THE SOCIAL AND ECONOMIC CONDITIONS

J. Lakshmaiah

I. PROPERTY IN A WELFARE STATE

A. *Idaology of a Welfare State*

India was constituted into a Sovereign Democratic Republic for securing to all its citizens, among other things, Justice, Social Economic and Political and to promote among them all Fraternity assuring the dignity of the individual and the unity of the Nation. The people of India, through their constitution, enjoined upon the State a solemn duty to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which Justice, Social, Economic and Political should inform all the institutions of the national life. It is the ushuring of a welfare state that was visualised by the Founding Fathers of the Constitution.

The term "Welfare State" is comparatively new in the English Language and was probably still unknown three decades back. Since the German WOHLFAHRTSTATT has been in use in that country for a long time and the thing it describes was first developed in Germany, the English term probably derives from the German. The German term, from the beginning, was employed to describe a varient of the conception of the Police State (Polizeistaet) — apparently first by the nineteenth century historians to describe the more favourable aspects of eighteenth century Government. The modern conception of the welfare state was first fully developed by the German academic SOZIALPOLITIKER, or "Socialists of the chair", from about 1870 onward and was first put into use by Bismark.

Similar developments in England contemplated by the Fibians and by theorists like A.C. Pigou and L.T. Hobhouse and put into practice by Llyod George and Beveridge were, at least in their beginnings, strongly influenced by the German example. The acceptance of the term "Welfare State" was assisted by the fact that the theoretical foundations that Pigou and his school had provided were known as "Welfare Economies".

By the time F. D. Roosevelt followed in the foot-steps of Bismark and Lloyd George, the ground had been similarly well prepared in the

United States, and the use made since 1937 by the Supreme Court, of the "General Welfare" clause of the Constitution naturally led to the adoption of the term "Welfare State," already in use elsewhere.

If Government is for the sake of the governed and not of the governors, then all its, acts, actions and activities are presumptively concerned with the general welfare or public welfare. The maintenance of order and the administration of Justice are as essential to a "Welfare State", as, say, providing safety, security and certainty to the people, as regards their life, liberty, property and pursuit of happiness.

The vast expansion of Government functions which has occurred as a result both of the growing complexity of modern life, and of the minimum postulates of Social justice, which are now part of the established public philosophy compelled the State to assume the role of a Protector, Dispenser of social services, an Industrial Manager, an Economic Controller and what not. This expansion has done much in bringing about a metamorphosis of the very conception of the State, so that from being, mainly an instrument of Power, it has become, so far as its internal activities are concerned, an agency or instrumentality of service.

The evolution of Social Philosophy consequent upon the rapid industrialisation and urbanisation of Society has contributed to the early ushuring in of the "Welfare State" or Public Service State. Thus we have moved away from the nineteenth-century idea of the Police State, negative and repressive, to a new conception of a positive Social Service State.

Transformation of the concept of the functions of the State occasioned a corresponding transformation in the concept of the Institution of Property. We cannot expect a dynamic society to generate static concepts. Every system of Government sustains a corresponding system of property. To change the one is to change the other. This factum is inherent in the very being of government.

> "Property and law are born together and die together. Before laws were made there was no property: take away the laws, all property ceases".[1]

The rights of property are a creation of laws of the State. Since the law can be altered, there are no absolute rights of property. There are legal rights to use and to enjoy and to dispose of property. The law defines what the rights to use and to enjoy and to dispose of property are, which the courts will enforce.

---

1. Bentham, *Theory of Legislation* 113, (1904).

B. *Public Philosophy: Theory of Property*

Blackstone says:

> "The earth, therefore, and all things therein, are in general property of all mankind, exclusive of other beings, from the immediate gift of the Creator."[2]

It is in order that, the earth may be enjoyed fully that, according to Blackstone the Legislature of England had universally promoted the grand ends of Civil Society, the peace and security of individuals by steadily pursuing that wise and orderly maxim of assigning to everything capable of ownership a legal and definite owner.

Viewed from this point of view, there can never be anything like absolute property or absolute private property. The ultimate title does not lie in the owner. The title is in "mankind", in the people as a corporate community. The rights of the individual in that patrimony are creations of the law, and have no other validity except as they are ordained by law. The purpose of laws which establish private property is not to satisfy the acquisitive and possessive instincts of the primitive man, but to accomplish social purpose comprehending "The peace and security of individuals."

Because the legal owner enjoys the use of a limited necessity belonging to all men, he cannot be sovereign lord of his possessions. He is not entitled to exercise his absolute and therefore arbitrary will. He owes duties that correspond with his rights. His ownership is a grant made by the laws to achieve not his private purposes but the common social purpose. And, therefore, the laws of property may and should be judged, reviewed and, when necessary ,amended, so as to define the specific system of rights and duties that will promote the ends of society.

Blackstonian doctrine of private property gave rise to a regressive conception of private property as an absolute right. For a time, the recognized theorists, abandoned altogether from political philosophy, from jurisprudence and from legislation, almost any notion that property had duties as well as rights.

In the name of absolute property, grave horrors were committed by absolute owners causing damage to their neighbours, and to their descendants. They ruined the fertility of the land, burnt and cut forests, they destroyed the wild life, neglected the mineral wealth, polluted streams,

---

2. Blackstone, *Commentries on the Laws of England* Chitty's ed. Book II Ch. I, 2 (1844).

controlled and cornered supplies, forming monopolies and they exploited the feeble bargaining power of wage earners.

Such abuses of absolute property remained irremediable. They had lost the tradition that property is the creation of the law for social purposes. Nineteenth century individualists knew much about the rights of property and little about any corresponding duties. Ultimately, the idea of private property lost all its rational justification, as the duties which alone are the rational justification of property were no longer remembered recognized, defined or enforced.

"Haves" and "Have nots" class emerged, with there being no connecting bond between them, and no concensus within the same realms of rational discourse. The "Have nots", the peasants and the workers had merely the duty to respect the rights of owners. But the "Haves" owed no reciprocal duty to the "have nots". There were no obligations in which the latter found their rights. "Have nots" are more numerous than the "Haves'. With the introduction of the principle under-lying universal adult franchise, the "have nots" acquired votes and the main issue, in the democracies became the struggle between the minority who had so much absolute property and the great mass of the electorate who had so little property.

This conflict can be solved only in two ways—revolutionary or evolutionary; revolutionary, by violent expropriation of the men of property, or evolutionary, by reforming the laws of property which restore adequate duties. It is the latter that was resorted to, in India, within the existing frame-work of the Constitution.

It could have been better had Blackstone and his successors adhered to the Public Philosophy—if they had used, in tead of abandoning, the principles which he stated so well. The earth is the general property of all mankind. Private titles of ownership are assigned by law-making to promote the grand ends of civil society. Private Property, is therefore, a system of legal rights and duties. Under changing conditions the system must be kept in accord with the social service philosophy of the State.

Any theory of property is complete without a reference to Natural Law and to Natural Rights of Property.

C. *Natural Law and the Natural Rights of Property*

> "The history of natural law is a tale of the search of mankind for absolute justice and of its failure. Again and again, in the course of the last 2,500 years, the idea of natural law has appeared, in some form or other, as an expression of the search for an ideal higher than positive law after having been rejected and divided in the interval. The

problem is as acute and as unsolved as ever. With changing social and political conditions the notions on natural law have changed. The only thing that has remained constant is the appeal to some thing higher than positive law. The object of that appeal has been as often the justification of existing authority as a revolt against it".[3]

"The appeal to some absolute ideal finds a response in men, particularly at a time of disillusionment and doubt, and in times of simmering revot. Therefore Natural law theories, far from being theoretical speculations have often heralded powerful political and legal developments."[4]

Through the theories of Locke and Paine, Natural law has provided the foundation for the individualist philosphy of the American and other Modern Constitutions. Their natural law ideas became the highest positive law of the United States through their incorporation in the Constitution. Some of the general clauses of the constitution were interpreted by the Supreme Court in the light of natural law principles which thus became part of positive law.

Greek thinkers have laid the basis of natural law and developed its essential features. Heraclitus was the first among them. He found the essence of being in the rythm of events. Nature was conceived by him not just as substance, but a relation, an order of things. This provided a basis for Sophists. Now the conception of nature, as an order of things was utilised. With a generation sceptical of itself, weary of the arbitrariness of human government, conscious of oppression and injustice, nature came to be opposed to the tyranny of man. In Sophocle's Antigone, natural "divine" law is opposed to written law. The former is wise, the latter arbitrary. From this, spring demands for justice which anticipate the principal demands for sosical justice, raised and defined again and again in modern history.

Nature and law of nature, with the stoics assumed a very different meaning. Nature is now not only the order of things, but also man's reason; it is not only outside but at the same time inside him. Man's reason has now become part of nature. This is a decisive change. It had become possible through the revolution in thinking which Socrates, Plato and Aristotle brought about in the ancient world. It is this recognition of human reason as part of nature which provides the basis for the stoic conception of the law of Nature. The Stoics develop this principle into an ethical one. When man, who is destined to be a social being and citizen, lives according to reason, he lives "naturally". The law of Nature thus becomes identified with a moral duty. It is here, that the seeds for the modern conception of social responsibility were sown.

---

3. Friedmann, *Legal Theory* 17 (3rd ed. 1953).
4. *Id.* at 18.

Natural law ideas have exercised great formative influence upon English law in various phases of development.

The constitutional basis of a higher law supervision by Courts—destroyed in England when the supremacy of Parliament was established was given and the courts fully seized the opportunity of using this power by infusing their particular conceptions of society into the general clauses of the constitution.

The Declaration of Independence, strongly influenced by the ideas of Locke, Paine and Rousseau, had spoken of man's inalienable rights of life, liberty and the pursuit of happiness and these ideas are amply reflected in many American State Constitutions.

Natural law thinking in the United States undoubtedly inspired the fathers of the Constitution and it has dominated the Supreme Court more than any other law court in the world.

John Locke's theory of property became the standard bourgeois theory, the classical liberal theory. The theory that property was a natural right triumphed with the glorious, American and the French revolutions. Property was included in the sacred trinity of Natural rights namely Life, Liberty and Property. He tried to prove that property is natural, that the right to property is a natural right and that private ownership is an institution, not of man, but of nautre. His method was to show that all just governments derive their power from the consent of the governed and that the governed are possessed of certain inalienable natural rights which governments are in duty bound to protect and respect. Property is one of these rights. He began by saying that modern property rights had been instituted by law; he ended by asserting that they were superior to all law. Government, having been instituted for the preservation of Life, Liberty and Property, is bound to hold them all inviolate. His period is marked by an attempt to credit effective safeguards against violations of natural law by the Government. Law in this period was conceived primarily as an instrument for the prevention of autocracy and despotism. The rise of absolute rulers throughout Europe made it evident that a shield of individual liberty against governmental encroachments was strongly needed. Thus the emphasis was shifted to those elements in law which render the institution capable of functioning as a guarantor of individual rights.

The theory of the Natural right of property with its emphasis on rights, being altogether oblivious to the duties aspect of property cannot justify modern property with a social purpose. But the natural right of property is not yet a dead idea, and its future is clearly linked with the outcome of that struggle between rival social systems which dominates

the thinking and acting of our age. Today, the natural right theory of property, restated to fit a complex system of cooperative production, is the officially recognized rule for the distribution of wealth in those parts of the world where Socialism has prevailed.

When society was shattered by wars and upheavals, a reaction set in, a deep seated dissatisfaction with material prosperity, and many other things. Once more the human mind grew restless, revolted against the accepted standards of the day, and as in previous generations, searched for an ideal of justice. Social justice came to be the reighing ideal of the present generation.

With this back-ground we can now approach the modern conception of property.

D. *Property in Industrial Society.*

Property and its distribution occupies a central position in the modern industrial society. The right to property as an inalienable, natural right of the citizen immune from governmental interference has been the legal philosophy of Locke, of the Founding Fathers of the Constitution and permeated the interpretation of the United States Constitution. Land ownership assumed a predominant role in feudal society. The detachment of the right of property accompanied the rise of modern commercial and industrial society.

According to Marx, property is the key to the control of modern industrial society. The capitalist, through the ownership of the means of production, controls the society. Therefore, Marxist theory demands a transfer of the ownership and the means of production to the community, which, in the beginning, exercises its control through a dictatorship of the proletariat and the coercive power of the State, until the latter, "withers away." The problem of social philosophy has thus been attempted to be solved in Soviet Russia. Idealogically, the property Philosophy of the American Constitution is opposed to that of Soviet Russia. But they share the heritage of modern political philosophy: the controlling significance of property in the social order.

Property is not confined to ownership in "things". It comprises not only, immovable and movable objects—but also patents, copy rights, shares, claims. Property is a "bundle of powers". Property is a bundle of rights by which one claimant excludes others, and therefore property is not limited to corporal things. Degrees of ownership are also recognized by law.

The definition of property which confines it to the complete control over a "thing", has been modified to some extent by giving "similar" or

"quasi-proprietory" rights, such as copyrights or patents, the same legal protection as property.

In the English Trust, the powers and rights once concentrated in the owner of the land are now divided between owner and user. Unlike the common law Trust, Civilian systems cannot dissect property into various components, but they have transferred certain functions of property from the owner to others; responding to new economic needs and social policies. Legislation protecting tenant farmers as against the owners is known in many countries. Such social pressures produce an evolution in the concept of property. Property has come to be conceived rather as a collective description for a complex of powers, functions, expectations ,liabilities, which may be apportioned between parties to a legal transaction.

Kart Renner, the Austrian Socialist discribed the way in which property and modern Industrial Society had become a source of power and had turned the capitalist into an industrial command. He observed how, under modern capitalism, the unity of ownership, which characterised a more limited and selfcontained society, is broken up into various specialised functions of ownership.

Property has now become according to Renner a source of Power, profit, interest, rent so forth. At the same time, the legal ownership ceases to represent the real control of the thing. The complimentary legal institution, such as mortgage assumes the real function of ownership. Thus, the owner of a completely mortgaged property is the legal owner, but the economic function of ownership is in the hands of the mortgagee.

Property denotes the most complete form of control that the law permits. It is the duel aspect of property, the power to enjoy and the power to control, which any analysis of the function of property in society, must take as its point of departure. For it is the increasing divorce of these two, once normally united, aspects of property which is the peculiar characteristic feature of modern evolutions of property. Correspondingly, the legal restrictions on the rights of property are different in impact and social significance, according to whether they seek to restrain the power to enjoy or the power to control.

In the present century, corporate enterprise has taken control of all the major fields of industrial and business operations, and the structure of corporate enterprise itself has drastically changed in the process. The development of the modern corporation is characterised by an increasing divorce of ownership and control, a phenomena analysed by Barle and Means.

> Corporations have ceased to be merely legal devices through which the private business transactions of individuals may be carried on. Though still much used for this purpose, the corporate form has acquired a large significance. The corporation has, in fact, become both a method of property tenure and a means of organizing economic life. Grown to tremendous proportions, there may be said to have evolved a "corporate system",—as there was once a feudal system — which has attracted to itself a combination of attributes and powers, and has attained a degree of prominence entitling it to be dealt with as a major social institution ... its impact on the life of the country and of every individual is certain to be great, it may even determine a large part of the behaviour of most men living under it.[5]

> .....the corporate system has become the principal factor in economic organization through its mobilization of property interests. In its new aspect, the corporation is a means whereby the wealth of innumerable individuals has been concentrated into huge aggregates and whereby control over this wealth has been surrendered to a unified direction. The surrender control over their wealth by investors has effectively broken the old property relationships and has raised the problems of defining these relationships anew."[6]

An organization of economic activity rests upon two developments, each of which has made possible an extension of the area under unified control. The factory system, the basis of the industrial revolution, brought an increasingly large number of workers directly under a single management. Then, the modern corporation, equally revolutionary in its effect, placed the wealth of innumerable individuals under the same central control. By each of these changes the power of those in control was immensely enlarged, and the status of those involved, worker or property owner, was radically changed. The independent worker who entered the factory became a wage labourer surrendering th dirction of his labour to his industrial master. The property owner who invests in a modern corporation surrenders his wealth to those in control of the corporation and has exchanged the position of independent owner for one in which he may become merely recipient of the wages of capital.

The separation of control from ownership made tremendous aggregations of property possible. But in the overwhelmingly important field of corporate enterprise, the nominal owner, the shareholder, is becoming more and more powerless. He turns into a mere recipient of dividends, often barely distinguishable from the bond or debenture holder. In the analysis of Berle and Means, Control has been wrested from the shareholder owner by five different devices:

(1) Control through almost complete ownership;

---

5. Berle and Means, *The Modern Corporation and Private Property*. 1 (2nd ed. 1944).

6. *Id.* at 2.

(2) majority control;
(3) Control through a legal device without majority ownership;
(4) Minority control; and
(5) Management control.[7]

The separation of ownership from control produces a condition where the interests of owner and of ultimate manager, diverge, and where many of the checks which formerly operated to limit the use of power disappeared. New responsibilities towards the owners, the workers, the consumers and the State, thus rest upon the shoulders of those in control. In creating these new relationships, the quasi-public corporation may fairly be said to work a revolution. It has destroyed the unity of property, divided ownership into nominal ownership and the power formerly joined to it. Thereby the Corporation, revolutionised the entire fabric of economic system by changing the nature of profit-seeking enterprise.

There has been effected a fundamental change in the form of property and in the economic relationships which rest upon it. Outwardly the change is simple enough. Beneath this, however, lies a more fundamental shift. Physical control over the instruments of production has been surrendered to centralized groups who manage property in bulk, for the benefit of the security holders. Power over industrial property has been cut off from the beneficial ownership of this property or from the legal right to enjoy its fruits. Control of physical assets has passed from the individual owner to those who direct the quasi-public institutions, while the owner retains an interest in their product and increase. A surrender and regroupings of the incidence of ownership, which formerly bracketed full power of manual disposition with complete right to enjoy the use, the fruits and the proceeds of physical assets has become apparent. There has resulted the dissolution of the old atom of ownership into its component parts, control and beneficial ownership.

This dissolution of the atom of the property has destroyed the very foundation on which the economic order of the past has rested. Private enterprise in the past has been rooted in the institution of private property. It was assumed that the individual is protected in the right both to use his own property as he sees fit and to receive the full fruits of its use. His desire for personal gain, for profits, can be relied upon as an effective incentive to his efficient use of any industrial property he may possess. In the quasi Public Corporation such an assumption no longer holds. The explosion of the atom of property destroyed the basis of the old assumption that the quest for profits would spur the owner of Industrial property to its effective use.

---

7. *Id.* at 70.

In the development of this concept of corporate enterprise there is discernable a considerable dispersion of ownership. An important part of the wealth of the individuals consists of interests in great enterprises of which no one individual owns a major part. Wealth is taking this form. The basic concepts were subject to a most searching scrutiny by Berle and Means thus:-

1. Most fundamental of all, the position of ownership has changed from that of an active to that of a passive agent. In place of actual physical properties over which the owner could exercise direction and for which he was responsible, the owner now holds a piece of paper representing a set of rights and expecations with respect to an enterprise. But over the physical property — the instrument of production — in which he has an interest, the owner has little control .... The owner is practically powerless through his own efforts to affect the underlying property.

2. The spiritual values that formerly went with ownership have been separated from it. Physical property capable of being shaped by its owner could bring to him direct satisfaction apart from the income it yielded in more concrete form. It represented an extention of his own personality. With the corporate revolution, this quality has been lost to the property owner much as it has been lost to the worker through the Industrial revolution.

3. The value of an individual's wealth is coming to depend on forces entirely outside himself and his own efforts .... It is further subject to the great swings in society's appraisal of its own immediate future as reflected in the general level of values in the organised markets.

4. The value of the individual's wealth not only fluctuates constantly but it is subject to a constant appraisal ....

5. Individual wealth has become extremely liquid through the organized markets ....

6. Wealth is less and less in a form which can be employed directly by its owner. When wealth is in the form of land for instance, it is capable of being used by the owner even though the value of the land in the market is negligible. The physical quality of such wealth makes possible a subjective value to the owner quite apart from any market value it may have. The newer form of wealth is quite incapable of this direct use. Only through sale in the market can the owner obtain its direct use. He is thus tied to the market as never before.

7. Finally, in the corporate system, the "owner" of industrial wealth is left with a mere symbol of ownership, while the power, the responsibility and the substance which have been an integral part of the ownership in the past are being transferred to a separate group in whose hands lies control.[8]

---

8. *Id.* at 66.

The power aspect of property in modern Industrial Society has been of an essentially institutional character. These new institutional developments represent either organised countervailing power, matching and curbing the formerly unrestrained power of the property owner in early industrial society, or they provided new institutions as a substitute for private property. The power aspects of property in contemporary industrial society result overwhelmingly from the concentration of industrial assets. It is as owner and controller of Industrial assets that in Renner's termonology, the Industrial owner becomes a "Commander." But in the present century the industrial property owner is hardly a physical individual. The owner and controller of industrial assets is the corporation. It is with the impact of corporate ownership and corporate power that the modern legal and social trends and counter trends are overwhelmingly concerned.

How the challenge of the rapidly changing modern industrial society with its concepts of property and corporate enterprise have been met by the framers of Constitution is now going to be our immediate concern. Before then we can as well dispose of another question regarding the recognition by the Supreme Court of the breaking up of the property into its component parts of control and enjoyment.

The Sholapur Spinning and Weaving Company (Emergency Provisions) Act was passed by the Parliament providing among other things Section 13 thereof that shareholders of the company concerned cannot nominate or appoint any person to be a Director of the company, that no resolution passed shall be given effect to unless approved by the Central Government and that no proceedings for the winding up of the company after the appointment of a Receiver in respect thereof shall lie in any court unless it be with the sanction of the Central Government. An individual shareholder of the company, applied under article 32 of the constitution for a writ of Mandamus and other reliefs against the Government assailing the acts on the ground, interlia, that it infringed the right to property secured by article 31 of the Constitution, the right to acquire, hold and dispose of property guaranteed to every citizen by article 19(1)(f). Negetiving the contention of the petitioner that he has been dispossessed from the property owned by him, Mukharjea J. held in *Charanjitlal Chowdhury* v. *The Union of India.*[9]

> The petitioner as a shareholder has undoubtedly an interest in the company. His interest is represented by the share he holds and the share is a movable property according to the Indian Companies Act with all incidents of such property attached to it. Ordinarily he is entitled to enjoy the income arising from the shares in the shape of dividends. A share like

9. 1951 S.C.J. 29.

any other marketable commodity can be sold or transferred by way of mortgage of pledge. The holding of the share in his name gives him the right to vote at the election of Directors and thereby take a part, though indirectly in the management of the Company's affairs. If the majority of shareholders sides with him, he can have a resolution passed which would be binding on the company and lastly be can institute proceedings for winding up of the company which may result in a distribution of the net assets among the shareholders.

It cannot be disputed that the petitioner has not been disopssessed in any sense of the term, of the shares he holds. Nobody has taken the shares away from him. His legal and beneficial interest, in respect to the shares he holds is left intact. He can sell or otherwise dispose of the shares at any time at his option. The impugned act has affected him in this way that his right of voting at the election of directors has been kept in abeyance so long as the management by the statutory directors continue and as a result of that his right to participate in the management of the company, has been abridged to that extent. His rights to pass resolutions or to institute winding up proceedings have also been restricted though they are not wholly gone; these rights can be exercised only with the consent or sanction of the Central Government. In my opinion from the facts stated above, it cannot be held that the petitioner has been dispossessed from the property owned by him.[9a]

This case is a landmark in recognising the break up of the unitary concept of ownership of property which as we have occasion to see has facilitated to a considerable extent the growth of the corporate enterprise in the modern industrial society.

II. Property Under the Constitution

The right to property is dealt with in two articles of the Constitution. Article 19(1)(f)refe rs to the "right to freedom" and the right to acquire, hold and dispose of property." Article 31 describes itself as dealing with "right to property" and clause (1) guarantees the right not to be "deprived of one's property save by the authority of law." Clause (2) guarantees that property cannot be 'acquired' or 'requisitioned' by the State except for a 'Public purpose' and after providing for the payment of compensation.

There was a controversy whether article 19(1)(f) covers abstract or concrete right of property or both. Ultimately the Supreme Court solved the problem by holding that article 19(1)(f) applies equally to concrete as well as to abstract right of property.

The rights referred to under article 19(1)(f) are rights which taken by themselves independently, are capable of being acquired, held or disposed of as 'property'. It is designed to include private property in all

9a. *Id.* at 48.

its forms and must be understood both in a corporal sense as having reference to all. these specific things that are susceptible of private appropriation and enjoyment as well as in its judicial or legal sense of a bundle of rights which the owner can exercise under the Municipal law with respect to the user and enjoyment of those things to the exclusion of all others. It takes in within its ambit any proprietary interest such as that of a mortgagee or lessee. an incorporal right, the interest of a Mohunt over the endowed property. the good will of a business, any interest in a commercial or industrial undertaking, the right to hold a fair on one's own land, heriditary trusteeships etc. By rendering the exercise of these rights subject to the imposition of reasonable restrictions, in the interests of the general public, the framers of the Constitution, infused into the idea of property a social purpose, restoring thus the balance between the individual and the society.

So far as article 31 is concerned, Clause (1) provides that no person shall be deprived of his proprety save by authority of law and as per clause (2) thereof, no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

S. R. Das J. as he then was, commenting upon clauses (1) and (2) of article 31, observed in *Charanjitlal's* case that Clause (1) deals with a matters akin to the exercise of police power as understood in United States of America and Clause (2) with what goes in America by the name of 'Eminent Domain'. When the distinction between these two was blurred, by a later decision of the Supreme Court, Parliament came with the Constitution (Fourth Amendment) Act, 1955 and restored the position as held by S. R. Das J. as he then was, in *Charanjitlal's* case.

So far as clause (1) of article 31 is concerned, no person can be deprived of his property save by authority of law and any one can be deprived of his property with the authority of law. There is no provision for compensation for such deprivation. Cases can as well be conceived when for no fault of themselves people being deprived of their very valuable property. though it be under the authority of law, presumably for serving an overriding social interest or purpose. When the Society stands to gain, at the cost of the individual, there is nothing to compensate the individual for the loss so occasioned by law.

The interests of the individuals, are admirably saved to the extent permitted within the existing frame-work of the Constitution by the 'Judicial valour and caution, as Sir Frederic Pallock calls it, of K. Subba Rao J.

as he then was, reminiscent of Lord Mansfield dealing with Commercial law of England and John Marshall dealing with constitutional law of the United States. How was this accomplished? His Lordship simply said in *Kochuni's* [10] case that the term ('Law' referred to in clause (1) of article 31 must be a valid law. So far the majorty was in company with the majority in *Gopalan's*[11] case. But in *Kochuni's* case, it was held that validity meant not only that law was intravires the Legislature concerned, but it should not contravene any of the Fundamental Rights included in Part III of the Constitution, as required by article 13. They held that the test of reasonableness contemplated under article 19 shall have to be applied to the concept of law in article 31(1).

We have had occasion to see the ubiquitious position, the corporation has come to play, in the shaping of the modern industrial society. The ideal of welfare states can be actuilized only through the divice or the instrumentality of a corporation. The entire gamut of the complexity of the functions of the State are motivated not by power, as it was once but by service, as it is now. When the device of the corporate entity is utilized by the Modern Welfare State or public service State for rendering services, the instrumentality also has undergone a corresponding change in its motivations. A public or a quasi public corporation is there not for earning profits but for rendering services. We have also seen, how the break up of the conception of unity of property into its components of enjoyment and Control has facilitated, if not accelerated this movement.

III. Constitution and the Corporation

Under these circumstances, what is the protection afforded to corporation under the constitution as regards its property? A corporation cannot be deprived of its property without authority of law as per article 31(1). Nor can its property be compulsory acquired or requisitioned save for a public purpose and save by authority of law which should provide for compensation for the property so acquired or requisitioned as per article 31(2). Protection is thus afforded against deprivation of property whether that deprivation has been brought about either under Clause (1) or Clause (2) of article 31. But this provision of the Constitution affording protection against deprivation of property necessarily implies or assumes the existence of property vested or come to be vested in it either on account of the fact that it has acquired or held the property. But is there any protection afforded regarding acquisition or holding of property by the

10. *Kochuni* v. *States of Madras & Kerala,* A.I.R. 1960 S.C. 1080.

11. *A. K. Gopalan* v. *State of Madras,* A.I.R. 1960 S.C. 27.

corporation, not to speak of disposal of the same? The right to acquire, hold and dispose of property was guaranteed under article 19(1)(f). Is the corporation entitled to those rights? It has been assumed by the Supreme Court, not to speak of other courts, in the following cases among others, that a corporation is a citizen under article 19 of the Constitution.

1. *Bijoy Cotton Mills Ltd.* case [12]

2. *Express News Papers (Private) Ltd.* case[13]

Nor is there any inappropriateness in extending the protection under article 19 to corporations. It has been consistently assumed that corporations aggregate are entitled to claim protection of the courts against violation of fundamental freedoms enumerated in article 19(1).[14]

Is there anying either in the language of article 19(1)(f) or the nature of the right claimed, compelling the inference that they are not applicable to corporations? If I may say so with great respect, this is the test to be applied for applying the provisions of the organic document while considering the nature of the right or the person concernd.

What is the answer to Justice Shah's question posed in the case of *State Trading Corporation of India* v. *Commercial Tax Officer?*

> In the matter of protection, the law makes no distinction between natural persons and artificial persons like corporations. Was it then afforded protection of the widest amplitude in favour of corporations as well as natural persons against discrimination under Article 14, against deprivation of property under Article 31(1), against compulsory acquisition or requisition of property for purposes not public and without payment of compensation under article 31(2), against imposition of taxes, proceeds of which are specifically appropriated for payment of expenses for maintenance of particular religion or religious denomination under article 27, against being subjected to taxation without authority of law under article 265, and to the freedom of trade commerce and inter-course, subject only to the provisions of Part XIII, still did not guarantee the right to carry on business or trade to acquire hold and dispose of property and the right to form associations, or the right to take up residence of its choice within the territory?[15]

Willis has observed thus:

> Under this theory (functional theory) there is no reason why all the constitutional provisions should not apply to a corporation, the same as to a natural person.[16]

---

12. *Bijoy Cotton Mills Ltd.* v. *State of Ajmer,* A.I.R. 1955 S.C. 33.
13. *Express News Papers* v. *Workers,* A.I.R. 1963 S.C. 569.
14. See *Charanjitlal* v. *Union of India,* A.I.R. 1951 S.C. 41.
15. (1964) 4 S.C.R. 99, 172.
16. Wills, *Constitutional Law of the United States,* 848-849 (1936).

He refers then to the extent to which the power of reason has prevailed over the power of ritual in the matter of applying the provisions of the constitution to corporations. The corporation was held to be a citizen of the State of its creation for the purpose of Federal Jurisdiction on the ground of diversity of citizenship. The genisis of this doctrine according to Willis is interesting. He continues;

> At first a corporation was not regarded as a citizen for any purpose and it could not get into or be taken into the Federal Courts on the ground of diversity of citizenship. Then a case arose where all of the stockholders of the corporation were citizens of the same state where the corporation was incorporated and plaintiff was a citizen of another state and it was held that the court would look behind a corporate veil to the stockholders and give the Federal Courts jurisdiction because of the diversity of citizenship thus found.[17]

Now it is believed that the Courts have come to the decision that the corporation is itself a citizen of the State of its incorporation for the purpose of diversity of citizenship.

But with all this the Supreme Court in the *State Trading Corporation* case held by a majority that the State Trading Corporation, a company registered under the Indian Companies Act 1956, is not a citizen within the meaning of article 19 of the constitution and cannot ask for the enforcement of the Fundamental rights granted to citizens under the said article on the ground that all citizens are persons but all persons are not citizens under the constitution.

All citizens under article 19(1)(c) shall have the right to form associations or unions. Under article 19(1)(f) all citizens shall have the right to acquire, hold and dispose of property. The rights so guaranteed are not absolute. Their exercise is subject to reasonable restrictions imposed by law in the interest of the Sovereignity and integrity of India or Public order or morality or in the interests of general public. By conceading the rights under article 19 to corporations it is not as if they are going to remain outside the control of law. It is only citizens under article 19(1)(c) that can incorporate a corporation in exercse of the right to form associations or unions. What the individual citizens are enabled to attain in their individual capacity they are enabled to attain in their corporate capacity also. In association with others through the exercise of their right guaranteed under article 19(c), rights guaranteed under article 19(1)(f) can be enjoyed.

---

17. *Id.* at 850.

IV. Semantic Discipline

The object or situation in the real world to which a word or lable refers must be found. How to do this for words like persons or citizens as accurring in Part III of the constitution is a question. The concept of a legal person is a general concept used in the presentation of positive law and closely related to the concepts of legal duty and legal right.

The concept of the legal person who by definition is the subject of legal duties and legal rights — answers the need for imagining a bearer of the rights and duties. Juristic thinking is not satisfied with the insight that a certain human action or omission forms the content of the duty or of a right. There must exist something that was the duty or the right'. In this idea a general trend of human thought is manifested—. According to the animistic interpretation of Nature, every object of the perceptual world is believed to be the abode of an invisible spirit who is the master of the object .... Thus the legal person as ordinarily understood also has "its" legal duties and rights in the same sense. The legal person is the legal substance to which duties and rights belong as legal qualities. The idea that a person has duties and rights involves the relation of substance and quality.

In reality, however the legal person is not a separate entity besides "its" duties and rights, but only their personified entity or — since duties and rights are legal norms — the personified unity of a set of legal norms. That every legal person is at bottom a juristic person, that only juristic persons exist within the realm of law, is after all only a tautology.

Judged by the aforesaid criteria, in the realm of law a citizen is as much a Juristic person as a corporation in the sense that both are bearers of rights and duties in law and as such no invidious distinction need be made in a way abnoxious to the spirit of article 14 between these two concepts except where the language of the provision or the nature of the right suggests a different inference. There is a misconception that here is a logical difference between the corporation as a legal person and a human being as a legal person. In the realm of law there is absolutely no such difference.

All legal systems are concerned with the control and organisation of relations between human beings by means of general rules. So soon as there is any system, any organisation, with a logic of its own, just so soon must there be some constants some reference points given, on which to base the logic of the system. Just as the concept 'one' in arithmetic is essential to the logical system developed and yet is not one

something (e.g. apple or orange etc.) so a legal system must be provided with a basic unit before legal relationships can be devised which will serve the primary purpose of organising the social facts. The legal person is the unit or entity adopted. For the logic of the system it is just as much a pure concept as 'one' is in arithmetic. It is just as independent from a human being as 'one' from an apple.

Again judicial caution and valour are needed to treat these two concepts — Corporations and citizens — on a par with legal persons and to hold that a corporation is a citizen.

Social necessities and social opinion are always more or less in advance of the law for law is stable, and society is progressive. The important thing is to define social purpose in as precise terms as possible.

The instrument of law is amongst the most powerfully creative forces in society. It moulds social opinion and action, guiding and understanding and shaping the will of men into socially beneficial chance.

What can we say about the philosophy of the day? How can we predict the social philosophy for tomorrow? How impossible it is to stand in one age and predict the social philosophy for the posterity? Even Adam Smith, who described his own time so accurately stated with complete conviction that the development of the great corporation was economically impossible because men would not work for corporations as they work for themselves. Unless the profit motive is to disappear, he argued, such organisations will be absolutely impossible, because of the underlying factors which make up 'human nature'. What is this human nature? Does human nature change? According to one school of thought it does'nt change. According to another school of thought, it does'nt cease to change. Man has succeeded to a considerable extent in conquering external nature but he has not yet succeeded in conquering his own nature. The various and the varying manifestations of human institutions have had their anchorage in the elements of human nature. Power motive is being abandoned from the realm of Government. Service motto is gradually substituted. The result is the public service state or Welfare State. The instrumentalities through which the modern Welfare State is functioning are public or quasi-public corporations. Through the breaking up of the concept of property into its component units of enjoyment and control, it has been seen, how the profit motive is going on being abondoned and the service motive is being introduced in its stead in the realm of corporate enterprise. The new conception of public philosophy, with Social responsibility is being given to us. The movement from rugged individualism to the modern corporate organisation registers a shift of emphasis from right to duty. A

new discipline is called for where the sense of social responsibility shall have to be inculcated into the body politic. What was visualised in that direction by the constitution is considerably actualised through legislation, aided by the Judicial interpretation.