

[Shri A. K. Sen]

consultation with the Chief Justice of India.

Shri Bade (Khargone): Is it not a fact that in article 222(2) of the Constitution there was a provision for giving some compensatory allowance, and that it was deleted by section 14 of the Constitution (Seventh Amendment) Act of 1956 on this ground that there was no justification for granting any compensatory allowance to the Judges?

Shri A. K. Sen: That is a different matter. I am now talking about the way in which transfers, such as they have been, have been effected,—the question of allowances is a different matter—because when we appreciate the way in which the whole thing has worked, we shall appreciate the necessity for introducing this provision.

As I said, though the power of the President to transfer a Judge from one High Court to another was unfettered, by convention we have never transferred a Judge without his consent, which explains a good deal the restraint with which these powers have been exercised, and completely negatives the unfounded charge that we have tried more or less to interfere with the judiciary, a charge which is so frequently and freely canvassed by persons who are possibly either ignorant of facts or do not like to know the facts.

This plenary power of transfer has never been exercised and transfers which have been effected since the Constitution have always been made with the consent of the transferee and in consultation with the Chief Justice of India. It is therefore necessary if we accept that it is a good thing, that it is a desirable thing, for the purpose of national integration, to have Judges drawn from different States, so that the highest judicial tribunal

in every State contains elements from other States and we have an all-India atmosphere running through our entire judicial life and strengthening it and giving it a national outlook, for good or for bad. People may differ with regard to that objective. We have by and large accepted it as a desirable thing. We feel that it is absolutely essential for the purpose of national integration and for introducing a robust national outlook into our judicial system that Judges should be transferred from one High Court to another, so that there is an element from outside the particular State in the highest judicial tribunal free from local bias, free from local prejudices and completely devoted only to the supreme task of administering justice equally and impartially.

Mr. Speaker: Is the hon. Minister likely to finish within five minutes? Otherwise, he may continue tomorrow.

Shri A. K. Sen: I shall continue tomorrow, Sir.

17 hrs.

*AMENDMENT OF ARTICLE 31A OF CONSTITUTION

Mr. Speaker: We will now take up the half-an-hour discussion.

Dr. L. M. Singhvi (Jodhpur): Before you take up the half an hour discussion, may we request you to consider the question of extending the time for discussion at least on the clause-by-clause consideration of the Bill..... (Interruptions).

Mr. Speaker: We have already extended the Session by two days and we cannot go on extending. We will always complain of lack of time. Let us see.

Shri Priya Gupta (Katihar): Sir, I gave notice of a call attention motion. Mr. Parikh is fasting. I could not know as to what happened about that. Will justice be done to him by the Railway Ministry?

Mr. Speaker: Is this the opportunity for asking about that?

Shri Priya Gupta: I waited for the whole day; I had not been informed.

Mr. Speaker: He will be informed just now as to what has happened to it.

Shri A. K. Gopalan (Kasergod) Sir, at this stage, I am sorry I have to take some time of the House for raising a discussion regarding amendment of article 31A of the Constitution. Today we discussed an amendment of the Constitution. Some feel that Constitution should not be amended. The question is whether it is essential to amend the Constitution. When the social welfare legislations enacted by the State and the Central Governments need it, it is essential that we must also be prepared to amend the Constitution, if the social welfare legislation could not be implemented.

17-02 hrs.

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

The Deputy Minister in the Ministry of Labour and Employment and for Planning (Shri C. R. Pattabhi Raman): Sir, I think I may tell the hon. Member that a constitutional amendment is being introduced. The hon. Law Minister will introduce the Bill in all probability on the last day of this session. That is the assurance I wanted to give.

Shri A. K. Gopalan: I am glad that it will be introduced. I want to show the harm done by its not having been introduced earlier as also the background in which I want the constitutional amendment. I want to speak about them briefly.

Land reform legislations had been given such a significant place in the First Plan and the Second Plan as well as the Third Plan. The object of it was to remove the impediments for increasing food production and also to create conditions for evolving as speedily as possible an agricultural economy with high level of efficiency and productivity. There were three main objectives of the land reform legislation: security of tenure, reduction of rent and conferment of right of ownership on the tenants. It was with this object in view that the Government said that in all the States by 1960 land reform legislation must be implemented. I want to refer to the Kerala Agrarian Reforms Act in this connection as also some other Acts in Mysore and other States as well. The Kerala Agrarian Relations Bill was introduced in December 1957 and it was discussed in the Assembly and ultimately passed on June 10, 1959. It was then sent to the President under article 200 of the Constitution. The President returned it on 31st July, 1959. On July 27, 1960 the President sent it back with some recommendations. On August 2, 1960 the Governor returned the Bill remitted by the President with his message and the amendment suggested by him to the new Assembly for consideration. On September 26, 1960 the amendments suggested by the President were taken up for consideration, and ultimately, on October, 13, 1960, the Bill as amended in the light of the President's recommendation was passed by the Assembly. On January 21, 1961, it received the assent of the President.

This is the background of the Act. After that, the State Government slowly began to implement the legislation. So, as far as the implementation is concerned,—it was a reduction of rent—land tribunals were appointed, and the tribunals went into the question of rent. About one lakh of petitions were filed before the land tribunals. In 17,000 cases judgments were given and the rent was reduced, and in about 5,000 cases not only was

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the rent reduced but according to the legislation 12 times the rent was deposited with the land tribunals for the ownership of the land.

It was at this time that some interested persons went to the Supreme Court. I have got the judgment of the Supreme Court as well as that of the high court. In regard to the Kasargod area which is part of Kerala now, it was decided that—there was the ryotwari system there—the ryotwari land does not come under the purview or the definition of estate. It was said:

“...To determine therefore whether a particular term defined or used in a particular area is the local equivalent of the word “estate” as used in article 31A (2) (a), it is necessary to have some basic concept of the meaning of the word “estate” as used in the relevant article of the constitution. It seems to us that the basic concept of the word “estate” is that the person holding the estate should be proprietor of the soil and should be in direct relationship with the State paying land revenue to it except where it is remitted in whole or in part....”

So, according to this, it was said that the ryotwari land does not come under the purview of the definition of estate and so in part of the State, Kasargod, the Act became invalid.

After that, there were two cases in the high court: one from the Travancore side and the other from Malabar side. Two landlords filed petitions, and in the judgment, it was said that jenmam land and pandaravaga land—there were two or three separate names there—also did not come under the purview of the Act, and so, the Agrarian Relations Act, as far as Malabar and Travancore areas were concerned, became invalid. It was in the Cochin area that it became valid.

Now, article 31A(2) (a) says as follows:

“the expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any *jaigir inam* or *muafi* or other similar grant, and in the States of Madras and Kerala, any *janman* right;

Then the Supreme Court gave its judgment and then afterwards, the high court also said that certain lands did not come under the definition of the word “estate”. So, the Act was declared invalid. In the Cochin area, there was no case and there was no judgment as far as the lands in Cochin were concerned. Immediately, when the judgment of the Supreme Court and the High Court came, the State Government said that the Act was invalid and they issued an ordinance stopping eviction. Then the ordinance was made into an Act.

As I have explained, the Act took so much time. There was the process of sending it to the President, the President kept it for two years, asking the law Ministry to go into it, and then, after it was returned, some amendments were made, and then it was passed. Afterwards the Supreme Court and the high court judgment said that as far as the Constitution was concerned, there was some legal flaw. So, they said, the Act is invalid. If they are really interested that whatever actions taken by the Government should not be void, they would have at once asked for stay and gone to the Supreme Court, because if they had gone to the Supreme Court, whatever actions have been taken would not be void. As I said, 17,000 peasants got their judgment as far as the reduction of rent is concerned by spending Rs. 500 or Rs. 600. Also, a lakh of people filed petitions before the land tribunal. They also had to spend

some money. When there was an implementation and when there was some implement, they would have at once asked the Central Government to make an amendment. After all, it is a very small amendment that 'estate' means *pandaravaga*, ryotwari and other things. So, they would have brought this legislation before, instead of introducing it at the fag end of the session.

Before the constitutional amendment is brought forward, the State Government should have at once gone to the Supreme Court directly or to the High Court, asked for special leave and said that it must be stayed, so that whatever actions have been taken under this Act should not be void. That was not done. It is six or seven months since the High Court judgment came. Though today the Government have said they would bring it, I am sorry they have not been able to bring this small amendment so far. I do not know the reason. In the Kerala Assembly, the Minister in charge has been saying that it is not their fault; they want to bring a comprehensive legislation, but for that there must be an amendment of the Constitution. I want to know from the Government what were the difficulties. The State Government wanted that this constitutional amendment should be brought about quickly. I do not know whether any other State has been affected by the judgment and they wanted the amendment or not, but as far as I could understand, the Kerala Government wanted it. They have said many times in the Assembly that they have asked the Central Government to bring forward the amending Bill.

Malabar was a part of Madras and there were certain legislations there. Kerala took that part of Malabar and it joined with the rest of Kerala. Whatever legislations had been there became void. Then new legislations came. It took four or five years. After that the whole legislation, the Agrarian Relations Act has become in-

valid. Because the Act is invalid, those 5000 tenants are now asked to pay the rent of the land. They have deposited the money to get the ownership of the land. The money is already there. Because of the judgment, they are asked now to pay rent as before for the last two or three years. I am glad at least now the Government of India are going to bring forward this amending Bill, but as I have said, I want to know the reasons why for the last 7 or 8 months, they did not care to bring the legislation. I also want to know why they did not go to the Supreme Court and get a stay, so that before the new Act comes, the actions taken under the old Act would not have become void.

Regarding article 31A, there was the first amendment of the Constitution as well as the fourth amendment in 1955. So far as the Constitution (Fourth Amendment) Act, 1955 is concerned, it has been clearly stated:

"The object of the amendment is to take out not only laws relating to abolition of Zamindari but also other items of agrarian and social welfare legislation, which affect proprietary rights, altogether, from the purview of Articles 14, 19 and 31. The object is thus explained in the Statement of Objects and Reasons—

"It will be recalled that the zamindari abolition laws which came first in our programme of social welfare legislation, were attacked by the interests affected mainly with reference to articles 14, 19 and 31 and that in order to put an end to the dilatory and wasteful litigation and place these laws above challenge in the courts, articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act."

So I want to know what could be done. I am not a lawyer. I do not know what can be done. But I feel

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that something can be done to see that as far as the actions already taken are concerned a constitutional amendment with retrospective effect is made so that they are made valid. If that is not done, certainly there will be no faith as far as legislations are concerned. So many legislations have been passed. All of them have become of no use. Any action taken under them is not valid today. If such a constitutional amendment is passed, lakhs of people who have already gone to the land tribunal and spent money will be benefited. If again they are asked to go to the land tribunal, I do not think they will go. In that way they will feel discontented. I would therefore request the Government to take the necessary steps to see that whatever actions have already been taken, they become valid by means of a constitutional amendment with retrospective effect. It should not only be introduced but also passed in this Session, because I feel that it will only be a minor amendment.

Some Hon. Members rose—

Mr. Deputy-Speaker: Shri Daji may put a question. Only those who have given their names can ask a question.

Shri Vasudevan Nair (Ambalazhuzha): I have given my name.

Mr. Deputy-Speaker: He has only supported, and not given a notice.

Shri Daji (Indore): I want to know whether the Government has specifically considered this question that when they amend the Constitution or amend the laws to validate what was done they give retrospective effect to the consequential changes so that the persons who have suffered during this time-lag may not suffer any more?

Shri Ranga (Chittoor): So far as this specific point is concerned, I have not much to say against it.

Mr. Deputy-Speaker: Only a question and not a speech.

Shri Ranga: I would like the Government to assure us that when they give consideration to this particular matter and try to validate the Malabar Act, in view of the fact that this word ryotwari was used there and the Supreme Court or the High Court came to the conclusion that whatever holding are held under the ryotwari settlement cannot be treated as estates and therefore those lands rented under the ryotwari system should not be placed and treated on a par with the ordinary zamindari or talukdari estates, they would be good enough to take care to see that this ryotwari system and the rights pertaining thereto which prevails in Tamilnad, in Andhra, I think almost in all parts of Mysore, Gujarat and certain parts of the Punjab would not come to be adversely affected in view of the fact that the ryotwari holders or patta holders are absolute owners of their land?

Mr. Deputy-Speaker: only a question and no arguments are to be advanced.

Shri Ranga: They may have some tenants here and there and in regard to those tenants there may be protective legislations so far as the rent on these are concerned. But so far as ownership is concerned, the pattadars are under the ryotwari system and they are the absolute owners. They are themselves the cultivators. I want an assurance from the Government that they would take care to see that their interests are not jeopardised.

Shri C. R. Pattabhi Raman: Mr. Deputy-Speaker, Sir, a reference has been made to the judgment on what is familiarly known as the Kochunni's case. I think hon. Members would be interested to know what the position was. Some writ petitions were filed in the Supreme Court challenging the validity of the Kerala Agrarian Relations Act. They were from the Cochin area and the areas transferred from

Madras as a consequence of the reorganisation of the State-Kasergod, South Kanara and what was referred to as the old British Malabar and other areas. In their judgment dated 5th December, 1961, the Supreme Court held that the provisions of the Act were valid in their application to the tenures in Cochin area on the ground that the tenures in Cochin were estates and protection of article 31A was available from any Act under article 14—that is equality of rights—and articles 19 and 31 of the Constitution. The Act, however, was struck down in its applications to the ryotwari areas transferred from Madras on the ground that certain provisions which were not severable were violative of article 14 of the Constitution and such lands were not estates. They really are concerned with what is an "estate". As hon. Members have just now referred to, they say that it does not come within the definition of "estate". That was the position. The High Court of Kerala in its judgment of November 13, 1962, further struck down the provisions of the Act, in relation to its application to the areas in Malabar and Travancore. That is the position, so far as this Act is concerned.

Then the validity of several enactments were questioned. The definition of "estate", which I have read out, may bear repetition. Article 31A defines it as follows:

"the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and shall also include any *jagir*, *inam* or *muafi* or other similar grant and in the States of Madras and Kerala any *janam* right;"

That is how the definition goes. The provisions of article 31A were, therefore, available only in respect of such estates as were declared estates at the time when the Constitution came into force, namely, the 26th January

1950. I wanted to draw your attention to that first.

Now, if I may anticipate, the Bill is in the hands, in the capable hands of the Law Ministry and it may come up, in all probability, as I told the hon. Member, on the last day, if not before. It was because of other legislative business that has been pending that this enactment is being delayed. This Bill, I have no doubt, will seek to amplify the definition of the expression "estate" to include, Shri Gopalan might note it, any land under ryotwari settlement and any held or let for purposes ancillary thereto, including was land, forest land and land capable of cultivation by agricultural labourers and villages artisans. We have to modify the ninth schedule to include certain enactments.

Then, some reference was made with regard to the delay.

Shri A. K. Gopalan: Here are certain lands, Pandaravaka lands, which must be included.

Shri C. R. Pattabhi Raman: That is what we are thinking of.

Shri Ranga: Are we to understand that this will apply to the whole of India?

Shri A. K. Gopalan: Pandaravaka include in the ninth schedule such Acts as are relevant to the area. Until the other day, in many of the States the Transfer of Property Act as such was not applicable and was not available. I have just given a resume. I expect the Bill will contain a little more; the ninth schedule will be there. As hon. Members are aware, there land is only in that area.

Shri C. R. Pattabhi Raman: We will are now, if I remember right—as many as 20 enactments in the ninth schedule. That will now contain many more enactments, perhaps about 100 or 120—I do not know, I am just guessing. For example, Acts of Bihar, Gujarat, to which a reference

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was made by Shri Ranga. All these will be covered, so far as the ninth schedule is concerned. There will be an enumeration of all the enactments. That will be the salient feature. The Bill will now provide for the amplification, as I have just now read out.

Secondly, it provides for the inclusion in the ninth schedule of protection under article 31B—that is what Shri Gopalan was referring to—of the existing legislation relating to land reforms. Regarding the list of enactments to be included, we have had to consult a number of State Governments. We have got all the replies and even if there was some delay, the difficulty has to be appreciated. I am saying this because of some words which fell from Shri Gopalan, who is always very restrained in these matters. He asked “why two years?”. I can assure Shri Gopalan that the replies have had to come from many States with different systems of tenure. A number of States have been consulted and we have got all the replies. I expect, a comprehensive legis-

lation will be on the tapis of the House and I have no doubt that it will satisfy.

Some Hon. Members rose—

Shri Daji: I put a specific question whether it will be given retrospective effect to avoid any hardship.

Shri C. R. Pattabhi Raman: I do not want to mortgage in advance my sister Ministry but I expect it will be retroactive.

Shri A. V. Raghavan (Badagara): Why fair rent orders could not be enforced?

Mr. Deputy-Speaker: The discussion is over. The House stands adjourned till 11 o'clock tomorrow.

17.26 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, May 1, 1963/Vaisakha 11, 1885 (Saka).