

WELCOME ADDRESS*

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I have very great pleasure in extending to the eminent Judges, lawyers and men of law attending this Seminar a most hearty welcome.

I am glad that the Indian Law Institute, which is doing work of real service to the nation in elucidating the aspects of the changing law under the growing Constitution, has chosen a place in the Madras State for discussion by the eminent scholars assembled here of a subject of considerable importance to administrators, Judges, lawyers and citizens. The Madras Government has not been wanting in helping the Law Institute to do its work. Two monographs, one on Sales Tax Law and another on the law of Motor Vehicles prepared under the auspices of the Indian Law Institute, Madras Branch, were recently received by the Government and are being examined.

As I looked into the memorandum setting forth the subjects for discussion at the Seminar, I was impressed by its comprehensiveness. Well may it be said, that the Seminar has taken all knowledge of property law for its province. And the importance of some of the subjects set for discussion will be my justification for referring to certain features pertaining to them. I am sure that the views of one who has been himself a lawyer and who has been in charge of administering the affairs of one of the premier States in India, both before and after the coming into force of the Constitution, will not, I dare say, be without interest to this distinguished audience.

I notice that the origin of the concept of property is to be discussed in the Seminar. The view of Roman lawyers, Blackstone and Savigny, that ownership of property arises from occupation was demurred to by Maine who thought that such a conception would be valid only in a well ordered society and that the idea would only apply to articles of capture in war. He was impressed by the communal holding of property in India and referred to the joint family system of property owning. The title of Proudhon's book "*What is Property? It is Theft*" is interesting. The Indian view has always been that property, or at any rate, the right to the possession of it, belonged to the person who put the land first

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our common law. The distinction turns only on the property. A poet has said "For forms of Government, let fools contest. Whatever is best administered is best". In a similar way, it can be said that it is unnecessary to discuss as to which among the various economic theories is superior. Even in socialistic countries, the private ownership of articles that are manufactured by the persons themselves is recognised. Ownership of property was an item in the Declaration of Human Rights. In the American Constitution, the importance of this aspect was recognised to the extent that it was said that guarantee of liberty of the person by itself included protection of the rights of property and it was not necessary to have the word "property" included in the amendment to the Constitution. Our own Constitution has made this a fundamental right. A citizen of India has a right to acquire, hold and dispose of property. But we should not forget that our ideal is the socialistic pattern of society. Though we have not adopted the principle of socialist ownership of the instruments and means of production as the Russians have done, we are pledged to the principle that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. There are other directive principles of State policy which will prevent the people being dichotomised into the few "haves" and the many "havenots". Mahatma Gandhi regarded the owner of a property as a trustee. According to him, however, the ideal of trusteeship had to come from below and not imposed from above. The following observation of the Mahatma is relevant in this connection:-

'Economic equality must never be supposed to mean possession of an equal amount of worldly goods by every one. It does mean, however, that every one will have a proper house to live in, sufficient and balanced food to eat, and khadi with which to cover himself. It also means that the cruel inequality that obtains today will be removed by purely non-violent means.

This is the same idea as is expressed in the *Thirukkural*:-

The wise man's wealth is like the village pond that is full.² The water is for the use of every one. Any one can use it without bothering himself about the maintenance of the tank or the flow of water into it. The Mahatma did not believe in the inevitability of class war. What was gained by violence would in his view be lost before superior violence. "Cut off the tallest poppies" was a slogan which did not appeal to him. He felt that the prince and the peasant would not be equalised by cutting off the prince's head; nor could the process of cutting off equalise the employer and the employed.

2. *Uruni neer Nirainthatte*
Ulakayam perarivalan thiru.

to beneficial use. The views of Manu as interpreted by Kullukabhatta are referred to in Sundararaja Iyengar's "*Land Tenures*". The decisions of the Madras High Court are also to the same effect. The '*Thirukkural*' says that what the King is entitled to are the property escheated, income from customs and the tributes from the conquered.¹

H. G. Wells speaks of the early man reaping without sowing. As a corollary to this principle, it had been thought that the payment to the State by the cultivator of the lands represented a tax and was not in the nature of rent payable by a tenant to the landlord. Though it is said that the Mohammeden rulers regarded land as belonging to the King and not to the cultivator, such an idea did not gain ground in the South. Under the British rule, the introduction of the Permanent Settlement was regarded as giving recognition to the onwership of the land by the landlord. This was due to the acceptance of the English law of property based on Feudalism. But though the language of the Permanent Regulation of 1802 conveyed such an idea, Madras Regulation IV of 1822 was enacted to show that such was not the intention. My personal view is that the Government did not claim at any time to be the landlord of cultivated lands. It is for you to consider whether this view has been modified in any way by any recent decision of the Supreme Court. The question is of great importance in the context of the power of the State to levy taxes.

I do not think that there will ever come a time when ownership of property of some kind by an individual will cease. Property, in a sense, is the projection outside, of a man's personality. Man is identified by his physical and mental characteristics. And in the image of the person must be included not only his tastes, preferences, but also the objects of personal possession indissolubly associated with him. The personal belongings of the Father of the Nation are looked upon with veneration no less than what the Mahatma himself evoked. These things achieve an immortality of their own. The case of an ordinary man is different. The human body of the ordinary man has no commercial value. Man has neither the skin of the alligator or the snake, nor the teeth of the elephant which can have a market. An exception may perhaps be made in respect of the human hair which has now a market. There is nothing anti-social in the concept of the personal possession. The distinction between things which cannot but be owned and which need not be owned is quite valid. The distinction may not correspond to the difference between personality and realty as in the English system of law or between immovables and movables (*Sthavara Jangama*) under

1. *Uru porulum ulaku porulam thun onrarth
Theru porulum vendan poral.*

It is easy to set forth the ideal but difficult to put it in practice. The problem of reconciling individual liberty with social well-being has been engaging the attention of the Government and the people for a long time. I should like to take this opportunity of drawing the attention of this eminent body to the various reforms that have been effected by the Madras Government in this sphere. In order to avoid the disparity of income between various classes and in order to simplify the land tenures and with a view to step up the food production of the country, many reforms have been introduced. Rent has been reduced to reasonable limits. Ceiling has been fixed for the holding of lands. The fixity of tenure that was given to the *ryot* in the erstwhile estates has now been extended to the tenant in *ryotwari* areas by enacting the Cultivating Tenants Protection Act. And the provision against enhancement of rent in the erstwhile estates has been extended to *ryotwari* areas by the Payment of Fair Rent Act. The zamins, inams and other kinds of intermediary tenures have been abolished by several Acts. The principle of agricultural income-tax has been introduced and the tax on urban lands has also been imposed. Legislation for improving and constructing tanks has been enacted. Communal property has been vested in the panchayats by the Madras Village Panchayats Act.

All these have not been done without facing many difficulties. The fundamental difficulties caused by the interpretation of the various laws cannot be under-estimated. The right to hold property is always subject to the restrictions imposed in the interest of society by exercise of what may be called police powers. Taxation and the principle of eminent domain are the other factors which may whittle down the right to property. I do not feel entitled to say anything with regard to the restrictions except the one relating to taxation. The administration of the State depends to a very large extent on the restriction furnished by taxation. Though taxation involves deprivation of the property of the individual, no compensation need be paid for the same. I do not think that there has been any change in the law on this point. The infringing of a taxation measure on the Fundamental Right guaranteed under the Constitution may, however, require consideration.

I see that very thought-provoking subjects, such as the problems created by industrialisation with reference to Town Planning, slum clearance, rent control, are to be discussed. The Madras Government is very actively engaged in schemes of town planning and a Bill modelled on the Government of India draft is being considered. The Madras Buildings (Lease and Rent Control) Act is being extended from time to time to provide for protection from unauthorised eviction and also for fixing fair rents.

I do not wish to say anything about the various other subjects, such as the control of companies, the question of patents, the law relating to family. I shall be a very interested listener, so far as time permits, to the discussion on these various aspects.

I once again welcome you to this beautiful hill station and hope that you will find it possible to enjoy your stay and achieve relaxation after the strenuous intellectual discussion.