discussed in the section on judicial interpretations, including the exclusion of mining leases from the purview of Section 118²³, conditions for resale of HIMUDA properties, exemption of bank auction sales under the SARFAESI Act from Section 118 and standardisation of the definition of

an agriculturist²⁴. By issuing these clarifications through formal circulars, the State Government has instilled confidence among investors and officials regarding the handling of such scenarios. For instance, following the June 2021 clarification on SARFAESI auctions, banks in Himachal Pradesh can now enforce securities without concern that the sale will be invalidated by Section 118, thereby encouraging financial institutions to extend credit for projects in the state²⁵.

Another significant reform involved clarifying the norms for permitting changes in the purpose of land use or subsequent transactions after land is acquired with permission under Section 118. Businesses evolve, for instance, a company may acquire land for a manufacturing unit but later shift to a different industry, or an entrepreneur may need to sell the enterprise, including the land, to another entity. Previously, the law lacked clarity on some of these scenarios, resulting in ad hoc case-by-case handling. Over the past decade, the Himachal Pradesh Tenancy and Land Reforms Rules, 1975, were amended, and instructions were issued to allow certain changes subject to fresh permission²⁶. The 2011 amendments to the rules detail applications for “permission to sell land/structure by the non-agriculturist acquired with permission” and “permission by non-agriculturists to purchase land/structure from non-agriculturists selling”, among others²⁷. By specifying these provisions, the State Government has clarified that Section 118 is not an inflexible barrier; rather, it accommodates genuine secondary transactions under regulatory oversight. This flexibility is crucial for facilitating business exit strategies and enabling the movement of assets as economic conditions evolve.

Empowerment and Responsibility

The State Government’s reforms have also prioritised enhancing the capacity of officials to process applications under Section 118 of the HPTLRA, 1972, efficiently. Training programmes and workshops have been organised for revenue officials to acquaint them with the single-window clearance system and the latest provisions of the Himachal Pradesh Tenancy and Land Reforms Rules, 1975²⁸. These initiatives aim to ensure that officials do not inadvertently cause delays in the processing of applications. The requirement for Deputy Commissioners to submit monthly reports on pending cases, as mandated by the 2014 guidelines, has instilled a degree of accountability within the local administration to address undue delays (Revenue Department, 2014). Additionally, high-level reviews at the State level regularly monitor the impact of Section 118 processes on major investment projects. These reviews help determine whether the procedural framework facilitates or hinders

economic progress²⁹. This has established a critical feedback mechanism, which was previously lacking, enabling delays or systemic issues in the permission process to be escalated and resolved through timely administrative intervention. Such reforms reflect the State's commitment to balancing regulatory compliance with investor facilitation, especially in sectors requiring land acquisition.

Stakeholder Mobilization

In recent years, the State Government of Himachal Pradesh has actively engaged with industry associations and prospective investors to clarify the provisions of Section 118 of the HPTLRA, 1972. The State Government frequently informs large investors about the requirements in advance and assists with documentation to ensure smooth processing of permission applications (Department of Industries, 2021). This supportive approach forms part of a proactive facilitation strategy. For instance, during "Investor Meets" organised by the State, officials have emphasised that, while Section 118 remains a statutory requirement, the State Government is committed to granting permissions for all genuine projects and has significantly expedited the process³⁰. Through such initiatives, Himachal Pradesh seeks to address the adverse perceptions associated with Section 118. Additionally, the State Government has amended the Himachal Pradesh Tenancy and Land Reforms Rules, 1975 or issued notifications to include new permissible purposes in response to emerging sectors, such as IT parks and hydroelectric projects, by revising the prescribed purposes in the rules³¹. These steps demonstrate the government's adaptability and willingness to promote sector-specific investment without diluting the protective spirit of Section 118.

Legislative Refinement for Himachali Domiciles

The Honourable Himachal Pradesh High Court has previously observed the sense of alienation among long-term Himachali residents who, despite residing in the state for decades, continue to be categorised as non-agriculturists and are thus ineligible to purchase land without permission³³. A legislative amendment could allow bonafide residents, those born in Himachal Pradesh or domiciled for over 20 years, to purchase a limited area of land for residential purposes without prior government approval. This proposal seeks to preserve the original intent of Section 118 by limiting the scope of such exemptions to a one-time purchase of small plots and excluding commercial or large-scale transactions. Although such a measure was previously supported

by the High Court, it was struck down on procedural grounds, leaving room for a legislative solution.

Time-Bound Approvals and Deemed Consent

To augment the 2014 procedural reforms, introducing time-bound processing of applications under Section 118 would significantly benefit investors. A provision could be added to the Himachal Pradesh Tenancy and Land Reforms Rules, 1975, stipulating that if a complete application is not disposed of within a specific timeframe, it would be deemed approved. This approach has been adopted in various other Indian states to streamline bureaucratic processes and improve the investment climate (DPIIT, 2023). As an alternative to deemed consent, the state could institute a statutory time limit for decisions along with an escalation mechanism, ensuring accountability without compromising administrative discretion.

Delegation of Powers for Small Transactions

Currently, all applications under Section 118 are routed through the State Secretariat, often resulting in delays. Delegating decision-making authority to the Deputy Commissioners for straightforward residential land purchases, especially those falling under Clause (h) of Section 118(2), could expedite the process significantly. Such a delegation, if accompanied by stringent guidelines and *post-facto* reporting requirements, would relieve the Secretariat of routine caseloads while preserving oversight for more complex matters³⁴. Proposals for such delegation have been discussed earlier, but need clearer implementation frameworks.

Digital Monitoring and Record-Keeping

While an online application module exists for Section 118 permissions, further digital integration could greatly enhance efficiency and transparency. Linking the portal with land records (Jamabandi) would allow automatic verification of land titles and ownership. Moreover, a public-facing dashboard displaying real-time application metrics could foster trust and demonstrate systemic efficiency (National e-Governance Division, 2022). Upon permission granted, digital tracking of conditions such as the two-year land utilisation clause could generate automated reminders to stakeholders and authorities, reducing *post-facto* enforcement reliance.

Continuous Stakeholder Consultation

Sustained engagement with stakeholders such as industry

associations, local bodies, and panchayats is vital for informed policymaking. Such consultations may reveal the need for targeted exemptions or new regulatory categories, especially in high-potential sectors like tourism and renewable energy (CII, 2021). Public education campaigns explaining the Section 118 permission process and highlighting success stories can also dispel prevalent misconceptions and build confidence among potential investors.

Conclusion

Section 118 strikes a careful balance between land conservation and economic development in the State. The Honourable Courts have played a pivotal role in shaping the implementation of Section 118. They have upheld its constitutional validity while simultaneously applying it with a degree of pragmatism. Landmark judgments have mitigated the law's potential rigidity, particularly in cases where procedural delays might have. Consequently, this judicial approach has enabled national banking institutions to secure and recover loans in Himachal Pradesh without excessive Section 118 restrictions³⁵. Such judgments have thus helped Himachal Pradesh integrate with national financial systems and reduced the perceived risk among institutional lenders. Administratively, the State Government has demonstrated a commitment to reform. The introduction of the single-window clearance mechanism in 2014 marked a significant shift toward procedural efficiency. The improved processing timelines and administrative responsiveness have garnered positive feedback from investors, particularly those in tourism and industry (CII, 2021). Simultaneously, the core protective function of Section 118 remains intact; there is no evidence of large-scale alienation of land to non-Himachali entities, reaffirming the law's original intent of preserving land for local use and preventing speculative acquisition.

In conclusion, Section 118 of the HPTLRA, 1972, is a dynamic and evolving statute. Through a combination of judicial oversight and administrative reform, it has matured into a legal framework that both enables investment and safeguards local interests. The structure of this analysis, from the legal framework to challenges and reforms, highlights the adaptability of the law in response to complex and competing demands. Implementing the proposed recommendations, such as domicile-based relaxation and time-bound approvals, would not only enhance administrative efficiency but also address the lingering sense of alienation among certain Himachali residents. The experience of Himachal Pradesh offers a replicable model for other regions aiming to balance development with local protections, a legal balancing

act that remains a work in progress, yet one worthy of emulation.

Acknowledgment

The author gratefully acknowledges the invaluable guidance, steadfast encouragement, and generous support extended by Shri Prabodh Saxena, IAS, Chief Secretary, Government of Himachal Pradesh, India. His visionary leadership, unwavering commitment to progressive governance, and personal interest in this area of research played a pivotal role in shaping and completing this study. His continued support served as a source of motivation and clarity throughout the course of this work.

Notes

1. Government of Himachal Pradesh (GoHP). (1972). *The Himachal Pradesh Tenancy and Land Reforms Act, 1972*. Shimla: Law Department.
2. Government of Himachal Pradesh (GoHP). (2021). *Clarification regarding the applicability of Section 118 in bank auction sales under SARFAESI Act*. Revenue Department Circular No. Rev. B(A) 2-1/2021.
3. Government of Himachal Pradesh (GoHP). (2021). *Consolidated guidelines and FAQs on land acquisition under Section 118*. Department of Revenue.
4. Department of Revenue, Government of Himachal Pradesh. (2021). *Exemption of SARFAESI auctions from Section 118*. Shimla: Circular No. Rev. B (10)-5/2020.
5. Government of Himachal Pradesh (GoHP). (2022). *Instructions and clarifications issued under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972*. Shimla: Law and Revenue Departments.
6. Department of Revenue, Government of Himachal Pradesh. (2018). *Notification regarding inclusion of hydroelectric projects and IT parks in permissible land use purposes under Section 118*. Shimla: Notification No. Rev. B (10)-3/2018.
7. Government of Himachal Pradesh (GoHP). (2022). *Notifications and instructions under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972*. Shimla: Revenue Department.
8. Department of Revenue, Government of Himachal Pradesh. (2014). *Guidelines to streamline permission under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972*. Shimla: Government Notification No. Rev. F(6)-1/2014.
9. Government of Himachal Pradesh (GoHP). (1975). *Himachal Pradesh Tenancy and Land Reforms Rules, 1975 (as amended)*. Shimla: Revenue Department.
10. Ramesh Sharma v. State of Himachal Pradesh, AIR 1996 HP 24.
11. High Court of Himachal Pradesh. (2016). *Ram Lal vs State of Himachal Pradesh*.

12. State of Himachal Pradesh v. Himachal Pradesh High Court Bar Association, (2016) 4 SCC 164.
13. Som Kirti alias Som K. Nath and Others v. State of H.P. & Others, CWP No. 586 of 2010 (Himachal Pradesh High Court, 2013).
14. *Geeta Devi v. State of H.P.*, CWP No. 2953 of 2015 (Himachal Pradesh High Court, 2016).
15. Government of Himachal Pradesh (GoHP). (2012). *Clarification on the status of non-agriculturists acquiring land through auction*. Circular No. Rev. B(A) 2-1/2010. Revenue Department.
16. UCO Bank v. Dipak Debbarma & Others, (2016) 3 SCC 594.
17. Constitution of India, Schedule VII, List I, Entry 45.
18. Urban Development Department, Government of Himachal Pradesh. (2015). *Guidelines on the resale of HIMUDA properties under Section 118*. Shimla: Circular No. UD-A (2)-2/2014.
19. Government of Himachal Pradesh (GoHP). (2015). *Clarification on the resale of HIMUDA properties under Section 118(2)(g)*. Revenue Department Notification.
20. Ravinder Chauhan v. State of Himachal Pradesh, AIR 1998 HP 24.
21. Himachal Pradesh Investment Promotion Cell (HPIPC). (2023). *Annual investment facilitation report: Achievements and reforms*. Shimla: Department of Industries.
22. Confederation of Indian Industry (CII). (2022). *Ease of doing business in Himachal Pradesh: State-level reforms and investor feedback*. Shimla: CII Himachal Chapter.
23. Department of Industries, Government of Himachal Pradesh. (2014). *Clarification regarding mining leases under Section 118*. Shimla: Government Circular No. Ind-II(Mines)-3/2013.
24. Department of Revenue, Government of Himachal Pradesh. (2012). *Clarification on the definition of agriculturist under Section 118*. Shimla: Revenue Circular No. Rev. B (10)-4/2011.
25. Reserve Bank of India. (2021). *Clarifications on SARFAESI enforcement in special land law states*. Mumbai: RBI Compliance Division.
26. Government of Himachal Pradesh (GoHP). (2011). *Instructions regarding amendments to the Himachal Pradesh Tenancy and Land Reforms Rules, 1975*. Department of Revenue, Government of Himachal Pradesh.
27. Department of Law, Government of Himachal Pradesh. (2011). *Amendments to the Himachal Pradesh Tenancy and Land Reforms Rules, 1975*. Shimla: Official Gazette Notification No. Rev.B(10)-2/2010.
28. Government of Himachal Pradesh (GoHP). (2020). *Training programs for revenue officials on the single-window clearance system and amended Tenancy and Land Reforms Rules, 1975*. Department of Revenue, Government of Himachal Pradesh.
29. Planning Department, Government of Himachal Pradesh. (2021). *Review of procedural frameworks and their impact on economic development*. Government of Himachal Pradesh.
30. Himachal Pradesh Investment Promotion Cell (HPIPC). (2020). *Investor meets proceedings and follow-up action plans*. Shimla: Department of Industries.
31. Government of Himachal Pradesh (GoHP). (2023). *Amendments to Himachal Pradesh Tenancy and Land Reforms Rules, 1975 (Updated Rules Document)*. <https://himachal.nic.in>
32. High Court of Himachal Pradesh. (2016). *M/s Himachal Housing Pvt. Ltd. v. State of Himachal Pradesh*, CWP No. 2165/2016.
33. Himachal Pradesh High Court. (2016). *Smt. Mohini v. State of Himachal Pradesh*, CWP No. 3532 of 2013.
34. Government of Himachal Pradesh. (2019). *Policy guidelines for processing cases under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972*. Revenue Department.
35. Reserve Bank of India. (2023). *Annual report on trends and progress in banking in India 2022–23*.

References

- Choudhary, R. (2018). Land laws and reforms in India: An overview with special reference to Himachal Pradesh. *Indian Journal of Legal Studies*, 10(2), 55–69.
- Confederation of Indian Industry (CII). (2021). *Tourism and economic development in Himachal Pradesh: Policy perspectives and sectoral insights (CII Policy Papers)*. Confederation of Indian Industry.
- Department for Promotion of Industry and Internal Trade (DPIIT). (2023). *Ease of doing business reforms: Status report 2022–2023*. Ministry of Commerce and Industry, Government of India.
- Department of Industries, Government of Himachal Pradesh. (2014). *Single window clearance mechanism for land approvals*. Government of Himachal Pradesh.
- Department of Industries, Government of Himachal Pradesh. (2021). *Handbook for investors: Guidelines under Section 118 and industrial facilitation*. Government of Himachal Pradesh.
- Department of Industries, Government of Himachal Pradesh. (2022). *Operational framework for single-window portal and e-investment facilitation*. Government of Himachal Pradesh.
- Department of Revenue, Government of Himachal Pradesh. (2014). *Guidelines for submission of monthly reports on pending cases by Deputy Commissioners*. Government of Himachal Pradesh.
- Government of Himachal Pradesh (GoHP). (2022). *Guidelines and procedures under Section 118 of the H.P. Tenancy and Land Reforms Act*. Government of Himachal Pradesh.
- Jain, L. (2023). Balancing roots and green growth: Evaluating Section 118 of HPTLRA-1972 in the context of biodiversity conservation and eco-entrepreneurship in Himachal Pradesh. *Biological Forum: An International Journal*, 15(3A), 115–121.
- Kumar, A., & Sharma, M. (2020). Restrictions on land transfers and their impact on development: A case study of Section 118 in Himachal Pradesh. *Himalayan Journal of Development and Policy*, 5(1), 32–45.
- National e-Governance Division. (2022). *Digital India Land Records Modernisation Programme (DILRMP): Progress report*. Ministry of Electronics and Information Technology, Government of India.

- Pathania, R. (2019). Land laws and development in Himachal Pradesh: Legal perspectives. *Shimla Law Review*, 6(1), 73–92.
- Rana, V., & Negi, D. (2019). Land regulation and sustainable development in hill states: The Himachal model. *Economic and Political Weekly*, 54(18), 14–17.
- Tripathi, A. (2020). *Property law in India: A comprehensive analysis*. Eastern Book Company.
- Verma, S. (2021). Balancing growth and tradition: Revisiting land ownership restrictions in Himachal Pradesh. *Journal of Mountain Policy and Governance*, 3(2), 21–29.
- World Bank. (2020). *Doing business 2020: Comparing business regulation in 190 economies*. World Bank Publications.