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LAW COMMISSION OF INDIA

FORTY-SIXTH REPORT

ON

THE CONSTITUTION (TWENTY-FIFTH AMENDMENT) BILL, 1971

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REPORT ON THE CONSTITUTION

(TWENTY-FIFTH AMENDMENT) BILL, 1971

Introductory

1. The Constitution (Twenty-Fifth Amendment) Bill,[1] which has been introduced in the Lok Sabha on the 28th July, 1971, has not been formally referred to us by the Ministry of Law and Justice for our opinion or report; but the Bill, and more particularly clause 3 of it, falls directly within the purview of the wider terms of reference—clauses (viii) and (ix)—under which the present Commission has been constituted; and so we think it right *suo motu* to make a report indicating our opinion on the merits of the Bill.

Clause 2(a) of the Bill.

2. The Bill consists of three clauses. Clause 1 is formal and describes the Bill as the Constitution (Twenty-fifth) Amendment Act, 1971. Clause 2 contains two sub-clauses (a) and (b), and it reads as under :—

> "2. In article 31 of the Constitution,—
>
> (a) for clause (2), the following clause shall be substituted, namely,—
>
> "(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash,".
>
> "(b) after clause (2A), the following clause shall be inserted, namely,—
>
> "(2B) Nothing in sub-clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2)".
>
> It is clear that the Bill proceeds on the assumption that the Twenty-Fourth Amendment recently adopted by Parliament is constitutionally valid.

1. Bill No. 106 of 1971.

Background of twenty-fourth Amendment.

3. It is unnecessary to refer in detail to the background of judicial decisions which made it necessary for Parliament to adopt the Twenty-Fourth Amendment. The question about the scope and effect of the provisions contained in Article 368 of the Constitution was first considered by the Supreme Court in *Shankari Prasad's case.*[1] Patanjali Sastri J., who spoke for the unanimous Court, held in the said case that, in substance, Article 368 conferred on Parliament power to amend any provision of the Constitution, provided that, in making such amendment, Parliament followed the procedure prescribed by the said Article and complied with its requirements. This judgment was pronounced on the 5th October, 1951.

The same view was reiterated by a majority of three Judges in *Sajjan Singh's case.*[2] This judgment was delivered on the 30th October, 1964.

On the 27th February, 1967, the Supreme Court considered the same question over again in *Golak Nath's case,*[3] and, by a majority of 6:5, held that the earlier decisions had not properly interpreted the scope and effect of Article 368 and that, the said Article did not confer power on Parliament to amend Part III of the Constitution in any event.

It is as a result of the last decision of the Supreme Court in *Golak Nath's case* that Parliament thought it necessary to pass the Twenty-Fourth Amendment Act.

Twenty-fourth Amendment clarificatory in nature.

4. In order to avoid confusion, it is necessary to state clearly that the Twenty-Fourth Amendment does not purport to confer on Parliament any additional power not possessed by it earlier, but it merely clarifies what, in the opinion of Parliament, has always been the true position about the scope and effect of the provisions of Article 368. It is true that, in order to clarify the said position, Parliament has, as a matter of abundant caution, made some suitable amendments in Article 13 and Article 368, but the result of the said amendments is to declare that article 368 meant what it was interpreted to mean by the unanimous Court in *Shankari Prasad Singh Deo's case*[1] as well as by the majority of the Judges constituting the Bench in *Sajjan Singh's case.*[2] In other words, the Twenty-Fourth Amendment Act says that the law in regard to the power of Parliament to amend the Constitution, which was laid down authoritatively by the Supreme Court and accepted as correct between the 5th October, 1951 and 27th February, 1967, is the correct law.

Possibility of challenge on the validity of

5. We do not think that the constitutional validity of the Twenty-Fourth Amendment Act is likely to be challenged before the Supreme Court; but it is not unlikely that, if the present Bill

1. *Shankari Prasad Singh Deo* v. *The Union of India*, A.I.R. 1951 S.C. 458.
2. *Sajjan Singh* v. *The State of Rajasthan*, A.I.R. 1965 S.C. 845.
3. *Golak Nath* v. *The State of Punjab*, A.I.R. 1967 S.C. 164 ~.

is passed by Parliament, an attempt may be made to challenge its constitutional validity on the ground that Parliament has no power to amend Part III of the Constitution and that the Twenty-Fourth Amendment Act passed by Parliament is inoperative, ineffective and void and, as such, cannot sustain the validity of the Twenty-Fifth Amendment Bill inasmuch as its provisions seek to modify some of the fundamental rights guaranteed by Part III. This fact has to be borne in mind in considering the merits of the proposed Bill.

the Twenty fourth Amendment.

6. After the judgment of the Supreme Court in *Golak Nath's case* was pronounced, there has been a national debate in regard to the merits of the decision in the said case. In this debate, advocates of the view propounded by the majority in *Golak Nath's case*, as well as those who are critical of that view, have used strong words, such as, the supremacy of the Judiciary, encroachment on fundamental rights, introduction of totalitarian concepts in the democratic set-up of our country, or tyranny of the Judiciary; and naturally, the introduction of such political overtones in this national debate has created an appearance of confrontation between Parliament and the Supreme Court. The Commission, however, does not regard the situation created by the majority decision in *Golak Nath's case* as necessarily leading to any conflict between the two great institutions, *viz.*, Parliament and the Supreme Court.

No question of confrontation between Parliament and Supreme Court.

7. The Commission believes that, in a democratic country like India which is governed by a written Constitution, supremacy can be legitimately claimed only by the Constitution. It is the Constitution which is paramount, which is the law of laws, which confers on Parliament and the State Legislatures, the Executive and the Judiciary their respective powers, assigns to them their respective functions, and prescribes limitations within which the said powers and functions can be legitimately discharged. Within their respective spheres, each one of the constituents of Indian democracy can claim supremacy in a limited sense only. This position is subject to the important proviso that Parliament has power to amend the Constitution; but, once Parliament's constituent power to amend the Constitution is exercised and the amended Constitution comes into operation, even Parliament has to function again within the limits prescribed by the amended Constitution.

Constitution supreme in democracy.

8. What we have witnessed as a result of the majority decision in *Golak Nath's case* is inevitably a part of the democratic process. It may sound platitudinous, but it is nevertheless true that it is the function and privilege of Parliament to amend the Constitution and make laws according to the provisions of the Constitution; it is the privilege and function of the Judiciary to interpret the laws and test their constitutional validity in the light of the relevant constitutional provisions; and it is the duty of the Executive to implement the laws.

Amendment inevitable as a part of the democratic process.

Amendment not to be regarded as raising questions of confrontation.

9. If, while discharging its functions, the Supreme Court interprets an ordinary law or a provision of the Constitution in a manner which, in the oninion of Parliament, does not represent the true intention of Parliament, it is open to Parliament to make its intention clear by taking recourse to the suitable, legitimate and well-recognised process of amending the law or the Constitution. But, while this process is in progress, no effort should be made to introduce notions of confrontation between Parliament on the one hand and the Judiciary on the other.

Cardozo's observations.

10. In this context, we would like to refer to the observations made by Mr. Justice Cardozo, the great American Judge of the Supreme Court of the United States. Said Justice Cardozo[1]:—

> "The great tides and currents which engulf the rest of men do not turn aside in their course and pass the Judges by."

We would invite the Union Government and the Members of Parliament to share our faith in the wisdom of Mr. Justice Cardozo's observation.

Clause 2(a) of the Bill considered.

11. Reverting then, to clause 2 of the Bill, it would be noticed that sub-clause (a) of this clause deletes the word "compensation" and introduces in its place the word "amount", in order to avoid any controversy about the adequacy of the amount which Parliament may direct to be paid in the manner specified by the clause, where property belonging to a citizen is compulsorily acquired or requisitioned. It also provides, as did Article 31(2) in the unamended form, that a law passed by virtue of the powers conferred by article 31(2) shall not be called in question in any Court on the ground that the amount so fixed or determined is not adequate; and it adds that the said law cannot also be challenged on the ground that the whole or any part of such amount is to be given otherwise than in cash.

Clause 2(b) of the Bill.

12. Sub-clause (b) of clause 2 of the Bill inserts clause (2B) after clause (2A) in the existing Article, and it lays down that nothing in sub-clause (f) of clause (1) of Article 19 shall affect any such law as is referred to in clause (2). In other words, an additional safeguard has been provided by clause (2B) which is sought to be introduced by the Bill to prevent any attack against the law passed under Article 31(2) on the ground that any of its provisions contravene the fundamental rights guaranteed by Article 19(1)(f).

Necessity of amendment in view of Cooper's case.

13. Every student of Constitutional Law knows that Parliament thought that it was necessary to make these provisions because of the recent decision of the Supreme Court in *Rustom*

1. *Cardozo, The Nature of Judicial Process, (1932), page 170*

Cavasjee Cooper & Another v. *Union of India.*[1] Parliament presumably thought, and we think rightly, that the effect of this majority decision of the Supreme Court was, in substance, to make compensation provided for by the impugned legislation justiciable and subject it to the test of reasonableness under article 19(5); and, to that extent, the said decision is inconsistent with the view taken by the Supreme Court in *State of Gujarat* v. *Shantilal Mangaldass and others.*[2] Indeed, eversince the Fourth Amendment was passed on the 27th April, 1955, the Supreme Court had generally interpreted clause (2) of Article 31 to mean that the adequacy of compensation directed to be paid by laws passed under the said clause was not justiciable as we have explained earlier, except in cases where it reasonably appeared to the Court that the compensation was illusory or that the whole legislative exercise was a fraud on the Constitution. But, in *Cooper's case,*[1] the majority view appeared to strike a somewhat different note; and that, according to Parliament, made it necessary to introduce the amended clause (2) in Article 31. We think that, in the circumstances to which we have just referred, Parliament is justified in introducing the amendment in question.

Clause 3 of the Bill.

14. This takes us to clause 3 of the Bill. It reads thus—

"3. After article 31B of the Constitution, the following shall be inserted, namely,—

"31C. Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

By introducing this clause, Parliament is taking the first major and significant step towards implementing two of the Directive Principles enshrined in clause (b) and (c) of Article 39 in Part IV of the Constitution, and, in that sense, the clause under consideration can be appropriately described as historic. After it

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1. *Rustom Cavasjee Cooper & Another* v. *Union of India*, A.I.R. 1970 S.C. 564.

2. *State of Gujrat* v. *Shantilal Mangaldass and Others*, (1969) 1 *S. C. R.* 509.

is adopted, Parliament will have heralded a new era in the pursuit of the goal placed before the nation by the Constitution to establish social and economic justice in this country. The Commission is in full agreement with this object of the clause.

Relationship between Directive Principles and fundamental rights.

15. In the two decades after the Constitution was passed, the inter-relation between the Directive Principles and Fundamental Rights has been often been considered by the Supreme Court. The Directive Principles enshrined in Part IV are, in terms, declared to be non-justiciable and yet, Article 37, which makes this declaration, emphatically adds that the said principles are nevertheless fundamental in the governance of the country and it ordains that it shall be the duty of the State to apply these principles in making laws. Broadly stated, in its judgments, the Supreme Court has often treated the Directive Principles as relevant in dealing with the question as to whether invasion of fundamental rights alleged to be involved in the provisions of any impugned statute is reasonable and is for public good or not. But, whenever there appeared to be a clear conflict between one or more of the Directive Principles on the one hand, and the fundamental rights on the other, the Court invariably held that the fundamental rights must prevail over the Directive Principles.

Importance of Directive Principles in achieving socio-economic justice.

16. But, in retrospect, for some time past, citizens genuinely concerned with the progress of Indian democracy in its destined task of achieving socio-economic justice in this country by a democratic process have often wondered how it would be possible to give effect to the more important declaration contained in Article 37 whereby duty was imposed on the State to apply the Directive Principles in making law. In appreciating how deep is the concern felt by many of us in this behalf, it is necessary to emphasize the part which the Directive Principles are expected to play in the achievement of socio-economic objectives. The fundamental rights and the directive principles enshrined in Parts III and IV of the Constitution have been described by Granville Austin[1] as "the conscience of the Indian Constitution." "The Indian Constitution", says Austin, "is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet despite the permeation of the entire constitution by the aim of national renascence, the core of the commitment, to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy." According to Austin:—

> "In the Directive Principles, however, one finds an even clearer statement of the social revolution. They aim

1. Granville Austin, The Indian Constitution: Cornerstone of a Nation (Oxford University Press, London) (1966).

at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from the object physical conditions that had prevented them from fulfilling their best selves."

Directive principles not merely pious declarations.

17. The words used by Dr. Ambedkar, when he piloted the Directive Principles in the Constituent Assembly, are significant. Dr. Ambedkar said:—

"In enacting this part (Part IV) of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are

to exercise the legislative and executive power they will have. Surely it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip-service to these princinles

but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country."

Directive principles dynamic in character.

18. Nehru described this position in his characteristically lucid words by observing:

"The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over."

Thus considered, the Directive Principles can be appropriately described in Nehru's words as being dynamic in character, while Fundamental Rights can be described as static. In describing Fundamental Rights as static, we do not propose to underestimate their significance and importance in the Constitutional set-up devised by the Constitution and the democratic way of life was adopted by us. They, no doubt, constitute a distinctive feature of our Constitution and are, in fact, justly regarded as its cornerstone. But the very nature of the Directive Principles postulates that their ultimate objective is to satisfy the ever-growing legitimate but unsatisfied hopes and aspirations of common citizens of this country to enjoy life, liberty and happiness in ample measures and, in that sense, they are inevitably dynamic in character and their horizon would continuously expand as the country witnesses economic development and adopts social change, and marches towards its cherished goal of achieving socio-economic revolution.

Primacy of directive principles recognised by the Bill.

19. However, as we have already indicated, Directive Principles, not being enforceable, were given a somewhat inferior position by judicial process. The proposed Bill for the first time recognises the primacy of Directive Principles and has selected two of them enshrined in Article 39(b) and (c) for implementation in the first instance. That is why we think the Bill marks the beginning of a new era in the constitutional history of our country.

Clause 3—question of form considered.

20. Having made these preliminary observations, let us proceed to examine the provisions made by clause 3. The first question which calls for consideration is: is it necessary to make the main operative provision of the clause in a negative form beginning with the word "notwithstanding"? Would it not be possible to secure the implementation of the principles enshrined in clauses (b) and (c) of Article 39 by a positive provision ? We have given anxious thought to this problem and we have come to the conclusion that the form adopted by the draftsman in framing clause 3 cannot be avoided and is, in a sense, inevitable.

Paramount obligation of the State.

21. In this connection, it is necessary to remember that fundamental rights enshrined in Part III are conferred on citizens, while Directive Principles enumerated in Part IV amount to paramount obligations imposed on the State. That being so, a positive provision made for the purpose of securing implementation of said principles cannot in the very nature of things be treated as fundamental rights.

In fact, such a positive provision would, for instance, amount to regulation or control of the citizens' right to property guaranteed by Article 19(1) (f). While considering the question about the form which the provisions of clause 3 should adopt, this aspect of the matter must be borne in mind.

Article 39(b) and (c).

22. At this stage, it is relevant to refer to the Directive Principles which are sought to be secured by the conferment of power on Parliament and the State Legislatures by clause 3. Clauses (b) and (c) of Article 39 provide:

> "The State shall, in particular, direct its policy towards securing-
>
> (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
>
> "(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

23. It will be noticed that implementation of these Directive Principles would amount to the control or regulation of the citizens' right to property and, in that sense, they must find a place under Article 31 by way of an exception or proviso or as a part of the scheme envisaged by all the provisions under Article 31, and that is what the draftsman has done in the present case. We are, therefore, unable to say that the drafting of Article 31C which is in a negative form is open to any serious criticism.

Implementation of Directive Principles—Effect on right to property.

24. However, we ought to emphasise that the effect of Article 31C, as we conceive it to be, is not that, in implementing the principles specified in clauses (b) and (c) of Article 39, Articles 14, 19 and 31 or any of them is intended to be unconstitutionally contravened; it means, as is meant by Article 31B, that enforcement of the relevant Directive Principles by legislative process may involve regulation of the fundamental rights guaranteed by Article 19(1)(f) and (g) and Article 31, but such regulation would inevitably have to be within the limits prescribed by clauses (5) and (6) of Article 19 or by the relevant provisions of Article 31, such as Article 31(2). It is inconceivable that Article 14, properly understood, can ever be violated by any legislation contemplated by Article 31C.

Effect of article 31-C examined.

25. We are confident that, after the present Bill is passed, when, in due course, Parliament and State Legislatures make laws in accordance with the provisions of Article 31C, they will faithfully keep in mind the basic concept of our constitutional philosophy that, in evolving a rational synthesis (Samanvaya) between the competing claims of a citizen's fundamental rights and public good, the relative importance and legitimacy of the claims must be carefully weighed and taken into account.

Desirability between fundamental rights and public good.

26. Apart from the apparent necessity to draft Article 31C in the present form, Government presumably intend to avoid any dilatory intervention of legal proceedings which inevitably stall, retard and sometimes materially hinder the whole object of meeting urgent economic problems speedily and effectively, though, of course, under valid laws. That, in fact, was the genesis of the Fourth Amendment by which Articles 31A and 31B were inserted in the Constitution and that also appears to be the justification of the relevant clause in Article 31C. But, obviously, this clause does not imply that Parliament desires to ignore Articles 14, 19 and 31 in passing laws to implement the principles enshrined in Article 39(b) and (c). The only effect of the clause is to avoid judicial scrutiny on the point.

Dilatory legal proceedings intended to be avoided.

27. In regard to Article 31C as at present drafted, there is one point to which we ought to refer. Article 31C as at present drafted provides that, notwithstanding anything contained in article 13, a law passed to give effect to the policy specified in clause (b) or clause (c) shall not be deemed to be void, *inter alia*, on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 19. In our opinion,

Question as to how far article 19 should be overridden.

the purpose which Article 31C has in mind would be effectively achieved if, instead of referring to Article 19(1) as a whole, reference is made to Article 19(1) (f) and (g). It is these two clauses that are likely to be contravened by legislation contemplated by Article 31C, and, if a provision is made that no law passed with a view to implementing the policy enunciated in Article 39(b) and (c) contravenes, *inter alia,* Article 19(1) (f) and (g), that would serve the purpose in view.

Consequences of mentioning whole of article 19.

28. On the other hand, if the whole of Article 19 is retained in the relevant provision of clause 3 of the Bill, it is likely to lead to some consequences which we view with grave concern. Sub-clauses (a), (b) and (c) of Clause (1) of Article 19 guarantee to all citizens fundamental right to freedom of speech and expression, to assemble peaceably and without arms, and to form associations or unions. We have already expressed our concurrence with the policy underlying the aim and object of clause 3 of the Bill and we have also indicated that a stage has now arrived when the primacy of the Directive Principles must not only be recognised in theory, but must become a reality of the part of national life. Nevertheless, we cannot ignore the fact that there may be citizens or groups of citizens who subscribe to the conservative political philosophy and want the *status quo* to remain and *laissez-faire* to thrive. It is well known that the doctrine of *laissez-faire* and the rule of the market characterised the Victorian era in the English public life. So far as we are concerned, the days of *laissez-faire* and the rule of the market are over, and the Constitution in unmistakable terms provides for the pursuit of the idea of establishing an egalitarian society by the rule of law in a democratic manner. Even so, if a section of the Indian community, however small in number, does not believe in this philosophy and wants to propagate the conservative view of life, it would be entitled to advocate the amendment of some of the Directive Principles to conform to its socio-economic philosophy. Freedom of speech and expression of opinion means not only freedom of speech and expression of opinion which is in conformity with the philosophy of the establishment, but more particularly freedom of speech and expression of opinion which dissents from the philosophy of the establishment. This position no democrat can dispute.

Recommendation to amend clause 3 relating to Article 31-C.

29. If that be so, we apprehend that retaining Article 19 without limiting its operation to sub-clauses (f) and (g) of clause (1) may conceivably empower Parliament or the State Legislature to make a law which might prohibit or penalise or control any criticism of the current economic policies adopted by the present Union Government or any movement to change the entire philosophy of the Directive Principles in conformity with the conservative view of economic and political life; and such a position, we think, could not be democratically sound or wise. Similar situations may, speaking purely theoretically, arise even in respect of the other freedoms guaranteed by clauses (b) to (e) of article 19(1) if the whole of article 19(1) were mentioned. That

is why we recommend that, in Article 31C as drafted under clause 3 of the Bill, reference should be made to Article 19(1) (f) and (g) alone and not to Article 19 as a whole.

Apprehension about possible invocation of other parts of article 19(1) considered.

30. Before we part with this topic, we ought to refer to one consideration which we have carefully weighed in making our recommendation about the inclusion of Article 19(1) (f) and (g) and not the whole of Article 19(1). It is not unlikely that the Government might have thought of including the whole of Article 19(1) because of their apprehension that even the freedom of speech, for instance, might in future be successfully invoked in challenging the validity of laws implementing the Directive Principles enshrined in Article 39(b) and (c). This apprehension of the Government would, no doubt, be referable to the decision of the Supreme Court in *Sakal Papers' case* in which the freedom of speech guaranteed by Article 19(1)(a) has been unduly and unreasonably extended to strike down the provisions of what Parliament regarded as a legitimate and progressive measure. We hope that the apprehension entertained by the Government may not come true. However, if in future, our hope is belied and the apprehension of the Government comes true, there will be time enough for Parliament to take suitable action by including any other part of Article 19(1).

Article 31-C—portion relating to declaration by Parliament.

31. That leaves another part of Article 31-C to be considered. By this part, it is provided that, if a law made by Parliament or State Legislature by virtue of Article 31-C declares that it is for giving effect to the policy enunciated by Article 39, clause (b) or (c), the said law shall not be called in question in any court on the ground that it does not give effect to such policy. In other words, the effect of this provision is that any question as to whether there is any rational nexus or connection, between the provisions of the law passed by Parliament or State Legislature and the object intended to be achieved by them will be completely excluded from judicial scrutiny. It is possible that the nexus between the provisions of the law in question and the object intended to be achieved by them is, in some cases, patent and direct, or is indirect and remote, or is, in some other cases, illusory or non-existent; and yet, if the clause in its present form is adopted by Parliament, courts will be precluded in all cases from examining the question about the existence of such nexus.

Judicial inquiry not to be excluded.

32. It is obvious that the whole object of Article 31C as at present drafted is to enable Parliament and State Legislatures to pass laws with the object of implementing the Directive Principles in question. If that is so, we see no justification for excluding judicial inquiry into the question about the existence of any rational nexus between the law and the object intended to be achieved by it. We feel confident that, once Article 31C is adopted by Parliament and the Constitution is suitably amended, judicial process will take cognizance or the new policy adopted

1. *Sakal Papers (Private) Ltd.* v. *The Union of India,* (1962) 3 S.C.R. 842.

by the Constitution and will not hesitate to recognise the primacy of the Directive Principles and the urgent need to implement them in order to meet the challenge of the times. As we have already emphasised, if Article 31C is adopted, a very significant and important steps forward will have been taken in giving due recognition to the primacy of the Directive Principles and we feel that, while taking this steps, it would be unreasonable to prevent any judicial inquiry into the question as to whether laws passed in pursuance of the new policy bear any connection with the object intended to be served by them.

It is also necessary to bear in mind that Article 31C does not seek to define or even describe concretely the content of the abstract economic principles enunciated in clauses (b) and (c) of Article 39; and that, we think, justifies our recommendation that the question about the content of the relevant Directive Principle or Principles sought to be implemented by any legislative enactment and its or their relation with the provisions of the said enactment should be left open for judicial inquiry. While dealing with this aspect of the matter, we may refer to the fact that Article 31A, which was inserted by section 3 of the Constitution (Fourth Amendment) Act, 1955, specifically and clearly enumerates by clauses (a) to (e) the objects for which laws could be passed and, yet, no provision has been made in the said Article providing that a declaration made by the appropriate Legislature that any law passed by it has been so passed for carrying out the objects enumerated in the clauses is conclusive and shall not be called in question in any Court. We trust that, having regard to this position, the Union Government should accept out recommendation to delete the last part of Article 31C.

Analogy of article 31(2).

33. Besides, we may point out that, when Article 31(2) was added by section 2 of the Constitution (Fourth Amendment) Act, 1955, Parliament provided that the question about the adequacy of compensation should not be justiciable, but did not make a similar provision about the question as to whether compulsory acquisition or requisition of the property is for a public purpose or not. It would be recalled that, under Article 31(2), no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for compensation. While excluding the question of compensation and its adequacy from the jurisdiction of courts, Parliament did not think it advisable similarly to exclude the inquiry as to whether the compulsory acquisition or requisition of any property is for a public purpose or not. In our view, just as the existence of the purpose is left open for judicial scrutiny by Article 31(2), so should the nexus between the provisions of the law proposed to be made in pursuance of the authority conferred by Article 31C and their object, *viz.*, the implementation of the principles enumerated in Article 39(b) and (c) be left open to judicial investigation.

34. We would accordingly recommend very strongly that the relevant part in question should be deleted from Article 31C as at present drafted. Recommendation to amend article 31C.

The proviso to article 31C is similar to the proviso to article 31A and, so, we have no comment to make on it.

35. Incidentally, we may be permitted to observe that, if this clause is retained in Article 31C and all judicial inquiry is excluded, laws passed under Article 31C would nevertheless be challenged in courts of law and, in doubtful cases, courts of law may feel inclined to reach the conclusion that the passing of the impugned law amounts to a fraud on the Constitution. Such a situation, we think, ought to be avoided. Parliament should trust the Judiciary to do its duty fairly, fearlessly, impartially and objectively and to take cognizance of the changed philosophy which Parliament proposes to adopt in recognising the importance, the urgency and the significance of implementing the Directive Principles in question. Challenge on the ground of fraud still possible.

36. As we have already indicated,[1] though the Bill has not been formally referred to us by the Ministry of Law and Justice, it is not unlikely that it may be brought before Parliament in its ensuing session; and having regard to the material terms enlarging the jurisdiction under which the present Commission has been constituted, we thought it right *suo motu* to make a report on the Bill in question. Report made in view of urgency of the matter.

37. In conclusion, our recommendations are :— Conclusion.

(1) In Article 31C as at present drafted, instead of Article 19, Article 19(1)(f) and (g) should be specified;

(2) The last part of the main paragraph of the proposed Article 31C, which provides that no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy, should be deleted.

P.B. Gajendragadkar—*Chairman.*

V.R. Krishna Iyer
P. K. Tripathi } *Members.*

P.M. Bakshi—*Secretary.*

NEW DELHI,
The 28th October, 1971.

1. Paragraph 1, *supra.*

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