LAND LEGISLATION AND ITS EFFECT

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Agriculture has been the predominant occupation in India for several centuries. Even today about 70 per cent of the people in India are dependent on land for their living. Agriculture and allied activities account for nearly a half of the country's national income.

I. Original Right of Ownership

The right of the agriculturist or the tiller of the soil in the land in his possession in ancient times has been the subject of considerable debate and difference of opinion. The predominant and the more generally accepted view is that in ancient India the tenant was regarded as the absolute owner. It is stated by Manu that the sages opined that cultivated land belongs to him who cleared and tilled it. There are passages in other ancient texts which lend support to this view. The right of the sovereign was only to collect a share of the produce for protecting the life, liberty and property of the people under hih charge and not a sproprietor of the soil. Even after the advent of the British rule this view was accepted by Lord Lyndhurst in *Facemann v. Fairlie*[1] and by Lord Romilly in a later case.[2] In *Survanarayana* v. *Pottanna*[3] a different note was struck by the Privy Council which observed that the soil vested in the rulers and sought to rely on the preamble to Reg. 31 of 1802 in support of their conclusion. Apparently Their Lordships were influenced by the notion of property in England and the concept of English Law that the soil belonged to the Crown. Reg. 31 of 1802 did not intend to and could not confer upon the Government any title which did not then exist. Even though the British Government proceeded on the assumption that the land belonged to the State, it became its policy to allow all lands to become private property. In the despatch of Lord Wellesley it was intimated that it could never be desirable, that the Government should itself act as the proprietor of the lands and collect the rents from the cultivators of the soil. Thus the Government claimed revenue not as rent but only as a tax.

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1. 1 M.I.A. 305, 343.

2. *Gurga Gobind Mungal* v. *The Collector of Twenty four Pergunnahs* 11 M.I.A. 345, 362.

3. 41 M. 1012.

II. Introduction of Intermediaries

Before this change in the attitude however, acting on the view that it was the proprietor the Government purported to confer proprietory rights therein on the Zamindars at the time of the permanent settlement. Subsequently it was realised that the regulation had the effect of interesting with the established rights of *ryots* and regulaion IV of 1822 was passed to the effect that the prior regulations did not interfere with the actual rights of ryots. It is common knowledge that whatever may be the legal position of the Zamindars, in fact they were mere farmers of revenue from the actual tenant from whom they collected the rent and after paying the fixed peishkush to the Government retained the balance.

A considerable part of the land in this country was held on beneficial tenures known originally by the Sanskrit name *'Manyam'* and latterly by the Arabic name *'Inam'*. This system is of ancient origin. It was the custom of ancient sovereigns to grant lands revenue free or at low quit rents for various purposes—for maintenance of learned men, for charitable Institutions, for the support of temples and its servants, for service rendered or to be rendered and so on. Sometimes entire villages were granted and somtimes lesser extent of lands. This practice was followed by the Muhammedan Government, especially in providing for its relations or to reward higher rank of its officers in the military and civil departments by making grants of large tracts of lands called *Jagirs*. The British Government also followed the practice during the earlier period of its rule. Though such grants could be made only by a Sovereign the Zamindars also began to make similar grants. In case of *inams* whether granted by the Hindu or Muhammedan Sovereigns or by the British Government, the grants were made of the land itself or of the right to collect revenue. This would depend upon the terms of the grant and there was no presumption one way or the other. Again whatever might have been the strict legal position of the rights of *inamdars* in practice, in a large majority of cases the *inamdars,* especially of entire villages and *jagirdars* did not cultivate the lands which were actually cultivated by the tenants who were paying rent to the *inamdars*. However, like the Zamindars, the *inamdars* also were keeping some lands under their personal cultivation according to their convenience or leasing them out on terminable leases perhaps with an intention to resume personal cultivation whenever they chose to do so.

Practically the rest of the land other than that held on Zamindary or *Inam* tenure was held on what is now known as *ryotwari* tenure. A *ryotwari* proprietor enjoys the absolute proprietorship over the soil and can deal with or use it in any manner he likes. He, no doubt, pays revenue to the Government known as the *ryotwari* assessment which was

introduced by the British Government by which assessment was fixed at a certain rate for a certain term of years.

Thus there were broadly three classes of *ryots*—those holding under Zamindars, those holding land under *Inamdars* and those holding land directly under the Government.

III. Abolition of Intermediaries

Leaders in the struggle for the freedom of our country rightly felt that the freedom must ultimately be for the benefit of the common man, for the teeming millions of India represented largely by the Indian peasant and this freedom was meaningless unless and until their poverty and illiteracy were eradicated. They were of the opinion that the appalling poverty of the Indian peasant was largely due to the profits from the land being taken away by intermediaries who were mostly absentee landlords and did not take any interest in the land or the raising of the produce but insisted on the payment of the share of the produce. In a large majority of cases the rent payable to the intermediary was so exhorbitant that very little of the income from the land was left in the hand of the ryot. The result is the *ryot* became heavily indebted and neither had the incentive nor the means to improve the production of the land. Even during the days of the British Government several legislative measures had been enacted giving fixity of tenure to the cultivating tenant and protection from eviction and from enhancement of rent, imposing duties on the zamindar to effect improvements and to keep irrigation sources in proper repair and so on. Later legislation aimed at giving relief from indebtedness was also introduced in several parts of India. It was however, felt that the cultivating tenant, due to his poverty and illiteracy could not take advantage of such beneficial legislation and continued to be at the mercy of the intermediary. There was therefore considerable agitation that all intermediaries must be eliminatd. With this object in view, immediately after the Second World War, the Congress party which was then in power started considering the need for legislation enabling the abolition of zamindaries and other intermediaries all over India. The election manifesto of the Congress party issued in December, 1945 stated that the reform of the land system was urgently needed. Its working committee pointed out that such reform involved the removal of intermediaries between the peasant and the State and the rights of such an intermediary should be acquired on payment of equitable compensation. Earlier the Government of India Act had been passed. Section 299 of the Act recognised the individual's right to property and prohibited the enacting of any law authorising the compulsory acquisition of any land among other property unless the law provided for the payment of compensation and either fixed the amount of compensation or specifies the principles

on which and the manner in which it is to be determined. This is practically an embodiment of the English concept of private property. Section 299(1) codified the English Common Law principle that the executive could not take away private property without authority of law. Section 299(2) contained a safeguard for private property against expropriation except for a public purpose and on payment of compensation. Whaever might have been the differences of opinion as to whether the amount of compensation should be made justiciable there is no doubt that even the most radical reformers were agreed that the intermediaries whose tenures were abolished had to be paid compensation as is clear from the resolution of the Congress Working Committee. This principle of acquisition only on payment of fair and equitable compensation was also accepted by the advisory committee on fundamental rights appointed by the Constituent Assembly.

The history of agrarian reform during the last twenty years is the history of the struggle between the two concepts, viz., the effort to see that the actual tiller of the soil becomes the owner of the land he cultivates and at the same time to conform to the principle of acquiring private property only on payment of compensation. Partly because the Government was not in a position to pay the full compensation (in the sense of the market value of the property acquired) and partly because the legislators felt that the intermediaries were only in the position of farmers of revenue and did not deserve such compensation, the various measures that were introduced for the abolition of Zamindaries and other intermediaries provided compensation which could hardly be considered adequate. In Madras the device was adopted to pass an act reducing rents drastically (Act XXX of 1947) and this was followed by the Estates Abolition (Act XXVI of 1948) which provided compensation on the basis of a multiple of these rents. The result was (as was pointed out later by aggrieved parties in a number of Writ Petitions in the High Court of Madras) the compensation under the acts was so low that in some cases it amounted to less than a year's rental which the landlords were receiving before the rent reduction acts. Naturally these acts were challenged in various courts. Among the acts already passed and were being challenged were the Bihar State Management of Estates and Tenures Act XXI of 1949, and the Madras Estates Abolition Act. A bill (later to become U.P. Zamindari Abolition and Land Reforms Act) had been introduced in the U.P. Legislative Assembly on 7.7.1949. A similar bill was to be introduced in the Bihar Assembly. It was at this stage that the Draft Constitution was discussed and debated in the Constituent Assembly.

The draft maintained the requisite for payment of compensation

and at the same time sought to provide an immunity from challenge for certain specified pieces of legislation.

Shortly after the Constitution, legislation in various parts of the country was attacked in various High Courts as violating section 299 of the Government of India Act or articles 14, 19 and 31 of the Constitution. Some High Courts upheld the legislation in some States while others struck down the legislation in other States. Evidently apprehending that article 31(4) and article 31(6) may not be a sufficient answer to the attack on such legislation, the Constitution First Amendment Act 1951 was enacted with a view to eliminating all litigation past and further challenging the validity of legislation for the abolition of intermediary interests in land. Article 31B dealt with acts already passed and referred to in the 9th Schedule and article 31A dealt with acts to be passed in future. The amendment was attacked as unconstitutional but was upheld in *Shankari Prasad* v. *Union of India*.[4] The matter did not rest there. In 1955 the Constitution 6th amendment act was passed. It added other specific enactments to the 9th Schedule so as to attract the provisions of article 31B to them. It also amended article 31(2) by adding:

> No such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate.

As has been pointed out earlier, while enacting artcle 31 it was assumed by the Constitution makers that the adequacy of compensation was not normally justiciable except when there was a fraudlent exercise of the power. In *Bella Banerjee's* case[5] however it was held that the word compensation meant a just equivalent of what the owner was deprived of and the question whether compensation was provided for in that sense was a justiciable issue. The above amendment to article 31(2) by the Constitution 5th amendment act was a direct result of this decision. Another change made was to replace the word "taken possession of" by "requisition" in article 31(2) so as to restrict the necessity of paying compensation only to cases of acquisition and requisition and not in the case of any other taking or interfering with the enjoyment of property.

To summarise, the Constitution makers and the legislators were not prepared to give up the concept of the sanctity of private property and the acquisition thereof without compensation. At the same time they

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4. (1952) S.C.R. 89.

5. *State of W.B.* v. *Mrs. Bella Banerjee*, (1954) S.C.R. 558.

realised the impossibility of getting through the legislation regarding abolition of zamindaries etc., by paying full compensation. Therefore they made express provision in articles 31(2); 31(6); 31A and 31B saving such laws from being questoned in a court of law on the ground that they violated any of the fundamental rights. They had finally to bringing the 4th amendment preventing the Courts from going into the adequacy of compensation.

The abolition, while mainly aimed at the big zamindars was also directed against *Inamdars*. As pointed out earlier several of the *Inamdars* were granted whole villages and large extent of land. Except in cases of lands reserved for personal cultivation, other lands were in the possession of tenants. Though in many cases the *Inamdars* were grantees of the land itself, as a matter of actual fact it was found that they were also absentee land-lords content with collecting rent. Hence *inams* also were made the subject of abolition. Though the abolition started with whole villages in Madras and Andhra Pradesh it was slowly extended to hamlets. The definition of "estate" in article 31A was, later by the 17th amendment act, enlarged to include *Jagir* or *Inam* and in relation to any local area to have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area.

The amendment of article 31A in this manner went much further than necessary. While, so far as *inams* were concerned, the main object was to abolish major *inams*, the amendment included in the definition of "estate" any inam land with the result that any law dealing with rights even in minor *inams* was saved from attack on the ground that it violated article 31. It is well known that most of the minor *inamdars* are petty land-owners who cannot in any sense be regarded as mere intermediaries or farmers of revenue and there was no reason why they should have been brought within the purview of article 31A.

IV. Fixation of Ceilings on Holdings

Not content with the abolition of zamindaries and *inams*, the legislatures in various States turned their attention to reform systems affecting lands governed by *Ryotwari* tenure. By the abolition of zamindars and *inams*, all the lands which originally formed part of estate became assimilated to the position of ordinary *ryotwari* lands. It was however found that zamindars and *inamdars* became entitled to a *patta* in respect of large tracts of lands which were being enjoyed by them as private lands. Further even among the lands which were *ryotwari* from their inception most of them were held in large blocks by a few individuals. The Bhoodan movement started by Acharya Vinobha Bhave under which the big land-owners were to be persuaded to part with lands

in their possession and make them available for the landless did not yield appreciable results. Tenancy legislation no doubt was started in various states to give security of tenure on reduced rents to tenants in ryotwari areas. But the ultimate aim was not only to ameliorate the conditions of tenants holding lands but to make land available to the tiller of the soil who however had no land to cultivate and to effectuate a more equitable distribution of wealth, thus implementing article 39(b) and (c) of Constitution dealing with directive principles of State policy, namely to ensure—

> 39(b)—that the ownership control of the material resources of the community are so distributed as best to subserve the common good;
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> 39(c)—that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

With this object in view legislation fixing ceilings on holdings was enacted in almost all the States. These enactments were again attacked as unconstitutional and in some cases were struck down by the High Courts concerned or by the Supreme Court. Being confronted with the prospect of failure of the avowed policy of fixing ceilings and introducing other reforms in regard to *ryotwari* areas, the Constitution 17th amendment was enacted inspite of considerable oppositon witihn and outside the ruling party. Under this amendment the *ryotwari* areas were also brought within the expression of "estate" in article 31-A. Thus any legislation dealing with acquistition of rights in *Ryotwari* areas was saved from being challenged in a Court of law on the ground that it violated articles 14, 19 and 31 of the Constitution. The net result ot the various amendments culminating in 17th amendment is that the most important safeguards of rights of property of any individual namely, those contained in articles 19 and 31 and the equal protection clause is not available to millions of persons owing lands. While the Constitution makers, as a matter of just compromise between the intermediaries on the one hand and the tenants on the other, made provision to save certain important zamindari abolition acts from attack and at the same time provided that the intermediaries were entitled to fair and reasonable compensation, the position now is that the saving from attack from unconstitutionality has been extended to fields not forming part of the 'compromise.' At the same time the right to receive fair and equitable compensation has been practically takn away by stating that the adequacy is not justiciable and leaving the quantum of compensation to the mercy of the legislature. Thus under the pretext of agrarian reform considerable inroads have been made into the concept of private property so far as agricultural lands are concerned not contemplated by the framers of the Constitution. Another disconcerting trend in the various constitutional amendments is

to add periodically to the list of enactments in the 9th Schedule protected from attack under article 31B. While the 9th Schedule started with 13 acts, the list was increased to 20 by the 5th amendment and no less than 44 acts were added to the list by the 17th amendment of the Constitution. This practice of conferring immunity on Acts passed by the Legislatures puts a premium on drastic legislation affecting rights of people so long as the party in power is assured of a requisite majority. While it is necessary and expedient to resort to constitution amendment at times to keep pace with the wind of change the powers of constitutional amendment ought not to be used for the purpose of validating State Legislations which do not conform to the requirements of the Constitution.

V. The Effect

The question which has to be considered is whether the agrarian reforms which were effected at such great sacrifice of the fundamental principle underlying our Constitution, namely, that the right of property of any individual is sacrosanct, have really benefited the community. Even if there has been a serious inroad into right of property, it would have been some consolation if the common man had been benefited by such legislation. While the Zamindars, *Inamdars* and *Jagirdars* were deprived of their properties, the lands in the estates became vested in petty *ryots* in small perties, the lands in the estates became vested in petty *ryots* in small holdings not capable of being cultivated economically. Carefully planned partitions and alienations enabled the bigger *patadars* to divide the lands so as to escape the effect of the ceiling Acts. The *ryotwari* holdings also were thereafter held in fragments by several persons. The surplus if any that resulted after the application of the ceiling act were again intended to be distributed among political sufferers and landless poor. As there are no principles for—guidance in the ceilings acts in the matter of distribution of surplus, the machinery of the act is being used in many cases by the persons in power as a means of extending patronage to their supporters and not to enuine needy tillers of the soil. While the attempt to recompense political suffers was laudable several of them were not agriculturists interested in cultivating the land. In effect this being a grant of land, the grantees did not differ materially from the *inamdars* of old as they were also absentee landlords. Thus the main result of the agrarian reforms has been the fragmentation of holdings and the re-introduction of a new class of absentee landlords. The fragmentation of holdings and vesting the lands in persons who are unable to invest capital for the purpose, has resulted in diminution of production. For instance small uneconomic holdings are not suited for the use of modern implements like tractors which if used in case of large tracts of

lands will increase the yield and diminish the cost of production. A half hearted attempt has been made to introduce and encourage co-operative farming but it is common knowledge that it has ended in failure and has virtually been abandoned.

The economic condition of the *ryot* remains the same and has not improved. On the other hand he is still burdened with heavy taxes and the revenue now collected by the Government is much higher than the rents he was paying to the zamindar or the *Inamdar* on the reduced scale as per the rent reduction acts. Unless the land revenue is abolished as contemplated by the Madras Government the tiller of the soil would be in a worse position than he was the Zamindar or the *Inamdar*. The real reform therefore does not consist in depriving certain persons of the ownership and parcelling out the property to others but in creating conditions for the *ryot* to produce more, earn more and increase his standard of living.

It is not just to lay the blame for this state of affairs on the Courts of this country. As long as the constitution declared the right of every citizen to hold and dispose of property the courts are bound to give effect to that principle and see that no inroad is made under the guise of land reform. The true reason for this is to be found (as has been stated earlier) in the inability of the representatives of the people to make up their mind as to the attitude they should adopt—whether they should adhere to the concept of individuals right to property or to abandon the same. It appears there is no satisfactory solutition lying somewhere midway between the two concepts. If the right to property is to be recognised the only course for the legislature is to confine itself to remedial legislation which improves the conditions of the tillers of the soil, and lessen their burdens without affecting the ownership of the proprietor. The failure of the earlier enactments of such a nature was not due to the inadequacy of the protection and amenities afforded to the *ryot* but to the failure in enforcement of such principles.