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sincerity, their desire to promote democratic institutions in Nepal and I have no doubt that the new King will persist in that desire and in trying to give effect to it.

So, on the passing of His Majesty King Tribhuvan Bir Bikram Shah, the late King, I am sure this House would like to express its sorrow and would like it to be conveyed to his family. Also, at the same time, I am sure this House would like to send its greetings to the new King Mahendra Bir Bikram Shah and wish him all success in the difficult responsibilities and burdens that have come to him. Above all, we would send our good wishes to the people of Nepal in the great adventures in building up their country on a democratic and prosperous basis that they are indulging in.

Mr. Speaker: On behalf of the House, I associate myself with what the hon. Leader of the House has said. We certainly send our greetings and all best wishes for the new King and for the people of Nepal. As a mark of respect and our sense of sorrow at the demise of the late King, the House will stand in silence for a minute.

CONSTITUTION (FOURTH AMENDMENT) BILL

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): I beg to move:

> "That the Bill further to amend the Constitution of India, be referred to a Joint Committee of the Houses consisting of 45 Members, 30 Members from this House, namely, Shri T. T. Krishnamachari, Shri Hari Vinayak Pataskar, Shri Satya Narayan Sinha, Shri Ghamandi Lal Bansal, Shri Chimanlal Chakubhai Shah, Shri Awadeshwar Prasad Sinha, Shrimati B. Khongmen, Shri Digvijaya Narain Singh, Shri Tribhuvan Narayan Singh, Pandit Munishwar Dutt Upadhyay, Shri Diwan Chand Sharma, Shri Radheshyam Ram Kumar Morarka, Shri Ahmed Mohiuddin, Shri Radheylal Vyas, Shri Wasudeo Kirolikar, Shri Upendranath Barman, Shri T. Sanganna, Shri Kotha Raghuramaiah, Shri Tekur Subrahmanyam, Shri R. Venkataraman, Shri C. P. Matthen, Shri N. C. Chatterjee, Shri Jaipal Singh, Shri Uma Charan Patnaik, Shri Shankar Shantaram More, Shri Amjad Ali, Shri Asoka Mehta, Shrimati Renu Chakravartty, Shri Kamal Kumar Basu and the Mover, and 15 Members from Rajya Sabha;
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> that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee;
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> that the Committee shall make a report to this House by the 31st March, 1955;
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> that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and
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> that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to Lok Sabha the names of Members to be appointed by Rajya Sabha to the Joint Committee."

To move an amendment to the Constitution, Sir, is never a simple matter. The Constitution itself has provided a somewhat complicated procedure for this purpose. It is obvious, therefore, that one does not take lightly to the moving of an amendment to the Constitution.

Some had told us that the Constitution should be treated as some sacred unchanging document which should not be tampered with easily. And yet, those very persons who have so said have, in another context, suggested changes to the Constitution. That is to say, when the changes were to their liking, the Constitution became something which

could be changed; when the changes were not to their liking, then it became a sacred document which should not be touched.

Obviously, the Constitution cannot and should not be changed frequently. Obviously also, it can and must be changed when the situation requires it to be changed. In fact, the Constitution itself has laid down how it can and should be changed—the procedure etc.

Therefore, to say that it should not be changed merely because it is the Constitution has no particular meaning.

Now, this Constitution is now about five years old, and in the making of it, undoubtedly, there was a great deal of effort and labour on the part of many of the leading persons in this country. Some of them at least are present here in this House. Some are no more. And we are entitled to treat this Constitution, therefore, with all the respect that it deserves.

Nevertheless, it should be remembered that however good a Constitution might be at any time, after working it for some little time, flaws appear. Nothing is perfect, and then it becomes necessary to make changes to remove those flaws. Many of them might be minor ones of drafting. Some might be major ones. As a matter of fact, while I am proposing an amendment to the Constitution in regard to certain articles, I might inform the House that we have in view a number of other amendments of the Constitution also, many of them not of a vital nature in the sense that they raise a very high principle, but, nevertheless something which we think will improve the working of this Constitution—because, after this experience of a few years these matters have come to our notice as they could not come to our notice when we were considering the mere theory of it. Practice brings out all these matters.

After all, the Constitution is meant to facilitate the working of the Government and the administrative and other structures of this country. It is meant to be not something that is static and which has a static form in a changing world, but something which has something dynamic in it, which takes cognizance of the dynamic nature of modern conditions, modern society, and at the same time has checks which prevent hasty action which might happen to be wrong. There are plenty of checks in this Constitution. Now, therefore, the fact that an amendment is proposed to this Constitution now or later should not and cannot be challenged except on the merits. Merely to say there should be no amendment has no meaning at all. And it is unfair to the Constitution itself, and the makers of the Constitution, who provided the means of amending it. Therefore, the question really is the merits of the amendment.

One other matter I might mention. I believe there is a proposal coming from an hon. Member on the other side that this amending Bill should be circulated to elicit public opinion. Well, a change of this kind in any important matter should not be hustled through Parliament, and the public should be given full opportunity to consider it. I submit that the public has been given very full opportunity to consider it. So far, if I may say so, as the Government is concerned, we have laboured on this for many months. I realise that the labours of Government are not before the public, but I am merely mentioning this. Government with their committees and sub-committees and Cabinet, were at it for many months. We consulted the State Governments. We consulted others outside the narrow sphere of Government. We had all kinds of drafts which we revised again and again, and then ultimately when I put this before the House, it became a public document. It was published in the Press and for many months it has been before the country, and, as a matter of fact, during this period

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we have had many criticisms about it, many suggestions in regard to it, many learned notes, legal and other, about it, which we have considered and are considering. And I might say that in some of those notes and arguments that have been advanced, I think there are some matters worthy of consideration, and I hope that when the Select Committee meets, they will consider many of those proposals and see if they are worthy of adoption or not.

We do not approach the Select Committee with a closed mind about the drafting of this Bill. We certainly approach the Select Committee with certain firm opinions of ours in regard to the basic provisions of this amendment or to the Constitution. But, if any of the suggestions that have been made or that might be made keep that firm principle intact and improve the drafting, then certainly I hope the Select Committee will adopt that.

Now, what basically do these amendments deal with? Basically they deal with the power and authority of this Parliament, that is to say, how far that power and authority of this Parliament can be exercised without review or check or other decision against it by the Courts, by the judiciary. Now, one of the fundamental bases of this Constitution and our general practice in this country is to have an independent and powerful judiciary. We have respected that, and I hope we will continue to respect it. There is no question of challenging, modifying, limiting or minimising the authority of the judiciary in this country. That should be understood, and therefore, what the judiciary, the High Courts, or the Supreme Court, decide we inevitably accept, and we act upon it. That is one thing. On the other side, if I may say so with all respect to the judiciary, they do not decide about high political, social, or economic or other questions. It is for Parliament to decide. It may be, and it often is, that in interpreting a law of Parliament, or in considering how far that law is in their opinion in conformity with the provisions of the Constitution, they may indirectly decide on social and economic and like matters. In some countries, great countries, the Supreme Court has by its interpretations widened the strict provisions of the Constitution; it has actually widened them. It may restrict them too. That is true. But the ultimate authority to lay down what political or social or economic law we should have is Parliament and Parliament alone; it is not the function of the judiciary to do that.

Now, the mere fact that I come up before this House with these amendments to the Constitution shows our respect for the judiciary. We accept the interpretation by the judiciary of the Constitution. Having accepted that, we feel it is not in consonance with the social or economic policy that we think the country should pursue. Therefore, we do not by-pass the Supreme Court; we come for a change in the Constitution, accepting their interpretation of it.

Now, it so happens, as I just said, that there are some people here, many perhaps, who themselves participated in the drawing up of this Constitution in the Constituent Assembly, and they naturally have their own opinions as to what was meant by the Constitution as drawn up. It was my privilege in fact to move this article, or the corresponding one, before the Constituent Assembly, and I gave expression to my views as to what it meant fairly clearly then; but I am a layman. A very high constitutional and legal authority, Shri Alladi Krishnaswami Iyer, also spoke; my colleague here sitting to the right of me also spoke; and they gave expression to a certain viewpoint in interpreting the very articles that we are putting forward. One might presume therefore what the intention of the movers of those articles was when they placed

them forward, and therefore what the intention of the Constituent Assembly was at the time. But we need not trouble ourselves about that. If the Supreme Court or the Hight Courts of this country have interpreted those articles in a different way, contrary to the intentions as expressed by the very movers of these articles in the Constituent Assembly, they have every right to do so. We cannot say, they should go back to refer to the speeches made and the rest. It simply means that we who put forward these articles were in error in drafting them. We did not put forward, we did not define precisely, what we meant. And therefore, we have to come to this House, to Parliament, now to change the drafting, the wording, to give effect to what was clearly meant then. But let us for the moment forget what was meant then—that chapter is over. We have to deal now with the present position, the present situation with the experience of these last five or six years behind us.

Once before we came to this House for an amendment of the Constitution, more or less relating to these very articles. Why did we come then? Because owing to certain interpretations of the judiciary, owing to certain decisions of the superior courts in this country, there was great delay in giving effect to the basic policy which this Government and this Parliament wanted to pursue, the basic policy in regard to land reform, to the reform of zamindari and like estates. If there is one thing about which I imagine almost everyone in this House was agreed, with minor variations—some people might have thought that it did not go far enough, and some people might have thought that it went too far, but I think everyone in this House was agreed—and I should say the vast majority of the people in the country were agreed, it was that land reform was not only essential, but urgently essential in this country, in fact that it had been delayed too long. Now, a number of States,—State Legislatures,—passed Bills or Acts in regard to land reform in those States. Then, there was a long story of delay, injunctions, all kinds of writs etc.—I have forgotten the legal language to describe all these manoeuvres of lawyers and the like. Anyhow, there was delay after delay. It is an extraordinary thing. Here are elected Legislatures giving effect to a programme which had been shouted out from the house-tops for years before; and everybody knew that; there is nothing secret about it. And because of some legal difficulty it was held up year after year. So we came to Parliament, and some amendments to the Constitution were passed by this Parliament, which at any rate made it easier to deal with that zamindari legislation. That chapter was over, although even after that, the ingenuity of lawyers has found many ways of coming up to the High Courts and the Supreme Court to delay matters. Now, while that particular chapter was over, other difficulties came in, and are likely to come in. There was the case—the House might remember—of the Sholapur Mills, where it was not a question of acquisition, but rather of Government taking it over for the time being to run it, because a great deal of mischief had been done to it previously, mischief which even was enquired or was being enquired into in the law courts. We had not a shadow of doubt in our minds that this question did not raise any idea of compensation. We were not acquiring anything, requisitioning anything. Nevertheless, the courts in their wisdom decided that this too was governed by that clause about compensation, and naturally we obeyed them, we bowed down to the decision of the courts.

These and many other matters have delayed essential action, action that we thought was necessary and essential. Also, it appeared to us that unless this matter was clarified, we

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might have to face similar difficulties again and again.

Now, the object of the amendments I am placing before this House is to clarify this matter, to make it in precise language perfectly clear, so that the decisions of this Parliament might not be challenged in regard to these matters in the court of law.

Now, what are these amendments? In the main, as I said, they merely state what the authority of Parliament is. Some people may imagine and may draw a dark picture of expropriation and the like. I am not going into that question. But so far as these amendments are concerned, it is perfectly clear that there is no question of expropriation etc. The question really has resolved itself as to the manner and the quantum of compensation. Now, I had thought, when we passed this article in the Constituent Assembly, that we had made it perfectly clear that Parliament would fix either the quantum of, or the rules governing, compensation, and after that, there would be no challenge at all. Well, in spite of that, it has been challenged—and in fact, challenged effectively. The question, therefore, is not one of expropriating without compensation, But the quantum of compensation to be given and who is to fix it. In fact, what we are doing, so far as article 31 is concerned, is that we are merely repeating, but in more precise and clear language, what we had said before. That is, previously it had been said—I need not read it; the House knows it—that there would be compensation but Parliament would determine the quantum of it or fix the rules governming it. But we had made one distinction, that is, where there is no acquisition; that is, a distinction between what might be called compulsory acquisition or acquisition of property by the State on the one hand, and any alteration, modification or extinguishment of the right of property by regulatory laws and the other. That distinction, we thought, was there previously. But anyhow, it is not clear enough, evidently, or else the courts would not have decided as they have done. Now, we wish to make that perfectly clear. So far as the acquisition of property is concerned, the old law holds. So far as any modificatory rules or extinguishment rights etc., without acquiring it, are concerned, to be put on a separate basis. That is the main thing in regard to article 31.

Then in regard to article 31A, we go a step further and enumerate a number of matters in which Parliament's decision in regard to compensation will be supreme and will not be liable to any decision contrary to it by the judiciary. What are those matters? I shall not read them out, but I may mention some of them.

Shri V. G. Deshpande (Guna): There is no mention of compensation in article 31A.

Mr. Speaker: Let him finish. The hon. Member may raise the point when he gets an opportunity to speak.

Shri Jawaharlal Nehru: In article 31A, after enumerating a number of matters, like (a), (b), (c), (d) etc., we say—Notwithstanding anything contained in article 13, no law providing for acquisition etc., 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. There is no mention of compensation because compensation will be mentioned elsewhere, immediately. Articles 14, 19 and 31 have been referred to by the judiciary repeatedly in this very context. We want to make it clear that the law that is made by Parliament or by the State Legislature will not be considered *ultra vires* Parliament or that Legislature on this ground. That does not mean that no compensation will be paid in these matters. Speaking for myself, I can imagine or

conceive of a thing whereby in the case of a slum no compensation might be necessary or desirable. I think it is a crime to have a slum, for the person who owns the slum and for the State that tolerates it. But that is a different matter. (*Interruption*). Leaving that specific case out, generally speaking, compensation in all these cases will be paid according to the Constitution, according to our general practice.

Now, there are two types. One is compensation to an individual for depriving him of his individual property for a specific purpose. Now, that stands on a separate footing, in my view, from some social scheme, of social reform, some social engineering or the like—just like the zamindari system, that is not a question of an individual, but of a system being changed. You might make some other land laws; you might, as suggested in this, put a ceiling on land holdings. All these are not individual cases of land acquisition. In the case of normal land acquisition, the normal laws prevail and the normal full compensation is given, but where all this affects a much larger sphere, the social sphere, then we have provided differently. 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, you 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 all these social matters, laws etc. are aiming to bring about a certain structure of society different from what it is at present. In that different structure, among the other things that will change is this—the big difference between the 'haves' and the 'have-nots'. Now, if we are giving full compensation, well, the 'haves' remain the 'haves' and the 'have-nots' 'have-nots'; 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.

At the same time, there is the approach of those of our friends who think that in the circumstances, no compensation should be given, there should be expropriation and the like. We do not accept that. We do not accept it because, apart from any other reasons, we do not think it is a practical proposition. I am not going into the merits of it—much can be said on the merits. But I do not think it is a right or practical proposition. We do want to give compensation and we intend to, as we have been doing. But it is patent that the compensation that has to be paid is not a kind of rule of thumb, that the compensation that you give should be the market value of the property. It cannot be done, if you have to think in terms of India as a whole State; you have to think not only of the type of property but the history behind it, the social consequences behind it and all that kind of thing in determining the compensation. The object is not to expropriate, the object is not to injure anybody; the object is a positive object, to bring about a social change for the benefit of the largest number of people doing the least injury to any group or class.

Now, in a matter of this kind, therefore, where you have to consider all these factors, political, social, economic, I submit that the judiciary is not the competent authority. The judiciary is a competent authority to judge—is this the market value or not? They are better competent than Parliament to decide that, but when you have to consider social and economic policies, obviously it would be unfair to cast the burden on the judiciary and it is only Parliament or the State that can do it.

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Now, you will see that this applies to both Parliament and the State Legislatures. But, in so far as the State Legislatures are concerned, there is a saving clause to the effect that:—

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

I would like to draw the attention of the House to something that is not adequately stressed either in Parliament or in the country. We stress greatly and argue in courts of law about the fundamental rights. Rightly so, but there is such a thing also as the Directive Principles of the Constitution. Even at the cost of repeating them, I wish to read them out.

"The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in makings laws.

The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

Further:

"The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

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

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"

and it goes on about equal pay for equal work, both for men and women, and about the health of the people and that childhood and youth are to be protected against exploitation. These are, as the Constitution says, the fundamentals in the governance of the country.

Now, I should like the House to consider how you can give effect to these principles if the argument which is often being used even, if I may say so with all respect, by the Supreme Court is adhered to. You can't. You may say you must accept the Supreme Court's interpretation of the Constitution. They are wiser than we are in interpreting things. But, I say, then if that is correct, there is an inherent contradiction in the Constitution between the fundamental rights and the Directive Principles of State Policy. Therefore, again, it is up to this Parliament to remove that contradiction and make the fundamental rights subserve the Directive Principles of State Policy.

Therefore, without going into further details of these matters, I would like to commend this Bill to the House. Other amendments are, more or less, of a similar type, amendments to article 305 and the Ninth Schedule. I would not like to go into those in detail. The main purpose is to remove this apparent contradiction that has arisen owing to the decisions of the Supreme Court between certain parts of the Constitution, between certain articles on the fundamental rights and the Directive Principles of State Policy in Part IV of the Constitution: and to make the Constitution more harmonious, it has become necessary. In doing so, I repeat, we are not denying compensation or saying that there should be expropriation. But, first of all, we repeat that compensation should be determined by the State or by rules laid down by the State. Secondly, we distinguish betewen acquisition and

requisitioning on the one side and extinguishment of some rights. There is a difference between the two. Thirdly, we lay down certain matters specifically, some relating to land reform, some relating to rehabilitation and relief of refugees, some relating to slums and vacant places, these things which are certain social things. We make it perfectly clear. It was not necessary because once you define that Parliament is going to be the judge of compensation, the manner and quantum of it, it is not necessary to have that long list. But, in order to make that assurance doubly sure and to prevent any other interpretation in future which might, perhaps, produce additional difficulties, we give that long list. In my view, it is not necessary but it is better to be sure about that and not to leave it to chance. Therefore, I move that this Bill be referred to the Joint Committee which I have named.

Mr. Speaker: Motion moved:

"That the Bill further to amend the Constitution of India, be referred to a Joint Committee of the Houses consisting of 45 Members, 30 Members from this House, namely, Shri T. T. Krishnamachari, Shri Hari Vinayak Pataskar, Shri Satya Narayan Sinha, Shri Ghamandi Lal Bansal, Shri Chimanlal Chakubhai Shah, Shri Awadeshwar Prasad Sinha, Shrimati B. Khongmen, Shri Digvijaya Narayan Singh, Shri Tribhuvan Narayan Singh, Pandit Munishwar Dutt Upadhyay, Shri Diwan Chand Sharma, Shri Radheshyam Ram Kumar Morarka, Shri Ahmed Mohiuddin, Shri Radheylal Vyas, Shri Wasudeo Kirolikar, Shri Upendranath Barman, Shri T. Sanganna, Shri Kotha Raghuramaiah, Shri Tekur Subrahmanyam, Shri R. Venkataraman, Shri C. P. Matthen, Shri N. C. Chatterjee, Shri Jaipal Singh, Shri Uma Charan Patnaik, Shri Shankar Shantaram More, Shri Amjad Ali, Shri Asoka Mehta, Shrimati Renu Chakravartty, Shri Kamal Kumar Basu and the Mover, and 15 Members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of Members of the Joint Committee;

that the Committee shall make a report to this House by the 31st March, 1955;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to Lok Sabha the names of Members to be appointed by Rajya Sabha to the Joint Committee."

Now, as the House knows, by the order of the House, ten hours have been allotted for the purpose of discussion of this motion. The discussion must conclude within ten hours.

We started at five minutes past twelve. Therefore, ten hours will run from that time.

There is another point. The House knows that we have a convention that those Members who are Members of the Joint Committee should, ordinarily, not try to catch the eye of the Speaker so as to give an opportunity to other Members to speak so that they may consider what view the other Members have to urge, in the Joint Committee. I think if the House agrees with me, we should not act upon that convention in view of the importance of the measure that is before the House for consideration. I believe also in the necessity of having in the Joint Committee certain important Members who, otherwise, will either get out or will not have the chance of saying to this House what they have to say at

[Mr. Speaker]

this stage. Therefore, if the House agrees, we might, not as a general rule but only in the case of this Constitution (Amendment) Bill, relax the rule or convention. I take it that the House agrees to what I propose.

We shall also have some time limit fixed for the speeches. I do not know whether it should be strictly limited but, in order to give an opportunity to as large a number of Members as possible to speak, it is desirable that there should be some time-limit. I think fifteen minutes may, perhaps, be small but, in any case, not exceeding half an hour. I think that would be acceptable.

Shri Gadgil (Poona Central): Small compensation.

Mr. Speaker: There are amendments to this motion. One stands in the joint names of Messrs. Deshpande and Chatterjee. I take it that they are keen to move it.

Shri V. G. Deshpande: Yes.

Mr. Speaker: That may be moved.

There is another amendment in the name of Shri Pocker Saheb. So far as that amendment is concerned, I do not propose to place it before the House because it is substantially the same as that of Mr. Deshpande. Mr. Deshpande wants that the opinion be taken by the first of July and Shri Pocker Saheb wants it to be by the 30th June, which is only a difference of 24 hours. The amendment being substantially the same, I do not propose to place it before the House.

Shri V. G. Deshpande: I beg to move:

> "That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st July, 1955."

Mr. Speaker: Amendment moved:

> "That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st July, 1955."

Shri N. C. Chatterjee (Hooghly): The country is somewhat perturbed—and I consciously say so not for myself and the organisation I represent but for a large section of responsible and thinking citizens who are deeply perturbed that this Constitution is being periodically revised, altered and tampered with. That is not a very healthy sign. It is a paradox that in the fifth year of the Indian Republic we are having the fourth Constitution amendment Bill.

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

It is the fourth amending Bill which is sponsored in the fifth year of our Republic and it is a matter of deep concern that the Prime Minister is sponsoring this Bill to amend the Constitution in a very vital matter, namely, article 31 of the Constitution. I say with the fullest sense of responsibility that it would, to a large extent, destroy the sanctity of private property. All sections of the House will remember that this fundamental right was consciously embodied in the Constitution by the makers of the Constitution not in a spirit of levity, not to make it a pious platitude, but to make it effective and enduring and also to secure some basic human freedom which should not be tampered with. The Constitution is not an ordinary law but it is an organic law. The Prime Minister was saying that we want to assure power, that is, the Parliament of India, and we shall say that compensation will be paid. With great respect, I say this is a fundamental mistake of the Prime Minister. Once you pass this law, you are not merely arrogating power to this Parliament, but you are giving power to all the State Legislatures throughout India to pass any law expropriating private property. You might seriously consider whether such *ad hoc* power should be conferred on the different States to expropriate private property without any compensation. There is not any guarantee in respect

of certain matters relating to expropriation and there is no constitutional obligation to pay compensation.

The Supreme Court of India has clearly elucidated the scope, purpose and object of these fundamental rights and they have pointed out that the fundamental rights were incorporated in the Constitution with a double purpose. The first purpose was that the citizens of India shall be assured of certain basic human freedom and they will be withdrawn from the vicissitudes of politics and no power on earth can at all tamper with those rights. Secondly, this is the glory of the Constitution of the Republic of India, of which we are proud, that we were not content with conferring the fundamental rights on the citizens; we went a step further and enjoined it on the Supreme Court of India that the highest court in this country, shall vindicate these rights, shall be the protector of these rights, and shall be the guardian of these rights. Under article 32 of the Constitution, the Supreme Court is under a constitutional obligation to issue prerogative writs including writs in the nature of *mandamus*, *certiorari* prohibition, etc., or to pass any order or any direction in order to enforce these fundamental rights. In a great case—the *Organiser* and *Cross-Roads* case—while freedom of the Press was established and vindicated, Justice Patanjali Sastri said in a very important judgment, which should be read and digested by all lovers of democracy and by all people who cherish respect for basic human freedom, that our Constitution has gone a step further than other constitutions of the world and it has given a remedial right and has made that remedial right itself a guaranteed fundamental right. Therefore, the Supreme Court of the country cannot discard that constitutional obligation of protecting and vindicating these rights. These fundamental rights are certainly going to be whittled down.

I know that the Prime Minister was making certain references to the 'ingenuity' of lawyers. I wish the Supreme Court of India at least had been treated with a little more respect. The Statement of Objects and Reasons starts with two misstatements—I consciously use the expression 'misstatements'. The first is that the Supreme Court of India has overlooked the difference in clauses 1 and 2 of article 31 of the Constitution. That is not a fair charge to make. It is rather presumptuous for anyone to sit in judgment over the considered verdict of the Supreme Court with regard to the interpretation of a difficult article in the Constitution of India. What did the Supreme Court say? The Supreme Court said that the two clauses must be read together and not disjunctively. Article 31 runs as follows:

> "(1) No person shall be deprived of his property save by authority of law.
>
> (2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixed the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

The Attorney-General argued before the Supreme Court of India in the second Sholapur case that the State had not acquired the company's property, the company is still the owner and, therefore, there is no question of acquisition and no question of compensation. If you read that judgment correctly, what the Supreme Court has said is this. You are really substantially depriving the company of its property and in effect depriving the company of property rights. According to that judg-

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ment these two clauses should be read together, and it is impossible to assume that the makers of the Indian Constitution meant to allow the State or any legislature to take away a man's property, practically deprive him of the right of enjoyment of his property and then say "I will not pay you any compensation". That is expropriation without compensation, that is confiscation. What the judges said was this:

"The impugned State has overstepped the limits of legitimate social control legislation and has infringed the fundamental right of the company which is guaranteed to it under article 31(2) of the Constitution of India, and is therefore unconstitutional".

1 P.M.

The judges recognise the need of social control. The judges cannot decend into the arena of public controversy and cannot defend themselves. It is entirely wrong to say that the Supreme Court did not recognise the necessity of social legislation or did not understand the implication of the Directive Principles. The leading judgment says that they recognise the necessity of the State imposing legitimate social control, but in this case, Justice Mahajan held that the impugned ordinance and the Sholapur Act did overstep the limits of legitimate social control legislation. They gave arguments for it. They said it is no good saying that there is no acquisition. If you look at the English dictionary meaning, or if you take a mere legalistic approach, acquisition means transfer of title from the expropriated owner to the State.

An Hon. Member: Even liability.

Shri N. C. Chatterjee: The Attorney-General argued therefore there is no acquisition. What the learned Judges said was this. In the guise of superintendence, the State is carrying on the business or trade for which this company was incorporated, through its own agents who take orders from the Government and they are appointed by the Government, and in the appointment or dismissal of these officers the shareholders have absolutely no voice. The purpose of taking over the company's undertaking is a public purpose. They recognise that, but they say that the company is debarred from carrying on its business in the manner and according to the terms of its charter and they also say that the ordinance overrides the directors, deprives the shareholders of the legal rights and all their privileges and completely put an end to the contract of managing agents. Therefore they say, what is the good of saying I am not acquiring the property. You do not allow the directors to function. You have appointed your own paid agents to function as directors. You supersede the Directors and shareholders. You do not allow the shareholders to function. You do not allow the shareholders even to dismiss the directors or to elect new directors. You do not allow the shareholders to declare any bonus or any dividend and you have completely taken over the company indefinitely: it may be for fifty or hundred years and so on. Therefore they say that it is in effect, in substance, an expropriation of property. What is wrong there? The Supreme Court judgment said in the second Sholapur case that appearances would not do. You cannot camouflage it. You cannot simply say, I would not acquire. But in effect you acquire and at the same time deprive the owner of compensation. They say that in order to decide whether a particular legislation is unconstitutional as offending the provisions of the Constitution, it is necessary to examine with some exactness the substance of the legislation for the purpose of determining what is it that the Legislature has really done. "The Court, when such a question arises, is not over-persuaded by the mere appearance of the legislation. In relation to constitutional prohibition binding a legislature, it is clear that the legislature cannot disobey the prohibitions merely by emp-

loying indirect methods of achieving exactly the same result. Therefore, in all such cases, the court has to look behind the names and forms and appearances to discover the true character and nature of the legislation." What the Prime Minister's Bill is seeking to do is to supersede this judgment of the Supreme Court.

What I am saying is: you are thinking and saying that you are the custodians of people's right, but is this the correct thing to do? What has the Supreme Court said? The Supreme Court says you cannot practise fraud on the Constitution. You cannot really practise some kind of contrivance and break the spirit of the Constitution. The Constitution says, if you take a man's property, you must pay for it. That is what the Prime Minister was saying. There is no object of expropriation. Are you now going to take up the attitude of my comrade friends and say, "confiscation"? Of course, I do not know—they are turning socialists after the recent elections—possibly they will say, the Bill is not bad enough; it ought to go further. But what I am pointing out is—and you have got to consider this point—is it right for you to say that I will not allow the Supreme Court or any other Court in India to look behind appearances, forms, and not to consider the substance? This is not a question of mere legalism or mere juristic approach. It is a very vital matter. Suppose the State is taking up a very important irrigation project. In fact, Justice Patanjali Sastri who was the Chief Justice of India, gave this instance in the judgment. I am appealing to every Member of the House to consider this aspect. In an irrigation project, suppose the State has got to divert the channel of a river. It diverts the channel of a river for *bona fide*, public purposes. Then 500 square miles of cultivable land are submerged and completely go out of the cultivation. Will you pay compensation or not? Chief Justice Patanjali Sastri says, if you do not pay compensation because it is not technical acquisition, you are not respecting the Constitution; you are playing a fraud on the Constitution. What is this? You say, I am not acquiring. Acquisition means transference of ownership. You say I have not transferred the ownership and that the 5,000 ryots who were owners would still continue to be the owners of that property. You say, I have not taken over your title. There is no transfer of title; there is no acquisition. Then there is no requisition, because my men have not gone, and they remain in the original possession! The Chief Justice says that this is an absurb position or situation. This is an unfair interpretation. This is not fair. This is not just. This is not equitable. Therefore they say that you should go behind the appearances or the forms.

Supposing there is an aerial display. We had something like that at Tilpat. Supposing in the case of the aerial display, God forbid, five aeroplanes crash and five houses are blown out. Will the State pay any compensation? The State may say, I have not acquired your property. I have not taken anything from you. On the other hand, I have given you five broken aeroplanes on the top of your houses! Is this fair? This is what they are saying. What the Prime Minister of India is going to do today by this Bill is to really supersede the *raison d'etre* of this second Sholapur case. What is being done under this Bill? There is clause 2A in respect of article 31, and it goes directly against the judgment and attempts to nullify this judgment of the Supreme Court:

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

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Therefore, there is no question of compensation there. We are today going to legislate that even if a man is substantially deprived of his property, there shall be no question of compensation unless and until there is technical acquisition or technical requisition. I submit with great respect that it is not a proper thing to do. It is really whittling down the fundamental rights. It sanctions a certain kind of contrivance or abuse of power which this Parliament should be loath to sanction.

The Statement of Objects and Reasons starts by using a language which I am sorry to say is not respectful to the Supreme Court. In introducing a constitutional amendment, there is, in the Statement of Objects and Reasons, a reflection on the judgment of the Supreme Court. The first sentence of paragraph 2 is this:

> "Recent decisions of the Supreme Court have given a very wide meaning to clauses (1) and (2) of article 31."

The next sentence reads:

> "Despite the difference in the wording of the two clauses, they are regarded as dealing with the same subject."

Sir, I ought to tell you that there was a difference of opinion on this point. Mr. Justice S. R. Das said that these two clauses should be read adjunctively but Justice Mahajan while delivering the judgment took a contrary view. Chief Justice Patanjali Sastri agreed with Justice Mahajan. Justice Bose agreed with Justice Mahajan and Justice Ghulam Husan also agreed with Justice Mahajan. In every case when this point was discussed there were 8 or 9 Judges of the Supreme Court who have taken the same view and they have taken the view that the two clauses should be read together, and should be read together so as to cover cases of substantial deprivation which must mean some kind of acquisition or expropriation similar to that and then compensation must be paid. Justice Mahajan has said:

> "Article 31 is a self-contained provision delimiting the field of eminent domain and Art. 31(1) and (2) deal with the same topic of compulsory acquisition of property. The words "acquisition" and "taking possession" used in Art. 31(2) have the same meaning as the word "deprivation" in Art. 31(1)."

Now, what is the good of discussing whether Justice Das—anything coming from Justice Das is entitled to the highest respect—is correct or the other Judges are correct? They have taken the unanimous piew including Justice Das that this is an *ultra vires* piece of legislation in spite of the difference of opinion on the technical question of interpretation of the two clauses of Article 31. Now, let me read to you Justice Das's judgment: Justice Das is saying:

> "It is impossible to uphold this law (Sholapur Ordinance) as an instance of the exercise of the State's police power as an emergency measure. It has far overstepped the limits of police power and is, in substance, nothing short of expropriation by way of the exercise of the power of eminent domain and as the law has not provided for any compensation it must be held to offend the provisions of Art. 31(2)".

Therefore, all the Judges of the Supreme Court have unanimously held that this Ordinance did overstep the legitimate ambit of State regulation and State control.

There is another sentence in this statement of objects and reasons which is based on a complete misunderstanding of the Supreme Court's judgments. It says:

> "Even where it is caused by a purely regulatory provision of law and it is not accompanied by an acquisition or taking possession of that or any other property right by the State, the law, in order to

be valid according to these decisions, has to provide for compensation under clause (2) of the article."

It is not so. On the other hand the Supreme Court has decided just the contrary. Somebody has misread the judgments or misunderstood them and has misled our Prime Minister. As a matter of fact, I had the privilege to address a very big conference of lawyers in South India.

An Hon. Member: Lawyers?

Shri N. C. Chatterjee: One of my friends is saying "lawyers" as if they are untouchables. There are lawyers who yield to none in the passionate desire for achieving the Welfare State.

An Hon. Member: There are Communist lawyers also.

Shri N. C. Chatterjee: There are lawyers who believe in the directive principles embodied in the Constitution. There were many lawyers like that in that conference which was very well attended. There the *ex*-Chief Justice of India Shri Patanjali Sastri presided and delivered an address. There he said: "We had never said anything like this. We never said that any curtailment of the right of property would bring in the applicability of article 31 and would demand compulsory obligation of compensation". I am just reading, Sir, with your permission only one passage from his speech which he delivered there. He said...

The Minister in the Ministry of Law (Shri Pataskar): You will find it on page 25 of the *A.I.R. volume.*

Shri Jawaharlal Nehru: On page 25.

Shri N. C. Chatterjee: The Prime Minister is up-to-date. He reads the *All India Reporter.* Only he is 4 pages behind; it is on page 29. On this page, *ex*-Chief Justice of India is saying:

> "It is not correct to say that the cases referred to (in the statement of objects and reasons under the Prime Minister's signature) decided that the deprivation of property referred to in clause 1 is to be construed as including *'any'* curtailment of a right to property. In fact, they (Supreme Court) decided the country, and recognizing that the operation of regulatory and prohibitory laws should not entail inability to pay compensation, left reasonable scope for the exercise of such regulatory powers by the State. This could be seen from the following extracts:"

Then the *ex*-Chief Justice of India quoted one portion of his own judgment and that is this:

> "The expression 'shall be taken possession of or acquired' in clause (2) implies such an appropriation of the properties or abridgement of the incidents of its ownerships as would amount to a deprivation of the owner. 'Any other interference with enjoyment of private property short of such appropriation or abridgement would not be compensable under Article 31(2)".

Therefore his lordship is saying: "On the other hand I said just the contrary". Now, I am reading to you a judgment of Mr. Justic Bose who expresses himself very clearly. Justice Bose said in the second Sholapur Case:

> "If there is substantial deprivation, then only clause (2) is, in my judgment, attracted. By substantial deprivation, I mean the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that we must seek."

Therefore, Sir, with great respect I am pointing out that this statement of Objects and Reasons is wrong. It is a complete misunderstanding of this judgment to say that the Supreme Court had stated that *any* curtailment of right to property would be struck down as *ultra vires* or repugnant to the Constitution unless and until compen-

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sation is paid. On the other hand, anybody who has read Subodh Gopal Bose's case will realise that the Supreme Court reversed the orders of the Calcutta High Court and upheld the West Bengal Act. In the West Bengal Act, you know, Sir, that there was a very serious curtailment of right to property. In Bengal when there was a revenue sale, the purchaser could annul certain under-tenures in an estate and that power was taken away. Subodh Gopal Bose who purchased valuable property at an auction sale, claimed that this was illegal and the Calcutta High Court upheld it. The Supreme Court reversed that decision and said; "No, it is purely regulatory". Chief Justice Sastri has said:

> "As a matter of fact, Subodh Gopal's case itself involved a curtailment of property right, namely, the right to annul certain under-tenures in an estate, and nevertheless the legislation which extinguished that right without providing for compensation was upheld as valid, that is to say, the case was regarded as falling within the legitimate exercise of the State's regulatory power."

Then he says that these judgments indicate the scope of regulatory and prohibitory powers which the State can exercise without having to pay compensation.

I think, Sir, there has been some misunderstanding and because of that misunderstanding the Prime Minister was hustled into this kind of legislation, at least in the drastic form in which it is being brought out now.

The first thing that this Parliament should consider is: "Would you amend the Constitution in such a way as to make payment of compensation for compulsory deprivation of private property by the State discretionary?" That is the first question. The second question is, would you make that compensation completely non-justiciable? I submit with great respect that this Parliament will stultify itself if it says, we are going to be a socialistic State and therefore we should adopt this course. Look at these directive principles, these directive principles ought to be respected. But what is the directive principle? Article 39 says:

> "The State shall, in particular, direct its policy towards securing—
>
> "(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;"

No quarrel with that.

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

Accepted: nobody quarrels with that either.

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

No objection to that. Look at article 38 which refers to justice. You are taking away the common citizen's, the poor man's hut, hamlet, arable and property. (*Laughter*) Don't laugh. That would be the consequence. For heaven's sake, apply your mind to it. I would request you, I would beseech you; that would be the practical consequence. In article 38 you have said;

> "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic and political, shall inform all the institutions of the national life."

Is this justice to take away a man's property or submerge his land and make it absolutely useless for him and say, I won't pay you compensation? Is this justice?

I come from West Bengal. I yield to none in my passionate desire for the rehabilitation of millions of displaced persons who have come. You

know about 40 lakhs of people have come. Even 20 lakhs are not properly rehabilitated. Over and above that, you know that the tempo of exodus of refugees from East Bengal has increased, even according to Government, to 300 per cent. The truncated State of West Bengal is practically going down and, and is being submerged. It has not got the resources; it cannot stand the strain. It has not been able to rehabilitate the poor men who have come. How will they tackle this problem. We are anxious that rehabilitation should be done. But, look at this section. What is the law you are passing? You are giving powers to the Bengal Legislature to pass a law to take land and the owner cannot claim any right to compensation. You are not giving the power to this sovereign omnipotent Parliament. You are not assuming power to yourself. You are repealing article 13. The Prime Minister was completely wrong; he was not able to answer Shri V. G. Deshpande's point. Article 13 is the article which guarantees the provisions in the fundamental rights chapter. Article 13 says that the State shall not enact any law to take away or abride any of these rights and if it does, the legislation shall be void and illegal *pro tanto*. Immediately we say, article 13 is put out of operation in the case of acquisition of any property, acquisition of any land or any immovable property for the purpose of rehabilitation of refugees. What will happen? You cannot invoke fundamental rights at all. Are you going to sanction this kind of thing. Supposing in the district which I have the privilege to represent here, Hooghly, you want to settle 40,000 or 50,000 people from Barisal or Noakhali and rehabilitate them in that district, will you take Birla's house or Dalmia's factory or Lothian jute mills or the mill or factories of English companies? You will take possibly 500 square miles or 200 square miles, certain villages, which will be poor people's land, which will cover poor men's properties. Are you going to give power to the West Bengal legislature, to the West Bengal Government to enact a law not to pay any compensation or pay any compensation it likes? Are you not simply making over this power to the tender mercies of an executive which we know is not always efficient, and is often corrupt? After all, what is the good of the Prime Minister standing up here and saying, I have no intention to expropriate property, I have no intention of denying the people compensation? What is the good of the Prime Minister saying this on the floor of the House? How will the people enforce it?

You are putting out of operation article 14. I was one of the counsel privileged to argue some of these cases. In some cases, the right under article 14 is taken away. That equality is gone.

Shri Gidwani (Thana): May I ask one question of the hon. Member?

Mr. Deputy-Speaker: He has no time to answer.

Shri Gidwani: The squatters have occupied certain lands in Calcutta. Do they belong to rich people or poor people?

Shri N. C. Chatterjee: If the law had been that there shall be no compensation to people who have property worth Rs. 5 lakhs or 10 lakhs, I would consider it. That would be worthy of consideration. Are you going to give this *ad hoc* power to the State legislatures in the name of slum clearance or rehabilitation of refugees, to take vacant land, to take any waste land, or to take any immovable property without payment of any compensation? Are you going to allow this complete mummification of this right, the complete abrogation of the fundamental rights as to property?

I think what our Supreme Court has done is really to follow the judgment of Justice Holmes, one of the greatest Judges that America has produced. Mr. Seervai, a distinguished Bombay Advocate and an eminent constitutional lawyer, pointed out that the Supreme Court has done nothing accept to follow the judg-

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ment of Chief Justice Holmes. He said that it is really a question of magnitude. If it assumes a serious magnitude it means deprivation or substantial taking away of a man's property. In that case, it is a question of the power of eminent domain. In no civilised country which calls itself democratic, is there, such a law. Australia has not got a law like this, Canada has not got a law like this. The U.S.A. Constitution allows taking of private property on payment of just Compensation. Wherever there is a written Constitution, you get this guarantee. If the State must have the final voice, and if the State, by virtue of this sovereign power of eminent domain wants to take property, it can certainly do so but it shall have to pay compensation. If you do not pay, you are robbing his property. This is not fair. Really under these highsounding expressions of rehabilitation of refugees or regularising aquatters colonies or creation of welfare State you should not give this *ad hoc* power to all the State legislatures throughout India to expropriate property without any compensation and simply leave poor people to the tender mercies of the executive Government, who may work havoc with it. Under this Bill you close all access to the Courts. You do not allow a person to go to the High Court and get a writ under article 226 or to the Supreme Court and get a writ or order under article 32. That will work great hardship.

Shri H. N. Mukerjee (Calcutta—North-East): I welcome the motion made by the Prime Minister in so far as it indicates the urgency of drastic alterations in our Constitution. I do not hold the idea that the Constitution is an absolutely sacrosanct document. I treat it with great respect. But, I do not take the attitude of my hon. friend Shri N. C. Chatterjee who said that it has become a practice of the legislature periodically and frequently to temper with the Constitution. I say on the contrary that there are certain basic alterations which are necessary in the Constitution. But, unfortunately, these alterations have not yet been incorporated. In so far as the present Bill shows that the Government, at any rate is taking a serious view of the lacunae in the Constitution, I am prepared to welcome this measure.

I wish also to say with all due respect that as far as our Constitution is concerned, its founding fathers are discovered; so many of them in this House, and I wish to say, again with due respect that we are not particularly impressed. I wish also to state that our Constitution was hammered out after the transfer of power which happened in circumstances which were rather sordid if we wish to recall them, and I wish to recall here today that that transfer of power was accompanied by the partition of our country, by torture of our people on a scale which we wish to forget; and all that happened because we did not achieve our freedom in the way in which freedom is and ought to be achieved. We did it by means of a compromise and that lent to the Constitution a certain character which requires to be transformed. That is why I say with all due respect that here is a Constitution which we have got to change, but I say "respect" over and over again because, in spite of everything—those who sat here or in the other place to promulgate our Constitution—they could not entirely steer clear of the pressure of popular forces, and that is why we have got the Preamble to our Constitution. That is why we have got the Directive Principles of State Policy, and that is why today even the Prime Minister has to say that there is a contradiction in our Constitution between the Directive Principles of State Policy and the Chapter on Fundamental Rights.

I was listening to Mr. Chatterjee, and he told us that the Supreme Court has elucidated the scope and purpose of fundamental rights and that Parliament should not controvert that. I have very great respect for the Supreme Court. There have been

occasions in the past when we have referred to judgments of the Supreme Court which have championed the rights of the citizen. I do not wish to reflect upon the Supreme Court, but I thought that Mr. Chatterjee knew a great deal about American judgments, and I am sure he knows a great deal about the opinions of Mr. Justice Holmes whom he has quoted towards the end of his speech —and Mr. Holmes laid down as a very definite proposition that, after all, it is for the legislature, it is for the representatives of the people, badly or well chosen, to decide what should be the Constitution. It is not for the judiciary to encroach on the province which is fundamentally the legislature's. That is a point of view which has been made very clear by Mr. Justice Holmes, and I think that if Mr. Chatterjee tries to make a study of the basic formulations of Mr. Justice Holmes and not merely something which he said in passing in connection with a particular judgment, he will agree with me that if Justice Holmes was here, he would say that if the necessities of the Indian situation require it, it is certainly for the representatives of the people, badly or well chosen, to promulgate what should be the organic law of the country and in spite of the lump-in-the-throat appeal which he made towards the end which sounded so very sympathetic regarding the distressing condition of the common man—for that I am very grateful to him, he has supplied some kind of weapon to my armoury; I am very grateful to him for that—but in spite of that I would tell him that legal logomachy is no substitute for statesmanship, not even for enlightened commonsense.

When I was listening to Mr. Chatterjee, I thought the voice was the voice of Jacob but the hands were the hands of Esau. He was trying to represent the last-ditch fight of big money which has never yet in history abdicated without a struggle to maintain its rights. We have to remember even in England which is our exemplar, all the gains of so-called democracy had to be fought for tooth and nail. A grim struggle had to be carried on. Even for the sake of the right that the States should be responsible for the elementary education of its citizens, in England they had to fight for sixty years. The owners of the instruments of production are compelled only by pressure to give way at certain points; even, on occasion, at critical points. These people, the owners of the instruments of production, surrender the outworks, but they do not yield the central citadel. They are not going to yield the central citadel till the pressure of the people is so formidable that they cannot get away with their gains. That is the position which I wish Mr. Chatterjee remembers.

I would like to say in regard to what the Prime Minister has told us that I am very much keen that the Joint Committee goes into the matter much more seriously than is usually done, and I suggest that articles 14, 19 and 31 are all considered in their fundamental aspects, so that when it comes back to us in this House, we shall be in a position really and truly to formulate in concrete, applicable terms, the concept of property rights.

Now, the essence of the motion made by the Prime Minister is that the concept of property rights requires to be reconsidered. We have been told—I do not know if that is a fact, but a newspaper, the *Hindustan Times*, tells us that the Congress Parliamentary Party has circulated a hand-out to its members where it is suggested that the amendment is really not an amendment of substance of the concept of property rights as guaranteed in the Constitution, but that it is only an amendment of form. It may be so and it may not be so, but I want to have an assurance from Government that we are not going to have this kind of frivolity. If we are going to amend the Constitution, let us do it properly. Let us face the problems squarely. Otherwise, let us hold hands with Mr. Chatterjee.

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After all, he has a very plausible proposition, there is no doubt about it. So, I suggest that we should go into a very serious examination of the concept of property as it is incorporated in articles 14, 19 and 31.

And when I say that this thing is very important, I do not speak as a dogmatist. I know that in season and out of season we are attacked as people who are wedded to a dogma, who do not know a thing about creative politics and so on and so forth. We are somewhat tired and sometimes a little amused at the proliferations of the Prime Minister on this very interesting topic, but I say that we are not dogmatists at all. What we want, of course, is very clear. We want to clear away historic rubbish and then construct the structure of socialism. That is what we want to do. If we discover something to be rubbish, we say so and we try to take concrete steps for concretely applicable instances; and if you want me to give you a latin tag of a legal character, I would say *salus populi suprema lex*. That is also our doctrine. The happiness of our people, that is the supreme law, and it is from that criterion that we take up our stand.

Mr. Deputy-Speaker: What the hon. Member wants has not yet gone to the Supreme Court. Otherwise, there will be a different interpretation.

Shri H. N. Mukerjee: We are not for simple expropriation without ado, and I want to make it very clear that in every case we do not stand for expropriation straightaway. And I wish also to make it very clear that that is not what Marxism has said. I would recall to you the Communist Manifesto where it is said that the expropriators are expropriated, there is also a sentence which is significant. It is that the knell of capitalist private property sounds. It is not the knell of private property. On the contrary, as a result of the negation of the negation, if you are interested—you, sir personally are interested in the philosophical aspects of things—as a result of the negation of negation, as Marxism puts it, private property is restored to private hands. It is capitalist private property that is attacked, and this is a matter which has sanction in our own traditions. I am afraid your propinquity has given me a Sanskritic infection and I try from time to time to discover some kind of warrant for my heresies in our Sanskrit literature. And as I tried to think what I could say, those words of the *Upanishadas* came to my mind: ईशा वास्यमिदं सर्वं

"All this belongs to the *Isas*, all this property belongs to the people". I need not quote what some French philosopher said about property being theft, but I know that big money is usually tainted money and for this I also find one warrant, one justification in the *Maha Bharata* in the *Santi Parva*. There it is said:

न छित्वा परममोसि, न कृत्वा कर्म दुष्करं ।
न हत्वा मत्स्यधानीयं, प्रापोन्ति महतीं श्रियम् ॥

"Big money cannot be made, unless you tear the hearts of others, unless you commit evil deeds, unless you kill people like fishermen catching their prey". That is big money.

Mr. Deputy-Speaker: That is what a poor man says.

Shri H. N. Mukerjee: It is against big money that our crusade has to start. And it is this big money about which Marx has said that if money comes with a Congenital blood-stain on its cheek, capital when it comes drips from every pore with blood and dirt. It is because of this, and it is only because of this, that it is necessary to check the depradations of big money. It is only because of this that we have to control what Shakespeare called the common whore of mankind, this gold, this yellow base metal which makes good evil, which makes foul fair. This money has to be controlled, and that is the criterion which we have got to adopt.

Our Constitution certainly makes it very clear that since the incentive of

capitalist economy which is preserved by bourgeois State law is egoistic inspiration for individual enrichment by exploitation, this has got to be checked, and that is the basic aspect of the matter. We find that unable to resolve the contradiction between the developing productive forces and capitalist productive relations, capitalism seeks to suppress democracy, it tries somehow to maintain its power, or it comes to be replaced by socialism. Now, socialism does not drop like a ripe plum into our mouths. Victory does not come of itself; it has to be dragged by the hand. But harried by contradictions, capitalist interests, the big money interests, look hopefully towards panaceas like *Ramrajya* and the "socialistic pattern of society" *Ramrajya* according to its definition included princes as well as paupers, while the people, I hope, want the extinction of pauperism. And in the "socialistic pattern of society" there must be some wonderful nectarine element which enabled the Federation of the Chambers of Commerce and Industry in this country to swallow it whole, to tell the Prime Minister, "we are enthusiastically in favour of the socialistic pattern of society". But if you read the records of their meetings in Delhi the other day, the day after they met and told the Prime Minister that they were all with him and shook him by the hand, the day after that they passed a resolution unanimously demanding that this constitutional amendment should be overthrown. They reminded me of mice playing when the cat was away, and perhaps in this case the cat was a very benevolent cat which might even be belled without discomfort by the mice concerned. That being so, I have my misgivings, I have my very serious doubts about what exactly this Government is trying to do.

I have heard Shri N. C. Chatterjee, and I remember what somebody once said on behalf of the possessing classes, "yes, we shall do anything for the poor man, we shall do anything but get og his back". They are going to do all sorts of things for the poor man, but they would not get off the back of the poor man. We know already opposition to this amendment has come to be organised; and particularly from the point of view of the electricity industry, objections have been raised, and we can understand what is what in that instance. I find also that in the case of our taking over the Imperial Bank, articles have begun to appear in commercial journals in which it is suggested that the basis of compensation to be paid to the poor shareholders, who I am told are all widows and trustees—I do not quite know, I am not acquainted with the crowd of shareholders in the Imperial Bank of India, but I have read in a very serious journal that mainly widows and holders of trusts (for children I expect) are shareholders of the Imperial Bank, and they have started this hullabaloo—should be such that compensation must be given to them in as ample and as comprehensive a measure as possible. This is why we have to be careful, and we have to formulate this resolution very carefully. And that is why I wish Government to remember,—and I wish the Select Committee also to do something in this regard—that there are different categories of property, which have to be treated differently. It is important that now that we are going deeply into this matter, we categorise property differently, and we let our people know what exactly is our treatment going to be regarding particular categories of property. For example, this amendment does not touch the rights and privileges and dignities of the former princes, which are guaranteed by the Constitution in articles 291, 362 and 363. Now, therefore, if our objective of this social legislation is to prevent the concentration of wealth and property in the hands of the princes, then surely this is not going very far. Then again there are the merger agreements, and all those agreements suggest that hardly anything is being done as far as this aspect of the matter is concerned. Then again, there are some categories of property which can be taken over without compensation. And today when we have got

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an opportunity in the Joint Committee, and in this House over again, we should go into this position more carefully. There are some categories of property which can be and ought to be taken over without compensation. For example, there are these enormous structures of British capital in this country; there are the plantations, there are the big industries, and there are these coal mines, which have made such profits—so many times figures have been offered in this House, and sometimes the Finance Minister tries to explain away those figures, but he is not here now; in any case, I am not going into the details of those figures—so there are certain interests which can be expropriated without our obligation moral, ethical, political or otherwise, to give any compensation for that purpose. Then, we have to be very careful as to how we are going to take over other properties for public purposes. The public purpose must be very definite, and then due compensation must be given. In those cases, due compensation must be given. Small owners particularly have got to be assisted, and there I am entirely at one with Shri N. C. Chatterjee. I know of so many cases, and I have got here a whole sheaf of cases in the 24 Parganas, where in the name of assisting the cause of refugee rehabilitation, what happens is that Government tries to pursue the old imperialistic line of divide-and-rule. The refugees might be inflammable political material. They come from East Bengal which produced a large number of political extremists, and in this country again, they might create a *golmal*. So the very wise policy is to set the refugee against the local inhabitant, and in the name of refugee rehabilitation to requisition properties of the local people, sometimes very poor people, people who have not got the means to go to the Supreme Court where Shri N. C. Chatterje shines so brilliantly. They cannot go there, they do not know anything about injunctions, writs of certiorari and so on and so forth, and so many other contrivances They just have not got the means, and they just do not know a thing about it. So, what happens is that these cases go almost by default. Now in these cases we must try to do something more definite.

I shall tell you also about certain of our projects like the DVC or the Mayurakshi project in West Bengal. The result was, many people were expropriated so to speak, and they were not given sufficient compensation. Sometimes on account of local officials' predilections against particular individuals, requisitioning is made. So, I want something very definite to be done as far as this is concerned. And that is why the Select Committee has got to sit down to do its job with very great earnestness, and that is why I say we must categorise property. We must try to say, these are items of property which we are prepared to take over without compensation, these are categories of property for which we are certainly prepared to pay due compensation. In regard to small owners, and small holders, we must have certain specific safeguards, so that the kind of injustice to which Shri N. C. Chatterjee and I are giving witness is not permitted to be practised.

I would now refer to the question of justiciability—I am nearly concluding. On this matter regarding justiciability. I have said before that I have respect for the Supreme Court. I am not like the men who joined Watt Tyler in the Peasants' Revolt in England in the 13th or 14th century and said: 'Let us go and kill all the lawyers' Shakespeare puts that in Watt Tyler's own mouth. I also happened at one time to have been called to the English Bar in far away times. I do not say: 'Let us go and kill all the lawyers'. But, Sir, there is something about the law which we have got to consider—I am happy my hon. friend, the Minister of Law, is here. This question about the equality of everybody before the law, is so much bunkum, this is so much hoodwinking and deception of the people. We

are all free to dine at the Ritz and own in a Rolls Royce! With wonderful impartiality the law forbids rich and poor alike to steal bread or to sleep under bridges! We know this kind of thing and then we know the people who are our Judges. I have nothing but respect for them, but we know the successful lawyer, the class from which in the Anglo-Saxon dispensation—which we hug to our hearts—the members of the judiciary are generally recruited, spends his life in ministering to the dominating class of society. Naturally, he comes, as a general rule, to share the outlook of that dominating class. His intellectual influence—Shri N. C. Chatterjee is my witness—the intellectual influence of the lawyer is applied in the interests of the dominating class of society. (*Interruptions*). The law, therefore, today, in our context is one of the last ramparts of reaction, and something has got to be done about it. I am not questioning the goodwill of any lawyer, let alone Shri N. C. Chatterjee, whom I have known for many years and for whom I have great respect. I do not say a word about him. I do not question the goodwill either of lawyers or of the legal system, but so large a part of the law is rooted in precedent that it is natural for the lawyer's mind to imagine that continuity with the past, rather than departure from it, is the *alpha* and *omega* of human wisdom. That is the lawyer's view of things...

Pandit Thakur Das Bhargava (Gurgaon): This Bill does not deal with lawyers.

Shri H. N. Mukerjee: This is a wonderful thing, this solemn principle of justiciability, but this is so much abracadabra as far as the interests of the common man are concerned.

Mr. Deputy-Speaker: Are not junior lawyers friends of the poor?

Shri H. N. Mukerjee: I am sorry, I feel like parrying that thrust (*Interruptions*).

I have almost concluded, but I wish to say that I remember vividly what the Prime Minister said two years ago here when the Kashmir issue was being discussed. Something was done in Kashmir—rightly or wrongly, I do not quite know. They acquired land without compensation, and in connection with this the Prime Minister said—I remember it distinctly—'I like that. If I had my way, I would have done it in this country'. I had also in my humble way suggested to him: 'You seem to be the Lord of creation as far as this House is concerned'—I did not have the gumption to use this kind of language, but this was my point—'You are the Lord of creation as far as this House is concerned. If you think that in Kashmir, lands can be taken over without paying compensation, why, in the name of the devil, can't you take over lands here without compensation?' There was no answer. I would say this not only in regard to land, but in regard to those industrial interests, which, I am happy, Shri N. C. Chatterjee, also wants, to be expropriated. I would say that in regard to that, the law is of no help. In the United States, there are anti-trust laws. Shri Asoka Mehta is a specialist in the study of this kind of thing; he will tell you much more about it; I do not know a fraction of what he knows, about the whole system of anti-trust laws. But in spite of that, these cartels and monopoly interests dominate the economic life of that country. Are we going to have that kind of thing? Let us beware in time before it is too late, and that is why I say it is very necessary that we make up our minds about it.

Now, I shall finish, but before that I shall only say one thing of a personal nature. A few months ago the Prime Minister relented and permitted me to have a passport to go to the Soviet Union for a short visit. Like every other visitor, I went to the Kremlin and I saw a huge bell which I was told, was the largest in the world; but it was a bell that had cracked, a bell which had never tolled. As I saw this bell, the largest bell in the world, a bell which had never tolled, I tell you—this is God's truth—I felt at once that all over the world and specially in my country, in spite of the wonderful

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civilisation which we have inherited, deprivation is the portion of the people. All over the world, for millions of men and women, the bell of happiness has never tolled. We want that bell of happiness to toll for the people of every country including our own, because we are born here, because we are part of the life of this country, we are part of the dust of this country, and when we die, we shall mix with the dust and the elements of this country. We want our country to grow, we want our people to be happy. But is our Government serious about bringing happiness to our people? I do not expect the moon, I do not want wonders to be achieved here now, straightway, by a magic, miracle. I do not believe in *mantrams* like the "socialistic pattern of society" being dinned into the ears of my friend, Shri Tulsidas, and others like him. I do not expect Government to bring in the millennium. I want that this Government tries to the best of its powers—its powers may be limited—to achieve happiness for our people. If that happiness can be achieved, in that task everybody can collaborate. But it is because we have our doubts, it is because we have our serious suspicions—for which I have been berated by many hon. Members like Pandit Thakur Das Bhargava—it is because we have our suspicions that we say this Government is not doing what it ought to do for the happiness of our people. But if it is serious about its objectives, if it is serious about the Directive Principles of State Policy let it come forward, let it examine the entire theory and structure of property relationships as embodied in the Constitution and then let the Select Committee report back to us in a document which. I take it, shall be a memorable thing in the history of this Parliament.

Shri Asoka Mehta (Bhandara): I welcome the Bill for the amendment of the Constitution that has been moved by the Prime Minister. While I welcome it, I must make it clear that I am not satisfied with it. The amendment does not go far enough.

This particular article has been discussed in this House on more than one occasion. If I am not wrong, this is the third time that this House has been called upon to consider this article. Why is it that we have to consider this article over and over again? In my opinion, it is because the approach has been wrong. We have not looked at the problem in the way in which it needed to be looked. I am afraid, in the amendment that is being suggested by the Prime Minister, we have not overcome the inadequacy of the approach in the past. The Prime Minister has spoken on this article not once, not twice, but I believe four or five times so far and I have tried to go through the various speeches that he has made on the subject. I find, over and over again, he has maintained that equity in relation to an individual has to be subordinated to equity in its relation to the community. He has further argued that the Directive Principles of State Policy represent a dynamic move towards a certain objective, the fundamental rights representing static standstill. I do not accept that. I do not think that the fundamental rights represent anything static. The fundamental rights, to my mind, are the substance, the core, of all that we desire the State to achieve. After all, the fullness of all that we promise to our countrymen, the richness that is to come to them, of which they are to be heirs, is ultimately represented by the fundamental rights. But the question is, what do we mean by fundamental rights? I have here a book by a distinguished professor of law, Emeritus, Professor of Columbia University, Robert L. Hale, who has discussed this question in *Freedom through Law*. He has argued that we must realise that fundamental rights ultimately are to enhance and enlarge the liberties of the people, but the liberties of the people are not fully realised because of economic inequalities. Economic inequalities have a three-fold aspect. They affect the freedom of men as producers, freedom of men as consumers and freedom of

educational opportunities. If these inequalities are to be corrected all these questions arise. If the fundamental rights which are the liberties of the people, the basic liberties of the people to realise happiness, to realise the fulness and richness of life, to achieve equality, if all these fundamental rights are to be fulfilled, we must see that there must be no political coercion, there must not also be economic coercion of any kind. And, it is for that reason that this distinguished Professor says:

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> "Economic inequalities, then—inequalities in freedom as producer and as consumer—are embodied in unequal legal rights. In assigning and enforcing legal rights to the fruits of transactions, the law is doing more than protect the winnings in the game of production and exchange. It is dealing unequal hands to the players. Further State intervention to alter the distribution of rights and liberties, to the advantage of those whose liberty is not restricted as a result, in part, of state action cannot be properly described as 'statism' in any obnoxious sense."

Therefore, the question we have to ask is, do we want to enlarge the liberties of the people, do we want an egalitarian and liberterian society to be created in our country. If we want to create such a society, then obviously, we must realise that we must not think in terms of rights of persons. Person is merely a juridical expression. But, we must think of the liberties of citizens, which deals with individuals, men and women of our country, and we must decide that we prefer to enlarge the liberties of the people, the liberties as producers, the liberties as consumers and their liberties for obtaining educational opportunities, that we want to enlarge the ambit of equality in our country and for that purpose we shall have to decide to curtail property rights. This property right in the sense in which it has been interpreted by the Supreme Court is considered a fundamental right. Do we concede that, do we accept that property right is a fundamental right upon which no encroachment whatsoever can take place? Is property to be conceived as a homogeneous entity or are we going to distinguish one kind of property from another? In the Czechoslovakian Constitution personal property, meaning thereby the house a man lives in, the tools with which he works, the income he earns by the sweat of his brow, by his personal labour, all this is considered to be personal property and cannot be encroached upon. Of course, the question can be asked whether any guarantee given by a Communist State is worth the paper on which it is written; that is a different question. But, it is possible for us to guarantee personal property and it is not necessary for us to guarantee the much wider gamut of private property. And, if we are prepared to do so and if we are going to guarantee it, as the Prime Minister pointed out in a memorable way, then the "haves" will remain "haves" and the "have-nots" will remain "have-nots", and the changes that we desire and cherish will never be brought about.

To this question, Justice Mahajan has given a reply:

> "It seems to me that our Constitution, subject to certain exceptions, has guaranteed the fullest protection to private property."

We have considered this article over and over again and this House has always ended by amending to a certain, yet limited extent this protection to private property. What then is the use of the Prime Minister complaining as he did last time in 1951, that somehow we find that the magnificent Constitution that we have framed was later kidnapped and purloined by lawyers? In this amendment, we are once again repeating the conditions whereby our lawyer friends will once again be able to kidnap and purloin the magnificent Constitution that we are creating. We are here sitting as

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architects of this Constitution. It is upto us to make the Constitution fool-proof against the lawyers as far as this aspect is concerned. The property of the people must be sacred and sacrosanct. The Supreme Court must be there to see that the Executive does not encroach upon the property of the people. But, what is property? Not big property or large-scale property, I am sure. Our eminent lawyer friends should be able to tell us how to safeguard the small property about which our friend Mr. Chatterjee is worried and our friend Mr. Mukerjee is worried. But, surely, I do not see any reason why any of us here should be interested in safeguarding the property of my friend Mr. Tulsidas and my friend Mr. Somani. Their properties need not be treated as sacrosanct. That distinction is not surely beyond the comprehension of our lawyer friends here. But, I find that the Prime Minister has over and over again tried to make that distinction and has failed.

Why have we to consider this amendment? It is because of certain judicial pronouncements. As far as the judicial pronouncements are concerned, I find that on two things there is complete agreement. As far as the Power of Eminent Domain is concerned, we are all agreed that it must be exercised under the authority of law and for a public purpose. On that there is no disagreement. The disagreement arises on whether the right of compensation is to be considered an ingredient of the Power of Eminent Domain. There, I find that while we are agreed and it is commonly accepted that the Power of Eminent Domain is dormant in the State and it remains dormant only. It remains dormant unless it is activised by the Legislature. But, the question is, while activising, is it necessary for the Legislature to think in terms of compensation? And, there, Justice Mahajan has stated:

> "Public purpose is an essential ingredient in the very definition of the expression Eminent Domain, even though obligation to pay compensation is not a content of the definition, but has been added to it by judicial definition."

Compensation is not a content of the concept of Eminent Domain; it has been added by judicial definition; it is something which, surely, this House can take away. Not only that, he proceeds further and says:

> "It is indeed like a shadow but yet it is distinct from it and flows from another source."

Is it not possible for us to remove the shadow which flows from another source from the substance with which we are dealing? I ask my friend Mr. Chatterjee: why all this anxiety to cling to the shadow in order to save the substance? We are not concerned with the shadow, we are concerned with the substance. My friend has pointed out to us that, after all, all the rights are not going. You can take away certain rights from the bundle of rights. But, that will not amount to acquisition. That is what the Supreme Court has said. It may be so But, what do we find? Justice Das has said:

> "If the rights taken away are such as would render the rights left illusory and practically valueless then there would be no question that in effect and substance the property has been taken away."

Where is this line to be drawn as far as big property is concerned? As far as small property is concerned, I think, the thing itself and the rights over the thing can be easily understood. But, as far as big property is concerned, where do we draw the line of demarcation or the dividing line between the thing and the rights over the thing. On this question, I find, our lawyer friends are not interested in enlightening us. They are interested in confusing us. I had hoped that an eminent lawyer like our friend Mr. Chatterjee would have enlightened us

on the subject because Justice Mahajan has said:

> "Article 31 deals with the field of Eminent Domain and the whole boundary of the field is demarcated by the article."

Where is the boundary line to be drawn, on what basis is the demarcation line to be drawn? That is what I expected my hon. friend Mr. Chatterjee and hon. Prime Minister, also a lawyer—and he cannot run away from that—to tell us. But they all want to run away from this and they all want to leave this to the Supreme Court and then say that the lawyers have kidnapped and purloined the magnificent Constitution that we have created. I feel that because they are lawyers, they are in league with the other lawyers outside and, perhaps, they want to create the condition whereby the lawyers can kidnap and purloin the Constitution in future. Let us analyse the amendments that have been made. I am not against the lawyers. I want the lawyers and I want them to protect our liberties, but the question is this: is it the right of owning big properties or is it the liberty which is to be protected? As far as the amendment goes....

Mr. Deputy-Speaker: The lawyer will equally well argue the poor man's case, but the only thing is that you have to pay him.

Shri Asoka Mehta: But the poor man has no case of property to be argued. What the amendment is trying to do is to separate the powers of eminent domain from the police power of the State, the regulatory and other powers. While that is being done there is a certain saving clause; certain activities or legislations for social welfare are sought to be excluded from the purview of the courts. It is a long list and I shall not repeat it here. The amendment, however, falls short of the social objectives we have in view. While I was reading some books on the subject, I found that the primary forces that bring about constitutional amendments are said to be two. They are influenced by the economic concepts in a particular society and they are also determined by the need to adjust conflicting interests and opinions. We are today so fortunately placed in this House that the overwhelming majority of the Members are of one mind, and outside the House also there is an overwhelming majority of the people who are of one mind. In Andhra, the people voted for the Congress Party who stand for socialism; the people voted for the Communist Party who also stand for socialism; they voted for the P.S.P. who also stand for socialism. Excepting for my friends of the Jan Sangh, I think everybody stands for socialism but they may not be clear as to what kind of socialism or which particular pattern they prefer, but there seems to be a remarkable unity in the country that we want socialism and want a Constitution whereby our socialistic objectives can be realised. This amendment does not permit us, as I will show, to bring about socialism in the country.

On the last occasion when Panditji was moving his amendment, he said:

> "When I think of this article 31, the whole gamut of pictures comes up before my mind, because the article deals with the abolition of zamindari system and land laws and agrarian reforms."

Why should the gamut of pictures be confined to agrarian reforms? Why should the gamut of pictures exclude the taking over of the Sholapur Mills or the clearing of slums which is considered to be a crime against the public? Why is it that his focus was controlled then and it is expanding now? He is now able to see that slums constitute a crime. When there is an occasion that a textile mill may have to be taken over for a temporary period for purposes of administration, his focus is enlarged. After some time it may be that the Prime Minister may consider that the industries should be taken over and then again the Constitution has to be amended. Every time the Constitution needs to be amended. My friend Shri Mukerjee referred to the cat being belled. If that expression is to be

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accepted the hole must be big enough or rather no bigger than the cat. If the cat is big, the hole must grow bigger, but under no circumstances the hole may be out of harmony with the size of the cat. That I have not been able to understand. Here we have certain common objectives and it is not what your vision just now is, it is not what social legislation programme you want to put through now, that should shape amendments to the Constitution, but the needs of the objectives adopted by Parliament and endorsed by the people. I find that not only the Constitution is not being trimmed and tuned in terms of the socialistic objectives, but a retreat is being registered. Last time when the Prime Minister was speaking on the subject, he said that he would like the whole question of compensation to be made discretionary and not obligatory, the quantum of compensation being left entirely to the exclusive purview of the legislature. This time that is not what is being done. It is true that the quantum of compensation is left to be decided by the Legislature in the case of certain types of properties that are enumerated in the amending article 31A. It is assumed that some rights can be taken over by the Government without compensation being paid, but the fundamental fact remains that for requisitioning property, and the question of acquisition arises in the case of big properties, we shall have to pay compensation and the courts will have the last say in the matter.

Shri Pataskar: That is not the present position.

Shri Asoka Mehta: On the last occasion, the other Panditji, Pandit Pant, had gone further and said:

> "I presume that if at any time this legislature chooses to nationalise industry and take control of it, whether it be all the industries or any particular class of it, such as the textile industry or the mines, it will be open to it to pass the law and frame principles for the purpose and those principles will be invulnerable in any court."

But those principles have proved to be vulnerable. Are we making this power invulnerable now? No, we are not making it invulnerable. If you want to take over the Sholapur Mills merely temporarily for a year or two, you can do, but if you want that the Sholapur Mills should be taken over and should not belong to Morarka, can you do it now?

Shri Pataskar: But for the interpretation of the Supreme Court, it would be possible, so far as taking over was concerned. In the opinion of Government, even the present provision was enough for the purpose.

Shri Asoka Mehta: I am concerned with the meaning of the amendment that has been tabled by the Prime Minister. Will it be possible tomorrow if the House decides that the textile industry in India should be nationalised and that we should pay only rehabilitation compensation to the owners of the industry? Will it be permitted or will it be purloined and kidnapped by Shri Chatterjee and Shri Anthony into the Supreme Court? My contention is that the time has come when the Prime Minister must make up his mind whether he wants to run with the hare or hunt with the hound. In one breath you talk of socialistic objectives. I read the letter that the Prime Minister has written to the Presidents of the Provincial Congress Committees. It is an eloquent letter. It is a letter that stirs the blood of those who read it. I found in that letter the picture of the Prime Minister as he was in 1935 or 1936, but when I find the same person coming here to sponsor the amendment, we are not sure whether it will be possible for us to carry through our plan of social changes, social reconstruction, social rehabilitation and nationalisation by paying rehabilitation compensation to those people of the privileged class like Shri Tulsidas and Shri Somani. Have we the right to do it? We have no

such right. Therefore, my appeal to you is that we must not set up fences round the right of property. Justice Mahajan said that eminent domain is the power to take and the other is the condition for the exercise of that power. Let the legislature decide the condition of taking. Let us not permit the courts to interfere as far as the conditions of taking over the property are concerned. Let the court be the custodian of the liberty of the people. There is a basic distinction between the American approach and the Indian approach. The founding fathers of America who lived in the 18th century said that property right is an inherent, ineluctable and inescapable part of a man's right to liberty. It is this concept that has been eroded by the social movement whose main contention has been that property cannot be considered to be a dimension of the person's liberty. If we want an egalitarian society, we need to review fundamentally the Constitution and free it from its overtones of property rights. Professor Mukerjee referred to a famous quotation of Proudhon: "Property is theft". The great Frenchman was not referring to the property of small persons or the property of the worker or artisan about whom Shri Chatterjee was shedding tears. That is not based upon theft. The expression is used in a larger context.

Therefore, my appeal to you and my appeal to the Joint Committee and to the Prime Minister is: let us not be called upon to consider this amendment over and over again. Let this article not be linked up with the gamut of pictures that the Prime Minister sees before his mind's eye. Let this article ultimately be linked up with the social objective which our people have accepted. Let us not be called upon to amend this article from time to time and make ourselves ridiculous and undermine the prestige of the Supreme Court. I am most anxious that the prestige of the Supreme Court should not be undermined by repeatedly overruling the Supreme Court's decisions by amending the Constitution. That way we are not helping to create the right kind of traditions. But we shall be creating the right kind of traditions only when we have amended the Constitution in such a fashion that the Constitution becomes a fit instrument of the high and exalted social objectives that we have placed before ourselves.

Shri Pataskar: I will try not to deal with the emotional aspects or with the emotions that have been raised by the present Bill which has been brought forward only with a very substantial reason in order to secure for the citizen whatever rights —as Shri Asoka Mehta said—he should have, and the rights that ought to be there in the Parliament and the Government. Before I go to the constitutional aspect of this matter, let me refer to what Shri N. C. Chatterjee said about the Statement of Objects and Reasons, namely, "the recent decisions of the Supreme Court have given a very wide meaning to clauses (1) and (2) of article 31. Despite the difference in the wording of the two clauses, they are regarded as dealing with the same subject". As a matter of fact, I will try in my own way to convince the hon. Member opposite and say that this statement given in the Statement of Objects and Reasons is perfectly correct.

An Hon. Member: No, no.

Shri Pataskar: On a proper interpretation of article 31 (1) and (2), the Supreme Court could not have come to the conclusion which they have arrived at. It is true that, if as a matter of fact this interpretation was allowed to stand, many of the social problems which we want to solve will be incapable of being solved in the near future and hence the necessity of this amendment. As a matter of fact, broadly stated, for the purpose of interpreting article 31(1) and (2), they have relied and tried to draw inspiration from the decisions of some judges in the Australian court, or from the American court, but they have not cared to

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find out the basis on which articles 31(1) and 31(2) here were passed by the Constitution-makers. I think if they had paid some attention to what happened in the Constituent Assembly, when article 31(1) and 31(2) which then formed part of article 24, were introduced, then probably all this mistake would not have arisen on their part. It has, therefore, become necessary now to bring forward this Bill.

My hon. friend, Shri Asoka Mehta, read out some passages from the judgment of Justice Mahajan. I can say very boldly that I have very well studied all of them. He quoted and said that the law of eminent domain, a very highsounding word, which has been used, is very rarely understood in this country, because what is provided for in article 31(1) is not eminent domain but it is police power.

Shri N. C. Chatterjee: Will the hon. Minister say that article 31 is not concerned with eminent domain?

Shri Pataskar: I will just try to show him as to how our Constitution came to be passed. What is the difference between our Constitution and the American Constitution? What is meant by the law of eminent domain, and what is the basis of our Indian Constitution? It is no good trying to take some provisions from the Australian or American Constitution and then trying to interpret what has been laid down in our Constitution. In considering, therefore, the present Bill, some abstract or theoretical considerations borrowed from and based on similar provisions in the Constitutions of other countries will not be of much avail. Most of the civilised democratic countries have either a written Constitution or an unwritten Constitution. I am only talking of those countries where there is some sort of parliamentary democracy. The British Commonwealth has led to different constitutional developments in different parts of the units that go to form that Commonwealth. England itself has no written Constitution: it has an unwritten one; and one can say that more or less English democracy is a historical growth. At this stage, I would draw the attention of the hon. Members opposite to clause 29 of the *Magna Carta* because England has no written Constitution.

> "No freeman shall be taken or imprisoned or be disseised of his freehold or liberties, or free customs, or be outlawed or exiled or any oterwise destroyed; nor will we not pass upon him but by lawful judgment of his peers, or by the law of the land".

That is the basis on which they started and out of which has grown the present unwritten Constitution of England. In article 31(1) also of our Constitution, we say that no man shall be deprived of his property except by law. It is almost the same thing.

The Constitution of the United States of America, another democratic country, is based on a written Constitution, more or less based on the principles which they borrowed from British precedents. As regards the Commonwealth countries other than England, Canada has a written Constitution. The next important country having a written Constitution is Australia. I am referring to these points because we must be in a position to grasp the fact that when the constitution-makers framed our Constitution they no doubt looked into what was provided in the different democratic countries and at the same time they have taken into account also the conditions and circumstances and purposes for which they had to provide certain measures in the Constitution. While construing the Constitution of our country, the framers have tried to take into account the different provisions in the written Constitutions of Australia, Canada or the United States; but it must be remembered that those Constitutions came into effect under different circumstances and are meant

for people with diverse economic, social and political problems. Therefore, it is not a correct procedure to try to construe the Indian Constitution on the basis of the words and phrases which occur in those Constitutions. It is true that in a sense all these Constitutions have got some common conceptions which they have taken from the English precedents: but all the same, they were meant for being useful to different countries for the solution of their own different problems. Therefore, in the first place, the great mistake which I think they have committed is, they have tried to compare our Constitution with the Constitutions of other countries as if our Constitution has merely copied them. Our Constitution has come into existence as a result of the labours of the representatives of our people who formed the Constituent Assembly. Before the Constitution was actually framed, the Constituent Assembly passed an objectives resolution. It was proposed by Pandit Jawaharlal Nehru and was unanimously passed. In that resolution you will find that the objectives have been mentioned. While drafting our Constitution, we took into account the objectives resolution which we had passed and after that, we started to frame our Constitution on the basis of that resolution. I would like to draw the attention of the hon. Members particularly to clause 5 of that resolution:

> "Where, shall be guaranteed and secured to all the people of India justice, social, economic and political."

Every provision made in the Constitution has, therefore, to be construed on the basis that we started framing the Constitution with this object in view—that we want to secure to the people of India justice —social, economic and political. I do not find in the judgments any reference even being made to any such thing. They are more or less obsessed with the idea of what has been laid down by some court in Australia or Canada. That is very unfortunate. I do not know how the mistake has occurred. Therefore, my submission is that if our Constitution is to be interpreted, whenever there is a question of interpretation, you must take into account what was the object with which we started framing the Constitution. Therefore, to interpret properly the different provisions of the Constitution, it is always necessary to keep in view this Resolution which I have already pointed out, particularly clause (5) thereof.

Then again, it is worth while to know the Preamble of our Constitution also. It gives us an inkling as to what we have decided to achieve by framing this Constitution. What is that we have started to do? You will find that in the Preamble. It says:

> "We, the people of India, having solemnly resolved to constitute India into a sovereign Democratic Republic and to secure to all its citizens: Justice, Social, economic and political,....."

That must be the main objective from which everything that has been laid down must be subsequently interpreted. If at all you put an interpretation which conflicts with this ideal, then it cannot be a correct interpretation. It must always be remembered that one of the main objectives is to secure to all its citizens "Justice—social, economic and political" and "Equality of status and of opportunity", and to assure the dignity of the individual and the unity of the nation.

Then, there is another thing which must be taken into account for a proper interpretation of the Constitution. For a proper interpretation of the provisions of the Constitution, we must also take into consideration Part IV of the Constitution, that is, our Directive Principles. The most important provision in this connection is article 38 which lays down that the State shall strive to promote the welfare of the people by establishing social order in which justice, social, economic and political shall

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inform all the institutions of the national life. Whatever is laid down in articles 19, 31 and similar provisions have to be interpreted in view of this policy of a welfare State. If you do not take any account of this thing and try to interpret the Constitution, the interpretation is bound to be incorrect and it will be found, as some Members have often felt, that the Constitution-makers have, probably, done something which does not and will not lead to the establishment of a socialistic State.

I now propose to examine the provisions with regard to the securing to all its citizens economic justice.

It is true that in our fundamental Rights we recognise in article 19(f) the right to acquire, hold and dispose of property. But that has been made subject to the restrictions contemplated in clause (5) of article 19. Clause (5) clearly lays down that the State can make any law imposing reasonable restrictions on the exercise of this right to acquire, hold and dispose of property. There is nothing like absolute right. Some of my friends on the other side have often felt that the Constitution has recognised property right in the absolute form. It is, no doubt true that the existence of private property is recognised in our Constitution, but subject to the condition of reasonable restrictions being imposed on this right in public interest. So, there is nothing like an absolute right to acquire, hold or dispose of property, as some people are under the wrong impression. This has been rightly provided for, because we want to secure economic justice to all citizens of our country and this objective cannot be achieved unless the right to property was qualified in the manner laid down in our Constitution.

Now, I will come to the point as to how to interpret article 31(1) and 31 (2) and what this connotes. There is a well-known classification of the State's sovereign power regarding property in constitutional law. These categories are: the power of taxation, the power which is known as that of eminent domain and the police power. These are the three classifications of power which you will find in all works on constitutional laws. As regards the power of taxation, there are provisions in the Constitution with which we need not deal for the purposes of the present Bill. The other powers are, what are elsewhere called the power of eminent domain and the police power.

Now, 'eminent domain' is the power of the sovereign to take property for public use without the owner's consent. That is, we acquire property of somebody in order to build some school or some other public building. The police power is more or less the power of the sovereign to regulate the use of property. The distinguishing characteristic between eminent domain and police power is that the former involves the taking of property because of its need for public use, while the latter involves the regulation of such property to prevent the use thereof in a manner that is detrimental to public interest. This 'regulation' may even mean destruction and deprivation. For instance, take the case of a building which is on fire in some town, and the State comes in to demolish the neighbouring house so that the other houses may be saved. Certainly, the owner of that building is deprived of his property, but it is not taking over. There is no acquisition. It is only deprivation in the public interest. Police power is something which is different from actual taking over which is called the power of 'eminent domain'. Therefore, it is no good confusing the two. It may be difficult to define exactly, what is meant by the power of 'eminent domain' and what is meant by police power. But the distinction is clear and one thing is entirely distinct from the other so far as constitutional law is concerned. As I said before, the power of 'eminent domain' involves taking over of property for public use, say, somebody's land for constructing some building for public use and

things like that when the State naturally takes it over. The State requisitions it and acquires it. On the other hand, police power involves regulation of such property to prevent the use thereof in a manner detrimental to public interest. The other thing is merely deprivation of property in the public interest and in that case no compensation need be paid because the State did not take over anything. The police power is inherent in the constitutions of every country in the world. For a sovereign body to carry on administration, it must have this power. Therefore, that is what is provided in article 31(1) and 'deprivation', 'acquisition' and 'requisition' cannot mean the same thing. Deprivation means the State does not take it over. The owner is only deprived of it. There also in order to safeguard the interests of owners, in our Constitution, it has been provided: "He shall be so deprived only by law and not by the executive arm of law." This point also must be noted.

It is also one of the accepted principles of constitutional law that police power requires no provision for compensation, while in the case of the exercise of the power of eminent domain the question of compensation comes in. Therefore, the whole trouble has arisen out of the fact that article 31(1) and (2) which provide for two distinct categories of these powers as if they are one and the same. Critics have tried to show as if the whole object of both these clauses is to make provision only for eminent domain and nothing else. That is how the mistake has occurred. These two powers are provided for in our Constitution in article 31(1) and 31(2). Article 31(1) makes provision for what is regarded in constitutional law as the police power, and 31(2) provides for the power which is called the power of eminent domain. These are distinct categories of sovereign powers with different connotations, subserving different needs of the society and the State. Article 31 (5) (b) specifically exempts the taxation powers or the police power from the operation of the power of eminent domain, because there you have to pay compensation. The power referred to in article 31(1) is what could be called in the words of Prof. Willis: "The off-spring of political necessity. This coercive legal capacity is inherent in every sovereign." No sovereign can function without this police power to deprive anybody of the property in the interest of public in general o. those over whom that sovereign has to govern. Whether it is Parliament, an individual or otherwise, this power has to be there. Under our Constitution the Parliament is a sovereign body and as such it must have this power and it can be exercised only by the authority of a law passed by that body.

Hence the necessity of provision in article 31(1). Article 31(1) has thus been designed to formulate a fundamental right against the deprivation of property by the exercise of police powers by the executive. The Constitution-makers did not want these police powers to be exercised by the executive. It can only be done by the legislature. As a matter of fact, if this interpretation was there, the Sholapur Mills case would have been decided in a different way. What happened? The management was not working well. There was no other way. Therefore the management was undertaken by passing a law here. It exactly fell within the meaning of what is provided as 'police power' in article 31(1). Unfortunately, I shall not blame anybody, the first misconception which arose, which has led to all this trouble was that it was considered that articles 31(1) and 31(2) were parts of the same power of eminent domain. If there had been a proper interpretation of the present provision, there would have been no difficulty. This is what I wanted to point out to my hon. friend Shri Asoka Mehta if he were here. Our Constitution-makers had all these things in view. They wanted to provide for such a contingency, namely, to establish a socialistic pattern. But, the trouble is that this provision was interpreted in a way

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which is not consistent with the purpose for which the provision has been made in the Constitution.

There is no written provision in the Constitution of the U.S.A. regarding the police power. That is the matter. While they tried to depend upon the ruling in the U.S.A., the point to remember is that there is no provision corresponding to article 31(1). There, the police power as developed in the Constitutional case law is essentially a legislative power. There, the Constitution does not contain a provision. They exercise that power by passing a law. That is what we are doing. Article 31(2) is, as I have said before, what is called elsewhere the power of eminent domain. Therefore, with due respect to the Chief Justice Patanjali Sastri, I have to say that he has fallen into the error of not having tried to make a distinction between article 31(1) and 31(2). As I said, article 31(2) is what is called the power of eminent domain, that is, property is to be acquired for a public purpose. It provides that the law should provide for compensation for property acquired or taken possession of. It also lays down that such a law shall fix the amount of the compensation or the principles on which and the manner in which the compensation is to be determined, and given. Therefore, under article 31(2), if somebody's property is to be taken, they divested him of his property or took possession of the property. Naturally, that man has to be paid some compensation. Our Constitution has laid down that principle. Who shall determine the amount of compensation or the manner in which it ought to be done? It will be by a law, that is, by this Parliament. What the Constitution makers laid down is that in this case, the quantum of compensation or the method by which it shall be paid shall be decided by the law. That is giving the power to this House and none else.

In article 31(2) dealing with the question of eminent domain, the only provision made was that for property which is acquired for public purpose or taken possession of for that purpose, the law should provide for compensation either by fixing the amount or by specifying the principles on which the compensation is to be determined and given. That was therefore to be fixed by the legislature itself. This is entirely distinct from similar provisions in the Constitution of the U.S. of the Constitution of Australia. For the interpretation of this article, reference was made to what was decided in one American case or another Australian case. What are the provisions there?

These powers known in constitutional law as the power of eminent domain and the 'police power' are undefined and loose in their very nature. They may have certain broad common aspects, but they vary from State to State and are conditioned by the circumstances of each State. You cannot have the same powers in U.S.A. and in Australia, as we are having in India. The economic, social and political conditions in the U.S.A., Australia and India are not the same and their Constitutions though democratic in character are framed to suit the differing conditions. The provisions made in those Constitutions regarding the exercise and applicability of these sovereign powers also vary and different phraseology is used in each of such provisions.

A good deal of confusion has been caused by the courts in India trying to make use of the words in those Constitutions for the purpose of ascertaining what was intended by different words used in our Constitution. Police power as developed in the American case law is essentially a legislative power—there is probably provision in the Constitution of the U.S.A. for other powers. It is because there is no provision for police power, it is a development of law. As regards the other power, that is, the power of eminent domain, there was the wording, "nor shall private property be taken for public use without just compensation". It is naturally a different wording. In America where they had so much of

land and very few settlers, they could make huge profits and the compensation is bound to differ. They could, therefore, provide for just compensation. Therefore, they used that wording in that Constitution. We have not used the word 'just'. Not that we were unaware of the provisions of the American Constitution. The Constitution-makers deliberately departed from it. This fact has been entirely ignored while trying to rely upon the wording in the American Constitution. The word 'taken' used in the similar provision in the Constitution of the U.S.A. is not the same as the word 'acquired' used in article 31(2). The Judges have proceeded on the basis that what is meant by 'acquired' in article 31(2) is the same as what is meant by the provision in the American Constitution regarding property taken for a public purpose. In the first place, the line of reasoning that because the Fifth Amendment of the U.S. Constitution which deals with eminent domain used the word 'taken' and article 31(2) also deals with the same topic of eminent domain, therefore the words used in our Constitution namely 'taken possession of or acquired' should be read as having the same meaning as is attributed to 'taken' is fallacious and entirely misplaced. The words used in that Constitution are entirely different. You cannot compare what is laid down here by 'acquisition' and take it as meaning the same thing as is meant by 'taken' in the American Constitution. This is a reasoning which is wrong. Because, it first starts with likening one thing with another and then ends by imputing the qualities of the other thing to the first-mentioned thing. The principal rule of interpretation is to ascertain the meaning and effect of an enactment from the words used therein and if the words used acquire a special or technical meaning, that meaning should be given to them. Why is it that we said one thing in article 31(1) and another thing in article 31(2) if we wanted to say the same thing? To say that the expression 'taken possession of or acquired' in article 31(2) must be given the same wide meaning which the American courts have given to the word 'taken' is to ignore the entire historical background of the law relating to the compulsory acquisition of private property for the State, in Indian Article 31(2) is not a new thing. Even under the old Government of India Act of 1935, there was section 299 and there was this power. There the word 'acquired' was used, it connotes an idea of acquisition which has developed in England. This word has its own meaning under the English law. It has acquired a special meaning. It connotes the idea of transfer of title, voluntary or involuntary. Acquisition must always mean and imply the acquiring of the entire title of the person whose title has been expropriated—whatever the nature or extent of that title might be. The criterion was to interpret the word 'acquired' as it ought to be done, irrespective of what word has been used for the same purpose in another enactment in another country. The word "acquired" used in our Constitution must also be given the same meaning. Acquisition must always mean and imply the acquiring of the entire title of the expropriated owner, whatever the nature or extent of that title might be. The word "acquired" used in our Constitution must also be given the same meaning.

Had Government acquired any title to these Sholapur Spinning and Weaving Mills when they passed the law and wanted it should be better managed by other directors? It was only under article 31(1), and it was not done under 31(2) at all.

The words "taken possession of" were also deliberately used in article 31(2) for the purpose of making it clear that compensation was required to be paid only when there was actual taking over of the property out of the possession of the owner or its possessor into the possession of the State, the manner of taking possession naturally depending on the nature of the property itself. Therefore, the arguments advanced by the hon. Member, Mr. Chatterjee, which is

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based only on the judgment of the Supreme Court is not correct.

The Supreme Court in the famous case of Subodh Gopal Bose came to the conclusion that clauses (1) and (2) of article 31 are not mutually exclusively in scope and contents and that they should be read together and understood as dealing with the same subject, namely, the prosecution of the right to property by means of limitation on the State power. This is the initial mistake of the Court, and once they have fallen into that mistake, I think the whole thing has gone wrong. They think that the deprivation contemplated in clause (1) is no other than the acquisition of the property referred to in clause (2). For arriving at this conclusion they have relied largely on the interpretation of the provision in the Fifth Amendment clause of the American Constitution: "Nor shall a private property be taken for public use without just compensation". This is not correct. I do not know how at all they could have in any way connected what was laid down in article 31(2) and 31(1) by any sort of analogical reasoning with what was laid down in another Constitution of a country where the phraseology used also is different. It is not correct.

Article 31(2) is more or less based on the law of acquisition as it operated even before this Constitution. Formerly, there was section 299 of the Government of India Act. Acquisition has become more or less a term of art and is a well known expression. It has been in force in our country for the last so many years and the words were used in the same context in section 299 of the Government of India Act and article 31(1) and (2) of our Constitution. They are almost identical except for some changes which we deliberately wanted to make.

Our Constitution is an independent piece of work not based on any particular constitution, but is framed on the historical background of our constitutional development and the particular needs of our country in view of the goal which has been set before us. That must be taken into account for its proper interpretation. It is wrong to hold that in this matter the framers of our Constitution shared the American view rather than the traditional British view of preserving the rights and liberties of the individual by making Parliament supreme. It is with respect to this aspect that in article 31(2) we have laid down:

> "No property, movable or immovable including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

So, as a matter of fact, if a correct and simple interpretation of this was to take place, all these matters are to be decided by Parliament itself. That was the intention with which these words were introduced in article 31(2):

> "....unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation...."

Therefore, it would be wrong to say that all this is a justiciable matter.

In this connection, no less a person than the eminent jurist and constitution-maker, Sir Alladi Krishnaswami Ayyar, said as follows about this particular provision, about its being justiciable:

> "We know that the Constitution guarantees certain Fundamental Rights to all citizens and

creates a forum for the protection of those rights. Now does it not betray lack of confidence even in the highest judicial tribunal of this land which will be set up to uphold the rule of law?"

There is no question, but there are certain matters which must be decided by Parliament. At the time when they pass this law about the acquisition of property, they are best fitted to know and find out the circumstances under which compensation has to be paid, what amount has to be paid and what are the principles on which compensation has to be paid. He adds:

"I feel constrained to submit that I never expected that the eminent persons who are associated with the amendment would adopt this attitude."

With regard to the first point, *viz.*, justiciability, I have said that despite the long list of constitutional provisions submitted by my friend, these provisions came on the statute-book when the conception of property was different from what it is today. The constitution-makers were aware of the difference between what they were doing and what was done by some other constitution-makers before them in other countries. The old conception of property, among other things, was a conception of something existing, something static, whereas the present conception is that property is dynamic and so on.

And then, in very clear terms, the late Sir Alladi Krishnaswami Ayyar interpreted this:

"The other portion of clause (2) which has given rise to a good deal of controversy is the import of the expression 'compensation' in section 299 of the Government of India Act 1935 and article 24 as originally drafted which in substance is merely a reproduction of section 299. On the one side it has been urged that the expression 'compensation' by itself carries with it the significance that it must be equivalent in money value of the property on the date of the acquistion, *i.e.*, the market value. On the other side, it has been urged that taking the clause as it is which refers to the law specifying the principles on which and the manner in which the compensation is to be determined, it gives a latitude to the Legislature in the matter of formulating the principles on which and the manner in which the compensation is to be determined. In this context it is necessary to note the language employed in article 24 is not in *pari materia* with the language employed in corresponding provisions in other Constitutions referring to the compulsory acquisition of property on payment of just compensation."

So, this great jurist was already aware at that time that there were other constitutions which had some other phraseology, and this change was deliberately made:

"The expression 'just' which finds a place in the American and in the Australian Constitutions is omitted in section 299 and in article 24. "There is also no reference to any principles and the manner in which the compensation is to be determined at all in the Australian or in the American Constitution.... It is an accepted principle of Constitutional law that when a Legislature, be it the Parliament at the Centre or a Provincial Legislature, is invested with the power to pass a law in regard to a particular subject matter under the provisions of the Constitution...."

The Constitution is not made as if Parliament in its own supreme legislative power can legislate and the State Legislature cannot. My learned friend opposite said even the Legislatures in the States might take

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advantage of it and pass any expropriatory legislation. I do not know what ground there is for this:

> "... it is not for the Court to sit in judgment over the Act of the Legislature. The court is not to regard itself as a super-Legislature and sit in judgment over the act of the Legislature as a Court of Appeal or a review."

I think if this aspect which was put forward at the time of making this provision of the Constitution by such great jurist as Sir Alladi Krishnaswami Ayyar, to which I referred, had been considered by the Court when they came to the question of interpretation of these provisions, probably the result would have been different and probably there would have been no necessity for the present amendment which we want to introduce. It has now become almost necessary because if we do not do that, that law stands with that interpretation.

In England, as I pointed out, as far as back as the days of the *Magna Carta* they said that no person shall be deprived of liberty or property except by law. We are more or less following the same principle, and therefore in article 31(1) we have laid down that this should be done by an Act of Legislature. But one of the remarks in one of the judgments —I will not refer to the names—is not to incline to the view by which the English courts regard as supreme the power of the Parliament but that it is a judicial power. I do not know what is the reason.

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It is wrong to hold that in this matter the framers of the Constitution shared the American view. I do not know how that impression could have come in the minds of the Learned Judges. There is nothing in the proceedings to show that at any time they had the American precedent in mind. On the contrary, as I just pointed out, Shri Alladi Krishnaswami Ayyar made it clear that what we were doing was something entirely different from what had been done in America or other countries. We wanted to lay down in our Constitution certain matters which are in consonance with the conditions that obtain in our country and that was the objective with which we started to frame the Constitution. Therefore it is surprising that these remarks should appear in a judgment. As a matter of fact, our Constitution has a historical background. There is the *Magna Carta* and the provision it contains with regard to this matter, and we have incorporated those provisions in simple language in article 31(1). But they want to mix up article 31(1) with 31(2) and therefore all this confusion has arisen, not deliberately, but somehow or other the subject has not been properly approached. They may not have been guided entirely by what was done by the Constitution-makers. But before coming to the opinion that the constitution-makers shared the American view, at least before that remark was made, they should have at least taken care to see what the Constitution-makers did say at the time the article was passed.

I do not wish to attribute any motives, but this is what has happened. There is no point in arguing about the sanctity of property. If there is any interpretation by which the progress of the country is going to be held up, such an amendment is the only way.

Pandit Thakur Das Bhargava: Did not the Attorney-General suggest before the Supreme Court, or some High Court that compensation really meant just equivalent in money?

Shri Pataskar: As a matter of fact, I do not know what the Attorney-General said. I base my remarks on the judgments. Whatever the Attorney-General might have said, I would submit that the proper course for them would have been to find out from the

Preamble what was the objective, what was said when this provision was made—did the Constitution-makers really make any differentiation between what was laid down in the Australian Constitution and the American Constitution and took inspiration from them. To argue that by this amendment we are trying to take away the authority of the courts is not correct. We are trying to restore what the Constitution-makers really intended.

Shri Asoka Mehta argued that we brought one amendment Bill and having found it insufficient we have brought another one. In our opinion the present articles are enough for the purpose for which they are intended. But on account of the interpretation of the Courts it has become necessary to bring forward this legislation. It should be more appropriate to hold that our Constitution-makers trusted the legislatures to protect the rights of citizens, as the people of Great Britain trust their Parliament to protect people's property. On the contrary, as I have already pointed out this is the provision in the *Magna Carta* and that is the provision made in 31(1). If it is not properly interpreted, it is not the fault of anybody. A misconception of the nature of the provisions of clauses (1) and (2) of article 31 has actually led to a series of judgments by courts which threaten to retard the social and economic progress of the country.

An analysis of the different judgments of the Supreme Court regarding the construction to be placed on clauses (1) and (2) of article 31 shows that they regard both these clauses as dealing with the same topic of eminent domain. They also further regard that the expression "taken possession of or acquired" occurring in clause (2) has the meaning as the word "deprived" in clause (1) has. This is entirely a wrong construction and steps have to be taken to make it clear as to what is laid down in clauses (1) and (2) of article 31. It is from that point of view that this amending Bill is brought. There is no question of trying to offend anybody's dignity. My hon. friend opposite tried to show that this measure was very objectionable. I hope I have tried to convince him as much as I could that as a matter of fact this misconception has arisen on account of a wrong comparison of our Constitution with some other Constitutions, and this Bill has been brought because the whole question has not been properly approached. No disrespect is meant to anybody.

Soon after the Constitution was passed it was found that the Courts in some cases began to interpret these constitutional provisions in such a manner as to prevent social justice being meted out to those who needed it. There are a number of cases arising out of the abolition of zamindari. It is not as if we are unnecessarily trying to bring forward Bills like this from time to time. But when it becomes necessary, in the interest of the people as a whole to carry out the objective with which we have framed the Constitution, naturally a Bill of this nature has to be brought forward before the House.

One of the courts so interpreted this provision that even the introduction of such a thing as a State Transport Service for effectively dealing with the problem of transport has been threatened by the interpretation of the word 'property' which was also construed as including the right to carry on the business of running a bus service. That was the U. P. case. Of course if a licence is withheld it might cause some problematic loss. But what the State did was in the interest of the general public. Even this Act was declared *ultra vires*. Now, we cannot do even such a simple thing on account of the wrong interpretation of article 31(1) and (2). So, something had to be done to set matters right by resort to a legislation of this kind. All these things if allowed to continue in this way will only lead to retard the progress of the nation. It is nobody's desire not to do what is just to all on the whole, nor is it the desire to

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allow things to be done arbitrarily by the executive. The intention of the framers of the Constitution cannot be allowed to be negatived or hampered by incorrect interpretation. The safeguard in 31(1) is of a peculiar character. We say that a man shall not be deprived of his property.

Shri N. C. Chatterjee: Is it proper continually to repeat that the Supreme Court's interpretation is wrong? Article 141 says:

> "The law declared by the Supreme Court shall be binding on all courts within the territory of India."

Shri Pataskar: As I have said, we have already accepted that position. I am only trying to bring to the notice of the House why it has become necessary to bring forward this measure. It is not our desire to do anything unjust.

Mr. Deputy-Speaker: It is open to anybody to make a criticism, legitimate and *bona fide*, in the interest of law, in the interest of interpretation of an article made with reference to a judicial pronouncement. Is it not open to any person, *bona fide*, to say that certain points have not been brought to the notice of Their Lordships, that interpretation in one case does not seem to follow the case of another? Is it taboo? Article 140 only says that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Nobody denies it.

Shri Venkataraman (Tanjore): It is not binding on the Legislature.

Shri Jaipal Singh (Ranchi West—Reserved—Sch. Tribes): May I seek a clarification from you? The Speaker before this debate was initiated gave us the impression that the House would like to know the overall feelings of the Members of this House. Of course, I would not say that we do not want to hear what the Treasury Benches have to say. But the Leader of the House is in charge of this Bill. Although it was stated that fifteen minutes was the time normally allowed, and thirty minutes in exceptional cases, I find that an hon. Member of the Treasury Benches has already considerably exceeded thirty minutes. I want to know whether the House has to hear the opinion of the Treasury Benches all the time, or of the other Members.

Shri Velayudhan (Quilon cum Mavelikkara—Reserved—Sch. Castes): Whatever be the reason, he is continuing like that.

Mr. Deputy-Speaker: The hon. Member will bear with patience. The hon. Member Shri Jaipal Singh has raised apparently a point of order. But there is nothing like that. I have already called Shri N. C. Chatterjee, Shri H. N. Mukerjee, Shri Asoka Mehta, who are the representatives of the various groups—I am going to call the representatives of his group also—and then I called Shri Pataskar. Of course, I am not going to allot to any particular group more time than that to which it is entitled.

Shri Jaipal Singh: My point of order was ..

Mr. Deputy-Speaker: I am going to allow every section to have its say in this matter. Shri Pataskar has taken more time. Normally we allow more time than even 30 minutes to members of the Treasury Benches to explain the viewpoint of Government. That time will be allotted to the Congress group. Every section of this House which is certainly a representative section, will be heard in this House, before the debate closes.

Shri Jaipal Singh: I am afraid I have been misunderstood. My point was not how the time was to be disposed of of a particular group, and so on. That was not my point. My point was that it was numerical, that is to say, if a particular quota has been fixed for various groups, that quota is not to be taken by any particular individual, and more so, the Treasury Benches are already represented by the Leader of the House,

and we on this side certainly would like to hear more the viewpoint of the various other Members in the same group, than of a Member of the Treasury Benches.

Mr. Deputy-Speaker: The hon. Member cannot dictate to that group as to what they ought to do. It is for them to do so. And they have put up the Minister in the Ministry of Law as their spokesmen. There is nothing objectionable in that. The hon. Minister can have as much time as he wants. I shall deduct that time from that allotted to the Congress group. I am not going to allow more time to the hon. Minister than what is allowed to the group as a whole, if they agree to put him up.

Shri Pataskar: I do not want to take any more time. I am sorry if in the course of the discussion there is a feeling that I have taken more time than half an hour, but I thought that it was my duty.....

Shri Jaipal Singh: Not a question of feeling; you have taken more time.

Mr. Deputy-Speaker: The hon. Minister is entitled to speak. I shall allow him to take fifteen more minutes. Other Members from the Congress group will try to restrict their time. I will not allot more time to the group as a whole.

Shri Pataskar: I shall conclude with this appeal to hon. Members. It is because I wanted to reply to the criticisms raised by three or four leaders of the Opposition groups, that I tried in my own way, in the best way that I can, to explain the implications of the constitutional provisions, and how they have not been very correctly interpreted, and why the necessity of this Bill is there. That is what I wanted to say. I do not want to take any more time of the House.

Shri Bogawat (Ahmednagar South): Does he not think it proper to include here nationalisation of any industry, if Government want it? After the declaration of the goal of socialistic pattern of society, there is no provision to that effect here. Does he not think it right to include a provision for nationalisation here?

Shri Jawaharlal Nehru: The hon. Member's question has nothing to do with the matter we are concerned with here.

Mr. Deputy-Speaker: When the hon. Member gets an opportunity, he may say what he wants.

Shri Frank Anthony (Nominated—Anglo-Indians): Before I deal with the points which are really relevant to the discussion, I feel I should express my regret over some of the very unfortunate views which have fallen from certain Members, particularly, from the Communist Benches; I feel they tried to throw out certain unworthy jibes both at the judiciary and at lawyers as a class. I can understand this kind of unworthy jibes emanating from my Communist friends, committed as they are to effacing the rule of law and obliterating all remnants of individual liberties, and as I say the law courts and the lawyers are the greatest bulwarks of the rule of law in this country and as such they are perhaps anathema to my Communist friends.

I am going to seek to bring the Members of this House back to an objective appreciation or assessment of certain basic juridical concepts. We have been treated as I expected to not a little of political tub-thumping and competition in political slogan-mongering. The Communists and the Socialists seem to have entered into a competition as to who should out do the other in this kind of political cliche-mongering. My submission to my Congress friends is this, that we are seeking not only to amend the Constitution but we are seeking to amend one of the most vital fundamental rights, and when that happens, our approach should not be conditioned by any kind of superficial political obsessions.

My first submission is that there is considerable confusion as to what

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precisely we are seeking to do under this amendment. My own feeling is that Government, without perhaps appreciating it, are confusing the exercise of police powers with the exercise of eminent domain. My hon. friend the Minister in the Ministry of Law—quite frankly, I did not follow his line of reasoning, to my mind it was palpably untenable, and apart from the rather gratuitous pointing of a finger at the Supreme Court, I for one was completely unable to understand his process of reasoning—sought to make us accept the proposition that both articles 31(1) and 31(2) were intended by the framers of the Constitution to be nothing but an exercise of police power.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

I would not say that that submission is absurd, but I say it is palpably untenable. I find my hon. friend the Minister of Commerce and Industry is also shaking my head. I am sorry; I mean he was shaking his head in protest against the proposition advanced by the hon. Minister in the Ministry of Law. But I have to say this. I do not want to be too legalistic in my approach. But I do not think that so far as article 31(1) is concerned, which says that there should be no deprivation of property except by procedure established by law, the proposition advanced by the hon. Minister in the Ministry of Law would be absurd. According to him, that represents a statement of an exercise of police power. My submission is that the dominant motive of article 31 was to protect the right of property, and when the judges of the Supreme Court have read into it that motive, they have done nothing but actually to bring out or evolve what was the intention of the framers of the Constitution. My hon. friend said that article 31(2) is a case of exercise of police powers. I do not understand it.

Shri C. C. Shah (Gohilwad—Sorath): He did not say that.

Shri Frank Anthony: He did say that.

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): He did not.

Mr. Chairman: He said that only with regard to article 31(1).

Shri Frank Anthony: May I be allowed to develop my point? He also said that article 31(2) was merely a statement of police powers, because compensation there was entirely within the discretion of the Legislature, and that the Supreme Court erred in saying that compensation should be just compensation. My submission is that the proposition is self-evident. Article 31(2) prescribes two conditions; it prescribes a public purpose, and it prescribes compensation, which the Supreme Court has rightly interpreted as meaning full compensation. The matter has been canvassed in several judgments.

There is an extract here from a very able speech made by Shri N. C. Chatterjee—I do not weary the House by reading it. There is a judgment of the Patna High Court; there is also a quotation from Nichols' treatise on *Eminent Domain*, where it is said the word 'just' would be tautologous. Compensation can only be good compensation; there cannot be varieties or degrees of compensation. The Supreme Court has explained it in simple meaning.

An Hon. Member: Why not?

Shri Frank Anthony: Because that would be a negation of plain meaning of it. "The phrase 'just compensation'"—I am reading from Nichols' *Eminent Domain*—"means the value of the land taken and the damages, if any, to the land not taken....It has been said in this regard that it is difficult to imagine an 'unjust compensation'". I will develop this further by referring to article 31(5). Article 31(5) (ii) definitely deals with police powers. It says:

> "Nothing in this law shall affect the provisions of any law

which the State may hereafter make for the promotion of public health or the prevention of danger to life or property".

My submission is that the framers of the Constitution categorically provided for eminent domain both in article 31(1) and in article 31(2). They provided amply for police powers in this exception under 5(b) (ii). Now, what are we seeking to do? I did not understand Shri Patas-kar's submission at all. He said that what we are doing is that we are merely clarifying the police powers of the State. Why are these amendments being sought to be included in article 31-A? Because the Government accept the position that all these further powers that they are assuming to themselves are in pursuance of their powers of eminent domain. Article 31-A is meant specifically as an exception to article 31(2). It was recognised by Government when they brought this exception into being that since they were purporting to act in exercise of their right of eminent domain, they would have to have this exception; otherwise, they would have to give just compensation. And the Government admit that thesis as soon as they are taking steps merely to enlarge the powers under article 31A.

That was my original submission to the House, that what we are seeking to do now is further not only, to enlarge the powers of the Government, but, what is much more important, to qualify a vital fundamental right which has been given in Part III to all citizens.

I do not know what the approach of the Members of the Congress Party as individuals may be, but I would ask them to look at this matter from as objective a point of view as possible. First of all, under their powers of eminent domain, the Government can only exercise those powers under two conditions: there must be a public purpose and there must be full compensation. Now, so far as public purpose is concerned, the Supreme Court have held that the opinion of the Legislature will carry due weight, although they do not entirely abdicate their power to assess whether, in fact, there has been, or there is, a public purpose. So far as compensation is concerned, it is completely justiciable. That is what we are seeking now to repeal—the element of justiciability. I am not dealing with this matter in any juridical, academic or legalistic way; I am dealing with a certain fundamental concept, and I say that unless we recognise certain fundamental juridical concepts we will be in danger not only of emasculating our Constitution, but emasculating what should have been the juridical, basic structure of any civilised society. Government admit that they are acting in exercise of their powers of eminent domain. There should be a public purpose—that is justiciable. There must be compensation—that should also be justiciable. Now, we are seeking to take completely outside the purview of the courts, we are seeking completely to oust the jurisdiction of the courts, in respect of this more important aspect, namely, justiciability of compensation. That is why we have to scrutinise this. I am not saying—that is going to be my submission to this House—that all the provisions are bad, that all the provisions are condemnable. I am asking every Member to apply his mind to the best of his ability and to see to what extent there is an unnecessary invasion of this basic, vital fundamental right which has been categorically guaranteed by the framers of the Constitution.

Some one, I believe, made the point —why should we not trust the Legislature? Now, this is a completely fallacious line of reasoning. No one distrusts the Leader of the House. No one distrusts persons, but when we are dealing with certain fundamentals, when we are dealing not only with legislation but with our Constitution, when we are purporting to legislate on a permanent basis, we cannot think in terms of persons or personalities; we must not think in

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terms even of parties. The *raison d'etre* of the Constitution would have been non-existent if it was a question of trusting the legislature. We have deliberately—so far as Parliament is concerned—abdicated our sovereignty in favour of the sovereignty of the Constitution. Why did the framers of the Constitution do that? In all their wisdom they categorically, in doing that, asserted the proposition that we cannot, and we must not, trust the Indian legislatures. Until we develop a genius and a respect for the rule of law, we must have these categorical restrictions placed on legislative tyranny or legislative abuse or legislative impatience.

It is against this background that I want very briefly to analyse some of these provisions in this proposed amendment. So far as the proposed article 31(2A) is concerned, my friend, Shri N. C. Chatterjee, has already pointed out the fact that the reason given in the Statement of Objects and Reasons is not correct. I do not know what point Shri Pataskar was trying to make out, but I think he completely missed Shri N. C. Chatterjee's point. Shri N. C. Chatterjee was on this point that it is a complete misreading of the Supreme Court judgment to say that the Supreme Court equated any curtailment of a right with deprivation of a right. On the other hand, they postulated a completely contrary proposition. The Supreme Court have held that any curtailment of a right is not a deprivation of a right. It is only that curtailment of a right which, in fact, deprives a person of that right that can be construed to be deprivation of the right. But I am merely pointing out this incorrect view taken in the Statement of Objects and Reasons; I am not going on further to suggest that article 31(2A) should not be there. If the House feels that we should clarify the position, certainly the House should be competent to clarify the position. But I feel that article 31(2A) imports something which would completely negate and stultify the guarantee to property contained in article 31. That is my submission, that article 31 was meant to be a guarantee in respect of a fundamental right in respect of property. Now, article 31(2A) gives blanket powers to deprive; no kinds of restrictions, no kinds of qualifications are set.

I want to read it out to the House:

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

Now, what are we doing? If left in its present form, it will mean every form of deprivation, deprivation which is much wider and more complete than acquisition or requisitioning of property provided the State does not take a beneficial interest. It can be done and there is no compensation and there is no public purpose. That is what I do not understand. I will give an example. I would like to be corrected. Under this, the State may say that Mr. Jawaharlal Nehru's house will be transferred or will be deemed to be the house of Mr. Frank Anthony. Mr. Jawaharlal Nehru may be able to afford that transfer.

An Hon. Member: Not the office.

Shri Frank Anthony: There can be deprivation provided there is no beneficial interest taken by the State. The Prime Minister may afford to have the transfer. But, I am putting it to you, what will be the effect if the shoe were on the other foot and it is said that Mr. Anthony's house shall be transferred to Shri Jawaharlal Nehru. There is no public purpose; there is no qualification and there is no question of compensation.

Almost unworthy remarks were directed against the lawyers and it was said that they are the last remnants of vested interests. I do not

know. I suppose there are lawyers also in the Communist Party. I suppose they represent the element of vested interest in the Communist Party, but it is not a question of anybody arguing the case of vested interests. I am only pointing out what can be done. There is no point in saying that we will not do this and we are not going to do this. What powers are you investing the Legislature with? Here is a blanket power of depriving provided the State does not take a beneficial interest. Then there is no question of public purpose, there is no question of compensation. I do not say that you should not have this but I do say, don't have it in its present form. I do not think it is the intention of the persons who framed this measure that this kind of blanket power of depriving without public purpose should be there.

Then, we have 31A (b) and (c).

> "the extinguishment or modification of any rights in estates or in agricultural holdings, or the maximum extent of agricultural land that may be owned or occupied by any person and the disposal of any agricultural land held in excess of such maximum, whether by transfer to the State or otherwise...."

So far as these are concerned, I think we should categorically provide for a public purpose. No one of us is against this kind of legislation where a public purpose has to be subserved. But, in its present form it means that under (b) and (c), certain things can be done although they have no relation to any public purpose. The Supreme Court may or may not import the condition of public purpose. But when we are holding out that the purpose is some kind of social legislation, obviously, it will be used to advance some public purpose. Why should we not categorically say that these things should be done and we are excluding compensation? But, let us at least say that these things should be done for a public purpose.

So far as (d) is concerned, namely, the acquisition or requisitioning of any immovable property for the relief or rehabilitation of persons displaced from their original place of residence, no one questions the laudable motive in this. But, we cannot achieve that commendable purpose by doing something which is not commendable. Under this present provision in its unqualified form, the public purpose is there and you are going to rehabilitate somebody. I am not talking of the Birlas and the Dalmias. But there may be a very poor man and in its present form it is just possible that that poor man's house—however small or poor he may be—can be taken in order to rehabilitate some person. We may put some qualification to it, that only the house of persons who enjoy a certain income can be taken. There may be some kind of qualification. In its present blanket power, it will leave power in the hands of the State to confiscate property of people who are poor. It is for a worthy purpose but the procedure would not be acceptable.

Then, there is (h), the extinguishment or modification of any rights of managing agents, managing directors, directors, managers or shareholders of companies. I am not dealing with the managing agents and those people. These represent the vested interests and somebody else can hold the brief on their behalf, the Communist lawyers, perhaps. But the reprehensible feature is this. The rights of the shareholders can be extinguished or modified. There is no qualification of public purpose. However small the shareholder may be, however humble or poor he may be, without any qualification as to public purpose, without any reason, his rights in the shares can be either extinguished or modified. I do not think that is the intention. But, here again, we are not questioning anyone's intention. It is a question of what powers we are giving under the Constitution. If we do not intend that small shareholders, poor people should

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have their rights extinguished or taken away, then we should categorically provide for it in this.

I have to say this. I am not opposing all the proposed amendments. I am only trying to point out certain lacunae and I say that we should make provision in the Joint Committee for preventing confiscation, at any rate, in respect of the not overwealthy classes. There is also this consideration to be made that in its present form we are sanctioning the expropriation in a blanket manner. What is going to happen to the incentive to hard work? The Prime Minister is always telling us—and quite rightly—that we must work hard. It may be good philosophy to say that we should work hard. People do not work hard in a vacuum. They do not work for the sake of working hard. They work hard because they want to achieve something. If tomorrow I felt that the results of my working hard, the house that I am building by working for 16 hours a day sometimes, the shares that I am acquiring, all that can be expropriated, the whole incentive to hard work in this country will be destroyed. But that is not the purpose of this amendment and that is why I suggest that we should bring in the necessary qualifications to this amendment. We do not want to destroy the incentive to hard work in this country. We do not want to take away the shares of small men. We certainly do not want to confiscate the house or property of a poor man. It is all permissible in its present form. My objection is basic one in the sense that I do not say that the Constitution is absolutely sacrosanct; no; but, we have to apply our minds to the Constitution *pari passu* the developments as we find them taking place. But, still we have got to remember this basic idea. There are two basic ideas which underlie any civilised society. The first one is the rule of law. And, the rule of law predicates that it is the courts that must ultimately be the interpreters of the law and the guardians of the rights of the individual. We must be very careful when we are seeking to erode the rule of law. That erosion must be to the minimum extent. We are dealing here with the jurisdiction of the courts. It should be the duty of every one of us to see we erode to the minimum extent necessary. (*Interruption*). What else are we doing? We are not only eroding but we are abrogating the fundamental rights as far as these amendments are concerned. Articles 14 and 19 are abrogated. That places an inescapable duty not to accept it blindly, but to analyse it. I do not think any one wants to stand in the way of social welfare legislation, but let us analyse every provision and see whether that provision or part of it is absolutely essential. My friend Mr. Asoka Mehta or my friend Mr. Mukerjee—I think it was Mr. Mukerjee—questioned the motive of the Prime Minister. He said that the Prime Minister was running with the hare and hunting with the hound, or perhaps my friend, Shri Asoka Mehta, said so. These kind of remarks are not only gratuitous but unworthy. We tend to be overborne by all these dogmas. Some people do not like pointing to other countries, but what has been done in Britain? They have achieved a Welfare State and they have achieved it by striking a balance between the welfare of the masses and respect for the rule of law and, above all, respect for fundamental liberty, and that is the balance I am asking this House to strike. I am not saying that we should not achieve a Welfare State in this country, but we must not achieve it by short-cuts and we should not achieve it at the expense of eroding the rule of law and at the expense of a gratuitous abrogation of liberty of the citizen. That is the plea that I am making for securing your objective of a Welfare State by maintaining the paramountcy of the rule of law and also your fundamental rights.

Dr. Krishnaswami (Kancheepuram): I believe all sections of the House are overwhelmed by the importance of the Constitution (Fourth Amendment) Bill that has been moved by the Leader of the House. Outside, a great controversy is raging over certain aspects of the Constitution (Amendment) Bill and it would be worthwhile if we met the criticisms that are voiced outside and find out what justification is there for them. The criticisms fall under three heads: What is the need for amending the Constitution within five years after its inauguration? How were the Constitution-makers proved to be wrong within a brief span of five years? What would be its consequences from the point of view of promotion of social reform, growth of private enterprise, industrial initiative and private property?

To understand the present amendment, it is necessary to undertake a brief legislative history of the provisions relating to property and acquisition of property. Articles 31(1) and (2) are a faithful reproduction of sections 299(1) and (2) of the Government of India Act of 1935. The Constitution-makers were aware of the rights of property and though they attached great sanctity to such rights, they did not consider them to have an absolute value. They took into account the law on the subject; they took into account the decisions that had been given by the Privy Council on cases arising under sections 299(1) and 299(2) and they probably considered that such decisions formed part of the corpus of the law of eminent domain. Indeed in 1946, a case went up before the Privy Council involving the extinguishment and modification of the rights of the Oudh Talukdars, and Lord Wright, in his judgment, says —and I believe it is worthwhile quoting it:

> "The appellant relies on certain express provisions of the Government of India Act, section 299, which provides that no person shall be deprived of his property in British India save by authority of law and that neither the Federal nor the Provincial Legislature shall have power to make any law authorising the compulsory acquisition of land for public purposes save on the basis of providing for payment of compensation. But in the present case there is no question of confiscatory legislation. To regulate the relations of landlord and tenant and thereby diminish rights hitherto exercised by the landlord in connection with his land is different from compulsory acquisition of the land."

Lord Wright has given this decision at a time when there was no freedom here, at a time when the concept of a secular State or a Welfare State was not in the air, and it was, I suppose, assumed by the Constitution-makers that the Supreme Court in interpreting article 31(1) and (2) would probably take into account the decisions of the Privy Council. It is not for me to question the interpretation of the Supreme Court, but certainly the consequences of such an interpretation have to be taken into account by the Legislature. The Supreme Court in its anxiety to give a more extended meaning to the bundle of rights of property, has ventured to suggest that any sort of modification or extinguishment will involve compensation. It would have made social legislation impossible. It would have put us into very great difficulties and from the point of view of the present legislation, what is important to realise is that section (2A) which is put in here in this amending Bill is nothing else but a reversion to the old principles enunciated by Lord Wright when he propounded that decision in the Privy Council. There is nothing revolutionary about it. Listening to my friend who preceded me, I began to wonder whether he was acquainted with the past development of case law on the subject. I wondered whether as a result of the freeing of the Supreme Court from the fetters of appeal to

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the Privy Council, we had not possibly gone to the other extreme of it. Indeed, if the truth can be told, there is nothing else but a reversion to the original interpretation which was hit upon previously by the Constitution-makers. I do not think that there need be any cause for alarm. I am mentioning this point because there is a tendency in certain circles to rouse a great deal of controversy over anything American. It is no use going to the Australian Constitution. Those of us who know anything of the Australian Constitution realise that so far police powers are concerned, that is the last Constitution to which we shall go. It is something if we went to the American Constitution where there is the question of police power, but before I consider this question at some length, I should like broadly to summarise only two or three powers which are inherent in any sovereign State. They are eminent domain, police power and taxing power. Police power and taxing power, as everyone knows, do not involve the payment of any compensation at all; they are inherent in sovereignty and they are exercised by the State for promoting certain beneficial purposes. Some brief excerpts from the judgment of the Supreme Court of the U.S.A. may possibly give an impression of the magnitude and the extent of the police power. In a classic case it has been stated that the extent of the police power is not susceptible of circumstantial precision. It extends not only to regulations which promote public health, morals and safety, but to those which promote the public convenience and the general prosperity. Governmental power must be flexible and adaptive, but the police power has its limits and must stop when it encounters the prohibitions of the Federal Constitution. The other is the description of the quality of the police power. The essential quality of the police power, which has been referred to by Justice Holmes, as a governmental agency is that it imposes upon persons and property burdens designed to promote the safety and welfare of the general public. It may be thought that if we too extended the meaning of police power, it would overlap and swallow the power of eminent domain. The great problem is to reconcile the claims of eminent domain with those of police power and that is the function which the Constitution (Amendment) Bill seeks to perform. Although there are certain criticisms of detail which might be made, I think, on the whole, it has succeeded in the objectives which it has put forward. I should like to point out as a preliminary that if we have an extended meaning given to the power of eminent domain, no social legislation would be possible. If it is suggested that everything which is deprived should be followed by compensation and compensation should be on market principles, no social welfare legislation can be promoted. On the other hand, if we exercise the police power and say that everything that is done by police power does not involve compensation, that might lead to a complete denudation of interpretation and thrift on which we rely. I therefore feel that the ambit of police power is something which has to be determined. My hon. friend Shri N. C. Chatterjee who is not here said that it had been determined by the Supreme Court. I venture to differ from him. Decisions on the ambit of police power have been most conflicting and confusing. In the Chitaranj Lal case which came up in 1951, the judges of the Supreme Court held on the very same facts that it was a reasonable restriction and that it was in the public interest and that no compensation need be paid for the management being taken over by the Government. I do not want to go into the merits of that decision but the fact of the matter is that on these facts they considered it as an exercise of police power. Within three years, the Supreme Court reversed the decision and held the view that any deprivation of property other than those authorised under article 31(5) was tantamount to acquisition and therefore compensation should be paid. I

want to ask my friends who have made the point that we should respect the judgment of the Supreme Court, whether the time has not come for the legislature to step and clarify the ambit of police power. If within three years, the Supreme Court can give two conflicting decisions on precisely the same facts, who is to intervene except the legislature and if the legislature has sufficient numbers and influence to promote a constitutional amendment, why should not a constitutional amendment be promoted in this House? I believe that in all these matters the latter decision of Justice Mahajan is accepted; I am not going into the interpretation of article 31(1) and (2). Judges are of course the final authority on the methods of interpretation to be adopted. But the consequences of that interpretation would have been absolutely disastrous from the point of view of development of society. If it is considered that a deprivation of property other than those which fall under article 31(5) should be compensated in every case no social welfare legislation, no social progress, would be possible. Everything would be held up. In the long run even the private property which our hon. friends seek to protect will have to pay for it by facing complete destruction at the hands of revolutionary chaos. It is a point which has to be taken into account and therefore from the point of view of amending this Constitution, we have to consider what exactly we ought to do. The constitutional amendment has to envisage the defining of the police power of the State and at the same time providing for the co-existence of the power of eminent domain. How is the co-existence of the power of eminent domain provided in the present amendment? I should like briefly to refer with your permission to two chapters which are of vital importance in this Constitution. They are the Chapters on Fundamental Rights and Directive Principles. I agree that in the event of a conflict between fundamental rights and directive principles, the fundamental rights being justiciable should necessarily prevail over directive principles. But it ought to be the aim of statesmanship and it ought to have been the aim of the judiciary—and this is not said as a criticism—that when the directive principles form part of the State, both should have been taken together, read together and given an interpretation so that a harmonisation of the two was possible. While I agree that the fundamental rights cannot be whittled down, at the same time the purpose cannot be achieved by treating the directive principles as things of no consequence at all. It is here that I should like you to remember that we have to harmonise the directive principles with the fundamental rights. If the attainment of the directive principles is jeopardised by the fundamental rights, or by a construction by courts of law which tend to think that the directive principles are things of no consequence, then the legislature should intervene to prevent such destruction for they are essential part and parcel of the Constitution. At the same time I should like to suggest that fundamental rights, if they are to be curtailed, have to be curtailed to an absolutely necessary minimum for the purpose of giving scope to the directive principles. How has this been done? For, it is obviously of great importance to know what exactly the limits are, the extent to which fundamental rights are curtailed to determine the amplitude and the ambit of the police power which has been assumed under article 31A. I do not know whether my hon. friends realise that the present legislation is a constitutional innovation of a rare type because in seeking to harmonise the fundamental rights with the directive principles the legislation has laid down the ambit of the police power in well-defined categories in article 31A. The categorisation of police power is an innovation in Constitutional law. It is quite different from what it is in the United States of America. Such categorisation gives scope for the exercise of police power and at the same time keeps it within well-defined limits as is quite proper and as is in

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conformity with the doctrine of co-existence of the power of eminent domain. I should like to point out that except for one special clause all the police powers are exercisable with direct reference to the directive principles. The law passed by the legislature under the enabling provisions given in this constitutional amendment must conform to the requirements laid down in categories. Who is to judge whether the legislation conforms to the requirements laid down in a category or categories? Obviously the legislature cannot be the final judge of the validity of a law that has been passed. The courts of law are undoubtedly precluded from going into questions of compensation. But they are not debarred from examining the validity of a law; whether a particular law falls within the category of police powers or not is vouchsafed to the legislature under the present Constitutional amendment. I therefore feel that the doctrine of ousting of jurisdiction of the courts of law that have been advanced with so much force by my hon. friends here is not really appropriate and does not really go to the heart of the matter. I believe that when you consider the question thoughtfully, you will find that the courts of law have got full jurisdiction to go into this matter of what the ambit of legislation is, to find out whether a particular law falls within the ambit of police power and in what category and also to realise how far that particular power has been exercised. Indeed the very fact that the courts are precluded from going into the question of compensation and there is immunity of attack on that score gives a greater function and a greater scope to courts of law to go into all these matters of legislation to find out whether it is really within the police power and also to vindicate whether the law has been passed *bona fide*. Therefore, from this point of view, the courts of law have a right to examine the chief criteria on which the legislature passes particular enactments. Nobody is precluded from examining such legislation. I think it is a very healthy and salutary check on the legislature. Otherwise, we will have the case of legislatures being tyrannical in many instances and really attempting to swallow up and use these powers where they should not be used and then making it very difficult for people to survive. I presume that courts of law will go into the legislative history of particular enactments and the reasons that the legislature had for enacting them and this will be taken into account when the validity of the measure is called into question in courts of law. I am satisfied that courts of law will have a very great power.

4 P.M.

There is one matter on which I am not fully convinced. Supposing for instance the legislature through indirect means tries to promote that which it is not allowed to promote by direct means. Well, the courts have the power. Some people hold the view that the doctrine of colourable legislation can be invoked in this connection and the legislation can be struck out on the ground that it is colourable. But those who have studied Canada's constitutional law would realise that the doctrine of colourable legislation was invoked only for the purpose of finding out whether a particular legislation fell within the competency of one State or the other. I however feel that there is nothing to debar our courts of law from going into this matter and striking out a legislation if it is *mala fide* and not *bona fide*. No one need think, or no one need assume, as some of my friends have suggested, that if the legislation is immune from the attack on the ground of not giving compensation, courts of law would be reluctant to intervene. Indeed the Bihar Zamindari Act was struck out on the ground that the compensation was of an illusory character and therefore, the courts were precluded from going into the adequacy of compensation. But there was nothing to prevent them from entering and taking a detailed analysis of

how this legislation should be permitted. There is also this particular matter which I would recommend to the Joint Committee to really go into. While I am sure that full power has been given to the courts, yet it may be necessary to have, from the point of view of abundant caution, a clarification making these powers even more explicit; not that the jurisdiction of the court will be increased by making such a clarification, but that it would be a warning to the legislature to keep within well-defined limits and to exercise police power according to the directive principles which is really made the object of this legislation.

I referred a few minutes ago, Mr. Chairman, to the fact that there was one sub-clause in this particular Bill to which I took strong exception. I should like, with your permission, to read it out and then give my observations on it. I refer to clause (e).

Sub-clause (e) reads:

> "the acquisition or requisitioning for a public purpose of any land, buildings or huts declared in pursuance of law to constitute a slum or of any vacant or waste land or"

Now, I can understand the acquisition or requisition for the public purpose of any land, buildings or huts declared in pursuance of law to constitute a slum; that falls under Directive Principle, article 38, 39(c) or 46. But, what I cannot understand is the presence of vacant land. Waste land also I can understand because that should be utilised for a beneficial purpose. The Statement of Objects and Reasons is explicit in this matter, but unfortunately the draftsmanship seems to have been poor. It has been pointed out in the Statement of Objects and Reasons that the proper planning of urban and rural areas require the beneficial utilisation of vacant and waste lands and the clearance of slum areas. How has this beneficial purpose been actually specified in the sub-clause? Vacant land here seems to be an inter-loper. For instance, according to the Bill as it stands, vacant land can be acquired in flagrant contradiction of the directive principles. Whereas we have tried to hedge in all the other things with reference to directive principles, I do not think we have done the same thing in the case of vacant land. One may assume in the distant future that on a certain occasion vacant land might be requisitioned purely for the purpose of building houses for government officials.

Shri Gadgil: That is not requisitioning; that is 'acquisitioning'.

Dr. Krishnaswami: That, particularly, is not in conformity with the directive principles or in conformity with the social welfare State which we have in view. Therefore, what I do suggest is that the Joint Committee should consider qualifying this word as 'vacant arable land' or 'vacant land taken over for the purpose of building a township' or 'for the purpose of building houses for the economically weak' or something like that which is found in the directive principles, article 46. That would give, for instance, the real scope and ambit of this power. If it is left as it is, it may be most arbitrary. My friend is shaking his head. There is no use of my friend shaking his head. He has after all to visualise the contingency which might occur a few years hence. When we think of constitutional amendments we must think of possibilities which would ensure say 10 or 15 years hence.

Acharya Kripalani (Bhagalpur *cum* Purnea): Has he not got the right to shake his head?

Dr. Krishnaswami: If he has got a right to shake his head then I have got the right to comment on his shaking his head and my hon. friend has the right to comment on what I have commented.

Shri Jawaharlal Nehru: And to further shake his head.

Mr. Chairman: I would like just point out to the hon. Member that in sub-clause (e) we have got 'acquisition or requisitioning for a public purpose'.

Dr. Krishnaswami: I am indebted to you, Mr. Chairman, for pointing out 'public purpose'. That 'public purpose' is too general, whereas in the case of other items you will find 'public purpose' on any land, buildings, or huts declared in pursuance of any law to constitute a slum...

Mr. Chairman: ...or of any vacant land etc. So, 'public purpose' is applicable to both.

Dr. Krishnaswami: 'Public purpose' is too general. It is always to be found in every one of the sub-clauses.

Shri Frank Anthony: No.

Dr. Krishnaswami: I will tell you.

Mr. Chairman: If it is too general for land, huts etc., it is similarly so with regard to waste or vacant land.

Dr. Krishnaswami: I should like to say that it can be, but I should like to point out that the acquiring of vacant land with the intention of giving effect to the directive principles should not be there. That is exactly my doubt in that matter and courts of law would be handicapped because they cannot resort to the doctrine of separating certain clauses from the Constitution and striking them out as void as they are part of the supreme law. It may also give a very arbitrary power to the executive and it is totally out of harmony with the purpose of categorisation of police power which has been attempted. Of course, if my hon. friends in the Joint Committee want to define those categories even more precisely, like giving amplitude to the legislature to legislate on this matter, that would be welcome, but on general grounds, I hold the view, Mr. Chairman, that this is a legislation which is perfectly in keeping with the modern times and which I think, subject to certain amendments, would constitute a milestone in the history of our Parliament. It was Lord Action who pointed out in a classic passage which I would bring to the notice of the House and which is worth quoting and remembering even by those who believe in a mechanistic society ruled by the principles of dialectical materialism: "The fate of every democracy, of every Government based on the sovereignty of the people depends on the choice it makes between these opposite principles: absolute power on the one hand and on the other, the restraint of legality and the authority of tradition". I believe that in this particular enactment, this legislation seeks to canalise the demands of economic and social change and it seems to make it possible while preserving the restraint of legality and the authority of tradition. The absolute power of a democracy can be a formidable tyrant precisely because there are no prior claimants to power, but in this constitutional amendment it has been placed under valuable legal restraints essential for the continuance and growth of a secular democracy.

Shri C. C. Shah: This is a very important Bill and it becomes necessary for us to satisfy ourselves as to the absolute necessity of it before we can give our consent. It deals with the amendment of Fundamental Rights and amendment of Fundamental Right relating to property. Therefore, it calls upon us to re-examine or to reapproach the Right to Property guaranteed under the Constitution.

This amendment has become necessary by reason of certain interpretations put by the Supreme Court on articles 19 and 31 and in order to be able to judge exactly the necessity for this amendment I would take the time of the House, a little, to give a brief summary of some of those cases which have necessitated this amendment. Shri N. C. Chatterjee referred at length to the Sholapur case and he thought that we were, by over-ruling the Sholapur case, disrespect to the Supreme Court. I submit that there is no question of any disrespect to the Supreme Court. It is a wrong approach to say that any amendment of the Constitution is a disrespect to the Supreme Court. We are entitled to amend the Constitution if we find that either the interpretation put by the Supreme Court

is wrong or that it does not carry out our intention. Therefore, it would be wrong to say that there is any conflict between the judiciary and the legislature in the amendment which we are making. In fact, the judiciary has a very important place in our Constitution. But, the legislature has an equally important place in our Constitution, perhaps, a more important place. Therefore, while we respect all the importance which is given to the judiciary, we refuse to be told what we can and we cannot do. Therefore what I wish to point out is that the interpretation of the Supreme Court on article 31 is very wide.

My hon. friend Shri N. C. Chatterjee took exception to two statements in the Statement of Objects and Reasons. I point out that that exception was entirely wrong and that the statements in the Statement of Objects and Reasons is a correct statement of the interpretation of the Supreme Court's judgments. I shall take up the Sholapur case first. I shall only summarise the facts as given in the judgment of Justice Fazl Ali. It is one of the largest mills in Asia employing 13,000 employees. It suddenly stopped working in August 1949. A situation was created by which the closure of the mill meant a loss of 25 lakh yards of cloth and 1½ million yards of yarn per month, and unemployment of 13,000 people. The shareholders of the company petitioned to the Government of Bombay to investigate into the affairs of this company and the management by the Board of Directors and by the managing agents. Two competent inspectors were appointed. Both the Inspectors' report revealed certain astounding facts. Throughout the mill had been grossly mismanaged by the Board of Directors and the managing agents. They have also revealed that the persons who were responsible for the mismanagement were guilty of certain acts of omission which brought them under the purview of the law. That was the position. What was the Government to do? The shareholders petitioned to the Government to take action in the matter. The shareholders were helpless. They could not do anything because the managing agents held the majority of the shares and therefore the controlling interest. The minority of the shareholders who were being ruined by the gross mismanagement by the managing agents applied to the Government to take action. The Government intervened. What did the Government do? All that the Government did was to take over the management in the interests of the company itself. Government sought to derive no benefit out of the management. It is true that the Government removed the Board of Directors because the Board of Directors was guilty of mismanagement. It is true that the Ordinance removed the managing agents because they were guilty of mismanagement. It is true that the Government deprived the shareholders of their right to vote because the controlling interest in the shares was held by the managing agents. The minority of the shareholders were helpless. So, an Ordinance became necessary because of the situation that had arisen. The action which the Government took was to continue supply of an essential commodity and prevent unemployment.

A shareholder applied to the Supreme Court for a declaration that this Ordinance was invalid and void. He attacked it on two grounds: firstly, that it was a discriminatory piece of legislation because it applied only to one company and not to other companies. He also attacked it on the ground that it deprived him of his rights as a shareholder and no compensation was paid to him. Three Judges of the Supreme Court came to the conclusion that it was not a discriminatory piece of legislation. But Mr. Justice Fazl Ali was at pains to point out that Government could not have done anything in the circumstances which existed and that the Government did the right thing. Mr. Justice Patanjali Shastri, as he then

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was, thought that there was hostile discrimination. That was his judgment. But, the majority view was different and they threw out that petition. Another shareholder filed a suit again for a declaration that the Ordinance, and the Act passed thereafter, were invalid. The Judges of the Supreme Court came to the unanimous conclusion that the Act is invalid and that the Ordinance is invalid because it deprived the shareholders of their right and it deprived the company of its management and therefore, though it was a regulatory piece of legislation, although the Government neither acquired nor requisitioned the property nor derived any benefit, they said that taking possession amounted to acquisition or requisitioning and therefore deprivation of property and therefore compensation must be paid. Compensation is to be paid to whom? The property remained the property of the company. The shares of the shareholders remained the shares of the shareholders. The benefits derived out of the management of the company went to the shareholders. Compensation for what, to whom?

Shri Gadgil: For mismanagement. Putting a premium on mismanagement.

Shri C. C. Shah: Yes. Justice Mahajan in his judgment says that the mismanagement is not a vice peculiar to this company, nor good management the virtue of all other companies. According to that logic, it was wrong to take action against one company which was grossly mismanaged unless we take action against all companies which were mismanaged.

This suit was tried by Shri Bhagwati, Judge in the Bombay High Court. He held that the Ordinance was valid. On appeal, Chief Justice Chagla and another Judge came to the conclusion that the Act and the Ordinance were valid. The Judges of the Supreme Court came to a different conclusion and held that the Ordinance was invalid. Four years after we passed that Act, we were called upon to hand back the company to the same managing agents. This is one judgment that calls for this amendment.

The second judgment which calls for this amendment is that in Saghir Ahmed *versus* the State of U.P. in which the U.P. Government passed the U. P. Road Transport Act and acquired the monopoly of the Delhi Bulandshahr route. The Government did not grant permits to private bus owners and exclusively reserved to themselves the right to ply their own State buses over that route. There was a petition challenging that Ordinance on the ground that it was void because it abrogated the right of trade and profession conferred under article 19(1)(g) of the Constitution. The Allahabad High Court came to the unanimous conclusion that it did not offend that provision, that it did not also amount to any deprivation of property under article 31 and so the Ordinance was valid. The Supreme Court came to a different conclusion and it may not be irrelevant to read a passage from the judgment of Justice Mukerjea. He says:

> "It is not enough to say that as an efficient transport service is conducive to the interests of the people, a legislation which makes provision for such service must always be held valid irrespective of the fact as to what the effect of such legislation would be and irrespective of the particular conditions and circumstances under which the legislation was passed. It is not enough that the restrictions are for the benefit of the people, they must be reasonable as well and the reasonableness would be decided only on a conspectus of all the relevant facts and circumstances."

He went on to say:

> "In the present case we have absolutely no materials before us to say in which way the establishment of the State monopoly in regard to road transport service in particular areas would be conducive to the general welfare of the public."

He held that merely because the private bus owners were not granted permission to run buses, though their buses remained their property and none of them were acquired or requisitioned, it was deprivation of property within the meaning of article 31 because they were prevented from doing their business which was their property, and therefore without compensating them for deprivation of their property, you cannot acquire the right of running buses on that route.

The third judgment was in Bella Banerjee's case. The Government of West Bengal in order to acquire certain lands for rehabilitating displaced persons from East Bengal passed a legislation. The amount of compensation which they fixed was on the basis of the market value of the land as on 31st December 1946. The legislation was passed in 1948. The Supreme Court held that because you are ante-dating the market value by two years, you are paying them something less than the full market value under article 31(1), and 31(2) and unless you pay the full market value you cannot acquire or requisition any property.

Shri Gadgil: There is no reference to market value.

Shri C. C. Shah: No. I need not read the judgment of Shri Patanjali Sastri and take up the time of the House.

Then there was the case of Subodh Gopal Bose in which one man purchased a certain village in a district and under an Act of 1859 of the West Bengal Government, he was entitled to annul the under-tenures and under-tenancies. That was an Act of 1859. The circumstances in 1948 were entirely different. When that man began to evict the under-tenurers and under-tenants the West Bengal Government found themselves in a hard situation, and so they passed an Act to prevent such evictions. The Bengal High Court came to the unanimous conclusion that this was a violation of article 19(1)(f). The Supreme Court came to the conclusion by a majority of three to two that article 19(1)(f) had no application to the facts of the case, but that article 31(1) applied, but that it was a reasonable restriction and would not amount to deprivation, and therefore it was valid.

Now, what is the situation which we face? The situation which we face is this: that in this uncertainty and conflict of judicial decisions on a matter of such vital importance as relating to property rights, when we are undertaking large-scale social welfare legislation, are we to leave it to the uncertainty of judicial decisions for all time to come, or, are we to do something about it in order that such uncertainty and the delay attendant upon it may not interfere with our important legislative programme. That is the real issue, and to say that we are doing something expropriatory and something totalitarian or this, that or the other, does not come into the picture at all. Because, the position is, according to the decisions, firstly, that full market value must be paid in every case. Well, we may be able to pay full market value in some cases, but we cannot afford to pay in all cases. The second thing is that the Judges have held that even though the provisions are merely regulatory, such regulatory provisions may be of such a substantial character as to amount to deprivation of property. There are several Acts which contain similar regulatory provisions. For instance, in the Insurance Act we have provided that if the Insurance company is mismanaged, Government can appoint an Administrator. In fact, in Bombay, two such insurance companies are being managed by an Administrator. We have certain provisions under the Railway Companies Emergency Powers Act. We have also similar powers under the Lunacy Act, the Court of Wards Act etc., in which the Government takes over management in certain circumstances. These are all regulatory provisions in which there is neither acquisition or requisition. In the Dwarkadas case

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the Attorney-General advanced the argument that if this view that regulatory provisions can also amount to deprivation of property and therefore compensation must be paid for that right was taken, all this legislation would be invalid, and Mr. Justice Mahajan has given us enough notice in these words:

> "These illustrative pieces of legislation to which the learned Attorney-General made reference may well have to be judged in the light of these observations when occasion arises."

So that, unless we take some action now, if anybody challenges any of these pieces of legislation, the Supreme Court may, by virtue of the decision in the Dwarkadas case, come to the conclusion that even these regulatory provisions are bad.

Then, the third position is: what is deprivation of property? Mr. Chatterjee took exception to the Statement of Objects and Reasons stating that we have misread, so to say, the judgment of the Court. I will only read the judgment that Shri Patanjali Sastri gave which makes it quite clear that in every case the Judges refuse to lay down a general principle. Now, for example, take the case of the Sholapur Mills. In that Mr. Justice Mahajan says:

> "In my judgment, in the determination of all such cases no abstract standard or general rule can be laid down and the question is really one of degree and hence its determination depends on the facts of each case. In these circumstances, what is to be determined here is whether the provisions of the Ordinance have not overstepped the limits of social legislation and whether they do not come within the ambit of article 31(2)."

And then he held that they had overstepped the limits of social legislation and control and therefore it was bad.

So that, in every case where we pass a law restricting the right of enjoyment of property or a law restricting certain rights of property, it will be the Judges of the Supreme Court who decide whether in that particular case, on the facts and circumstances of it, it amounts to deprivation and therefore compensation must be paid, and therefore whether the Act must be declared to be invalid or whether it is not deprivation.

All these things were most carefully considered when we drafted the fundamental rights. These difficulties are inherent in every legislation where judicial review is permitted. And, after an exhaustive examination of the difficulties of defining fundamental rights and the limits within which they can be exercised. Sir B. N. Rau, in a very illuminating book called "Constitutional Precedents" which was given to the Members of the Constituent Assembly, concludes thus:

> "We are now in a position to realise some of the difficulties of the problem of fundamental rights. To enunciate them in general terms and to leave it to the Courts to enforce them will have the following consequences:
>
> (1) The Legislature not being in a position to know what view the Courts will take of a particular enactment the process of legislation will become difficult.
>
> (2) There will be a vast mass of litigation about the validity of laws and the same law that was held valid at one time may be held invalid at another or *vice versa*: the law will therefore become uncertain.
>
> (3) The Courts, manned by an irremovable judiciary not so sensitive to public needs in the social or economic sphere as the representatives of a periodically-elected legislative body, will, in effect, have a veto on legislation exercisable at any time and at the instance of any litigant."

These are the dangers which were then envisaged and these dangers have been realised within the four or five years of the working of our Constitution. Having realised them, can we leave the thing at that, or are we bound to resolve that conflict and amend the Constitution to put beyond any pale of doubt as to what our intentions are and the manner in which they should be enforced.

I will concede that a judicial review is an important feature of our Constitution, and I do not wish to say that in all cases we can take away judicial review. Where, for example, it concerns personal liberties, I say that it is a right so great that I would like to put it not only beyond executive arbitrariness but even beyond legislative arbitrariness, because even the legislatures may at times go wrong even though they have a majority. So, so far as personal liberty is concerned, a judicial review may be permissible. But, when we come to property rights which involve an extensive legislation of a socio-economic character in a changing dynamic society where we have to undertake vast legislation of this description, can we rely upon the uncertainty of judicial decision which comes to the conclusion four years hence that the Act is invalid? In the meantime we may have undertaken and implemented an Act in a particular manner and so on.

I submit, therefore, that even though the judiciary holds a very honoured place in our Constitution, if we say that in a particular matter we will not allow judicial review, that the Legislature shall be the judge as to the quantity and manner of compensation to be paid, not only is there nothing wrong about it, but the Legislature being the best judge as to the circumstances which necessitate the particular legislation should be invested with the power of determining what compensation has to be paid.

An attempt is being made sometimes to represent as if the judiciary is the only guardian of the rights and liberties of the people and that if the judiciary is not there, probably the legislatures would run amuck and encroach upon the rights and liberties of people at any time or any cost. I submit it is a wrong approach. The legislatures, as I have said, have a very important place.

Shri Gadgil: On the contrary, the judiciary thinks that it is a Third Chamber.

Shri C. C. Shah: I do not wish to comment upon either the role of the judiciary or the legislature. Both have an assigned place in the Constitution. But within the limits of each of them they must be allowed to function properly and fully and neither the judiciary should appropriate to itself the legislative functions and place its own judgment over the legislative judgment, nor should the Parliament appropriate to itself the judiciary's functions.

In this case what I say is that it is an approach which is undemocratic even. The elected representatives of the people represent the will of the nation. They know what the nation wants and if they come to a conclusion, that should be respected. No doubt, at times under political considerations the majority sometimes passes a law; but these are risks attendant in every democracy and in every parliamentary form of government. That is a risk which England has taken all these years. In England Parliament is supreme and no law passed by Parliament can ever be called into question. In America they have gone to the other extent. So far as judicial review is concerned, I would like to read to the House a passage from Sir B. N. Rau's illuminating book. The doctrine of judicial review has been a matter of keen controversy amongst constitutional lawyers:

> "On the other hand, the doctrine of judicial review has found from its very inception violent opponents and detractors in the country of its origin. Jefferson

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and Madison denounced it. Great teachers of constitutional law, such as J. B. Thayer, have drawn attention to the dangers of attempting to find in the Supreme Court—instead of in the lessons of experience—a safeguard against the mistakes of the representatives of the people. That criticism has grown in the last fifty years to the point of bitter denunciation as the result of the exercise of the power of judicial review in a manner which, in the view of many, has made the Supreme Court a defender of vested rights and social statics. Some French jurists, who were attempting to find a remedy for the absence of an effective guarantee of fundamental rights in their own constitution have come to regard the experience of judicial review in the United States as a sufficient deterrent against introducing judicial review in France. In countries other than the United States, in which judicial review of legislation is recognized, it has been exercised only in rare cases for the protection of the rights of the individual."

I am, therefore, submitting that this Bill has become absolutely necessary. What does this Bill say or mean?

Mr. Chairman: I have allowed the hon. Member 27 minutes; he can take three more minutes.

Shri C. C. Shah: It will be wrong to read in this Bill something more than it means. It will be wrong to create a scare as if this Bill means something other than what it says. In the first place, this Bill does not say that no compensation shall be paid for acquisition or requisition of property. In fact, it accepts the principle that compensation shall be paid. It only decides who shall be the judge of the compensation to be paid and that too only in specified categories the legislature shall be the judge, and not the Supreme Court. It only extends the scope of article 31A to certain kinds of property owned.

Now we amended this article and added 31A for zamindari abolition. If for zamindari legislation we were called upon to pay full compensation we would have to mortgage the revenues of India for many years to come, before we could have paid even a fraction of what we paid for that purpose. At the time when we passed that Bill taking away judicial review in legislation for zamindari abolition, nobody opposed it. On the contrary everybody supported it. The reason appears to be this that a feudal decaying order finds few supporters, because it lapses by its own weight. But capitalism spreads its net far and wide in a more subtle manner and it finds many unconscious defenders even among eminent lawyers and in the Press sometimes. And we find many people coming forward, in the name of democracy, in the name of liberty, and in the name of fundamental rights and cherished objectives, to say that we are doing something which is fundamentally wrong. I submit when we abolished zamindari, we did a very great thing compared to which what we now wish to do is insignificant, and if even in that case we made that issue non-justiciable, what is wrong in what we are doing in extending it merely to certain other categories of property? It is misrepresentation of this Bill to say that the moment it is passed, Government will expropriate the property of anybody and everybody without paying any compensation. The Prime Minister has made it clear that it will not apply to individual acquisitions, *x's* individual property or *y's* individual property. It is intended to be applied to large scale acquisition where we cannot afford to pay full compensation, nor can we take the risk of such legislation being declared invalid after five or six years.

Shri K. K. Basu (Diamond Harbour): It depends upon the support behind it!

Shri C. C. Shah: There is full support to this Bill.

It is also necessary to remember that acquisition or requisition cannot

take place by an executive order under this Bill. People seem to think that when the Bill is passed acquisition or requisition can be done by an executive order. At each time of acquisition or requisition there has got to be an Act either of Parliament or State Legislature and when that Act is passed there will be a full and frank debate and discussion, full weight will be given to public opinion and after taking into consideration those factors the Act will be passed and such an Act cannot, I submit, be said to be an expropriatory piece of legislation.

Finally, I wish to submit that the hon. the Law Minister in his speech was at pains to point out that the interpretation put by the Supreme Court on Article 31(1) and 31(2) was wrong. Well, I think it is too late in the day for us to say that that interpretation was right or wrong. It is there; it is binding upon us unless we amend it. But what I wish to point out is this. Even if that interpretation was wrong by this amendment we are not entirely overcoming that interpretation. We are providing only specified categories of property which will be non-justifiable under article 31A. In all other cases it will remain an issue which is justiciable. Therefore, if our intention is that compensation to be paid should be an issue entirely non-justiciable, then, this Bill does not carry out that intention and the interpretation put by the Supreme Court remains, except to the limited extent in which we put it under article 31A.

Shri T. T. Krishnamachari: Not wholly.

Shri C. C. Shah: I agree.

Mr. Chairman: The hon. Member may finish as soon as possible, so that another hon. Member may finish today.

Shri C. C. Shah: We have heard a good deal about the sanctity and inviolability of the rights of private property. We are living in a society where it is too later in the day to speak about the sanctity or inviolability of private property. Private property is subject to social control and social legislation. It is a creation of a social organisation and if a man acquires property and amasses wealth it is because that organisation permits him to amass that wealth. It is the organisation which has enabled him to amass that wealth. He holds that wealth for the benefit of the society and the community, and the society and the community have every right to demand that wealth back from him, paying such compensation as the legislature thinks fit under the circumstances of the case. Apart from going into the ethics of property—whether private property may be theft, etc.—even from a practical point of view it is too late in the day to argue about the sanctity and inviolability of private property. If I may respectfully say so, I will only say that we are engaged, as the Prime Minister has often told us, in a great adventure in building a new India, and the question is whether the men of property will co-operate with us; the question is whether the men of property will realise and see the signs of the time; and the question is whether he will voluntarily choose equality and flee greed, as Tawney has said, rather than stick to the rights and fight to the last. Those who oppose even a modest measure like this Bill only invite violence.

श्री बी० जी० देशपांडे : इस संविधान का संशोधन यहां सामने रखते हुए हमारे प्रधान मंत्री जी ने जिस प्रकार की बातें सदन के सम्मुख रखी हैं और उसका विरोध करते समय जो बातें कही गयी हैं उससे मैं समझता हूं कि इस संशोधन की गम्भीरता सदन के ध्यान में अच्छी तरह से आयी नहीं। एक तो खुशी की बात है कि आन्ध्र के चुनाव के पश्चात् हमारी कांग्रेस पार्टी के नेता और कम्युनिस्ट पार्टी के नेता दोनों का इस संशोधन के विषय में एक मत हो गया। परन्तु इसके साथ ही मुझे इस बात की भी खुशी है कि आज कम्युनिस्ट पार्टी के नेता और समाजवादी पार्टी के नेता ने न समझते हुए इस संशोधन का विरोध किया है, और मैं भी उनके साथ मैत्री करना चाहता हूं क्योंकि दोनों ने

[श्री वी० जी० देशपांडे]

यह बतलाया है कि इस संशोधन में जो बातें करनी चाहिए थीं वह नहीं की गयीं । जो प्रिंसेज हैं, राजा महाराजा हैं उनकी सम्पत्ति को आपने छुआ नहीं, कोयले की खदानें हैं उनको आपने छुआ नहीं, ब्रिटिश पूंजीपति हैं उनकी पूंजी को आपने छुआ नहीं, और हमारे कम्युनिस्ट पार्टी के नेता आंखों से आंसू बहा रहे थे कि शायद पश्चिमी बंगाल के गरीब किसानों की जायदाद आप लोगे । इस बिल के बारे में जो करना चाहिए था वह आपने किया नहीं, जो नहीं करना चाहिए वह जरूर कर रहे हैं । हमारे अशोक मेहता जी भी आज एक नई थ्योरी ले आये कि सम्पत्ति के विरोध में युद्ध करने के पक्ष में तो हम हैं लेकिन सम्पत्ति में भी दो क्लासेज हैं । सोसाइटी में तो क्लासेज नहीं हैं लेकिन सम्पत्ति वर्ग विहीन नहीं है । एक बड़ी सम्पत्ति है और एक छोटी सम्पत्ति । और आप कहते हैं कि छोटी सम्पत्ति जो है उसको छूना नहीं चाहिए, बड़ी सम्पत्ति को छू सकते हैं । लेकिन इस विधेयक से आप छोटी सम्पत्ति को छू रहे हैं और बड़ी सम्पत्ति को नहीं छू रहे हैं । हमारे प्रोफेसर हीरेन मुखर्जी और श्री अशोक मेहता दोनों आपस में मिल कर समझ रहे हैं कि सब प्रागतिक मिलकर आज देश में एक नई क्रान्ति ला रहे हैं । पर मेरा विरोध इसलिए है कि मैं इस विधेयक को लीगलिस्टिक दृष्टि से नहीं देखता । यह बात तो मैं समझता हूं कि संविधान सब विधानों का एक महान विधान है और इस दृष्टि से इस पर जो चर्चा होगा वह वैधानिक होगी, परन्तु मैं इसको केवल लीगलिस्टिक दृष्टि से नहीं देखता । श्री पातंजलि शास्त्री गलत हैं या पाटस्कर साहब सही हैं यह समझने में मैं असमर्थ हूं । मैं तो समझता हूं कि पातंजलि शास्त्री ठीक हों या शायद पाटस्कर साहब भी ठीक हो सकते हैं । आज विधान को इंटरप्रीट करने का काम है और मैं समझता हूं कि आज जो चर्चा होगी वह इसी दृष्टि से होगी। लेकिन जिस प्रकार से हमारे संविधान पर प्रहार हो रहा है उसको देख कर मुझे बड़ा दुःख होता है । मैं संविधान को वेद के समान स्वतः प्रमाण तो नहीं मानता हूं कि इसमें परिवर्तन नहीं होना चाहिए । लेकिन परिवर्तन करने का भी कोई तरीका है । आपने कांस्टीट्यूशन बनाया है और सुप्रीम कोर्ट कहती है कि आपका कानून कांस्टीट्यूशन के मुताबिक नहीं है । तो आपको कानून को बदलना चाहिए, आपको अच्छे ड्राफ्टमैन लाने चाहिएं । आप संविधान बनाते हैं कि यह जो ९५ कानून हैं यह ठीक हैं । आज भी आप दो चार कानूनों को वैलिड करना चाहते हैं । इससे मैं समझता हूं कि पूरा संविधान का शास्त्र बड़ा परिवर्तित हो जायगा । अब यह कानून संविधान के मुताबिक चलेंगे और यह संविधान के मुताबिक हैं या नहीं यह निर्णय सुप्रीम कोर्ट नहीं करेगा । ऐसी दशा में सुप्रीम कोर्ट रखने का रिटेन कांस्टीट्यूशन रखने का, मौलिक अधिकार रखने का प्रयोजन मेरी समझ में नहीं आता । मैं इस दृष्टि से इन कानूनों को नहीं देखता कि यह लीगलिस्टिक हैं या नहीं और यह टैकनिकली ठीक हैं या नहीं । मैं संविधान के सामने प्रणाम करता हूं और आप सब की वैधानिक बुद्धिमत्ता के लिए आदर रखते हुए मैं पातंजलि शास्त्री और मिहर चन्द महाजन को पाटसकर और पंडित नेहरू से विधान का ज्यादा पंडित मानता हूं । जैसे आपको उनको ठीक न मानने का अधिकार है उसी तरह मुझे उनको ठीक मानने का अधिकार है । हमने संविधान में लिखा है कि ला एज इंटरप्रीटेड बाई सुप्रीम कोर्ट फाइनल होगा । इस दृष्टि से मैं समझता हूं कि यह ठीक बात है । मैं हंसूंगा उन पर जो उन पर विश्वास नहीं रखते । आज यह कोई लीगलिस्टिक सवाल नहीं है । आज संविधान के बारे में एक बड़ी भारी प्रगतिशील प्रणाली लेकर आप आ रहे हैं । कम्युनिस्ट और सोशलिस्ट आपका समर्थन इसलिए कर रहे हैं कि आप आज वैयक्तिक सम्पत्ति पर एक लड़ाई कर रहे हैं । अशोक मेहता जी ने ठीक कहा है कि ससा के साथ भागना चाहते हैं और कुत्ते के साथ शिकार भी करना चाहते हैं । हम लोगों के पास आते हैं या खेती करने वालों के पास जाते हैं तो कहते हैं कि

ऐसी कोई बात नहीं है, कम्पेनसेशन तो हम जरूर देने वाले हैं। किन्तु इस का परिणाम देश में जो खेती करने वाले हैं, जितने किसान हैं उन पर सबसे अधिक होने वाला है। कांग्रेस में जो आप प्रस्ताव भेजते हैं उसके लिए कहते हैं कि यह तो फारमल है, प्रोसीज्योरल है, यह कोई मौलिक नहीं है, और भवन के सम्मुख जब आते हैं तो बड़े प्रागतिक होकर कहते हैं कि सोसाइटी बड़ी डाइनेमिक है, गतिमान है और जैसे जैसे ये कल्पनायें नई नई बनती जा रही हैं उनके अनुसार यह क्रान्तिकारी परिवर्तन किये जा रहे हैं।

एक माननीय सदस्य ने अभी कहा कि इसका परिणाम जमींदारी समाप्त करते समय जितना हुआ था उतना होने वाला नहीं है। सभापति महोदय, मैं आपको बतलाने वाला हूं कि मेरे मित्रों ने शायद यह बिल ठीक तरीके से पढ़ा नहीं। एक बात मैं कहूंगा कि इस बिल के अनुसार सीलिंग के ऊपर के जमीन का कम्पेन्सेशन आप नहीं देंगे। लेकिन जो सीलिंग बनने वाली है वह हमको पता नहीं है। कहीं यह तीस बीघा है, कहीं ५० एकड़ है और कहीं दस एकड़ है। हमारी लाखों देहातों में रहने वाली करोड़ों जनता लैंड ओनिंग प्रोपराइटर है। उनकी सीलिंग निश्चित करने के बाद जो भूमि बाहर निकलेगी उसके लिए आप मुआवजा नहीं देने वाले हैं। आपने जागीरदारों को कहीं पर तो १५ गुना दिया है, कहीं १० गुना और कहीं १२ गुना दिया है। दरभंगा के महाराज को आपने मुआवजा दिया है, रामगढ़ के महाराज को दिया है, बलरामपुर के महाराज को मुआवजा मिल गया है, किन्तु समाजवादी ढंग के समाज की रचना की प्रतिज्ञा लेकर और सामाजिक विषमता न रखने की प्रतिज्ञा लेकर आप पार्लियामेंट के सामने आकर कहने वाले हैं कि बंगाल के देहात में जिसके पास १५ एकड़ भूमि है उसकी १२ एकड़ निकालकर तीन एकड़ जो भूमि है वह बिना कम्पेन्सेशन के हम लेने वाले हैं। मुझे जवाब दिया जायगा कि ऐसी कोई बात नहीं है। पंडित जवाहरलाल ने बताया कि मैं कम्पेन्सेशन देने वाला हूं। लेकिन कांस्टीट्यूशन में तो यह लिखा नहीं है कि यावच्चन्द्रदिवाकरौ पंडित जवाहरलाल नेहरू हमारे प्रधान मंत्री रहेंगे। हां यह हो सकता है कि जनता की इच्छा से वह हमारे प्रधान मंत्री बने रहें लेकिन संविधान में तो ऐसा दिया नहीं है। आपने जो कानून बनाया है उसके मुताबिक देखें कि इस देश में एक बड़ा क्रान्तिकारी परिवर्तन आने वाला है। आपकी वैयक्तिक सम्पत्ति की कल्पनायें बदली जाने वाली हैं। आप देहात में छोटे छोटे लोगों पर आघात करने वाले हैं। प्रोफेसर हीरेन मुखर्जी ने बताया कि एक गांव में वेस्ट बंगाल में उन्होंने देखा कि छोटे छोटे लोगों के मकान और छोटे छोटे लोगों की जायदाद रिफ्यूजी रिहैबिलिटेशन के नाम से ली जा रही है। दिल्ली के अन्दर हमारे प्रधान मंत्री जी ने बड़े जोर से बतलाया कि स्लम्स् के जो ओनर्स हैं उनको स्लम्स् रखने का कोई अधिकार नहीं है। उनको हम कम्पेनसेशन देंगे नहीं, देना भी नहीं चाहिए। मुझे तो यह सुन कर बड़ी हैरानी हुई कि मानो स्लम्स का होना और इनका ओनर होना, कोई पूंजीवाद की जाति है। मुझे स्लम्स् मालूम हैं जहां झोंपड़ियों में रहने वाले मामूली लोग भी इन स्लम्स् के ओनर हैं। मैंने स्लम्स् ज्यादातर शहरों में देखे हैं। नागपुर शहर में मैंने ऐसे स्लम्स् देखे। वहां पर छोटी धनतोली ग्राम में छोटे छोटे घरों में बेचारे अस्पृश्य जाति के और महार जाति के लोग रहते थे, अब चूंकि उस जगह पर बड़े बड़े पूंजीपतियों और बुद्धिजीवियों की कोठियां बननी थीं, इसलिये उन बेचारों को वहां से निकालना जरूरी हो गया और स्लम्स् का क्लियरेंस करना जरूरी हो गया और कहा यह जाता है कि हम सामाजिक विषमता दूर करके आज इस देश में समाजवादी ढंग की समाज की रचना कर रहे हैं लेकिन उधर उस महार का झोंपड़ा बिना उसका उचित मूल्य या मुआविजा दिये हुए उसको वहां से निकाल रहे हैं। इस प्रकार की बातें यहां हो रही हैं। दिल्ली शहर के अन्दर ही इस स्लम्स् की सफाई के नाम पर एक बस्ती के लोगों को उनके घरों से हटाया गया और हमने देखा कि

[श्री वी० जी० देशपांडे]

उनको आठ मील की दूसी पर ले जाकर फेंक दिया और पूरा मुआविजा भी नहीं दिया और अब इस कानून के बनने के पश्चात् तो पूरा मुआविजा देने का सवाल ही नहीं रहेगा और इस कानून के बन जाने के पश्चात् तो उनको मुआविजा ही नहीं दिया जायगा। इस प्रकार का कानून जब आप बनाते हैं, तब मैं उनको कहना चाहता हूं कि डेमोक्रेसी को आपने स्वीकार किया है। आपने कहा कि हमने एक कमेटी नियुक्त की और इस पर विचार किया और उनकी निगाह में तो कांग्रेस इज इक्वेल टु नेशन। इस सम्बन्ध में कांग्रेस की वर्किंग कमेटी में प्रस्ताव पास हुआ, आल इंडिया कांग्रेस कमेटी में प्रस्ताव पेश किया गया और वहां पर उन्होंने चर्चा की और इसलिये उनके विचार में अब इसको देश के सामने विचार के लिए रखने की कोई जरूरत नहीं है। वकीलों ने चर्चा की और जज ने मत दे दिया। आप डायनैमिक सोसाइटी की बात कहते हैं और ऐसा समझ लेते हैं कि हमारी जो विचारधारा अथवा विचार परम्परा है, वही समाज और देश की सम्मति है, ऐसा विश्वास रखते हैं, और इस सम्मति का उपयोग समाज के कल्याण के लिए होना ही चाहिए, यह मानने वाला मैं हूं और इस दृष्टि से समाज का नियंत्रण निजी सम्पत्ति पर करने पर भी मेरा पूर्ण विश्वास है, इस प्रकार का क्रान्तिकारी परिवर्तन जब आप किसी कल्पना में करते हों, जिसका परिणाम करोड़ों लोगों पर होने वाला है, तो मैं आपको आपकी इस नई कल्पना ले कर आने के लिए बधाई देता हूं लेकिन आपका कर्त्तव्य यह भी है कि कांग्रेस पार्टी के दफ्तरों में, आल इंडिया कांग्रेस कमेटी की बैठकों में और वकीलों की लायब्रेरीज में इसकी चर्चा करने के बजाय हमारे प्रधान मंत्री देहातों में जनता के पास जाते और उनसे कहते कि देखो, हम तुम लोगों की जमीन बिना मुआविजा दिये लेने वाले हैं, तुम लोगों के घरबार बिना उसका मुआविजा दिये लेने वाले हैं। अब समाजवाद की गतिमान कल्पना आ गयी है, तुम्हारी सब की सम्पत्ति हम बिना मुआविजा लेंगे और आप लोगों का कर्त्तव्य है कि समाज कल्याण की दृष्टि से आप इसमें हमारा समर्थन करें और जनता के मत में परिवर्तन करते हुए, जैसे होली के दिन पंडित नेहरू ने प्रांतिक कांग्रेस कमेटियों को संदेश देते हुये कहा, मखौल में यदि न कहा हो, सब लोगों को और उन लोगों को भी जो हमारा विरोध करते हैं उनको भी साथ में लेते हुए नये समाज की रचना हम करने जा रहे हैं। मेरा कहना है कि प्रधान मंत्री को इस वृत्ति को रखकर समाज के सब वर्गों के सामने जाना चाहिए था और सबका सहयोग पाने का प्रयत्न करना चाहिए था। यहां मैं देखता हूं कि जिनके पास सम्पत्ति है, अथवा जो पूंजीपति हैं, बड़े वर्ग के लोग हैं, उनको हाथ नहीं लगाना चाहते, हां अलबत्ता मैं देख रहा हूं कि छोटे छोटे जो देहाती लोग हैं, छोटी छोटी प्रापर्टी वाले लोगों को ही ध्यान में रखकर यह नये कानून बन रहे हैं और यह नया संशोधन बन रहा है। सभापति महोदय, मैं यह चीज साफ कर दूं कि मेरी शिकायत लोगों की सम्पत्ति ली जा रही है, इसके लिए नहीं है, केवल सरकार के हाथ में, लैजिस्लेचर के हाथ में आप एक शक्ति दे रहे हैं। मैं यह कहना चाहता हूं कि यह लैजिस्लेचर सावरन नहीं है यदि इस देश में हमने मौलिक अधिकारों का पाखंड न किया हो और सच्चे दिल से हमने मौलिक अधिकार दिये हों तो इस हाउस में रहने वाले हम अपोजीशन के मेम्बर विरोधी दल के सदस्य जो हमारे मौलिक अधिकार हैं उनको कुचल कर उसके ऊपर पार्लियामेंट की पावर हम रखते हैं और प्रीवेन्टिव डिटेंशन एक्ट जैसे कानून लागू करते हैं तो मैं कहूंगा कि यह डेमोक्रेसी का मजाक है। और इलेक्शन के दिनों में जैसे हम देख रहे हैं कि किस प्रकार का इंटरफीयरेंस होता है और पार्लियामेंट ने अगर उसमें मदद की तो वह चल जाएगी। बात यह है कि मौलिक अधिकार हमने जान बूझ कर लोगों को प्रदान किये हैं और डेमोक्रेसी के अंदर मौलिक अधिकारों की एकतंत्रीय राज्य से भी ज्यादा आवश्यकता होती है और यह देखना बहुत आवश्यक हो जाता है कि जनता के और व्यक्ति के मौलिक अधिकारों का संरक्षण हो

और यह मौलिक अधिकार देने के पश्चात् मैं विरोध इसका नहीं करता हूं कि कांग्रेस पार्टी खुल्लम खुल्ला आती है और कहती है कि इस देश में निजी सम्पत्ति, वैयक्तिक सम्पत्ति इस कानून के पश्चात् नहीं रहेगी और हमने पूरा नेशनलाइजेशन और पूरा सोशलाइजेशन कर दिया है। कम से कम समानता होती और सामाजिक विषमता न होती तो ठीक था लेकिन आप इस प्रकार से अधिकार ले रहे हैं कि जिसके कारण यह साफ जाहिर होता है कि पार्टीबाजी और इलेक्शन को दृष्टि में रखकर आप बड़े बड़े पूंजीपतियों पर निर्भर रहने की मनोवृत्ति नहीं त्याग पाये हैं। करोड़ों रुपया आपके पास है। मैं तो मखौल से कहता हूं कि जहां आप हर एक इंडिविजुएल की प्रापर्टी की सीलिंग फिक्स करना चाहते हैं तो पार्टी फंड पर भी कोई सीलिंग रखिये। किसी पार्टी के पास लाख दो लाख से ऊपर नहीं होना चाहिए। करोड़ों रुपये का फंड किसी पार्टी के पास नहीं रहना चाहिये चाहे वह कम्युनिस्ट पार्टी के पास हो अथवा कांग्रेस पार्टी के पास हो....

श्री गाडगील : हिन्दू सभा के पास है।

श्री बी० जी० देशपांडे : पार्टी फंड्स के ऊपर भी इस तरह की कोई सीलिंग रहनी चाहिए। मैं यह कह रहा था कि आप लोगों के हाथ में अधिकार आने के पश्चात् मैं यह देख रहा हूं कि इस प्रकार का कानून आपने बना लिया है, जैसे कहने लगे कि भाई हम इतने लोगों को कैसे पैसा देंगे, बात यह है कि आपने वैयक्तिक सम्पत्ति का तत्व माना हुआ है, करोड़ों रुपये की जायदाद शहरों में रहने वालों के पास है, मिल वालों के पास है और आप कानून बना रहे हैं कि देहात में रहने वाला कोई आदमी सौ रुपये माहवार के ऊपर न कमाये और सौ रुपये माहवार के ऊपर यदि कोई हजार या दो हजार की भी जायदाद हो तो वह बिला मुआविजा दिये आप उसे ले लें। उसकी सम्पत्ति आप लेते नहीं तो उस सम्पत्ति का मुआविजा देने की जरूरत नहीं। ३१(२) धारा लीजिये इस सम्बन्ध में मैं स्वयं अपना उदाहरण पेश कर सकता हूं और आप कोई भी मेरे साथ चल कर देख सकते हैं कि मैं जो कह रहा हूं वह ठीक है या नहीं। हमारे खेत में से एक नाला जाता है, सरकार ने परसों ही एक ब्रिज ऐसा कंस्ट्रक्ट किया है जिसके कारण आधा खेत नदी में चला गया है, रंक्वीजीशन किया नहीं। एंक्वीजीशन किया नहीं और कोई कम्पेनसेशन देने की आवश्यकता नहीं, खेत चला गया है, खैर यह जाने दो। लेकिन मेरा आपके ऊपर आक्षेप यह है कि आपके हाथ में यह अधिकार देने के पश्चात् जितने सम्पत्तिवान हैं जो आपको फंड दे सकते हैं उन पर तो आप हाथ लगाने वाले नहीं हैं, कोई पूंजीवादी इसका विरोध करने के लिए तैयार नहीं हैं और डिवीजन के वक्त एंबसेंट रहेंगे और चुप रहेंगे और रहना भी चाहिए क्योंकि पूंजीपतियों की सम्पत्ति में तो इससे हाथ लगने वाला नहीं है, यह तो केवल देहाती प्रापर्टी पर हाथ डालने के लिए है जो अपनी आवाज उठा नहीं सकते और जिनके पास आप जाते नहीं। पन्द्रह दिन के अन्दर सब काम हो जाना है। पन्द्रह तारीख को प्रस्ताव आया, तीस तारीख को रिपोर्ट आनी है, विद्रूप चला गया है कि कांस्टीट्यूशन में परिवर्तन होगा, फिर कहेंगे कि पास हो जाने दो कोई बात नहीं है, कम्युनिस्ट अगर आ गये तो समूचा ही खा जायेंगे, यह तो आधा ही खाते हैं, खाने दो। दो साल के बाद इलेक्शन आने वाले हैं, इसलिए आप सम्पत्ति के साथ ऐसा खिलवाड़ करते हैं, इसके लिए मेरा आक्षेप नहीं है लेकिन आप इस को लेकर जो पूंजीवादी आपको चुनाव में मदद करेंगे या जो समाज के शक्तिमान् वर्ग हैं उनको मदद करने के लिए और जो गरीब वर्ग के लोग हैं उनको और ज्यादा दबाने के लिए और समाज में आर्थिक विषमता को देखते हुए, ग्रामीण वर्ग के लोगों और हीन वर्ग के देहातियों को जो आप कानून बना देने वाले हैं कि देहात में कोई भी ऐसा घर न हो जिसकी सौ रुपये महावार आमदनी हो, इसको मैं ठीक व उचित नहीं समझता। मिनिस्ट्रों की तनख्वाहें हैं उनका नाम भी नहीं, उनकी सम्पत्ति आप छीन नहीं रहे हैं। मैं तो कहता हूं कि पार्लियामेंट के मेम्बर को जितना तनख्वाह मिलता है उतना कमाने वाला देहात में एक भी नहीं रहेगा।

[श्री वी० जी देशपांडे]

उससे तो आप बिला मुआविजा दिये हुए सम्पत्ति छीनने वाले हैं और करोड़पति और लखपति लोगों के वास्ते आप कहते हैं कि हमारे यहां इंग्लैंड की अपेक्षा बहुत थोड़े लोग उस श्रेणी के हैं, लाख के ऊपर मुश्किल से सौ आदमी हैं, देहात में खेती करने वाले एक लाख की क्या एक हजार की इन्कम कमाने वाले कोई भी नहीं रहेंगे । आप के सम्पत्ति के समानीकरण करने के बजाय मैं देखता हूं कि आप देहात के अनपढ़ लोगों को अधिक से अधिक गरीब बनाने के लिये, देहात के लोगों पर अधिक से अधिक अन्याय करने के लिये, जो लोग श्रीमान् और सम्पत्तिमान हैं और जो लोग आप को वोट देने वाले हैं उन को बलवान् करने के लिये और हमारे तथाकथित प्रगतिशील लोगों की पालिसियों का खयाल रख कर, इस प्रकार से संविधान का संशोधन कर रहे हैं । इस विधेयक के एक एक क्लाज को आप ले सकते हैं और उस को लेने के पश्चात् आप देख सकते हैं कि किस प्रकार की सम्पत्ति आप संविधान के इस संशोधन के अनुसार इस देश में लेने वाले हैं ।

5 P.M.

Sardar A. S. Saigal (Bilaspur): It is five o'clock, Sir.

Mr. Chairman: He has taken only about twenty minutes. Let him finish. After the hon. Member finishes we may adjourn.

श्री वी० जी० देशपांडे : अभी तक एक ही बात थी ।

Mr. Chairman: May I know whether the hon. Member is bringing his remarks to a close? He has already taken about 20. minutes.

Shri V. G. Deshpande: The maximum is thirty minutes, Sir.

Mr. Chairman: If every hon. Member takes thirty minutes then only about 10 or 12 Members can take part. The points which the hon. Member wanted to make have been made out. I think if he wants to take two or three minutes more, we will sit, otherwise we may adjourn.

Shri V. G. Deshpande: No, Sir. I shall need more time.

Mr. Chairman: Then the House stands adjourned till 11 A.M. tomorrow.

The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, the 15th March, 1955.