श्री अटल बिहारी वाजपेयी : सब एक साथ खड़े हों, इससे अच्छा है कि एक एक कर के खड़े हों।

अध्यक्ष महोदय : आप भी उनके साथ शामिल हो जाते हैं।

We will take up...

SHRI SAMAR GUHA : What about my request, Sir ? Will you please ask the Government to make a statement ?

MR. SPEAKER : I will resist this if you go on like this. I am not prepared to listen to you.

SHRI SAMAR GUHA : I will have to make you listen. People are being killed by the Pakistani tanks. I have to make you hear because you are here to hear us...*

MR. SPEAKER : Nothing of what the hon. Member says will go on record.

Everyday a scene is being created in this House. What is this ?

Now we will take up this Bill after lunch.

We meet after lunch at 2·15.

13·13 hrs.

The Lok Sabha adjourned for Lunch till Fifteen minutes past Fourteen of the Clock.

The Lok Sabha Reassembled after Lunch at Sixteen minutes past fourteen of the Clock.

[MR. SPEAKER *in the Chair*]

CONSTITUTION (TWENTY FIFTH AMENDMENT) BILL

THE MINISTER OF LAW AND JUSTICE (SHRI H. R. GOKHALE) : Mr. Speaker, Sir, I rise to move :

> "That the Bill further to amend the Constitution of India, be taken into consideration."

Sir, in the last session of Parliament the Constitution (Twenty-fourth) Amendment was passed with an overwhelming majority. It has now become a part of our Constitution. The famous judgment in Golaknath case has therefore gone out of the field. Having asserted the supremacy of Parliament, it is now open to amend any provision of the Constitution and the decks are now cleared for the passage of the Constitution (Twenty-fifth Amendment) Bill.

The present amendment seeks to amend Article 31 and to add a new Article, Article 31-C. The proposed amendment substitutes the word 'amount' for 'compensation'. This amount may be fixed by law or may be determined in accordance with such principles and given in such manner as may be specified in law. The proposed amendment also provides that no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate and that the whole or any part of the amount is given otherwise than in cash.

The proposed amendment is necessitated by the judgment of the Supreme Court in what is now known as the Bank Nationalisation case. After the Fourth Amendment was passed by Parliament, there have been many judicial somersaults on the interpretation of the Fourth Amendment, but in the last case, the Bank Nationalisation case, the continued use of the word 'compensation' led to the interpretation that the money equivalent of the property acquired must be

* Not recorded.

given for any property taken by the State for a public purpose. This interpretation given by the Supreme Court completely renders nugatory the provisions of the Fourth Amendment which made the adequacy of compensation fully non-justiciable. Even Mr. Justice Subba Rao, as far back as 1965, had held on the Fourth Amendment that the compensation payable and its adequacy was not justiciable, nor were the principles laid down in the statute justiciable. But very soon thereafter he overruled himself. He was again overruled in a subsequent case by the Supreme Court which is known popularly as Shantilal Mangaldas case where the Supreme Court held that adequacy of compensation was not justiciable. If the matter had rested there, then full effect could have been given to the Fourth Amendment, but then, as I stated earlier, there was another somersault and the matter was argued again before the Supreme Court in the Bank Nationalisation Case. The judgment in the case of Shantilal Mangaldas was overruled, and the Supreme Court has again laid down, relying on the use of the expression compensation, that compensation means money equivalent, in other words, it means the market value of the property.

This decision of the Supreme Court in the bank nationalisation case really, although not expressly, repealed the Fourth Amendment which was passed by this House in the year 1955. I have mentioned this history only to point out to hon. Members that what is now sought to be done in this amendment is to restore the *status quo ante* which prevailed after *Shantilal Mangaldas's* case and before the judgment in the bank nationalisation case was delivered.

It is also important to remember that the proposed amendments provide for the exclusion of the applicability of article 19 (1) (f) in property which is covered by article 31. This again became necessary because of a change of view in the decisions of the Supreme Court. Earlier decisions of the Supreme Court had consistently taken the view that both these article, namely 19 (1) (f) and 31 are mutually exclusive and if the provisions of article 31 are held to be applicable, they do not have to look to article 19 at all to find out whether a legislation is reasonable. But, again, in the bank nationalisation case, that view was reversed, and a position was introduced wherein it was held that even if all the requirements of article 31 were satisfied, you must test it also on the anvil of article 19 to find out whether a particular legislation imposes a reasonable restriction or not. So, this set at nought completely the intent and purpose for which this Parliament had passed the Fourth Amendment in 1955, and that is the reason why the present amendment has been put forward before the House for consideration to restore the *status quo ante* and to make it clear beyond doubt that it is for Parliament to determine as to what is the reasonable amount which should be payable in the case of acquisition of property. It is not the court which will be the final arbitor to decide oh the reasonableness of the amount, but it is this Parliament which would be the final arbitor for deciding as to what amount can be regarded as adequate or can be regarded as reasonable for the aquisition under a particular legislation.

It is obvious that it should not be possible for the court to block measures of social change by compelling payment of compensation of such a high quantum as to make it impossible to implement the socio-economic measures. Hon. Members will, I am sure, appreciate the crucial importance of this.

On the agenda today is a far-reaching programme aimed at restructuring the entire socio-economic fabric of our country. This will involve greater and greater State intervention including nationalisation of major areas of industry and comerce. Clearly, if we are compelled to pay market value as compensation for everything we acquire, our programmes will become impossible of implementation or at best beset with threats of litigation and stay orders all the way.

SHRI PILOO MODY (Godhra) : What programme ?

AN HON. MEMBER : Socialist society.

SHRI H. R. GOKHALE : Even as far back as 1955, when the Fourth Amendment

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was moved and taken for consideration, Pandit Jawaharlal Nehru intervening in the debate had made very significant remarks in respect of the obligation of the State to pay compensation at the market rate for properties acquired. He said this :

> "If we are aiming, as I hope we are aiming and we repeatedly say we are aiming, at changes in the social structure, then inevitably we cannot think in terms of giving what is called full compensation Why ? Well, firstly because you cannot do it, secondly because it would be improper to do it, unjust to do it, and it should not be done even if you can do it for the simple reason that in all these social matters, laws etc. they are aiming to bring about a certain structure of society different from what it is at present. In that different structure, among other things that will change is this, the big difference between the have's and the have-not's. Now, if we are giving full compensation, the have's remain the have's and the have-not's have-not's. It does not change in shape or form if compensation takes place. Therefore, in any scheme of social engineering, if I may say so, you cannot give full compensation, apart from the other patent fact that you are not in a position-nobody has the resources—to give it."

Panditji meant what he said. But the whole objective was frustrated by the decisions of the Supreme Court; they were rendered nugatory, particularly in the last case, namely the bank nationalisation case.

That is why I should again emphasise that the present amendment has become necessary to restore the position which obtained prior to the Bank nationalisation case to enable propery to be acquired for a public purpose on payment of reasonable compensation as will be determined by Parliament.

Speaking on the issue of compensation, it would be very interesting to see how even as far back as at the time of the first Round Table Conference Mahatma Gandhi said these very prophetic words. He said :

> "If the national government comes to the conclusion that that step is necessary no matter what interests are concerned, they will be dispossessed and they will be dispossessed. I might tell you, without any compensation, because if you want this Government to pay compensation, it will have to rob Peter to pay Paul, and that would be impossible."

What is the reasonable amount must, therefore, of necessity be left to the decision of Parliament. Judges howsoever eminent cannot be permitted to enter the political arena so as to infuse their own political or economic thinking in place of the philosophy which Parliament in its wisdom may accept in the interest of the people of the country. The danger of making political and economic decisions dependent on the individual philosophy of Judges was pointed out by a prominent member of the Bar, then a member of the Rajya Sabha, in the debate on the Fourth Amendment. He said this :

> "It is rightly said, Sir, that law is one generation behind society and lawyers are two generations behindsociety, and I may add that judges are three generations behind society."

SHRI ATAL BIHARI VAJPAYEE (Gwalior) : What about former Judges ?

SHRI H. R. GOKHALE : The member who said this was than an eminent member who spoke on this. These are the words uttered by a then member of the Rajya Sabha and at present a sitting eminent and distingushed Judge of the Supreme Court — I am referring to Mr. Justice Hegde.

That is precisely why the danger of asking Judges to interfere in the political arena is this, that they import their concepts which were probably good three generations

ago. That is why the amendment intends to put the judiciary beyond the pale of controversy by making the determination of compensation non-justiciable.

May I say this, that it is not to take away something from the powers of the court, but it is really to protect the court from itself, the judges from themselves, because if the judges begin to enter into a discussion of politics and economics, it is inevitable—as indeed it should be inevitable —that they will be subject to criticism from the people at large. It is to save them from this catastrophe that it is always regarded as essential that judges should be protected from public controversy on matters which are political, matters which are economic.

Critics of the present measure seek to invest property rights with an aura of sacrosanctity by regarding it as a primordial institution of the law of nature. It is this approach which led the Supreme Court in the Bank Nationalisation Case to seek help from the now archaic and long-past dead theories of Blackstone who regarded property as a natural right. Such a view is not only out of tune with the juristic approach to the institution of private property in modern jurisprudence, but it is not in tune even with the native genius of ancient and traditional juristic thought in India. The individual's right to private property must yield second place to the supervening right of society to acquire the property for a public purpose. That is the eminent and dominate basis of the amendment which the House is called upon to consider today.

I cannot do better than once again remind the House of what the Father of the Nation said, again many many years ago.

SHRI PILOO MODY : Do not desecrate his name.

SHRI H. R. GOKHALE : He said :

"I have in mind many things I would have to do in order to equalise conditions. I am afraid that for years together India would be engaged in passing legislation in order to raise the downtrodden, the fallen, from the mire into which they have been sunk by the capitalists, by the landlords, by the so-called higher classes and then, subsquently and scientifically by the British rulers."

"If we are to lift these people from the mire, then it would be the bounden duty of the National Government of India in order to set its house in order, continuelly to give preferences to these people and even free them from the burden under which they are being crushed.

And if the landlords, zamindars, monied-men and those who are today enjoying privileges,—I do not care whether they are European or Indian—if they find that they are discriminated against, I shall sympathise with them, but I will not be able to help them. I will therefore be a battle between the haves and the have-nots."

Sir, that really takes me to a more vital part of the 25th Constitution (Amendment) Bill, and that as, the newly introduced article 31C and which, I am proud to say, is a land-mark in the constitutional history of India. This article, for the first time, gives to the directive principles of State policy in our Constitution a place of primacy and predominance. The directive principles are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. Though the directive principles are not in terms enforceable by any court, the proposed amendment makes the enforcement of the directive principles possible.

The proposed amendment proves that no law giving effect to the policy of the State towards securing the principles specified in clauses (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 of the Constitution, not withstanding anything contained in article 13. The two clauses, namely, (b) and (c) of article 39 enjoin on the State to direct the policy towards securing that ownership and control of material resources of the

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community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The implementation of these directive principles is vital for the achievement of our objectives of re-structuring society so as to make it eqalitarian and just. The proposed amendment removes the majore road-blocks in the implementation of these directive principles. A legislation containing a declaration that it is for giving effect to the policy contained in article 39 (b) and (c) of the Constitution will disable courts from scrutinising whether such legislation in fact gives effect to such a policy.

The Law Commission, in its recent report, has fully endorsed the basis of the proposed amendment in the following words:

> "However, as we have already indicated, directive principles not being enforceable were given a some what inferior position in judicial process. The proposed Bill for the first time recognises the primacy of directive principles and has selected two of them enshrined in article 39B and 39C 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."

I am proud to say that this clause refers to implementation of the directive principles of the Constitution. The Law Commission I am tempted to repeat these words because I want to emphasise with regard to the basic approach underlying these articles which are proposed to be amended—has fully agreed that after it 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.

Having appreciated the basic approach underlying article 31C, I am aware that the Law Commission has made two recommendations which we have found very difficult to accept. The Law Commission, for example wants that the bar to judicial review should be confined only to article 19 (1) (f) and (g) and not to the whole of article 19. But I must point out that the Law Commission itself agrees and concedes that the reason for the apprehension which the Government has in its mind for including the whole of article 19 is justified. It in terms refers to the decision of the Supreme Court in the price page schedule case which is now very well known as the Sakal newspaper case, and the Law Commission says that "The applicability article 19(1) (a) was unduly and unjustifiably extended in that decision so as to apply in the case of newspapers where a price page schedule was fixed.

Now the result of it was that inspite of the basic right under 19(1) (a) being available to the common man, it actually worked for the protection of the monopolists and property owners. It was nobody's intention; it can never be the intention in a democratic set-up to touch the basic fundamental rights, such as the right of association, right of free speech and so on. It is equally the intention and confidence of the Government that under the garb of the exercise of these basic rights which are meant for the common man, it should not be made to result in the protection and perpetuation of monopoly and property owning class in this country.

That is why the Government has found it unacceptable to confine the power of judicial review only to article 19(1) (f) and (g), and thought it advisable that it should be applicable to the whole of 19...(*Interruptions*)

The Law Commission has also recommended that in article 31 the declaration which is made finally, determinative and non-justiciable should be deleted. Once again I find it extremely difficult to accept the reason given by the Law Commission for making this recommendation that it should be deleted. The Law Commission mentions it as a ground if the declaration is kept as it is and it is made non-justiceable even in cases

where there is colourable exercise of power or where there is fraudulent use of the constitutional power, or as the Law Commission says, if you use this particular article for making a law for a purpose which has no nexus whatsoever with any of the Directive Principles contained in article 39(b) and (c) even then, says the Law Commission, the Court will be precluded from going into the matter and find out whether the law furthers the implementation of article 39(b) and (c).

I would very respectfully join issue with the members of the Law Commission on this because it is well settled and well known in jurisprudence that howsoever rigid and tight a declaration which disables the court from going into the justiciability of a matter might be, nothing can happen in which the court might say : I realise that this is a fraud and still I am helpless. The court can never say : this is colourable exercise of power and this particular clause bars me from going into the colourable exercise. Even if the whole declaration is left as it is, the court is not as helpless as the Law Commission believes it is.

On the other hand if the clause is deleted, the dangers are far greater than the so-called advantage which will be gained by deleting the clause. Once again, I say that if the courts are asked to consider and decide as to whether a law really implements and gives effect to the Directive Principles contained in article 39(b) and (c), what are we doing if not dragging the judges and courts into an arena which rightly belongs to the field or public life, with which a judge, those who are individuals as jugdes, is not concerned. We expose them to criticism but the worst danger is that we enable them to infuse their own political philosophy in their judgments which unfortunately has been the experience in the country for the last ten years. Should we take this risk and should we enable the courts to determine whether a certain law is adequate, is sufficient to implement the Directive Principles ? When Parliament makes a declaration in its wisdom that the law is intended and meant for the furtherance of one or both the Directive Principles referred to in article 39(b) and (c) ? It is according to me thoroughly unsatisfactory that it should be made justiciable, that in a political matter the judges of the court should be asked to sit in political judgment when their field really should be confined to decisions on legal interpretation.

That, according to me, was a far greater danger, a danger, would repeat, not to the intentions which we have in going ahead with our programmes, but a danger to the reputation of the Judges themselves because it has been shown that the Judges have been tempted to be drawn into the political arena. Otherwise I am not able to understand how in the 1970's Blackstone can be the basis of a decision for saying that property is a natural right, as if nothing has happened after Blackstone died. Even in England, a country which is otherwise regarded as fairly conservative, in the last 50 years the Judges have gone back on that position. Even Lord Denning, who is a sitting Judge of the Court in England today, has said in more than one judgment that we cannot go back to Blackstone in this country, when the very complexity of modern times requires lagislation to deal with situations which are unheard of and which could not be imagined when Blackstone lived. Therefore, you import a new theory of jurisdiction. How do you import Blackstone unless you import your own politic and economic theory into interpreting the legislation ? Therefore, the question for consideration before the House is whether the recommendation of the law Commission should be accepted. I am afraid it is impossible to accept that recommendation for the reasons which have mantioned. Opening the door of jurisdiction to the judiciary would mean enabling them to examine whether the Directive Principles were or were not implemented by the legislation in question. Such a thing would import the political philosophy of the Judges and, as I have said earlier, it would involve the Judges in matters which rightfully belong only to the political and economic sphere. That is why the declaration, I submit to the House, should remain as it is.

By passing the proposed amendment, this House will be taking a decisive and historic step forward towards the fulfilment of our social objectives. I would, therefore, recom-

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mend to the House the passing of the proposed Twenty-fifth Amendment.

SHRI SAMAR GUHA (Contai) : What about the amendments that you have circulated ?

SHRI H. R. GOKHALE : When the question of amendments comes, we will deal with them. Just now the question of the amendments does not come.

MR. SPEAKER : Motion moved :

"That the Bill further to amend the Constitution of India, be taken into consideration."

SHRI P. K. DEO (Kalahandi) : I beg to move :

"That the President of India be requested to refer the Bill to the Supreme Court under article 143 of the Constitution." (23)

SHRI ATAL BIHARI VAJPAYEE : I beg to move :

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th February, 1972." (24)

SHRI PILOO MODY : On a point of submission. The Government has given notice of three official amendments.

MR. SPEAKER : They will be taken up when we come to Clause-by-Clause consideration. This is the motion for consideration of the Bill.

SHRI PILOO MODY : I am making a submission, not trying to tell you something that you already know.

My submission is that we should know whether the Government intends to move these amendments or not before the debate takes place so that the debate can be meaningful, because if they intend to move them, there is so much that can be said in the debate that would otherwise not be necessary. So, I think that in a situation like this, on such an important Bill, the Government must make its mind clear at this point.

MR. SPEAKER : This is a submission to the Government, not to the Speaker. The total time is 8 hours. Perhaps 5 hours may be devoted to general discussion, 2 hours for the clauses and 1 hour for third reading.

SHRI PILOO MODY : What about my submission ?

MR. SPEAKER : That submission does not concern me; that concerns the Government.

SHRI PILOO MODY : That means, they will have 24 hours more for horse-trading.

SOME HON. MEMBERS : Time should be extended.

SHRI ATAL BEHARI VAJPAYEE : It should be 10 hours.

MR. SPEAKER : We will sit for longer time, if necessary.

Shri Samar Mukerjee.

SHRI SAMAR MUKERJEE (Howrah) : Mr. Speaker, Sir, I am not a lawyer nor a judge and I do not know the subtleties of these formulations in the Acts and Rules. So, I will not deal with those aspects. This amendment is of a political nature and so, I will confine myself to the sphere of politics and economics. I have heard with attention the quotations made by the Law Minister, particularly of Pandit Jawaharlal Nehru and Gandhiji, in relation to the objectives before the country, which they have placed. But these are very old quotations. The objectieves placed by them before the country were also very old. But the Constitution of the country was serving the big business, the capitalists and the monopolists for the last 25 years. It

is now after 25 years that you feel the necessity of introducing this amendment in article 31 in regard to compensation. The purpose of the amendment as stated by the Law Minister, is to restore the *Status quo ante*. That means, you are holding the views which you were holding up till now for the last 25 years, though you are placing here the political outlook that you want to bring about a change in the pattern of society and in the economic and social structure of society by minimising, if not ramoving disparities, among the people. You have also said that the struggle is going on between the haves and have-nots and this amendment is to bring about changes in the lives of the have-nots, so that some curbs can be placed on the haves in the from of some restricted compensation. If you really want to analyse the Constitution from the point of view of haves and have-nots, I would request you to deeply ponder over the real class character of this Constitution. It is a constitution to exploit and safeguard the exploitation of the society. Unde, this consitution monopoly, capitalism has grown on a big scale. It is under this constitution that the land-lords vested interests have got the protection of this government and also the courts. Today you are referring to courts and accusing the judges of holding out-dated views and interpretating the provisions of the Constitution with that old outlook.

Are you really serious in bringing about a change in the social structure ? No. That is quite clear because you want to restore the *status quo unte* by introducing this amendment. That means that you want to safeguard the vested interests by these articles. In the Directive Principles of the Constitution you have stated that there should be no concentration of wealth; yet, during these 25 years there has been a phenomenal growth of monopoly capitalism on the one side and concentration of poverty on the other. That is why 25 years after independence you have to raise the slogan *garibi hatao*. How has *garibi* intensified so much ? Because, under this very Constitution you allowed the vested interests to rob the poor people. Now if you want to introduce any changes which are of a basic and fundamental nature, then the entire Constitution should be changed lock, stock and barrel.

SHRI PILOO MODY : This is the lock; stock and barrel will follow.

SHRI SAMAR MUKHERJEE : We have been repeatedly clamouring that exploitation by big business, particularly foreign imperial exploitation should be stopped. The big monopoly capitalists should not be allowed unchecked robbery and exploitation of the masses. In order to bring about basic social changes towards socialism the primary necessity is that the means of production must be taken away from the hands of the individual and pleced under the control of society by nationalisation. They should be the property of the entire society. Without the socialisation of the means of production you cannot bring about changes in the social structure and there can be no basic changes in the relationship of production without taking over the big properties in the hands of the entire society. Article 31 was the biggest barrier in the way of that because of the judgment of the Supreme Court about compensation for 14 nationalised banks. So, you are coming forward with this amendment. But when an amendment is being brought forward, it should not have a provision for payment of compensation, or at least the compensation should not be the market value. The basic solution is that this article should go completely and there should be no compensation for either foreign or local monopolist capitalists. Their property should be acquired without any compensation. Similarly, from the big landlords the entire land should be taken away without payment of any compensation. That should be distributed among the landless and the poor peasants. They should be distributed land completely free of any cost. Then there can be any basic, fundamental changes in society and in the economic structure. By simply bringing about these types of amendments no basic change will take place.

The Directive Principles were there incorporated in the Constitution for the last 25 years but those Directive Principles are simply pious wishes, only to hoodwink the masses. On the one side there are the Directive Principles and, on the other, there is full guarantee for unfettered exploitation to the big vested interests through the clauses

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of Fundamental Rights. You have turned the right of property into a fundamental right and you are not yet basically, fundamentally, changing that article.

If you are serious, you must bring about provisions of that nature. But instead of that, we see even amendments to the amendments that have been brought forward here. You are silent whether you will press for them here or not. But these new amendments to the amendments quite signify that under the pressure of the big business you have even retreated from what amendments you had brought forward in July last. That is why, though we are prepared to support the original amendments, we are not prepared to support the new amendments to the amendments.

In the name of minorities you want to maintain the system of huge profiting through educational institutions. You know the example of Kerala where the entire Catholic Church turned to be an educational system as a source of big business. They have amassed a huge amount of money and have become a centre of reaction and corruption. By this new amendment you want to protect these types of vested interests. That is why we are totally opposed to these new amendments to your original amendments.

Also, you have brought forward one amendment on page 2 which says "which does not give adequate effect". This question of adequacy is subject to interpretation by the courts. By this amendment also you are creating some loopholes for the courts to interfere in these cases. That is why also we are opposed to these.

Then, you have introduced that two-thirds majority of those present in the House as well as the majority of the total strength should be the condition for introducing legislation under these amendments. This also is a submission to the pressure of the vested interests. If this is accepted, in the State Assemblies generally for the two-thirds majority to be present or for any particularly party to get may not be possible in many cases. That is why these measures will be held up. So, I am opposed to these new amendments to the original amendment of the Constitution.

Regarding clause 3 (new article 31C), you are taking away entirely the rights conferred by article 19. Here also I am opposed to taking away the entire rights under article 19.

15 hrs.

Here, the apprehension and the concern expressed by the Law Commission's Report is just because article 19 confers the right of speech, association and other elementary democratic rights to the citizen. That right you cannot take away with the provision of this new clause which you want to introduce. That is why I want that only sections 19(f) and (g) should be taken into this amendment and other sections should be left out.

My conclusion is that this amendment which you are now trumpeting, that it is a very big step in introducing the basic fundamental changes in the social structure, is not the reality though you are using it for your election purposes. But still it will be a slight curb on the big business. That is why we are supporting it. In order to change the social structure, we want that the changes in the Constitution should be more basic and fundamental. That is why we are demanding, time and again, that these big businessmen and the foreign imperialists should be given no compensation and these big landlords should not be given any compensation. Only small and medium owners or businessmen should be given some compensation. Otherwise, there cannot be any basic, fundamental, change in the social structure of our country.

SHRI N. K. P. SALVE (Betul) : Mr. Speaker, Sir, after listening to the very able, erudite and lucid speech of the hon. Law Minister, there is hardly any necessity for me to deal with any fact which deals with the historical background leading to present amendment to the Constitution. However, to

a competent and a conscientious student of the Indian Constitution, I have no doubt in my mind, it would not be very difficult to infer and ascertain that in the preceding two decades, when with various amendments we riddled the Constitution, we have never deviated and departed from the cardinal and basic principles which has commended themselves to the founding fathers of the Constitution.

In fact, the Parliament in exercise of its constituent authority, invariably, maintained the primacy of the Fundamental Rights not only over the rest of the constitutional provisions but also over the Directive Principles. That such primacy was very zealously guarded by the judiciary is a matter of history.

However, we managed to enter a phase when, as indicated by the hon. Law Minister, these very Fundamental Rights started becoming a sort of weapon as it were, a sort of an instrument as it were, in the hands of the vested interests, in the hands of men, as my hon. friend, Mr. Kumaramangalam, would call them, men of property and property alone to fight the progressive measures that were made and enacted by Parliament and various State legislatures. This is how a conflict arose between the Directive Principles and the Fundamental Rights and it was of no wonder that a time came when the Directive Principles came to be identified with the cause of the down-trodden, with the underprivileged, with the famished and the poor the and Fundamental Rights came to be associated with the cause of the very few, the vested interests, the men of prosperty and property alone.

And then the battle royal reached its crescendo in the case of Golak Nath in which by a stroke of pen the Parliament was stripped of its constituent authority to tinker with the fundamental rights and the Parliament was told that the law which held the field for nearly 17 years was not to be a good law prospectively.

And by a majority of six to five judges, it was held that the Parliament/shall hereafter not exercise its constituent authority in any manner whatsoever either to abridge or abrogate the Fundamental Rights. Sir, even the most fervid and most devout supporters of the Golak Nath case at one time, to-day admit that that particular decision of the Supreme Court unfortunately happened to be given in a manner which was not only incorrect but it was also improper.

It is whispered very loudly, Sir, I repeat it is whispered very loudly that then own political philosophy got itself super-imposed in judgment when the Judges were called upon to interpret a written Constitution. I, for one, would not want to utter a single word that would mean any disrespect to the Supreme Court. For, it is necessary to maintain such diginity of Supreme Court to keep intact the infrastructure of democracy, we show the maximum deference and respect to the Supreme Court. I do hope, Sir, that the Supreme Court will also show respect to itself.

Therefore, we were compelled to come to the Twenty-Fourth Amendment Bill. There is a slight change I want to make to what the Law Minister said about Twenty-Fourth Amendment. We came in with the Twenty Fourth Amendment Bill, the Law Minister said, to re-establish the supremacy of the Parliament. There is a slight change I would like to make. We did not establish the supremacy of the Parliament. We established, we reiterated the supremacy of the people through the elected representatives working in the Parliament. That is how it was. That is how it was so far as the Twenty Fourth. Amendment Bill was concerned.

Everyone now holds that the Twenty Fourth Amendment Bill is a valid piece of legislation. Though there is again a whisper that until the earlier law which was the law of the land was duly reviewed by the Supreme Court itself Twenty Fourth Amendment itself could not be valid even if Parliament has power to amend part III of the Constitution. That is a matter which may be debated before the Supreme Court. However, I do hope not.

The present measure, the Twenty Fifth Amendment to the Constitution is a com-

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pletely new approach. It is a drastic departure in the approach to ihe Constitution, both in the matter of approach of the Parliament to the Constitution and in the principles which, so far have been cherished or the principles to which the Constitution has conformed ail these years, and the principles which commended itself to the founding fathers of the constitution. Therefore, this measure, now for the first time, is such a drastic change in the approach, a drastic departure from the principles that for the first time we have come to establish the primacy of the Directive Principles over the Fundamental Rights, some of the Fundamental Rights, especially the Fundamental Rights relating to property.

Therefore, I agree with the Law Minister that this is a historical landmark of the Indian people in their pursuit to achieve their socio-economic objective and surely, it is a commendable endeavour by which we want to facilitate the creation of a Welfare State by establishing a social order in which the social, political and economic justice will continue to inform all the institutions in the national life of the country. Therefore, I do submit that this measure is so radically progressive that I would describe this measure as a revolutionary measure brought by this Parliament.

I would refer to what that great Italian patriot, Mazzini, who along with Garibaldi established a new order in Italy, said about revolution. If this concept of revolution is true, then that applies to the revolution which we are seeing here to-day. Said Mazzini :

> "Great revolutions are work rather of principles and not of bayonets and are achieved first in moral and afterwards in material sphere."

Never was it more true than what it is in what we are doing today in Parliament.

However, Sir, it is necessary for me to express some doubts that I have as regards this measure—they are doubts of a technical nature. I must make it clear as my predecessor made it clear that he is not a lawyer, that I am also a chartered accountant only. Therefore, my field is not Constitutional Law. I will, therefore, depend upon commonsense; I am not going into the futile subtleties of law.

The first doubt which comes to my mind straightway is this. Whether the very object which we have in this Bill, is likely to be frustrated if we keep the Bill in its present from ? The object clause makes it absolutely clear that as a result of the decision of the Supreme Court in the Bank Nationalisation case, clause 2 is being enacted. The Supreme Court held that compensation is a Constitutional guarantee and therefore compensation equivalent in money of the property which is compulsorily acquired has to be given. The Supreme Court contented that Parliament was right in enacting that on the question of adequacy of compensation they cannot go into, but that determining whether or not we are giving the full equivalent in mony on acquiring property is justiciable. This is an interpretation which I cannot understand. I cannot understand the rationale when you agree to stop yourself from going into the adequacy of compensation but still keep open for your consideration the question whether or not the same is equivalent in money for what you have acquired. Are the two processes different. The mistake therefore which I think we may be committing—is this. We have only changed the word 'compensation' and put in the word 'amount'. The mechanics of the entire article continue to show that we are exercising the right of eminent domain the right of requisitioning and acquisition of property unaltered. Is it not, therefore, possible for the Supreme Court to take a view like this ? Never mind the nomenclature or name you call it by compensation or damages or solatium. Never mind whatever name you call it, so long as you exercise the right of eminent domain, your obligation to make good the loss to the person who loses the property is expressly recognised and in that sense there is no change in the law. And when that concept comes in, to take

it for granted that the controversy of the *status quo* is clinched by the present amendment, I think is a view, not free from doubt and I do not certainly share the complacency that this Bill in its existing form will achieve the objective enumerated in the Statement of Objects and Reasons in that difficulty.

I do hope therefore that this matter will be carefully gone into once again. What may happen is after one year it may come back again for amendment and we find ourselves where we were after the Bank Nationalisation Case. Then we shall have to re-start a fresh the same thing once again. For too long a time we have waited. We have repeated amendments after amendments, far too many time and far to long, Sir. Let us put an end to it. Let us make the thing obsolutely clear so that the courts do not find ways and means to get within their purview and that it does not become justiciable on the ground releiving the status quo despite amendment. In fact, if this still remains justiciable by any means or manner then the entire purpose and object of clause 2 would have been completely frustrated.

My next doubt is with regard to the new clause, 2B. It is stated therein :

> "Nothing in sub-clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2)".

As was ably explained by the hon. Law Minister, it became necessary to insert this particular clause because Supreme Court held in Cooper's case that when you acquire property for public purpose, it is not enough if you comply with the requirement of Article 31, but, you have also get to put on the anvil, you have to take care of what is stated in 19(1)(f). Now, we are confining ourselves, therefore, only to 19 (1) (f) completely forgetting that there is one more sub-clause where there is again property coming and that is sub-clause (g) of article 19(1). What happens if you go to take trade or business which is covered by sub-clause(g). Then again you will have to come for further amendment. Therefore, why can you not take precautions at this stage, to bring in sub-clause (g) ? This is of great importance but somehow this seems to have completely escaped the notice of the draftsmen. While acquiring property you may comply with art. 31 but there is one more important Article to be taken care of, which may not have been looked into in the case of Bank Nationalisation Case but nevertheless which does become important, and that is Article 14 which guarantees equality before law to everyone. In respect of that article, it has been held by various courts that it takes in arbitrariness, it takes in reasonableness, it takes in generally discrimination and particularly it takes in discrimination of such type as it calls hostile discrimination where unequals are treated as equals. Then is it not more than likely that some day, when we are acquiring some property, it would be found. . .

MR. SPEAKER : The hon. Member should try to conclude now.

SHRI N. K. P. SALVE : There is no equality of time.

AN HON. MEMBER : Shri N. K. P. Salve is not more equal than others.

SHRI N. K. P. SALVE : . . . it is likely to be found that we may not be able to exercise our authority under article 31 without satisfying article 14.

I would request the authors to consider whether or not it would be wise also to take article 14 along with article 19(1) (f) and (g). The last point that I want to make on this clause is that there are going to be laws where we are going to acquire property without the declaration under article 31 (c). The other day we have had the Income-tax Act amendment; for acquisition of property under that Act, there is not going to be a declaration that it will be immune from the scrutiny and examination of the courts. Now, that type of law in which there is not going to be a protection of the declaration will have to be determined only with reference to powers in article which we are seeking to amend, namely article 31 (2). In that case, if the matter of justiciability is not properly

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taken care of, in 31 itself we are likely to get into very serious difficulty.

Then, I come to clause 3. Clause 3 as I see it, introduces a revolutionary concept. It has established the primacy of the Directive Principles undoubtedly over certain Fundamental Rights. Now, therefore, the time has come when the courts will have to determine the ambit and the exact gamut of the Directive Principles. And when I read the Directive Principles for the first time to determine their ambit—and I have discussed this matter with eminent jurists—I find that the two principles in respect of which we are making this legislation are extremely narrow in their ambit and gamut. The two principles read as follows:

Article 39 says :

> "(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"

This Directive Principle is not at all revolutionary. It is an extremely static principle. It only says that the entire material resources should be so distributed as to subserve the common good. This might have been a very good Directive Principle in the Victorian era. At that time, it might have been considered very progressive, but today it is not so, because it does not state that the material resources will be taken under social control or that they would be taken under the State ownership.

Likewise, we have the next principle which says :

> "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

The Directive Principle does not say that where there is such concentration of wealth and means of production that by itself causes common detriment, but only where it causes common detriment, then alone it may come within the scope of proposed article 31C.

'Detriment' is again such a nebulous matter that once you go to court to determine what is detriment to a community you do not know what will happen, for what may be detrimental to the society in which Shri Piloo Mody lives may not by some standards at all be detrimental to the society in which I live and so on and so fourth. So, I respectfully submit that this particular aspect may be looked into so that we do not find ourselves trammelled and fettered because of the extremely narrow gamut and ambit of the two Directive Principles in making progressive laws.

There is one more very important suggestion that I have to make. In this clause, why have Government not taken along with articles 14, 19 and 31, also article 26 ? As you know, there are many religious or sectional institutions, whether they are Christian institutions, Parsi institutions Hindu institutions or Sikh institutions, which are fabulously rich and many of them to our knowledge, on account of the court cases, are found to be managed by people who are not too honest. Therefore, if we want to acquire their property, then this clause will not be of any avail to us because article 26 is not taken in here. Why should we leave out fraudulent religious institutions irrespective of religion to which they belong ?

In conclusion, I want to say that the Law Commission has *suo motu* given its report on the Bill. I consider the approch of the Law Commission extremely unfortunate. They seem, to be pleading with us for the Supreme Court; it is wanting to establish a rapport between Parliament and the Supreme Court. There is no need for this. We respect Supreme Court I do not know who gave them the brief for the Supreme Court. They have said something about the Supreme Court which is very very uncharitable. What one of the Judges has said has been referred to by the Law Minister,

but I would like to share with Members of Parliament what they want us to share with them. This is what they say :

> "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:—
>
> '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."

Whether we share our faith in Justice Cardozo's observations or not, while Law Commission came as the Messiah to plead the cause of the Supreme Court, they have actually ended by maligning the Supreme Court. which is unfortunate.

There are many more things I wanted to say about Law Commission which for want of time I am leaving out, but I say this that whatever may be the right and authority of the Supreme Court and the Law Commission, I do hope that neither the Law Commission nor Supreme Court shall arrogate to themselves any responsibility which is of a political or social nature and land themselves into the predicament of scathing criticism to which Shri Gokhale was referring just now. They have no business...

MR. SPEAKER : No, no. He should stop now.

SHRI INDRAJIT GUPTA (Alipore) : Mr. Speaker, Sir, while speaking during the discussion on the 24th Amendmenti in the last session, I had pointed out–and I want to repeat that now–that there is some common ground between Government and certain of our friends on this side, but both of them from opposite ends and for opposite reasons no doubt are trying to show is that these amendments are something which are really revolutionary in nature. I had made it clear, and I make clear now also as regards the 25th Amendment, that there is nothing revolutionary about these amendments. The 24th Amendment, as the Minister himself reminded us in his opening remarks, merely restored the position as it existed prior to the Golaknath case. In all the years before this case, nobody kicked up a big hullabaloo in this country saying that there was anything dangerous and revolutionary in the Constitution. But the Golaknath case upset that existing position. The 24th Amendment restored the *status que ante*. In the 25th Amendment again, even as recently as 1959, we know that in the Shantilal Mangaldas Case, the Court had taken a particular view on this question of compensation. I may just quote part of the judgment of the Supreme Court in the Shantilal Mangaldas Case because it is very relevant now with reference to the 25th Amendment :

> "Whatever may have been the meaning of the expression 'compensation' under the unamended article 31(2), when Parliament has expressly enacted under the amended clause"—

they are referring here to the Fourth Amendment—

> "that no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate, it was intended clearly"—

this is what the Court is saying—

> "to exclude from the jurisdiction of the Court and inquiry that what is fixed or determined by the application of the principle specified as compensation does not award to the owner a just equivalent of what he is deprived".

15.24 hrs.

[MR. DEPUTY SPEAKER *in the Chair*.]

This was the Supreme Court's own view, in the Shantilal Mangaldas case only in 1969. And despite this, in the Bank Nationalisation case, another bench of the same Supeme Crourt took a contrary view,

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and therefore, now, the Government is faced with the necessity of coming forward with a fresh amendment.

Mr. Salve has cast some doubt. I do not know what sort of a lawyer he is. But he is in any case much more of a lawyer than I am. (*Interruption*)

AN HON. MEMBER : A senior lawyer.

SHRI INDRAJIT GUPTA : I concede he is much more of a lawyer than I am. I have never studied law. But he cast some doubt on whether the su bstitution of the word 'compensation' by the word 'amount'—even that—if foolproof or not, legally speaking. I am not competent to say; it is for the Government and their legal advisers to make sure about that. But you can never be sure of anything, now, that goes before the Supreme Court. My point is that this is above all a political issue. Let me make it quite clear. I agree with my friend Shri Mukherjee that this Constitution requires many more fundamental changes, really revolutionary changes, not pseudo-revolutionary changes; but whether these changes can be brought about within the four corners of this chamder, I do not know. They may have to be brought about through some action somewhere else; some action somewhere else is alone responsible also for the 24th and 25th amendments coming here. That also is quite true.

I just want to remind the Government that it is not a legal question. It is primarily a political question, and the question is whether, at the stage at which our country has reached, which is to be given primacy—property rights or public welfare ? It is a simple question with which we are faced now. It has nothing to do with socialism as Mr. Salve correctly pointed out. Some of the directive principles could have held good in the Victorian era also, but yet, in our country, in this modern era, these directive principles, however vague, however nebulous, have never yet been translated into legal action. Who prevented you all these years from framing laws in consonance with the directive principles ? Who was plocking your way ? If you had done it earlier, the people would have welcomed it all the more. Obviously, there are changes which have taken place in the country which have acted as the compulsion on the Government. That is a good thing. I say it is no longer a question of a Bill. It is something that the ruling party put in its election manifesto. It has become the possession of the people, of this House. The election manifesto of the ruling party in the last elections, and on the basis of that manifesto, all the assurances which the Prime Minister herself gave to millions of people in the country when she went round addressing them—those things have become the possession of the people of this country, and it is on the basis of that manifesto and those assurances that the people also came forward and gave you, what you are so fond of remianing us always—the massive mandate.

If I may quote from your manifesto at that time, it was stated :

> "The spirit of democracy demands that the Constitution should enable fulfilment of the needs and urges of the people. Our Constitution has earlier been amended in the interests of economic development; it will be our endeavour to seek such further constitutional remedies and amendments as are necessary to overcome the impediments in the path of social justiee."

It is on that basis that assurances were given :

SHRI PILOO MODY : Delightfully vague.

SHRI INDRAJIT GUPTA : Yes; as vague as the directive principles. I agree. Now, since the 22nd July, when the original Bill was introduced in this house, it is the possession of the people of the country. If you want to go back on it, you have to understand the implications for your party, for the Government and for the country and the people.

All this talk, all this campaign has gone on since the 22nd July, the main protagonists

of which are my friends over here who have been conjuring up the spectre of total expropriation of property, who have been shedding crocodile tears for the small property owner, small shop keeper, small peasant and small artisan and they have been saying when they were going round that once that Bill was passed there will be no security and he would expropriated. All this is of course not true but only moon-shine. This is just an enabling power.

As has been said on a previous occasion, theoratically speaking, many Parliaments in this world can pass laws which can be taken to the point of absurdity but if they do so those Parliaments and those Governments cannot survive a minute after that. Last time during the course of the debate Mr. Kumaramangalam quoted from a judgement given by a Judge in England in which he said that the British Parliament had no written Constitution and there was nothing to prevent the British Parliament from passing a perfectly valid law saying that all blue-eyed babies that were born in England should be drowned at birth. But having passed that, they could not survive. Similarly somebody else said somewhere that the British Parliament can enact a perfectly valid law for boiling the cook of the Bishop of Rochester to death, but it has not done so.

So this is an absurdity. We are not dealing with property which is not in fact an impediment to socio economic reformes. We are dealing with property whose concentration is in the hands of a few people and which concentration, I agree with my friend Mukherjee, has been allowed to develop over the last twenty five years of the Congress regime. This is economic concentration resulting in large holdings, industrial monopolies and big princes and land-lords. It is that which is now coming in the way and we are concerned only with that we are not concerned with any other property.

One can always argue that any law is liable to abuse or misuse. But that can never be an argument against bringing an enabling law. Our party is pledged to support this Bill in its original from as it was introduced. We have campaigned for it throughout the country, just as the reactionary and vested interests have also campaigned throughout the country against it spreading imaginary fears among the small property owners.

I have to say this. Technically speaking it is true that the amendments standing in the name of Mr. Gokhale have not been moved but the Government is not willing to tell us just now whether it intends to move them or not. However they have been circulated and are in the possession of the House. I cannot give my observation on this Bill without taking them into account. Because they have been circulated let me say just the opposite what I have said : if this Bill is sought to be put through with the amendments which have now been tabled and circulated, our party is totally opposed to that and will oppose this Bill...(*Interruption*) I shall enjoy the spectacle of Mr. Mody supporting some of Mr. Gokhale's amendments.

SHRI PILOO MODY : I do not support any of their Bills and I do not support their amendments. I do not support their Government but you do.

SHRI INDRAJIT GUPTA : The total effect of these amendments will be, in our opinion, completely to undermine the very structure and purpose of the original Bill. I would like to know what happened between 22nd July and now which has suddenly brought about this *volte face*. Semething has happened which is political, not legal compulsion. What has happened which has brought about this retreat ? When the siren was sounded by the friends of Mr. Mody, the warning was given and the black-out exercise has begun, and you are trying to bring about a black-out.

SHRI ATAL BIHARI VAJPAYEE : Back out.

SHRI INDRAJIT GUPTA : Back out and black out, both.

What are the second thoughts which moved you between July and now to bring forward these amendments ? Perhaps it is due

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to the fact that towards the end of July this Government received a draft Ordinance from the Kerala Government providing for the take-over of all foreign-owned plantations in that State. Is it that ? Is it that which has hurriedly inspired the idea of a two-thirds majority in the State Legislature because that Ordinannce has not yet gone back to the srate, has not yet been approved or assented to. The Kerala Ministry, which recently your own party has also joined, has unanimously approved of an Ordinance and sent it to you for your approval, providing for the take-over of all foreign owned plantations. Now without giving assent to that Ordinance, if you can first push through this third amendment of Shri Gokhale, then the Kerala Assembly, of course, is tied hand and foot. It cannot bring about a two-third majority there in favour of any such Bill. You are placing a veto in the hands of the foreign plantation owners by this amendment. Is that the motive ? There may be some Bills or Ordinances contemplated by some other States also, I do not know. In the case of Bihar the Bill for the abolition of the Tata Zamindaris in Jamshedpur is pending before the Central Government. The Bihar Government has passed it, but the assent or approval has not been given. So, you cannot expect us to regard with equanimity these amendments as some things which are innocent. We have to look behind them and see what is behind them, and we see the pressure of the reactionary vested interests—those who are outside the ruling party itself which do not want the Tata zamindari or the foreign plantations to be taken over. It is the pressure of such people which has brought forward these amendments.

We read in the newspapers—of course that is their domestic business, but I cannot help commenting on it—that their parliamentary Party or their Parliamentary Executive was not even consulted before these amendments were drafted and circulated. So, why should we not be suspicious that some pressures operating behind the scenes have brought about this reactionary sliding back ?

I do not have much time. So, I will make one or two comments on these amendments. I would like to mention first of all the second and third amendments because to our mind these are the most dangerous and mischievious.

SHRI N. K. P. SALVE : Why are you speaking hypothetically ?

SHRI INDRAJIT GUPTA : I am not going to get a second chance to speak.

SHRI N. K. P. SALVE : There is the clause-by-clause discussion.

SHRI INDRAJIT GUPTA : I do not know the argument or logic in support of the word "adequately" in the second amendment because they have not come to the stage of explaining it. But, to my mind, however much you try to explain it away, it does give the Judges a loophole by which they can intervene to decide whether concentration of wealth should be reduced or not, end if so to what extent. This is precisely what Shri Gokhale in his opening remarks said he did not want either. The Supreme Court Judges should not be allowed to exercise political judgement or so-called socio-economic judgement. They are not there for that purpose. Suppose some State Government comes forward with a ceiling on urban property and fixes it at a ridiculously high level and they say that it will be Rs. 10 lakhs, I would like to go to Court and challenge it on the ground that it does not give adequate expression to the Directive Principles. It talks of an urban ceiling, but fixes it at an absurdly high figure. If the amendment is accepted, my road is blocked; I cannot go before the court and plead against the ridiculously high ceiling. There are other examples, which can be given from the other angle. So, on the face of it, it is adding to the confusion. In fact, it will only allow the judiciary an entry again into this field to give a political judgment. Therefore, we cannot support it.

Coming to the question of the special two-thirds majority, I do not want to say anything against it. It is so palpably monstrous. You want to elevate every single

Bill which a State legislature or Parliament may make in future for acquiring property to the status of a constitutional amendment. You cannot permit this thing to happen. It means, as I said, putting a veto in the hands of the reactionary defenders of the *status quo*. If amendment No. 3 is insisted upon by Government, there is no question of not opposing it; we will oppose it to the last, but I think it would have been far better if they had not come forward with this Bill rather than bring it forward and then bring in this amendment.

Apart from the constitutional validity, I would like to ask, do you think it is in line with constitutional propriety, without consulting the State Governments or State legislatures to bring forward an amendment here saying that every State legislature, in future, if it wants to pass such a Bill, can do it only by two-thirds majority ? It may be constitutionally valid for you to do so, but is it proper in a federal set-up ? Is this the meaning of constitutional propriety ? How do you think the States will take it ?

Finally, I come to amendment No. 1. Educational institutions of minority communities should be protected as far as possible in conformity with the commitments and pledges given under articles 26 and 30. There can be no two opinions about it. But our quarrel with the amendment is not on that ground. Our quarrel is on the ground that it says, "any property belonging to an educational institution..." The property may have nothing to do with the educational purposes of that institution at all. There are all sorts of educational institutions in this country. Some of them do not have huge properties. They just have their institutions, some buildings, etc. But there are other institutions in various parts of the country which own huge amounts of landed property and other things, which have nothing to do with their educational purposes. This is opening a lophole where by big holders of property, by a simple subterfuge, can just transfer the properties in the name of some educational or charitable trust and get away with it. Then, there is also the confusion as to what is minority and who is majority. I think Mr. Birla in Calcutta can claim to be a member of a minority community. Certainly, he belongs to a linguistic minority when he operates in West Bengal. You know his wealth, property and possessions there. Even his property which is outside West Bengal can be transferred to some so-called charitable trust or institution within Bengal and you have to pay the market value. If you want to keep something which is in conformity with articles 26 and 30, we have no objection. It should be thought about and redrafted. But this sweeping provision about "any property" is something which is meant not really to protect the interests of minorities but to protect the interests of certain vested interests who may happen to belong to minorities.

In conclusion, I would just end with one or two quotations. This is from a newspaper which everyone knows here, the *Tribune*; I do not know the complexion of that paper. I find there an editorial written on the 17th November where they say :

> "The judicial view hither to has been that the Directive Principles should be enforced without amending the Fundamental Rights, which is like making omelettes without breaking eggs.....No doubt, the vesting of these new powers in Parliament and the State Legislatures is capable of abuse. But the fact that a power is capable of abuse has never been a reason, in law or in fact, for denying its existence or challenging its use for a proper purpose."

Therefore, finally, let me just once again make a presentation of a small quotation, both to Shri Mody and also to the Ministers on the other side; I am sorry, Shri Chavan is not here because he has told me in the past on the floor of this House that this gentleman whom I am quoting is out-moded and out of date. May I first just quote and then reveal his identity ?

> "We Communists have been reproached with the desire of abolising the right of personally acquiring property as the fruit of a man's own labour, which property is alleged to be the ground work of all personal freedom, activity and independence.

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> Hard-won, self-acquired, self-earned property ! Do you mean the property of the petty artisan and of the small peasant."

—I may add here 'of the small shopkeeper'—

> "a form of property that preceded the bourgeois form ? There is no need to abolish that; the development of industry has to a great extent already destroyed it, and is still destroying it daily...
>
> You are horrified at our intending to do away with private property. But in your existing society, private property is already done away with for-nine-tenths of the population; its existence for the few is solely due to its non-existence in the hands of those nine-tenths. You reproach us, therefore, with intending to do away with a form of property, the necessary condition for whose existence is, the non-existence of any property for the immense majority of society."

Whom am I quoting ? 125 years ago, in 1848 that old man Karl Marx, now sleeping peacefully in High Gate Hill, London, said this. I think these words are as true today as they were then. Today I make a present of it here.

MR. DEPUTY-SPEAKER : Before I call the next speaker I would like to make an announcement. In order to allow more members to participate in the debate the House will sit till 7 O'Clock today and there will be no lunch hour tomorrow.

SHRI ATAL BIHARI VAJPAYEE : This is not fair either to the House or the Members. The BAC decided to do away with the lunch hour but we did not follow that. Tomorrow we can sit during the lunch hour, but not after 6 O'clock today.

MR. DEPUTY-SPEAKER : You will agree that the fixing of the time of the House is the prerogative of the Speaker, and he has done it. When the House sits, all other items of engagement are less important than the business of the House.

SHRI ATAL BIHARI VAJPAYEE : But you are informing us at 4 O'Clock. This is not fair. This is not the prerogative of the Chair. This cannot be done in this away. You should have consulted the House.

SHRI SHYAMNANDAN MISHRA (Begusarai) : We can sit longer tomorrow. What is the difficulty about it ?

SHRI PILOO MODY : I suggest that as a protest you may adjourn the House.

SHRI S. M. BANERJEE (Kanpur) : The BAC is meeting at 4 O'Clock. The Speaker should have waited at least till that.

MR. DEPUTY-SPEAKER : I have conveyed to the House the decision of the Speaker, namely, that in order to give more time to members the House will sit up to 7 O'Clock. This issue can be raised in the BAC meeting if you do not like it of it.

SHRI SAMAR GUHA : We have other engagements also. Will you kindly convey to the Speaker, suddenly when at 4 O'Clock this information is given, what are we to do ?

MR. DEPUTY-SPEAKER : Hon. Members should realise the basic thing that when there is business in the House, that has primacy over any other business.

SHRI SHYAMNANDAN MISHRA : Then you can go on up to 5 O'Clock in the morning !

SHRI PILOO MODY : Please send that advice to the Prime Minister. I suggest, you send it to her in writing.

श्री एच के० एल० भगत (पूर्व दिल्ली) : उपाध्यक्ष महोदय, मैं लॉ-मिनिस्टर साहब और प्राइम मिनिस्टर साहिबा को कांस्टीट्यूशन 25वीं

अमेण्डमेंट बिल लाने के लिये मुबारकबाद देना चाहता हूँ और खास तौर से लॉ-मिनिस्टर साहब को उनकी स्पीच के लिये भी मुबारकबाद देना चाहता हूँ। अभी मैंने बहुत ध्यान से और बहुत इज्जत के साथ मेरे लायक सीनियर दोस्तों-श्री समर मुखर्जी और श्री इन्द्रजीत गुप्ता साहब को सुना। श्री इन्द्रजीत गुप्ता साहब ने कहा कि इस बिल में कोई खास रेवोल्यूशनरी बात नहीं है और श्री समर मुखर्जी साहब ने कहा कि यह तो कोई खास बात नहीं की है, देश के एन्टायर कांस्टीट्यूशन को या जो आर्टिक्ल फण्डामेन्टल राइट्स का है, इस को एन्टायरली लौक स्टाक एण्ड बैरल खत्म कर दिया जाय।

उपाध्यक्ष महोदय, श्री समर मुखर्जी साहब से मैं आप की मारफत कहना चाहता हूँ कि यह उन की फिलोसफी है कि the Constitution should go lock, stock and barrel and the country should be ruled through the barrel of a gun. It is not our philosophy. We are committed to a revolution but to a revolution through consent, through law and through Parliament. This Bill is a radical measure which furthers our march towards revolution by consent.

श्री इन्द्रजीत गुप्ता साहब ने कहा कि इस में कोई बहुत रेवोल्यूशनरी बात नहीं है। खैर, दोनों पार्टीज ने यह ज़रूर कहा है कि जिस शक्ल में यह बिल आया है, उसको हम सपोर्ट ज़रूर करेंगे। अब, उपाध्यक्ष महोदय, आप ज़रा सोचें कि इसमें बातें क्या हैं? एक बात तो यह है कि इसमें कम्पेंसेशन, जिसको सुप्रीम कोर्ट ने इक्वेवैलेन्ट-टुमार्केट-वैल्यु इन्टरप्रेट किया है, उसके बजाय एमाउन्ट दिया जायेगा और दूसरे उस एमाउन्ट की जज यह पार्लियामेंट होगी या स्टेट लेजिस्लेचर्स होंगे। यह बात क्या प्रोग्रेसिव नहीं हैं? यह बहुत प्रोग्रेसिव स्टैप है—दो-तीन मायनों में। एक मायना तो यह है कि साफ़ लफ़्ज़ों में पार्लियामेन्ट डिसाइड करेगी, जनता के चुने हुए लोग डिसाइड करेंगे। दूसरे, मार्केट वैल्यू नहीं होगी, उसके बजाय एमाउन्ट होगा जो पार्लियामेन्ट तय करेगी। आज आप देखते हैं कि मीन्स आफ़ प्रोडक्शन और मीन्स आफ़ डिस्ट्रीब्यूशन को लिया जाय जिसमें सैकड़ों करोड़ रुपया, कन्सेन्ट्रेशन आफ़ वैल्थ लोगों के कब्जे में है, अगर उसको हम लेना चाहें तो सैंकड़ों करोड़ रुपये का कम्पेन्सेशन देना पड़ता है, अगर उसको हम इन टर्म्स आफ वैल्यू लेते हैं, जिसका एमाउन्ट पार्लियामेन्ट तय करेगी, जिसमें ये दोनों पार्टीज भी बैठी हुई हैं क्या यह प्रोग्रेसिव कदम नहीं है?

दूसरी बात, श्री इन्द्रजीत गुप्ता जी ने कहा कि इसमें कई पुरानी बातें हैं। श्री समर मुखर्जी साहब ने कहा कि लॉ-मिनिस्टर ने खुद कहा है—इट रेस्टोर्ज़ रेस्टेट्स्को-आन्टी। उन्होंने (लॉ-मिनिस्टर) स्टेटस्को-आन्टी का जिक्र किया और सुप्रीम कोर्ट की कुछ पुरानी जजमेंट्स का भी जिक्र किया, जिसमें सुप्रीम कोर्ट ने खुद कहा था कि फंडामेन्टल राइट्स का अमेण्डमेन्ट पार्लियामेंट कर सकती है। उसके बाद अचानक उन्होंने अपने उस फैसले को बदला—वह भी 6 राय के मुकाबले 5 से, सिर्फ एक की मैजोरिटी से उसको बदला। वैसे एक की मैजोरिटी से जो फैसला हुआ, वह भी कुछ सिगनिफिकेन्ट मालूम होता है, क्योंकि सिण्डीकेट कांग्रेस की वर्किंग कमेटी ने भी कुछ फैसले इसी तरह से एक की मैजोरिटी से किये थे। तो सुप्रीम कोर्ट ने उस जजमेन्ट को एक की मैजोरिटी से रिवर्स कर दिया। तो पार्लिमेन्ट कानून ले आई कि हम फंडामेन्टल राइट्स को बदल सकते हैं, कम्युनिटी के इन्ट्रैस्ट में। हमारे कांस्टीट्यूशन के कई पार्ट्स हैं जिसमें कुछ तो उसका बाडी है और कुछ उसका खोल है। बाडी में यह है कि कैसे गवर्नमेंटल मशीनरी फंक्शन करे, स्टेट्स और यूनियन की, उसका जिक्र है लेकिन मेरी राय में इस कांस्टीट्यूशन में सबसे इम्पार्टेन्ट बात इसके प्रिएम्बुल और डायरेक्टिव प्रिंसिपल्स के अन्दर है—which I call as the soul of the Constitution. यह इस कांस्टीट्यूशन

[श्री एच० के० एल० भगत]

की बुनियाद है कि इस देश के करोड़ों नागरिकों को सोशल एकोनामिक और पोलिटीकल जस्टिस मिलेगी और उसके लिए एक आर्डर क्रिएट किया जायेगा। मैं कहता हूँ कि आज पहली दफा आर्टिकिल 32 में, जिसमें सुप्रीमकोर्ट को पावर्स हैं उनसे कहा गया है कि जो डायरेक्टिव प्रिंसिपल्स हैं उनको अन्दर लाकर जो इंडिविजुअल राइट्स हैं एक आदमी के उसके राइट पर मिलियन्स के राइट को प्रिफरेन्स दिया गया है। इससे बड़ा रेडिकल स्टैप आज की तारीख में नहीं समझता और क्या हो सकता है ? आजतक हम सोचते रहे कि यह इंडिविजुअल लिबर्टी है, प्रापर्टी है लेकिन आज हमने कहा कि इंडिविजुअल लिबर्टी से ज्यादा कम्युनिटी की, स्टेट की और नेशन की लिबर्टी को रोगार्ड करने की जरूरत है अगर हमारी कौम गुलाम रहती है, एकोनामिक स्लेवरी में रहती है, एकोनामिक बांडेज में रहती है और मुल्क के कुछ कैपिटेलिस्ट्स इस मुल्क की किस्मत को इधर से उधर घुमाते रहते हैं तो फिर इस देश में आजाद कौन रहेगा ? एक इंसान भी आजाद नहीं रहेगा। इसलिए मैं कहता हूँ कि यह एक रेडिकल कदम है। मैं इस बात को भी मानता हूँ कि अकेले इस कदम से अगर हम यह कहें कि हिन्दुस्तान में कोई रिवोल्यूशन आ जायेगा और वह सारी बातें हो जायेंगी तो वह गलत है। ऐसा नहीं होगा। मैं इस बात से भी एग्री करता हूँ कि हमें कांस्टीट्यूशन में बहुत सी बातों को और अमेन्ड करना पड़ेगा और बहुत हिम्मत से करना पड़ेगा।

उपाध्यक्ष महोदय, जनता ने हमको वर्डिक्ट दिया है अभी हमारे भाई इन्द्रजीत जी हमको हमारा मेनिफेस्टो बता रहे थे। जनता ने हमको वर्डिक्ट दिया है तो कांस्टिट्यूशन में बहुत सी तब्दीलियां लाने के लिए दिया है। जनता चाहती है कि आमदनियों में हद मुकर्रर की जाये, ज्यादा से ज्यादा और कम से कम आमदनी की हद मुकर्रर की जाये, जायदादों की हद मुकर्रर की जाये और जनता चाहती है कि यहां पर देश में इक्वैलिटी लाई जाये और मैं तो कहता हूँ कि जनता चाहती है कि देश में स्टेंडर्ड आफ लिविंग भी एक जैसा किया जाये। तो इन सारी चीजों को करने के लिए कांस्टीट्यूशन में और कई वाइटल रेस्पेक्ट्स में हमें अमेन्डमेन्ट करना पड़ेगा—इसमें कोई शक नहीं है। लेकिन यह जो अमेंडमेन्ट लाया गया है, वह उन कानूनों को बनाने का हमारा रास्ता खोलता है। इस देश में कुछ क्वार्टर्स में बहुत शोर मच रहा है कि कांस्टीट्यूशन को खत्म करने की बात हो रही है, सब्वर्जन आफ कांस्टीट्यूशन की बात कही जा रही है—खास तौर पर हमारे जनसंघी और स्वतंत्र पार्टी के सदस्यों की तरफ से। कल मेरे पास एक बहुत बड़े वकील की लिखी हुई किताब आई जिसमें यह लिखा है कि इस बिल के पास होने से हिन्दुस्तान के नागरिकों की लिबर्टी खत्म हो जायेगी। इसके जरिये हरएक की प्रापर्टी ले ली जायेगी, जमीनें छीन ली जायेंगी। मैं नाम नहीं लेना चाहता लेकिन मैं नहीं समझता कि एक इतना बड़ा वकील, जब कांस्टीट्यूशन में इतनी साफ बातें लिखी हुई हैं, तब कैसे लोगों के सामने इस तरह की झूठी बातों का प्रचार करता है ?

इस कांस्टीट्यूशन के आर्टिकल 31 (ए) सैकिन्ड प्राविजो में लिखा हुआ है कि एग्रीकल्चर प्रापर्टी में सीलिंग करने के अन्दर जो प्रापर्टी निकलेगी, उसका कम्पेन्सेशन मार्केट वैल्यू के मुताबिक देना होगा। ऐसी हालत में हिन्दुस्तान के किस आदमी की किस जायदाद को या किस आर्डिनरी सिटिजन को खतरा है ? यह झूठा प्रचार क्यों किया जा रहा है ?

उपाध्यक्ष महोदय, अर्बन सीलिंग के बारे में कानून आने वाला है और उसमें गवर्नमेन्ट इस बात का इन्तजाम करेगी कि एक आर्डिनरी सिटिजन का कोई मकान अगर लिया जाता है,

किसी रोड को चौड़ा करने के लिए या कोई सड़क बनने के लिए तो सीलिंग से नीचे जो प्रापर्टी है, उसका कम्पेन्सेशन मार्केट वैल्यू के मुताबिक दिया जाये लेकिन जहां तक इस आर्टिकिल का ताल्लुक है, यह एक इनेब्लिंग प्रावीजन है। यह प्राविजन उसमें है लेकिन मैं कहता हूँ कि अगर यह प्राविजन न भी हो तो भी कोई पार्लियामेंट कितनी ही शक्तिशाली क्यों न हो क्या वह कोई ऐसा कानून बना देगी जिससे करोड़ों लोगों के मकान, दुकान और जमीन को छीन लिया जाये ? और फिर यहां पर तो कांस्टीट्यूशन की गारण्टी मौजूद है।

16 hrs.

दो तीन बातें और कहकर मैं समाप्त करूँगा। एक बात तो यह कही जाती है कि सुप्रीम कोर्ट के जुरिस्डिक्शन को छीना जा रहा है और पार्लियामेंट हक ले रही है। यदि ऐसा हो तो मैं कहता हूँ कि ठीक छीना जा रहा है। मैं यहां पर आइवरी टावर्स जैसे शब्द को यूज नहीं करना चाहता लेकिन सच्ची बात यह है कि सुप्रीम कोर्ट में बैठे हुए लोग इस देश की जनता की भावना को नहीं समझ सकते हैं जब कि पार्लियामेन्ट के चुने हुए लोग जनता की आकांक्षाओं को समझते हैं। सुप्रीम कोर्ट की कुर्सी पर जो बैठ गया, बैठ गया, उसको हटाया नहीं जा सकता जब तक कि यहां से इम्पीच न किया जाये। उनकी नौकरी पक्की है जबकि हमारी कच्ची है, सिर्फ पांच साल की है। जजेज जैसा कि गोखले साहब ने बताया कि कई जेनरेशन पुराने होते हैं। वकील बहुत पुराने होते हैं क्योंकि 1930 और 1942 के केसेज की दलीलें पेश करते रहते हैं। मेरा सौभाग्य है कि जब मैं बोल रहा हूँ तो सदन की नेता प्रधान मंत्री जो यहां पर बैठी हुई हैं, मैं उनसे कहना चाहता हूँ कि आज जो सिस्टम आफ जस्टिस है, उसको पूरी तौर पर देखें। आज क्या सिस्टम आफ जस्टिस है जिसकी बहुत तारीफ की जाती है ? जस्टिस के नाम पर जस्टिस इज डिलेड, जस्टिस के नाम पर जस्टिस इज मेड मोर डिफीकल्ट, जस्टिस के नाम पर जस्टिस इज डेनाइड और जस्टिस के नाम पर जस्टिस इज किल्ड। यह सब कुछ आज जस्टिस के नाम पर होता है, जनता को इस सिस्टम आफ जस्टिस में कोई विश्वास नहीं। एक केस आता है तो वह सालों पड़ा रहता है। जब चाहते हैं तो हो जाता है वरना नहीं होता है। इसलिए इस सिस्टम आफ जस्टिस में रेडिकल रिफार्म की जरूरत है ताकि जनता को सस्ता और फौरन न्याय मिल सके। ऐसा करने के लिए यदि सुप्रीम कोर्ट की पावर्स को कम करना पड़ता है, हाई कोर्ट की पावर्स को कम करना पड़ता हैं या नीचे वालों की पावर्स को कम करना पड़ता है तो उसको करिए या अगर प्रोसीजर्स को चेंज करना पड़ता है तो उसको भी करिए क्योंकि इसके बिना कोई गुजारा नहीं है।

आखिरी बात कहकर में समाप्त कर रहा हूँ। डायरेक्टिव प्रिंसिपल्स जो हमारे कांस्टिट्यूशन में रखे गए हैं उनके क्रिटिसिज्म में कहा गया है कि डायरेक्टिव प्रिंपिसल्स को इंडिविजुअल राइट्स पर प्रिफेरेन्स दिया जाये। आप कांस्टीटुएन्ट असेम्बली की डिबेट्स को देखें। उस समय फ्रेमर्स ने कहा था—They will not be enforceable by court. इसलिए कहा था कि तब देश आजाद हुआ था, डेवलपमेन्ट के काम शुरू होने थे, दौलत बढ़ानी थी और उन्होंने सोचा था कि इस समय अगर हम यह सब रखेंगे तो शायद प्रैक्टिकल नहीं होगा। लेकिन उन्होंने कहा था कि वह डायरेक्टिव प्रिंसिपल्स जो है इनसे Legislatures shall be governed in framing the laws. They were directions to the legislatures to keep them in view before framing the laws.

तो मेरा कहना है कि जो आज यह 25वां कांस्टीट्यूशन अमेन्डमेंट बिल है इसपर कुछ अमेन्डमेन्ट्स अभी मूव नहीं हुए हैं, जोकि लॉ मिनिस्टर के नाम से हैं और मैं बहुत सफाई से

[श्री एच० के० एल० भगत]

यहां पर कहना चाहता हूँ कि अगर इन अमेन्डमेन्ट्स को इन्ट्रोड्यूस किया तो जो एक राइट पार्लियामेन्ट एक हाथ से ले रही है वह वर्चुअली दूसरे हाथ से चला जायेगा। Speaking for myself I can say that I am totally opposed to these amendments.

इन शब्दों के साथ मैं आपका बहुत धन्यवाद करता हूँ और लॉ मिनिस्टर को इस पर मुबारकबाद देता हूँ ।

SHRI FRANK ANTHONY (Nominated-Anglo-Indians): Mr. Deputy-Speaker, Sir, may I say at the outset that I am at least partially happy at amendment No. 11 in the name of the Law Minister and because of that I do not propose to speak as strongly as I might otherwise have done. Under that amendment, those of you who have read it, would see that the Government now propose that if there is compulsory acquisition of property of an educational institution particularly under Art 30 then the market value will be paid. I had begun to think that the Government with its overwhelming majority or absolute majority — some of us quite frankly and fanatically supported the ruling Party on the eve of the elections because we felt that the paramount need of the country was for a strong and viable government at the centre and, above all, a government committed as we had hoped, to the Fundamental Rights of a secular democracy—after this majority there have been disquieting trends towards authoritarianism and that is why this amendment, as I say, has made me partially happy.

Sir, during the debates in this House, when I opposed the Twenty-fifth Amendment at the introduction stage and made several speeches on the Twenty Fourth Amendment, I underlined my preoccupation with minority educational institutions. I have had the privilege of being associated with them for the best part of 30 years, with about 600 and odd schools, and it has been my endeavour to ensure that these schools take their place as part of the larger pattern of Indian education. And leading educationists today acclaim these schools over which I have the privilege to preside, in a manner of speaking, as being in the vanguard of Indian education.

Sir, I have tabled one amendment and this is to Amendment No. 11 to be moved by the Law Minister. I wish to add after the word 'amount' the words 'in cash'. I am hoping that Mr. Gokhale will still remember some of his affiliations as a lawyer. It would be meaningless and it would denude it of all content, if, while you are prepared to give minority educational institutions compulsorily acquired market value, you calcuate the market value in terms of bonds which may be payable many years later. Therefore, I would request the hon. Law Minister to accept this; this market value which is calculated should be paid in cash.

During the debate on the Twenty-fifth and Twenty-fourth amendment I had asked Mr. Gokhale not once but several times 3 or 4 times at least,—that he may at least give me a straight, simple answer, I regret to say I was unable to evoke that simple, straight answer. The question I asked Mr. Gokhale was this, that in my very humble view, Article 31C as proposed extinguishes property. In the face of 31 C, if you take the power to extinguish property, do the cherished fundamental rights of the minorities survive? What I am particularly concerned with is education. There is this right under Art. 30 and to some extent the right under Article 26 because that will protect the religious and charitable trusts of the minorities. I was not able to get a straight answer from Mr. Gokhale. On one occasion he said: 'Well, we are not considering the Twenty-fifth amendment. Now we are considering the Twenty-fifth Amendment and I am repeating that question for about the fifth time or the sixth time. In view of the proposed. Article 31 C do the fundmental rights enshrined in Article 26 and 30 survive?

By way of abundant caution, I have given notice of an amendment that no law under Art 31 C shall derogate from the fundamental rights in Articles 26, 29 and 30. Article 29 is with regard to some of the cases

that I argued, with regard to language, script and culture.

I now come to the Bill generally. I have been hoping that Mr. Gokhale will call a spade a spade—he need not call it a bloody spade and emulate Anglo—Indian language—but I have been hoping he will call it a spade. I am hoping that he will accept this. This Bill and particularly provision 31 C has changed the basis and the basic character of the Constitution, what was uptill now the heart of the Constitution. The founding fathers did this — among whom I had the privilege to be counted. Sir, I am not as old as I look and I feel a little younger than I look. Our founding fathers deliberately carved out Chapter III and, as my learned friends on the other side remember, the heading of Chapter III is put categorically as 'Fundamental Rights'. Now, Sir, advisedly these Fundamental Rights were fundamental, they were meant to be fundamental, they were transcendental.

No doubt, the directive Principles are there. They are very important. They are meant to guide and to direct the Government in reaching towards certain objectives. But up till now, with your Fundamental Rights being, as they were intended to be, transcendental, the Directive Principles, in any attempt to implement them, had to be harmonised with these Fundamental Rights. You could not supersede the Fundamental Rights with the Directive Principles. Now, what are you going to do ? What do you intend to do at one stroke ? You are changing the whole basic character of our Constitution. At least admit that. Do not try and nationalise that. Say, "Yes, we thought it was necessary; we are changing the whole basic character of our Constitution". And I should have thought that in pursuauce of that, you would have brought in another verbal Amendment to delete the expression 'Fundamental Rights' from Part III because they are no longer fundamental.

Now, what have you made fundamental ? You have made the Directive Principles fundamental. All right; if you find that it squares with some kind of new-found pseudo-progressive philosophy, all right, but say so in terms that the Fundamental Rights are no longer fundamental, we have not only changed, but we have — if I may use the expression, or correct expression — subverted the basic character of the Constitution; we are superseding the Fundamental Rights, we are making the Directive Principles fundamental. Say this to the people of India, at least to those who understand. 350 million illiterate people may not be able to understand that. I forget who said this; I think it was Indrajit Gupta who had said this 'What has prevented you'. Now, in the name of the Directive Principles, you are subverting the whole basic character of the Constitution. What has prevented you these long years from implementing these Directive Principles ? I cannot go through the whole gamut. But here is articie 45 which says :

> "shall endeavour to provide within ten years from the commencement of the Constitution,...",

—that is, by 1960—

> "...free and compulsory education".

Have you anywhere come near the attainment of that Directive Principle ? On the other hand, we see not only a bleak but the grim paradox of galloping illiteracy. I was reading an article the other day; according to a conservative estimate, 350 million Indians are illiterate. By the turn of the contury. according to another conservative estimate, we will have at least 400 million illiterates, and by any standards, India has the dubious privilege of contributing the largest number of illiterates to the general world pool of illiterates.

Again, what does article 44 enjoin ? It says :

> "...shall endeavour to secure a uniform civil code".

I do not want to join hands with the Jan Sangh on this or on any other issue. But why have you not done it ? You will never do it, because you are concerned more with vote-catching. This is

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long overdue. Who has prevented you from having a uniform civil code? Have these Fundamental Rights prevented you from having a uniform civil code? You would not do it? You may do it with regard to my community. We do not object. We are in many ways progressive, and certainly we will go along with you, uniform civil code or no uniform civil code, I do not know, but you do not do it. And you will not do it as long as you have got both eyes, not one eye only, on the number of votes that you might catch from a particular direction.

Now, what are you doing? You are now making fundamental and transcendental articles 39 (b) and (c). My grievance is this. Article 39 (b) reads thus :

> "...Ownership and control of the material resources of the community are so distributed as best to subserve the common good."

It is first class as an enunciation of some vague philosophic social objective. But you are now installing it as the paramount fundamental right, a vague amorphous sweeping provision like this. How are the courts going to interpret this? I do not know whether you intend that the courts should at any time interpret this? But what I am saying is this that anything can be brought within the sweep of article 39 (b), not so much of article 39 (c), anything which any State may endeavour to bring within the purview, I would say, rather, the mischief of article 39 (b). I can understand certain parties like the CPI (M) and perhaps one or two other parties who are avowedly not concerned with democracy, who are avowedly not concerned with democratic rights, who are avowedly not concerned with fundamental freedoms, who think that these are all bourgeois concepts—and I see increasing numbers of the ruling party who seem to be at one with them, the CPI (M), regarding all these fundamental freedoms and democratic values as a bourgeois concept—I can understand these parties taking this stand. But now what is going to happen?

31C, however you may rationalise it and explain it, gives the power of expropriation *simplicitur*. A mere *ipse dixit* under 39 (b) and you expropriate. What do you give? Let us see whether the Supreme Court says that there is a difference between amount and compensation. But what do you intend to do? You may not do it. But I say you are going along with people who are committed to destroying the Constitution. The people who will do it are the people who have no time for the Constitution—no time. They will do it. The Communists in Kerala will do it immediately, and what will they give? They will expropriate by making use of this legalised sort of confiscation or theft—does not matter as between the two words—and they will give a derisory amount. For one crore of rupees, they will give one rupee. And what are you now saying? That it will be outside the purview of the courts.

I can understand Indrajit Gupta saying this. But I do not understand the ruling party, the party of Jawaharlal Nehru saying it. People like Indrajit Gupta and his ilk are committed to destroying the Constitution and you are going along with them. They are committed to destroying fundamental freedoms and you are going along with thems My hon. friend is taking objection to thiw small concession of two-thirds majority. No, s what do you do? Each time you pass th e legislation, you are in terms superseding thd fundamental rights, and the least you coulihave done was, as I said, to put in this provt sion for having this two-thirds majority, no, that it is going to act as much of a brake We see this competition in pseudo-radicalism today. Everybody is jumping on to this band wagon, the slogan-mongering band wagon for, for many politicians—I say it with respect—it is probably true that many have never done honest hard work, had never earned an honest or competent living. Forthem this is mother's milk. You are institutionalising and legalising confiscation.

SHRI H. K. L. BHAGAT : He can say this because he has never had to go through the trial of an election.

SHRI FRANK ANTHONY : This is a snide remark. But what amazes me is that people who contest elections spend lakhs but have no ostensible means of livelihood.

SHRI PILOO MODY : Why are they on opposite side not smiling ?

THE MINISTER OF STEEL AND MINES (SHRI S. MOHAN KUMARAMANGALAM) : And you.

SHRI N. K. P. SALVE : This is a very cheap jibe.

SHRI FRANK ANTHONY : How far will this policy carry you ? After this farrago of slogan-mongering has exhausted itself and you expropriate Karni Singh - poor chap, I voted against him last time; I will tell you more about it when the 26th Amendment comes—what will you do ? You expropriate the Birlas. I am not concerned. I want some of the disgustingly wealthy people on the front Trersury bench to be expropriated. But what will happen after that ? You work it out arithmetically. After you expropriate everybody who is expropriatable and distribute it to these many millions of heads of our population, it will come to two or three rupees per head per month for one year. After that, where do you go ? When you have institutionalised this, what are you left with as the instruments of progress ? Can there ever be any substitute for hard, honest work ?

Now, today what are you doing ? You are killing every motive, every incentive, for any honest person to do any real hard work.

Already we see this deceleration in industrial progress, and now it is going to become galloping after the 25th amendment. Nobody but a fool will invest money; nobody but a fool will put into his investment the sweat and blood when he knows that at the next minute the communists particularly will expropriate and give him an illusory amount for all the sweat and blood and honest work that he has put hasjin. (*Interruption*) Already, because of our restrictive short-sighted policies, we have made India a paradise for smugglers; Now, with the Twenty-fifth Amendment Bill you are going to make it a paradise for the blackmarketeer and everybody who wants to operate under the table. They will all operate under the table, and that is what you are going to do.

A specially pernicious feature is this. My friend there—what does he want to do ?

MR. DEPUTY-SPEAKER : The hon. Member's time is up.

SHRI FRANK ANTHONY : I will finish in five minutes. Now, he orated about the power being there before the Golaknath judgment. But this Bill is much more far-reaching than what the position was before the Golaknath judgment. On the pretext of qualifying property, what are you doing ? You are effacing the whole spectrum, the most vital of all the fundamental rights. That is why I do not understand how, some of my democratic friends, lawyer friends can subscribe to it. At least, a person like Shri Asoke Sen, has had the moral courage to come out and write articles about it. I would have said, "All right, if you are really concerned,"—one judge, I think it was Justice Hidayatullah who said—"take property out of the fundamental rights capter; take article 31 out, and take 19 (i) (f)." I know serveral of the Independent Group will not agree because they feel there should also be a right to property. Take property out of the fundamental rights chapter. That would have been the most honest thing. But on the pretext of qualifying property, you are wiping out the whole gamut of fundamental rights. I just cannot understand it. Why ? Because you want to continue this pretence that you are not destroying property and so you have seized on this, and on that paretext what are you doing ? You are institutionalising discrimination. You have put in article 14 in clause 31 (c). This is monstrous; What do you say ? You are institutionalising discrimination, Mr. Gokhale. Does it not outrage your erstwhile judicial conscience ? (*Interruption*) You can say deliberately, "Yes; we are expropriating our political opponents; we are doing it deliberately." and they are helpless. They cannot invoke article 14. Then what are you doing ? An even more perni-

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cious part of 31 (c), on the pretext of qualifying property rights, you are wiping out all the seven freedoms in article 19. Mr. Gokhale, the Bar will be very ashamed of you. You are wiping out all the seven freedoms. I just do not understand why you are doing it.

MR. DEPUTY-SPEAKER : The hon. Member's time is up.

SHRI FRANK ANTHONY : I am finishing. Mr. Gokhale, what are you doing ? You are wiping out the right to assemble, freedom of speech, profession, everything. I do not know whether this example will do. Tomorraw, you might come and say, "Well, Mr. Anthony, you have got a reasonably big library. We are taking over your library, because we want to redistribute it to a lot of poor people." But I will say,—(*Interruption*) "Why aren't you taking over Mr. Gokhale's library ?" Mr. Gokhale is now *persona grata* in the ruling party. I cannot invoke article 14. I say that you are destroying profession under article 19 (i) (g). I may reply you cannot invoke article 19 (i) (g); you have no profession left. This is the gift you are giving to the country.

You are destroying article 14. You are destroying all the seven freedoms; the seven freedoms were not absolute; they were subjected to reasonable restrictions; all in the name of qualifying property. This is the supreme tragedy. (*Interruption*)

MR. DEPUTY-SPEAKER : Please conclude. I have given you 20 minutes.

SHRI FRANK ANTHONY : I will finish, Sir. Then, my friend saw one side of the medal. I refer to amendment No. 12 "does not adequately give effect." He seems to read into it that you are giving jurisdiction to the Supreme Court. I say that you are trying to institutionalise colourable legislation. As the Law Commission has said, you can never oust the jurisdiction of the Supreme Court. You may say so. If it is is colourable the Supreme Court can assess it. They have alerted you. You only used the word 'effect'. 31(c) says : "no law containing a declaration that it is for giving effect to such policy shall be called in question on the ground that it does not give effect to such policy." Now you are putting in : "...does not adequately give effect." What are you doing ? You are institutionalising, in my humble view, colourable and fraudulent legislation...

SHRI S. MOHAN KUMARAMANGALAM : Yes.

SHRI FRANK ANTHONY : The cat is out from what Mr. Kumaramangalam says...(*Interruptrons*)

THE PRIME MINISTER, MINISTER OF ATOMIC ENERGY, MINISTER OF ELECTRONICS, MINISTER OF HOME AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRIMATI INDIRA GANDHI) : Shall we remove that word ?

SHRI FRANK ANTHONY : The communists will use it where there is the very remotest connection with the directive principles; you will now be able to say that the nexus may not be adequate; that there is no real nexus. By using the word 'adequately', you have institutionalised colourable, fraudulent legislation. Shame on you, Mr. Gokhale.

SHRI H. R. GOKHALE : If you do not want the word 'adequately', shall we remove it ?

SHRI FRANK ANTHONY : You tell me what your intendment is and I shall tell you whether you should cut it out.

Finally, I want to say this. I have been in this House for some time. In my humble way I have fought what I have regarded as not desirable legislation or trends. When the Andhra Bill was on the floor of the House, I fought it almost alone in this House because I said that a tragic blunder was being committed by the Government, that

we were giving hostages to disintegration. People will now perhaps say that what I had said then has proved to be tragically prophetic.

What are you doing now ? It is not a blunder; this is deliberate. You are changing the whole character of the Constitution; you are making this Constitution—to which you make us take a oath of allegiance—a hand-maiden of lawlessness and a symbol of political and legislative lawlessness. You are inviting the country through this to take to the streets. Because what have been our bastions ? Our bastions have been, firstly the Fundamental Rights and then, the Supreme Court. By one evil stroke you are effacing the Fundamental Rights; you are also effacing the jurisdiction of the Supreme Court.

SHRI VIKRAM MAHAJAN (Kangra) : This Bill is a challenge to this House to arise to the level of events which are being created. Never before has such a momentous decision been taken as we are taking today to bring about social and economic changes, to eradicate poverty and bring about equality of opportunity, the right to live and the right to make the country worth living. My learned friend Mr. Anthony was saying that the whole character of the Constitution was being changed because the concept of fundamental right is changing and that we were trying to delete the chapter on fundamental rights from the Constitution.

Every generation has a right to decide for itself what fundamental rights it would like to have. No generation can decide for all times to come and say that these are the fundamental rights which will govern the life of the people for all time to come, for all the future generation. It would be a static concept and any generation which says so in my submission would be a very immodest generation because it would be claiming itself to be a perfect generation which has created a perfect Constitution.

As I have submitted earlier, the goal is the Directive Principles. I would like to quote a passage from the Law Commission's Report in which they give the observations of Pandit Jawahar Lal Nehru on fundamental rights as under :

> "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."

The Commission continues :

> "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 feact, 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..."

What I am submitting is that the object of this Bill is to meet the aspirations and the needs of the people. This Bill by itself will not bring about the changes which we desire, but it is a great step in achieving the objective. Of course, there are many more Bills which have to be brought to bring about the desired results, but this is a Bill which on its own will bring about a great and revolutionary change.

It is said that this Bill will change the entire concept of the Constitution. My learned friend has not read a few other provisions of the Constitution. We have a

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similar provision in respect of the rural sector which empowers the Government to pass legislation without giving the exact compensation or the exact value. All the zamindaris were abolished without giving the market value. The land ceilings were brought without paying the market value. That amendment has been in the Constitution for the last decade, but nothing was done to expropriate the opponents as Mr. Anthony put it. He put forward the argument that this Bill will be used to expropriate the properties of the opponents, out the experience of the past decade shows that such powers were never used to kill the oppoent.

For the benefit of my hon. friend, I would like to read article 31A of the Constitution.

"(1) Notwithstanding anything contained in article 18, 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

"shall be deemed to be avoid 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."

So, the State Legislatures and Parliament had the power a decade earlier to pass any law which would extinguish any state and that law could not be challenged in a court on the ground that it was contrary to articles 14, 19 or 31. With the help of this provision, zamindaris were abolished and land ceilings imposed without paying market compensation. Never was this power used by the States or the Centre against its opponents. The people have the confidence, and I hope my learned friends will also have the confidence, that the present Bill will not be used merely to expropriate the properties of opponents. Mr. Frank Anthony gave some examples and said, "You may take away my library but not that of Mr. Gokhale". May I say, any State or the Centre can pass a law that all the blue-eyed babies born in this country shall be thrown into the Jumna, but a Government which passes such a law would be thrown out the next day. So, if a Government passes such absured laws, it would be thrown out the next day.

Some friends have said, the judiciary should be given the power to decide whether the compensation is adequate or not or whether the directive principles have been followed or not. I would have supported the idea that the judiciary should come in, but I think the time has come when the judiciary should not be brought into the controversies of the modern system which aims at bringing economic changes for the betterment of the people. Otherwise, the judiciary will be open to criticism and it will affect its general working in other spheres also, because every time the judiciary comes in, it will be deciding one way or the other and the party which loses will criticise the judiciary. Therefore, it should be between the people and their representatives. People should expect from their representatives a just and fair legislation and the representatives should be able to bring about a legislation which aims at eradication of poverty. If they fail in their duty, people will throw thom out. I hope the judiciary will be kept out of this controversy. It should be between the people and their representatives without the judiciary coming in. I fully support the Bill to the extent it keeps the judiciary out of the controversy.

Lastly, I would like to quote a passage from Abraham Lincoln as to what he said about a century back :

"This country with its institutions belongs to the people who inhabit it. Whenever they shall grow weary of the existing Constitution and Government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember it or overthrow it."

MR. DEPUTY-SPEAKER : As a result of a review in constitution with the Business Advisory Committee, the Speaker has decided that the House should sit upto 6:30.

SHRI PILOO MODY (Godhra) : Mr. Deputy Speaker, all these years, I have laboured under the impression that there were several democrats outside the Swatantra Party. I think today I can claim that I and the Swatantra Party must be the last bastion of democracy in this country. When the President of India puts his rubber stamp on this constitutional amendment, India will have signed its second tryst with destiny, having converted a constitutional democracy into a totalitarian oligarchy devoid of the rule of law.

We are already beginning to see the symptoms of it all over. Debate has gone on at high levels, debate has gone on at lower levels, it has gone on in this Parliament and at its lowest level it has taken place at Jantar Mantar Road.

Our much-abused Constitution not only permitted but directed the State to create a social order in which justice, social, economic and political shall inform all institutions of national life, leading inevitably to a welfare state. For 25 years this Government has had the opportunity to bring it in line with the Directive Principles of State Policy, but it has failed. Even after this amendment is passed it is still not going to happen. What we are going to have is greater arbitrary exercise of naked power to establish perhaps a Police State.

What is it that the Constitution has inhibited us from doing except the vindictive use of absolute power ? That is the only thing that the Constitution has debarred these people from doing. If I may be allowed to quote the relevant article, 39(b)—by the way, this (b) seems to be the bee in their bonnet—

> "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good".

Have they done it ? Can any Minister sitting on that bench truthfully say that the public sector, that monster that they have created or a major part of their public sector, by shuffling the ownership and control by taking it under their own control, has so distributed it as to best subserve the common good ? Is this their idea of common good ? And yet they have done it.

Can they say that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment ? Was it not they who instituted this system of lincensing ? The issue of licenses was entirely in their hands and so they could have controlled these big business houses. Who issues licenses to them ?

AN HON. MEMBER : Morarji.

SHRI PILOO MODY : My hon. friends would like to disown him and claim Karl Marx. I am not concerned with it. To me the Government is Government, red, pink, blue, turkish, non-turkish, red-turkish, pink-turkish or blue-blooded. I do not care a damn.

Talking about the concentration of wealth, have they not imposed expropriatory incom-tax and surcharge levy of 97 per cent, wealth-tax, gift-tax and estate duty ? Has anybody stopped them from collecting them honestly ? They talk about the concentration of the means of production. What about the public sector ? That, certainly, is not concentration of private wealth. But it has not functioned well. What about the company law which you cannot apply honestly ? What about the licensing and credit control ? They have all these instruments.

They may talk about them, they may propagate them and they may collect votes on account of them. But they have not implemented any of those things which they could have implemented. What have they done ? They have created black markets, black marketeers, smugglers, bootleggers and they have slept with them because these are the principal supporters of this Government. And they come here and preach socialism !

[Shri Piloo Mody]

What is it that this Constitution has stopped them from doing ? Has it stopped agrarian reform ? Has it stopped you from economic controls ? Under this Constitution, as it stood, one state or the other—let me quote—"intermediaries were abolished, ceilings were fixed, cultivating tenants were regulated by law, the tiller of the soil secured cultivating rights against the absentee landlords, scattered bits of land were consolidated by a process of statutory exchange." All this has been permitted. To read further :

> "the State, instead of talking loosely of taking away the fundamental right to property, should concentrate in the making of a comprehensive law of land tenure regulating the rights equitably of the ryots, cultivating tenant and the landless labour and place it on a stable basis which would have validity for a substantive period of time...
>
> Instead of ideological debates and dialectics, jurists, research scholars, and economists may investigate the problem for evolving reasonable principles of compensation relevant to this social and economic conditions of our country. Fixation of compensation is not an exact science...
>
> Even on the industrial and business front, the constitution has conferred large powers on the State to regulate them, to prevent concentration of wealth and exploitation and even to nationalise an industry or business, on economic considerations in public interest...
>
> The fundamental rights are not absolute rights but are subject to laws of social control. The right to equality is subject "to the doctrine of classification, the right to admission to colleges and employment is subject to the laws making special provisions for backward communities and scheduled casts, the right to seven freedoms is subject to laws of reasonable restrictions in public interest, the right to life and personal liberty is subject to procedure prescribed by law, the right to property is subject to the law of deprivation, acquisition and taxation."

and the right to speak in Parliament is subject to the ruling of the Speaker.

> "The right to work depends upon the employment potential created—

not on slogans or socialism or anything else but on the employment potential created—

> "the right to health upon medical facilities given, the right to education on the educational opportunities provided, the right to equal pay on the prosperity generated, the right to leisure on the technology and automation accepted by industry...The distinction between fundamental rights and the potential rights embodied in the directive principles, rests on the fact that the former exist but the latter are created by human ingenuity."

an ingenuity that these people do not have.

> "The judiciary has to decide both on the scope of the fundamental rights and the permissible limits of the law of social control and to decide also on the validity of laws to creating statutary rights, on the basis of the tests of legitimate encroachment... Out of this conflict evolves the new social order by the process of judicial adjustment and through the rule of law."

Not Shri Gokhale's law but the rule of law.

SHRI H. R. GOKHALE : Whose ingenuity is this ?

SHRI PILOO MODY : "Autocratic power finds the judicial check irksome and seeks to explain away its incompetency or neglect of duty by posing an inflexible and irreconcilable conflict

between fundamental rights and directive principles."

AN. HON. MEMBER : This book may be laid on the Table of the House.

SHRI PILOO MODY : It will shock you to receive it.

THE MINISTER OF EDUCATION AND SOCIAL WELFARE AND MINISTER OF DEPARTMENT OF CULTURE (SHRI SIDDHARTHA SHANKAR RAY) : What book is it ?

SHRI PILOO MODY : I have to inform the House, particularly in view of its sensitive nature, that it is the Golak Nath case judgment which enshrines all this and sanctifies this.

SHRI H. R. GOKHALE : This is Golak Nath's ingenuity ?

SHRI PILOO MODY : It is the Golak Nath case judgment which sanctified this and which made it possible, even though Shri Gokhale may have forgotten how to evaluate a judgment.

SHRI SIDDHARTHA SHANKAR RAY : Where did you read from ?

SHRI PILOO MODY : It is not a Constitution Amendment; it is not economic reform; it is not national reconstruction; it is not *garibi hatao*, but it is political skullduggery that these people are up to.

Confucius, the Chinese philosopher, said :

"When he was young, he judged men by their words. When he grew up, he judged them by their deeds."

As a young nation, there is a tendency on the part of the public to judge leaders by their professions. In a few years time, they will be judged by their deeds...

—not by there constitutional amendments.

This is what Mr. Gunnar Myrdal, a socialist economist, wrote about "proclaimed leftists and progressives" that you see — so many of them here. I am so glad to see the new entrants, Mr. Salve, Mr. Mahajan and I do not know who else have become new entrants overnight. About "proclaimed leftists and progressives", he said :

"There is a yawning gap between their profession and practice, between there public and private life — even between what they say in one place and another.

The main obstacles to socialism in India are not the so-called reactionaries and vested interests. It is the inability of socialists to live upto what they preach to the public."

This is why socialism will not get ushered into India. He further says :

"Ministers preach egalitarianism — absolute equality — to the public, and legislators advocate ceiling on income and wealth. Yet, they enjoy enormous perquisites..."

Mr. Gokhale, how big is the bungalow you stay in? How big a garden do you enjoy ? What right you have to talk about socialism. Sir, I think, you will bear me out that, normally, I do not indulge in any personal attack on anybody. But I am going to take this magnificent opportunity to say something about Mr. Gokhale who resigned from a Judge ship of the Bombay High Court because he found the salary inadequate. At that time. I sympathised with him because the Rs. 3500 or Rs, 4000, that he was getting, plus perquisites, a cheap house, peons and the whole lot, was perhaps too little for Mr. Gokhale. I do not blame him for resigning because he always wanted to come and occupy this chair. After all, this job of his carries an annual salary of Rs. 12 lakhs as a result of the new taxation levied in the last three years. Every Central Cabinet Minister, unknown to the public outside, is paid salaries and perquisites of Rs. 12 lakhs. If you do not believe it, I have all the calculations with me here. I will be very happy to lay them on the Table of the House. I do not need any taxation experts on evasion and avoidance to advise me on the subject.

SHRI H. R. GOKHALE : He is an expert himself.

SHRI PILOO MODY : This is the very same Gokhale who says that, in future, the battle is going to be between the "haves" and the "have-nots"; I seriously wonder about his sanity. Is he in his own bath-room going to box with himself before the mirror ? On the one hand, he is very much of a "have" and, on the other hand, he is very much of a "have-not". It depends on how you look at the "haves" and the "have-nots". Mentally, I say, he is a "have-not".

SHRI H. R. GOKHALE : What are you ?

SHRI PILOO MODY : The Law Commission recommended, the Cabinet accepted, and the Minister introduced amendments to his own Amendment and, last night, he invented an argument, an argument against the Law Commission, an argument against the Cabinet, an argument against his own amendments, and he justified it in the name of morality. The fact of the matter is that Mr. Bhupesh Gupta in the other House put the screw on him, not to bring these amendments...

SHRI S. M. BANERJEE : Sir, I rise on a point of order.

SHRI PILOO MODY : And Banerjee is going to put a screw on the House right now.

SHRI S. M. BANERJEE : My point of order is this. Firstly, he should make a speech. His entire speech should not be a quotation. That is one thing. Second thing is that he has mentioned the name of the hon. Member of the other House, Shri Bhupesh Gupta. His personal or private life is not supposed to be known to him. This is very unfair. He is losing his property. Let him lose. He has acquired a mass of health. We do not grudge. What is this concentration of health ? (*Interruption*)

MR. DEPUTY-SPEAKER : I think it is not desirable to refer to a Member in another House.

SHRI N. K. P. SALVE : Many things are not in good taste, so to say.

SHRI PILOO MODY : Now that you have given your ruling. I thought you would have ruled him out of order. Instead of that you have thought it fit to give me advice as to whom I should mention in the other House.

I would like to quote that to Mr. Banerjee and to you on the many an occasion that mention has been made about Members of the other House. To me Mr. Bhupesh Gupta is not Mr. Bhupesh Gupta, the editor of a newspaper. To me, he is the leader of the Communist Party. If I cannot say Mr. Bhupesh Gupta, shall I say 'Leader of the Communist Party in the Rajya Sabha' or the 'Leader of CPI here' or 'Mr. S. M. Banerjee' who has constantly carried their brief all these years. They put the screw on Mr. Gokhale and on the Government and on the Prime Minister and overnight, morality came to the rescue of Mr. Gokhale who withdraws these amendments because these people have threatened that they will not vote for them. I don't pay any attention to such threats at all. They will go down on their knees and I would like to tell Mr. Gokhale that even if he introduces his amendments, these people are going to vote for him. They dare not go to their electorate without you. So, don't get blackmailed by people whom you have to keep down.

Sir, only in a democracy are there restraints and in a democracy, society is so organised that no man or woman, no body of men or body of women, can exercise full or absolute control over the destinies of the nation. This is the basic essence of a democracy and what this Government is trying to do is exactly the opposite. It is the doctrine of limitation which makes a democracy acceptable. This Government wants that there should be no limitation on its power whatsoever.

The founding fathers, our dear founding fathers, great men, who put in great sacrifice, had great vision and honesty of purpose, great concern and these are the people with the best intentions in their life, sat deliberated

for a year and a half and produced the Constitution...

SHRI FRANK ANTHONY : Why a year and a half ? For four years we sat.

SHRI PILOO MODY : Four years, Mr. Anthony says. For four years they sat and produced a Constitution which is to be dismissed in one moment by some elected punk kid riding into Parliament on the trail or the petticoat of a Prime Minister driven made by power.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND SHIPPING AND TRANSPORT (SHRI RAJ BAHADUR) : Sir, this is highly objectionable. He must withdraw it. It is shameful. You have got a lady sitting by your side.

MR. DEPUTY-SPEAKER : I think this expression is unfortunate. I request you to withdraw that expression.

SHRI PILOO MODY : Which expression ?

MR. DEPUTY-SPEAKER : That word 'petticoat' — will you withdraw it. In the context in which you have used, it is unparliamentary...(*Interruptions*) Will you please withdraw it ?

SHRI PILOO MODY : I am not anxious to use that word. I withdraw it. But I must have a substitute. Shall I say, riding on the trail of her popularity ? What shall I say ? Is there any of you brash enough to say that that is not true ?...(*Interruption*).

The Law Minister quoted Nehru, A poor example to quote. Because for everything Nehru said, he provided a quotation with which he could be refuted. I have a book full of this and if he is so inclined, in his leisure I will give him quotations which refute his own quotations of Nehru.

Let me make a plea. As ridiculous as it may sound, I want to make a plea. We have no tradition in this country of common law. We have no established norms of public opinion or behaviour.

We have no heritage of freedom and democracy and therefore to transcend fundamental rights, to arm Parliament and politicians riding on this mass hypnosis with these powers is irresponsible in the extreme. I see before me the three eminent jurists; I called them on the last occasion the three blind mice on the treasury benches. It is in this way that they are trying to bring about the deathknell of Indian democracy. It saddens my heart.

In 3500 years of recorded history men all over the world for the most part have lived in tyranny and under oppression. It is only on a few occasions in a few places, a few men enjoyed the liberty and freedom of free men.

17 hrs.

AN HON. MEMBER : Why are you mourning ?

SHRI PILOO MODY : I know, if democracy dies, to him it is a joke, because, we know, he has never sworn by it. But it is indeed true, it is a mourning, because for the first time we were lucky enough for 20 years to enjoy this whiff of fresh air, this breath of freedom and the fact that our people could not participate in it can be laid straight and firmly at the footsteps of these people in power and Mr. Banerjee. The spirit of man will survive and it will fight on. This world and our country and the people living in it will survive the onslaught of Mrs. Indira Gandhi and her Government, they will survive this era of history because the spirit of man reigns eternal and even though in the next few years you may plunder all you like--even Chengis Khan plundered—on some day, there will be established in this country...

SHRI S. MOHAN KUMARAMANGALAM : A swatantra Government ?

SHRI PILOO MODY : Truth cannot evade even the worst cynic. Some day there will be in this country a Swatantra Government, a free Government, freely elected. The reason I have this faith is because I know that irrespective of what the 350 people here can be made to say, the struggle for freedom will continue, and continue for ever. Thank you.

SHRI SHANKERRAO SAVANT (Kolaba) : I rise to support the Twenty-fifth Amendment to the Constitution moved by the Law Minister.

The need for this amendment arose out of the Supreme Court's judgment in the Bank Nationalisation case. While giving its judgment in R. C. Cooper vs. the Union of India, the Supreme Court held that the Act 22 of 1969 is not *ultra-vires*. That is the Bank Nationalisation Act. Secondly, it said that the selection of some banks only for nationalisation does not come under the category of hostile discrimination. Thirdly, it said that the provision of compensation in Act 22 of 1969 is bad because it contravenes Art 31 (2) of the Constitution as the item 'compensation' mentioned therein means 'just compensation' which means market value. It also laid down that the method of giving compensation must be reasonable.

In giving this judgment, the Supreme Court had gone against its own earlier judgment in *Shantilal Mangaldas's* case where it had held that the court could only see whether the compenstation given was fraudulent or illusory and it had no power to see whether the compensation was just or adequate.

This legislation has had a tortuous course. In the Constituent Assembly itself there was a dispute as to whether the compensation should be equivalent to the market price, and to avoid the payment of market price, they dropped the word 'just' from the draft proposal for paying just compensation. But the Supreme Court in *Bela Bannerji's* case held in 1954 that although the word 'just' had been dropped, still the connotation of the word 'compensation' was that the market price must be paid.

This was the signal for the Fourth Amendment which made the adequacy of compensation non-justiciable. This amendment was interpreted in *Shantilal Mangaldas's case* referred to earlier.

Thus, all along, during the last 22 years, Parliament had been proposing its theories of private property in one way and the Supreme Court has been disposing of them in another way. It is to make the law both fool-proof and knave-proof that the present amendment has been brought forward.

To pay full compensation is to perpetuate the very evil of concentration of wealth which we are seeking to abolish. The amending Bill has taken care to see that this injustice in the distribution of wealth is not perpetuated.

I have suggested one amendment myself, but it is not of a revolutionary nature. It is only meant to fill up a lacuna existing in the Bill. I shall explain this lacuna while moving the amendment.

I shall now confine myself only to some of the amendments moved by the Law Minister himself, and I should certainly like to give my views on those amendments. In my view, they are not necessary because they will not only dilute the original Bill but they will negative it in part.

The amendment regarding the proposed payment of market price to educational institutions of minorities is a step in the wrong direction. We are told that the Twenty-fifth Amendment is necessary to usher in an egalitarian society and to hasten the era of socialism. Is our socialism partial ? Is it meant only for the majority and not for the minorities ? Are we to suppose that all Anglo-Indians are opposed to socialism, like Shri Frank Anthony ? I am sure that there are men even in the Anglo-Indian community who are prepared to share the toils and turmoils of the fight for socialism. It is only then that they can share the fruits of socialism.

There is no firm definition of 'minority'. The Hindus are in a majority in most of the States but they are a minority in Jammu and Kashmir. The Sikhs are a majority in the Punjab but a minority everywhere else. The Christians are a majority in the Nagaland but they are a minority everywhere else. Therefore, the word 'minority' here will cause only confusion.

This discrimination in favour of the minorities, apart from its being illegal, is politically a bad precedent. It may prove to be a thin end of the wedge of political pampering that may spoil the minorities themselves and may ingrain in them a sense of separateness from the main body of the Indian population which in spite of differences in caste, race and religion and lauguage is determined to march hand in hand towards the accepted goal of secular democracy.

I would, therefore, like to say that the amendments proposed by the Law Minister regarding the educational institutions of minorities to which full price is proposed to be paid, should be withdrawn by the hon. Law Minister, and the present Bill should be kept as it is, with just one amendment which I shall move afterwards and which is necessary only to fill in the gap or the lacuna which remains there otherwise.

SHRI N. SHIVAPPA (Hassan) : While rising to support this important amendment which is really the first milestone in our onward march to solve the untold misery and sorrow experienced and suffered by the teeming millions of our country, I want to make one point clear. That is about the necessity for this amendment.

Many of our colleagues ventured with the help of quotations and authorities to put their case. I am only venturing as a lawyer not to make any interpretation or as an argument this way or that for the sake of argument. I want to concentrate my argument solely and purposefully on the very true spirit, perspective and objective for which it was brought forward and is now the subject of consideration by this august House.

In all these 24 years of our democratic history, whether on the floor of this House or outside, most of our political stalwards not only from this side but also from the other side have only written volumes or spoken profusely extending lip-sympathy and courtesy to the downtrodden, oppressed and suppressed and economically backward, unfortunate and innocent people. They have never known what is the definition of meaning of the words 'fundamental rights'. These gentlemen have only talked and interpreted or written volumes for the sake of 9 per cent of the people of this country. Who are they ? It is we the MPs, State legislators, educated officers and Judges of the High Courts and the Supreme Court. These stalwart judges whom we all respect are not in turn prepared to recognise and respect the views of the members of Parliament expressed on the floor of this House.

I want to say categorically that these people have definitely said only as an eye-wash or vote-catching ruse or to further their vested interests for their own ends and nothing else. The discussion and deliberation of these people and the interpretation of the courts were only to safeguard the interests of the 9 per cent who constitute the intelligentsia, those who have amassed wealth either by good means or bad. They never thought in terms of conceding the fundamental rights to the remaining 91 per cent of the population of this country.

What is now urgently needed to bring about these amendments to usher in an era of socio-economic development of the country? Only we had the courage to set this process in motion. We have now two big personalities. One is the personality of our hon. Prime Minister, Indiraji, the leader of the great Congress organisation after the rift; the other is the personality of the nation of India, the 91 per cent who constitute the downtrodden, oppressed, suppressed. Their interests have not so far been taken care of by the Supreme Court Judges or other people who have been delivering judgments or talking on the political platforms all those years from Kanyakumari to Himalayas.

So it is not an amendmentor a constitutional provision that we have to enact only for the sake of somebody. Why should we think of fundamental rights only in terms of 9 per cent of the people ? Why were they not for the sake of the 91 per cent ? Hence, the object and the necessity of this amendment have got their reason behind in the democratic history of the last 25 years.

The second thing is, the Golaknath case. What is this Golaknath case ? It is only a

[Shri N. Shivappa]

question of interpretation. Interpretation of the Constitution is being given by whom ? It is not being taken by the Supreme Court or by the High Court, much less by the executive, nor by any other alien friends; it was given by this House. It was given under the Constitution; it was given by provisions of the Constitution. So, as a lawyer, if really all the judges of this country have got a little bearing on the idea or the intention of the legislature which is to be carried out by them, for the good of the country, it is that intention that is incorporated in this particular constitutional letter of the law. Who is making the letter of the law ? It is we. So, the legislature, the supreme body of this country, has got the right to look into the condition of the people, whether the 'haves' or the 'have-nots'. We are not bothered Piloo Mody's belly being developed or sunk. We are only bothered about cases where the belly has already sunk back, the belly of the poor poople. It must also be developed. Bread has to be given to them. Where can we give the bread ? The interpretation of the letter of the amendment is different from the spirit of the amendment to be thought of, namely, why it should be brought in; why it should be implemented; where was the necessity and whether anybody has got the courage and the capacity to bring it in.

If the Supreme Court has an idea, what alternative suggestion has it made ? It is only a body, an institution, to interpret the Constitution and the law, and nothing beyond should be done, nothing should be done such as dictating terms to others. It has assumed the authority to give dictation and that too, a controversial dictation. It is not a uniform dictation even. Even in the Golaknath case, they only posed a problem. To whom ? Not only to Parliament but to the nation. We went before the nation. This is not a subject-matter which has come today before Parliament. I want to reiterate this. I want to inform this House that we had a discussion on the floor of this House; we had taken it up deliberately—the Golaknath case—many a time on the floor of this House.

If we can recall the case, this Golaknath case posed two important problems to two agencies : one to the legislature and the other to the nation at large. So, the nation practically took a particular stand and declared that we are going to authorise this Parliament through their elected representatives to see that the amendment is brought in, and that was declared by our hon. Prime Minister. We got the vote; we got the sanction and we got the backing of the nation and the nation stood behind that. What the nation said is that this House should promulgate, this House should bring the amendment and this House is free to do it. We will do it. Nobody can rise any objection. Nobody can pass a remark. I have heard the agruments from the Opposition who conflict with each other and contradict each other. It is very unfortunate. If we compare Shri Piloo Mody's arguments with those of other colleagues who gave their version, we can say that they are all good stalwarts and lawyers and Parliamentarians and judges. They have advanced their beautiful arguments in their own colour. We have no objection. But, at the same time, what is their ultimate idea ? One side wants that the entire Constitution should be abolished or the word "compensation" should not be there or it should not be open to judicial review. The other side wants that no letter in the Constitution should be touched. These are the two sides or agencies sitting there, and they want to go before the country and before the nation and want to give a sigh of relief from economic oppression and suppression. They want to build Rome in a say. That is also their ambition; their hope. And then, Mr. Piloo Mody's hope is known to us. That is, the big houses and the strategy of evasion should continue. If all that is going to be advanced, well, he knows that friends have learnt it and our colleagues on the other side also know it.

On our side, we are democratic socialists. We are living in a democracy, and through democracy, we are going or travelling on the path of democracy and trying to see that the socialistic policies and programmes are implemented peacefully and constructively, not in a very ambiguous manner or in any extreme manner, not by means of bloodshed and revolution.

We have taken the country into confidence. The country has reposed confidence in this Parliament and in this leader. Therefore our friends need to take to task the ruling party for introducing this amendment. Our cabinet, our Law Minister and our Prime Minister have given sufficient thought to this matter and after careful examination of the Golaknath case three amendments are simultaneously made to the fundamental rights. First, it gives power to Parliament to amend the Constitution. Secondly, it says what sort of property should be taken over and what amount should be paid, whether it is adequate compensation or otherwise. This is a comprehensive, sensible and purposeful draft. It does what the country is expecting us to do.

The amendments suggested to article 31 impose some limitations on the rights under articles 14, 19 and 39. What are the limitations ? They are reasonable restrictions. In this context I want to invite your attention to the remarks by some Judges. They have their own motive behind interpretation in Golaknath case or other case. On our side I am glad that Mr. Gokhale has given a very good exposition. I want to put to you what Mr. Hegdeji who was a Judge himself had said. In a reception given to him immediately after he assumed office as a Judge in Udipi which is in my State in his own area where he was practising he made this observation about judges :

> "Any ass can become a Judge and when it becomes a judge it will bray judiciously".

This is what Mr. Hegdeji has said on assuming office as a Judge. If that is so what right have they got to comment about the contributions made by this august House consisting of more than 500 elected representatives of the people. They have mixed with the people and they know what they want. They have studied the Constitution and they want the judiciary to act according to the letter of the law which is passed here. Why has it not been done ? Why give an interpretation which acts as an impediment to the progress of the nation ? Why control Parliament ? This Parliament cannot be controlled either by the judiciary or by the bureacratic system. Mr. Piloo Mody wants that exploitation should be continued. We do not want that exploitation should continue whether in the form of legalised exploitation or authoritarian exploitation. He wants that money should earn money. We do not want that. We want that the worker should earn money and live. He must be able to work and live. So many judicial decisions about property have come here. As a lawer I have seen this things. This is an unfortunate state of affairs. It has been well thought of by the hon. Leader of this House and we are happy that this amendment has been placed before this august House for its consideration. This will go through, this is a must go through. This is a must for the country's progress and prosperity and for the achievement of the objectives of our policies and programmes.

SHRI BISWANARAYAN SHASTRI (Lakhimpur) : I rise to support the Constitution (Twenty-Fifth amendment) Bill which is before the House. The Constitution (Twenty-Fourth Amendment) Bill which has now become an Act and the Twenty-Fifth and Twenty-Sixth Amendment Bills which are before the House, in my opinion are three different aspects of one complete thing. Practically the Constitution Twenty-Fifth Amendment Bill is the most important of all amendment Bills so far brought to amend the Constitution, because all the previous amendments are piecemeal amendments and this amendment seeks to give wider power to Parliament and State Legislatures, and for that matter to the elected representatives of the people in a word to the people. All these three amendments are necessitated by the Supreme Court judgement. Many things have been said here about those judgments. I am not a lawyer, and I am not going into that aspect. Whatever I say is from the point of view of common sense.

The present Bill is going to impose some restrictions on property, and there is some controversy. Practically it is an issue between the Directive Principles and the Fundamental Rights. Whenever there is a conflict between these two, we must take the

[Shri Biswanarayan Shastri]

help of the preamble of our Constitution where it has been clearly stated :

"*Justice*, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity assuring the dignity of the individual and the unity of the nation."

Nowhere is there mention in the Preamble of the right to property, not a word. It is found in the Fundamental Right chapter and not in the Preamble. If we analyse the Fundamental Rights and the Directive Principles, it will be clear to any lay reader that Fundamental Rights are static and the Directive Principles are dynamic and they direct the State to go in certain directions and to implement certain ideas. Therefore, if the Fundamental Rights stand in the way of the implementation of the Directive Principles, the Fundamental Rights must be amended for the welfare of the majority of the people. There is a maxim :

'*Bahu jana hitya, bahu jana sukhaya.*'

For the welfare of the majority of the people and for the happiness of the majority of the people Fundamental Rights, if necessary, must be amended. There is a mythological story in our *Puranas*. The Vindhya mountain stood in the way of the learners and pilgrims who wanted to go to South and to subdue it, the help of the Sage Agastya was sought. Agastya reduced the mountain to its size. So, if the Supreme Court or anybody stands in the way of the implementation of the directive principles, those things are to be reduced to their proper size. In this connection, I would like to quote Gandhiji. When Louis Fisher, the famous journalist interviewed Gandhiji, he asked Gandhiji's opinion about land. Gandhiji's reply was, "The peasants would simply seize the land". And, Gandhiji was not an extremist. Regarding compensation, Gandhiji said, that would be fiscally impossible.

It is also argued in certain quarters that the concept of Indian society is going to be changed by this amending Bill. They refer to the ancient method of Indian society and the present method. I am a student of history and therefore, I can say with some authority that in ancient India, the king who was the repositary of the community had the right to property, but even he had no right to the land. A king could give away as gift all their property but not the land, because lands belongs to all. There is common ownership of land :

न भूमिः स्यात् सर्वसाधारणत्वात्

Property is not simply land, building money and machinery. The intelligence and the discovery of a person is also property. If these things are restricted for years to come, the entire nation will be deprived of these discoveries and the intelligence of a particular person. For instance, if Shakespeare's works were cofined to his descendants, the world would have been different today. But that was not done. If by this monopolistic trend or *status quo* method of forces we are going to restrict something for generations to come, the nation, the people and the world will be losers. Therefore, for the benefit of the common people who are in the majority, it is proper that the State should be enabled to take possession of whatever it needs.

If compensation at market value is paid for surplus property to distribute it among the people, the very purpose of such an Act will be defeated. For instance, there is a big company with large resources and capital. If it is taken over and market value is paid to the company, it means they are paid even what they do not require or they will be made richer than what they are at present. Therefore, the question of adequate compensation or market value does not arise and it has no meaning in the present context. The same can be said about the abolition of privy purses. If, in lieu of privy purses, compensation is paid to them, only the name will be different and they will get the same amount and same facilities. Therefore, the

very purpose of abolishing those things and acquiring surplus property above the ceiling will be defeated if adequate compensation or market value is paid to the owners. There is no justification for the fear or apprehension in certain quarters that the small landholders or property-holders will be deprived of their property. It is quite absurd and hypothetical. In spite of the existence of some such provisions in the Constitution already, so far Parliament and the State Legislatures have not made any law which deprives the people of their right in an arbitrary manner. Therefore, this apprehension is not well-founded.

The boggey raised about the rights of the minorities is also politically motivated. I do not want to go into it.

Then about some comments in certain judgments that the elected representatives of the people cannot be trusted with. If they cannot be trusted with, I do not know who under the sun can be trusted with. Because, the Constitution in its very preamble says "We, the people of India, having solemnly resolved to constitute India into a soverign democratic Republic and to secure to all its citizens justice...hereby adopt, enact and give to ourselves this Constitution." This Constitution is prepared, drafted and adopted by the elected representatives of the people and given to the people. If we cannot trust them with the Constitution, could we trust it with people who are sitting somewhere else, who are not concerned or worried with the problems of the people ?

This Bill empowers both the Central and State Government to make laws which will translate certain ideas which are embodied in the Directive Principles of the Constitution and thereby give relief to the people who have so far been deprived of their legitimate dues. With these words, I support this Bill.

SHRI T. BALAKRISHNIAH (Tirupathi): Sir, I rise to support the Twentyfifth Amendment Bill presented by the hon. Minister of Law. The hon. Minister in his opening speech has pointed out the object and necessity of this amending Bill.

Law is changing from generation to generation. Dharma is changing from yuga to yuga. So, laws are made according to the changing social circumstances and changing social conditions. Law cannot be rigid; it has always to be flexible. So, it is but right and proper that we should bring in a law which is suitable to the conditions of the people.

The judgments of the Supreme Court in the Golak Nath case, bank nationalisation case and the privy purse case and our manifesto were put before the people by us during the elections. People have given their mandate by electing us in a majority. Now, should we respect the judgment of the people or that of the Supreme Court ? I have got the greatest respect for the judges of the Supreme Court and the High Courts because they are mature men with good legal background. But they do not have contact with the people. They cannot feel the pulse of the people. When a villager comes to me and says that he needs a house, I forget for a moment that I am a parliamentarian or a lawyer and I feel that something should be done for them and I request the Government to do something for them. There are millions of people without homes, without land and without jobs. How are we to solve these problems if these are standing as obstacles ?

We know pretty well that we are wedded to democratic socialism. According to that we must frame our laws and in accordance with the principles that have been enunciated under articles 38 and 39 of the Constitution. But my learned friends on the Opposition side are pressing very much about the Fundamental Rights. What is fundamental ? Are our lives fundamental or our laws ? Are we realising that we are living in an unrealistic world ? That realisation is not there. Their cry is like a cry in the wilderness. They do not suggest any ways and means by which we can achieve all these objects. They have not suggested how we can help the poor man.

My learned friend, Shri Frank Anthony—I very much appreciate his oratory but not his point—has asked what this Government had been doing all these years; why they

[Shri T. Balakrishnish]

could not implement the Directive Principles of State Policy. We know the difficulties why they could not be implemented. To overcome those difficulties we are thinking of legislation.

There are millions of Scheduled Castes people in our country. In spite of 23 years of our democratic rule, we are not able to provide them not houses but at least house sites or even hut sites. That is the position in which we are placed now. What is it due to? It is not that our Government is lacking in efforts but it is because of the rigid laws. The rigid laws are not permitting it. Under the Land Acquisition Act whenever they propose to acquire something, several formalities have to be gone through and this word "adequate compensation" stands as a bottleneck. The man who is aggrieved, the landlord, immediately goes to the High Court, files a writ and gets a stay. On account of the stay this will never see the light of the day and the purpose will not be served. For years together it will be prolonged. Will it be possible for us to provide house sites for these poor people who really need them?

17.42 hrs.

[MR. SPEAKER *in the Chair*]

About compensation I would like to submit one thing. They are always claiming market value. The compensation or the amount fixed by Government or Parliament, they say, is not adequate. They want more compensation and to become richer. It is not because of anyone's individual efforts that one is entitled to so much of compensation but it is because of the efforts of the State. Those who are economists or have studied economics know pretty well that in the modern civilisation in and around the growing cities and towns, the State provides all modern amenities to live a modern and civilised life and hence the value of the land increases. For that why should the Government pay more than the required amount to the man who owns the property?

Is it possible for a poor man or a middle class man or a lower middle class man to own a house site at least for the construction of a house, leave apart possessing property or any land or any such thing, so that he can say that he has got a house of his own to live in after his retirement or to go and stay in after his day's work? Can he feel like that? It is not possible because the value has increased.

I, therefore, submit that the Government is justified and right in substituting the word "amount" for the word "compensation". Man is greedy, ambitious and selfish. He wants more money and more treasures. The land which cost Re. 1/- twenty years back is now costing thousands of rupees. The land which he got for a mere *darkhast* free from Government, he is now selling for lakhs of rupees. Are we to pay lakhs of rupees for that? Wherefrom can we get that money? It has to be paid from the State treasury. The Government cannot afford to pay compensation as expected by these people. We can only pay an amount.

After all, Government's intention is not to deprive the petty peasant and the small shopkeeper of what he has but to help those who have something or nothing to fall back upon. It is with that intention this Government is coming forward with this Constitution Amendment.

Coming to Fundamental Rights; I submit, that the courts can only interpret the law and apply it. It is very well in the case of individual cases, but not in a case where a policy matter is taken up by the State. In a policy matter taken up by the State, the Judges who are sitting there, who have got a mature mind, who have got a calm and cool thinking must give sound advice and cooperate with the Government. If they come to a kind of adverse judgment, that will come in the way of progress and create not only obstructions but also confusion and chaos in the State. Therefore, I submit, the Judges must only interpret the law and

apply it. It is the Parliament that is a supreme body. It can enact any law that is suitable for the country and that is suitable for the people. If the High Courts or the Supreme Court—a time will come when we can manage even without them—assert that they have got superiority over the Parliament, they must forget that they have any superiority over the Parliament. The Parliament has to work within the framework of the Constitution and the judiciary has to work within the framework of the Constitution.

The Twenty-fifth Constitution Amendment Bill is an important Bill and, I can say, it is a bold measure in the history of Parliament that we are going to pass and it is only under the able leadership of our Prime Minister that we can achieve socialism and economic progress. "Now or never" goes the saying. Now is the only time when we have got a majority to bring forward any progressive measures and, if we do not make an attempt or an effort to bring forward any progressive legislation, we can never do it in future.

SHRI J. B. PATNAIK (Cuttack): Mr. Speaker, Sir, I consider it a great privilege to support this Constitution Amendment Bill. This Parliament, with this measure, will go down in history as a successful Parliament and, certainly, the Members who have participated in this historic action would share this honour.

This is a very bold attempt and, I should say, it is an attempt in the right direction to remove a great contradiction in our Constitution. The contradiction is between the rights of the people, the Fundamental Rights, and the Directive Principles of the State Policy. In the Fundamental Rights Chapter, there are three articles which concern the right of property of the citizen and these articles are, 14, 19 and 31. Article 19 confers the right of property on the citizen and articles 14 and 31 give them the protection of law and the law-courts. In the Directive Principles of the State Policy, article 39 confers on the citizen the right for adequate means of livelihood. From this follows, two clauses, (b) and (c), which says that the means of production of the society should be so controlled and distributed as to subserve the commongood.

And that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The Preamble of the Constitution also envisages social and economic justice. So the preamble of the Constitution and the right conferred on the citizen in the Directive Principles of the State Policy are in contradiction with the right to property that is given in the Fundamental Rights Chapter.

When the right to property was first embedded in our Constitution, concentration of wealth had already taken place. The wealthy the landlords and the capitalists took advantage of this right to property and within years of our Independence, further concentration took place so much so that when the Monopoly Commission went into the whole matter in 1965, they found that out of 2259 companies they examined, 1536 were controlled by 75 houses whose total assets were Rs. 2605·95 crores. It constituted 46·9% of the non-banking private sector. If the banking business was taken into account, it would have been much more.

Now the Commission which went into this inquiry as to how this concentration took place had quoted a famous authority, Dr. Lokanathan. Dr. Lokanathan said :

> "In spite of the fact that Parliament cries every day against the business community, nothing material is done."

It only proves that during these years though the successive Parliaments have cried in every session against the business community, against the capitalists and Monopolists nothing tangible was achieved by way of redressing the grievances of the people. That shows only how far-flung and tight were the tentacles of the monopolists and the capitalists and thus this contradiction persisted to the great woe, detriment and disadvantage of the people.

[Shri J. B. Patnaik]

Year after year, the *per capita* income shows a very slow growth. In 1960-61 at the 1960-61 prices it was Rs. 306. It rose to Rs. 321 on the basis of the same price of 1960-61 in 1968-69. So, within eight years the *per capita* income rose only by Rs. 15 whereas the capitalists multiplied their wealth and multiplied their income. When we are calculating this average *per capita* income, it is a very wrong assessment because in this assessment of average *per capita* we are taking into consideration the wealth and income of the big capitalists and the big monopolists which is just like assessing the flow of water in the river Jamuna. We take the whole bed area of river Jamuna and the water that flows in it and when we make the average calculation of the water flowing in the river, we make the same mistake as this average. Now if someone goes to the river to find out the flow of water and if he does not know swimming, he is going to be drowned.

Now this contradiction must go and this Parliament which is wedded to the goal of a socialistic society must act now and remove this contradiction.

Coming to the amendment itself, I should say that the spirit of the amendment is the same as the spirit of the Fourth Amendment to the Constitution in 1955. Art. 39 before any amendment provided that no property shall be taken possession of or acquired for public purpose under any law authorising the taking of such property or acquisition unless the law provides for compensation for the property or either fixes the amount of compensation or specifies the principles and the manner in which it is to be determined. On account of the extended interpretation given by the Supreme Court given to the word 'acquisition' Clause (2) of Art. 31 was amended and substituted in 1955 by the Fourth Amendment with some verbal changes, but the most material addition to that clause was that no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate.

Thus, for the first time the question of adequacy of the consideration was taken out of the jurisdiction of the courts. A new clause 2A was also added in 1955 by the Fourth Amendment Act. The main effect of the said amendment was that compensation was payable only where there is a transfer of ownership to a State or a Corporation owned or controlled by the State and no other mode of deprivation of property. This amendment was taken in its true spirit in many judgments of the Supreme Court. But the Bank nationalisation revealed the frailty of judges to obvious political and economic formulations of their own.

The insertion of a new clause—Clause 2B—does not materially affect the constitutional position. Clause (5) of Art 19 which was there from the very beginning, from the very inception of the Constitution, authorised the imposition by the State of restriction on the exercise of the right of property in the interests of the general public.

The right to property was not even absolute in the British days. Property could be acquired for public purposes. When our Constitution was made, this was duly taken into consideration in Article 19(5). It was clearly stated that property could be taken over in the interest of the public.

Insertion of Art. 31C is more or less a declaration of law already embedded in the Constitution. It is already too late for us that even after a lapse of two decades we had not taken up legislations in the line of economic policy laid down in Art. 39(b) and (c). If the State goes on paying money compensation at the prevailing market rate, it would mean in cases of persons having concentrated large properties in their hands that they would get movable cash equivalent instead of immovable or other tangible property. Thus the concentration would remain as before except that certain properties will be converted to money at the cost of the State.

The position however is different where the compensation in the shape of equivalent

market value goes to the hands of such persons or sources where there is no question of concentration of wealth. For such cases of complete indemnification we have clear provision in Art. 31A(1) as amended in the Seventeenth Amendment in 1964. Such persons who held land within the ceiling limit on personal cultivation are entitled to get full compensation.

There are some Members who are always crying wolf, over touching the right to property. If we take into consideration the right of property actually enjoyed by the people of our country we find that 90 per cent of our people do not have property; and out of the 10 per cent, 9·9 per cent are only small property holders. Only 0·1 per cent are the monopolists and big capitalists and some of our friends are weeping about those people, that their rights are being taken away by this amendment.

The test of property, according to a great political philosopher, Locke, is that it has to be conducive to the well-being of many and the well-being of the society. There is no absolute right to property. By this historic amendment of the Constitution, we will remove the contradiction in our Constitution and the Parliament and the State legislatures will now be free to go ahead with their legislations to accelerate progress towards the goal of socialism. In the years of independence in all the contests between the rights of the capitalists and the big landlords and the rights of the people, it is the people who always went to the wall. Now, after this constitutional amendment, it is the other way round, and now it is the turn of the capitalists to go to the wall. The capitalist integument, as I would like to put it, would now burst as under and we would go ahead towards our goal of socialism.

18 hrs.

THE MINISTER OF STEEL AND MINES (SHRI S. MOHAN KUMARAMANGALAM) : Mr Speaker, Sir, I must confess to a certain feeling of disappointment as I sat listening to the speeches, particularly made by Members on the other side. I expected that over such an important matter we would have a certain level of argument, a certain seriousness, not the expression of hyperbole, of violent adjectives which are no substitute for argument, for discussion. And I would prefer, if you will allow me, to deal with it in terms of fundamentals.

What exactly are we doing ? What is our aim ? It is not, as my hon. friend Shri Piloo Mody said, arbitrary exercise of naked power, not as Shri Frank Anthony said, the establishment of a totalitarian State, a paradise for blackmarketeers; all these expressions are cheap but they do not advance the argument. And it is the argument that is important in a debate in a House like this, and I shall proceed to argue my case, and I hope my hon. friend Shri Piloo Mody would listen.

Now, I start from the position that no where, no where in the world has it been laid down that only if property is taken away by payment of market value compensation is it a democracy. That is my first and principal point. You take the Universal Declaration of Human Rights at the United Nations. You will find there that everyone has the right to own property alone as well as in association with others. That is article 17 there. Again, no one shall be arbitrarily deprived of his property, and 'arbitrary' has been said to be 'except by the exercise of law', that is, law passed by the Parliament of the country.

We may go back to the *Magna Carta* before which even many Members of the Opposition, I think, would be prepared to bow more quickly than they bow before our own Constitution. It says :

> "No free man shall be seized or imprisoned or stripped of his rights or possessions except by the lawful judgment of his equals or by the law of the land."

All that we are saying here is that no person shall be deprived of his property for a public purpose, and the State shall not acquire any public property for a public purpose except by a law, that is, by a law passed by Parliament. What is there arbitrary about it ? What is there undemocratic about that ? It exists in many Parliaments in the world. Let me quote France also which by the standards of, shall I call it, the Right

[Shri S. Mohan Kumaramangalam]

Opposition, a democratic country. The provision there is that :

> "Laws shall establish the regulations concerning the nationalisation of enterprises and the transfer of the property of the enterprises from the public to the private sector."

> "Laws shall determine the fundamental principles of property, rights, civil and commercial obligations."

The word 'laws' means laws passed by Parliament. If that is good enough for France, which I think is a democracy, if that is good enough for England, if that is good enough for the Univarsal Declaration of Human Rights, why is it not good enough for us ? Are we lesser men ? Are we persons who cannot be trusted like they can be ? Surely, this is the first and the most fundamental question which my hon. friend oppsite has to answer.

He may accuse us of misusing the power. Yes, we shall have that out in another debate when we discuss the way in which it is exercised and the mistakes that we make; yes, we make mistakes; everybody in the world makes mistakes; we shall try to correct them. But today we are not on that question. We are on the question of the power that is to be given to Parliament. Should or should not Parliament have that power ? And I say 'Yes, it should'.

Now, I shall go back many many moons ago to what happened when Gandhiji himself said something in this connection at the Round Table Conference. I am obliged to my hon. friend Prof. S L. Saksena because he in his speech in the Constituent Assembly had quoted Gandhiji's speech at the Round Table Conference, and led me to what I am going to quote today. When he was asked, 'What is the formulation you would like to make regarding private rights, regarding property rights', he said-:

> "The second formula that I have got with me (hastily drafted by listening to other persons' speeches) is that no existing interest legimately acquired and not being in conflict whith the best interest of the nation in general shall be interfered with except in accordance with the law applicable to such interests".

Then he explained what he meant. He said :

> "Then you have 'not being in conflict with the best interest of the nation'. I have in mind certain monopolies legitimately acquired"—

undoubtedly 'legitimately' means under the law at that time in force—

> "but which have been brought into being in conflict with the best interest of the nation".

Those monopolies are to be taken away, limited, restricted, confiscated, whatever it may be, in accordance with what ? With the law applicable to such interests ?

You can go to many parts of the world, you can go back in constitutional history, you can go back in law. You will find at every stage that ultimately it is law, applied in the interest of whom ? In the interest of the nation.

You may charge us when, for instance, we have taken over the coking coal mines 'that you have taken it over in your individual interests, that you are going to use the coking coal only to swell your bank balance'. We will answer that charge. It can be easily answered. But that is not the point at issue. The point at issue is: do we or do we not need this power in order to achieve the programme of socio-economic reform to which we are committed ? You can say that the programme is not in the interest of the people, that the programme is a programme which is against the interests of the people. You can throw us out. By all means, you have got the right to do that. But that is not the point we are debating today. What we are concerned with now is what is the scope of the power that should be given to Parlia-

ment. Should or should not Parliament have the power to decide what should be the compensation to be given when property is taken over in the national interest ?

Shri Frank Anthony talked of Shri Gokhale's library. I thought he would keep to a higher level of debate. Who is interested in a lawyer's library, even in Shri Anthony's library ? He may have it. If he wants my library, if he feels like having another library, we are prepared to give it to him. That is not the point. We are not after people's libraries. We are not after people's clothes or shops or small fields. We are interested in a major resturcturing of the economy. Soon we are going to come before you for the take-over of the coking coal mines. What should be the compensation that should be paid to them ? Should there be compensation for the coal that is also underground, and which we have taken away, as it were, exploited by the mine-owners ? It can be argued that we should pay compensation. We say no. Whether we should or should not is a matter for us, for Parliament, to decide. This is a political question to be decided by political beings who are vested with political Power. It is not a matter for the judiciary. This is simply what we are trying to stress here, when we reassert the position as it stood before the Cooper case. Everybody accepted this as the interpretation and understanding of the Fourth Amendment to the Constitution. We are reasserting only that. Suddenly to discover that the whole world, as it were, is being shattered, that democracy is being completely murdered and using all such expressions does not, I think, advance one's knowledge of the issue actually at stake.

I would like to refer here to the speech of Shri Samar Mukherjee in which he dealt with our policy. I do not propose to deal with our policy. There will be plenty of opportunities for doing so. The question which I am sure Shri Mukherjee will address himself to is this : does this change in the Constitution enable Parliament to take what action it wishes in the field of social reform ? If we fail to take such action, you will denounce us. That is your prerogative. If we have to take such action, we should have the power to enable us to take it. If one day you come to power, you should also have that power. To anybody, any party, which wishes on the basis of the decision of the majority of the people to achieve certain socio-economic reform, this Constitution should be a weapon which will enable that party to achieve it. That is all we are seeking to do. What I am surprised about it is that once more you are harking back to article 19 (i) (a) to (e), forgetting that even the Law Commission has accepted the position that keeping article 19 (i) (a) outside, as it were, the purview of article 31C would only enable reactionaries to use it for their own purposes. What the Law Commission has said is, "Do not be apprehensive, gentlemen in Parliament, in Government, because we are sure actually they are not going to do that. They will learn. If they do not learn, you can always amend it again." We do not see why it is necessary to do this; it is much better to make it clear and say that we do not want to take that risk. And that is why we have taken that clause as a whole.

I was also interested to hear Shri Indrajit Gupta, but I am surprised that he also was not able to appreciate why it is, for instance, that we have brought in the word "adequately". My friend Shri Anthony did a good service to us by explaining what the introduction of "adequately" means. The introduction of the word "adequately"—the amendment that is coming up tomorrow—is only to make it quite clear that the courts will not go into the extent to which articles 39B and 39C have been implemented; whether the implementation is adequate or not. They will entirely be restricted to examinatoin of any connection between articles 39B and 39C on the one hand and the legislation on the other which, as Shri Anthony said, in any event they would have been able to do under the scope of the doctrine of fraudulent exercise of power or colourful exercise of power. What we have gone is to make it quite clear, and that is as far as we can go.

I was also unable to appreciate what Shri Indrajit Gupta was saying when he remarked that supposing the legislation does not "adequately" achieve implementation of articles 39B and 39C, then, the courts now will not be able to go into it, but surely the question is that we should bar the jurisdiction

[Shri S. Mohan Kumaramangalam]

of the courts. We should not permit the courts, as it were, to sit in political judgment on issues which are really political, both, as my friend the Law Minister said, from the point of view of legislation that we are going to actually implement and from the point of view of preventing the courts from being laid open to criticism on the ground that they have gone into a political field.

I would also like to mention that so far as the amendment which we are bringing in relation to article 31 is concerned, by which we are safeguarding the right o minorities, it is really to reassure the minorities that the amendment of article 31 does not in any way affect the rights they have already got under article 30. That is all. It is not meant to widen any right, but it is meant to make more than clear the fact that article 31 (ii) -- the amendment—is not directed in anyway to whittle down the rights which the minorities already have under the Constitution. We are not trying to create new rights. We are not trying to expand the rignts. We are only trying to make it clear that what you, the minorities, have already got under articly 30, we are not going to take it away from you. Rest assured that this amendment is not directed against you; and we have to make it clear because, as often happens, most of the big property-owners try to take shelter behind the minorities or the small property-owners. We have no intention of going against either the small property-owners on the one hand or the minorities on the other. It is to establish this quite definitely, categorically, that this has been introduced as an amendment. We have no intention to change the position in relation to minorities and we thought it would be only proper that we should make it clear.

Let me now go on to Shri Anthony's points. There were not very many points among them, but I would like to deal with one or two of them. The first point I would like to make clear is in relation to the attack or the criticism he made on the question of adequate compensation. It is very important, it has become very important for us if we are to push forward with the socio-economic reforms that we are trying to implement; it has become very important that the question of justiciability of compensation should be taken outside the scope of the courts' jurisdiction. We have found this difficulty in the Act which brought about agrarian reform in West Bengal. A stay was immediately granted and we were put into a very great difficulty as a result of it. We found it very difficult even in the case relating to coking coal mines compensation and take-over case where a writ was filed in the Calcutta High Court, and for a week we were not entitled to raise one tonne of coal while we were compelled to pay all the workers all their wages. This was what happened. Ultimately after very prolonged arguements in the court we were able to get that stay order lifted. We found, as our friends in Kerala know, that a very recent enactment in Kerala about private forests had also been virtually stayed and we were not able to go forward so that it has become important for us.

Mr. Salve raised this question that even the word "amount" may not be enough to enable us to achieve the object that we want to. I do not think that he is correct. If he reads the Law Commission's reports he will find that we have got abundant legal authority to support the position that we have taken namely, the introduction of the word "amount" instead of the word "compensation" makes it clear that there is no question of market value compensation having to be paid. The Supreme Court in Cooper's case relied essentially on the continued use of the word "compensatian" even in the fourth amendment to come to the conclusion that market value compensation has to be paid. They said : We interpreted "compensation" in Bela Banerjee case as market value compensation; you have continued to use that word; since you have continued to use that word what you have done is to accept the meaning we gave to the word "compensation" in Bela Banerjee case. There was no other alternative except to get away from the word "compensation." That is why the word "amout" has been introduced. It has been stated by the Law commission and by all the persons whom we have consulted that the use of the word "amount" clearly indicates

what ever amount that is considered reasonable and proper by Parliament, particularly as you get the later part of article 31 (2) where the question of adequacy cannot be gone into by the courts at all.

Mr. Anthony also said that we were changing the whole character of the Constitution by introducing article 31 C. Naturally this is the article that has come up for most serious criticism both from Mr. Anthony on the one hand and Mr. Mody on the other. So far as 31 C is concerned we want to make our position quite clear. If you take article 31 A of the Constitution I think it should be clear to anybody who reads it that we have already raised as it were, the Directive Principles above the Fundamental Rights because it says that none of the laws which are really aimed at agrarian reform shall be deemed to be void on the ground that they are inconsistent or take away or abridge any of the rights conferred by Articles 14, 19 or 31. This was introduced in 1955 at a stage when the most important task before our country was the execution and implementation of vast schemes of agrarian reform, abolition of the zamindari system, abolition of land-lordism, big land-lords etc.

Now today, in the seventies, in the decade in which we are entering, the principal task that is facing is what I would call the abolition of the monopolies in industry, the control that they possess in industry. I mentioned for instance the coaking coal mines. I do not want to go into it just now.

My friend Mr. Mody is not happy about the way the public sector functions. We shall take the point whether the public sector functions well or not, later on. That is not the issue today. The issue today is this.

We go to the people with a certain programme seeking economic reform. If we are not able to execute that programme except by amending the Constitution in the manner in which we have proposed, we are entitled to come back to the Houe and say : we want an amendment of the Constitution in order to be able to implement this programme of socio-economic reform.

What does 31C say ? It says : Notwith standing anything contained in article 13, n- law which gives effect to the principles o article 39 (B) and (c) shall be challenged in the ground that it violates articles 14, 19on 3 . That is virtually the same as 31A. T or is no difference at all. Then comes perhere the most important part of that article :haps

> "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."

I would like to emphasis this because this is possibly the most crucial amendment. The Law Minister also emphasised that it was in a sense a historic amendment because it does place, and we have consciously placed, these two Directive Principles 39 (b) and 39 (c) above the Fundamental Rights because we consider that the task today on the agenda of our people is a serious, determined effort to implement these two Directive Principles and we do not believe that it will be possible to effectively implement these Directive Principles—I gave examples just now of the various enactments in regard to which we have had difficulties with the Courts even in the recent past—Unless we have the protection of article 31C for such legislation.

Mr. Frank Anthony said that as a result of this even for a property worth Rs. 1 crore we may only give a compensation of one rupee. I do not know whether one should always give a compensation of Rs. 1 crore or Rs. 50 lakhs or even Rs. 10 lakhs when one takes away a property of that value because it depends on the historical conditions in which that property was accumulated.

I was reading recently that the President of Chile, Senor Allende, nationalised the copper mines of Chile and he promised the U. S. proprietors that he would give them full compensation. He calculated the compensation at 650 million dollars or so. Having calculated the compensation, he presented a bill to those companies for 670 million dollars which the companies had to

[Shri S. Mohan Kumaramangalam]

pay. When the companies asked why they had to pay 600 million dollars, he said that was for all the excess profits that they took away over all the years that they were exploiting the copper of Chile. What is unreasonable in that ? It is perfectly reasonable, and it has happened in our country, and I say that it is a valid and reasonable thing to take into consideration. If for years and years a particular company is paying out dividends of 30, 40 or even 50 per cent, keeping the workers down as it were in the mire of poverty, as was done for decades in our country, if crores of rupees were taken away by the foreign interests, particularly plantations in the form of dividends, and at the end of it all they say that we must pay market value compensation, I ask: where is the justice or morality in such a demand ? So, it is a question of the circumstances. The circumstances may necessitate compensation of one rupee. The circumstances may necessitate 100 per cent compensation also. I do not say we will never pay 100 percent compensation. It depends on the circumstances in which we take over a particular industry, a particular area of our economy. It is entirely on this basis that we will come to our decisions. But if one says all time that we are not being fair, we are not being just, I do not know how one talks about fairness and justice without looking into the real facts and circumstances.

Mr. Anthony used the word 'theft'. He said that it would be theft. I was reminded of a very respectable philospher of modern political theory, T. H. Green, who is considered to be one of the most conservative philosophers, who has written about the theory of the modern State. Looking through his book the other day, this is what I read :

> "...when the possession of property by one man interferes with the possession of property by another; when one set of men are secured in the power of getting and keeping the means of realising their will, in such a way that others are practically denied the power. In that case it may truly be said that 'property is theft'."

Green was discussing the matter on a very high plane, a plane to which I would request some of you to try to rise, though you may fail, and that is the philosophical plane. Here is a narrow set of people enjoying peoperty, and here is a vast mass of millions who have none or little. Since the enjoyment of property by the small narrow group is dependent on the non-enjoyment of property by millions, it is "theft". He wrote this over a hundred years ago, nothing very revolutionary. Marx wrote this earlier, but Marx is anathema to many on the other side and so I do not quote him. But you cannot object to T. H. Green. That is why, if you go anywhere in the field of philosophical discussion and political analysis, you will find that property is always looked upon as something transient and passing. It is not absolute. Therefore it is that the approach which we found for the first time really made in Golaknath case is an approach that is contradictory to all the progressive humanistic writings of men over the centuries. I do not want to take the time of the House, because unfortunately there was not much that came on which I can take very much time. But I would like to deal with one or two points.

Mr. Anthony said, it is the courts who must balance the rights of the individual on the one hand and the rights of society on the other. But I prefer what Panditji wrote quite sometime ago :

> "Ultimately the balancing authority can only be the sovereign legislature of the country, which can keep before it all the various factors—all the public, political and other factors—that come into the picture."

It is only we—all of us sitting here, not only on this side, but Parliament as a whole who are capable of transmitting into legislation which we pass the desires of the people to whom ultimately we have to render account. The entire difference between the judiciary on the one hand and ourselves on the other is that on political questions we have to render account and they do not. It is their prerogative to interpret the law, but

it is we who have to make the laws and we make them in response to the needs and urges of the people. That is the difference. That is why we do believe that ultimately it is the people who must decide what is the course that is to be followed. The amendments that have come before the House are really only aiming at doing that.

Lastly, there is a certain anxiety over the question whether article 31C will really mean that the court will not have the right to do anything at all. I dealt with it a little earlier, but I would like to clarify one point. Where does the line of demarcation come ? What do we say, the oourts can do and want do we say, the courts cannot do ? Mr. Palkhivala has recently written an article and he has sent me a copy of the pamphlet. His understanding of article 31C is,

> "Even the question whether the laws would in reality implement the Directive Principles will not not be justiciable."

He is perfectly right. We do not want the judges to decide whether the laws would in reality implement the directive principles. That is for us to decide. They may or may not, but surely we must be able to decide, because my understanding of articles 31B and C is bound to be different from Mr. Anthony's understanding, because our political approaches are different. Now, who is to decide whether my understanding is right or his understanding is right ? The People, the Parliament, not the judges, because with the judges, it is a lottery. Some of theme may be with me and some with him. It depends on their political philosophies. But they have not been appointed judges because of their political philosophies. We have been appointed as Members of Parliament because of our political philosophy. That is why it is wrong to give that power to the judges. It would mean compelling them to take political decisions, though some of them unfortunately have been eager to do so in the past. I hope they would not do so in future. This really is the crux of the matter,

It is a very difficult world in which one lives, because we are trying to do the most *bonafide* actions not in relation to ourselves alone but in relation to Parliament, of which all of us are members. We are trying to enable Parliament to decide on certain laws, to carrry forward and implement certain laws. That is what we are trying to do. I would like to end by quoting from an American Prefessor of Philosophy who is one of the leading figures, who has discussed the relationship btween law and philosophy —Morris Cohen :

> "The principle of freedom of personality certainly cannot justify a legal order wherein a few can, by virtue of their legal monopoly over necessities, compel others to work under degrading and brutalizing conditions. A Government that limits the right of large land-holders limits the right of property, and yet may promote real freedom. Property owners, like other individuals, are members of a community and must subordinate their ambition to the larger whole of which they are a part. They may find their compensation."

—and I appeal particularly to our princess on the other side—

> "spiritually identifying their good with that of the larger life."

It is very important when we conclude our debate on this question to get back ultimately to the basic philosophical concept and their relationship with what objectives were put in before our country. I would appeal to all hon. Members to appreciate that modern democracy looks upon the right to property as conditioned by social responsibility, by the needs of society, by the balancing of interests which loom so large in modern jurisprudence and not as a pre-ordained untouchable private right.

I am sure the House will support this amendment.

MR. SPEAKER : I thought we will continue up to 7 O'Clock. But hon. Members are anxious that we should adjourn now at 6·30 p. m.