"THE CONSTITUTIONAL AMENDMENTS THOSE PAVED THE WAY FOR AGRARIAN REFORMS IN INDIA"

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For quite a considerable period of time, there has been an ongoing tussle between the judiciary and the legislature regarding the Constitutional provisions of right to property. The reason behind it was simple. In order to uphold the sanctity of the Constitution, as and when required, the judiciary was invalidating legislative action curbing property rights and whenever the judiciary invalidated a law by terming it as unconstitutional the legislature conveniently amended the Constitution in order to uphold its supremacy over the judiciary. During this conflict, there emerged another set of litigations which actually intended to put an end to the legislative manipulation by questioning the amending power of the Constitution itself. The litigations were mostly based on the relevance of Article 13(2) of the Constitution which provides that 'the state shall not make any law which takes away or abridges the fundamental rights and any law made in contravention of fundamental right shall to the extent of contravention, be void'. The argument that was put forward by the litigants was relating to the validity of amending power of the parliament with regard to fundamental rights. Here the major role of the judiciary came into limelight. The litigation actually is the result of the following reason-

It is a well known fact that at the initial stage, right to property was there under the fundamental rights in the Constitution. It was only after the case of *Kameshwara Singh v. State of Bihar*[1], when the Bihar Land Reforms Act was declared invalid by the judiciary, the very purpose of agrarian reforms came under challenge. At that time it was need of the hour for an amendment of the Constitution and accordingly the First Constitutional Amendment Act, 1951 has inserted Art. 31-A, 31-B and the Ninth Schedule to the Constitution. The persons affected by the amendment has challenged its

[1] AIR 1951 Pat 91

constitutionality, which was been decided by the Supreme Court in *Shankari Prasad v. Union of India*[2]. In that case the contention of the parties was that as the Constitutional Amendment Act passed by the Parliament was law as designated under Article 13 which is a fundamental right and the State is not empowered to make any law that would abrogate the fundamental rights, the amendment was in conflict with Article 13 of the Constitution and thus was void. The Supreme Court, however, rejected that contention and held that even fundamental rights are not immune from Constitutional Amendments and that a contrary conclusion would lead to a conflict between Article 13 and Article 368. In fact, this decision of the Supreme Court has enabled the Government to achieve its goal of effecting the much needed agrarian reforms without being hampered by judicial review. Again in *Sajjan Singh v. State of Rajasthan*[3], when the validity of the Constitution (17th Amendment) Act, 1964 was challenged, the Supreme Court has approved the majority view given in Shankari Prasad's case and held that the words amendment of the Constitution means amendment of all the provisions of the Constitution. Pronouncing the judgment, Gajendragadkar, C J has said that if the Constitution-makers would have intended to exclude the fundamental rights from the scope of the amending power of the Parliament, they would have made a clear provision in that behalf. Another point of argument from a lay man's point of view in favour of Parliament's unlimited power of constitutional amendment is that without it, it might not be possible to implement the directive principles of State policy which aim at radical re-organization of the economic structure.

In English law, in the absence of a written constitution, the Parliament's power is unlimited. Here the power to acquire private property is coupled with two conditions, namely (i) it should be for a public purpose and (ii) it should be only on payment of compensation. The courts would hold now that the law is valid only if it provides for compensation and such compensation must be equal to the market value of the property acquired. In India, it is, in fact, the 44th Constitutional amendment, that has made the right to property better protected than ever before. By the insertion of Article 300-A, the Amendment says that no one shall be deprived of his property except by the authority of law, and the courts would insist that such deprivation must be sanctioned by a valid law. One of the criteria of such validity would be that the law which provides for the acquisition of properties by the State shall

[2] AIR 1951 SC 458
[3] AIR 1965 SC 845

necessarily make a provision for compensation as well as resettlement wherever necessary. Article 300-A, in the present context, has to be read in association with Article 31-A,which gives an indication that the compensation payable may be different if the purposes differ, as when the land acquired happens to be the excess land over the ceiling limit, compensation payable is different from the ones acquired within the ceiling limit.

The very purpose of insertion of Articles 31–A and 31-B by constitutional amendments are to immunize certain laws from challenges on the ground of their inconsistency with the right to property. After the deletion of clauses (2) to (5) of Article 31, the laws included in Articles 31-A and 31-B would be protected only against challenges, on the ground of Articles 14 and 19 but not on the ground of Articles 300-A. In other words a law providing for agrarian reforms would now be challenged on the ground that it does not provide for compensation because while it is protected against Article 14 and 19, it is not protected against Article 300-A. This would also mean that the laws included in the 9th Schedule would be re-examined by the courts on the ground that they do not provide for compensation.

The scope of judicial review in respect of right to property is increased by the 44th amendment. Although Article 300-A says that no one shall be deprived of his property save by authority of law, there is no reason to expect that this provision would protect private property only against executive action. If one sees how similar provision in Article 21 has been judicially interpreted in recent years one can expect Article 300-A to provide viable checks upon legislative power. In Article 21 it is said that no one shall be deprived of his personal liberty except by procedure established by law. Although in ***A.K. Gopalan v. State of Madras***[4] the Supreme Court had held that 'law' meant the enacted law as Article 21 did not provide any criteria for validity of the laws. However, judicial view has changed in recent years.

In this context, it is worth mentioning that it was the decision in the Bella Banerjee's case that has actually induced the government to go for the Fourth Amendment. In this case the Apex court through this landmark decision had insisted for payment of compensation in every case of compulsory deprivation of property by the state. It was held that clause (1) and (2) of Article 31 deals with the same subject, that is, deprivation of private property. Further the court held that the word compensation meant just compensation i.e.

[4] AIR1950SC27

just equivalent of what the owner had been deprived of. It is also worthwhile to note here that this amendment also amended Article 305 and empowered the state to nationalize any trade. The Parliament instead of accepting the decision, by its Fourth Amendment Act, 1955 amended clause (2) and inserted clause (2-A) to Article 31. The effect of the amendment is that clause (2) deals with acquisition or requisition as defined in clause (2-A) and clause (1) covers deprivation of a personÊ¹s property by the state otherwise than by acquisition or requisition. This amendment enables the state to deprive a person of his property in an appropriate case by a law. This places an arbitrary power in the hands of the state to confiscate a citizenÊ¹s property. This is a deviation from the ideals of the rule of law envisaged in the Constitution. The amendment to clause (2) of Article 31 was an attempt to usurp the judicial power. Under amended clause (2), the property of a citizen could be acquired or requisitioned by law which provides for compensation for the property so acquired or requisitioned, and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined. It was further provided that no such law could be called in question in any court on the ground that the compensation provided by that law is not adequate. This amendment made the state the final arbiter on the question of compensation. This amendment conferred an arbitrary power on the state to fix at its discretion the amount of compensation for the property acquired or requisitioned. The non-justiciability of compensation enables the state to fix any compensation it chooses and the result is, by abuse of power, confiscation may be effected in the form of acquisition.

Looking back, by the Seventeenth Amendment Act, 1964 the state has extended the scope of Article 31-A and Ninth Schedule to protect certain agrarian reforms enacted by the Kerala and Madras states. The word estate in Article 31-A now included any jagir or inam or maufi, or any other similar grant and janmam right in state of Kerala, Madras and also Ryotwari lands. It has also added consequentially, the second proviso to clause (1) to protect a person of being deprived of land less than the relevant land ceiling limits held by him for personal cultivation, except on payment of full market value thereof by way of compensation. It has also added 44 more Acts to the Ninth Schedule.

The Supreme Court in a number of judgments has considered the said amendments and has also restricted their scope within reasonable confines wherever found necessary. The Supreme Court in *Kocchuni vs State of*

Madras,[5] did not accept the plea of the state that Article 31(1) after amendments gave an unrestricted power to the state to deprive a person of his property. It held that Article 31(1) and (2) are different fundamental rights and that the expression "law" in Article 31(1) shall be valid law and that it cannot be valid law unless it amounts to a reasonable restriction in public interest within the meaning of Article 19(5). While this decision conceded to the state the power to deprive a person of his property by law in an appropriate case, it was made subject to the condition that the said law should operate as reasonable restriction in public interest and be justiciable. The Court construed the amended provision reasonably in such a way as to salvage to some extent the philosophy of the Constitution. This became necessary as the definition of estate was simultaneously expanded to cover Ryotwari settlements in order to make agrarian reforms more effective.

But the Supreme Court in *Srimathi Sitabai Devi v. State of West Bengal*[6] held that Article 31(2) i.e., the provision relating to the acquisition or requisition of land was not subject to Article 19(5). It would have been logical if the expression "law" in Article 31(2) was given the same meaning as in Article 31(1). In that event, the law of acquisition or requisition should not only comply with the requirements of Article 31(2) and (2-A), but should also satisfy those of Article 19(5). That is to say, such a law should be for a public purpose, provide for compensation and also satisfy the double test of "reasonable restriction" and "public interest" provided by Article 19(5). The reasonableness of such a law should be tested from substantive and procedural standpoints. There may be a public purpose, but the compensation fixed may be so illusory that it is unreasonable. The procedure prescribed for acquisition may be so arbitrary and therefore unreasonable. There may be many other defects transgressing the standard of reasonableness, both substantial and procedural. But from a practical standpoint, the present dichotomy between the two decisions Kochunni and Sithabathi Devi did not bring about any appreciable hardship to the people, for a law of acquisition or requisition which strictly complies with the ingredients of clause (2) may ordinarily also be 'reasonable restriction' in public interest. Substantive deviations from the principles of natural justice may be hit by Article 14. Provision for an illusory compensation may be struck down on the ground that it does not comply with the requirement of Article 31(2) itself. That is if the courts make it mandatory to bring 31(2) in conformity with 31(1).

[5]AIR 1960 SSC 1080
[6](1967) 1 SCR 614

The Supreme Court in ***P VajraveluMudalier v. Special Deputy Collector***[7] and also in the ***Union of India v. Metal Corporation of India***[8] considered Article 31(2) in the context of compensation and held that if the compensation fixed was illusory or the principles prescribed were irrelevant to the value of the property at or about the time of acquisition, it could be said that the Legislature had committed a fraud on power and therefore the law was inadequate**.** The Supreme Court in three other decisions confined the bar of Article 31-A only to agrarian reforms. In Kochunni case the Court held that requirement of Article 31-A bars an attack on the ground of infringement of fundamental right only in the case of agrarian reforms, pertaining to an estate. In *Ranjith Singh v. State of Punjab*[9], it was held that the expression "agrarian reform" was wide enough to take in consolidation of holdings as it was nothing more than a proper planning of rural areas. In Vajravelu decision the Supreme Court has explained that there is no conflict between the said two decisions and has pointed out that the latter decision includes in the expression of agrarian reforms, the slum clearance and other beneficial utilisation of vacant and waste lands. The Supreme Court, however, in ***Ghulabhai v. Union of India*,**[10] did not accept the contention of the state that the expression 'Estate' takes in all waste lands, forest lands, lands for pastures or sites of buildings in a village whether they were connected with agriculture or not, but ruled that the said enumerated lands would come under the said definition only if they were used for the purpose of agriculture or for purposes ancillary thereto.

CONCLUSION

The point to be noted that repeal of Art. 31 and its reincorporation in Art. 300-A does not really affect the basic right to compensation for property acquired by State except for the fact that the amount of compensation now payable after the Amendment depends more on the discretion of the Government as it fixes the amount of compensation in some particular cases involving land reforms. However, as such discretion cannot be arbitrary, the determination of compensation for acquisition of property can still be questioned as arbitrary. As per the previous law, a citizen can be deprived of his property if there is a law and if such law describes the method of calculating compensation. But now after the change, the Estate Abolition Acts which prescribed the procedure for arriving the amount of compensation and the Land

[7](1965) 1 SCR 614
[8](1967) 1 SCR 255
[9]AIR 1965 SC 632
[10]AIR 1967 SC 1110

Ceiling Acts and the Bank Nationalization Act which fixed the compensation have become valid. This is how the various amendments to the Constitution and its subsequent effects on other laws of the land has paved the ways for agrarian reforms so as to fulfill the dreams of the Constitution Makers to make India a progressive state.

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