ABSTRACT OF

LAW AND LAND REFORM IN INDIA

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THE CONTINUING CONTROVERSY over property rights, which began with efforts at land reform in the constituent assembly, has gone on at two levels: that of the battle between government policy-makers and legislative draftsmen on the one hand and the bar and courts on the other; and that between shifting political forces in India—those pressing for reform and those resisting. The initial struggle, in writing the Constitution, centered on the fate of the traditional rights of *zamindars* and similar intermediaries (often absentee landlords) whose holdings were sometimes very lucrative and drew protest from the exploited tenants. The main questions at this time were: should there be compensation and if so how much; should this decision be left to the state legislatures or should it be justiciable; what safeguards should be created to prevent extreme legislative action; should other kinds of property receive full compensation if taken by the state; should there be a distinction between major social reforms and property takings for public use? Article 31 of the Constitution was the compromise formula and its ambiguities left the issue quite open.

In the first cases under *zamindari* abolition acts, one state High Court held that the local law violated the "fundamental right" of "equal protection of the laws." The government's response was a constitutional amendment (the first) exempting these laws from the standards of the Fundamental Rights and a "Ninth Schedule" of Acts and Regulations beyond the challenge of "fundamental rights" provisions. In general, however, the Supreme Court upheld *zamindari* abolition laws even before the amendment. The first amendment was challenged as having been passed without the required votes in Parliament and other grounds, but the courts rejected this argument.

The *zemindars* lawyers then challenged the new laws on the grounds that, by not providing compensation, the states' legislation violated the constitutional provision giving the states the right to pass land reform legislation only if such legislation specified principles of compensation.

https://doi.org/10.2307/3053002 Published online by Cambridge University Press

The Supreme Court accepted this argument just at a time when state legislatures had begun enacting reform legislation covering a much broader spectrum of problems. State takeover of private bus lines, and of companies in which mismanagement threatened the production of essential commodities, and of land for the resettlement of East Bengali refugees, were all held by the Supreme Court to necessitate full compensation. In response, the government passed the fourth amendment which provided a list of types of government actions toward property which would not be covered by the three constitutional articles that had thus far thwarted successful action.

The lawyers' response to this challenge was to pick apart the amended Constitution's definition of "estate," (the kinds of interests in land that might be taken or modified without regard to the "fundamental rights") which implied that there must be an intermediary status between peasant and ruler. As government-planned land reforms moved beyond *zemindari* abolition laws to include such measures as ceilings on the amount of land one individual or family could hold, ceilings on rents, security for tenants, and the like, the old concept of *zemindar* or other intermediary became less relevant. Much of the land in India, for example, especially in South India, had long been held by *ryotwari* settlement, that is, by peasants who generally worked their own land and paid land revenue directly to the state, but who might have tenants. By a restrictive definition of "estate" under local laws as interpreted by the courts, such interests were sometimes excluded from the operation of reform laws.

In general, however, it might be said that during the 1950's the Supreme Court adopted a permissive attitude toward the authority of legislatures to prescribe land reforms; almost any law that could be classified "agrarian reform" was considered exempt from the usual requirements of the Fundamental Rights. During the 1960's a somewhat more restrictive attitude became apparent. Even if compensation at full value need not be paid for farm lands taken by the state for redistribution, the compensation requirement was rigorously applied to other takings of property, including land wanted for urban development. Although courts were forbidden to examine the "adequacy" of compensation provided by legislatures, they found new doctrines to serve as a basis for the "full equivalent" requirement for all property except agricultural land.

Most recently, successful attacks have been made on the government's right to make any constitutional amendments that would further curtail

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the Fundamental Rights. Beginning in 1964, Supreme Court opinions reflected a shifting attitude in the Court—arguments that the Fundamental Rights were beyond the power of amendment (if they "abridged" or "took away" those rights) finally won out in February 1967. The full Court, by a majority of 6 to 5, announced that in future it would hold offending amendments invalid under the conditions of article 13 for future laws, but it upheld past amendments, even though inconsistent with the Constitution under their new doctrine. This comes, ironically, at a time when the Congress Party is losing its monolithic ability to impose its will on Parliament—when it will be, for the first time, able to win ready acceptance of constitutional amendments that curtail fundamental rights.

A look at the history of this period indicates that the restraint of the government in the use of its amending power was due in part to political differences within the ruling party, in part to a genuine desire to respect the "rule of law" as determined in the courts. At least during this period, restraint stands out in contrast to blunt confrontation. But the role of law cannot be divorced from the political reality that, especially on the state level with its exclusive competence in land legislation, politics is dominated by the large landowners and well-off peasants whose interests are against sweeping reform. Hence, in a Congress Party which was searching for the broadest possible base of support for its independence struggle, compromises were struck between those pressing for reform and those whose support was valuable, but who opposed reform. Thus the restraint surrounding reform actions after independence may be a reflection of the political balances developed by the Congress organization. The legal profession, responding chiefly to "ability to pay" has aligned itself with those having the largest interests to protect—the landowners. The position of the courts is difficult to label as being on one or the other side. But its most recent decisions have been far more sweeping in their implications than one would have expected during the Congress Party's stronger days under Nehru.

This series of confrontations may be seen as a period of experimentation during which lawyers, judges, and legislators, accustomed to British-style legislative supremacy slowly began to recognize the implications of constitutional restriction enforced by a strong and independent court system. They also indicate that in India (as in constitutional federal systems in which the judiciary may test the validity of legislation by constitutional standards, including the United States) there is still a lively debate as to which of the organs of state is supreme in interpreting and applying its fundamental law.

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