CONSTITUTIONAL PROVISIONS AND OWNERSHIP OF LAND

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Man is capable of owning and possessing property in numerous forms. Although their number is legion, perhaps the most important form in which property can be held is 'land'.

> The process by which property in land has been created, and the rules and customs by which its disposition and enjoyment have been regulated, at different times, in different countries, amongst different nations, exhibit very remarkable diversities. The causes of these diversities are to be sought in the varieties and peculiarities of race, climate, character, circumstances, mental and physical development, which have operated in unequal combination and with unequal force. To investigate these causes would be difficult, if not impossible task; and little or no benefit would accrue from its most successful performance. But great advantage is derivable from an examination of the economic result produced by the different modes of disposition and enjoyment. The Statesman and the Legislator may learn much wisdom by investigating the effects of different system of land law upon national progress and prosperity; and this wisdom may be put to practical use by discouraging or even forbidding principles or methods of enjoyment, which have been found prejudicial to the common welfare; and by encouraging or introducing these methods and principles, which experience has shown to be conducive to the wealth and welfare and happiness of the community.[1]

These words are almost prophetic, since, it is with thoughts such as these, that the makers of our Constitution, approached the question of property in land in independent India. It was not an easy problem, as is demonstrated by the widely divergent views put forward during the debates of the Constituent Assembly, which was entrusted with the task of framing the Indian Constitution, and to which a more detailed reference must be made presently.

But before we arrive eat the state of things which prevailed in India immediately before the framing of the Constitution, it will be necessary briefly, to refer to the origin of property in land, and how this concept developed in this country. Unless we develop into this history, it would be difficult to evaluate the reforms that have been sought to be introduced by the Constitution, and to adjudge the criticisms that have been levelled

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1. C.D. Field, *Landholding and Relation of Landlord and Tenant* 1 (1883).

at them and the wisdom and perspicacity of those who were responsible for the framing of our Constitution.[2]

In ancient times, when men were few on the face of the earth, they generally led a nomadic life and moved with their herds from place to place, as inclination or the search for new, pastures led them. Their agricultural labours were limited to the raising of a few cereals which the virgin soil produced which was a rich return. This temporary occupation was the first species of property in land. At this stage, the flocks and herds were more important than agriculture and land was unassigned and unbounded. But as the number of communities increased, the production of a large quantity of food became necessary and the nomadic life was found unsuitable. Agriculture attained greater importance than the mere ownership of flocks and herds. Land had to be assigned to the cultivator and occupation and continued possession of land gave rise to the concept of property in land. The proprietory right at first resided in the Community rather than the individual and there were frequent skirmishes to determine the boundary between the terriotry of one Community and another. But the common property soon developed into separate property in obedience to an irresistible tendency of social progress. While the individual Community remained independent of any superior or paramount power, its members had theoretically equal rights and no one paid or delivered any portion of the product of the land to superior in order to purchase protection or forbearance or to defray the cost of Government. But as time passed, communities soon began to associate, either willingly for purposes of protection or unwillingly as the result of subjugation by those whom superior physical strength inclined to the pursuit of arms, and the governing paramount authority had to be maintained by the contrtbution of its subjects.[3] The Judicial Committee of the Privy Council, observed in the case of *Adusumilli Suryanarayana* v. *Achuta Pothanna*[4] that the ownership of the soil in land in India has always been in the sovereign or ruler for the time being. Some English writers have also repeated this. Jaiswal disagrees with this proposition. He says :

> Some of these writers have confidently asserted that property in the soil, according to the Hindu view, always vested in the Hindu sovereign. The fact on the other hand is that this is exactly the reverse of the Hindu theory on the subject. The writers unconsciously have read their own

2. *Id.* 2-3.
3. *Ibid.*
4. 23 C.W.N. 273.

> feudal law into Hindu jurisprudence. Nothing is so distant from Hindu law as this theory. Numerous instances of gifts and sales of land by private individuals can be given from the earliest literature. Law-books give provisions for sale of land and for acquirement of proprietory right (Svamya) by prescription.[5]

Inscription[6] proving to the hilt private property in the soil are extant. Above all it is expressly and emphatically declared that the king has no property in the soil and this is declared in no less an authority than the very logic of Hindu Law the *Memansa*.[7]

During the debates of the Constituent Assembly, the abolition of the Zamindari system was advocated by some, as being the only thing which was consistent with the principles of socialism upon which Indian Independence was going to be based.[8] It was however forgotten that the basic principles of land-holding in India was more socialistic than any brand of socialism which might be imported from foreign sources. Land in India was always vested in th etiller of the soil. *Manu,* the ancient law-giver says :

> Sages, who know former times, consider this earth (Prithivi) as the wife of King *Prithu* and thus they pronounce cultivated land to be the property of him who cut away the wood *or who cleared and tilled it,* and the antelope of the first hunter, who mortally wounded it.[9]

The portion in italics is the gloss of Culluca Bhatta, but is considered to be an accurate delineation of the law. 'The notion of the proprietory right of the sovereign in the soil' says Sinha in his *Law of Landlord and Tenant*[10], "is of Mahomedan origin, so far at least as India is concerned." According to the theory of Mahomedan Law, the proprietor of land in a conquered country is the conqueror.

In England, it was held that land vests in the Crown in the contemplation of law. But, both under the Mahomedan Law as well as the English Law, this concept was based on conquest. The Norman conquerors of England maintained that Sovereign was the Supreme Lord

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5. Jaiswar, *Hindu Polity* 343 (1943).

6. *Indian Antiquary* 199 (1910).

7. VI. 73.

8. Constituent Assembly Debates, Vol. IX.

9. Quoted in *Vyakunta Bapuji* v. *Government of Bombay,* (1875) Bom. H.C. Rep. 35 *et seq.* The judgment supports this view see *id.* at 35-37. Also see *Nilkantha Vyavahara Murukha* Ch IV Sec. 1 Pb. 8.

10. R. Sinha, *Law of Landlord & Tenant* 7.

11. *Humphries* v. *Brogden,* 12 Q.B. 739.

of all the land, and that everyone held under him, as tenant in England and as vassal in Scotland, names which have survived in legal theory and language down to the present day.

In this country, the Sovereign always took a certain share of the produce of the land. This share varied according to the exigencies.[12]. The Muhammedan sovereigns adopted and continued the fiscal policy of the Hindu Kings. In the latter period of Muhammedan rule,

> though the demands of the great landholder—the State, were swelled by fiscal rapacity, it was thought necessary to have distinct name and a separate pretext for each increase in taxation, so that the demand sometimes came to consist of 30 or 40 different items in addition to the nominal rent.[13]

The English made what has come to be known as permanent settlement for the collection of land revenue. Field says as follows: "The Decennial settlement, which after being approved by the Court of Directors was declared permanent, was *"concluded with the actual properitor of the soil,* (the italics is mine) of whatever denomination, whether Zamindars, talukdar, or Chowdries"[14]. "A zemindar," says the learned author, "may then be said to be an estate held under a qualified raiyat of proprietorships, the exact limits of the qualifications having never yet been defined." In Kumar *Kamakhya Narayan Singh* v. *Bhuvaneswar Lal Singh*[16] P. R. Das J observed at page 605:

> Any student of the history of the Land Tenure in Bengal will have no difficulty in appreciating that the words 'proprietor of the soil' as used in the Bengal Code have a technical signification. The East India Company made a vigorous and determined search to discover that mythical person 'the proprietor of the soil', and in the end, produced a literature as interesting as instructive. But the search failed to achieving definite result, because it was discovered that the right to the soil itself was unappropriated unless it could be said that it resided in the general community. There were really three claimants to the title, the sovereign, the Zamindar and the cultivator etc.

There has been an acute controversy on the subject as to whether the Zamindar was or ever became the absolute proprietor of the soil in his Zamindari Estate, and it is unnecessary to go into detailed particulars. Philips in his *Tagore Law Lectures*[17] says as follows :

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12. *Venkata Narasinha* v. *Dandamudi,* I.L.R. 20 Mad. 299.
13. Baden-Powell, *Land Systems of British India* 150 (1892).
14. *Supra* note 1, at 574 et seq.
15. *Id.* at 512 et seq.
16. I.L.R. 7 Pat. 594.
17. Lecture VIII ,(1874-75).

> Actual proprietors of the soil does not mean absolute proprietors of the soil as against the ryots, and that consequently, as the Government do not declare any intention of giving up to the Zemindar anything but the right to alter the assessment, there is nothing to show that the terms used are meant to render the Zemindars absolute proprietor as regards Government, except in the matter of permanency of revenue.[17a]

In *Raja Ranjit Singh Bahadur* v. *Kali Dasi*,[18] however, the privy Council said :

> Passing to the settlement of 1793, it appears to their Lordships to be beyond controversy that whatever doubts be entertained as to whether before the English occupation the Zemindars had any proprietory interest in the lands comprised within their respective districts, the statement itself recognised and proceeds on the footing that they are the actual proprietors of the soil. It is clear that since the settlement, Zamindars have at least a *prima facie* title to all lands for which they pay revenue, such lands being commonly referred to as *malguzari* lands.[19]

This view has been reiterated in *Raj Kumar Gobinda Narayan Singh* v. *Shyam Lal Singh*.[20] The Court of directors agreed with Lord Cornwalls to make the assessment permanent and unalterable, on the belief that the possession of property and the sure enjoyment of the benefits derivable from it will stimulate industry, promote agriculture, extend improvement, establish credit and augment the general wealth and prosperity.

It was very difficult for the Zamindars to realise rent from the *raiyats*. This was the reason why the Zamindars were very harsh or very timid. In muslim times extremely harsh methods were used to recover revenue from the Zamindars. Owing to these causes they readily made sub-infeudations of their interests and a mass of middlemen arose like *patnidars, dar patnidars* etc.

It is in this back ground, that we must approach the question of the abolition of this parasitic Institution was one of the first demands. No- of the constitution. In the original article 31 expropriation without com- Zamindari interest was peculiar only to Bengal, Bihar and Orissa, part of the United Provinces and Madras and did not prevail throughout the Indian sub-continent. The more responsible view is that the continuance of the Zamindari system and the introduction of the Permanent Settlement was not to be blamed for his action. Whether his high hopes were fulfilled is another story altogether. The majority of the Zamindars turned out to be a race of lazy, lethargic persons who stayed away in big cities, leading

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17a. *Id.* at 317.

18. I.L.R. 44 Cal. 841.

19. *Id.* at 852-3.

20. 35 C.W.N. 521, 528.

immoral and luxurious lives without the slightest initiative or desire to improve their lands or the lot of their tenants. For a long time the writing on the wall was there, and when the independence movement started, the abolition of the Zemindary interest, which absorbed so much of the time body claimed that Zamindary system should continue. The only point was as to the conditions upon which it was to be liquidated.

The election manifesto of the Congress in 1945-46 pledged itself to the abolition of the Zamindary system, but decided against expropriation without compensation. When Congress came into power in the General Elections of 1946, Bills were sponsored by the Bombay, Madras, Madhya Pradesh, Bihar and U.P. Legislatures, for abolition of all intermediate tenures.

Attention may now be drawn to articles 14, 19(1)(f), 31 and 39 of the Constituent Assembly. It must be also borne in mind that the pensation was ruled out, and no prefix was added to the word 'Compensation,' because it was accepted that it should be 'just.' The problem was however not so easily solved as will appear from the history of the amendments and extension of article 31, which will presently be related.

Certain litigations were already pending and others soon came to be filed. By an unanimous decision of the Patna High Court,[21] the Bihar Land Reforms Act 1950 was declared invalid. It was declared invalid, not as contravening article 31, but as contravening the equal protection of article 14, inasmuch as the statute permitted differential treatment of landowners in the matter of compensation.

In order to avoid the delay of litigation and remove any possible objections, Parliament passed the first amendment Act, adding two further articles namely article 31A and 31B and a schedule of State Laws which were to be immune from attack was apended as the ninth Schedule.

But even after the amendment, the legal actions were not abandoned In fact, the word 'Compensation' was the subject matter of several legal decisions which may now be considered.

Although the framers of the Constitution chose not to prefix the word 'Just' or 'reasonable' or 'Adequate' to the word 'Compensation' in article 31, the Courts held that compensation must mean 'Just compensation' and be calclated on the basis of the market value. According to the Allahabad High Court[21] it should be full one hundred per cent market value to-

21. *Suryapal Singh* v. *State of U.P.*, A.I.R. 1951 All. 675

gether with a solatium of 16 per cent. In *West Bengal Settlement Kanungo Co-operative Society Ltd.* v. *Mrs. Bella Bannerjee*[22] Harries C.J. held that Clause (2) of a article 31 requires a 'Just' amount of compensation to be paid for any propetry compulsory acquired and if the amount a law gives is not just or reasonable, then it cannot be regarded as compensation within that clause. In *State of Wes Bengal* v. *Mrs. Bella Bannerjee*[23] certain provisions of the West Bengal Land Development and Planning Act of 1948 were held to be unconstitutional and void. Under sec. 8 of the impugned Act it was provided that a declaration by Govt. under sec. 6 that land was required for a public purposes would be conclusive and in determining the compensation, the market value of land as on the date of the publication of the notification shall be calculated *but not exceeding the market value on Dec.* 31, 1946. *.Both these provisions* were declared *ultra vires.* The court said:

> While it is true that the legislature is given the discretionary power of laying the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Whether such principles take into account all the elements which make up the true value of the property appropriated and include matters which have been neglected is a justifiable issue to be adjudicated by the Court. This indeed was not disputed.[24]

In the Patna Case — *State of Bihar* v. *Kameshwar Singh*[25] it was argued that there was no public purpose in acquiring Zamindari interests. Mahan J. said at Pg. 261, as follows:-

> The phrase "public purpose" has to be construed according to the spirit of the times in which particular legislation is enacted and so construed. the acquisition of the estates has to be held to have been made for a public purpose.

The provision as to acquisition of arrears of rent, half of which went to the Zamindars and the other half to supplement the revenues of the State or to secure means to pay compensation, was however struck down as lacking in any public purpose.

As regards the new clauses A and B of article 31 Mahajan J. said:

> They merely place beyond the reach of the Court any enactment dealing with the compulsory acquisition of property which may infringe any of

22. A.I.R. 1951 Cal. 32.
23. A.I.R. 2954 S.C. 170.
24. *Id.* at 176.
25. A.I.R. 1952 S.C. 252.

the provisions of Part III of the Constitution: in other words, article 13(2) of the Constitution cannot be called in aid to impugne the validity of such statutes.[26]

Pylee says:

These judicial pronouncement had far-reaching consequences. They showed that legislation on social and economic welfare, which necessitated the acquisition of various forms of private property, was virtually impossible because of the prohibitory cost involved in the payment of compensation. Zamindari abolition was only the first stage in a planned programme of legislation for local and economic welfare. Other equally important legislative measures were planned to follows suit. Some of the most important of these are (i) the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed minimum and the further modification o fthe rights of land owners and tenants in agricultural holdings; (ii) the proper planning of urban and rural areas, the beneficial utilization of vacant and waste lands and clearance of slum areas (iii) the taking over the control of the mineral and oil resources of the country in the interests of national economy; (iv) the taking over of the management by the State for temporary periods, of commercial and industrial undertakings in the public interest or to secure better management (v) reforms in company law administration including the elimination of the managing agency system; (vi) nationalization of public utility undertakings. But so long as the compensation clause of the Constitution remained in the manner in which it was interpreted by the Supreme Court, it was pointed by a spokesman of the Government, no progress could be made along these lines. Thus, according to them, the compensation clause and the power of the Courts to enforce it stood in the way of planning and the implementation of a programme of planned development. The Government wanted to remove this hindrance and have a free hand in the evolution of a new society. It was claimed that the only way to accomplish this was the passing of the Fourth Amendment Act of 1955.[27]

This is as far as constitutional amendments are concerned relating to property which are relevant. It will now be necessary to take stock of the situation. The question of the compulsory acquisition of property for public purposes has been exercising the Government, long before the Constitution came into being in independent India. In fact article 31 as it emerged from the deliberations of the Constituent Assembly, closely followed the provisions of sec. 299 of the Government of India Act 1935. It did no violence to the concept of private property which we had learnt under the English law. Cl. (1) was a virtual reproduction of sub-sec. (1) of sec. 299 of the 1935 Act, which reflected the common law principle that the Executive could not take away private property without the authority of law. Clause (1) of Article 31 embodies this principle.

26. *Id.* at 269.

27. Pylee, *Constitutional Government of India* 300 (1960).

While a citizen is protected from deprivation of his property without a legal enactment, it does not follow that he can get consideration in each case. It is only when the deprivation can be made to come under cl. (2), that he is entitled to the constitutional right of compensation. This gives rise to certain complex problems. The first is to differentiate the two clauses (1) and (2) in order to determine whether they relate to the same set of circumstances and the second is to find out the exact circumstances under Cl. (2) as applicable and third is to consider the expression 'compensation,' both as regards its meaning and the question of the interpretation of legal terms used in article 31, which have had to be interpreted judicially, but the decisions themselves have not been uniform.

The words used in call (2) of the original article 31, used the words "Taken possession of or acquired" and there was much contest as to meaning thereof. In *Chiranjit Lal Chaudhury's* case[28] the brief facts were as follows: The Sholapur Spinning and Weaving Co. Ltd., was a company incorporated under Indian Companies Act, the Directors of which gave notice on 27.7.49 to the workers that the Mills would be closed. On 9.1.50 the Governor General of India promulgated an ordinance which purported to make special provisions for the proper management and administration of the company which, owing to the mismanagement and neglect of the Directors, had come to grief. It was held that the 'property' was the right in the shares of the company, and simply because incidental privileges arising out of the ownership of the shares has been curtailed, it can neither be said that the citizen, (The applicant held three ordinary shares and 80 preference shares) was 'deprived' of his property under article 19(1)(f) or clause (1) of article 31 or that his property has been "acquired" or taken possession of," the terms of clause (2) of article 31.

In the cases of *State of West Bengal* v. *Subodh Gopal Ghose*[29] and *Dwarkadas* v. *Sholapur Spinning Co.*[30], majority decision declared that both clauses (1) and (2) of article 31 related to the exercise of "eminent domain' and not 'Police Powers.' In the *Dwarkadas* case, known as the second *Sholapur* case, the plaintiff challenged the *vires* of the very same Act. Mahajan, J. specifically disagreed with the view of Das J., that clause (1) and clause (2) of article 31 relate to different matters. According to him a article 31 was a self-contained provision; delimiting the field of eminent domain and article 31(1) and (2) dealt with the same topic of compulsory acquisition of property. It will be remembered that in

28. A.I.R. 1961 S.C. 41.
29. A.I.R. 1954 S.C. 92.
30. A.I.R. 2954 S.C. 119.

the first Sholapur case it was held that the mere taking over of incidental powers flowing from the ownership of shares was neither deprivation of or acquisition or taking over possession, of property. It subsequently appeared (and upon this ground, the second *Sholapur* case was distinguished) that under the guise of superintendence, the state was carrying on the business or trade for which the company was incorporated, with the capital of the company but through its own agents who took order from it and were appointed by it and in whose appointment and dismissal, the shareholders had absolutely no voice. Thus, the impugned legislation had overstepped the limits of social control legislation and had infringed the fundamental rights of the Constitution guaranteed under article 31(2). As Das J. pointed out, it did so without payment of any consideration.

The majority decision held that the American doctrine of police power as a distinct and specific legislative power is not recognised in our Constitution and it is therefore contrary to the scheme of the Constitution to say that clause (1) of article 31 must be read in positive terms and under stood as conferring police power on the Legislature in relation to rights of property. It is the legislature alone that can interpose and compel the individual to part with his property.

This extended view of article 31 was responsible for the fourth amendment Act which changed the words "taken possession of or acquired," to "compulsorily acquired requisitioned." The next case is of *Kochunni* v. *State of Madras*[32] Before that howevre, it will be necessary to notice the complex array of cases which tried to differentiate between the right to property dealt with in article 19(1)(f) and in article 31. Article 19(1)(f) mentions the right to 'acquire, hold and dispose of' property. Article 31, in clause (1) guarantees the right, not to be 'deprived of 'property except in accordance with law and in clause (2) guarantees that private property can not be acquired or requisitioned by the State except for a 'Public Purpose' and after providing for the payment of 'compensation.'

In *Chiranjit Lal's* case it was held that article 19(1)(f) would continue until the owner was deprived of such property by authority of law under article 31. If there was 'deprivation' of property under clause (1) of article 31 by law, the citizen was not entitled to compensation at all, while he was entitled to compensation at all, while he was entitled to compensation at all, while he was entitled to compensation if property was acquired or

31. *Supra* note. 29.

32. A.I.R. 2960 S.C. 1080 (1092).

requisitioned under clause (2). Upon the point as to what is 'deprivation' there was conflict. In the cases of *Subodh Gopal Ghose*[33] and *Dwarkadas*[34] an extended meaning was given to it. There need be no actual possession. If there was a restriction which went beyond a certain degree, it might amount to deprivation; Further, it was held that 'requisition' was not 'acquisition'. As explained in *Kochunni's* case the fourth amendment accepted the view of Das J. and made it clear that clause (1) dealt with deprivation of property other than acquisition or requisition as mentioned in clause (2) and there could be no acquisition or requisition unless there was transfer of ownership or a right to possession, to the State or its nominee. Even if the curtailment of a property rights was considerable, but short of transfer of ownership or right to possession, no right of compensation arose. This was certainly not what the original framers of the Constitution contemplated. It is true that in India we need not follow the identical concept of 'Police Powers' or 'Eminent Demain' as it prevails in America, but it was never intended that if you interfere with a citizen's right in private property, so that it becomes illusory, still you could expropriate his property without compensation, by simply passing a law. In that case, article 19(1)(f) becomes wholly redundant. This position came out vividly in *Kochunni's* case. It was held here that a law depriving a person of his property will be an invalid law if it infringes either 19(1)(f) or any other article in Part III. The limitation on the power of the State to make a law depriving a person of his property is found in the word 'law' which has reference to article 19 and the 'law' can only be sustained if it imposes a reasonable restriction, in the interests of the general public. A law, made, depriving a citizen of his property shall be void unless the law so made complies with the provisions of cl. (5) of article 19 of the Constitution. Subba Rao J. (as he then was) held that the decision in, *State of Bombay* v. *Bhanji*[35] which related to requisition of property no longer applied, as after the fourth amendment, clause (1) and (2) of article 31 could not be held to apply to the same subject matter. In *Sitabati* v. *State of W.B.*[36] however it was held, approving the earlier decision of *Barkva Thakur* v. *State of Bombay*[37] that article 19(1)(f) had no application to a law under article 31(2) and that in the *Kochunni* case there was no question of either acquisition or requisition. It is unfortunate that the bold stand taken in *Kochunni's* case has for the time being been whittled down.

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33. *Supra* Note. 29.
34. *Supra* note 30.
35. (1955) 1 S.C.R. 777.
36. 66 C.W.N. 423.
37. (1961) 1 S.C.R. 128.

According to the Preamble to the Constitution, we seek social and economic justice as well as equality of status and opportunity. The directive policies of State contained in article 39, enjoin that everyone should have the right to an adequate means of livelihood and the ownership and control of material resources should be so distributed as best to subserve for the common good and that we should avoid concentration of wealth and the means of production. The right to acquire hold and dispose of property is guaranteed as a fundamental right by article 19(1)(f). The most controversial right is the right of property dealt with in article 31 of the Constitution, particularly the right to deprive a citizen of his private property by legislative measures, and the right to compensation. Upon this point we have singularly failed to establish any consistent stand or a fixed ideal. Perhaps this in line with the professed aim of our leaders to make India a 'Democracy of socialist pattern', an expression which few can understand. As society changes, the concept changes, but we might say that socialism as we know it to-day may be said to be essentially a doctrine and a movement aimed at the collective organization of the community in the interests of the mass of the people by means of the common ownerhip and collective control of the means of production and exchange. But the State socialists believe that all private profit is anti-social and challenge the view that the pursuit by each citizen of his private economic interests works out for the good of society as a whole.

The problem is indeed a complex one and must always be looked at, not in the abstract sense, but in the background of nature and inclinations of the people for whom it is intended, their history, the trend of their thinking, the inner sources of their inspirations, and of course their present and future needs. There is nothing inherently heinous in taking from the rich and giving to the poor. Equality of wealth is a desirable end. It is however questionable, whether it is the best way to attain it by nacked expropriation or confiscation. The real problem is not to bring the rich to the level of the poor, but to raise the poor to the level of the rich. It should cause some heart-searching to find that this desirable end is being achieved, not by nations professing socialism, but by democracies like the United States of America, the United Kingdom, West Germany and Japan, who believe in the doctrine of private property and private initiative. This is not to say that in these countries there is no public ownership or that public sector undertakings are unknown. In each of these countries, there are giant public undertakings, and laws are constantly being passed to keep them from trampling upon the rights of the individuals. The anti-trust laws in America illustrate this point. In pure communism, all sources of profit are commandered by the State. Thus, in Russian and China, the entire means of produc-

tion, including agriculture, has been taken over by the State which alone is responsible for all production including that from land. In India we want to have a 'Democracy of a socialistic pattern', but we have succeeded in producing a model which neither satisfies the democrat nor the Socialist. What is most disturbing is that for nearly nineteen years we have given it a trial, but it has produced no desirable results. While Germany and Japan, totally devasted in the last World War, have not only recuperated, but have come up in the vanguard of industrial development, we still languish in the fringe of a fast deteriorating agricultural economy; beset with shortages, famines, and an infinitely slow rate of industrialisation. The reason is that we have no clear idea of the kind of democracy or socialism that we want. We have not only been tinkering with our laws to herald in a kind of socialism which we do not clearly understand, but what is more serious, we have been constantly tinkering with the Constitution, which should have a basis of permanence and stability. No body has ever suggested that the system of Zamindaries or other intermediaries should be perpetuated in Independent India.

Under normal circumstances, the compensation must be the 'Just' value, and the normal measure of a just value is the market price. It was on this basis that in, *State of W.B.* v. *Mrs. Bela Bannerjee*[38] it was held that, to be 'Compensation' one must pay the market value as on the date of acquisition, together with compensation for being deprived of property. But it is rather difficult to follow, as to why this absolute principle could not be cut down to suit Indian conditions, and why the Supreme Court had necessarily to define the word 'Compensation' in article 31, with reference to American, English or continental analogies. In the Constitutions of these advanced countries, compensation is always 'Just' or 'Reasonable' or Equitable'. In India also we were not strangers to the concept of acquiring property for a public purpose. There were the Land Acquisition Acts, the first of which came into force as long ago as in 1870. In these statutory enactments, the concepts of compensation is certainly based on market value. But during the Constituent Assembly debates, it was made amply clear that India could not afford to pay the full market value (Not to speak of additional compensation) for all intermediate interests. If this was insisted upon, then the intermediary interests could not be abolished and would be perpetuatd, which nobody wanted. Those who steered the resolutions which were eventually found acceptable, were of the opinion that if the legislature laid down the amount of compensation or the principle upon which it was to be calculated, that was enough and full market value would not then have to be paid. I do not see why this was not a correct

38. *Supra* note 23.

view of the law to take. Normally, and in a very prosperous society, the measure of compensation is based on the market value. But in a society which is indigent, the just or reasonable value of land need not always be the competitive market price plus a solatium. A lot could be said from this point of view. It seems that the truculent attitude taken by our legislaturs made a simple point full of complexities, and the attempt to defeat Judicial Review recoiled upon itself. While the legislature should not have been so keen to exclude Judicial Reviews, the Courts should have been less permeated with abstract notions of Just Compensation imported from the west.

The State is now the biggest owner of land in the country, all intermediary interests having vested in it. If this is true socialism, it was native in our soil and we imported nothing from the west. In Hindu India, all land vested in the community. It never vested in the King although he was entitled to payment of revenue as consideration for affording protection to his subjects. What then is the exact position now? Is the State, in the position of the king or the Community? Strictly speaking, the position is a curious amalgam. The Constitution of India is a peoples' Constitution, since the preamble says:-

> We the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic .... In our constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution.

But there are three limbs of the Constitution, one of which is the Executive headed by the President (The others are the legislature and judiciary). The executive bears all the marks of a ruler although it is a constitutional rule, being always subject to the Constitution. Sovereingnty, it is said, lies in the people. The State is both the representative of the people, and its protector. Theoretically, it is both the ruler and the ruled rolled into one. What happens now to the tillers of the soil? Apart from all legal subtelty, the basic idea was that the land will belong to him who tills it, and the fruits will be enjoyed by him who drops the sweat of his brow upon the earth, by honest toil. It is however a magic picture, that is not necessarily coming true, as was dreamt by the Constitution-makers. Firstly, if all land has gone back to the State, it must make just laws for redistributing the same to the tiller of the soil. Such re-distribution however has proved to be an intensely complicated process. The first thing that has been done is to introduce a ceiling upon land-holding. It was argued that if the available agricultural land is to be equitably dstributed amongst an immense population, there can not be large quota. To give much to one, would be to deprive another. But, this too has its draw-backs. Land in India requires a Productive principle of management. Large-scale agriculture is essential, but is imprac-

tical with tight ceilings on land-holdings. A great deal more thought must be expended upon this aspect of the matter.

Since the Constitution came into being, most States promulgated their Land Reform legislations. It will be useful to deal with some and discuss their merits and demrits. They are listed in the 9th schedule to the Constitution. It appears that upon an analysis of the various Acts, the objects may be devided into the following headings:-

(1) Abolition of all intermediate interests.

(2) Putting a ceiling on the quantity of agricultural land that can be held by any one person and preventing consolidation of holdings in excess of the prescribed ceiling.

(3) Encouragement of coo-perative farming by permitting co-operative societies to hold land than individuals.

(4) Preventing the fragmentation of holdings by prescribing a standard area below which no fragmentation will be allowed by transfer, partition or settlement.

I shall now proceed to deal with the situation in West Bengal. The two Acts which are relevant, are the West Bengal Estates Acquisition Act 1953 (W.B. Act of 1954) and the West Bengal and Reforms Act X of 1956.

So far as these two West Bengal Acts are concerned, the following comments may be made: The object of all land Reforms is to abolish all intermediaries and to keep only two parties alive, viz., the State as the owner of all lands and the actual tiller of the soil as the tenant under such owner. It was expected that the actual tiller of the soil or the Raiyat, upon being virtually clothed with the mantle of ownership will display enthusiasm, initiative, enterprise and show better results than in the past. By and far, this expectation has not been fulfilled, for a variety of reasons. Such expectations are reasonable when the person concerned is educated, affluent and blessed with ample resources. Unfortunately, the tiller of the soil or the Raiyat continues to be an illiterate indigent and superstitous person living on the margin of misery want and financial involvement. He still pursues primitive methods of agriculture, and his equipment has not altered in a thousand years. The Government has neither been able to give him education, nor can it provide irrigation water or Fertilizers to resusciate the dead soil. Chemical fertilizers which ar produced insufficiently are of little use to him because he is not trained in the use of it, and in any event most of it finds its way to the black market. The poor Raiyat has therefore received a doubtful benefit, the

value of which is questionable. While the Zamindar was there, the raiyat often defaulted in paying his rent, but the Zamindar had to make good the revenue because of the fear of losing his Zamindary by public auction. But now the rigour of punctual payment has fallen on the head of the poor Raiyat and the general complaint is that the amount of rent prescribed by the State Government are too high and that the procedure for the enforcement of its realisation too severe. Government is accused of making senseless exactions. For example, in West Bengal it tried to realise the canal-water taxes from Raiyats when not a drop of water was running down the irrigational channels. This resulted in a plethora of writ applications in which the Government was restrained from realising the tax.

Compulsory levy of the produce of the land has not increased the incentive to greater production, but has retarded it.

The hope that Co-operative farming would grow has been belied in most parts of India. Inspite of the encouragement given to co-operatives in the West Bengal Acts, no such movement has grown. The main reason in the dove-tailing of it with the co-operative movement controlled by the Bengal Co-operative Societies Act 1940. The entire co-operative society system is a failure in West Bengal. Wide-spread corruption, embezzelement and other mal-practices have put a stink upon it, which prevents the growth of public confidence in any such institutions. In fact- Co-operative Farms have not come into existence and never will. This has posed a somewhat serious problems. In the modern age, the only kind of farming that can prosper is mechanized farming, which requires large tracts of land in one, single block, to be economical. The frame of the Land Reform legislations deny this opportunity, by laying down ceilings of land-holding which are uneconomical for farming. Opportunities have been given only to Co-operative farms and Farming Companies, and these also are hedged in with restrictions. Pandit Nehru wanted to push the case of Service co-operatives, but this met with opposition and nothing materialised. There appears to be a body of unreasoning opposition to large-scale farming by Joint Stock Companies. The phenomenal success of Messrs Lever Bors. in growing and marketing dehydrated vegetables shows the futility of such opposition.

The Bihar Land Reforms Act 1950 seems to have been more generous to the Raiyat in the matter of retention of lands. The right to retain all lands used for agricultural and horticultural purposes which were in the *Khas* Possession of the Raiyat was confirmed. Subsequently however, a ceiling has been put, by the Bihar Land Reforms (fixation of ceiling are etc.) Act 1961 to be paid, is more or less the same as in West Bengal. It may however be paid in cash or in Bonds which may

either be negotiable or non-negotiable or non-transferable and payable in forty annual instalments, with interest at the rate of ½ per cent per annum.

With regard to compensation, the complaint of the intermediaries is no longer the amount, but the manner of payment. It is said that nowhere have the State Governments any intention of paying the compensation and the payments made are minimal, halting and more or less illusory.

In Madras, we have the Madras Estates (Abolition and conversion into Ryotwari) Act 1948 (Madras Act XXVI of 1948 and Act I of 1950) which abolishes Zamindaries. There is also the Madras Land Reforms (Fixation of Ceilings on lands) Act 1961 (Madras Act LVIII of 1961.)

By and far, all the States in their respective Land Reform Legislations have purported to lay down ceilings on land holdings and the same comments are applicable to all. It is trite to say that if land is to be available to all, the individual holding must be small so that there is enough to go round. This is however an over-simplification of the position. The total population in India most of which lives on the fringe of an agricultural economy, is colossal and there is virtually an explosition in the growth of population in this country. We must therefore face facts scientifically and not be carried off by emotional *cliches.*

The world now is in the machine age, and neither the *Charka* nor the bullock-drawn plough can bring us salvation. We must prepare for farming with machines and frame our laws from that point of view.

From this point of view, the ceilings laid down are wholly uneconomic and the bias against large scale farming must be eschewed.

It is perhaps worth observing that after nearly nineteen years of freedom, we have failed to solve the problem of feeding our people, even with the giant P.L. 480 aid from America. That shows that Agricultural Reforms and the planning that must go with it is defective. How far this is due to defective Land Reform Laws is worth serious consideration.