TRENDS AND PROSPECTS

Dr. M. P. Jain

I. INTRODUCTION

In independent India, regulation of property rights has been undertaken by the Government on a very large scale. To have an idea of what has hapuened in this area, one has just to look at the statute book and the law reports to see how massive is the legislation enacted by the Central and State Governments; and how vast is the case-law that has accumulated around property relations during the last sixteen years. It might perhaps be true to say, as a rough generalisation, that since 1950, no single head has given rise to so much litigation between government and citizens, and between the citizens *inter se,* as the government regulation of property. Important constitutional battles have been fought in the courts on the subject of land legislation; at times, passions and emotions have risen to a high pitch; there has been an amount of bitterness between the courts and the legislatures, the role of the judiciary being criticised on the ground that it is thwarting essential land reforms by resorting to legal quibblings, and, in the process, the Constitution itself has had to be amended thrice in order to enable the government to effectuate its land policy. The most important constitutional provision which has been in the forefront in all this development is article 31; to a lesser extent, article 19(1)(f) has also been in the picture.

The great bulk of the legislation has been generated as a result of the government undertaking a thorough reconstruction of the agrarian economy through such measures as abolition of zemindaris and other intermediaries, giving security to tenants, fixing a maximum ceiling on personal holdings of agricultural land and redistributing the surplus land among the landless, consolidation of landlordings etc. This has involved a large scale uprooting of vested interests and hence there has been a good deal of case-law around agrarian reform. To a lesser extent, legislation and litigation have centred around the acquisition of land by the Government for multifarious purposes. In practically every area of land policy—whether agricultural or urban acquisition of property comes into the picture in one way or the other. This has necessitated passing of legislation for meeting various types of situations, at times laying down a summary procedure of acquisition. In both the areas, agrarian reform and acquisition, the main bone of contention has been the question of compensation to be given to one whose property has been acquired by the Government. Regulation of

land-lord-tenant relationship has been a major theme of legislation in urban property and by and large litigation in this area arises between private individuals. Another major area of government regulation has been the field of private industrial and economic sector, but by and large legal controversies in this area fall to be considered under article 19(1)(g) and so are not noted in this paper. Some reference would be made however to questions of compensation on nationalisation of private undertakings, or on taking over their managements for temporary periods which come within article 19(1)(f) and 31.

In this paper, an attempt will be made to bring in bold relief some of the major trends discernible in the area of property regulation, mainly in the sphere of Constitutional law, and to assess what prospects in this area loom large on the horizon.

II. POLICIES

Most of the 'property regulation' in the post-independence era can be explained and appreciated only when some clarification is made of the goals and perspectives which the framers of the Constitution had in view, the steps taken to effectuate these goals, and of the policies and objectives which have been adopted from time to time by the planners and policy-makers in the country.

An idea of the goals and perspectives of the framers of the Indian Constitution can be gathered by a reference to the Preamble of the Constitution, Directive Principles of State Policy, articles 36 to 51 contained in Part IV of the Constitution. The Preamble states that the Constitution is being adopted to achieve for all citizens of India 'justice, social and economic and political'. A few of the relevant directive principles are:

> The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.[1] that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;[2] that the State shall organise agriculture on modern and scientific lines.[3]

The accent of the Constitution is thus towards a welfare state. The ideal of a socialist pattern of society has not been spelled out in the Constitution, but it was adopted later. Parliament accepted in 1954, the

1. Article 38.
2. Article 39 cl. (b) and (c).
3. Article 48.

ideal of a socialist pattern of society as the goal of social and economic policy. This approach has influenced the growth of policies in the area of land as in the industrial sector.

III. Trends in Constitutional Development

A. Article 31

The effectuation of the land policy, articulated after independence, and mentioned above, did not prove to be a very smooth process. A major hurdle that came in the way of the Legislature was from the side of the Constitutional norms relating to private property as developed and interpreted by the Supreme Court during the period 1951 to 1954, with special reference to article 31. It is clear from a perusal of the cases at the time that there was a clear conflict between the values sought to be promoted by the judiciary on the one hand and the values held important by the legislature and the Executive on the other.

Various laws enacted by the State Legislatures for the abolition of zamindari were challenged in the courts, by the interests adversely affected, mainly under articles 14, 19, 31. The Patna High Court declared the Bihar Legislation to be bad under article 14[4] the Allahabad High Court, on the other hand, declared the U.P. law to be valid.[5] The matter came before the Supreme Court. Before, however, the court could give its opinion on the validity or otherwise of this legislation, Parliament became restive at the delay being caused by litigation in furthering the programme and, therefore, thought of short circuiting the judicial process by amending the Constitution in 1951. It will be noted that the amendment came within one year of the inauguration of the Constitution. A new provision, article 31A, was added to lay down that no law providing for the acquisition by the State of any estate or of any rights therein, or for extinguishing or modifying of any such rights, would be void on the ground of inconsistency with any fundamental rights. Another article 31-B, with schedule IX was added providing that the Acts mentioned in the schedule would not be deemed to be void on the ground of their taking away or abridging any of the fundamental rights. In the ninth Schedule were listed at the time 13 Acts enacted during 1948 and 1950, of these one was from Bihar, 6 from Bombay, one from Madhya Pradesh, 2 from Madras, one from U.P. and one from Hyderabad. These Acts were to be valid in spite of the fact that a court had declared any of them invalid.

Zamindari abolition having thus got under way, other steps were taken for the effectuation of agrarian land policy, e.g., putting a ceiling on the

4. *Kameshwar* v. *Bihar*, A.I.R. 1951 Pat. 91.

5. *Suryapal Singh* v. *U.P.*, A.I.R. 1951 All. 674.

extent of individual holding of the agricultural land. The inevitable consequence of putting a ceiling on the extent of individual occupation or ownership of such agricultural land was to provide for the acquisition of the excess land held over the prescribed maximum limit for distribution among the tillers of the soil. This was the next important item on the programme of agrarian reform of the ruling party. The socio-economic policies of the government were also becoming diversified and control and regulation of industries was also being envisaged on a large scale so as to discipline and re-orient the private industrial sector. In executing this programme two questions became crucial. For what type of state action should compensation be payable? Should it be paid only when a property interest was being taken over by the State for its own use or should it be payable even when the State was not acquiring anything for itself but was merely trying to regulate and control property rights and such regulation depreciated the value of the concerned property rights? Similarly, about compensation? Who should decide finally? The Legislature or the courts; The legislative decision was bound to be policy-oriented, as it would take into consideration the nature of the property being acquired, its socio-economic value and the resources of the State.

On both these questions, the courts took certain positions which went against the political thinking at that time. As regards compensation, the courts took the position that it had to be equivalent to the interest in property affected.[6] On the second question, the courts equated the words 'taken possession of' and 'acquired' in article 31(2) to 'deprivation' in article 31(1) and held that for any 'substantial deprivation' of property, compensation was payable whether or not the State was taking over the interest concerned for public use or just seeking to regulate the interest in the hands of the person concernd. The crucial question however was whether the deprivation complained of was 'substantial' or not.[7] The main thing was to decide whether in a given case government regulation led to a 'substantial' deprivation or not. This involved a value judgment by the courts—to draw a dividing line between state regulation and private property. Such questions have been handled by the courts in the U.S.A. but they have always led to many difficulties—uncertainly litigation etc. This approach could be illustrated by a case decided by the Supreme Court in 1965 but where article 31(2) as it stood before the 4th amendment was applicable. S 6(2) of the Bhopal Reclamation and Development of Lands (Eradication of Kans) Act, 1954, put a ban on the owner of Kans—infested land from possessing it till the Reclamation officer restored its possession

6. See below, Part IV *West* v. *Bella Bannerjee,* A.I.R. 1954 S.C. 170.

7. *Charanjit* v. *India,* A.I.R. 1951 S.C. 41, *Sholapur Mills'* case A.I.R. S.C. 92, 126, *West Bengal* v. *Subodh Gopal,* A.I.R. 1954 S.C. 92; *Saghir Ahmad* v. *U.P.,* A.I.R. 1954 S.C. 728, *Commr. H.R.E.* v. *Lakshmindra* A.I.R. 1954 S.C. 282.

to the owner. The court held that the possession by the Reclamation officer amounted to 'taking possession' within article 31(2) and as no provision for compensation was made, the provision was bad. Foregoing of land revenue for the duration of dispossession was not regarded as compensation in the eyes of law.[8]

From the point of view of the government, this judicial approach created many difficulties in its way of furthering its socio-economic programme. The State was required to pay compensation even if a mere regulatory law curtailed a right to property in a substantial manner without transferring it to the State. This appeared to restrict too much the capacity of the government to order the economic field, especially in the industrial field, where the Government might have to be called upon to take over managements of industrial undertakings for a temporary period or implementing its policy to abolish the managing agency system in companies. Also, by the rule that compensation should be adequate to the property being acquired, the government would have been effectively immobilised as it could not re-order the agrarian sector, by fixing of a ceiling of land-holding and redistributing the excess land among the peasants. The Central Government felt that its whole economic programme was in danger of being thwarted by these judicial attitudes. Thus the fourth amendment was undertaken in 1955 to nullify the effect of these judicial pronouncements. Through the fourth amendment, article 31(2) was amended and a new clause 31(2)A was added. Clause 31A added by the first amendment was expanded so as to lay down a few more categories of 'deprivation' of property which were now immunized from an attack under the fundamental rights under articles 14, 19 and 31. The categories of laws exempted under article 31A from challenge now extended from the field of land reform to that of industry and mining.

The fourth amendment also added a few more items to Schedule IX. Seven more acts were immunised from any attack (either past or future) on the ground of breach of any of thefundamental rights. These acts cover a wide canvass; some relate to land acquisition for rehabilitation of refugees; one relates to the field of insurance, one to railway companies; one to taking over of management of industrial undertakings under the provisions of the Industries (Development and Regulation) Act, and one is for land development and planning.

The fourth amendment did one thing more. It immunized laws creating state monopolies or nationalising any undertaking from the operation of article 301.

---

8. *Madhya Pradesh* v. *Champalal,* A.I.R. 1965 S.C. 124.

During 1955 to 1964, things went well from the government point of view so far as the regulation of property rights were concerned. The judicial review of property legislation under article 31 had been effectively curtailed by the fourth amendment. As the review of the case law during the period would show, there was no major set-back to the legislative programme in the area and the government policies were being implemented without much difficulty from the judiciary. But in 1964, the government felt that another amendment of the Constitution was called for. This was to expand the definition of the word 'estate' in article 31A so that a wide coverage of the law could become immune from challenge under articles 14, 19 and 31. The main purpose of the amendment was to include *'ryotwari'* tenure within the definition of the word 'estate', so that legislation dealing with *'ryotwari'* tenure became immune from attack under articles 14, 19 and 31.

The seventeenth amendment also added 44 new Acts passed by the various state Legislatures to Schedule IX. Thus, at present, Schedule IX consists of 64 Acts, which cannot be challenged under any fundamental rights. These acts cover an extremely wide field, *e.g.*, ceiling on agricultural holdings; abolition of certain types of tenures, acquisition of land belonging to religious and charitable endowments, fixation of rent, protection of tenants from exiction etc.

It might be of interest to note that in *Sajjan Singh* v. *Rajasthan*[9] the Supreme Court rejected a challenge to the 17th amendment that it was unconstitutional.

Compensation: Over the period since independnece, a very clear trend has been to restrict and limit the right to compensation for property acquired by the State.

The right to compensation has been drastically curtailed through various amendments of the Constitution mentioned above. By the fourth amendment of the Constitution, in article 31(2) the words 'acquisition and taking possession of' were replaced by the words 'compulsorily acquired or requisitioned'. To explain these terms, a new provision, article 31(2)A was added. It says that unless a law provides for the transfer of ownership or right to possession of any property to the State etc. 'it shall not be deemed to provide for the compulsory acquisitioning or requisitioning of property, notwithstanding that it deprives any person of his property.'

The position under article 31(2)A therefore is that deprivation of

9. A.I.R. 1965 S.C. 845. In this case, Hidayatullah and Mudholkar, C.J., raised a doubt whether fundamental rights can be amended by taking recourse to article 368. The matter is now being fully argued before the Supreme Court.

property is divided into two categories: to the first belong compulsory acquisition and requisitioning of property by the State for a public purpose which can be effected by law providing for compensation or specifying principles for it. To the second category belong all cases in which the ownership or right of possession of the property is not transferred to the State. This kind of deprivation can be effected by law and Legislature has a complete discretion in the matter whether to give comepnsation or not. Compensation is payable now only in the first case—when the ownership or possession of property in transferred to the State or a corporation owned or controlled by it. In the second case, the Legislature may give compensation if it so desires; there is no obligation on it under the Constitution. The result therefore is that no one can claim the right to compensation under article 31(2) now in a situation like the one which was presented in the *Sholapur Mills* case, or *Saghir Ahmad's* case or *Subodh Gopal's* case[9a]

The question of the quantum of compensation payable by the government for the property acquired has been one of the most controversial aspects of the Constitution of India over the years. The position in this connection may be discussed in two parts—as it obtained before 1955, and after the date. Before 1955 was it regarded that 'compensation' in article 31(2) meant just equivalant.[10]

Soon after the Bella Bannerjee case, governmental became uneasy as it thought that the judicial insistence on payment of full market value of the property acquired would place such a burden on its resources that it would throw out of the gear the socio-economic programme which it then envisaged. By the fourth amendment of the Constitution, therefore, article 31(2) was so drafted as to make the question of 'adequacy' of compensation a 'non-justiciable' matter. But as the recent judicial pronouncements have shown, it has not been possible to keep the courts completely out of this area.

Two Supreme Court cases may be mentioned here to illustrate the judicial attitude on the question of compensation. In *Vajravelu* v. *Sp. Dy. Collector*,[11] the Supreme Court pointed out that the amended article by retaining the word compensation, must be interpreted as having accepted the meaning of the expression 'compensation' and 'principles' given to them in the *Bella Bannerjee* case. Therefore, a legislature in the making a law of acquisition or requisition should provide for a 'just compensation' of what

---

9a. *Supra* note 7.

10. *State of West Bengal* v. *Bella Bannerjee*, A.I.R. 1954 S.C. 170 see also *West Ramnad Electric Distribution Co.* v. *Madras*, A.I.R. (1963) S.C. 1753. *Kamalabai* v. *Desai*, A.I.R. 1966 Bom. 37.

11. A.I.R. 1964 Sc. 1017.

the owner was being deprived of or should specify the principles for the purpose of ascertaining the 'just equivalent of what the owner was being deprived of. The principles prescribing the 'just equivalent' cannot be questioned on the ground of 'anadequacy.' If the principles laid down are not relevant to the property acquired at the time of acquisition, then courts can intervene and scrutinize the validity of the principles. This has no reference to the adequacy of the compensation but to no compensation at all.

Recently, however, the Supreme Court has declared the Metal Corporation of India (Acquisition of undertaking) Act, 1965, invalid as it did not provide for 'compensation was acquired on October 23, 1965, with a view to providing for the orderly and full development of the lead-zinc deposits at zawar and for the expeditious completion of the scheme undertaken by the company. The court struck down the Act on the ground that it did not provide for 'compensation' within the meaning of article 31(2). In clause (b) of paragraph 2 of the schedule in the Act, two principles of valuation were contained. The plant, machinery and other equipment which had not been used nnd was in good condition was to be valued at the actual cost of acquisition to the company. The used equipment was to be valued at the written down value determined in accordance with the provisions of the Income-tax Act. The court did not agree that the basis of cost-price of the unused machinery when it was acquired was relevant to the fixing of compensation at the time of nationalisation of the company; nor did the doctrine of written down value accepted in the Income-tax Act afford guidance for ascertaining compensation for the used machinery. Both the principles of compensation were thus held as not relevant to the fixing of compensation for machinery at the time the government was acquiring the same and so the Act was held as not providing for compensation within the meaning of article 31(2)[12]

The latest judicial trend to break through the shackles imposed by article 31(2) and asserting that the government cannot escape by providing shadowy compensation merely to fulfil the letter of the law, are notable developments in the constitutional jurisprudence of the country. In this era of nationalisation, this will provide a bit of much needed protection to private property. Most of the cases today relate to acquisition of industrial undertakings or urban property. It has never been the policy of the government to deny reasonable compensation in such cases.

Public Purpose: Article 31(2) as it stood before the fourth amendment did not in so many words provide that no acquisition could be made

12. *Union of India v. Metal Corporation of India,* Civil Appeal No. 1222 N of 1966.

save for a public purpose. The fourth amendment of the Constitution expressly made 'public purpose' a condition for compulsory acquisition by the State. It may however, be noted that under the Legislative entry 42 in List III the Legislature can acquire property even without a public purpose and that the only obstacle to such a law would be article 31(2). Even that obstacle would disappear if the law is one which falls within article 31A.[13]

The phrase 'public purpose' suggests public welfare and that idea has been changing in the course of time. Property taken need not be made available to the public. It may benefit only certain individuals provided they are benefited in furtherance of a scheme of public utility.[14]

Usually, the courts have taken a very liberal attitude on the question of 'public purpose' and it will be a rare case indeed where the court will hold that a purpose is not public purpose. The courts pay a good deal of deference on this matter to legislative determinations, but the ultimate power still vests in the courts.[15] A provision excluding the jurisdiction of the courts and making decision of either the Executive or the Legislature as to public purpose binding and conclusive on a court of law is ultra vires article 31(2)[16]. It is the duty of the courts to see that no acquisition or requisition of property is allowed for other than a public purpose.

Section 6(3) of the Land Acquisition Act, 1894 provides that the declaration by the State Government of the existence of the public purpose for land acquisition "shall be conclusive evidence that the land is needed for public purpose." This section would have been ultra vires article 31(2) had it not been for the fact that its validity is saved by article 31(5)(a).[17]

Under the Land Acquisition Act, land can be acquired for (a) public purpose, (b) for a company when it is for a public purpose, and compensation is payable wholly or partly out of the public revenues. This pro-

---

13. *Bihar* v. *Rameshwar Pratap,* A.I.R. 1961 S.C. 1649.

14. *Thambiran* v. *Madras,* A.I.R. 1952 Mad. 756; *Gundachar* v. *Madras,* A.I.R. 1953 Mad. 537; *Moosa* v. *Kerela,* A.I.R. 1960 Ker. 96; *Province of Bombay* v. *Khusaldas Advani,* A.I.R. 1950 S.C. 222; *Kamalamma* v. *State,* A.I.R. 1960 Ker. 321; *Jhandulal* v. *Punjab;* A.I.R. 1959 Punj. 535; *Vajrapura Naidu* v. New *Theatre Talkies,* A.I.R. 1960 Mad. 108. *Jain, Indian Constitutional Law,* 489 (1962).

15. See, on this question, generally, J. Narain, "The concept of Public Purpose in article 31(2) of the Constitution of India, 6 *J.I.L.I.* 17'.

16. *Kamalamma* v. *State,* A.I.R. 1960 Ker. 321.

17. *Brij Nath* v. *U.P.,* A.I.R. 1953 All. 182; *Lilavati* v. *Bombay,* A.I.R. 1957 S.C. 521; *Arjan Singh* v. *Punjab,* A.I.R. 1959 Punj. 538; *Barkya Thakur* v. *Bombay,* A.I.R. 1960 S.C. 1203; *Jhandu Lal* v. *Punjab,* A.I.R. 1961 S.C. 343.

vision came in question in Somawanti v. State of Punjab,[18] where the petitioner's land was requisitioned to enable the respondent to errect a refrigeration plant thereon. The petitioner—the owner of the land—was about to start a paper factory for which he had obtained a licence when his land was requisitioned. The Government contributed a sum of Rs. 100 only towards the total compensation of about Rs. 4,50,000 payable to the petitioner for the land. The Supreme Court held that Section 6(3) of the Land Acquisition Act completely barred judicial review of 'public purpose' of an acquisition except when it was colourable. A declaration by the State that a particular land was needed for a public purpose, made conclusive by the Land Acquisition Act, did not infringe the Constitution as it was saved as noted above and article 19(1)(f) was not attracted as was decided by the Supreme Court in *Bhanji Munji's* case[19]

The clause in the Land Acquisition Act authorising the Government to acquire land for companies when compensation is wholly payable by the company concerned[20] was called in question in *R. L. Arora* v. *U.P.*[21] The Supreme Court felt that the legislature could not have intended that individuals should be compelled to part with their lands for private profit of others, who might be owners of companies, through the companies simply because the company might produce goods which would be useful to the public. The court thus held that the particular work for the construction of which the land is sought to be acquired must itself be useful to the public directly.

The view propounded by the majority in the *Arora* case was not palatable to the government which wanted to have broad powers to acquire land in view of the increasing industrialisation in the country. Therefore, to override the interpretation given by the court, the Land Acquisition Act was amended and a new clause (a) was inserted after the original provision.[22] In *R. L. Arora* v. *State of U.P.*[23] again the amended clause

18. A.I.R. 1963 S.C. 151.

19. *Bombay* v. *Bhanji Munji* A.I.R. 1955 S.C. 41.

20. The relevant provision is S. 41(1)(b) under which land could be acquired for a company when it is needed for erection of dwelling houses for workers employed by the company, or when such acquisition is needed for construction of a work which is 'likely to prove useful to the public'. The company concerned is to enter into an agreement with the government to provide for payment to the government of the cost of acquisition and to lay down the terms on which the public can use the work to be executed.

21. A.I.R. 1962 S.C. 764.

22. The newly added clause runs: "That such acquisition is needed for the construction of some building or wor kfor a company which is engaged ro is taking steps for engaging itself in any industry or work which is for a public purpose."

23. A.I.R. 1964 S.C. 1230.

came into question. It was argued that under the amended clause the company for which acquisition was sought to be made should be engaged in any industry or work which was for a public purpose. In such a case, it was possible to acquire land under this clause even though the particular building or work for the construction of which land was being acquired might not be for a public purpose and this amounted to a contravention of articles 31(2) and 19(1)(f) as such acquisition would amount to an unreasonable restriction on the fundamental right to hold property.

For that purpose the petitioner laid emphasis on the literal interpretation of the clause. But the argument was brushed aside by the majority on the ground that keeping in view the setting under which the legislature amended the provision, literal construction was not possible.

Interpretation should be such as to conform to the intention of the legislature, i.e., the building or work which is to be constructed must be such as to subserve the public purpose of the industry or work in which the company is engaged or about to be engaged.

The case of *Somawanti* reveals once more the unsatisfactory state of law regarding land acquisition. The distinction drawn by the Land Acquisition Act between 'acquisition for a public purpose' and 'acquisition for a company' has been largely obliterated by the instant case, for here even though the purpose was to establish a factory as a private venture and the compensation was to be paid by the company, the court nevertheless held that the 'acquisition was for a public purpose, 'merely because a token payment of Rs. 100/- was being made by the State. Thus, it is quite possible to convert an acquisition for a company into an acquisition for a public purpose by the simple expedient of the State making a token payment towards compensation payable for the land acquired.

There is enormous economic activity going on in the country needing vast state acquisition and thus opportunity for wrong use of power has enormously increased. The law is an anachronism in the modern times when it is kept alive in the face of article 31(2).

B. Article 31A

By article 31(4) and 31(6), it was declared that provisions of article 31(2) would not apply to a law pending in the form of a bill in a State Legislature at the commencement of the Constitution, and also to laws enacted within eighteen months before the Constitution came into force, subject to presidential assent or certification.

As things developed, however, these provisions did not prove sufficient to keep the land legislation immune from challenge in the courts.

Articles 31(4) and (6) saved this legislation from contravention of article 31(2), but did not do so from a challenge under any other provisions of the Constitution, especially the fundamental rights under articles 14 and 19(1)(f). The point was settled at the High Court level in *Kameshwar Singh's* case.[24] The Bihar Land Reforms Act, 1950, provided for the transfer to the State of Bihar of the interests of the proprietors and tenure-holders in land, and of mortgages and leases of such interests including interest in trees, forests, fisheries, ferries, huts, etc. Compensation to the expropriated landowners was to be paid not on a uniform basis, but on a basis varying between 3 to 20 times the net income. The court found that the Act was bad under article 14 on the ground that the classification of the zamindars for the purpose of payment of compensation was discriminatory. This was sufficient to throw into confusion the projected programme of land reform. Therefore, through constitutional amendments two new articles, 31A and 31B, were added.

Clause (1) of article 31A as it came to be after the fourth amendment protects from the operation of articles 14, 19 and 31 a law providing for—certain matters enumarated therein. A law made by a State with respect to any of these matters would be immune only if it secures the assent of the President. It would be seen that the immunity granted by article 31A is much wider than that granted by articles 31(4) and (6); under 31A, law is immune from challenge under articles 14, 19 and 31, while not under articles 31(4) and (6), the immunity extended only from article 31(2), i.e. from the conditions of compensation or public purpose.

Article 31A(1)(a) seeks to protect law dealing with agrarian reform; clause (b) seeks to protect the state from a claim of compensation in a situation like the *Sholapur Mills* case.[25] Clauses (c) and (d) were thought necessary to save a number of reforms being introduced in the company law; clause (e) was felt necessary so that the government could exercise full control over the mineral and oil resources of the country[26]

Article 31A(1)(a) has been the most active and has been invoked in a very large number of cases. The word 'estate' therein, as explained in article 31A(2)(a) has the same meaning as is given to it by a local law. As the connotation of the word 'estate' was not uniform throughout the country, but differed from place to place, one uniform definition of

---

24. *Supra* note 4.

25. See, *Municipal Corp., Amritsar* v. *Punjab,* A.I.R. 1966 Punj. 232. State taking over management of municipal schools alongwith property etc. for 10 years held protected under article 31A(1)(b).

26. *Barrakur Coal Co.* v. *India,* A.I.R. 1961 S.C. 954.

the term would not have sufficed and so the term was so defined as to bring within it all variety of definitions prevailing in the country. Thus to define 'estate', we have to look to the local law and the definition so given has to be adopted for the provision in the Constitution. To make it still broader, it has been laid down that if in any area the term 'estate' is not defined then its 'local equivalent' would be included in it.

As larger and larger volume of legislation has been enacted dealing with acquisition or modification of rights in agricultural land, article 31A (1)(a) has been invoked more and more to seek immunity for the legislation from challenge under articles 14, 19 and 31. The result has been that in a large number of cases the courts have found themselves debarred from assessing the validity of tenancy legislation even though containing very drastic provisions. A few examples would illustrate this. The Bombay Personal Inams Abolition Act, 1953, was held protected even though it extinguished all *inams* and subjected all *inam* lands to payment of land revenue without providing any compensation for extinction of certain rights.[27] The Bombay Tenancy and Agricultural Lands Act, 1956, passed the title to the land, which vested originally in the landlords, to the tenants on a fixed day, who were regarded as having purchased it compulsorily. The law, it was held, provided for extinguishment of rights in estates and so was protected under article 31(1)(a).[28]

This article protects an Act even if its provisions are confiscatory as well as discriminatory. It gives a complete answer to any challenge under articles 14, 19 and 31. In the *Kochuni* case,[29] however, the Supreme Court has held that the purpose of this provision was to bring about a change in the agricultural economy, and facilitate agrarian reforms and it was therefore, to be applied to legislation affecting the rights of landlords and tenants. It was not applicable to a legislation seeking to modify the rights of the owner without reference to the law of land tenures, so as for example, to regulate *inter se* of the rights of a proprietor in his estate and the junior members of the family. Article 31A(1)(a) does not enable the State to divest a proprietor of his estate and vest it in another without reference to any agrarian reform.

Doubt was thrown on this view by the Supreme Court in *Ranjit Singh* v. *State of Punjab*.[30] Here portions of land commonly owned by

---

27. *Gangadhar Rao* v. *Bombay*, A.I.R. 1961 S.C. 288.

28. *Sri Ram Narain* v. *Bombay*, A.I.R. 1959 S.C. 459.

See also *Atma Ram* v. *Punjab*, A.I.R. 1959 S.C. 519, *Raghubir Singh* v. *Ajmer*, A.I.R. 1953 S.C. 373, *Gajapati* v. *Orissa*, A.I.R. 1953 S.C. 375.

29. *K. Kochuni* v. *State of Madras and Kerala* A.I.R. 1960 S.C. 1080.

30. A.I.R. 1965 S.C. 632.

the proprietors had been reserved for the village panchayat and given over to it for diverse purposes and other portions were reserved either for non-proprietors or for the common purposes of the villages. The Supreme Court refused to apply the *Kochuni* case to decide the validity of the Act in question and held it covered by article 31A(1)(a). The court emphasised that the scheme of rural development at the present time involved not only equitable distribution of land so that there was no undue imbalance in society resulting in a landless class, on the one hand, and the concentration of land in the hands of a few, on the other, but envisaged also the raising of economic standards and bettering rural health and social conditions.

What the Supreme Court said about the *Kochuni* case in the *Ranjit Singh* case came to be reviewed by Subba Rao J.,as he then was who had earlier delivered the opinion in the *Kochuni* case. In *Vajravelu* v. *Sp. Dy. Collector*[31] certain agricultural land on the fringe of Madras city was sought to be acquired with a view of slum clearance within the city. This was sought to be done under the Land Acquisition (Madras Amendment) Act, 1961. The question was whether the validity of the Act could be adjudged under articles 14 and 31(2) and that depended on the question whether or not the Act was protected under article 31(1)(a). Thus the Court was inevtably drawn to a consideration of the observations made in the *Ranjit Singh* case regarding the *Kochuni* csae. Subba Rao J., as he then was, held that *Ranjit Singh's* case accepts the view that article 31A was enacted only to implement agrarian reform, but has given a comprehensive meaning to the expression 'agrarian reform' so as to include provisions made for the development of rural economy. He emphasised that the object of agrarian reform was implicit in article 31A(1)(a). If the State were enable to acquire the lands of citizens without reference to any agrarian reform in derogation of their fundamental rights without payment of compensation, article 31(2) would be deprived practically of its content. If Parliament had wanted to make article 31(2) a dead letter, it would have clearly expressed its intention. Therefore, article 31A(1)(a) would apply only to a law made for agrarian reform. Slum clearance in the city cannot be regarded as agrarian reform in any sense of the term. But the Act in question refers not only to slum clearance but to housing schemes as well as creation of modern suburbs which do not refer to agrarian reform at all. The Act in question was thus not saved by article 31A(1)(a).

An interesting point which arose before the 17th amendment, was whether *ryotwari* tenures would be included within the term estate in article

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

31A(1)(a). In *Purushotaman* v. *State of Kerala*,[32] the majority took the view that a *ryotwari* tenure would be covered within the 'local equivalent' of estate as the latter term was not defined by the local law. In *K. Konhikonam* v. *State of Kerala*,[33] the same question was considered with respect to that portion of Kerala which had come to it from Madras after States Reorganisation in 1956. In this area, the existing law, the Madras Estates Land Act, 1908 so defined the term 'estate' as to exclude the *ryotwari* tenure. Therefore, the Kerala Agrarian Relations Act, in so far as it sought to acquire *ryotwari* land, was not protected by article 31A(1)(a) and could be challenged under article 14. The court further held that the scheme of giving compensation on a *graduated* basis, less to the holder of longer property, was discriminatory. In this connecton the court specfically approved the principle laid down by the Patna High Court in *Kameshwar Singh* v. *Bihar*.[34]

These were very inconvenient decisions as they come in the way of agrarian reform in a part of Kerala and Madras. To set matters right, the 17th amendment adopted in 1964 added the word *ryotwari* settlement in clause 31A(2(a). Also, within the term 'estate' was included 'any land held or let for purposes of agriculture or for purposes ancillary thereto'. The definition of term 'estate' has therefore been made very broad and so practically the entire corpus of agrarian land legislation would now be protected from challenge under articles 14, 19 and 31. However, one limitation has also been imposed, *viz.*, land under personal cultivation upto the ceiling fixed would not be acquired unless the law provides for compensation at the market value. The fact therefore remains that by the process of amending the Constitution, a very rigorous restriction has been placed on the right to claim compensation for agricultural property acquired by the State. In three cases, *Kaweshwar Singh's, Kunhi Koman's* and *Krishnaswami's* the scheme of compensation was declared to be discriminatory but in all cases, the Acts were sought to be validated by the process of constitutional amendment.

C. *Articles* 19(1)(*f*) and 19(5)

There have been several discernible trends in the interpretation of 19(1)(f) read with article 19(5). To begin with, the courts started with taking a very restrictive view of the term 'property' in the constitutional provision. Ordinarily, the word 'property' is a term of wide import and is indicative and descriptive of every possible interest which a person can

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

33. A.I.R. 1962 S.C. 723.

34. A.I.R. 1951 Pat. 91. See also *Krishnaswami* v. *Madras* A.I.R. 1964 S.C. 1515.

have. Not only the thing which is the subject matter of ownership but even dominium or the right of ownership, possession etc. fall within the scope of the term. As against this broad connotation of the term 'property', the judiciary sought to limit its import with a view to restrict the guarantee under article 19(1)(f). In the earliest Supreme Court case, *Chiranjit Lal* v. *Union of India*,[35] the right of voting enjoyed by the shareholders of a company, or their right to select the directors, or their right to pass resolutions, or institute winding up proceedings, was held as not 'property.'

In *West Bengal* v. *Subodh Gopal*,[36] Sastri, C.J., propounded the theory that article 19(1)(f) dealt only with the natural rights inherent in a citizen to acquire, hold, dispose of property in the abstract without reference to rights to any particular property.

In course of time, the court, has, to some extent, moved away from these restrictive interpretations of the word 'property'. In *Subodh Gopal's* case, Jagannadh Das, J., had protested against the view taken by Sastri C.J. He stated there that to construe article 19(1)(f) as not referring to concrete property rights would enable the legislature to impose unreasonable restrictions on the enjoyment of concrete property interests. In *Dwarka* v. *Sholapur Mills*[37] Das J., held that the mills, machinery, stocks etc. were property as also contract or agreement which a person might have with another. In *Commissioner, H.R.E.* v. *Lakshmindra*,[38] the Supreme Court observed that there was no reason why the word 'property' as used in article 19(1)(f) should not be given a liberal and wide connotation and should not be extended to those well recognized types of interest which have the insignia or characteristics of proprietary rights.

Another interesting development with respect to article 19(1)(f) has been the varying judicial attitudes towards its inter-relationship with article 31. Initially, the judicial attitude was that article 19(1)(f) did not apply to a law depriving, as distinguished from restrictnig, a citizen of his property. In *Bombay* v. *Bhanji Munji*,[39] the Supreme Court held that article 19(1)(f) 'postulates the existence of property which can be enjoyed and over which rights can be exercised' because otherwise the reasonable restrictions contemplated by article 19(5) could not be brought into play. But this view underwent a change and in the *Kochuni* case[40] it was over

35. A.I.R. 1951 S.C. 41.
36. 9.I.R. 1952 S.C. 92.
37. 9.I.R. 1964 S.C. 119.
38. A.I.R. 1964 S.C. 282.
39. A.I.R. 1955 S.C. 41.
40. *Supra* note 29.

ruled. This change was due to amendment of article 31(2) by the fourth amendment of the Constitution.

By the fourth amendment of the Constitution, much of the efficiency of article 31 was watered down and the *Kochuni* case, and the judicial view propounded therein is a consequence thereof. The advantage of this judicial view is that the reasonableness of a law depriving a citizen of his property can now be adjudged under article 19(5) as was done in the *Kochuni* case. It might also be of interest to note that the Supreme Court has also come to hold the view that 'restriction' in article 19(5) would include prohibition as well.[41]

Generally speaking, article 19(1)(f) has not proved to be much of a hindrance in the way of the Government programme regarding land reforms and regulation of property interests. Courts have characterised as 'reasonable' a very drastic reordering of the agrarian economy which shows that the courts themselves have assimilated and imbibed, and been influenced by, the prevailing economic philosophy. Any number of cases can be cited in support of this statement. Thus legislation controlling accommodation and rents in urban areas has been held to be valid on the ground of shortage of accommodation.[42] Several laws regulating the relationship between landlord and tenants, or restricting the landlord's right to eject tenants, or regulating the rent to be charged by the landlords have been declared to be constitutional.[43] The fundamental right, it has been held, only imports a right to recover reasonable rent from cultivators and therefore a law whose object is to fix fair and reasonable rent cannot be said to invade that right[44] In addition, the Supreme Court has held that article 19 does not apply to corporations as they are not envisaged to be citizens.[45]

The one important case in which article 19(1)(f) came alive was the *Kochuni* case. The legislation making *sthanam* property as *tarwad* property was characterised as a legislative device to take property of one and vest it in another without compensation and so was held to be unreasonable. The article has also been used by the courts to hold the law

---

41. *Narendra Kumar* v. *Union of India*, A.I.R. 1960 S.C. 430.

42. *Ishwar Pd.* v. *Sen*, A.I.R. 1952 Cal. 273; *Prem* v. *U.P., Coop. Bank*, A.I.R. 1953 All. 51.

43. *Indar Singh* v. *Rajasthan*, A.I.R. 1957 S.C. 511; *Kishan* v. *Rajasthan*, A.I.R. 1955 S.C. 795; *Madras* v. *Kannepali*, A.I.R. 1962 S.C. 1687; *Vasantlal Maganbhai Sanjanneala* v. *Bombay* A.I.R. 1962 S.C. 4.

44. *Kishan* v. *Rajasthan*, A.I.R. 1955 S.C. 795. See *Madras* v. *Kannepali*, A.I.R. 1962 S.C. 1687.

45. *STC* v. *CTO*, A.I.R. 1963 S.C. 1811; *Tata Engineering* v. *Bihar*,

of pre-emption to be bad in several respects. A significant use of the article is however made in enforcing certain procedural norms in exercising administrative powers relating to property, a subject discussed below.

In *Bhau Ram* v. *Baij Nath*,[45a] the Supreme Court held the law of pre-meption on the ground of vicinage with respect to urban property as unreasonable. The Court stated that it raised litigation and was not in the interest of the general public. The ruling in the *Bhau Ram's* case had a limited scope as it applied only to urban property and not to agricultural property; also, it outlawed pre-emption merely on the ground of vicinage and not on any other ground like that of a common staircase or entrance between properties. In *Ramsarop* v. *Munshi*,[46] right of pre-emption in respect of agricultural land in favour of son or brother against a sale by father or brother was held to be reasonable. As yet, the Supreme Court has not ruled definitely whether pre-emption on the ground of vicinage in respect of agricultural land would be good or bad, but there appears a strong probability that it would be sustained as it avoids fragmenation of holdings and leads to consolidation of agricultural land, a policy which is being promoted at present.

An interesting use made of article 19(1)(f) is to enforce some procedural (and at times even substantive) norms on the exercise of administrative power relating to private property. Speaking generally, it may be said that the courts have not taken kindly to conferment of absolute discretion on administrative officers uncabined by procedural safeguards like the right of hearing to the person whose property interest is sought to be affected. A number of cases may be cited to illustrate this thesis.[47]

In order to protect religious endowments from frittering away their resources on activities other than those envisaged by the objectives of the endowment, several States have undertaken to impose government regulation and supervision on the working of Hindu religious endowments. Apart from the problems which such regulation raises under articles 25 and 26, problems of maintaining due procedure in exercise of administrative powers have been looked into by the courts under article 19(1)(f).[48] In the area of religious endowment, it might be correct to

---

45. A.I.R. 1962 S.C. 1476.

46. A.I.R. 1963 S.C. 553.

47. See *Raghubir* v. *Court of Words*, A.I.R. 1953 S.C. 373.

47. See *Raghubir* v. *Court of Words*, A.I.R. 1953 S.C. 373. *Bombay Corp.* v. *Pancham*, A.I.R. 1965 S.C. 1008.

48. *Jagannath* v. *Orissa*, A.I.R. 1954 S.C. 400. *Commr. H.R.E.* v. *Lakshmindra*, A.I.R. 1954 S.C. 282.

say that the courts have been careful to see that undue powers are not conferred on administrative officers and that they should function under judicial supervision.[49]

D. Article 14

Through articles 31-A and 31-B, operation of article 14 has been eliminated from a large segment of property legislation. It is only in a very few cases that the courts find their way to adjudge, legislation under article 14.[50] One important trend noticeable in the cases is that the courts do not like classification of those who have been deprived of their property in such a way as to reduce the amount of compensation without very strong justification. Two such discriminations have been held bad. One to give a graduated scale of compensation reducing with the increasing quantum of property acquired. The ruling of the Patna High Court on this point in the *Kameshwar Singh* case has been specifically approved by the Supreme Court in the *Kunhikonam* case.[51]

Then in the *Vajravelu* case,[52] distinction made between those whose land was acquired for housing purposes and those whose land was acquired for any other public purpose, and to pay the former less compensation than the latter was held to be discriminatory. Another interesting case in which article 14 was invoked to invalidate a land tax is *K. Moopil Nair* v. *Kerala*.[53]

IV. Concluding Remarks

The developments around property relations in India, and the action and interaction which have been produced between the legislative and judicial procsses as a result thereof, may be regarded as forming a very fascinating chapter in the Indian Constitutional development during the last 16 years.

The three constitutional amendments noted earlier in the paper have always remained a subject of controversy. It is, however, difficult to say that these were completely unjustified and unwarranted. It would not have been possible for the government to implement the programme of

---

49. *Sadasib Prakash* v. *Orissa*, A.I.R. 1956 S.C. 432; Koti Das v. Sahi, A.I.R. 1950, S.C. 942; *Bihar* v. *Bhabapritananda*, A.I.R. 1959 S.C. 1073.

50. See *Swami Motor Transport* v. *Sri Sankara Swanigal Muth* A.I.R. 1963 S.C. 864. *Kunhikonam* v. *State of Kerala* A.I.R. 1962 S.C. 723 *Krishnaswami* v. *Madras* A.I.R. 1961 S.C. 1515.

51. *Supra* notes 33 and 34.

52. *Supra* note 11.

53. A.I.R. 1961 S.C. 552.

land reforms had article 31 remained as it originally stood under the Constitution in 1950. But, even accepting the need for some modifications in article 31, one could still argue that the amendments went too far. Article 31B with schedule IX has however the least justification, for the State Acts have been made immune from judicial review without any critical examination of the principles and policies underlying them. The technique of constitutional amendment should be to lay down broad principles and policies underlying them. The technique of constitutional amendment should be to lay down broad principles and then leave the courts free to work out their implications. On this view, while the need for article 31A may be accepted, article 31B & schedule IX cannot be justified.

The three constitutional amendments, coupled with a broad judicial interpretation of article 31A(1)(a), and the import of the concept of social justice to give a wider connotation to the expression 'agrarian reform' have given more than adequate powers to the legislatures to introduce and implement agrarian reform programme. The Supreme Court has specifically referred to social justice as the basis of aggrarian reforms and emphasized that this aspect of the matter cannot be ignored.[54]

But if, in spite of this, deficiencies exist in the formulation and implementation of policies of agrarian reform, and if the full programme of agricultural land-reform has not been executed yet, it is not because of any legal quibbles or constitutional hurdles or legal incapacity of the legislatures to do the right; the blame must be laid clearly and squarely at the doors of the State Legislation, and the Executive for lack of will and faulty implementation of the legislation already enacted.

In spite of the efforts made through constitutional amendments to exclude judicial review from the area of property legislation, and especially from the area of compensation, it has not been possible to achieve the objective completely. On the other hand, recent trends show that the courts are anxious to make their presence felt in this area more and more. Thus, the *Kochuni* and other cases, by linking article 19(1)(f) with article 31, have achieved the significant result that the law depriving a person of his property has to satisfy the test of 'reasonableness.[55] Another fascinating development in the sphere of judicial process is typified by such

54. *Vasantlal* v. *Bombay* A.I.R. 1962 S.C. 4 reiterated in *Swamiji* v. *Mysore* A.I.R. 1966 S.C. 1178. Also *Vajravedu* and *Ranjit Singh* cases *Supra* notes 30 and 31. In *Sajjan Singh's* case *Supra* note 9, the Supreme Court referred to the policy of agrarian reform adopted by the ruling party in order to ascertain the pith and substance of the 17th amendment. It held that it was validly enacted as it did not effect article 226. Hence the consent of the States was not needed.

55. *Supra* note 40.

cases as *Vajravelu* and *Metal Corporation* in which the Supreme Court has retrieved some lost ground on the question of compensation. It may however be emphasized that this judicial approach in no way creates the danger of jeopardising the legislation concerning agrarian reforms, for article 31A(1)(a), as interpreted by the courts, exempts such legislation from attack based on articles 14, 19 and 31. The new judicial approach becomes meaningful only in that limited area which is left uncovered by article 31A and 31B, which means acquisition of industrial undertakings, urban property etc. It may also be noted that the fact that the Supreme Court has confined article 31A(1)(a) to matters of agrarian reforms only, is also a welcome development from the point of view of property rights, for those measures which have no relevance to agrarian reform may still be challenged under articles 14, 19 and 31.

At times, it is loosely stated that the Indian Constitution, as it stands at present, gives practically no protection to private property rights. But the trends reviewed in this paper would show that nothing is farther from the truth. The linking of articles 19(1)(f) with article 31, the purposive interpretation of article 31A(1)(a) *i.e.* on the one hand, restricting it to agrarian reforms, and, on the other, giving it a very broad interpretation in that area—and the newly emerging judicial attitude in matters of compensation as revealed by the *Metal Corporation* case, would amply show that there is a good measure of constitutional protection still available to private property interests, at least in the spheres falling out of articles 31A and 31B, and this constitutes quite an important segment of private property in the country.

The practical application to factual situations of the principles regarding compensation evolved by the Supreme Court in the *Vajravelu* and *Metals Corporations* cases, is not going to be an easy matter. There is going to be a lot of confusion, and, consequently, one may look forward to a good deal of case-law, on the point whether compensation provided for under an article is 'illusory' or 'inadequate'. The case of *Guir Nitay Tea Co.* v. *Assam*[56] shows the type of difficulties bound to arise on this question. In this case, ten times the annual land revenue on fallow or uncultivated land as compensation for property acquired, was held to be 'absurd' by one judge; but the other two judges held that to question this would be to question the 'adequacy' of compensation which was not open to the courts under article 31(2). A search of law reports may perhaps reveal many such instances of cleavage of judicial opinion on the 'illusory-inadequate' dichotomy. At any rate, after the *Metal Corporation* case, one may forecast that many cases of this type are bound to arise in course of time.

56. A.I.R. 1966 Assam 58.

A large number of land acquisition laws have been enacted by the various State Legislatures during the last several years. In every State, quite a few such laws have been enacted authorising the State to acquire land for various purposes. These laws differ in procedure and the scale of compensation to be given for land acquired. It would be rendering a yeoman service if all these various laws are analysed, and some rational and uniform norms developed on such matters as procedure and compensation, which might be adopted uniformly by the States in all cases. It would avoid a lot of confusion and litigation. In this connection, attention may also be paid to the anomalies which arise at present in the working of the Land Acquisition Act, 1844 which still remains as one of the most important of land acquisition laws. The judicial view propounded in the *Somawanti* case,[57] needs some close consideration. It is necessary to have the law amended suitably so that a proper balance may be maintained between the state power of eminent domain and the right of private property. The present position is not very satisfactory.

Looking into the future, one matter, it may be surmised, is going to assume more and more significance as time goes by. Agrarian reforms having been implemented, attention is now being directed to regulation and control of urban property. The socialist views are being projected in this area as well. An oft-repeated argument is that just as a ceiling has come to be imposed on holding of agricultural property, so also a ceiling should be imposed on the holding of urban property. This is advocated in the interest of reducing concentration of wealth. That involves state acquisition of urban property over and above the ceiling fixed. An academic constitutional question for consideration may be whether under the present constitutional dispensation, would the legislature be in a position to reorder urban property relations, to the extent of acquiring it at less than the market price, as was done in the sphere of agricultural economy. Though a view has been expressed that article 31A(i)(a) as it now stands after the 173 amendment may cover urban property[58] as well, and thus immunize legislation dealing with that from an attack under articles 14, 19 and 31, the position is not clear and the validity of this view is open to grave doubts. The word 'estate' in that provision, by its very nature, envisages agricultural property. The expression *ryotwari* tenure itself has a special connotation of its own. Moreover, the historical processes indicate that the various constitutional amendments have been undertaken to further agrarian reforms. This has been repeatedly held by the Supreme Court. Thus legislation imposing a ceiling on urban property and acquiring the

57. Supra note 18,

58. Errabi, "Constitutional Developments pertaining to property and the XVII Amendments", 6 *JILI*, 196, 211.

excess, will fall out of the purview of article 31A(1)(a). In that case, the question of compensation becomes very important. The latest judicial view would make it very difficult, if not impossible, for the legislature to embark on a policy of acquiring urban property on the same basis as was done in case of zamindaris. In such a situation, the question would arise whether it is worthwhile at all to seek to impose a ceiling on urban property if the excess property is to be acquired by the state on a near-market price.