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SHORTCOMINGS OF KARNATAKA LAND REFORMS ACT

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INTRODUCTION

IN A COUNTRY LIKE OURS, WHICH HAS ACCEPTED AND ADOPTED THE CONCEPT OF WELFARE STATE, LAW NECESSARILY BECOMES A DYNAMIC INSTRUMENT OF SOCIAL ENGINEERING. AGRARIAN REFORMS BY WAY OF SUITABLE LEGISLATION HAVE BEEN COMMENCED SINCE LONG IN VARIOUS STATES, AND OUR OWN STATE BROUGHT ABOUT CONSOLIDATION OF LAND REFORMS ACT PREVALENT IN DIFFERENT AREAS, WHICH FORMED PARTS OF INTEGRATED KARNATAKA STATE, AND PASSED THE KARNATAKA LAND REFORMS ACT IN 1961 (ACT 10 OF 1962).

Land Reform in the southern Indian state of Karnataka is characterized by both bright spots and serious areas of concern. The state has been in the forefront of modernizing land governance by using information technology for the past few decades, and it also has a record of having implemented one of the most progressive land reforms laws in India.[1] In Karnataka, about 53.41 percent of the total land available within the State which forms the "net sown area" and the rights **OVER** the agricultural land is subjected to restrictions under various provisions of the Karnataka Land Reforms Act, 1961 and successive amendments to it over the years have aimed at bringing about revolutionary changes**.**

THE OBJECT IS THUS THE CREATION OF EGALITARIAN SOCIETY TO PROVIDE EQUALITY OF STATUS AND OPPORTUNITY AND TO BRING ABOUT ECONOMIC SECURITY AND STABILITY TO THE EXTENT POSSIBLE, WITHIN THE FRAME WORK OF LAW, IN THE FIELD OF AGRICULTURE AND DISTRIBUTION OF LAND AVAILABLE.

THE PAPER MAKES AN EFFORT TO question the constitutional validity of Section 79- A, 79-B, 79-C and Section 80 of the Karnataka Land Reforms Act, 1961 on the ground that it violates the basic structure of the fundamental rights of the citizens. The above provisions place an embargo on sale of agricultural land to a non-agriculturist and provides for restrictions on transfers and holdings of agricultural land based on the income from non-agricultural sources over and above existing provisions under the same Act which provides for acquisition of surplus land by the State through executive action.

THE PAPER IN ITS INITIAL PART MAKES AN EFFORT TO TRACE OUT THE HISTORICAL DEVELOPMENT TO THE CONSTITUTION THROUGH AMENDMENTS AND VARIOUS ENACTMENTS GIVEN LIFE TO BY LEGISLATIVE ASSEMBLIES ACROSS THE COUNTY IN REALISING AND ACHIEVING REFORMS IN THE PASTURES OF AGRICULTURE, STAYING TRUE TO ITS OBJECTIVE WHICH IT WAS SET-OUT TO ACHIEVE.

HISTORICAL BACKGROUND

[1] LAND GOVERNANCE ASSESSMENT FRAMEWORK (LGAF), KARNATAKA- State Report 2014

1. PRE- CONSTITUTIONAL ERA

LONG BEFORE independence, the political leadership of India had committed itself to create a more just and egalitarian society for the country. To these men the creation of such a society required a more equitable distribution of wealth and other means of livelihood. The discussion in the Constituent Assembly concerning property rights and the compulsory acquisition of the land generated even more heated debate than the extended debates on "due process" clause. This is quite understandable in the view of the fact that this would have far reaching consequences considering its brawny effects on private land holding across the length and breadth of the nation. Decision as to what degree the property rights would receive constitutional protection would have great bearing on a whole host of other consideration, the most notably of which were land reforms and improving the grim lot of the Indian peasantry. The question as to social, political and economical implications in the very same order startled in the minds of the members of the Constituent Assembly. While there was a general consensus among the members on land reforms and to improve the social and economic status of the peasantry, many complex questions were raised and opinion of the Constituent Assembly was sharply divided, especially over the question of compensation for the land acquired by the Government. The end result was a balancing act on part of the State to reconcile claims of compensation on acquisition of the private property and the duty of the state to acquire private property for public purpose. In the account, only the highlight of the debate can be touched upon.[2]

Jawaharlal Nehru and the leadership of the Indian National Congress had agreed that the only solution to the zamindari problem could be its abolition and the distribution of their land holdings among the tenant-farmers. Speaking in 1928 to the Annual Session of the United Congress Committee, Nehru declared:

> *"To our misfortune we have zamindars everywhere, and like blight they have prevented all healthy growth….We must, therefore, face this problem of landlords, and if we face it what can we do to abolish it? There is no halfway house. It is a feudal relic of the past utterly out of keeping with the modern conditions. The abolition of landlordism must, therefore, occupy a prominent place in our programme."*[3]

2. POST- CONSTITUTIONAL ERA

The ideas of socio-economic justice and equality, which were nurtured by the radicals in the pre-independence days also found their way into the Constitution of Indiaǵ The chapter on directive principles of state policy, which significantly carries no sanctions, enjoins certain duties upon the states. Article 38, for example, requires the state to secure

[2] H.C.L Merlliat: "Compensation for the Taking of Property: A Historical Footnote on Bela Banerjee's Case," *Journal of India Law Institute*, I (1958-1959), pp. 375-397.and "The Indian Constitution: Property Rights and Social Reform," *Ohio State Law Journal*, XXI (1960), pp. 616-642.

[3] Quoted in Frank J. Moore and Constance A. Freydig, *Land Tennure Legislation in Uttar Pradesh* (Berkeley: Modern India Project Institute of East Asiatic Studies, University of California, 1955), p.3.

and protect "as effectively as it may, a social order in which justice, social, economic and political" would permeate the nation's life. Article 39 is somewhat more specific. It directs the state to distribute ownership and control of the material sources of the community for the sake of the good of society. Thus, although agrarian reform is not specifically mentioned in the Constitution, its introduction would, quite clearly, be well within the scope of the directive principles.

"The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a Constitution made for a progressive society. Working of such a Constitution depends upon the prevalent atmosphere and conditions."[4] , were the words of the members of the Constituent Assembly which inspired the Parliament to ring immediate changes to the Constitution with introduction of Art.31-A, Art.31-B and Art.31-C by an amendment [5] with a view to facilitate agrarian reforms and abolish zamindari holdings. Insertion of such provisions rendered Art 31 futile[6] as insertion of Art.300 A[7] which was equivalent of the former Art.31 (1). The provisions under the umbrella of the Constitution providing for acquisition of estates, etc.; validation of certain Acts and Regulations and laws giving effect to certain directive principles were inserted to bring about never seen revolutionary changes to agrarian reforms and securing the constitutional validity of zamindari abolition laws in general and certain specified State Acts in particular.

THE SUPREME COURT AND PROPERTY RIGHTS

By the late 1950 much of the legislation had been enacted by the State Legislature, had received the Presidential assent, and implementation process began. Although there was no uniform pattern to these land-reforms enactments, the formula established by the legislature for determining the amount of compensation varied from state to state and from enactments to enactments. No had the President given his assent to these legislations, the High Court of the States were filled with petitions under Art.226 questioning the amount of compensation receivable by the zamindars and immediate relief prayed was for delay in implementation of the legislations. In the State of Uttar Pradesh alone, "about 7000" petitions had been filed by February 1951.[8] *Much water has flown through the rivers of India since the Supreme Court, by three to two majority, declared unconstitutional two provisions of Bihar Land Reforms Act in its judgment handed down in the case of The State of Bihar v. Maharajadhiraja Sri Kameshwar Singh of Darbhanga and Others*[9]*. Subsequently, validity of Madhya Pradesh*[10] *, Uttar Pradesh*[11] *and several*

[4] Constituent Assembly Debates, 1948, Vol. VII, 38.
[5] Ins. By the Constitution (First Amendment) Act, 1951, s.4 (with retrospective effect)
[6] Art. 31. [Compulsory Acquisition of Property.] Rep. by the Constitution (Forty- fourth Amendment) Act, 1978, s.6 (w.e.f. 20-06-1979)
[7] Ins. By the Constitution (Forty- fourth Amendment) Act, 1951
[8] National Herald (Lucknow), February 7, 1951.
[9] AIR 1952 SC 252
[10] *Vishweshwar Rao v. The State of Madhya Pradesh* , (1952) S.C.R 1020.
[11] Raja Suriya Pal Singh v. The State of Uttar Pradesh and Another, (1952) S.C.R 1056.

other zamanindari abolition enactments arose before the Apex Court. The decision of the Supreme Court of course, was binding upon the High Courts, and the result was that several of the High Court's began questioning the validity of the enactments. Seeing its land-reform programme threatened by judicial decisions while accentuating the loop-holes existing in the Constitution and amendments that followed up post its existence, the Government introduced in the Parliament yet another constitutional amendment (Seventeenth Amendment) designed to settle once and for all, questions posed over the validity of these measures. The then Law Minister, Mr A.K Sen cleared general sense of misconception in the air that, the amendment aimed at casting away all the impediments, technical and legal, in our way to achieve noble purpose of ensuring minimum land to everyone[12] *and clarified that it was in no way out of any disrespect to the judiciary*[13] *but to remove fetters in the way of introducing land reforms.*[14] *Significantly, however, this amendment does add to Art.31A the proviso that when the State acquires any land which is within the ceiling limit and under personal cultivation of the property owner, then the law must provide for payment of compensation "at a rate which shall not be less than the market value thereof".*[15] *However, it was unclear whether the Courts had any jurisdiction to make certain that property owners would receive full compensation, for this new proviso is a part of At.31-A which imposes severe limitations on the scope of judicial review.*

KARNATAKA LAND REFORMS

The Mysore Land Reforms Act, 1961 to enact uniform law relating to land reforms in the State of Karnataka relating to agrarian relations, conferment ownership on tenants and ceiling on land holdings etc., which Act is renamed as Karnataka Land Reforms Act, 1961 in view of renaming of the State. The Act No.10 of 1962 received the assent of the President on 05.03.1962

Constitution (17th Amendment) Act.1964 inserting Act No.10 of 1 962 in the 9th Schedule of the Constitution of India at Sl.No.5[illegible]. Hence, Act No.10 of 1962 received the protection of being challenged as violative of any of the provisions of the Part-III of the Constitution. Amendment of Karnataka Land Reforms Act, 1961 subsequently amended to introduce the prohibitions on holding or transfers and ceilings on holdings of agricultural lands in the State of Karnataka Land Reforms (Amendment) Act, 1973 which is referred as Act No.1 of 1974. The provisions Section 79A, 79B, 79C and 80 are the focus of this paper which provides for an absolute embargo on any person or joint family, as the case may be from holding or transferring agriculture lands. It is also pertinent to note that Karnataka is the only state to impose restrictions on parameters of income in addition to holdings of surplus land in the hands of land owners/landlords. In view of the embargo imposed under Section 79-B of

[12] *The Hindu*, June 2, 1964, p.7
[13] *The Hindustan Times*, June 2, 1964, p.6
[14] *The Hindustan Times*, June 3, 1964, p.12
[15] Land ceilings differ from State to State, taking into account such factors as the traditional land systems, degree of arability of land, and size of families : *M/s Nambudari Seeds v. Asst. Commissioner of Income Tax* (decided on 14th July 2014)

the Karnataka Land Reforms Act, 1961, based on the income criteria, a person cannot transfer/make over her land holdings to her own daughters and Petitioners 2 to 4 cannot hold any agricultural lands in the State of Karnataka for reason of their family income exceeding 25 lakhs from sources other than agriculture for a period of 5 consecutive years preceding the said date. Hence, the paper is challenging the restrictive provisions of Section 79- A, 79-B, 79-C and Section 80 of the Karnataka Land Reforms Act, 1961 on the ground of being violative of Art. 14, 19 and 21 of the Constitution of India.

Act No.1 of 1974 inserted in the 9th schedule of Constitution of India (39th amendment) Act, 1974 which received the assent of the President on 10th August 1975. Thus Act No.1 of 1974 received the protection of Art.31B of the Constitution of India.

The validity of some of the clauses in Section 2A and Section 5, 7, 8, 14, 15, 41, 42, 44, 45, 47, 57, 59, 63, 66, 66A, 67, 72, 77, 78, 79A, 79C, 81, 91, 104, 106, 127A and Schedule I of the Act as amended by Act of 1 of 1974 of the Karnataka Land Reforms Act, 1961, on the ground that they were violative of Art. 14, 19 & 31 of the Constitution of India.

Act in question is protected under the umbrella of 9th Schedule to the Constitution of India having regard to the fact that the law placed in the 9th schedule cannot be deemed to be void in view of Article 31B. Hence, the Hon'ble Court was upheld the validity of the said Sections.

13 member Bench of Hon'ble Supreme Court had occasion to deal with Art 31B of the Constitution of India wherein it considered the validity of the Constitution (Twenty fourth Amendment) Act 1971, and Constitution (Twenty fifth Amendment) Act 1972, Constitution (Twenty Ninth Amendment) Act 1972, in his holiness ***Kesavanada Bharathi Sripadagavaru & Others v. State Of Kerala & Another*** (AIR 1993 SC 1461), wherein the Kerala Land Reforms (Amendment) Act, 1969 (Kerala Act No.25 of 1971) came to be inserted in the Ninth Schedule of the Constitution of seek protection under Art.31B from being challenged on the ground of violation of any of the provisions of Part III of the Constitution. The Hon'ble Apex Court by is its Judgment dated 24th April 1973 held as follows:

"*486. I have held that Art.369 does not enable parliament to abrogate or take away fundamental rights. If this is so, it does not enable parliament to do this by any means, includingthe device of Art.31B and the Ninth Schedule.* ***This device of Art.31B and the Ninth Schedule is bad in so far as it protects statutes even if they take away fundamental rights.*** *Therefore, it is necessary to declare that the Twenty Ninth Amendment is ineffective to protect the impugned Acts if they take away fundamental rights*"

Subsequent judgment of the Constitution Benches of the Hon'ble Supreme Court in **Vaman Rao v. Union Of India**[16] and **Bheemsinghji v. Union Of India**[17] held that "*mere abridgment that is to say curtailment, and not necessarily abrogation, that is to say total deprivation, is enough to produce the consequence provided*

[16] 1981 (2) SCC 362.

[17] 1981 (1) SCC 166

for by Art. 13(2). It was also fof the opinion that every case in which the protection of fundamental rights is withdrawn, will not necessarily result in damaging or destroying the basic structure of the Constitution, and the question as to whether the basic structure is damaged or destroyed in any given case, would depend upon which particular Article of part-III is in issue, and whether what is withdrawn is quintessential to the basic structure of the Constitution."

The 5 member bench of the Hon'ble Supreme Court in the matter of **I.R.Coelho v. State Of Tamil Nadu**[18] has referred the matter to 9 judges bench so as to consider whether the validity of a Constitutional amendment made on or after 24.04.1973 effecting inclusion in the 9the Schedule. Whether validity of a Constitutional amendment made on or after 24.04.1973 effecting inclusion in the ninth schedule of an Act or regulation which, or a part of which, is or has been found by the Supreme Court to be violative of one or more of the fundamental rights under Arts. 14, 19 and 31 is open to challenge or whether only validity of such a constitutional amendment to the ninth schedule which damages or destroys the basic structure of the constitution can be challenged before the Court

LIST OF DATES

18/06/1951	Constitution (1st Amendment) Act, 1951 came into force, which: (i) **Inserted A.31-A, 31-B and 31-C** of the Constitution; (ii) **Inserted 9th Schedule** into the Constitution.
15/03/1962	Karnataka Act No. 10 of 1962 (i.e., the Karnataka Land Reforms Act, 1961) came into force.
20/06/1964	Constitution (17th Amendment) Act, 1964 came into force, which: (i) **Inserted Second Proviso to A.31-A** which provides that wherever Government acquires property, it should provide for payment of compensation at a rate which shall not be less than the market value.
24/04/1973	The Constitution Bench of the Hon'ble Supreme Court in ***Keshavananda Bharati's* case AIR 1973 SC 1461***inter alia* held that that Parliament had no power to amend the basic structure of the Constitution. Therefore, as held subsequently in *I.R. Coelho's case* that after 24/04/1973, the laws included in the 9th Schedule would not have absolute immunity and thus validity of such laws may be challenged on the touchstone of basic structure as reflected in Article 21 read with Article 14, 15 and 19 and the principles underlying in those articles.
01/03/1974	Karnataka Act No. 1 of 1974 came into force

[18] 1999 (7) SCC 580.

	which was inserted in the 9th Schedule and Constitution (39th Amendment) Act, 1975 which *inter alia***inserted Sections 79-A, B and C of the Karnataka Land Reforms Act, 1961.**
20/06/1979	Constitution (44th Amendment) Act, 1978 came into force, which *inter alia* (i) **Repealed A.19(1)(f)**-Fundamental right to property; (ii) **Repealed A.31**-Compulsory acquisition of property. In this case, (iii)**Inserted A.300A**-Persons not to be deprived of property save by authority of law.
13/11/1980	The Constitution Bench of the Hon'ble Supreme Court in ***Waman Rao v. Union of India* AIR 1981 SC 271** held that deletion of Article 19(1)(f) and 31(2) by the Constitution (44th Amendment) Act, 1978 is not retrospective. As such, the validity of any law made prior to 20/06/1979 shall be open to challenge on the ground of contravention of those Articles.
11/01/2007	The Constitution Bench of the Hon'ble Supreme Court in ***I.R. Coelho v. State of Tamil Nadu* AIR 2007 SC 861***inter alia* held that the power to grant absolute immunity at will is not compatible with basic structure doctrine and after 24/04/1973, the laws included in the 9th Schedule would not have absolute immunity and thus validity of such could be challenged on the touchstone of basic structure as reflected in Article 21 read with Article 14, 15 and 19 and the principles underlying in those articles.

AMENDMENT TO KARNATAKA LAND REFORMS ACT, 1961 WITH RELEVANT AMENDMENTS TO THE IMPUGNED PROVISIONS

A total of 43 amendments have been carried out to the Karnataka Land Reforms Act, 1961starting with the 1st Amendment in 1965 until the most recent 43rd Amendment in 2017.

Insofar as the impugned provisions are concerned, a total of only 6 of these amendments are relevant, i.e., (a) 9th Amendment (1974), (b) 18th Amendment (1979), (c) 20th Amendment (1982), (d) 25th Amendment (1991), (e) 28th Amendment (1996) and (f) 42nd Amendment (2015).

Out of the above 6 amendments, the last 3 amendments deal exclusively with the increase in non-agricultural income limits, i.e., (a) 25th Amendment (1991), (b) 28th Amendment (1996) and (c) 42nd Amendment

(2015), wherein the limit was raised from the original Rs. 12,000/- (1974-9th Amendment) to Rs. 50,000/- (1991-25th Amendment) to Rs. 2,00,000/- (1995-28th Amendment) to Rs. 25,00,000/- (42nd Amendment). Pertinently, while the practical situation as to agrarian reforms has evolved dynamically from 1974 onwards, the law whilst being stagnant, only the portion as to the exclusionary limit has been modified, albeit neither reasonably nor in a rational and prudent matter.

Sl. No.	Karnataka Act No.	Effective Date	Description
1	**10 of 1962**	**15/03/1962**	**Karnataka (Mysore) Land Reforms Act, 1961 originally enacted**
2	14 of 1965	29/07/1965	1st Amendment
3	38 of 1966	29/09/1966	2nd Amendment
4	1 of 1967	02/02/1967	3rd Amendment
5	5 of 1967	01/02/1967	4th Amendment
6	11 of 1968	28/03/1968	5th Amendment
7	6 of 1970	15/01/1970	6th Amendment
8	4 of 1972	11/05/1972	7th Amendment
9	2 of 1973	15/02/1973	8th Amendment
10	**1 of 1974**	**01/03/1974**	**9th Amendment** ➢ Inserted the word "*holding or*", after "restrictions on" in heading of Chapter-V. ➢ **Inserted Sections 79-A, 79-B and 79-C.** ➢ Section 80 renumbered to sub-section (1). ➢ **Section 80(b)(iii) which originally read 'who is not an agricultural labourer' substituted with:** ***"(iii) who is not an agricultural labourer; or (iv) who is disentitled under Section 79-A or 79-B to***

			acquire or hold any land." ➢ **Section 80**: in the proviso, for the words "to enable persons", substituted the words figures and letters "***to enable a person disentitled to acquire or hold land under Section 79-A or Section 79-B***" **Section 80:** Inserted sub-section **(2)** "***Nothing in sub-section (1) shall apply to lands***

			granted under Section 77".
11	26 of 1974	01/03/1974	10th Amendment
12	31 of 1974	03/08/1974	11th Amendment
13	18 of 1976	11/09/1975	12th Amendment
14	27 of 1976	16/12/1975	13th Amendment
15	44 of 1976	02/06/1976	14th Amendment
16	67 of 1976	13/06/1976	15th Amendment
17	12 of 1977	01/03/1974[19] 31/12/1976[20] 04/05/1977[21]	16th Amendment
18	23 of 1977	01/03/1974	17th Amendment
19	**1 of 1979**	**01/03/1974**[22] 01/01/1979[23]	**18th Amendment Section 79-A(6)**: Substituted the words "***no amount***" in place of "only fifty per cent of such amount".
20	2 of 1980	17/12/1979	19th Amendment
21	**3 of 1982**	01/03/1974[24]	**20th Amendment**

[19] All sections except Section 1, 2 and 11
[20] Section 2
[21] Section 1 and 11
[22] All other provisions except Sections 1,3,10,12, 13(1), 15, 16(1), 16(3), 17, 18, 19, 24, 25, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 43
[23] Sections 1,3,10,12, 13(1), 15, 16(1), 16(3), 17, 18, 19, 24, 25, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 43
[24] Sections 3,7,15,16 and 20

		01/01/1979[25] **25/11/1980**[26] 06/03/1982[27]	**Section 80(1)**: Substituted the words "***lawful***" in place of "valid".
22	1 of 1983	19/10/1982	21st Amendment
23	35 of 1985	27/09/1985	22nd Amendment
24	19 of 1986	06/12/1985	23rd Amendment
25	18 of 1990	08/10/1990	24th Amendment
26	**1 of 1991**	**05/02/1991**	**25th Amendment Section 79-A(1) and (2):** Substituted "***fifty thousand***" in place of "twelve thousand"
27	31 of 1991	13/11/1991	26th Amendment
28	9 of 1992	21/04/1992	27th Amendment
29	**31 of 1995**	**20/10/1995**	**28th Amendment Section 79-A(1) and (2):** Substituted "***two lakhs***" in place of "fifty thousand"
30	8 of 1996	20/10/1995	29th Amendment
31	23 of 1998	01/11/1998	30th Amendment
32	34 of 1998	15/02/1999	31st Amendment
33	22 of 2001	27/08/2001	32nd Amendment
34	20 of 2003	23/04/2003	33rd Amendment
35	34 of 2003	20/08/2003	34th Amendment
36	18 of 2004	10/03/2004	35th Amendment
37	7 of 2005	19/03/2005	36th Amendment
38	17 of 2005	28/05/2005	37th Amendment
39	1 of 2007	05/01/2007	38th Amendment
40	35 of 2010	29/07/2007	39th Amendment
41	27 of 2014	28/08/2014	40th Amendment
42	2 of 2015	08/01/2015	41st Amendment
43	**33 of 2015**	**12/08/2015**	**42nd Amendment** ➢ **Section 79-A(1) and (2):** Substituted "***twenty five lakhs***" in place of "two lakhs" ➢ **Section 80:** Proviso

[25] Sections 4, 6(1), 8, 9, 10, 12, 19 and 21
[26] Sections 1, 6(2), 11, 13, 14, 17, 18 and 22
[27] Sections 2 and 5

			Substituted "Deputy Commissioner" in place of "Assistant Commissioner"
44	43 of 2017	28/10/2017	43rd Amendment

STATEMENTS OF OBJECTS AND REASONS FOR THE KARNATAKA LAND REFORMS ACT, 1961 AND AMENDMENTS TO THE IMPUGNED PROVISIONS

Karnataka Act No. 10 of 1962 (Karnataka Land Reforms Act, 1961) as originally enacted

An act to enact uniform law relating to land reforms in the State of Karnataka.

Whereas it is expedient to enact a uniform law in the State of Karnataka relating to agrarian relations, conferment of ownership on tenants, ceiling on land holdings and for certain other matters hereinafter appearing"

Karnataka Act No. 1 of 1974 (Amendment inserting the impugned provisions)

Relevant portion:

"…*While applying the ceiling and determining the surplus land for a family, the lands held by the individual members will be added together. Where lands are held separately by the husband and wife of a family, the surplus to be surrendered shall be on pro rata basis from the holding of each member of the family. Ceiling will not apply to the lands held by co-operative farming societies but the extent held by each person in such society and also in firms, associations and private trusts shall be deemed to be his personal holding for applying the ceiling.*

Persons having assured income of not less than Rs. 12,000 per annum from non-agricultural source are not permitted to hold agricultural lands. Persons who are not cultivating personally are also not permitted to hold agricultural lands

The term "to cultivate personally" is redefined so as to require residence within 16 kilometers from the limits of the village in which the land is situated…"(emphasis supplied)

Karnataka Act No. 1 of 1979 (Amendment of Section 79-A(6) wherein 'no amount' was substituted in place of 'fifty percent' as regards compensation)

"*Amendments proposed in the Bill are mainly to give effect to the suggestions made by the Government of India while assenting to the Act 1 of 1974 and to remove certain difficulties felt in the implementation of the Act. Some of the important amendments proposed are.—*

(1) cocoa is being made a plantation crop;

(2) persons cultivating lands on the strength of leases created upto 1st March 1974 contrary to the provisions of section 5 are proposed to be declared as "tenant";

(3) certain dependents of soldiers who have died while in service are proposed to be permitted to alienate the land resumed from their tenants;

(4) provision is being made to grant agricultural labourers ownership of their dwelling houses;

(5) members of the Tribunal who continuously absent themselves for more than three consecutive meetings of the Tribunal are proposed to be removed and the Deputy Commissioners are being empowered to transfer cases from one Tribunal to another wherever necessary;

(6) the High Court has recently struck down the registration of tenants as occupants who filed their applications after 31-12-1974 without showing sufficient cause for the delay. It is proposed to validate all such applications. Time to file declarations is being extended upto the expiry of three months from the date of commencement of this Act;

(7) it is proposed to provide for the payment of compensation in a lumpsum to landlords whose annual income is not more than Rs. 2,400 and to give option to widows to receive the compensation amount either in lumpsum or in the form of annuity. In the case of religious and charitable institution, in lieu of annuity it is proposed to give every year the interest that would accrue had the amount payable been deposited in fixed deposit in a Scheduled Bank for a period not less than 61 months;

(8) as desired by the Reserve Bank of India it is proposed to give compensation in the form of non-negotiable bonds to landlords;

(9) it is proposed to empower the deputy commissioner or some other officer authorised by the Government to distribute surplus lands;

(10) the Tribunal is being empowered to reopen any orders passed under section 67 of the Tribunal is satisfied that the said order has been obtained by fraud, misrepresentation or suppression of facts or by furnishing false, incorrect or incomplete declarations;

(11) the provisions of the Act are being made applicable to all tenants and landlords holding lands in inams or other alienated lands;

(12) according to the existing Schedule I the government has to issue a notification specifying the nature of irrigation facilities from government canals and from government tanks in respect of all lands for the purpose of classification of lands. It is proposed to remove the necessity of issuance of notification by the Government consequential and minor amendments.

Opportunity is taken to make some other consequential and minor amendments.

Hence this bill."

Karnataka Act No. 1 of 1991 (Amendment of Section 79A(1) increasing non-agricultural income limit from Rs.12,000/- to Rs. 50,000/-)

The Government having considered several representations to amend the Karnataka Land Reforms Act, 1961, has considered it necessary to amend certain provisions of the said Act. Salient features of the Bill are as follows:—

"…

7) The limit of rupees 12,000 on the income accruing from sources other than agriculture is proposed to be enhanced to rupees 50,000 to make persons having such income eligible to acquire agricultural land.

8) The period fixed for filing application to the High Court consequent to the abolition of appellate authorities is extended from 90 days to 120 days. Opportunity is also taken to make some incidental and consequential amendments.

Hence the Bill." **(emphasis supplied)**

Karnataka Act No. 31 of 1995 (Amendment of Section 79A(1) increasing non-agricultural income limit from Rs.50,000/- to Rs. 2,00,000/-)

"Certain difficulties have been experienced in recent years in the working of the Land Reforms Act in the State, in as much as restriction imposed on acquisition of agricultural land for certain purposes have come in the way of achieving development in certain sectors of economy, especially the Agro-Industrial Sector where the State holds considerable potential for advancement. Industries and other economic sectors where speedy execution is necessary, are found resorting to various indirect methods of obtaining lands for their requirement, which often tend to defeat the very purpose of the Land Reforms Law. In the new environment of economic liberlisation sweeping the country, it is felt necessary to enable the industries based on aquaculture, floriculture, horticulture and also the housing industry which hold high potential for drawing outside investment in the State, to obtain lands required for their establishment and expansion, easily.

The amendments proposed in this Bill are formulated with a view to addressing these issues which have roused persistent demand for public regulation, and to achieve overall development of the State by giving impetus to its economic growth and to that end to remove the lacunae in the existing law.

Opportunity is also taken to make some other consequential and incidental changes.

Hence the Bill."

Karnataka Act No. 33 of 2015 (Amendment of Section 79A(1) increasing non-agricultural income limit from Rs.2,00,000/- to Rs. 25,00,000/-)

It is considered necessary to amend the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962), for the following reasons, namely:-

(1)to enhance the annual income limit from two lakh to twenty-five lakhs from sources other than agricultural lands to acquire any land taking into consideration the revision of rupee value since 1995;

(2)to empower Deputy Commissioner instead of Assistant Commissioner to grant permission for non-agriculturist to purchase agriculture land under section 80 to take more caution while granting such permissions;

(3)to enhance the power of the Government and the Deputy Commissioner excisable on behalf of the Government to grant the land in any area to exempt from the provisions of section 63, 79A, 79B of the Act.

Hence, the Bill." (emphasis supplied)

TIME PERIODS AND GAP IN INCREASE IN NON-AGRICULTURAL INCOME CAP

Act No. 10 of 1962 w.e.f. 15/03/1962: Rs. 0 (since S.79-A was not present in the original enactment)

↓ **Time Gap: 12 years**

Act No. 1 of 1974 w.e.f 01/03/1974: **Rs. 12,000/-**

↓ **Time Gap: 17 years**

Act No. 1 of 1991 w.e.f. 05/02/1991: **Rs. 50,000/-**

Time Gap: 4 years

Act No. 31 of 1995 w.e.f 20/10/1995- **Rs. 2,00,000/-**

Time Gap: 20 years

Act No. 33 of 2015 w.e.f. 12/08/2015- **Rs. 25,00,000/-**

With respect to the above, it is also pertinent to note the following:

Average income of an Indian citizen in 1974, per World Bank data was Rs. 12,240/- (US$ 140 @ 1 USD = 72 INR). This means that the limit of Rs. 12,000/- as set in 1974 excluded a considerably large Indian populace from their right to purchase agricultural property in Karnataka, despite at that time, the right to property was a fundamental right under Article 19(6) before being repealed in 1979 through the Constitution (44th Amendment) Act.

Per Income Tax department's data,

- In **AY 2012-13 (FY 2011-12)**, there were a total of 3,12,88,559 (3.12 crore) taxpayers, of which 1,91,51,275 (1.91 crore) taxpayers filed ITRs of gross income over INR 2 lakhs per annum, which means as per the then existing slab of INR 2 lakhs of non-agricultural income, about **61.2% of Indian populace were excluded from purchasing or holding agricultural property in Karnataka**.
- In **AY 2013-14 (FY 2012-13)**, there were a total of 3,60,75,691 (3.60 crore) taxpayers, of which 2,61,85,891 (2.61 crore) taxpayers filed ITRs of gross income over INR 2 lakhs per annum, which means as per the then existing slab of INR 2 lakhs of non-agricultural income, about **72% of Indian populace were excluded from purchasing or holding agricultural property in Karnataka**.
- In **AY 2014-15 (FY 2013-14)**, there were a total of 3,91,28,247 (3.91 crore) taxpayers, of which 3,21,68,853 (3.21 crore) taxpayers filed ITRs of gross income over INR 2 lakhs per annum, which means as per the then existing slab of INR 2 lakhs of non-agricultural income, about **82.21% of Indian populace were excluded from purchasing or holding agricultural property in Karnataka**.
- In **AY 2015-16 (FY 2014-15)**, there were a total of 4,35,99,192 (4.35 crore) taxpayers, of which 3,81,49,761 (3.81 crore) taxpayers filed ITRs of gross income over INR 2 lakhs per annum, which means as per the then existing slab of INR 2 lakhs of non-agricultural income, about **87.50% of Indian populace were excluded from purchasing or holding agricultural property in Karnataka**.

The inflation rate in India between 1995 and 2015 was 303.88%, which translates into a total increase of INR 303.88. This means that **100 rupees in 1995 are equivalent to 403.88 rupees in 2015**. In other words, the purchasing power of INR 100 in 1995 equals INR 403.88 in 2015. The average annual

inflation rate between these periods was 7.23%.

However, the % increase in the non-agricultural income limit in 1995 which was 2,00,000/- and in 2015 when it was increased to 25,00,000/- has no co-relation to the rupee value, as may be evidenced by the fact above that 2,00,000 in 1995 would be equivalent to 8,07,760 in 2015. However, there was an arbitrary increase of more than 1150% which is unreasonable and has no basis.

CONSTITUTIONAL VALIDITY OF THE IMPUGNED PROVISIONS

The paper analyses the constitutional validity of Section 79-A, 79-B, 79-C and Section 80 of the Karnataka Land Reforms Act, 1961 (hereafter, "**Impugned provisions**"). The paper also wishes to highlight the fact that a lot of water has flown through since its inception and such provisions will only hamper the land reforms than facilitating it in the near future.

VIOLATION OF "ARTICLE 14" BY THE IMPUGNED PROVISIONS

Manifest arbitrariness', i.e., when legislation is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favoritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment can be sole ground for striking down legislation as being violative of Article 14[28]. Positively speaking, the law must conform to norms which are rational, informed with reason and guided by public interest, etc.

The impugned sections being prohibitory making an unnecessary classification of a section of society benefitting one section and depriving other section, is totally unconstitutional, as it runs against the scheme of the Constitution which is "equality" and that too in a "Democratic Republic." The impugned provisions of the Act indirectly taking away the property of a person without specifying the purpose for which the land is to be used is not a measure for agrarian reform. Hence the same affects the basic principles of the Rule of Law.[29] The legislations should not termed 'arbitrary' in the eyes of the judiciary be while trying to bring a sense of equality, which in its fundamentals is antithetic to arbitrariness, for equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.[30]

a. Classification not found on intelligible differentia

Scheme of impugned provisions running parallel depriving the following classes of persons from holding or acquiring (even through inheritance) agricultural property: (a) person or family having non-agricultural income over a certain limit (79A); (b) person not cultivating land personally(79B); (c) any company, educational institution, trust etc.; and (d) non-agriculturists (80).

[28] *Shayara Bano v. Union of* India, (2017) 9 SCC 1, para 95

[29] *The Godavari Sugar Mills Ltd. v. S.B. Kamble and Others, 1975(1) SCC 696*

[30] *E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555

As a corollary, this would mean even the following classes of persons are not entitled to hold or acquire agricultural land: (a) person who may be an agriculturist, but by virtue of his family member earning from non-agricultural sources, tipping over the stipulated income limit; (b) a person whose immediate predecessor may be an agriculturist cultivating land personally, but him earning from non-agricultural sources over stipulated limit disentitling him to his succession rights; (b) agriculturist who may be cultivating land personally, but has income from non-agricultural sources over the stipulated income limit; (c) a company which may be into agri-based products; (d) an educational institution which may be into agricultural research.

- The differentiation sought to be made seems to be, for instance:

a)	Agriculturist without non-agricultural income >Rs. 25 lakh	vis-à-vis	Agriculturist with non-agricultural income >Rs. 25 lakh.
b)	Non-agriculturist without any source of livelihood	vis-à-vis	Non-agriculturist with non-agricultural income >Rs. 25 lakh.
c)	Agriculturist with any income without any limit.	vis-à-vis	Non-Agriculturist with income <Rs. 25 lakhs.
d)	Owner of agricultural land<Rs. 25 lakhs non-agricultural income.	vis-à-vis	Owner of agricultural land, <Rs.25 lakhs non-agricultural income from non-agricultural sources, but member of a family has non-agricultural income >Rs. 25 lakhs.

On basis of above, the excessively restrictive provisions permit only an agriculturist, who is personally cultivating the agricultural land, and who along with his family has no non-agricultural income over 25 lakhs to acquire or hold agricultural land. Even the sub-registrar/guidance value of agricultural land in and around Bangalore is valued at approximately Rs. 3 crore per acre, which means it becomes highly unaffordable for a person permitted by the impugned provisions to acquire agricultural land. The delineation of class in the Impugned Provisions is therefore, irrational, capricious and completely devoid of any reasoning.

a. ***No rational nexus between the provisions and objects sought to be achieved by the legislation***

The Statement of Objects and Reasons of Karnataka Act No. 1 of 1974 seems to have no rational nexus with the very object of "agrarian reforms". Impugned provisions vis-à-vis S.109 of the same Act provides for excessive delegation, and once again defeats the agrarian reform by giving powers to the District Collector to exempt certain lands

from being acquired by the Government. The court should closely study to see if the legislature merely wears the mask of agrarian reform or it is in reality such. A label cannot salvage a statue from the constitutional limitations if the agrarian reform envisaged by it is "a teasing illusion or promise of unreality.[31]

The impugned provisions effectively create two classes of property: (a) agricultural property which can be converted and sold (Refer S.95 of Karnataka Land Revenue Act, 1964-non-obstante clause) and (b) agricultural property which cannot be sold on account of being unconverted. Therefore, whilst selling agricultural property for agricultural purposes only in certain cases is invalid, converting the agricultural property and thereafter selling it is permissible. The very object of "agrarian reforms" is defeated. In the name of agrarian reform, agrarian regression being perpetuated.

VIOLATION OF ARTICLE 19(1)(F) AND 19(1)(G)

The deletion of the right to property from the array of fundamental rights will not deprive the person of protection under Part III of the Constitution which were available prior to the coming into force of the 44th Amendment, since the impugned Acts were passed before June 20, 1979 on which date Article 19(1)(f) was deleted. It is therefore pertinent to note that any acquisition of land under the impugned provisions can still be challenged before the court of law after the decisions of the Apex Court in I.R Coelho Case which made the Ninth Schedule of the Constitution amenable to challenge for violating of provisions under Part III of the Constitution.

Right to practice an occupation/profession/avocation under 19(1)(g) restricted by virtue of impugned provision: (a) an agriculturist personally cultivating the land having non-agricultural income over limit (for instance, owing to an acquisition, lost land, and invested in commercial venture) is prevented from holding agricultural land and also from acquiring further agricultural land, thus preventing him from his original occupation; (b) a non-agriculturist within income limit who intends to take up agricultural as an additional occupation has to seek permission to even take up agriculture- for exercising fundamental right, he has to seek state sanction; (c) an agriculturist personally cultivating the land having non-agricultural income within the limit is prevented from holding/acquiring agricultural land merely because his spouse/unmarried daughter has non-agricultural income over the stipulated limit.

Courts are increasingly receptive to economic arguments while deciding these issues. In such an environment it becomes the bounden duty of the Court to have the economic analysis and economic impact of its decisions. We may hasten to add that it is by no means suggested that while taking into

[31] *State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd,* AIR 1973 SC 2734, *also Godavari Sugar Mills Ltd. v. S.B. Kamble* (AIR 1975 SC 1193), *VajraveluMudaliar v. Sp. Dy. Collector* (AIR 1965 SC 1017), *Balmadies Plantations Ltd. v. State of Tamil Nadu*1972(2) SCC 133.

account these considerations specific provisions of law are to be ignored. First duty of the Court is to decide the case by applying the statutory provisions. However, on the application of law and while interpreting a particular provision, economic impact/effect of a decision, wherever warranted, has to be kept in mind. Likewise, in a situation where two views are possible or wherever there is a discretion given to the Court by law, the Court needs to lean in favour of a particular view which subserves the economic interest of the nation.[32] Conversely, the Court needs to avoid that particular outcome which has a potential to create an adverse affect on employment, growth of infrastructure or economy or the revenue of the State. It is imperative to understand that, now if the impugned provisions are done away with the agricultural lands will be free from unnecessary Governmental control. There is more interest from high-earning population to own a land to cultivate on land near their place of work and with such embargo being placed on non-agriculturists with income of Rs.25,00,000/- or more from buying agricultural land. A person who is holding a fallow land, unable to cultivate will now find it difficult to sell his land and the situation is worsened when the population with purchasing power to buy such land is barred from buying agricultural lands hampering the revenue and development of the State as the land will remain unfit for cultivation and not being available for developmental activities and situation of limbo to a farmer holding such pieces of fallow/unfit land.

VIOLATION OF ARTICLE 21

Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.

The living tree doctrine adopted by the Supreme Court in plethora of cases has now extended the scope of A.21 to include Right to property, a fundamental human right under Article 300-A[33]: The impugned provisions take away the liberty of an agriculturist to deal with his own agricultural property which in-turn would affect his Right over his property and with such interpretations it can only be said Fundamental Rights of agriculturists are being hampered by such impugned provisions.

The impugned provisions also interfere with the right to inheritance which is a sacred right, and a vital part of the right to life. There is deprivation of livelihood by not affording compensation and taking away agricultural land merely because of certain factors in the impugned provisions. For protection of 31-A, compensation at market value is a must.[34] If the compensation is illusory or the principles prescribed are irrelevant to the value of the

[32] *Shivashakti Sugars Limited vs. Shree Renuka Sugar Limited and Ors.* (09.05.2017 - SC) : MANU/SC/0647/2017

[33] *See Chairman, Indore VikasPradhikaran v. Pure Industrial Cock and Chem. Ltd. and Ors. (MANU/SC/7706/2007)*; *Tukaram Kana Joshi and Ors. v. MIDC and Ors.* (MANU/SC/0933/2012)

[34] *See K.T. Plantation* Case, (2011) 9 SCC 1; *P. Vajravelu Mudaliar v.* Special Deputy Collector, AIR

property at or about the time of its acquisition, it can be said that the Legislature committed or a fraud on power and, therefore, the law is bad.

VIOLATION OF 'FEDERALISM' I.E., ARTICLE 251 AND 254 OF CONSTITUTION

Federalism is part of the basic structure of the Constitution. The Seventh Schedule to the Constitution of India defines and specifies allocation of powers and functions between Union & States. It contains three lists; i.e. Union List (**"List I"**), State List (**"List II"**) and Concurrent List (**"List III"**)which forms the foundations for upholding federalistic feature of the Indian Constitution.

Impugned provisions fall under List III Entry 42 of VII Schedule since acquisition and requisition of land are covered in the impugned provisions. Section 79A falls under List III Entry 5 since inheritance is an important subject covered by that provision.

Impugned provisions under Karnataka Act No. 1 of 1974 are completely contradictory to Central Act No. 39 of 2005 [Hindu Succession (Amendment) Act, 2005, specifically S.6] insofar as treatment of female issues as coparceners and their right of inheritance when it comes to agricultural lands. As such, impugned provisions are in violation of Article 254 and therefore void by operation of Article 254(2).Since impugned provisions are repugnant to Central Act (Hindu Succession Act), they deserve to be stuck down as being void. [35]

CONCLUSION

In light of the above, it is imperative to look at the present effect and the potential/future effects that the impugned provisions have and shall continue to have from the perspective of the State's economy. Whilst the general trend is increasingly for high level executives in various professions to purchase land and cultivate it outside, the draconian impugned provisions prevent them from acquiring any agricultural land and therefore, rather than increasing and reforming agricultural sector. On the other hand, it is also imperative to look at the compensation being offered for those holders who lose lands as a consequence which is not at market value which once again lends credence to the contention that the impugned provisions suffer from arbitrariness and therefore are amenable to be struck down.

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1965 SC 1107; *State of Gujrat v.* Shantilal Mangaldas, AIR 1969 SC 634

[35] *State of Kerala v. Mar AppraemKuri Company Ltd* . MANU/SC/0455/2012