AGRARIAN REFORMS

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At the time when India became independent there were mainly three systems of land holding in operation in the territory of India: One was the system relating to estates comprising Zamindaris either temporarily or permanently settled; undertenures carved out of Zamindaris; and inam villages declared by definition to the estates. The main incidents of the village declared by definition to be estates. The main incidents of the Zamindary system were that the holder or proprietor of the estate paid pieshkush to the Government and was an intermediary. He was the proprietor of the soil comprised within geographical limits of the Zamindary. The lands within the Zamindari were broadly divided into ryoti lands and private lands. A tenant inducted into possession of ryoti land for the purpose of agriculture acquired a permanent right of occupancy by force of statutory provision and he was entitled to enjoy the land subject to the payment of melvaram or rent to the Zamindar. In the case of private lands within the Zamindary, no such right of occupancy could be acquired by the tenant. In the case of *inam* villages, which were estates by statutory definition, the inamdar was the land-holder and a tenant let into occupation of ryoti land for the purpose of agriculture acquired permanent right of occupancy. The *inamdar* himself held the *inam* village either rent free or subject to payment of *jodi* or quit rent to Government as fixed under the *inam* settlement. In addition to these *inam* villages, there were minor *inams* granted prior to or subsequent to the major grant and these minor inams were enfranchised and title deeds were granted by the *Inam* Commission on behalf of Secretary of State to the inamdars. The minor inamdars to whom title deeds were granted were not subject to the disabilities of the holders of estates and the tenants introduced by them did not acquire permanent rights of occupancy. Then there was the ryotwari system under which a person held the land directly under the State subject to the payment of land revenue.

Before any agrarian or land reform could be thought of or introduced in its essential aspect, it was necessary to abolish or put an and to the Zamindari and *inam* tenures, eliminate all intermediaries, introduce the ryotwari system in respect of all lands, and establish direct contact between the ryot and the State. The essential aspect of agrarian reform was to prevent concentration of large holdings in the hands of a few individuals, to impose a ceiling limit upon the extent of land that

could be lawfully held by an individual and ultimately to achieve the purpose of making the tiller of the soil the owner. In such a process, conferment of security of tenure on the tenant even in respect of lands held under ryotwari system was necessary and expedient.

The Constitution of India was framed in this background of tution dealing with Directive Principle of State Police we find article 39, tution dealing Directive Principles of State Police we find article 39, clauses (b) and (c) inserted by the framers of the Constitution and they read as follows:-

> The State shall, in particular, direct its Policy towards securing—
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> (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
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> (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

Before the Constitution of India came into force, in exercise of the powers conferred by the Government of India Act, 1935 the Provincial Legislatures with a view ultimately to liquidate and abolish the Zamindaris and other estates, enacted Rent Reduction Acts statutorily authorising the reduction of rent payable by the *ryot* to the land-holder. This kind of legislation was followed by Estates Abolition Acts for the purpose of statutorily vesting the estate and all lands included therein in the State and providing for the grant of ryotwari pattas to the erstwhile land holders and to the ryots who had already acquired occupancy rights. Many of these enactments were enacted by the Provincial Legislatures more than eighteen months before the commencement of the Constitution. Article 31(2) corresponds to Sec. 299 of the Government of India Act, 1935. Article 31(4) reads as follows:-

> If any bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding any thing in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) 99.

Article 31(6) reads as follows:-

> Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon if the President by public notification so certifies,

> it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provisions of sub-section (2) of Section 299 of the Government of India Act, 1935.

It will be noticed that article 31(2) provides for the Legislature specifying the principles to determine compensation. The question, therefore, arose whether the requirements of article 31(2) would be violated in a case in which the law authorising acquisition of property specifies the principles of compensation notwithstanding the fact that the principles so specified would not work out to a just equivalent in money value. The decision in *State of West Bengal* v. *Mrs. Bela Bannerjee* dealt with this problem. The validity of Section 8 of the West Bengal Land Development and Planning Act (21 of 1948) came up for consideration. That section provided that the market value in determining the amount of compensation shall be deemed to be the market value of the land on the date of the publication of the notification with a condition that if such market value exceeded the market value as on 31st December 1948 the excess shall not be taken into consideration in awarding compensation. The argument of the learned Attorney General in support of the constitutional validity of Section 8 was that as article 31(2) authorises the specification of the principles of compensation, the Constitution left scope for legislative discretion in determining the measure of the indemnity and therefore the legislation would not be invalid if the amount ascertained under the principles did not result in a full and fair money equivalent. This argument was rejected and it was held as follows:-

> We are unable to agree with this view while it is true that the legislature is given the discretionary power of laying down 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. Within the limits of thisbasic requirement of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the court. This, indeed, was not disrupted.[2]

The validity of the Zamindari Abolition Acts was challenged on the ground that the compensation was not a *quo pro quo* or a just

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1. A.I.R. 1954 S.C. 170.
2. *Id.* at 172.

equivalent to the money value of the property taken and it was held that compensation meant a fair and just equivalent in money value. The result was that the provisions of the Zamindari Abolition Acts were exposed to the risk of being declared as unconstitutional. This led to the enactment of the first Constitution Amendment Act by which articles 31A and 31B were inserted, with retrospective effect from the date of the commencement of the Constitution.

The object of these two provisions was two-fold. The enactment and regulations specified in the 9th Schedule to the Constitution become immune from attack on the ground that the provisions thereof contravened the fundamental rights specified in Part III and any judgment which would have the effect of invalidating any Act or provisions thereof on that ground became ineffective and inoperative. Article 31B was without prejjudice to the generality of the provision contained in article 31A by which a law providing for the acquisition by the State of any estate is saved from attack on the ground that it is inconsistent with or takes away or abridges any of the fundamental rights. The 9th Schedule, included the various Abolition Acts passed by the various Legislatures prior to the date of the First Amendment. After that date, however, the immunity from attack under article 31A could be invoked only if the law provided for the acquisition of any estates or any rights therein and for this purpose the expression "estate" was defined in sub-clause (2) of article 31A.

The question naturally arose as to what exactly the implication and amplitude of the expression "estate" was. There was that the correct of "estate" involved the existence of an intermediary between the State and the cultivating tenant: the other was that unless there was any law in the local area defining the meaning of "estate" in relation to land tenures, the expression "estate" would mean no more than land held under an engagement directly under the State with an obligation to pay land revenue to the Government, attached to it. This question came up for decision in *Purushottaman* v. *State of Kerala*[3] and it was held that in the absence of any local law prevailing in any particular area defining "estate", "the basic concept of the word estate is that the person holding the estate should be proprietor of the soil and should be in direct relationship with the State paying land revenue to it except where it is remitted in whole or in part "and that' it is not necessary it can be called an estate within the meaning of article 31A(2) (a)." In the territory of the composite State of Madras there was an Estates Land Act in force and therefore in the area to which the Act applied the con-

3. A.I.R. 1962 S.C. 694.

cept of estate involved the existence of an 'intermediary' with the result that it was held by the Supreme Court that in the South Canara area the land that was held under the *ryotwari* tenure could not be an "estate" and that therefore the Kerala Agrarian Relations Act in so far as it applied to the South Canara area was not protected by article 31A.[4] These two decisions created a somewhat anomalous situation. In one part of the country the proprietor of the land holding directly under the State would fall within the ambit of article 31A and legislation dealing with rights therein would get the protection of article 31A; in another part of the country where legislation similar to Madras Estates Land Act was in force the concept of 'intermediary' would apply with the result that legislation modifying or extinguishing rights in such land would not get the protection of article 31A.

It was to remedy this situation that the 17th amendment of the Constitution was enacted in 1964.

Section 3 of the amendment included various enactments in the 9th Schedule of the Constitution. As a result of Section 2 any land held under the *ryotwari* settlement is also included in the meaning of "estate" and any law providing for acquisition by State or extinguishment or modification of rights therein would get the protection of article 31A. The consequences of this amendment are far reaching and somewhat startling and destroy the sanctity attached to property rights under the ryotwari settlement. But for the fact that the provisions of article 31A as now found are, the result of the amendment of the Constitution itself, they would be easily open to the attack of being in contravention of fundamental rights. But the very purpose of the amendments is to deprive the citizen of his fundamental rights and once it is held that the amendments to the Constitution are valid, the fundamental rights in Part III stand abrogated or pro-tanto rendered inoperative. Perhaps the only justification for the 17th amendment to the Constitution including 'any land held under ryotwari settlement' within the meaning of 'estate' is that but for such amendment it would not be possible or constitutionally permissible to fix a ceiling limit on the holdings of land and provide for the land in excess of the ceiling limit becoming vested in the Government. When the Zamindari and *Inam* tenures are abolished and all land is held under the ryotwari settlement, there can be no fixation of ceiling limit in respect of any land.

It is entirely left to the discretion and generosity of the legislatures to fix the ceiling limit in any manner they like. Even if a person has a few acres of land barely sufficient for his maintenance and subsis-

4. *K. Kunchikeman* v. *State of Kerala,* A.I.R. 1952 S.C. 723.

tence, legislation can be enacted modifying or extinguishing rights therein; and such legislation would be protected under article 31A. In this context it is appropriate and pertinent to enquire into the basic policy and the objects of the various Governments now functioning under the Constitution. In chapter XIV of the Third Five Year Plan the objectives of land reforms are stated.

It is very attractive and prima-facie unobjectionable to speak of prevention of concentration of holdings in a few hands and fragmentation of holdings in order to serve the common good and promote economic prosperity and progress. But, how does it work in actual practice? There can be and there is a sharp divergence of opinion on the question whether in the interests of greater food production, fragmentation of lands into small holdings is desirable or expedient. In a country like India whose wealth essentially consists in agriculture, the correct perspective should be that there should be an incentive and stimulus given to growing more food modern mechanisation, aids by way of chemical manure and large scale farming, would certainly be more beneficial and achieve better results. It is well known that the former Prime Minister, Jawaharlal Nehru advocated the idea of co-operative farming and that there was not only serious scepticism but also active controversy over the issue whether co-operative Societies have been functioning is not calculated to inspire confidence. There is more friction and bitterness and there is less co-ordination. The frame of mind, healthy and necessary, for successful functioning of co-operative societies has not yet developed. Whatever it may have been, the idea of co-operative farming appears to have been abandoned.

In anticipation of legislation fixing a ceiling limit on the extent of land-holdings, there was a spate of transactions by way of partition, alienations, settlement deeds and other devices to get round the scheme of ceiling limit. Whatever may be ostensible position in legal theory, the fact remains that in spite of the various Acts fixing ceiling limits, large extent of land are held by different and individual members of the family within the permissible limits but nevertheless operating really as ownership on a large scale. There is nothing intrinsically evil about this. After all it is only a person who has a large extent of land who will be interested in investing capital, securing chemical manure, making experiments with new kinds of food crops, employing machinery for the purpose of rendering land fit for cultivation and growing more food, even if it be to make more money and profit.

Fixation of ceiling limit is itself not the end. It is only means to an end, the end being that the excess land vests in the State so that the Government can give it to political sufferers ,landless poor or per-

sons not having enough land to cultivate and live upon. This sounds very satisfactory from a purely doctrimnaire and idealistic point of view, but from a pragmatic and realistic point of view it is not possible to say it has achieved the desired results. It is perhaps fairly well known that several persons in response to the appeal of Acharya Vinoba Bhave made great reputation of having given land under *Bhoodan* Movement; but it ultimately turned out that either the title to the land was in dispute or that the land was unfit for cultivation or involved a large investment for reclamation. Similarly, political considerations are bound to weigh and operate in the matter of distribution of excess land. It is not easy to decide which persons should be the objects of the bounty of the Government. Particularly in the stage in which we are, when political parties are struggling to strike deep root in the soil, the temptation is strong to divert surplus or excess land to other than legitimate purposes.

Not content, however, with the substitution of the new definition of the expression 'Estate' within the meaning of article 31A, the 17th amendment went further and by Sec. 3 added to the 9th Schedule of the Constitution as many as 64 enactments which had already been passed by the Legislatures of the States in India. These enactments related to a variety of subjects including fixation of ceilings on agricultural lands, conferring rights on tenants which they did not have before, and other provisions regulating landlord-tenant relationship in lands. The result of inclusion in the 9th Schedule is that the provisions of article 31B of the Constitution became attracted and in a consequence the enactments related to a variety of including fixation of ceilings on agricultural lands, conferring rights on tenants which they did not have before, and other provisions regulating landlord-tenant relationship in lands. The result of inclusion in the 9th Schedule is that the provisions of article 31B of the Constitution became attracted and in a consequence the enactments included in the 9th Schedule or the provisions thereof cannot be attacked on the ground that they violate fundamental rights. Article 31B fully preserves the power of the Legislature to repeal, amend or alter the enactments included in the Schdule. The precise implications of the exercise of this power will be considered persently.

The guarantee intended to be conferred on the citizen in view of the drastic provisions in article 31A is to be found in the 2nd proviso by Sec. 2 of the 17th amendment. The said proviso reads as follows:-

> Provided further that where any law makes any provision for the acquisition by the State of any estate and where any provision for the therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law ffr the time being in force or any building or structure standing thereon or appurtenant

> thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

The purpose of this proviso is that if any land is within the ceiling limit applicable to a person under the law in force in a particular State and the State proposes to acquire such land, it can only do so by enacting a law which provides for payment of compensation at a rate which shall not be less than the market value thereof. If this proviso is not inserted in the Constitution it would have been open to the Legislature of a State to enact legislation providing for the acquisition of land within the ceiling limit and specifying such principles of compensation as it chooses to adopt. In such a situation the adequacy of compensation would not be a justiciable issue and it would not be open to any court to strike down the law on the ground that the compensation is wholly inadequate or even illusory. The 2nd proviso has the effect of guaranteeing to the citizen the fundamental right that land within the ceiling limit shall not be acquired except on payment of market value. It can fairly be stated that the 2nd proviso is in substance and effect a declaration of fundamental right in the context of article 31A. The enactment passed by the Legislatures of the various States and included in Schedule 9 provide for ceiling limits of land that can be held by a person. These enactments themselves cannot be attacked as violating fundamental rights by reason of the provisions of article 31B. Suppose a particular limit of 50 acres is fixed under an Act included in the Schedule. The State wants to acquire an extent of Ac. 20-00 out of the 50 acres; at the same time the State does not want to pay the market value for the land sought to be acquired. Can it take advantage of the fact that the Act fixing the limit is included in the 9th schedule, exercise the power of amendment, reduce the ceiling limit and provide for acquisition by the State of the excess land without paying the market value? It has been held by the Supreme Court in *Sajjan Singh* v. *State of Rajasthan*[5] that amendment in the enactments subsequent to the 9th Schedule do not get the benefit of article 31B. If therefore the amendment of the provision by way of reducing the ceiling limit does not get the protection of article 31B, can it get the protection of article 31A on the ground that the fixation of the ceiling limit is an essential aspect of agrarian reform and the power to fix a limit carries with it the power to vary the limit? It is in this context that the real purpose and effect of the second proviso becomes relevant and crucial. If the second proviso is really to be understood as conferring a fundamental right, it means and implies that once a law is passed fixing the ceiling limit, then a citizen is entitled to the market value of all the land within the ceiling limit before it can be acquired by the State by a fresh law. If the citizen has no such right to claim the market value in respect of the land within the ceiling limit, then all

that the Legislature has to do is to reduce the ceiling limit and acquire the land between the limit originally fixed and the limit as revised without paying anything like a market value or paying next to nothing. Suppose the Act included in the 9th Schedule fixes 50 acres. Subsequently another Act is passed reducing it to 30 acres and providing for the vesting of the 20 acres in the State and the provision made for compensation is nowhere near the market value. Suppose further that the object proposed is a very laudable one—to give the land to the political sufferers, or the landless poor. What is the right of the citizen whose 20 acres are taken away? The reasonable view is that having regard to the intendment and purpose of the proviso, such a reduction of the ceiling limit is really a devise or disguise to acquire the land without payment of market value and is intended to defeat the right conferred by the second proviso and is thus a fraud on the constitutional guarantee. If this were not the proper way of construing the second proviso, the second proviso will be denuded of its real meaning and purpose and will cease to operate as a constitutional protection. The mere fact that a subsequent legislation purports to be in the name of agrarian reform or to establish a balanced rural economy cannot help to save the legislation from judicial review.

Another aspect of the matter is whether the benefit of the second proviso can be claimed by any institution or only by a physical person holding the land within the ceiling limit. The expression "Person" prima-facie includes a juristic person unless of course it is repugnant to the subject or context. The words "where any land comprised therein is held by a person underpersonal cultivation" will have to be construed and their meaning ascertained. The problem is by no means free from difficulty. The provision is susceptible of two interpretations. One is that, as personal cultivation is referred to, the benefit of the right to the market value within the ceiling limit is intended to be confined to a physical person or an individual holding the land under his personal cultivation and cannot be claimed by a juristic person such as for example a Society registered under Societies Registration Act or a Corporation or Company. The other interpretation is that the emphasis is upon the ceiling limit fixed under the law and the words "under his personal cultivation" can well be understood in a broad and generic sense. And therefore if the lands are held by a juristic person and are under personal cultivation as contra-distinguished from being let out to tenants, such juristic person can also claim the benefit of the proviso. The question as to which is the interpretation that is to be adopted really turns upon the intention of the Legislature in enacting the proviso. There are two

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

rules of construction. One rule of construction is that the intention of the Legislature is to be gathered from a grammatical meaning of the words used and if the words used ae precise and clear, there is nothing more to be said and the court has no option but to give effect to the intention so disclosed. The other rule of construction is that where a literal and grammatical meaning leads to an anomaly, hardship or injustice not contemplated by the Legislature and the intention gatherable from the scheme or enactment does not contemplate such anomaly, hardship or injustice, it is open to the court to depart from the rule of grammatical intrpretation and give a meaning consistent with reason and justice and the presumed intention. Applying these tests it appears to be reasonably possible to take the view that what is really contemplated is that the lands within the ceiling limits should not have been let out to tenants but should have been cultivated personally. Once the lands are let out to tenants, different considerations come in. So the mere use of the words "his personal cultivation" need not necessarily exclude the interpretation that the lands are held by a juristic person or are under the direct cultivation of such a person and are not let out to tenants.

The inclusion of the various enactments in the 9th schedule to the Constitution does not in any manner preclude the State Legislatures from repealing the enactments in whole or part making suitable or appropriate modifications or amendments therein. Such a thing can be done only after having a clear and complete picture of the basic policies and a very large degree of responsibility rests on the representatives of the people to ponder deeply over the problem and take a broad view of the matter visualising the beneficial or adverse consequences of any policy not merely in the near future but in the generations to come. It is no doubt true that the judiciary in one sense makes the law by means of the exercise of the power of interpretation vested in it. But in a matter like this it is extremely difficult, if not impossible, to stem the tide in the face of the provisions of the Constitution itself having been amended.

A few important decisions of the Supreme Court in relation to the scope, effect and import of article 31A may be considered in this context. In *Kochuni* v. *States of Madras and Kerala,*[6] the material facts were as follows:-

There were what were known as 'sthanams' in Malabar. The exact rights of the Sthani with respect to the properties of 'sthanam', had come up for decision before the Privy Council and the Privy Council had held

6. A.I.R. 1960 S.C. 1080.,

that all the properties in possession of the 'sthani' should be deemed to be sthanam properties and that the members of the tarward had no interest therein. Then the Madras Legislature passed the Madras Marumakkathayam (Rmoval of Doubts) Act, 1955 (Madras Act 32 of 1955) under the provisions of which the members of the tarward were given rights in the sthanam property and to that extent the rights of the sthani were curtailed. The validity of the said Act was questioned. One of the contentions in support of the constitutional invalidity of the Act was that the Act offended against article 14 and 19(1)(f) of the Constitution. The argument in reply was the sthanam was an estate within the meanin gof article 31A and therefore the Act was immune from attack under articles 19, 19 and 31 of the Constitution. It was held that article 31A related to a land tenure described as an 'Estate' and that the contrary view contended for "would enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform" and as article 31A deprives citizens of their fundamental rights, "it cannot be extended by interpretation to overreach the object implicit in the article". In the result it was held that the protection of article 31A cannot be invoked to sustain the legislation. On the merits it was held that the legislation in question contravened the fundamental rights under article 19(1)(f) and was not saved by clause (5) of article 19.

In the case of *Gangadhararao* v. *State of Bombay*[7], the validity of the Bombay Personal Inams Abolition Act. (No. XLII of 1953) was in issue and two points were raised. One was that the property dealt with in the Act was not an estate and that no compensation had been provided in the Act for taking away the property of the inamdars. It was held that 'inam' was specifically include in the definition of "estate" in article 31A and therefore the Act would be protected from attack under articles 14, 19 and 31. The further contention that the Act did not provide for compensation and therefore was ultra vires in view of article 31 was rejected in view of the immunity under article 31A.

In *Sonapur Tea Co.* v. *Deputy Commissioner*[8] the Assam Fixation of Ceiling on Land Holdings Act (1 of 1957) was impugned on the ground that it infringed the rights under articles 14, 19 and 31 of the Constitution. Under the Act a limit was fixed on the extent of land that may be held by any person; but an exception was created in favour of lands belonging to religious or charitable institutions of a public nature, lands held for special cultivation of tea or purposes ancillary thereto and lands exceeding 150 bighas utilised for large scale cultivation of

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7. A.I.R. 1961 S.C. 288.
8. A.I.R. 1962 S.C. 137.

citrus by any person before 1955, lands utilised by efficiently managed farms on which heavy investments had been made and whose break up is likely to lead to fall in production, and lands held by a sugar factory or co-operative farming society for cultivation of sugarcane for the purposes of such factory. It was held that the lands affected would fall within the meaning of 'estate' and therefore the extinguishment of the rights in land in excess of the ceiling limits would be within the protection of article 31A and that it conformed to the pattern of agrarian reform as the object was to settle the excess land on actual cultivators or tenants and that the State was paying compensation to the expropriated owners with respect to the excess land. The exceptions from the operation of the Act referred to above were conceived and enacted in the interests of the economy of the State. The importance of this decision lies in the fact that the fragmentation of holding for the purpose of equitable distribution of land and economic resources of the community can co-exist and harmonise with a policy of large scale-farming and large scale cultivation and preservation of holdings of large extents of land. Therefore it would be an idle and unrealistic approach merely to fix a ceiling limit and evolve a scheme of fragmentation as an essential part of agrarian reform. Agrarian reform is only an aspect of the larger question of rural economy and prosperity and increased productivity and production of crops in general and certain kinds of crops in particular, in national interest. It would therefore ignoring the ultimate purpose and objective for each State to enact a law prescribing a ceiling limit, curtailing the right of the landlord and conferring a right on the tenant, and distribution of the excess land between a number of landless poor persons—all in the name of agrarian reform. It would therefore be a very appropriate and reasonable approach to be adopted by each State to seriously consider and decide how exactly the target of increased food production would be achieved and to frame legislation bearing that fundamental aspect in mind. It is also essential to remember that in any progressive and cizilived country the interaction of various aspects of national life cannot be overlooked and the repercussions of one phase of activity on other phases of an ordered society cannot be overlooked. If for example a mere isolated and doctrinnaire principle of agrarian reform is adopted and enacted especially in a society where the resources and means of production of the society are not owned by the State, its reactions upon the industrial, technological and scientific progress will have to be taken into account and an overall picture would have to be taken of the various factors of progressive nation-building which either interact and result in mutual co-ordination or lead to mutual retardation. It is idle to talk of industrial progress which involves large scale capital to be invested and at the same time mechanically and blidnly adhere to an apparently simple and logical rule of agrarian reform involving what

is called equitable distribution which really implies fragmentation. More than everything else, serious attention would have to be paid to the problem as to how any particular scheme, attractive and beneficial though it may appear on paper can be actually worked out and implemented, with the administrative set up that is available.

A consideration of the dominant purpose and intendment of article 31A and in what cases the protection under article 31A can be invoked in support of a particular enactment would be relevant and material in this context. The precise effect of the decision in *Kochuni's* case came up for consideration in *Vajravelu Mudaliar* v. *Special Deputy Collector, Madras.*[9] In that case the constitutional validity of the Land Acquisition (Mad) Amendment Act (Act of XXIII of 1961) was in issue. Under the provisions of the said amending act, the following clause was substituted for clause (1), sub-section (1) of Section 23 of the Land Acquisition Act 1894 (the Principal Act).

> First the market value of the land at the date of the publication of the notification under section 4(1) or an amount equal to the average market value of the land during the 5 years immediately proceeding such date whichever is less.

The Act contemplated acquisition of land for purpose of slum clearance and enabling housing schemes to be ushered in. It was found that slum clearance and housing schemes became an urgent problem calling for immediate attention, relieving the growing conjection in the city. The Act was impugned on the ground that it infringed the fundamental rights unde rarticles 14, 19 and 31 of the Constitution. The argument in support of the validity of the Act was that article 31A applied to the legislation and thereby excluded an attack under articles 14, 19 and 31 of the Constitution. This contention necessitated an enqiury into the exact purpose of article 31A. The argument for the State was that article 31A (1)(a) read along with the definition of the word 'estate' is wide enough to cover the legislation and therefore, though the purpose of the enactment impugned was slum clearance and housing schemes, the protection of article 31A was attracted. The point was elaborately considered and it was held that:

This court could not by interpretation enlarge the scope of article 31A. On the other hand, the article by necessary implication is confined only to agrarian reform.s Therefore it would apply only to a law made for any acquisition by the Government of any estate or any rights therein or for extinguishment or modification of such rights if such acquisi-

9. A.I.R. 1965 S.C. 1017.

tion, extinguishment or modification of such rights is for the purpose of agrarian reform.

Frequent amendments of the Constitution particularly to destory fundamental rights would make the rule of law a mockery. The liquidation of the Zamindari system and abolition of other estates and conversion of all the land therein into ryotwari tenure did not completely achieve the purpose because there were still the minor inams to be dealt with. Threfore, the Lgislatures have passed laws to abolish minor inams and to convrt them into ryowari lands. This led to other incidental problems such as whether the inam and is held by an institution or by an individual and whether the inam land is situated in a Zamindari village, inam village or ryotwari village. Different provisions have been enacted in regard to the proportion of the land to which patta is to be given depending on whether the inam belonged to an institution or individual and on whether the inam is in a Zamindari, inam or ryotwari village. The ultimate purpose is to convert all theselands into ryotwari tenure and enable persons to hold lands under pattas directly under the Government.

Then comes the problem of eliminating the middle man, the landlord and treating the tiller of the soil as the owner. As a step reliminary to this, various tenancy Acts have been passed by and under which a tenant in occupation of the land is vested with a statutory right to continue in occupation for a specified period notwithstanding any contract to the contrary. The problem is further complicated by the fact that in certain areas like the Telenganga area in the State of Andhra Pradesh, there are various categories of tenants such as protected tenants, tenants having statutory right to acquire ownership of the land, the persons who notwithstanding such liberty to acquire such ownership have not chosen to exercise that right. The Government will have to face these problems and find a workable and equitable solution. The prosperity o fthe country is in the village, but nevertheless there is a growing tendency on the part of the people in the village to migrate to towns and cities. It is perhaps as it should be if we bear in mind the fact that commerce and industry are as essential to the prosperity of the country as agrarian and rural economy is. This tendency only highlights the position that absentee landlordism would be an inevitable evil in fact, whatever the protestations might be. This is yet another matter for the legislature to seriously consider before they think of implementing what is called the 'socialistc pattern.'

In view of the express provisions in the Directive Principles of

State policy, any legislation exproprietory in character or otherwise imposing what may appear to be unreasonable restrictions may be sustained as constitutionally valid in courts of law. That is the reason why there is a much greater degree of responsibility on the part of those in authority and running the administration, to see that in the name of socialistic pattern, laws are not enacted which in actual operation retard the economic progress and well-being of the nation. This is particularly so because, the power to legislate in respect of agricultural land, including the relation of land-lord and tenant, is vested in the State Legislature and the Union Parliament cannot legislate in respect of these matters. Instead of each Government having its own policy according to its complexion and predelictiions, it is eminently desirable that there should be a uniform policy adopted throughout the country. Otherwise, a situation may arise in which the Constitution will have to be amended by transferring these and kindred items into the concurrent list or giving exclusive power to the Union Parliament in respect of these matters.

One radical point of view must be borne in mind in dealing with this all important and crucial problem. That is this: Ultimately it is neither legislation nor amendment of the Constitution from time to time to protect such legislation that can achieve the purpose. What is really important and effectual from a pragmatic point of view is that the people in general must themselves develop an enlightened social conscience, become politically and conomically educated, realize that self-interest is intimately bound up with national well-being and evolve a new outlook, and a new approach. It is only then that any beneficient legislation can really be implemented. One may add that once such a consciousness and conscience are evolved even legislation may not be necessary except to regulate, consolidate and co-ordinate the various integrated activities and to prevent a rigid and strict insistence on property rights of individual and thereby secure a non-interference from the judiciary; but if the people in general remain in a state of apathy, indifference or ignorance, not all the enactments passed can bring about the desired results. This is particularly so in the case of a nascent democracy like ours where the real and difficult problem is to keep pace with world forces of world progress and at the same time to shake off and get rid of the dead weight of the past and the unhealthy outlook and habits derived from an entirely different system of property-holding which was essentially feudal in character, from a policy of laissez-faire and too much insistence on freedom of contract. One word of caution, however, is necessary. Socialism and welfare state are no doubt very attractive ideals. But inequalities are inherent in the very constitution of men and in the ultimate analysis, human individuality cannot be sacrificed on the alter of a blind and unthinking adherence to the concept of

social justice and State control, State ownership or State activity. The history of the world movements emphasizes that all thinking men are struggling to evolve a scheme of harmony and just balance between individual liberty and personality on the one hand and collective existence and security on the other.