CONSTITUTIONAL PROVISIONS AND SOCIAL JUSTICE

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The philosophy of our Constitution is proclaimed in its preamble. Before Liberty, Equality, and Fraternity, Justice is acclaimed as the foremost objective of the Constitution: Justice, Social, Economic and Political, and these great articles of faith have been woven into the fabric of the Constitution, and in particular in the fundamental rights and the directive principles. The Preamble embodies the aims and the aspirations of a people freed from their bondage.

To the founding fathers of the Constitution, the institution of property was fundamental. The inviolability of private property has been recognised not merely in the Municipal Law of the great majority of civilized states, but also by International Law both in the time of peace and in War and even by the Peace Treaties following the First World War. Article 545 of the French Civil Code declared that no one may be deprived of his property except for purposes of public utility and for adequate compensation. The Spanish Code is much to the same effect. Article 438 of the Italian Code States that no one shall be constrained to surrender his property except for purposes of public utility and subject to previous payment of just indemnity. The Belgian Constitution of 1893 provides for such the same. The protection of private property is secured by several provisions of the Constitutions of the South American Republics; and article 153 of the Constitution of the German Federation guarantees private property. Expropriation is conditioned by compensation, and the same principles are recognised by Act 80 of the Danish Constitution, Act 625 of the Netherlands Civil Code and articles 104 and 105 of the Constitution of Norway. The fifth amendment of the United States Constitution providing that no person shall be deprived of Life, Liberty or property without Due Process of Law, and that private property shall not be taken for public use without just compensation is familiar to the Indian lawyer; nor can it be forgotten that the Magna Carta Ch. 39 declared that no free man shall be deprived of his free hold. *The De Keyser's Hotel* Case,[1] has settled once for all that the Crown cannot take the property of a subject, without just compensation. International jurists also have long recognised the inviolability of private property. Private property is not affected by conquest, annexation or cession of territory:

1. *Attorney-General* v. *De Keyser's Royal Hotel.* [1920] A.C. 508.
2. *U.S.* v. *Percheman* 7 Pet. 51.

and in the Peace Treaties after the First World War, the principle of inviolability of private property was always recognised. The Brest-Litovsk Peace Treaty forbade expropriation of private property without adequate compensation. Indeed article 17 of the United Nations Declaration of Human Rights has made it a universal rule "that everyone has the right to own property alone, as well as in association with others", and that "no one shall be arbitrarily deprived of his property." In strong contrast with the Constitution of the majority of the countries in the world is the provision in article 4 of the Constitution of U.S.S.R. which firmly established the abolition of private ownership of the instruments and means of production. Land, under article 6 is declared to be state property; it belongs to the whole people.

The makers of the Indian Constitution who had before them the Constitution of the U.S.S.R. as also several other leading Constitutions of the world, abandoned the provisions of the U.S.S.R. and ensured the inviolability of private property by several articles. Article 19(1)(f) granted the fundamental right to all citizens to acquire, hold and dispose of property, subject only to reasonable restrictions that may be imposed by law in the interests of the general public. Article 31(1), again in the chapter on fundamental rights, declared that no person shall be deprived of his property save by authority of law. Article 31(2) further provided that no property, moveable or immoveable shall be taken possession of or acquired for public purpose under any law authorising the taking of such possession or such acquisition, unless the law provided for compensation for the property taken possession of or acquired, and either fixed the amount of compensation or specified the principles on which and the manner in which compensation has to be determined and given. While article 19 was restricted to a citizen, article 31 extended its shield not merely to be a citizen but also to all persons whether citizens or not. With these provisions the right to private property was as secure as it could possibly be made. The directive principles supplemented the fundamental rights. Article 37 provided that these principles were fundamental in the governance of the country and it was the duty of the state to apply these principles in making laws, even though the provisions of that part were not enforceable in courts of law. Article 38 enjoined the State to strive to promote the welfare of the people by securing a social order in which justice, social, economic and political shall inform all the institutions of national life, echoing as it were the provisions of the Preamble. Article 39 inter alia stated that the ownership and control of the material resources of the community be so distributed as best to subserve the common good, and that the operation of the economic system shall not result in the concentration of wealth and means of production to the common detriment. Since these principles are to be

carried out in the making of laws, and laws under article 245 could be made only subject to the provisions of the Constitution and therefore subject to fundamental rights in Part III, it was implicit that such laws embodying the directive principles should be so made as to conform to, and not to conflict with Part III. It should also be added that originally item 33 in List I of Schedule VII related to acquisition or requisition of property for Union Purposes, item No. 36 List II to acquisition or requisition for purposes of the State, subject to entry 42 in List III and that item 42 related to principles on which compensation for property acquired or requisition is to be determined, and the form and manner in which such compensation is to be given.

The Zamindari system obtained in large parts of India, and even prior to the Constitution laws had been enacted in respect of abolition of Zamindari Estates. In some states bills for such abolition were pending at the time the Constitution came into force. Article 31(4) therefore provided for any bill pending at the commencement of the Constitution in the Legislature of a State being reserved for the considration of the President and on receiving his asset such law could not be called on question in any Court on the ground that it contravened the provision of article 31(2). Similarly article 31(6) provided that laws enacted by a state not more than 18 months before the commencement of the Constitution may be submitted to the President for his certification, and on such certification it could not be called in question in any Court on the ground that it contravened the provisions of article 31(2) or of Section 299 of the Government of India Act, 1935. All the Zamindari Abolition Laws came within the scope of either Clause 4 or clause 6 of article 32 and thus it was thought that article 31(4) and article 31(6) would secure complete immunity to the Zamindari laws from attack under the Constitution. Nevertheless, when the Bihar Land Reforms Act abolishing Zamindaries was impugned, the High Court of Patna in *Kameshwar Singh* v. *State of Bihar*,[3] struck down the Act as contravening the equality clause under article 14 of the Constitution in the matter of compensation. The State filed an appeal to the Supreme Court, but even before the appeal came up for hearing the first amendment to the Constitution was passed by Parliament, introducing article 31-A which forbade any challenge to such Acts under any provision of Part III.

Article 31-A brings within its purview Acts relating to Estates which at the time was intended to include Zamindari Estate, *Jagir, Inam, Muafi* or other similar grant, and article 31-B validated all Acts included in

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3. A.I.R. 1951, Pat. 91.

Schedule IX to the Constitution and Schedule IX included at the time 13 Acts all of which related to Zamindari abolition. No one at the time even thought of the enormous potentialities implicit in amending the Constitution in this manner much less of the possibilities of its undermining the foundations of the Constitution by inclusion of legislative enactments either actually struck down or feared to be struck down by the Courts as contrary to the provisions of the Constitution. The Zamindari system had undoubtedly involved concentration of large areas of land, even entire districts within its fold and at the time of the passage of the first amendment to the Constitution it is interesting to observe, that the then Law Minister, Dr. Ambedkar who piloted the bill had assured Parliament that the Government had not the remotest intention of bringing the ryotwari tenures into aricle 31A. Parliament confined the amendment provision only to the Zamindari tenure, and the statement of the Law Minister allayed all fears in respect of *ryotwari* lands.

Almost immediately thereafter the first amendment was challenged before the Supreme Court in *Shankari Prasad* v. *Union of India*[4]—the amendment was upheld by the Supreme Court. The appeal from the decision of the Patna High Court was heard thereafter and it was allowed on the basis of the first amendment. The decision is reported in *State of Bihar* v. *Kameshwar Singh*[5]. It should be noted that if only the Bihar Legislature had made suitable amendments to its law so as to avoid discrimination in the matter of compensation, the Constitution first amendment would have been unnecessary so far as Zamindari abolition legislation was concerned. Having regard to the protection given to Zamindari legislation against article 31(2) by article 31(4) and 31(6), the intention of the Constitution makers to save them from attack became perfectly clear; and it was not surprising that the Supreme Court upheld the validity of the first amendment which was directed only against Zamindari Estates. But as subsequent events showed the shield that the Supreme Court forged against Zamindari Legislation became the sword in the hands of Parliament for striking down the judgments of the Supreme Court itself which invalidated later several enactments for violation of the fundamental rights guaranteed by the Constitution.

Private property is guaranteed in its manifold aspects by article 19, 31 and 39(b). But even at the very outset, the Supreme Court found it difficult to reconcile article 19(1)(f) and article 31. Article 19(1)(f) guaranteed to citizens the right to acquire, hold and dispose of property subject to reasonable restrictions that may be imposed in the interests of

4. A.I.R. 1951 S.C. 458.

5. A.I.R. 1952 S.C. 252.

the general public. But article 31(1) stated in effect that a person may be deprived of his property by authority of law. In *Charanjit Lal* v. *Union of India*[6] Das J., as then he was, thought article 19(1)(f) would continue the right to property until the owner was, under article 31, deprived of such property by authority of law. If a person's right to property is restricted by a law he could go to Court. If, on the other hand property was taken away by law, he had no remedy. It was this anomaly that was later removed by the majority decision in the two cases, *State of West Bengal* v. *Subodh Gopal*[7], and *Dwarkadas* v. *Sholapur Spinning and Weaving Co.*[8].

To *Subhodh Gopal's* case, we are indebted for a comprehensive definition of property. Sastri, C. J., held that the word "property" in Part III should be given a liberal interpretation to include private property in all its forms. It should be understood not only in a corporeal sense as having reference to all those specific things that are susceptible of private appropriation and enjoyment but also in its juridical or legal sense of a bundle of rights which the owner could exercise under the Municipal law with respect to the use and enjoyment of those things to the exclusion of all others. The only limitation was as held later in *Amarsingh* v. *The Custodian of Evacuee Property*,[9] that such property must be capable of being the subject matter of acquisition and disposal. It has been held that in article 19(1)(f) property would also include money,[10] though it was doubtful whether "property" in article 31(2) would include money, on the principle that money could not be the subject matter of acquisition which was to be compensated also in money. The fundamental right to property under article 19(1)(f) like other fundamental rights in article 19 is confined only to a citizen; but a citizen did not include a Corporation, as held in *State Trading Corporation* v. *Commercial Tax Officer*.[11]

The inter-relation between article 19(1)(f) and article 31(1) was settled in *State of Bombay* v. *Bhanji Munji*[12]. There the Supreme Court said that article 19(1)(f) postulates the existence of property, which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by article 19(5) cannot be brought into play. But when there is a substantial deprivation of property which

6. A.I.R. 1951 S.C. 41, 60.
7. A.I.R. 1954 S.C. 92.
8. A.I.R. 1954 S.C. 119.
9. A.I.R. 1957, S.C. 599.
10. *Bombay Dyeing and Manufacturing Co. Ltd.* v. *The State of Bombay*. A.I.R. 1958 S.C. 329.
11. A.I.R. 1963 S.C. 1811.
12. A.I.R. 1955 S.C. 41.

is already held and enjoyed one must look to article 31 to see how far it is justified. When every form of enjoyment which normally accompanies an interest in property is taken away leaving the mere husk of title, article 19(1)(f) is not attracted. This was remeniscent of the doctrine in *Gopalan's* case[13], that once the personal liberty has been taken away the detenue was entitled to no fundamental rights under article 19.

But the dichotomy made in *Bhunji Munji's* case was hardly satisfactory. Law may deprive a person completely without question: but when law imposes merely a restriction, its validity could be challenged. Equally the protection of article 31(1) in relation to artcle 31(2) was equally elusive. If a law deprived a person of property, no compensation need be paid. If, however, he was deprived of his property by way of acquisition under article 31(2) he was entitled to insist that the property could be acquired only for a public purpose and only on payment of compensation which in *Bela Banerjee's* case,[14] was held to mean just equivalent in money value. The situation was most illogical. The problem came up for consideration in two cases: *State of West Bengal* v. *Subhodh Gopal*[15] and *Dwarkadas* v. *Sholapur Spinning and Weaving Co.*[16] The majority held in these cases that clauses 1 and 2 of article 31 were not mutually exclusive in scope and content, but should be read together and understood as dealing with the same subject, viz., the preservation of the right to property by means of the limitation on the state power referred to. The deprivation contemplated in clause 1 is no other than the acquisition or taking possession of property referred to in clause 2. In other words, Clause 1 and 2 both related to Eminent Domain imposing different limitations, and deprivation in article 31(1) was tantamoun to acquisition no formal transfer or vesting of property in the State was required. Expropriation by the State without the owner's consent would be acquisition. But it is not any taking that would amount to acuquisition, but onlly such taking as would substantially impair or abridge the right to property taken.

Das J., as he then was, dissented. He held that article 31(1) related to Police power while article 31(2) dealt with Eminent Domain. According to the Learned Judge there could be no acquisition unless there was transfer of title to the acquiring State. The majority view was followed in *Saghir Ahmed* v. *The State of U.P.*[17] The Court unanimously held

13. *Gopalan* v. *State of Madras*, A.I.R. 1950 S.C. 27.
14. *State of West Bengal* v. *Mrs. Bela Banerjee*, A.I.R. 1954 S.C. 170.
15. A.I.R. 1954 S.C. 92.
16. A.I.R. 1954 S.C. 119.
17. A.I.R. 1954 S.C. 728.

that it must be taken as settled now that Clauses (1) and (2) of article 31 are not mutually exclusive in scope, but should be read together as dealing with the same subject, viz., the protection of the right to property by means of limitations on the State's powers, the deprivation contemplated in clause (1) being none other than acquisition or taking possesion of the property referred to in clause (2).

The Supreme Court thus gave full protection to private property under article 19(1)(f) to the citizen to acquire, hold and dispose of property, not absolutely subject to the restriction in article 19(5); nor could a person be deprived of his property, save by law under article 31(1) and except on payment of compensation, i.e., the just equivalent in money, whether or not there was a transfer of title to the State. The security to private property was thus complete, and anomalies in the previous interpretations of these articles ceased to exist.

The immediate sequel to these decisions was another amendment to the Constitution which became the fourth. Article 31(2) was recast. Deprivation would not amount to acquisition qualifying for payment of any compensation unless there was a transfer of title to the State or to a Corporation owned or controlled by the State. Further, no property could be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which had to provide for compensation for the property so acquired or requisitioned and either fixed the amount of compensation or specified the principles and the manner in which compensation is to be determined; and then followed an important clause that no such law could be called in question in any Court on the ground that the compensation provided for by that was not adequate. The adequacy of compensation was no longer justiciable. The decision in *Saghir* Ahmed's case was reversed. Deprivation was mere deprivation, not acquisition. The fourth amendment further enlarged article 31-A by adding several clauses. It covered not merely the acquisition of estates which now included Janmam lands in Kerala, but also the taking over of management of any property for a limited period in public interest or to secure proper management of the property or the amalgamation of two or more corporations again in public interest or the extinguishment or modification of any rights of managing agents of corporations or of any voting rights of shareholders or the extinguishment or modification of any right in mines and minerals No such law was to be deemed to be void on the ground of inconsistency with articles 14, 19 and 31 provided such laws secured Presidential assent, which in effect meant the Cabinet's assent. Socialistic Pattern was now on the march, and was inducted into the Constitution.

To Schedule IX, seven more Acts were added, article 31(B) extending protection to them against attack based on any fundamental right.

The seven acts so included in Schedule IX had very little to do with land reform. There were for instance Sections 52A to 52G of the Insurance Act, 1938, the Railway Companies (Emergency Provisions) Act, 1951 and Chapter 3-A of the Industries (Development and Regulation) Act, 1951. What *Shankari Prasad's* case had sanctioned in 1951, was now availed of the shelter several Acts which the Government apparently feared would not stand the test of fundamental rights. The jurisdiction of the Courts for enforcement of the fundamental rights in respect of these Acts was thus taken away. The Constitution had made the Supreme Court Supreme. The right to move the Supreme Court for the enforcement of the rights conferred by Part III had been granted. The Constitution gave the power of amendment to Parliament to be made by a two third majority. Fundamental rights which Parliament could not even by a unanimous vote abridge or abrogate could now be over-borne by a two-thirds majority under the name of an amendment. Such a process could immunise any act from judicial interference. Articles 31-A and 31-B underwent modification. Articles 31-A and 31-B became independent of one another. Article 31-A was confined to meet the challenge of an Act under articles 14, 19 and 31 alone; while article 31-B provided an umbrella to all the Acts included in the Schedule IX against all the fundamental rights in Part III; and both articles 31-A and 31-B were deemed to be retrospective in operation commencing from the date of the Constitution itself. While legislation in respect of estates as defined alone were saved by article 31-A, any legislation whatever its subject matter could be brought into the Schedule IX, and could thus obtain immunity against challenge in respect of any rights in Part III. Constitution amendment became an effective weapon to overthrow the Constitution.

But even the change in the language effected by the fourth amendment in article 31(1) and 31(2) revived the old problem of the inter relation of article 31(1) and article 19(1)(f). As stated earlier according to the terms of article 31(1) a person could be deprived of his property if there was a law permitting deprivation, while a law restricting his enjoyment of property had to stand the test of reasonableness in the restrictions that it imposed, in the interest of general public. The anomaly which had been resolved by the cases of *Subhodh Gopal and Dwarkadas* once again sprang up. The problem again posed a challenge to the Courts.

It was in *Kochunnis* case[18], that the Supreme Court had to consider this important question of Constitutional construction. In *Kochunni's* case, the impugned law was passed by the Madras Legislature declaring *Sthanam* properties to be *Tharavad* properties in accordance with

18. *K. K. Kochunni* v. *State of Madras and Kerala,* A.I.R. 1960 S.C. 1080.

Marumakkathayam Law. The *Sthani* was deprived of his *Sthanam* properties, and the Act was a law under article 31(1).

Subba Rao J., as he then was speaking for the majority traced the history and the reasons for the change brought about by the fourth amendment. Article 31(1) was distinct and separate from article 31(2) and they did not cover the same field after the fourth amendment. Article 31(1) spoke of deprivation by law. But the law to be valid should not violate any of the fundamental rights in Part III. That is what article 13(2) declared in unequivocal terms. If therefore, the law violated article 19(1)(f) read with clause (5), the law could be void and therefore inoperative and a law that is void could not be a law within article 31(1), and could not deprive a person of his property. The Madras Act was thus struck down.

Kochunni is undoubtedly a land-mark in the Constitutional development of this country. Article 31(1) states in negative form that no person shall be deprived of his property save by authority of law. The law must obviously be a valid law. Article 13(2) is a mandate to the State that it shall not make any law which abridges or takes away the rights conferred by Part III and that any law made in contravention would be void. Therefore, the law depriving a person of his property cannot take away or abridge the rights conferred by the art III of the Constitution. It is, therefore, manifest that the law must satisfy two tests for its validity viz., (1) that the legislature has competence to make the law and (2) that it does not take away or abridge any of the fundamental rights in Part III of the Constitution. It follows that a law depriving a person of his property would be an invalid law, if it infringed either article 19(i)(f) or any other article of Part III. The far reaching effect of this conclusion is clear. No law is law if it violates any of the fundamental rights in Part III. *Kochunni's* case opened a new vista of Constitutional interpretation. Every fundamental right was equally sacrosant. A law to be valid should run the gamut of each and every fundamental right.

Kochunni is equally important in its insistence that what matters is not the literal interpretation of a word like estate or *Janmam* in article 31-A but the object or purpose of the relevant provision. The impugned Act related to *Janmam* lands, but it object was not agrarian reform and therefore could not come within the tentacles of article 31-A so as to deny the fundamental rights under articles 14, 19 and 31. The old view in *Bhanji Munji* was expressely held no longer to hold the field.

In spite of the clear and unambiguous terms of the decision, *Kochunni* was sought to be confined to its own facts as a special case, and thus

devitalised by the Deision in *Ranjit Singh.* v. *The State of Punjab.*[19] It was there held that agrarian reform should be given a wide meaning and that laws relating not merely to agrarian reform but also to ancilliary legislation would come within the protection of article 31-A. But later, the correctness of *Kochunni* was reaffirmed in *Vajravelu* v. *The State of Madras.*[20] Article 31A was held to apply only to laws relating to acquisition, modification or extinguishment of rights in land enacted for agrarian reforms. Slum Clearance for instance did not relate to agrarian reform in the limited or wider sense.

It may be recalled that the fourth amendment had directed that the adequacy of compensation provided by a law of acquisition should not be called in question in any Court. This was a provision taken advantage of, by several states and Parliament to deny just compensation to a person whose lands were acquired. Sometimes the law would fix as compensation market value of the property on a date 5 or 6 years prior to the acquisition. Sometimes compensation was fixed on a sliding scale on the model of the Income-tax Act with this difference that the higher the value of the property, the lesser the compensation payable. But though adequacy of compensation could not be challenged objections came to be raised that compensation was illusory or a fraud on power.

In *Vajravelu's* case the Court pointed out that the Constitution fourth amendment retained the words "Compensation" and "principles" — words which had been interpreted to mean a 'just equivalent' in *Bela Bannerjee's* case. The new problem before the Court was: What is the effect of the ouster of jurisdiction of the Court to question a law on the ground that the compensation provided for, by it is not adequate? To hold that compensation meant just equivalent and so the Court can still ascertain whether it is adjust equivalent or not would defeat the Constitutional amendment. Hence neither the principles prescribing the just equivalent nor the just equivalent can be questioned on the ground of inadequacy of the compensation fixed or arrived at by applying the principles prescribed by a Law. This does not, however, mean that the law is wholly immune from judicial scrutiny. In *Vajravelu's* case the Court held that the doctrine of fraud on power may be attracted. The State can make a Law of acquisition or requisition only by providing for 'Compensation' in the manner prescribed in article 31(2). If the Legislature, though ex-facie purports to provide for compensation but in substance and effect takes away property without compensation, it would be using the protection of article 31(2) in a manner which that article

19. A.I.R. 1965 S.C. 632, 638.

20. A.I.R. 1965 S.C. 1017, 1021.

did not intend. If the law provides for an allusory compensation, or prescribes principles which do not relate to the property acquired, or to the value of such property at or within a reasonable proximity of the date of acquisition, or the principles are so designed and so arbitrary that they do not provide for compensation at all, it would be a fraud on power and the Court would strike down the law. The above view is furthre explained and applied in the recent case; *Union of India* v. *Metal Corporation of India*[21]. Thus the Court has evolved a rule which gives at least some protection to the expropriated owner in the matter of compensation.

As pointed out earlier the legislative entries in respect of acquisition and requisition had been distributed between the three lists, in the original Constitution. The seventh amendment to the Constitution in 1956, omitted item 33 from list I, Item 36 from list II, item 42 from List III and substituted for item 42 in list III a new entry "Acquisition and requisitioning of Property'.. Acquisition is equivalent to Eminent Domain. Now, was public purpose the concomitant of acquisition in the Indian Constitution as part of the entry itself?

Acquisition was certainly not the equivalent of confiscation; and it was held in *Kameshwar Singh's* case that acquisition under the Indian Constitution included public purpose as part of the content of the entry itself, though attempts were made to show that public purpose was merely a requirement of the fundamental right in article 31(2) and not an integral part of the legislative power. But later in *State of Bihar* v. *Rameshwar Pratab*[22], the Supreme Court went to the extent of stating that public purpose was not included in the legislative entry of acquisition and that it was competent for a Legislature to pass a law empowering acquisition even without any public purpose. The change in the entries made in the seventh amendment was the ground on which the decision was based. It would then follow that if for any reason article 31(2) was deleted or the requirement of public purpose was eliminated therefrom the legislatures in India would be able to take any citizen's property even for a private purpose, say a swimming pool for a minister's private use.

Private property in its several aspects figures in several legislative entries: Item No. 18 list III relates to land, rights in or over land, transfer and alienations of agricultural lands. Item No. 5 in List III relates inter alia to succession, joint family and partition, Item 6 to transfer

21. Civil Appeal No. 1222-N of 1966.

22. A.I.R. 1961 S.C. 1949, 1652.

of property other than agricultural land which is provided for in List II, Item No. 7 List III, relates to contracts but not including contracts relating to agricultural land. It is thus clear that the institution of private property is one of the bases of the Constitution, and detailed provisions are made granting legislative power to the Union or to the State to regulate private property. Equally as stated earlier, article 19(1) (f) and article 31 granted fundamental rights to the citizen against arbitrary action in respect of private property. Undoubtedly, the Constitution is built in recognition of the preservation of private property.

Nevertheless, attempts have been sedulously made to abridge or abrogate the fundamental rights to property in devious ways. The first amendment had avowedly been made for the purpose of taking over Zamindari estates. But the Supreme Court had interpreted estates to mean not only Zamindari estates but any other Estate, if so described by any Act in conformity with the literal language of article 31-A. A large number of Land Reform Acts were held to fall within article 31-A. The Constitutional pattern yielded to Socialistic pattern. Slogan replaced the great objectives of the Preamble. Justice was completely forgotten; and even the directive principle that distribution of ownership should subserve the common good. The Communist Party which came into power in Kerala initiated the Kerala Agrarian Relations Act in 1960. One Karimbil Kunhikoman who owned ryotwari lands in the northern most part of Kerala which had been part of the district of South Kanara challenged the validity of the Act and the Supreme Court held that the Act in respect of *Ryotwari* Lands could not come within the purviey of article 31-A, *ryotwari* not being an estate and struck down the Act as abnoxious to the equally clause in article 14 of the Constitution. The result was the seventeenth amendment to the Constitution. *Ryotwari* was now included within the definition of estate in article 31- Aand a large number of Acts passed by the various States in India whether they related to land reforms of not were included in Schedule IX and secured against challenge under any of the articles in Part III. The validity of the seventeenth amendment was questioned before the Supreme Court and upheld in *Sajjan Singh* v. *State of Rajasthan*[23]. In view of the fact that a subsequent challenge to the Seventeenth amendment is pending decision by the Supreme Court, it would not be proper to say the Supreme Court.

In the original Bill proposing the seventeenth amendment to the Constitution as many as 122 Acts of the various states were sought to be included in Schedule IX. With commendable restraint, only 44 were

23. A.I.R. 1965 S.C. 845.

selected and finally included when the seventeenth amendment was actually passed. All these Acts, it is only fair to state, have made inroads into the sanctity of private property. The general pattern of the so-called land Reform Acts, is the same. By Legislative compulsion a land-lord is deprived of his land and the tenant is made its owner whether he himself tills the soil or not. The owner is paid a compensation which would be euphonious to call just. A ceiling is then imposed on the ownership of lands differing with different states, and the lands above the ceiling are acquired by the State again on a nominal compensation and distributed for a small price to the landless. The result is that a large number of uneconomic holdings have multiplied in every state all over the country. With the announcement of ceiling on land, and land for the tiller, no owner or tenant has cared to make any improvements on the land on the realistic principle that one does not feed a cow which is soon to be taken away. No owner could know what he would be able to keep and what he had to lose, and equally the tenant of large holdings suffered the same anxiety.

Clearly, the inviolability of private property is by no means absolute in the Indian Constitution. Apart from the power *Eminent* Domain recognising the taking of private property for public purposes as an incident of sovereignty in all civilised States, embodied in article 31(2) the Constitution only secures private property, so long as its restrictions or deprivation is not needed in the interests of the general puublic. Article 19(1)(f) and article 31(1) are the great instruments by which private property is made amenable to public welfare. If the progress of the country demands a new social order in which all proprety has to be taken and re-distributed, the Constitution allows such course provided it could be demonsrated before a Court that it is reasonable that it is in the interests of the general public and that it subserves the common good. But properties acquired should be paid for, and not expropriated, for that would hardly be in accordance with the principle of justice which is consecrated, both in the Preamble and in article 38 of the directive principles. It is certainly not just to arbitrarily take what a person holds dear, without paying him compensation. Nor, could a court be expected to countenance any new pattern of so-called land reforms which are contrary to public interest, unreasonable or do not advance the country's welfare. Article 31-A and article 31-B are avowedly framed to further inequality, arbitrary spoilation of private property, which cannot stand the test of reasonableness. Of what worth are the grand ideals of justice enshrined in the Constitution if injustice and inequality should be the basis of a new national life? The ink on the paper on which the Constitution was written was hardly dry, when those in power, began infiltrating alien ideas into the Constitution, contaminating the great objectives consecrated there-

in. The Constitution, as originally conceived and framed was not given a fair trial. Land Reforms Acts have been passed from one end of the Country to the other distributing small bits of lands and multiplying innumerable uneconomic holdings. Land is not for the tiller nor for any one else, but for feeding the people of the country. The primary purpose of land is production of food, food for all. The Agriculture Act of 1947, in England provides for issuance of directions to secure good estate management and good husbandry. Bad estate management entails even dispossession. A modern state with ever increasing population must necessarily adopt modern machinery for improving its production. But, that would demand, not small but large holdings where the tractor and other implements would have full play. Of course, it is not for a lawyer or for a Court to say how the common good could best be sub-served. But, law should be an instrument for national progress, not of national humiliation. The country's lot now is the begging bowl, rolling from continent to continent gathering mounting debts, which in the words of the present Railway minister, would take fifty years to repay. For faithlessness to the Constitution, the country has to pay a terrible price.