

THE CONSTITUTION (FOURTH AMENDMENT) ACT, 1955

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Statement of Objects and Reasons appended to THE CONSTITUTION (Fourth Amendment) Bill, 1954 which was enacted as the Constitution (Fourth Amendment) Act, 1954

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to amend articles 31, 31A and 305 of, and the Ninth Schedule to, the Constitution.

2. Recent decisions of the Supreme Court have given a very wide meaning to clauses (1) and (2) of article 31. Despite the difference in the wording of the two clauses, they are regarded as dealing with the same subject. The deprivation of property referred to in clause (1) is to be construed in the widest sense as including any curtailment of a right to property. Even where it is caused by a purely regulatory provision of law and is not accompanied by an acquisition or taking possession of that or any other property right by the State, the law, in order to be valid according to these decisions, has to provide for compensation under clause (2) of the article. It is considered necessary, therefore, to re-state more precisely the State's power of compulsory acquisition and requisitioning of private property and distinguish it from cases where the operation of regulatory or prohibitory laws of the State results in "deprivation of property". This is sought to be done in clause 2 of the Bill.

3. It will be recalled that the zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to articles 14, 19 and 31, and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the courts, articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g., the following:-

(i) While the abolition of zamindaris and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reform are the fixing of limits to the extent of agricultural land that may be owned or occupied by any person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings.

(ii) The proper planning of urban and rural areas require the beneficial utilisation of vacant and waste lands and the clearance of slum areas.

(iii) In the interest of national economy the State should have full control over the mineral and oil resources of the country, including in particular, the power to cancel or modify the terms and conditions of prospecting licenses, mining leases and similar agreements. This is also necessary in relation to public utility undertakings which supply power, light or water to the public under licenses granted by the State.

(iv) It is often necessary to take over under State management for a temporary period a commercial or industrial undertaking or other property in the public interest or in order to secure the better management of the undertaking or property. Laws providing for such temporary transference to State management should be permissible under the Constitution.

(v) The reforms in company law now under contemplation, like the progressive elimination of the managing agency system, provision for the compulsory amalgamation of two or more companies in the national interest, the transfer of an undertaking from one company to another, etc., require to be placed above challenge.

It is accordingly proposed in clause 3 of the Bill to extend the scope of article 31A so as to cover these categories of essential welfare legislation.

4. As a corollary to the proposed amendment of article 31A, it is proposed in clause 5 of the Bill to include in the Ninth Schedule to the Constitution two more State Acts and four Central Acts which fall within the scope of sub-clauses (d) and (f) of clause (1) of the revised article 31A. The effect will be their complete, retrospective validation under the provisions of article 31B.

5. A recent judgment of the Supreme Court in *Saghir Ahmed v. the State of U.P.* has raised the question whether an Act providing for a State monopoly in a particular trade or business conflicts with the freedom of trade and commerce guaranteed by article 301, but left the question undecided. Clause (6) of article 19 was amended by the Constitution (First Amendment) Act in order to take such State monopolies out of the purview of sub-clause (g) of clause (1) of that article, but no corresponding provision was made in Part XIII of the Constitution with reference to the opening words of article 301. It appears from the judgment of the Supreme Court that notwithstanding the clear authority of Parliament or of a State Legislature to introduce State monopoly in a particular sphere of trade or commerce, the law might have to be justified before the courts as being "in the public interest" under article 301 or as amounting to a "reasonable restriction" under article 304(b). It is considered that any such

question ought to be left to the final decision of the Legislature. Clause 4 of the Bill accordingly proposes an amendment of article 305 to make this clear.

NEW DELHI; JAWAHARLAL NEHRU.

The 17th December, 1954.

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(i) While the abolition of zamindaris and the numerous intermediaries between the State and the tiller of the soil has been achieved for the most part, our next objectives in land reform are the fixing of limits to the extent of agricultural land that may be owned or occupied by any

person, the disposal of any land held in excess of the prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings.

(ii) The proper planning of urban and rural areas require the beneficial utilisation of vacant and waste lands and the clearance of slum areas.

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might have to be justified before the courts as being "in the public interest" under article 301 or as amounting to a "reasonable restriction" under article 304(b). It is considered that any such question ought to be left to the final decision of the Legislature. Clause 4 of the Bill accordingly proposes an amendment of article 305 to make this clear.

NEW DELHI; JAWAHARLAL NEHRU.

The 17th December, 1954.

THE CONSTITUTION (FOURTH AMENDMENT) ACT, 1955

[27th April, 1955.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follow:-

1. Short title.-This Act may be called the Constitution (Fourth Amendment) Act, 1955.

2. Amendment of article 31.-In article 31 of the Constitution, for clause (2), the following clauses 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 compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

3. Amendment of article 31A.-In article 31A of the Constitution,--

(a) for clause (1), the following clause shall be, and shall be deemed always to have been, substituted, namely:-

"(1) Notwithstanding anything contained in article 13, no law providing for-

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

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:

Provided that where such law is a law 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."; and

(b) in clause (2),-

(i) in sub-clause (a), after the word "grant", the words "and in the States of Madras and Travancore-Cochin, any janman right" shall be, and shall be deemed always to have been, inserted; and

(ii) in sub-clause (b), after the word "tenure-holder", the words "raiyat, under-raiyat" shall be, and shall be deemed always to have been, inserted.

4. Substitution of new article for article 305.-For article 305 of the Constitution, the following article shall be substituted, namely:-

"305. Saving of existing laws and laws providing for State mono- polies.-Nothing in articles

301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19."

5. Amendment of the Ninth Schedule.-In the Ninth Schedule to the Constitution, after entry 13, the following entries shall be added, namely:---

"14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).

15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act XXVI 1948).

16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).

17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).

18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).

19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953).

20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951."