

# COMPENSATION OR EXPROPRIATION?

## An Analysis of Article 31 of Indian Constitution

By

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The constitution of India guarantees fundamental liberties to the citizens of the Republic of India. In view of experience of the working of this Constitution, a question naturally arises as to how these rights have been respected and how the Constitutional machinery has been used since we became independent. In this article an attempt has been made to review only one and restricted aspect of our Constitution, viz., and individual's right to compensation for property.

The original clause in Article 31 of the Constitution was that "the State must compensate a person whom it deprives of property." Article 31 provides that no person should be deprived of property except by the authority of law and further that the law authorising the acquisition or the taking possession of property must provide for compensation. The term compensation means the equivalent in value of property taken. Inadequate or discriminatory payment would, therefore, be an infringement of the fundamental law of the land providing for adequate compensation. Article 31 was already found a hindrance to State legislative policy in relation to agricultural estates. The constitution was, therefore, amended and Article 31A was introduced by Section IV, of the Constitution (Fourth Amendment) Act. This Article provides a stipulation that no law providing for acquisition by the State of any estate or of any rights therein is to be deemed to be void on the ground of its infringing any of the fundamental rights laid down in Part III of the Constitution of India.

It can be respectfully submitted in reason that in several cases the fundamental rights of the citizens to get fair compensation upon acquisition of property by the State have not been respected, especially by some of the State Governments and the amendment of the Constitution which was carried through by the party in power in spite of general opposition from various quarters does no credit to the Government.

In this connection we may do well to consider what foreigners think of our Constitutional experience. After all, from a distance, they are in a better position to judge impartially problems which we, within the country, may not be able to view so dispassionately and uninterestedly. In a learned treatise entitled "Fundamental Rights in India", Mr. Alan Gledhill makes some interesting observations which our Government in particular and the Congress Party in general would do well to note. Mr. Gledhill is an authority on the subject. He is a retired Member of the Indian Civil Service, was formerly one of the Judges of the Rangoon High Court and is at present professor of Oriental Laws in the University of London. This is what he observes regarding the fundamental rights guaranteed under our Constitution:—

"Article 31 has already been found a hindrance to State legislative policy in relation to agricultural estates and Constitutional amendments have been found necessary. The amendment and contemplated amendments of the rights, and the provisions of the Constitution relating to the writs,

suggest that those in India who now hold political power<sup>2</sup> have to a great extent lost faith in them . . . .”

While judging the experience of working of our Constitution it is necessary to appreciate the mental background of those concerned with its formulation and its working. One cannot help recalling Prime Minister's speech in the Constituent Assembly on 10th September, 1949 when he said: “We honour our Judges but we will tolerate no legal quibbles; no law, no judge is going to come in our way; the legislature must not be interfered with by courts of law in such measures of social reform.” Again during the discussion on the Constitution (Fourth Amendment) Bill, the Prime Minister of India observed: “If we are to acquire property, I think we should pay just and equitable compensation. I am talking about individual properties. Normally there may be a number of rich men interested — there are here and there — but many of these properties, big properties, are limited liability companies with large number of small shareholders. We do not wish to deprive them. Full compensation should be paid to small owners whose properties are acquired by the State for public purpose.”

Regarding the first observation of the Prime Minister which reflects the attitude of those concerned with the framing of our Constitution even before it was enacted as law, Mr. Gledhill has certain interesting remarks to make. He observes: “It is submitted that it is fundamental that the Constitution and not the legislatures, should be supreme. The purpose of having fundamental rights is to prevent a temporary majority in a legislature abusing its powers. To sweep them aside, to facilitate the enactment of measures of social reform when the ink was hardly dry on the new Constitution, was to create an unfortunate precedent, especially when the compara-

tive ease with which the Constitution can be amended, is considered. Abolition of large agricultural estates and their division into small holdings, is not one of the Directive Principles, but a plank in the Congress platform. To mention briefly, the Directive Principles which might be regarded as having a bearing on the matter require State policy to be directed towards securing that ownership and control of material resources are so distributed as best to conserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment . . . . It is possible to hold with honest conviction that the legislation saved by Article 31(b) is not necessarily an advance towards the objective set out in these, the only relevant Directive Principles . . . .

“The objection to the insertion of Article 31(b) in the Constitution is not sentimental; it strikes at the roots of the principle that Constitution should be paramount law, not susceptible of *ad hoc* and *ex post facto* amendment. A precedent has been established for a parliamentary majority to play havoc with the fundamental rights, to make way for a policy it favours.”

The second observation of the Prime Minister referred to above is fully supported by the Judges of the Supreme Court in *Bihar vs. Kameshwar, A.I.R. (1952) S.C. 252* wherein it was laid down, “Legislation enacted ostensibly in exercise of this power, but in effect depriving a person, whose property had been acquired, of compensation, was colourable and void.” The Prime Minister of India, the Supreme Executive Authority in the country, and the Supreme Court of India, the Supreme Judicial Authority in the country, have laid down certain principles which must be followed. These are important principles which create confidence in the implicit honesty and impartiality of the Prime Minister and the Supreme

Court. The subsequent experience, however, at the State Government level rudely shakes our confidence in the Constitution and this becomes all the more so when one finds that the aggrieved party is completely and permanently helpless and devoid of any judicial remedy whatsoever. This is not merely a theoretical apprehension. Cases have come to light in which the superb sentiments referred to above have been thwarted at the State Government level.

It would be worthwhile noticing one such case to appreciate what grave danger the country is facing by allowing a temporary majority in a State legislature to abuse the fundamental rights of the citizens. The legislation in question is the West Bengal Estates Acquisition Act 1953. Under this legislation, estates and rights in agricultural estates of various landlords were acquired by the State of West Bengal on 15th April, 1955. Section 17 of the Act provides for the method of computing the compensation. This Section provides for the amount of compensation being worked out on a graded scale merely depending upon the net income of the estates acquired. The section does not take into consideration any development expenditure incurred by the owner nor the original investment. It also does not take into account the market value of lands on the date of acquisition. The formula provided by this section is that where the net income from land is Rs. 500/-, the amount of compensation payable would be twenty times such net income. With increase in income the multiplying factor goes on diminishing with the result that for net income in excess of Rs. 80,000/- the amount of compensation is only twice the net income. Such a formula may be workable in case of individual zamindars. The law, however, fails to make any provision for companies operating as land improvement companies. Failure to make such provision has led to very serious hardship to about 2,000

small investors as could be seen from facts given below in case of one such company — the Port Canning and Land Improvement Company Ltd.

This company was registered 85 years ago and has a share capital of Rs. 60,00,000/-. In 1873 it acquired lands at a cost of Rs. 50,00,000/-. At that time the total area under cultivation was about 98,000 bighas. During the past 83 years the company spent a further sum of Rs. 32,00,000/- on development works out of its annual earnings. On the date of acquisition by the Government the land under cultivation had increased to 3,15,000 bighas. Thus, over a period of 83 years the shareholders had put in nearly Rs. 90 lacs in this company for which they now stand to get a compensation of only Rs. 6,00,000/-. On the day of acquisition at the then ruling market price of lands, the market value of the entire holding of the company was Rs. 3,75,00,000/-. The book value was Rs. 68,00,000/- and the compensation Rs. 6,00,000/-.

The company has, in the past, reinvested a major portion of its earnings in further development and distributed very small amounts by way of dividends to shareholders. During the entire history of the company, i.e. 85 years, the average dividend declared by the company works up to only 2.8% per annum. At no time the dividend has exceeded 5% of the paid-up capital, even at times when the Bank rate continued to be over 6%. The maximum dividend of 5% was paid by the company only six times in 85 years. It will, therefore, be observed that the company never exploited its tenants in order to distribute exorbitant dividends to its shareholders.

On the date of acquisition, the company had 1947 shareholders of which 1028, i.e. more than 50%, held less than 10 shares. About 75% of the shareholders of the company held less than 20 shares each. The present compensation which the

West Bengal Government is offering would be equal to one year's revenue which the Government would receive from the acquired lands. On the basis of the above compensation the loss to the shareholder on his investment through nationalisation would be nearly 8/9th of his original investment.

A further fact to be noticed is that a major portion of even this meagre amount of compensation will be paid in non-negotiable bonds bearing interest at only 3% whereas the prevailing rate of interest is much higher. Such bonds are repayable equally over a period of 20 years. This means that the shareholders will have to wait for 20 years to receive even 1/10th of their original investment.

It is understood that the company repeatedly pointed out to the West Bengal Government and to its Chief Minister the gross injustice and hardship resulting out of the operation of this law which has been particularly made non-justiciable under Article 31A of the Constitution of India. The West Bengal Government has turned a deaf ear to all appeals made by poor shareholders of this company which include among others, widows, office clerks, retired persons and other lower middle class people who stand to suffer enormously through such arbitrary measure. Cases have come

to light in which retired persons who have put in their entire provident fund money into the shares of this company when the market value was Rs. 110/- per share now stand to receive only Rs. 6/- or Rs. 7/- for each share held in this company.

This is an illustration of how the relevant provision of our constitution has operated in actual practice. It should act as a serious eye-opener to every citizen as it clearly indicates how doctrinaire thinking when allowed to temper with the fundamental law of the land can undermine some of the vital institutions like right to private property and leave citizens helpless before the Leviathan of the State. The wise words of a leading thinker should be pondered over by every lover of democracy and economic progress. He said:

"The freedom to acquire and own property is one of the essential freedoms of man. History, I believe, shows clearly that where the individual had no right to own and manage property, he likewise had no other freedoms — freedom of speech, of press, of religion, of assembly, and of living as an individual. Today, history repeats itself. In those lands where man is not free to own property and to choose his vocation he does not enjoy those other freedoms."

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*(The views expressed in this leaflet do not necessarily represent the views of the Forum of Free Enterprise.)*

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