4|24|S 3|71, dated the 10th November, 1971 under clause (c) (iv) of the Proclamation, dated the 15th June, 1971, issued by the President in relation to the State of Punjab.

(ii) A statement (in English and Hindi) giving reasons for not laying simultaneously the Hindi Version of the above Notification.

[Placed in Library. *See* No. LT-1244/71 for (i) to (ii).]

THE INLAND AIR TRAVEL TAX RULES, 1971

SHRIMATI SUSHILA ROHATGI: Sir, I also beg to lay on the Table a copy of the Ministry of Finance (Department of Revenue and Insurance) Notification G.S.R. No. 1760, dated the 15th November, 1971 (in English and Hindi), publishing the Inland Air Travel Tax Rules, 1971, under sub-section (3) of section 8 of the Inland Air Travel Tax Ordinance, 1971. [Placed in Library. *See* No. LT-1217/71.]

INTERIM REPORT OF RAILWAY CONVENTION COMMITTEE 1971.

SHRI PITAMBER DAS (Uttar Pradesh): Sir, I beg to lay on the Table a copy of the Interim Report of the Railway Convention Committee, 1971.

THE CONSTITUTION (TWENTY-FIFTH AMENDMENT) BILL, 1971

THE MINISTER OF LAW AND JUSTICE /विधि और न्याय मंत्री (SHRI H. R. GOKHALE): Mr. Chairman, Sir, I beg to move :

"That the Bill further to amend the Constitution of India as passed by the Lok Sabha, be taken into consideration."

Sir, hon. Members are aware that in the last session, the two Houses of Parliament passed the Constitution (Twenty-fourth Amendment) Bill, by which power was given to Parliament to amend any provision of the Constitution. That Bill received the assent of the President and has thus become part of the Constitution. That having become part of the Constitution, the difficulties raised by the judgment in what is now called the Golak Nath Case are out of the field, and the way is clear for taking on hand consideration and passing of the present Bill which I am placing before the House for consideration.

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

The proposed amendment is necessitated by the judgment of what is now well-known as the Bank Nationalisation Case. In that case, it was held that despite the Fourth Amendment, the continued use of the word "compensation" meant that the money equivalent of the property acquired must be given for any property taken by the State for a public purpose. This interpretation given by the Supreme Court clearly defeated the plain intention of the Fourth Amendment which by amending article 31 (2) made the adequacy of compensation non-justiciable.

Even Justice Subba Rao, as far back as in 1965, in the case which is known in the legal field as the Vajravelu Case, had held that neither the principles prescribing the just equivalent nor the just equivalent can be questioned in a court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles.

However, the learned Judge overruled himself in a later case which

is now known as the Metal Corporation case. But again the same Judge was overruled by the Supreme Court in another case which is now known as the Shantilal Mangaldas case. And the decision in the Shantilal Mangaldas case was, I submit, in tune with the object of the Fourth Amendment. But the bank Nationalisation case again virtually overruled the ratio in the Shantilal Mangaldas case and went back to the theory of an equivalent in money of property taken, thus defeating the plain language of Article 31 (2). The proposed amendment, therefore, seeks only to restore the *status quo ante* which was prevalent after the Shantilal Mangaldas case and before the Bank Nationalisation case. At the same time, I may also invite the attention of the honourable Members of this House to the change made with regard to the exclusion of the operation of Article 19(1) (f) to any property falling under Article 31 (2). Now, this again was necessitated by changing judicial decision. The earlier view was that both these Articles namely, Article 19 and Article 31, were mutually exclusive and if the test of Article 31 was satisfied, it was not necessary to test the law on the anvil of Article 19 again. This again was reversed in the Bank Nationalisation case, the consequence being that even if the law stood the test of Article 31, it has to be tested on the ground of reasonableness or otherwise under Article 19 of the Constitution. Hence an express exclusion of the operation of Article 19 (1) (f) in respect of property is covered by Article 31.

I may mention that so far as this part of the proposed amendment is concerned, namely, the substitution of the word 'amount' in place of 'compensation', also making the adequacy of the amount non-justiciable further leaving it outside the purview of the court scrutiny to determine whether the amount should be paid in cash or otherwise, all this has been fully supported and endorsed by the recent report of the Law Commission which has been already circulated to the honourable Members of the House. The substitution of the word implies that the amount awarded for the acquisition of property would be such amount which the legislature thought fit and reasonable in the circumstances of the case.

It should not be possible for the court to block measures of social progress, of social change, by compelling payment of amounts as compensation of such a high quantum as to make impossible the implementation of these measures. The agenda today, the political agenda today, is a far-reaching programme aimed at reconstructing the entire socio-economic fabric of the country, and this involves, and would involve, greater and greater intervention including nationalisation of major areas of industry and commerce, and obviously, if we are compelled to pay the full market value for everything we acquire, our programmes will become impossible of implementation and the whole road will be blocked by intervention of the court, by litigation and by stay orders all the way. Sir, I do not wish to quote, but I may remind hon. Members of this House that when the Fourth Amendment was discussed in Parliament, the question as to the adequacy of compensation came for discussion and our leader, Pandit Jawaharlal Nehru, put it in very clear and unequivocal terms and said, "We cannot pay the full market value and even if we can, we should not pay the market value, because such a provision which requires the payment of full market value would defeat the purpose for which power is sought to be given to Parliament to implement the socio-economic measures which form part of the important programme before Parliament." I need not again quote what Mahatma Gandhi more than once said even as far back as when he spoke in the Round-Table Conference. He equated the payment of full compensation to robbing Peter to pay Paul. While he expressed that he might find some cases of inconvenience arising, if full market

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value will not be paid, he clearly pointed out that in such cases while he might sympathise, he will not be able to help. As to what is the reasonable amount must, therefore, be left to the decision of Parliament. It is, therefore desirable and necessary that Judges howsoever eminent, should not be asked to sit in judgment over socio-economic matters.

Sir, we are opposed to any measure seeking to invest property with an aura of sanctity by regarding property as primordial institution of the law of nature. This approach, to a certain extent, led to reliance being placed on the theory of Gladstone which long since back was discarded even in the country of its origin. Such a theory that property is a primordial right or is a natural right is not only not in tune with the ideas of modern jurisprudence, but also is not in tune with the native genius and traditions in our country. It has been regarded as a well-established principle in modern jurisprudence that the needs of the society must be paramount and must take precedence over the needs of the individual. That, in short, is the dominant and predominant basis underlying the proposed amendment which is placed before the House for its consideration.

I may add that in the Lok Sabha by an amendment which was moved by me on behalf of the government, a proviso has been added to this clause. This proviso has been added with a view to reassure the minorities that the passing of this amendment will not, in any way take away the existing rights which they possess under article 30 (1) of the Constitution. Sir, as the House is aware, under article 30 (1), the minorities whether linguistic or religious, have the right to establish and administer educational institutions. The proviso does not at all take away anything nor add anything to the guarantee which has been mentioned in article 30 (1) in the Constitution. The idea of adding this proviso for the consideration of the House is to reassure the minorities that whatever rights they have got under article 30 (1) of the Constitution will stand protected even after this amendment is passed.

That takes me to article 31C which has been proposed. I am proud of 31C because it makes a departure in the very basis from the point of view of which we have been approaching questions arising under the Constitution. For the first time, it gives effect to what has already been intended ever since the Constitution came on the statute book; in fact much before the Constitution was passed. It was never regarded that Directive Principles should have a subsidiary place as compared to Fundamental Rights in the Constitution of India. As Members know there are two articles which expressly mention that the Directive Principles are fundamental in the governance of the country. In fact one article makes an injunction on the government to give effect to Directive Principles in the making of laws and yet somehow or other by judicial processes and judicial determination, Directive Principles had been given subsidiary place. It has been regarded, in my respectful submission, wrongly that Fundamental Rights must supersede and must have an upper and higher place as compared to Directive Principles.

For the first time in the Constitutional history of India, article 31C reasserts the position which is always intended to exist. And Sir, that position is that the Directive Principles do not and will not have a place of secondary importance in the structure of the Constitution. It reasserts that the Directive Principles, being the moral basis of the value underlying the structure of the Constitution, will have primacy an dprecedence over the Fundamental Rights. I may mention, Sir, that even the Law Commission has, in its latest report, fully endorsed the basis underlying the proposed amendment. The Law Commission—I am tempted to quote here in respect of the new Article—says this:

"However, as we have already indicated, the Directive Principles,

not being enforceable, were given some inferior position by judicial process. The proposed Bill, for the first time, recognises the primacy of the Directive Principles and selects two of them enshrined in Article 39 (b) and (c) for implementation in the first instance. That is why we think the Bill marks the beginning of a new era in the Constitutional history of our country. There is no doubt that the passing of the Bill will be the first decisive step towards the implementation of the Directive Principles."

Having appreciated that the basis underlying the proposed amendment is proper and justifiable, the Law Commission, I am aware, has made two other recommendations with which, with all respect to the Law Commission, we are not in a position to agree. The first suggestion made by the Law Commission is that from Article 31(c) the exclusion of the operation of Article 19 should not be made. But the Law Commission suggests that the exclusion should be confined to Article 19(1) (f) and (g). Now, even here, I must emphasise, the Law Commission has fully appreciated the apprehension which the Government entertained and the reason why the Government has proposed in this Bill the exclusion of the operation of the entire Article 19 and has not confined it only to Article 19(1) (f) and (g). The Law Commission is aware, and in so many words the Law Commission mentions in its report, that this has arisen because of judicial determination again. They have noticed that in the decision in the Price-Page Schedule case, which is now popularly known as the Sakal newspaper case, reliance was placed for striking down that legislation not on 19(1) (f) and (g), but on 19(1)(a). The legislation was struck down on the ground that it violated the right to freedom of speech. The remarks which the Law Commission makes in this context are again more important, and I feel it my duty to invite the attention of this House to those remarks. The Law Commission says that the Supreme Court, in their judgment in the Sakal newspaper case, unduly and unjustifiably imported fabrication of 19(1) (a) for striking down the legislation laying down the Price-Page Schedule in the Sakal newspaper case.

Sir, they also apprehend that maybe a situation will arise in course of time when the courts may not stick to the view. They have held the view that the courts may not share that view. They do not share our apprehension that in future, when such a situation arises, the courts will take that view. Having considered all the aspects of the matter, we regret that we are not in a position to share the optimism of the Law Commission and we think that in a matter like this it is not possible to allow things to be decided and determined in future. The only objection by the Law Commission, although the Commission does not say so in so many words, and by the outsiders, both in the Press and among the public, is that if such a wide exclusion, the whole of Article 19, is made, may be that this power will be used for taking away the other Fundamental Rights which are included in the other clauses excluding Article 19(1) (f) and (g).

Sir, the greatest guarantee in a democracy, as has been repeatedly said, is the faith we have in ourselves. The law which is to be passed or which may be passed under article 31C, is not a matter of adjudication.

It is the law passed by Parliament—by this House and by the other House. The Parliament, in its wisdom, the Parliament, in its consideration, will decide as to what are the cases in which article 31C should be utilized. I have no doubt that if any misuse of power takes place—although I don't apprehend it so long as we have faith in the people and the people have faith in us—, if such misuse of power does take place, the people in this country are alive and alert and are in a position to, are capable of, taking care of

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such situations to see that those who misuse power do not remain in power any longer.

Sir, the Law Commission has also stated that article 31C, which deals with the provision of a declaration, should be omitted, should be deleted. Now, there again, with respect, I do not agree with the reasons—or rather the one reason—given by the Law Commission. The reason given by the Law Commission is that if such a declaration is made in the form in which it has been provided for, even cases where there is colourable use of power, even cases where there is fraudulent use of power or where there is a fraud on the Constitution, or even cases where it will be established that the proposed legislation to be passed under article 31C has no nexus whatsoever, will stand scrutiny of courts and the Parliament will be in a position to make this declaration in cases where it could be established that this is no nexus with these directive principles.

Sir, I said that we are not in a position to agree with this, because I think it is beyond doubt that howsoever weighty our declaration, howsoever tight the provision excluding the intervening of a court in the matter, the courts of law are not so helpless. The courts themselves have held that if it is a fraud, if the legislation is colourable, if it is established that there is no nexus whatsoever, they can strike down the legislation, whether there is a declaration or not. Therefore, this reason, I would like to submit, is no reason for saying that the whole part pertaining to the declaration under Article 31C should be deleted, should be omitted, from the proposed amendment. On the other hand, what the declaration does, in fact, is to provide that short of declaring that the law is fraudulent, short of declaring that it is a colourable exercise of legislative powers, short of declaring that there is no nexus whatsoever, the court will have no jurisdiction to go through such matters as adequacy of the legislation to implement the Directive Principles. For example, it is not intended that once the nexus, howsoever remote, is established, the court will be able to say, 'No, this nexus is there but it is not enough'. The extent of the implementation or adequacy of the implementation is not a matter which, I submit, should be left to the scrutiny of the court. And that is all precisely what is sought to be excluded by this.

Sir, I am avoiding quotations in this introductory speech. But I think it is in the interest of democracy where the three wings are equally important—Legislature, Judiciary and the Executive—to ensure that the legislation which is passed takes care to see that the respect which the Judiciary deserves is not intended to be taken away by this. But at the same time, we must see that the Judiciary should not be called upon to sit in judgment on political and economic matters. The moment they are called upon to decide political and economic matters, the criticism of the Judiciary on the public platform and in the Press becomes inevitable. It is not to embarrass the Judges by asking them to decide political and economic matters. The intention under the proposed amendment is to keep the Judiciary out so that they decide matters of law and are not called upon to sit in judgment on matters which genuinely and really belong to the political and the economic spheres.

It is not as if for the first time somebody has invented a new principle in this country. Way back, in a country like America, when President Roosevelt made his address to the Congress, said:—

> "Everytime they (the Judges) interpret contract, liberty, vested rights, due process of law, they necessarily enact into law parts of a system of judicial philosophy. And for the peaceful progress of our people during the 20th century we shall owe most to those Judges who hold the 20th century economic and social philosophy and not too long

outgrown philosophy which is the product of primitive economic conditions"

The idea was, why call upon the Judges to import a philosophy whether modern or primitive by giving them a chance to sit in adjudication on matters which do not belong to the judicial sphere?

If we refer to the two Directive Principles which are the basis of the proposed amendment, the House will notice that each of these two Directive Principles, when the laws seek to give effect to such Directive Principles which involve consideration of political and economic matters, I dare say that there is a large measure of agreement that in order to protect the judiciary from an attack—which should not be there because the judiciary is one which we regard in this country as wedded to democracy and as the bastion of democracy—we are all one that the judiciary should remain independent. We are all one that every citizen from the top to the bottom should respect judicial adjudication. But that does not mean that in creating powers for the judiciary we should create a situation where this respect will vanish, where this respect will diminish because the moment a Judge is tempted to interfere in matters which are political or economic, a situation inevitably arises for which nobody can be blamed; they come in for political criticism; they come in for criticism on policies which they accept or which they do not accept. That is the sole purpose underlying the declaration which has been provided for in article 31(c).

The amendments have been discussed elaborately everywhere in the country. I would suggest that the passing of these amendments is going to open up a new chapter in the history of this country. They will enable us to undertake measures which were long since promised to our people. I commend that the House take this Bill into consideration.

SHRI N. R. MUNISWAMY (Tamil Nadu): Sir, I move:

"That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following Members, namely:—

1. Shri T. Chengalvaroyan
2. Shri B. K. Kaul
3. Shri Mahavir Tyagi
4. Shri Lokanath Misra
5. Shri Dahayabhai V. Patel
6. Shri R. S. Doogar
7. Dr. Bhai Mahavir
8. Shri N. K. Shejwalkar
9. Shri Kumbha Ram Arya and
10. Shri N. R. Muniswamy

with instructions to report within a week."

The questions were proposed.

MR. CHAIRMAN: Both the Motion and the Bill are open for discussion.

SHRI A. P. JAIN (Uttar Pradesh): Sir, may I seek a clarification. It is a well-established right of Members to seek clarifications, particularly from the mover, the Minister.

MR. CHAIRMAN: What do you want?

SHRI A. P. JAIN: The hon. Minister has referred to article 30(1) which refers to the right of religious and linguistic minorities to establish and maintain educational institutions. Now may I know from the hon. Minister what is the nexus between these two reserved rights, *i.e.*, to maintain and establish educational institutions and the payment of compensation, which he has provided by an amendment the Lower House?

SHRI H. R. GOKHALE: At this stage, I do not think question and answer are intended. I will keep a note of this point.

सरदार रघुबीर सिंह पंजहजारी (पंजाब) : इसका टाइम-टेबुल क्या होगा ?

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS AND IN THE MINISTRY OF SHIPPING AND TRANSPORT/ संसदीय कार्य विभाग तथा नौवहन और परिवहन मंत्रालय में राज्य मंत्री (SHRI OM MEHTA): We can have the reply tomorrow at 11.00 A.M. and then the Third Reading can be had at one o'clock. We can have a general discussion today upto 2 o'clock. We sit up to 2 o'clock today.

SHRI BHUPESH GUPTA (West Bengal): I would like to know whether the consent of the persons, whose names have been mentioned in the motion for referring the Bill to the Select Committee, has been obtained, because I find the first name is that of Shri T. Chengalvaroyan. The names are to be proposed on the basis of the consent of the Members concerned. The first name is that of my friend sitting here. Has he given his consent?

MR. CHAIRMAN: Whenever a Member gives notice of Motion, we presume that he must have taken the consent.

SHRI BHUPESH GUPTA: No, Sir. His name must be given after his consent has been obtained.

MR. CHAIRMAN: He has not said anything about this and, therefore, I presume that he has taken the consent.

SHRI BHUPESH GUPTA: It has been challenged by me. You can presume as long as it is not challenged. Now since it is challenged, it cannot be presumed. See the rule. As far as I know he is supporting the Bill. He does not want it to be delayed.

MR. CHAIRMAN: If any Member refuses to be on the Committee, his name will be cut out.

SHRI BHUPESH GUPTA: How? Can anybody give my name without my consent? Can you show me the rule? Mr. Chengalvaroyan does not want the Bill to be referred to the Select Committee. How his name has been smuggled, I cannot understand.

MR. CHAIRMAN: If he says that his name has not been given with his consent, his name will be struck off.

SHRI BHUPESH GUPTA: Then strike it off.

SHRI THILLAI VILLALAN (Tamil Nadu): Mr. Chairman, Sir, I like to be relieved of this honour. I want to know the other names.

MR. CHAIRMAN: It has been circulated. Yes, Mr. Gurupadaswamy.

SHRI AKBAR ALI KHAN (Andhra Pradesh): With your permission, I would like to know one thing and this will finish much of the criticism that is likely to be made on this Bill. I want to know from the hon. Law Minister as to what is the safeguard for a common and a poor man's property if it is taken and he is also not given the market value. The whole contention is that it hits the common man, it affects the common man . . .

MR. CHAIRMAN: Do not set up this precedent. Yes, Mr. Gurupadaswamy.

THE LEADER OF THE OPPOSITION (SHRI M. S. GURUPADASWAMY): Mr. Chairman, I wish to support the Bill in principle. Every student of contemporary politics is aware that there is, at present, no agreed international formula for inequality. There is not even much clear thinking on the kinds of inequality that have to be tolerated by us. But ever since the times of Aristotle the pace of equality is growing and the desire to avoid extremes of fortunes is becoming stronger. Today, equality has become a new political frontier that is to be reached. In the past equality was considered as an offshoot of exploitation, economic and otherwise but according to the socialist economists of the present day, equality is considered as a precondition of economic growth. There is a saying among the economists to-day that we must equalise till we do not hurt the economy if the inequities that are found in the society have to be brought down to civilised levels.

The agony and pain resulting from inequality or inequity in the distribution of income and wealth is felt

less in the prosperous economies because of the fact that there is more social and economic mobility in those economies. But the same thing cannot be said of the developing economies or the under-developed economies where we do not have the same economic and social mobility operating. It is understood by all of us that society is based on extremes of wealth is generally exposed to periodic outbursts of discontent and it is especially so in developing countries. It is axiomatic to me that power follows property and property is the classic symbol of inequality. If political power has to be shared by the broader masses, there has to be sharing of economic power by the broader masses. Political power and economic power are linked together.

Some time back there was a very interesting study made by Laydall research group and they took for their study 25 countries. After the study they reached a conclusion that only five among 25 countries have stood out with high inequalities. The names of these are Brazil, Chile, India, Ceylon and Mexico. It is obvious that in India the inequality of property is far greater than in advanced countries and it is even greater compared to the other developing countries of the world. And in India we are finding, therefore, political power is being managed, controlled, owned by a set of plutocrats and this has threatened harmonious and peaceful development. This also has eroded our social and economic stability. Therefore, what is required is to restructure our economic society and to bring about reordering of our property relations. We have to examine the present legislation against this backdrop. We have to examine it in the context or from the point of view of whether the present measure will fulfil the basic philosophy of equalisation without hurting the economic growth or development. This has to be the yardstick to measure the implication, the importance, the justification of this measure. But before examining this measure I would like to dilate on one point.

Sir, some attempts have been made by some Members, including a few Ministers, to create an impression in the country that there is a confrontation and opposition between the Executive and the Judiciary in the country. The arguments and expressions used have created a psychology of controversy about the role of the courts in the matter of constitutional interpretation. To my mind it is unfortunate. Sir, let us remember that both Parliament and courts are the creatures of the Constitution. It is the Constitution which is supreme and it is the Constitution which has defined the respective role of the Executive, the Judiciary and the Legislature. Therefore, to say that one wing is thwarting the policies of the other is wrong and misleading. The Judiciary is expected to say what the law is and Parliament is expected to say what it ought to be.

श्री राजनारायण (उत्तर प्रदेश) : श्रीमन्, मैं एक व्यवस्था का प्रश्न प्रस्तुत कर रहा हूं। जरा अनुच्छेद 359 को देखा जाय।

'359 (1) जहां कि आपात की उद्घोषणा प्रवर्तन में है वहां राष्ट्रपति आदेश द्वारा घोषित कर सकेगा कि भाग 3 द्वारा दिये गये अधिकारों में से ऐसों को प्रवर्तित कराने के लिए, जैसे कि इस आदेश में वर्णित हों, किसी न्यायालय के प्रचालन का अधिकार तथा इस प्रकार वर्णित अधिकारों को प्रवर्तित कराने के लिए किसी न्यायालय में लम्बित सब कार्यवाहियां उस कालावधि के लिए जिस में कि उद्घोषणा लागू रहती है अथवा उस से छोटी ऐसी कालावधि के लिए जैसी कि आदेश में उल्लिखित की जाये, निलम्बित रहेंगी।

तो इस समय हमारे यहां इमरजेंसी लागू है और राष्ट्रपति को यह अधिकार प्राप्त है कि राष्ट्रपति अपनी एक घोषणा के द्वारा, आदेश के द्वारा यह आदेश कर सकते हैं कि न्यायालय में जो कुछभी हो वह इस समय

[श्री राजनारायण]

रद्द है, स्थगित है, तो मैं जानना चाहता हूं कि राष्ट्रपति महोदय ने कोई इस प्रकार का आदेश जारी किया है या नहीं किया है, और अगर जारी किया है तो इस समय यह एग्जिस्टेंस में है ही नहीं, अस्तित्व में है ही नहीं ।

SHRI AKBAR ALI KHAN: Irrelevant:

श्री राजनारायण : जरा सुना जाय । जब यह इस समय एग्जिस्टेंस में है ही नहीं तो इसको सस्पेंड करने का इस समय यहां विधेयक प्रस्तुत कैसे हो सकता है । यह मैं जानना चाहता हूं आपसे ।

MR. CHAIRMAN: I overrule this point of order. It is not relevant.

श्री राजनारायण : मैं एक प्वाइंट आफ इफार्मेशन आप से जान रहा हूं । आप हिन्दी समझे नहीं क्या । मैं अंग्रेजी पढ़े देता हूं, सुन लीजिये ।

श्री सभापति : मैंने पढ़ लिया है, अंग्रेजी मेरे सामने है । मैंने अंग्रेजी में पढ़ लिया है ।

श्री राजनारायण : जरा सुन लीजिये ।

"Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended . . ."

श्री सभापति : मैंने देख लिया है । उसको मैंने खूब पढ़ लिया है, जबकि आप हिन्दी पढ़ रहे थे, और मेरी राय में इस बिल से इसका कोई ताल्लुक नही है, चाहे प्रेसिडेंट ने आदेश किया या नहीं ।

श्री राजनारायण : मैं यह जानना चाहता हूं कि प्रेसिडेंट ने किया या नहीं । आप गवर्नमेंट से जवाब नहीं दिलाते, गवर्नमेंट की जिम्मेदारी अपने पर क्यों लेते हैं । प्रेसिडेंट ने इसका आदेश किया है या नहीं, और अगर किया है तो इस समय यह अस्तित्व में है या नहीं ।

श्री सभापति : मैंने कहा कि यह रेलेवेंट नहीं है ।

श्री राजनारायण : आप अपनी रूलिंग से सत्य और असत्य का विवेचन तो करेंगे नहीं रूलिंग तो, केवल व्यवस्था पर देंगे । गवर्नमेंट से जवाब क्यों नहीं दिलाते ।

श्री सभापति : यह इररेलेवेंट है, इस बिल से कोई ताल्लुक इस बात का नहीं है । It is irrelevant. Mr. Gurupadaswamy.

श्री राजनारायण : श्रीमन्, मैं आश्चर्यचकित हूं आपकी व्यवस्था देने की क्षमता पर । मैं आपसे यह अर्ज कर रहा हूं कि संविधान का जो आर्टीकिल 359 है उसको पढ़ लीजिये ।

श्री सभापति : मैंने पढ़ लिया है ।

श्री राजनारायण : मैं बहुत अदब के साथ कहता हूं कि आप जरा कानून की बारीकी में जाये कि जिसके बारे में आज यह सदन यहां पर विचार कर रहा है अगर वह अस्तित्व में नहीं है तो क्या इस समय सदन के समय को उस पर व्यर्थ बरबाद करना हमारे लिये उचित है । जो काम इस विधेयक के जरिये हम करना चाहते हैं अधिनियम के रूप में परिवर्तन करके, वही काम इमरजेंसी के पीरियड में प्रेसिडेंट अपने आदेश से कर रहे हैं । अगर प्रेसिडेंट ने अपना आदेश कर दिया है तो इस पर इस समय यहां समय खर्च करने की आवश्यकता क्या है ।

श्री सभापति : मैंने अपनी रूलिंग दे दी कि यह इररेलेवेंट है । आप मेहरबानी करके बैठ जाइये । श्री गुरुपादस्वामी ।

श्री ना० कृ० शेजवलकर (मध्य प्रदेश) : सभापति महोदय, एक बात मैं पूछ लूं ।

श्री सभापति : मैंने अच्छी तरह से देख लिया है, आप बैठिये ।

श्री ना० कृ० शेजवलकर : मैं एक निवेदन करता हूं, एक मिनट में खत्म हो जायेगा । प्रेसिडेंट महोदय ने जो डिक्लेयरेशन किया है उसमें कोई ऐसी सूरत नहीं है . . .

श्री सभापति : उसकी कोई जरूरत नहीं है पूछने की ।

श्री राजनारायण : कोई जरूरत ही नहीं है । अगर आप यहां न बैठे तो भी कोई जरूरत नहीं है, काम चल जायगा ।

श्री सभापति : आप बैठिये । श्री गुरुपाद-स्वामी ।

श्री राजनारायण : इसका कम से कम सरकार से उत्तर तो मांगना चाहिए, कि क्या स्थिति है ।

MR. CHAIRMAN: Yes, Mr. Gurupadaswamy.

SHRI M. S. GURUPADASWAMY: Sir, . . .

श्री राजनारायण : बूड़ा वंश कबीर का उपजा पूत कमाल ।

SHRI M. S. GURUPADASWAMY: I was referring to the controversy created about the role of the courts in the country. My friend, Mr. Gokhale, is aware that the authors of any law may have some intention, but the words may convey a different meaning altogether, and the courts are the authorities to interpret correctly the meaning of the words. I want to invite his attention to the famous words of Lord Halsbury, Lord Chancellor of England once said:—

> "My Lords, I have more than once said that in construing a statute, I believe the worst person to construe it is the person who is responsible for its drafting."

I would only remind him of these words with a view to justifying my statement. And there should not be any psychology or impression created in this country that there is confrontation, opposition, between the courts and the other wings of the Government. Parliament has got the power and authority to change any law. It is always given to the courts to interpret these laws. If there are judicial errors, Parliament is there to correct these judicial errors or lapses.

Having said this, I would like to refer to the various clauses of the Bill. Firstly—let me repeat—the present measure tries to support and broaden the philosophy of equalisation; it tries to make socialist objectives more meaningful. It accepts, by implication, that the rigid stratification of society posed a threat to the social order. From this point of view, the Bill is welcome. But it has got various limitations. The first part of the amending Bill deals with compulsory acquisition or requisitioning of property by the State. It reiterates the earlier accepted norm that the State can do so if it is for a public purpose and is done under the authority of the law. There is no change in this and this has been retained. However, previously, compensation was envisaged but now it is sought to be replaced by the word 'amount'.

Sir, here I have got some misgivings. I do not mind if compensation is denied to prosperous persons whose properties are taken over by the Government. They have enjoyed their fortunes for too long. And one of the socialist objectives being to level off incomes, we cannot afford the luxury of giving the market value equivalent to the property acquired from the propertied classes. There, I am going to support the contention of the Government and the purpose of the Bill. But it will be different if the same principle is applied to pigmy properties and small owners. The Bill proposes to treat both the rich owners and the poor owners in the same category. The affluent owners are combined with the non-

[Shri M. S. Gurupadaswamy.]

affluent owners, and the same yardstick is applied. Sir, I would like to pose this question to the Minister: Where is socialism when poor people are denied their property, and a fair equivalent is not given to them? It also introduces an elecent of arbitrariness Government can victimise the small owners and deny full compensation or full value of the property. I do not think it is the intention of the Government to do such a thing. The socialist objectives, I think, should also encourage, support and protect the small owners, and should, at the same time, draw a line between the small and the big. Sir, I have proposed some amendment in this regard. I have said in the amendment that reasonable or equivalent compensation has got to be paid in respect of properties acquired which are below the ceiling.

Again, Sir, the first part of the amendment does not take into consideration adequately the educational trusts. Sir, in India we do require enormous resources for education The resources available in the hands of the Government are not adequate. This requires supplementary resources of the community. If trusts are created for that purpose by any section of our society, whether by majority or minority, why should they not be treated liberally? And for this purpose, I have given another amendment I have said in the amendment that educational trusts belonging to any section of our society should be treated liberally in case of acquisition.

Sir, the most important and crucial part of the amending Bill is its second part. It deals with Article 31 of the Constitution. It tries to give effect to Directive Principles contained in Article 31(b) and (c). The Articles (b) and (c) deal with distribution and control of the material resources of the community to subserve the common interest, and envisage that the economic system should not operate in favour of concentration.

The amendment proposes to give constitutional validity to all legislation intended to give effect to these Directive Principles. But, to my mind, the amendment suffers from two drawbacks. Firstly, it tries to revoke all the fundamental rights incorporated in Article 19(1).

I heard carefully the speech of my hon'ble friend, Mr. Gokhale, while he was introducing the Bill. But I failed to appreciate his point. I would like to ask him again what is the relevance in bringing all the Fundamental Rights under the purview of the Bill.

Secondly, Sir, the amendment does not pay equal importance to economic obligations incorporated in Articles 41 and 43. Here, again, if the intention is to bring about economic justice and to bring about social economic transformation, obviously we do want this dimension to be enlarged That is why we have brought in other Articles, Articles 41 and 43, which cast economic obligations on the government in respect of weaker sections of our community. These two Articles, which I have stated, deal with the question of right to employment. right to education and assurance of living wages to the working class and so on. I would have appreciated the Government if they had brought before us a package of Constitutional reforms whereby we will be able in the future to bring about a structural, socio-cultural and economic transformation. I do not know why these aspects have been overlooked or left out from the purview of the Bill.

11 A.M

Then, Sir, I come to the point raised by the Minister himself that this excludes or takes away from its purview all the fundamental rights included in Article 19(1). What is the relevance of this to the Bill? The fundamental rights included in Article 19(1) deal with the freedom of speech and expression, movement, association . . .

MR. CHAIRMAN: Mr. Gurupadaswamy, I do not want to stop you, but there is a long list of speakers.

SHRI M S. GURUPADASWAMY. I am finishing, Sir I would like to ask the Minister what is their relevance here? They are not related to property rights or property relations While we agree with him that property relations have got to be restructured, re-ordered, re-fashioned, we do not want that in the name of re-structuring the property relations, we should abridge or cut down the fundamental rights They have no relevance at all to the Bill I think fundamental rights are common law rights and are not contractual rights. They are remotely connected with property rights And if these are taken away from the purview of the Bill my fear is that the Government can become arbitrary and in the name of cutting down property rights, it may interfere crudely in the fundamental, basic liberties of the people. Sir, we do stand for a healthy harmony of democracy and socialism We cannot afford the luxury of sacrificing socialism at the altar of democracy or vice versa We believe in democratic socialism That is our concept, that is our philosophy And the basic rights, fundamental rights cannot be sacrificed at the altar of the economy or the economic changes that we may envisage Therefore, Sir, I oppose the provision worded in this fashion which excludes or takes away the fundamental rights from the purview of the Bill

Lastly, Sir, the Bill deals with another aspect, that is, "no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" Sir, we are not in favour of this amendment It is already enunciated that all acquisitions have got to be for a public purpose and this is made justiciable And one should be allowed to question the justiciability of any act of the Government And till today the Directive Principles were put in a separate category, in Chapter IV, and the main reason for this was that these Directive Principles should not be justiciable And today the Minister is saying the same thing We do not want this to be justiciable at all One big difference between Fundamental Rights and Directive Principles is that Principles should be non-justiciable and why is he insisting that Directive Directive Principles are not justiciable, in this matter? I would like this to be justiciable I do not want any distinction to be made between Fundamental Rights and Directive Principles envisaged in this Bill The people should have the opportunity of questioning the wisdom of the act of the Government whenever they take action under the Bill An arbitrary Government can take shelter under this and impose its will, and there is no way of getting out of this predicament Therefore, I plead with the Government that we should concede the right of judicial review to the courts in this regard There has got to be a link a nexus, between the action of the Government and the constitution.

With these words I would like to commend my amendments and I hope and trust the Government will reconsider its stand and concede some of the points that I have made through these amendments

श्री सुन्दर सिंह भंडारी (राजस्थान): सभापति जी, सविधान सशोधन विधेयक विचारार्थ प्रस्तुत है, और इसके पीछे, जिस कारण से, इस विधेयक को लाना पडा उसका जहां तक सम्बन्ध है, और उस गलती को दूर करने के लिये ही अगर यह विधेयक लाया गया होता तो मुझे इसका समर्थन करने मे कोई आपत्ति न होती । बैंक राष्ट्रीयकरण कानून के बारे मे सर्वोच्च न्यायालय के फैसले मे जो कुछ चीजे आई हैं इसमे कोई शक नही कि उससे सविधान की मान्यता का विरोध हुआ । वैसे तो स्वय सरकार ने स्वीकार किया है कि सुप्रीम कोर्ट इस मामले मे विभिन्न समयों पर अलग-अलग राय लेती रही है और शान्तिलाल मगलदास के मामले मे उन्होंने वही राय ली जो सविधान सभा चाहती थी, जो इस सविधान की मशा थी,

श्री सुन्दर सिंह भंडारी

लेकिन बैंक राष्ट्रीयकरण के मामले में उन्होंने अपनी राय बदल दी और इसलिये इसमें परिवर्तन करना आवश्यक है उस परिस्थिति को फिर से पैदा करने के लिये जो शान्तिलाल मंगलदास के मामले के द्वारा निर्मित हुई थी।

मैं नहीं समझता कि बैंक राष्ट्रीयकरण का जजमेंट पोलिटिकली मोटिवेटेड था। मैं नहीं जानता कि किसी फैसले के ऊपर हम पोलिटिकल मोटिवेशन का आक्षेप कैसे लगा सकते हैं। या तो हम अदालतों को विधान सभाओं के द्वारा बनाये गये कानूनों को इंटरप्रेट करने के अधिकार से वंचित कर दें, इंटरप्रिटेशन में पार्टीज टू दी सूट के वकील बहुत हद तक जिम्मेदार हैं और अदालतें उन वकीलों के द्वारा पेश किये गये तर्कों के आधार पर जो एक समय में एक रवैया लेती हैं उसका उससे एक सम्बन्ध आता है। अब अगर उस मुकदमे का उन्होंने एक विशेष प्रकार से अर्थ निकाल कर और अपना निर्णय, इन्टरप्रिटेशन के आधार पर किसी प्रकार से किया तो हमारा मत है कि किसी भी प्रकार से किसी फैसले में हम पोलिटिकल मोटिवेशन की बात न कहें तो यह ज्यादा अच्छा होगा। एक तरफ तो हम . . .

SHRI AKBAR ALI KHAN: We do not agree with that.

श्री सुन्दर सिंह भंडारी : मैं आपकी बात सुन रहा हूं, समझ रहा हूं। आप भी मेरी बात समझने की कोशिश करें।

श्री अकबर अली खान : मैं समझकर ही बोल रहा हूं।

श्री सभापति : सुन भी रहे हैं।

श्री सुन्दर सिंह भंडारी : बिना सुने शायद आक्षेप करना चाहते हैं। तो इसलिए जजमेन्ट में से हमें फिर से इस बात की जरूरत पड़ सकती है कि अगर हमारे कानून की भाषा में कोई भी ऐसी गुंजाइश रह गई है कि जिसका इंटरप्रिटेशन अदालत बार-बार कि इस तरीके से करती है जो कानून बनाते एक हमारा इरादा नहीं था, लेकिन शब्दों की रचना कुछ इस प्रकार की हुई हो, या इसमें से वह गुंजाइश उतनी साफ नहीं हो रही कि जिसमें से उसका अर्थ लगा कर हमने जिस भावना से कानून बनाया, उसमें से कुछ गलत दिशा ली जा सकती है, तो उन जजमेन्ट्स से हमारी आंख खुलनी चाहिए। उस जजमेन्ट में से हम उस कानन की भाषा को संवार लें, सुधार लें, उसमें इन्टरप्रिटेशन का कोई लूपहोल बचा है तो उसको दुरुस्त कर लें, इसके लिए हमें अधिकार है -- पार्लियामेन्ट को, लेजिस्लेचर्ज को--और कहीं भी पार्लियामेंट के इस अधिकार पर कोई अंकुश लगाने का या पार्लियामेंट को उस अधिकार से वंचित करने का इसमें अर्थ पैदा नहीं होता। लेकिन जब हमने एक इंडिपेन्डेन्ट जुडीशरी की कल्पना की, जब संविधान में एक इंडिपेन्डेन्ट जुडीशरी के लिए व्यवस्था की, तो इसका मतलब साफ था कि जुडीशरी द्वारा पार्लियामेन्ट के कानूनों के बारे में, प्राविजन्स में से कौन सा इंटरप्रिटेशन निकाला जा सकता है, इसका वह जरूर विचार करें और उसका वह ज्युरिस्डिक्शन है, लीगल ज्युरिस्डिक्शन है, बाजिब ज्युरिस्डिक्शन है, कि उसका वह अधिकार सुरक्षित रहना चाहिए।

यह बात ठीक है कि बैंक नेशनलाइजेशन का मामला एक सार्वजनिक विवाद का विषय भी बन गया था और राजनैतिक प्रतिष्ठा को, उसके आधार पर दांव पर लगाया गया था, सरकार की उसके फैसले पर राय खरी नहीं उतरी। महज इस वजह से कि सुप्रीम कोर्ट ने बैंक नेशनलाइजेशन के पहले कानून को रद्द कर दिया, किसी भी अदालत पर राजनैतिक दृष्टिकोण का आक्षेप लगाना, यह किसी भी दृष्टि से--यह कहते हुए कि हम अदालत की इज्जत को बरकरार रखना चाहते हैं या उसकी आज़ादी पर आक्षेप लगाने की बात--उचित नहीं है और लीपा-पोती करने के समान बात है। मैं ऐसा समझता हूं कि अगर सरकार इस नतीजे पर आ गई कि सुप्रीम कोर्ट का एक बार का दिया गया

फैसला अदालतों के लिए उचित नहीं था और फिर से सुप्रीम कोर्ट ऐसे ही प्रश्न पर विचार करे—जैसा कि अभी तक के जजमेन्ट्स के बारे में रिव्हयू करता रहा है, बदलता रहा है—उसके लिए इतनी गुजाइश उसको न दी जाए और हम एक लेजिस्लेटिव्ह मेजर से अपनी तरफ से जल्दी में उसका वह दरवाजा बन्द कर दें, अगर सरकारी पक्ष का यह इरादा था तो मुझे इस मामले में कोई बहुत बड़ा गिला नही है। लेकिन स्वाभाविक रूप से हमें ऐसे मामलों में अदालतों को मौका देना चाहिए। और अदालत का फैसला भी, आज तक, कभी भी पत्थर की लकीर सा नहीं रहा। समय-समय पर अदालत अपने जजमेंट्स के ऊपर रिव्हयू करती रही हैं और आगे भी कर सकती हैं। इसलिए मैं नहीं समझता कि केवल एक फैसले के आधार पर ही इस प्रकार के अमेन्डमेन्ट के लिए रश करना, वह किसी भी प्रकार से न्यायोचित माना जा सकता था। परन्तु सरकार अदालतों के फैसलों पर अदालतों को दोबारा रिव्हयू करने का अधिकार देने की गुजाइश के पहले यह रास्ता अपनी तरफ से बन्द कर लेना चाहती है, तो मैं कहना चाहता हूं कि यह पार्लियामेंट का अधिकार है। पार्लियामेंट अगर उस अधिकार को बकार करना चाहती है तो मुझे किसी प्रकार का आक्षेप करने का कोई कारण दिखलाई नही देता है। इसलिए मैं समझता हूं कि अगर हम कम्पेसेशन की जगह पर, कम्पेन्सेशन का जो ठीक तरह से अर्थ नहीं निकाला गया, इसलिये उसकी जगह पर एमाउन्ट शब्द कहना चाहते है और एमाउन्ट को रखकर हम उसकी मिकदार के बारे में—जिस तरह का इन्टरप्रिटेशन सुप्रीम कोर्ट ने बैंक नेशनलाइजेशन के मामले मे लिया वह भविष्य मे न लिया जा सके, उस रास्ते को बन्द करना चाहते है, तो वहां मैं इस संशोधन के इस पहलू का स्वागत करने के लिए तैयार हूं। लेकिन जब कभी भी सरकार ऐसे संशोधनों को लाती है और जिस मंशा से और आगे तकलीफ के ख्याल से वह इस सशोधन को लाई है, उससे आगे बढ़ने का मोह वह छोड़ नहीं सकी है। यहां पर केवल बैंक नेशनलाइजेशन केस में जो एक तकलीफ हुई उससे यहां दो कदम आगे बढ़े हैं और मुझे आगे बढे हुए दो कदमों पर विरोध है और आपत्ति है। जब तक यह संविधान संशोधन विधेयक आगे की चीजों का भी समावेश करता है तब तक मैं इसके पैकेज डील का समर्थन नहीं कर सकता।

इसमें जब यह अधिकार लिया गया, सम्पत्ति के प्रश्न पर कानून बनाते समय, कि उनको लेते समय अदालतें उसको देख नहीं सकेगी, तो मैं समझता हूं क्वान्टम आफ पेमेन्ट और मोड आफ पेमेन्ट-तो ठीक है कि अदालतें न देखें। लेकिन यह कहना कि अदालतों के दरवाजे बन्द हैं, तो बिना कानून को देखने के अधिकारों से अदालतों को वंचित करना किसी भी प्रकार से एक डेमोक्रेटिक कंटरी में, एक कांस्टीट्यूशन द्वारा चलाये गये देश में और जिस कांस्टीट्यूशन में ज्यूडिशरी की भी व्यवस्था है, जो कानून की स्क्रूटनी के लिए बनाई गई है, उसको उसके अधिकार से वंचित करना कदापि उचित नही है। आप समाप्त कर सकते हैं उस अधिकार को, तो आज आर्टिकल 19(1)(एफ) ले, पूरे आर्टिकल को उसके दायरे से बाहर करना, यह अधिकारों पर अतिक्रमण है और सुप्रीम कोर्ट के स्क्रूटनी के रास्ते पर एक बाधा उपस्थित करने के समान है जिसको नही होना चाहिये था। इस अधिकार को वंचित करवाकर उसका एक कारण दिया है कि 'सकाल' के मामले में एक फैसला हो गया है। अब अगर एक आइसोलेटेड जो केस है और बराबर अदालतें उसी इण्टरप्रिटेशन पर परसिस्ट करती है, तो हमको जरूर उसका विचार करना चाहिये। यह मंशा कानून बनाते समय हमारी नही थी, लेकिन बैंक नेशनलाइजेशन केस का एक इण्टरप्रिटेशन ले लिया, या 'सकाल' के मामले में एक इण्टरप्रिटेशन ले लिया और उसमें से भविष्य के लिए अदालतों के रास्ते से स्क्रूटनी को भी बन्द कर दे, तो यह किसी

श्री सुन्दर सिंह भंडारी

प्रकार से न्यायोचित नही माना जा सकता है।

'सकाल' का मामला एक आइसोलेटेड केस हो सकता है। उसी प्रकार के दूसरे मामले अदालतो के सामने जाने पर इस प्रकार का इण्टरप्रिटेशन अदालते सभवत न ले। फिर भी जब तक हम इस बात का फैसला न कर ले तब तक अदालतो को निश्चित रूप से आर्टिकल 19(1)(ए) को भी परव्यू में लाकर, सब प्रकार के सुधार, सब प्रकार के परिवर्तन के रास्ते बन्द कर लिये गये हैं, मै नही समझता हूं आर्टिकल 19 के अन्तर्गत इन सब कानूनो का परव्यू अदालतो के बाहर रखना किसी प्रकार से न्यायोचित माना जा सकता है। क्योंकि वहा पर सब प्रकार के अधिकार है, स्पीच के, एक्सप्रेशन का, पीसफुल असेम्बलीज का, एसोसिएशन एण्ड यूनियन बनाने का अधिकार है और इसी प्रकार के अन्य फण्डामेंटल राइट्स है। इन फण्डामेंटल राइट्स के सम्बन्ध में केवल किसी लेजिस्लेचर का डिक्लेरेशन, यह कहना कि डाइरेक्टिव प्रिसिपल्स को लागू करने के लिए हमने यह कानून बनाया है, तो फिर ठीक है. विधान सभाओ ने डिक्लेरेशन दिया तो उस डिक्लेरेशन का भी उन्होने ठीक प्रकार से अर्थ लगाया है, उस डिक्लेरेशन को भी उन्होने सही दायरे मे लागू किया है इस बात की जाच करवाने के लिए आप अदालत मे जाने को तैयार क्यो नही? अगर अदालते मानती है कि आपका डिक्लेरेशन वाजिब है तो आपको अधिकार है, लेकिन लेजिस्लेचर के द्वारा किया गया यह डिक्लेरेशन कि डाइरेक्टिव प्रिसिपल्स को लागू करने के लिए यह कानून बना है और इसलिए आर्टिकल 14, आर्टिकल 19, आर्टिकल 31, कोई इस पर लागू नही होगे, मै समझता हू कि इस अधिकार को वचित करना, यह एक प्रकार से प्रजातन्त्र के अन्तर्गत नही माना जा सकता। प्रजातन्त्र के अन्तर्गत जो दिये गये मौलिक अधिकार है उनसे लोगो को वचित करने का इसमें से प्रयत्न होगा।

जो विषय श्री गुरुपादस्वामी जी ने सामने रखा कि प्रापर्टी लेते समय भी आपने जो उद्देश्य कहा कि भौतिक संपत्ति के स्वामित्व और नियन्त्रण व वटन तथा धन और उत्पादन साधनो के अहितकारी केन्द्रीयकरण को रोकना चाहते है, मै इस उद्देश्य से सहमत हू। लेकिन जहा केन्द्रीयकरण नही है, परन्तु आपको प्रापर्टी लेने की आवश्यकता पड सकती है किसी भी पब्लिक परपज के लिए तो केन्द्रीयकरण को रोकने के लिए ली जाने वाली सम्पत्ति और अन्य आवश्यकताओ के लिए ली जाने वाली सम्पत्ति में एक लाइन आफ डिमार्केशन होना चाहिए। मुझे खेद है कि इस सशोधन के अन्तर्गत (*Time bell rings*) मै समाप्त ही कर रहा हू। कोई लाइन आफ डिमार्केशन नही है ताकि पता लग सके कि कंसंट्रेशन आफ प्रापर्टी और कसंट्रेशन आफ वेल्थ को रोकने के लिए लिया जाने वाला पग कौन सा है और पब्लिक परपज के लिए लिया जाने वाला पग कौन सा है। इन दोनों के बीच कोई लाइन आफ डिस्टिक्शन नही है। और हम कितना ही यहा सिद्धात के आधार पर आश्वासन देने की कोशिश करे, जब तक संवैधानिक व्यवस्था इस प्रकार के विधान में इसके दुरुपयोग को रोकने के लिए समाविष्ट नही होती तब तक सदन में दिये गये आश्वासन इसके लिए अपर्याप्त होगे और इस नाते यह सविधान सशोधन विधेयक अधूरा है। यह छोटे लोगो पर, कम सम्पत्ति वालो पर। कृषि की सीमा के अन्तर्गत आने वाली भूमि के लेने पर इस सम्बन्ध में किसी प्रकार की सुरक्षा का प्राविधान इस सविधान संशोधन में नही है।

इसलिए मै समझता हू कि यह विधेयक अधूरा है, यह विधेयक इन छोटे लोगो पर अन्याय करने वाला विधेयक है। उनकी छोटी सम्पत्ति और उनकी छोटी जमीन

उस को भी सरकार की दया पर और सरकार के कानून के ऊपर जो एक साधारण बहुमत के आधार पर बनाया जा सकता है और खुद सरकार ने जिस को विचार कर कहा था कि यह साधारण बहुमत पर नहीं बनना चाहिए, इस के लिए 2/3 बहुमत की आवश्यकता होनी चाहिए, लेकिन पता नहीं कौन से प्रेशर्स के आगे यह सरकार का प्रारम्भिक विचार दब गया और अब केवल साधारण बहुमत के आधार पर ही इस प्रकार का फैसला करने की बात कही गयी है। इस लिए जब तक इन व्यवस्थाओं का समावेश इस संविधान संशोधन विधेयक में नहीं होगा, तब तक यह संविधान संशोधन विधेयक केवल बैंक नेशनलाइजेशन केस में से निकलने वाले कारणों तक ही सीमित नहीं होगा, यह उस से आगे सरकार के हाथ में अधिकार केन्द्रित करता है और छोटे लोगों को सुरक्षा नहीं देता। इस कारण मैं इसका विरोध करता हूं इस रूप में जब तक कि इस को सीमित न किया जाय और इस में उन व्यवस्थाओं का समावेश न किया जाय जो यहां के छोटे लोगों की सम्पत्ति से सम्बन्ध रखती है। धन्यवाद।

SHRI JAISUKHLAL HATHI (Gujarat): Mr. Chairman, Sir, the Twenty-fourth Amendment of the Constitution has been passed and it gave to Parliament the power which it had lost as a consequence of the Golak Nath case. Having got that power back, it is but proper that Parliament should go ahead with enacting legislations for social and economic progress and for such progressive measures as are necessary. But in doing so it is necessary that Parliament should be armed with the necessary powers and the experience in the past has to be taken into account.

It is nobody's case that there is any confrontation between the Judiciary and the Legislature and it is not also the intention to say that because the Judiciary has given certain decisions the Constitution is being amended. But certainly as the Judiciary has a right to express its views, if the intention expressed by Parliament is not properly carried out or understood. then Parliament equally has a right to reiterate by way of amendment of the Constitution as to what the intentions are.

The first important amendment that is sought to be made is the substitution of the word "compensation" by the word "amount". This article 31 has a long history. If we go back to the year 1950 or to the day from which the Constitution came into force, several measures were taken for land reforms, for agrarian reforms, for abolition of *zamindari*. Other social measures like taking over of management of commercial undertakings and industrial undertakings were taken. Measures for settling displaced persons were also taken.

Earlier, before the Fourth Amendment, in the case known as Mrs. Bela Bannerjee's case, the courts held that compensation would mean "just equivalent". Now, the word "just" is of an American concept. It is found in the American and Australian Constitutions and we had deliberately omitted the word "just" because by compensation we do not mean the existing market value but certainly to compensate. But because they were free to hold that although the land acquisition or acquisition in West Bengal was to be paid at a price prevailing in 1946—and the Act was passed in 1946—it was held that as no market value had been paid and, therefore, the person whose lands were taken was not properly compensated; as it is not just and equivalent.

Now, in England also you will find that it is not the market value that is insisted upon. It is a more democratic country. Parliament is there. There, the Town and Country Planning Act, 1944 provided that compensation may be paid on the basis of

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the value prevailing in 1939. Although the Act was passed in 1944, the compensation was to be paid on the basis of the value prevailing in 1939. There was no agitation of the kind. Similarly, if you want large chunks of land, and supposing a man in Delhi has purchased a land three years back @ Rs. 50 per yard, and now you want to acquire his land, the actual compensation would mean the value which he has paid plus anything by way of interest. That would be an adequate compensation. That was why the Fourth Amendment Bill was passed in 1955.

SHRI A. D. MANI (Madhya Pradesh): We have also a similar provision and the . . .

MR. CHAIRMAN: Please, Mr. Mani, do not interrupt.

SHRI JAISUKHLAL HATHI: I know the provisions. In 1955 the Fourth Amendment Act was passed. The same kind of atmosphere grew up when a provision was added that no law fixing the compensation or specifying the principles on which the compensation would be given shall be questioned in a court of Law. There also this kind of apprehension was expressed and they said that now that the courts are debarred from reviewing the cases or where judicial review is debarred, the Parliament can give any compensation that they like, fixing the amount in any manner that they like and, therefore, it will be a kind of confiscated nature.

That was not the position here. At the outset some reactions took place and so much so that the Judge of the Supreme Court of America also made a similar observation. Justice Douglas of American Supreme Court observed thus in his review of Indian Constitution—

> "Whatever the cause, the 1955 amendment casts a shadow over every private factory, land or other individual enterprise in India. The legislature may now appropriate it at any price it desires, substantial or nominal. There is no review of the reasonableness of the amount of compensation. The result can be just compensation or confiscation dependent only on the mood of Parliament.
>
> If the Parliament appropriates private property for only nominal compensation the spectre of confiscation would have entered in India contrary to the teaching of our outstanding jurists."

That is the review of the Indian Constitution by Mr. Justice Douglas. In England, the Acts of Parliament are not being judicially reviewed, but still they have trust and confidence in the Parliament; that the Parliament will not go mad so as to confiscate property of everybody without due compensation. Here also it is a question of trust and confidence. After all the people who are going to pass legislation will be the representatives of the people and when any such Compensation Act is being passed, certainly the law that is provided will ensure that the interest of an ordinary man, of a common man is being protected. In fact, we have a provision in the Constitution itself which is not being amended.

If one looks at article 31 (2) proviso it very clearly protects the people for whom we have the greatest anxiety. It says:

> "Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure provides for payment of compensation at a rate which shall not

be less than the market value thereof."

After all, the laws will have to be passed by this House or by the Legislature and where there is a law to be passed, as Mr. Bhandari said, for avoiding concentration of wealth there will be no question as to the amount of compensation.

SHRI C. D. PANDE: There is a difference between an ordinary law passed by Parliament and amending the Constitution. Whatever change you make, will it be governed by the laws of the land?

SHRI JAISUKHLAL HATHI: I would like to go on with what I want to say because the time is very limited.

MR. CHAIRMAN: Clarifications could be given by the Minister.

SHRI JAISUKHLAL HATHI: I am here to express what I feel about them and I feel that whenever a law to avoid concentration of wealth is being passed, naturally there will be no question of giving adequate compensation or protecting the Fundamental Rights. The Fundamental Rights are not to be used as weapons by those who have vested interests. In fact, the Directive Principles of the State Policy are the guidelines to the Government of the day to govern the country in a particular way and the two articles that the Bill seeks to amend to-day are the most important ones. Therefore, if we want to go ahead with social, economic and progressive measures, it will be necessary to make legislations whereby we are in a position to avoid concentration of wealth, we are in a position to see that there is equal opportunity of employment, we are in a position to see that the natural resources are available and are not concentrated in a few hands. Therefore, it is not that the Directive Principles are merely a piece of decoration in the Constitution. That they are not justiceable does not mean that they are there to just show how magnificent our Constitution is containing beautiful ideas. They are to be implemented and if in the implementation of these, there is any kind of hurdle or obstacle, the Parliament is there to remove it but let it not be understood that it means disrespect to the Judiciary. It does not mean so nor does it mean that there is any dispute with the Judiciary. They are there to interpret but, as when the Fourth Constitution Amendment Bill was moved, the Home Minister very clearly said, we would like to releave the Judges of the necessary embarassment that would be caused to them by interpreting anything that we say. Here also the Law Minister said that. After all, if we want the Judiciary to remain independent—and we do want the Judiciary to remain independent, we do want their dignity and respect should be maintained—then in the political field it is better they are kept out and, therefore, it is that the word 'amount' is substituted. *(Time-bell rings)*. The other things the Law Minister has explained, and since you have been pleased to ring the bell, I will not say anything more, except to say that I support the Bill.

SHRI M. C. SETALVAD (Nominated): Mr. Chairman, I have great pleasure in welcoming this piece of legislation and my comment is not on the fact that it has been brought in by the Government but on some parts of it, on some of its provisions. You will remember, Sir, that I welcomed the Twenty-fourth Amendment Bill and was happy that power has been restored to Parliament to amend all parts of the Constitution including the Fundamental Rights. But the power to amend has to be exercised with care and circumspection.

Coming to the Bill, the first part, of it only brings about a change which was really intended to be always there by the framers of the Constitution. When the framers of

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the Constitution used the word 'compensation' and the words principles ....etc., as is shown by the debates, they meant Parliament to be the supreme authority to fix the amount of compensation. But that was not the view which the courts took. Then, we came to the Fourth Amendment and we tried to amend the clause so as to make the intentions of the Constitution-makers clear. I had the privilege of participating in the discussions which led to the adoption of the language of that amendment, and we thought we had made matters clear enough. Even so the courts wavered after the Fourth Amendment and the reason was, of course, the use of the word 'compensation'. All that this Bill does or proposes to do is to eliminate the word 'compensation' and substitute for it the word 'amount', an amount which may be fixed by the legislature. This was always the intention, from the very inception of the Constitution-makers made clearer by the Fourth Amendment.

Coming to the next part of the Bill, it is a small amendment which brings about a change in the law as laid down by the Bank Nationalisation case that the condition of reasonable restriction in the acquisition of property in addition to that of public purpose should not prevail. That idea is a welcome change for the very words 'public purpose'—and it has to be a public purpose for purposes of acquisition—imply a reasonable purpose and, therefore, the restriction imposed by the acquisition would necessarily be a reasonable restriction.

But when we come to the third part of the proposed Bill I feel a great deal of difficulty. I am one with those who have framed the Bill in the intention which they profess and which I am sure they have of giving primacy to the Directive Principles over Fundamental Rights whenever that becomes necessary.

No doubt the Constitution has provided that the Directive Principles shall not be justiciable. But in the past our Constitution-makers— in the First and Fourth Amendments did not hesitate to give primacy to the Directive Principles in the matter of land reforms when it became necessary. You will remember, Sir, that article 31A was enacted in order to conserve and promote the land resources of the country. It was clearly a purpose denoted by article 39(b) of the Constitution. So, this is not the first occasion in which it is proposed to give the Directive Principles primacy over Fundamental Rights. But are we proceeding in the right manner in giving this primacy to the Directive Principles? What did the Constitution-makers or those who amended the Constitution do when they amended the constitution and provided for article 31A? What they did was to concretely lay down certain ideas which were germane to land reform, land conservation and agrarian reform and embodied them in the Constitution itself. Having laid down those concrete purposes and concrete objectives, they said: If you legislate in regard to these concrete objectives, such legislation will be immune from objection on the ground of infringement of certain Fundamental Rights. Now, that is what, in my view, should have been done in this case also. Articles 39 (b) and 39(c) are worded rightly, because they are matters of State Policy in vague and general language. They cannot very well be subjects of legislation. They would have to be concretised, and surely it would have been very easy for a Parliamentary Committee or for Law Commission which the Government itself has appointed, to concretise these ideals and put them in the shape of principles which could be easily embodied in legislation. Having amended the Constitution accordingly, and put Article 31C in such form, legislation in respect of those matters as under Article 31A could be made immune from such Fundamenta

Rights or the application of such Fundamental Rights as may be provided in the article. Then, you would absolutely be on safe ground, the constitutional amendment itself pointing out what concrete ideas would prevent, for example, concentration of wealth and so on. The Legislatures, acting on those principles, would themselves have a safe and certain guide to act upon.

What I do object to Parliament abdicating those functions. These are matters of general and Central interest. What is, after all, contained in Article 39(b) and (c), broadly speaking, is economic and social planning. These are essentially matters for Parliament and not for State Legislatures. These are subject-matters of legislation in the Concurrent field and surely Parliament should lay down the subject matter of these laws.

It is not derogatory to the States to say that the States have not yet attained that experience in democratic institutions which the Centre has. It would be, therefore, difficult for the States really to formulate these principles with certitude. It would not difficult for the Law Commission or for a Parliamentary Committee at the Centre to specify them and lay them down. Some of the States have not even been functioning. The administration of some of the States had to be taken over by the Centre. Are we then going to leave these State Legislatures to formulate principles from these vague generalities of Article 39(b) and 39(c)? That is my objection. I call that really an abdication of a responsibility which really rested with Parliament, a responsibility towards the whole country, because these are the objectives which the whole country has to aim at and work for. Therefore, heartily believing in these objectives, I say this manner of approach is wholly unsatisfactory and should be corrected.

Lastly, my objection is to the last clause, in the proposed Article 31C. There, we are making a departure from the basic concept of the Constitution. I am referring to that provision which makes a declaration, by the State Legislature finally and conclusive and debars the courts from examining the legislation to see whether it conforms to the principles laid down in Article 39(b) or 39(c). Surely, we cannot import such a wide and sweeping clause in the Constitution. No other article in the Constitution has such a provision which destroys what has been really the basis of our Constitution, namely, judicial review in the rule of law.

Mr. Chairman, these are my broad views on the subject.

[MR. DEPUTY CHAIRMAN in the Chair]

SHRI M. RUTHNASWAMY (Tamil Nadu): The first consequence to the 24th amendment to the Constitution which was passed in the last session is this Bill which erodes into the right to property guaranteed under the Constitution under sub-clause (f) of clause (1) of article 19. I grant that no rights are absolute. Rights are subject to the safeguarding of the interests of the society and the State. Even the right to freedom of expression, the right to preach or propagate religion, etc. all these are subject to the requirements of public order. Granting that no right is absolute, even the right to property is not absolute. I cannot agree with the main clause of these amendments, which substitutes the word 'compensation' for acquisition of property for public purposes by the word 'amount'.

In no law of nationalisation, even in socialist countries like England or Germany under socialist democratic influence, is the right to just compensation denied. Mr. Hathi congratulated the makers of our Constitution on dropping the word "just" before compensation. He seemed to think as if he, his party and his Government had abrogated the idea of justice in regard to property.

What is this word "amount"? I must confess it is a great legal invention and an act of legal wizardry. I do not know who is the chief artist

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in the invention of this word "amount", whether it is the Law Minister or the Minister of Steel and Mines, or perhaps the combination of both. They have invented this word "amount". I hope and trust our Attorney-General has not been dragged into this unholy alliance.

Now, what is amount? Does it mean amount of money, so many rupees, or so much pounds or tonnes of grain, or does it mean...

SHRI C. D. PANDE: Shares.

SHRI M. RUTHNASWAMY: ..... shares or is it to be only a few words of consolation?

SHRI MAHAVIR TYAGI (Uttar Pradesh): May I inform my friend that the word "amount" according to the Oxford Dictionary means "come to" if it is a verb? Here the word "amount" is used as a noun which means "Total to which a thing amounts", "full value", "significance" etc., "quantity", "as a considerable" amount of money. The word is meaningless. Amount of what?

SHRI BHUPESH GUPTA: Even tomfoolery.

SHRI M. RUTHNASWAMY: It is left to the Government to specify what "amount" means and it will be reviewed by the courts of law. These amendments have always been advocated on the ground that they are necessary for promotion of economic and social progress and is a war against poverty. But this looks very much like a war against properly.

Property has been recognised from time immemorial as one of the expressions of human personality, or something which a man acquires by his labour. And laws have always guaranteed this right to property and its enjoyment. Some laws have gone to an extreme extent as the Roman law, for instance, which gave the right of using and abusing. But more civilised governments have guaranteed the possession of property, enjoyment of property and the right to acquire property in a just manner. It is an expression of individual liberty. So, this amendment amounts to erosion of the right to liberty. Right to property is a right which expresses individual liberty.

12 NOON

In the last debate on the Twenty-Fourth Amendment, the Minister for Steel and Mines said that these amendments were necessary for the promotion of social and economic progress. When I argued that the Constitution was not against any proposal for the promotion of social and economic progress, the Minister for Steel and Mines said that he did not object to the Constitution as being an obstacle to progress but to the Judges as being an obstacle to progress. Then way was the Constitutional amendment necessary at all, if the Constitution was not an obstacle to progress? And now the Judges are being confronted against Parliament. I think it is very unfair to bring about this confrontation of the Judiciary against Parliament. It reduces the esteem in which the Judiciary is held by all sections of the people. And if the Judges are against this or that proposal for social and economic progress, as he argued they were in the Golak Nath Case, well, a succeeding set of Judges might overthrow the decision in the Golak Nath Case. He himself cited the case of the Supreme Court in the U.S.A. where one Supreme Court declared certain proposals, the New Deal policy of President Roosevelt, as being *ultra vires* and a succeeding Supreme Court restored the validity of those proposals. Why then didn't the Government leave the Supreme Court here to correct its own mistakes? Why should it come before Parliament and bring about these Constitutional amendments which erode into the Constitution which is the fundamental law of the country?

Then again, another great invention to the credit of the Government in regard to this matter is that the Directive Principles of State Policy should be allowed to override Fundamental Rights. Now, Fundamental Rights are an integral part of the Constitution. They are subject to judicial review.

There is a safeguard against any abuse of the Fundamental Rights. But the Directive Principles of State Policy are directed to the State, and "State" is defined in the Constitution as being the Government and the Parliament of the Union, the Government and the legislature of the States. "State" does not mean to include the judiciary. Now, the Directive Principles of State Policy are going to influence the very Constitution itself. These Directive Principles of State Policy should be put in tablets in Ministers' rooms so that every day they may be reminded of their duties. They may have to spend sleepless nights. Very few of those Directive principles have been put into legislation or administrative action. There is one Directive Principle which directed the Government to achieve total literacy or total primary education within 15 years. What has become of that Directive Principle of State Policy? It is being treated as a dead letter because all this social and economic progress does not depend on Constitutional amendments; it depends on the policies of the Government. They depend on the plan, they depend on the financial resources which they ought to collect and consolidate. They depend on the table of priorities which they give to their plans. They are not able to do any of these things, and, therefore, they come before Parliament and seek constitutional amendments. This is a very important moment in the history of Parliament because it is not open to erode into a very important right, a right which lies at the economic and social activity of the individual. It is because of the right to hold property and because of the desire to hold property—some economists have called it the magic of property—that all the history of socio-economic reforms has been achieved. And it is this right to property that is being eroded. Therefore, I oppose this amendment.

SHRI BHUPESH GUPTA: Sir, the very first question that we should ask ourselves is as to why there should be such a hue and cry over this proposed Constitution Amendment. After all, it seeks to restore the old position as it obtained at the time of Shantilal Mangaldas case under the Fourth Amendment to the Constitution and before the bank nationalisation case. It is the bank nationalisation case which I think has made this Amendment absolutely essential to get over the new difficulties and handicaps created by the Supreme Court judgment in the Bank Nationalisation case and the position taken generally by the Supreme Court in matters relating to socio-economic reform. One should have thought that since we are restoring the old thing which Parliament had sanctioned and there was no controversy earlier, we *should easily reconcile ourselves* to the task of setting things right. Unfortunately, however, there has been a very strong opposition coming to it initially from the side of the Swatantra Party, Jan Sangh, and others. Shri Rajagopalachari went to the length of saying in an article which was published in 'Swaraj' that the Congress Party, the Communists and others are out to destroy the Constitution. Between 1955 when the Fourth Amendment to the Constitution was passed and the Bank Nationalisation case in 1969, that is to say, during the fourteen years or so, we did not come across such noise, such hullabaloo and also the scaremongering talk, in any quarter. Then why has it become necessary today for them to raise this big noise? Not because constitutionally or legally we are doing something absolutely shocking for them or very dangerous, nothing of the kind; they are afraid because of the change in the political picture and landscape in the country. Then the Congress Party was a sort of monolithic consisting of a whole number of reactionaries, easily vulnerable to the pressures of the vested interests. Today, the situation has somewhat changed even in the Congress Party. Some of them had left the party; others have taken positions which are relatively progressive compared to the past and generally the radicalisation among the masses which is reflected in the ruling Congress has made them apprehensive that as a result of the

[Shri Bhupesh Gupta.]

popular pressure, as a result of the rising trends in the democratic movement. a radicalisation of the masses, perhaps now there will start a new chapter in which even the ruling party will be obliged to undertake certain socio-economic measures of an important nature striking against the vested interests and meeting out, to some extent, if a limited way, social justice. It is these political fears on their part, their narrowness, their sectarian interests, their selfishness and their political affiliations with the reactionaries which have led them to the present position of opposition to this Bill. It has nothing to do either with law or Constitution. It is really a politically motivated opposition and I do not blame them because . . .

SHRI C. D. PANDE: Are you in that position?

SHRI BHUPESH GUPTA: I did not disturb anybody while speaking. When they see people marching forward in order to secure social progress, redressal of their grievances and to bring about certain changes in the structure of our economy and society, these vested interests and their political touts, of whom there are many in the country, are naturally afraid that something may happen which will jeopardise and endanger their paradise. That is why this opposition has come.

So far as political and legal arguments are concerned, these laboured points are being made only to confuse them and ridicule their ideas before others and, in the bargain, to gain something. Many on this side are so thoroughly dispirited today that not only they are calling Shrimati Indira Gandhi "Joan of Arc", but also supporting this measures. We welcome today what they are doing. Whether it is justified or not is a matter of opinion. But we will count their votes because their votes will bring in two-thirds majority without which we cannot pass a measure of this kind. This is the first point.

With regard to the measure, we welcome it, wholeheartedly, I must say, and you will have noted we have tabled no amendments although it is possible to improve it. It is possible to make it stiffer so far as vested interests are concerned and to attack them. But we have not done that. I understand that our Marxist friends are doing that. If they are accepted, then the Bill will have to go again to the other House in which case I do not know when the Bill will be passed.

There was an offensive against this measure. Three amendments came suddenly. These amendments wanted to emasculate the measure and make it somewhat agreeable to the vested interests. It goes to the credit of the Congress Party members and some in the Opposition, because our concerted efforts have succeeded in persuading the government not to yield to the pressure of vested interests with regard to at least two of the amendments. We also thank the government for seeing reason in what we were saying. This Bill is only an empowering measure to remove the Constitutional obstacles. Whether we shall use it or not is left to the future. The future will be shaped not as we say or as we think. It will be shaped by the mass struggles and movements outside in which the progressive forces belonging to all Parties must unite to bring about necessary changes in the line envisaged by the present Constitutional amendment. By passing this measure, automatically we do not get whatever we want. We do not get nationalisation of oil companies by this measure. We do not get nationalisation of non-coking coal mines by this measure. We do not get the 75 monopoly houses disbanded by this measure. What is more important for us is the struggle for progressive changes. This measure will enable us to overcome the barriers created by the Supreme Court's vulgar and distorted interpretation of the Constitution rejected by life itself and by the electorate of the country. This is what we are doing. About Judges, if I may say so, I would like to say this much. Some of you may be Judges. If Shri Mohan Kumaramangalam had not come to the Treasury Benches, and is not whispering to Shri Om Mehta, he might have been today sit-

ting as a Judge of the Supreme Court. Shri Gokhale was the Judge of yesterday and politician of tomorrow. There are some eminent lawyers who may be Judges tomorrow. Sir, as far as Mr. Mani is concerned, he will never be a Judge nor an accused . . . (*Interruptions*). Sir, our Judges think that all the wisdom of judges from the days of Manu to Mohan Kumaramangalam are concentrated in themselves and in the Treasury Benches.

SHRI AKBAR ALI KHAN: Then, what do you think?

SHRI BHUPESH GUPTA: I don't think so. Therefore, Sir, we do not want to give this privilege to the judges. These are matters not of law, but of social change; not of jurisprudence, but of politics; not of interpretation, but of decisive political and economic action; and not of judicial wisdom, but of people's democratic rights. Therefore, Sir, they should be settled in the life of the nation and they should reflect the life of the nation, and the Constitution (Amendment) Bill only helps us to do so. Whether we shall do so or not remains to be seen. I hope these things will be done and follow-up action taken. Now, Sir, this is the proposition.

Now, Sir, with regard to some of the things, I must say something. Many arguments have been given and I do not know whether I should give arguments to counter them. This is patently obvious. Sir, some people are saying that it is a Communist measure. Nothing of that kind. Even the Communist Party does not want the abolition of property as such. Sir, I invite your attention to the Election Manifesto of our Party and I am glad that this measure falls in line with what we had stated at the time of the election.

Naturally, Sir, what they say with cowardice, we say with courage. But I do not blame them. It is better to say rather than not say at all. Sir, here is what our Manifesto says:

"The Fundamental Rights chapter should be so amended as to provide for a wider range of curbs and restraints on monopolists, big landlords and other vested interests including the right of the state to nationalise their concerns and other property with which they exploit the masses and build up their economic power, without compensation. When Parliament or a State assembly decides to pay any compensation, it will be for them to decide in all cases the quantum of compensation and also the manner of payment. The Supreme Court and the judiciary should have no 'jurisdiction' even to entertain any complaint in regard to this issue of compensation. Parliament and the State assemblies should have the finally say.

In this connection, the Communist Party of India wishes to make it clear that it does not stand for the abolition of the right to property. On the contrary, the Communist Party of India demands that so far as the common man, including the small property holder, is concerned, his property be given full protection against the onslaughts of the capitalists, landlords, money lenders and also of the government acting in the interests of these exploiters."

SHRI AKBAR ALI KHAN: To protect the common man, what is the provision?

SHRI BHUPESH GUPTA: You are not one of these common men. Your House in Hyderabad costs about some lakhs. You are an 'uncommon' man living in a palace. Sir, again the Manifesto says as follows:

"The Communist Party of India, however, wants the right of property of the monopolists, princes, landlords and other men of wealth to be severely restricted so that they cannot abuse this right to carry on their plunder, perpetuate their vested interests and obstruct and block social and economic progress. The Communist

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Party stands for the necessary amendments to the Constitution to ensure this."

This is our position, Sir. Therefore, Sir, please do not think that the Communist Party of India wants to abolish property of all. We are for taking away of the property of the vested interests, monopolists, big landlords, princes and others and, at the same time, we want protection of the property of the small men.

Sir, the Directive Principles—I may quote those Directive Principles referred to in Article 39—say "that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood". But what has happened since independence? Today, 60 per cent of our people are living on the starvation line; 82 per cent of our people do not have the means to spend one rupee per day; unemployment has risen to the staggering figure of 15 million; and 30 per cent of our population constitutes the landless agricultural labour living in utter poverty, sorrow and suffering. This is the position today! Now,

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

Even Pt. Jawaharlal, while speaking on the Plan in August, 1960, in the other House said that the fruits of planning have gone to 5 to 10 per cent of the people; 90 per cent of the people have got nothing. This is what he said. The position is worse today. The rich have in many ways become richer and the poor have in many ways become poorer.

Now, look to the distribution of wealth. The national income has, of course, gone up. But an unjust and unequal distribution has taken place, not because of this or that policy, but because of some fundamental things in our economy, which need structural changes. Sir, see what (c) says:

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

This is again substantially belied, because the capitalists have grown more powerful than ever before. Sir, at the time of Independence, the Birlas and the Tatas had industrial estates worth Rs. 50 crores. Today, the Birlas and the Tatas have industrial estates of the order of Rs. 1300 crores of rupees. Even at the time of appointment of the Monopolies Commission, which enquired into the monopolies, etc., it was found that the Tatas and the Birlas together had industrial estates of the order of 700 crores of rupees. Today these Tatas and Birlas have got these industrial estates of the order of 1300 crores of rupees. Such is the report of the Monopolies Commission.

Now, we know, Sir, this is happening today. There are 75 big business families who between them concentrate 5000 crores of rupees worth of industrial wealth. Well, Sir, nearly 50 per cent of the total investment in the corporate sector of the country is in their hands, despite the growth of the public sector.

In the countryside, today, sections of the rich peasants are growing richer. An invasion is taking place, of big capital, in our agriculture, with the result that the poor peasants, Harijans, Adivasis and others are suffering and they are always exploited and oppressed by the affluent sections. Such is the position today. This must change. Therefore, it is very right that we assume powers in the hands of the Parliament and give this power also to the State Legislatures to bring about certain social and economic changes, which are absolutely essential . . .

(Time bell rings)

SHRI BHUPESH GUPTA: I will just finish . . .

MR. DEPUTY CHAIRMAN: There are many other Members who want to speak. It is an important Bill.

SHRI BABUBHAI M. CHINAI (Maharashtra): How much time is allotted to their party....

SHRI BHUPESH GUPTA: I am finishing . . .

SHRI BABUBHAI M. CHINAI: He is talking against monopolies and concentrations, but he is a monopolist No. 1 in this House . . .

(*Interruptions*)

SHRI BHUPESH GUPTA: How many minutes have I taken?

MR. DEPUTY CHAIRMAN: 18 minutes.

SHRI BHUPESH GUPTA: Their party has taken 45 minutes. I am finishing . . . (*Interruptions*). The moment I start you start disturbing. I would have finished otherwise. Sir, there was an agreement that you shall not ring the bell before 20 minutes. Why did you ring the bell before that?

(*Interruptions*)

Now, Sir, the question has arisen with regard to the quantum . . . (*Interruptions*) . . . I never disturb anybody. If you disturb, I sit down . . .

(*Interruptions*)

SHRI C. D. PANDE: Mr. Gokhale has spoken on your behalf.

SHRI BHUPESH GUPTA: I am not speaking; I am criticising.

(*Interruptions*)

Mr. Gokhale has not spoken on my behalf. I am quite capable of speaking on my own behalf.

Sir, much has been said about the sanctity of the law of Constitution and all that. Even the *Magna Carta* of 1215 did not make property a fundamental right in the sense that you cannot touch it. The *Magna Carta* provided that property could be taken away provided it was by law and by judgment. It was only protection against property being taken away by executive order. We are only providing here that property may be taken away in the national interests by Parliament and the State Assemblies. Are we to push back beyond the days of the *Magna Carta*? Is this the idea of your progress that we should push back beyond the days of the *Magna Carta*, the 12th century? When the *Magna Carta* did not say it, why are you saying it? —I cannot understand. Friedman wrote:—

> "That the content of rule of law cannot be determined for all times and all circumstances is a matter not for lament but for rejoicing. It would be tragic if the law were so petrified as to be unable to respond to the unending challenges of evolutionary and revolutionary changes in society."

That is what a progressive writer wrote. Even the Motilal Committee Report did not envisage that property should be so sacrosanct—property of the vested interests. Then came the Karachi Resolution of the Congress Party and the Congress Party, in 1931, adopted a resolution in which they said:—

> "Property shall be sequestered or confiscated save in accordance with law."

Therefore, the emphasis was, nobody should take away property without the sanction of the law. We are making it possible for Parliament to give the sanction of law, keeping in view the demands of the people and certain socio-economic objectives which you have set before us. The latest election manifesto of the Congress also says it—I need not go into it. Therefore, why there should be objection on that score? Nothing is being done. It is absolutely unheard of. In fact we are in line with the contemporary world and even with the capitalist world. Even the British Parliament can take away any property as it likes. The French Parliament, the Italian Parliament and other Parliaments also can take away property; even in the American Constitution which provides for property being treated as an untouchable fundamental right, this is

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not the position. Then why should we accept this position? —I cannot understand.

Even when the Constitution was amended, Mr. Alladi Krishnaswami Iyer, Dr. Ambedkar, Mr. Munshi and others gave a clear assurance that when the cause was being defeated, the question of compensation would not be treated as justiciable in a court of law. It was not their intention to make it a justiciable question of law. On that basis the original provision in the Constitution was passed.

In Bela Bannerjee's case a certain interpretation was thought to be put, which came in the way of land reforms and other measures. Only then Jawaharlal Nehru came to this House seeking the amendment to the Constitution with a view to removing the difficulties created later by a judgment of the Supreme Court in the Bela Bannerjee case, and we had the fourth amendment to the Constitution. Then the Bank nationalisation case is also under that interpretation. Should we not change this thing? The consensus of opinion in this country has been in favour of making the quantum of compensation non-justiciable—not today but at the time when the Constitution was passed. That position always remains and we are restoring that position.

Before I sit down, I would like to say that, as far this measure is concerned, it will be good in so far as it goes. But it will depend on the Government, on what they would do. Therefore, I would request the Government to take this into consideration as my suggestion. You are arming the Parliament and the State Assemblies with certain powers, not to be treated as cosmetics in order to beautify ourselves and display in Parliament or the State Assemblies. They should be treated as weapons in our hands to strike the vested interests, to take measures in the socio-economic interests and in order to improve the conditions of the masses and change the society. If that is so, then structural changes should be facilitated by measures and follow-up action armed with this Constitution Amendment Act. That is what we want. Therefore, I demand the nationalisation of foreign oil concerns as a first step, which has become all the more necessary by the proclamation of Emergency and the crisis through which we are passing. I demand nationalisation of motor companies, *i.e.* Hindustan, Fiat and the others that I have mentioned. I demand nationalisation of coke mining. The Government should have a plan for its own guidance and for helping the States. We should not stand to see the taking over of the Birla House by paying a compensation of Rs. 55 lakhs. If we want the Birla House as a memorial for public use, we should be able to take it over by paying not even compensation of Rs. 10|-, because we shall decide whether the Birlas should get the compensation or not.

Therefore, it is not merely to pass this measure but the most important thing today is to see, to devise plans and measures of action for structural social and economic changes, for taking over foreign monopoly concerns, for taking over Birla and other concerns, for disbanding 75 monopoly houses and for giving a fair deal to the working people of our country. That should be our approach. It should not be in the spirit of making laws, speaking of measures, but it has to be a living measure. It can only be so when we all combine together, and with the united efforts of all the hon. Members at least we defeat some of the three amendments which have been brought forward. With the cooperation of all, we shall be passing the Bill today. Therefore, we have to arm ourselves and struggle against monopoly, for bringing certain urgently needed socio-economic changes in the matter.

SHRI TRILOKI SINGH (Uttar Pradesh): Mr. Deputy Chairman, Sir, I rise to support the motion moved by the hon. Law Minister. Sir, my task has been made easier because

not much has been said by Members in the Opposition.

I was really surprised beyond measure to see the hon. and learned Mr. Setalvad saying that the amendment also enables the State Legislatures to make law for acquisition of property. I do not know, I may be wrong, but the report goes to show that when the hon. Mr. Setalvad, was the legal adviser of the Government of India, when he was the Attorney-General, with his advice Parliament amended article 31 in such a manner as to empower the State Legislatures to pass laws which take away the purview of articles 14, 19 and 31 of the Constitution. The proposed amendment, article 31C seeks to enable Parliament and State Legislatures to make laws overriding the provisions of articles 14, 19 and 31. Sir, I would like to draw attention of the hon. Members that this was done in 1955 by the fourth amending Bill and if they just care to go through the provisions of article 31A, we find a similar provision, namely—

> "...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."

Unnecessarily, while discussing the property rights, the rights of freedom of expression or association have been brought in. This is only an enabling legislation enabling the State Legislatures and Parliament to make laws to acquire property.

Much has not been said about the words 'amount' and compensation. There is no confrontation between the Judiciary and Parliament or the State Legislatures. There has never been any. The Judges do their duty. We make laws and they interpret them, and if the Parliament or the State Legislature comes to the conclusion that the law that they framed does not convey the meaning or the idea that they wanted to convey, they always change it in accordance with the decision of the Supreme Court or the various High Courts. This has been done a number of times. Very often the laws that we pass are declared *ultra vires* by the High Court or the Supreme Court. The State Legislature or the Parliament passes another law amending the old law and even lays down that it would be deemed to have existed from the date it was passed by the Parliament. It is nothing new.

Shri Setalvad says that arming the State Legislature would be very dangerous. I would draw attention to the Ninth Scheduled under article 31(b) consisting of not less than 64 enactments. Out of these 57 were passed by the State Legislatures. Only seven are Central Acts and under the provisions of article 31(b) the purview of the Fundamental Rights is completely barred. It says:

> "Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with or takes away or abridges any of the rights conferred by, any provisions of this Part..."

I say that to assume the State Legislatures will act in an irresponsible manner is something which a person like myself who has been a democrat all his life, cannot understand. How can the State Legislatures be irresponsible. The electorate is the same. The proposed amendment and also the old articles, what do they seek? In case the State Legislatures make a law it says:

> "Provided that where such law is 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."

[Shri Triloki Singh.]

My grievance is wholly different. So far as property is concerned, I have said it before and I would draw the attention of the Law Minister again that our Constitution is not only cumbrous but perhaps the longest in the world. It is full of redundant articles. Article 19(1)(f) it is assumed, confers the right to acquire hold and dispose of property. Article 31(1) says:

> "No person shall be deprived of his property save by authority of law."

If article 19 (1) had not existed, this provision was enough to guarantee property rights –Article 13 (2) which had been declared redundant by no less a person that Justice Patanjali Sastri led to the confusion in the Golaknath case because the Supreme court based its judgment on article 13 (2). In the case of Bank Nationalisation the Supreme Court relied on article 19 (1) (f). America, which is supposed to be a capitalist society where property right is held sacrosanct, in their Fifth Amendment said: 'Nor any person shall be deprived of property save by due process of law.' 'Nor shall any person be deprived of his property without due process of law' this is what exists in the American Constitution. Not only in the American Constitution; you find this in the other Constitutions also. *Magna Carta* has been referred to, the Constitution of the Fifth Republic of France has been referred to. In England I know of a case—England is supposed to be the mother of democracy—where in 1917 they wanted to acquire a hotel building for war purposes. The hotel owner would not agree to part with it. Then they passed a law acquiring that property and taking possession of it without providing even for compensation. Of course that was ruled out later on. The House of Lords held that even if that was not there compensation has to be paid But possession of property is always subject to public interest I would like to draw the attention of hon. Members to such a provision in the Constitution of Ireland where it says that the state recognises further that the rights mentioned in the foregoing provisions of this article are in a civil society to be regulated by the principles of social justice.

Personally speaking to me there seems to be nothing new by which the Government when armed with these powers will turn into a dictatorship or become a Hitler as has been said in the other House and even outside Parliament. This is only an enabling clause which empowers Parliament and the State Legislatures to acquire property for an amount of money to be decided by the legislature or Parliament as has been done in the case of agricultural properties. What has happened in their case? Properties worth thousand's of crores of rupees which vested in the zamindars and landlords were acquired and compensation for them was decided not by the courts of law but by the legislatures of the respective States and those enactments find a place in the Ninth Schedule of the Constitution of India. If the agricultural properties could be acquired for an amount of money decided by the State legislatures why should there be any *hullagulla*, why should there be such a big row when properties in the urban area buildings and things like that are going to acquired.

SHRI AKBAR ALI KHAN: Not urban area alone.

SHRI TRILOKI SINGH: Of course non-agricultural property in rural areas also. But my grievance with the hon. Law Minister and my own party and the Government is this. There is a talk of lowering the ceilings. The Chief Ministers have agreed only a few months back that the ceilings as had been decided by the various State legislatures in the matter of land holdings should be brought down. In U.P. the ceiling is 40 acres and if the present Government in U.P. feels that they should bring it down to 30 acres, under the existing provisions of the Constitution, article 31A, second proviso, the State shall have to pay the market value. If I am to go by the statement of the

Planning Minister 40 million acres of land would be required if the present uneconomic holdings are to be made economic. Even if as has been agreed to in the Chief Ministers' Conference ceiling laws are brought forward in the various legislatures at least 10 million acres would be held surplus and for the acquisition of those 10 million acres the various State Governments shall have to pay market rate. And I would like to draw the attention of the hon. Law Minister that the market rate in a place like Lucknow from where I come and which is not agriculturally a developed area varies between Rs. 10,000 to Rs. 15,000 per acre. In Punjab it ranges between Rs. 40,000 to Rs. 50,000 per acre. The President when he convened Parliament in his Address made a mention of the land reforms and spoke of the proposal to bring down the existing ceilings. Why has this not been done? I was surprised to find an hon. member saying that even as it exists in the case of agricultural properties there should be some such provision in the case of non-agricultural property. I am one of those who would like the Government to come forward with another amendment of the Constitution. They shall have to if they are at all serious, even one per cent serious, about land reforms, for which so much *hulla-gulla* has been made by them, by the Planning Commission, by the Prime Minister of India and also by the party to which I belong and which is in power here at the Centre. Why this lacuna again? I take it that it is not deliberate. That is why I say that the whole Constitution needs to be re-written so as to remove all redundancies. Let a Joint Committee of Parliament be appointed representing all shades of public opinion in the country to go through the provisions of the Constitution. Otherwise, in the laws that we make, Supreme Court will be coming in and unnecessarily the hon. Members of this House or the other House will be exercised and say that the Judges of the Supreme Court want to become dictators or they are reactionaries and so on. The independence of the judiciary is as necessary and essential for the success of democracy as the proper functioning of Parliament. Therefore, I would like to submit through you to the hon. Members and to the Government, let this Bill be passed. But this is not going to be the final Bill. Very soon this very Government will be coming before Parliament for an amendment of the Constitution to help them to lower the ceilings of agricultural holdings. If a constitutional provision has existed in the case of agricultural property for more than fifteen years, there is no reason why such a law be not enacted or Parliament or the State Legislatures be not empowered to make such laws for the acquisition of property which is non-agricultural.

I would like, before I conclude, to draw the attention of the hon. Members of this House that it is not only agricultural property but other properties also, enumerated in clauses (b), (c), (d) and (e) of article 31A, whereby if the State makes any law for the extinguishment of any rights, it does not attract the attention of the Fundamental Rights as laid down in articles 14, 19 and 31. There is no reason why there should be no such provision in the case of non-agricultural property as it has existed in the case of agricultural property for such a long time. Thank you very much.

SHRI MAHAVIR TYAGI: I want one clarification from the hon. Minister, I will not make a speech. At the end of clause 3, it says:—

> "....no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:".

If a law does not give effect to such a policy, but only mentions that it contains a declaration that it is for giving effect, whether it gives effect or not may I know whether it will

[Shri Mahavir Tyagi]

be deemed to be valid and it cannot be questioned? Is that the meaning of the law? It does not exactly carry out the policy, but only says that it is meant for such a purpose. If in reality it does not give effect to it, will that law be saved?

MR. DEPUTY CHAIRMAN: I think the hon. Minister will probably clarify it tomorrow.

SHRI K. CHANDRASEKHARAN (Kerala): Mr. Deputy Chairman, Sir, I rise to whole heartedly welcome all the provisions in this Bill. I am glad that the recommendation of the Law Commission that there should be justiciability insofar as the provision contained in article 31C is concerned, has been rejected by the Government. I do not think that any amendment to the provisions of this Bill are called for. It would be good and in the best interests of the country and the future implementation of progressive legislation that this enabling Constitution (Amendment) Bill is passed as it is.

Sir, the provision of this Bill broadly contained in the first part changing the whole concept of compensation into amount has been the result of several judicial decisions going this way and that way and producing, as a result, a state of chaos so far as the provisions in regard to compensation as legislated upon by the State Legislatures and Parliament are concerned.

Sir, the hon. Minister referred to Vajravelu Mudaliar's case. There has been subsequently the Gujarat case. But departures were made by the Supreme Court in the Bank Nationalisation case and compensation became a justiciable concept. And therefore to the extent that Parliament or the State Legislatures fixed the procedure in regard to the fixation of compensation, the rate of compensation and the mode of giving compensation, the matter became very difficult, particularly on account of the decision of the Supreme Court. It is not as if anything new is being legislated upon. The scheme of constitutional amendments that we had embarked upon from the stage of the Fourth Amendment and on to the Seventeenth Amendment of the Constitution is not being departed from; on the other hand, what this Bill seeks to implement is the scheme of things that Parliament had at the time when the Constitution was drafted and which the Constituent Assembly passed,—the scheme of things that Parliament had in view when the Fourth Amendment was passed, the scheme of things that Parliament had in view when the Seventeenth Amendment was passed. Therefore, the aspect of compensation being changed into amount has become absolutely necessary, and rightly the amendment has been put forward.

Sir, the question has been asked as to whether compensation may not be merely fiduciary, it may not be illusory whether the statement that the legislation that is being embarked upon in pursuance of this Constitutional amendment either by the State Legislature or by Parliament would not bear any relation to implementing the Directive Principles of State Policy contained in article 39(b) and (c). I submit that the question is a most irresponsible question. It is impossible to think that the elected members of Parliament and of the State Legislatures would embark upon legislations which are not serious, would embark upon legislations in the name of article 39(b) and (c) without bearing in mind the essentials of parliamentary democracy. Sir, the best safeguard that we have got in this country is the safeguard that parliamentary democracy provides, the safeguards that the elected members of Parliament and of the State Legislatures provide. And if we forget that, the essence of Parliamentary democracy will be lost sight of.

The second thing that has been referred to in this amendment is "public purpose". Insofar as "public purpose" also is concerned, there have been divergent decisions by the various High Courts in this country and

contained in the Constitution itself also decisions of the Supreme Court. It is, therefore, necessary to give "public purpose" the protection that it deserves, particularly when there is a public purpose made by responsible Members of Parliament and State Legislatures. The "public purpose" that we have in view is the purpose to achieve the objectives of the directive principles of State Policy, and in this regard if any of the fundamental rights ensured in Chapter III of the Constitution comes in conflict with any of the Directive Principles of the State Policy particularly, if I may say so, the protective principles of this legislation, the principles in (b) and (c) of article 39, certainly, the directive principles have got to be sustained and the fundamental rights should be thrown away to that extent because the Fundamental Rights, Sir, are only the rights of an individual citizen. The Directive Principles of State Policy attempts to ensure the rights of the community as a whole, the rights of groups of citizens, and if the rights of groups of citizens comes into combat with the right of the individual citizen, the rights of groups of citizens have got to be sustained.

Sir, in regard to both "public purpose" and "compensation", as I said before, and as the hon. Minister has also pointed out, there has been such divergence of pronouncement of judicial opinion that it is impossible to entrust the interpretation in this regard to the judiciary. It is also right, Sir, that in so far as matters, economic and political are concerned, the judiciary should be saved from criticism and the judiciary should be exempted from going into the merits and demerits of a particular decision that Parliament or State Legislatures have taken in regard to matters political and economic and covered by sub-clauses (b) and (c) of Article 39.

Sir, it is interesting in this regard to find out to what extent there has been divergence of opinion in the judiciary in this country. I was reading an article from a very eminent law journal in this country recently which stated that after the Constitution has come into force in regard to matters of fundamental nature, more than 200 times the Supreme Court has over-ruled the decisions of the High Courts in this country. Again, in matters of very great fundamental importance the Supreme Court has over-ruled itself on more than a dozen occasions. There is also a reference to what the Privy Council had done since about three centuries for which account was taken. The article said that not on one occasion but the Privy Council had really over-ruled its own decision. There was only one occasion on which the Privy Council had made a fundamental divergence in regard to the view it had taken. That, again, was in an ecclesiastical case which does not matter so far as the society is concerned, so far as the country is concerned. Therefore, it is time that the judiciary is saved from the criticism that it would normally receive when it is asked to make pronouncements in regard to social, economic and political matters.

Then, Sir, much has been stated in regard to what has been called as the delegation of powers to the State Legislatures or the abdication of responsibility on the part of Parliament. I do not think, Sir, there is any delegation of powers or an abdication of responsibility in that manner.

1 P.M. It has been provided in the Seventh Schedule to the Constitution as early as the commencement of the Constitution itself that in regard to various matters, they would be covered by the Concurrent List and both Parliament and the State Legislatures can have their say and that the State Legislatures can legislate if there is no Parliamentary legislation on that matter. Sir, the delegation, if there had been a delegation, the abdication of responsibility, if there had been an abdication of responsibility, is not by the provisions of this Bill; it is by the terms of List III in the Seventh Schedule to the Constitution. And if that be so, we will see that the scheme of the provisions of the amending Bill has followed the scheme of provisions contained in the Constitution itself.

[Shri K. Chandrasekharan.]

There is, therefore, really no abdication of responsibility. And to think that the elected Members of Parliament are entitled to have a higher status than the elected members of the State Legislatures in something preposterous. Sir, the elected members of the State Legislatures have been given the power and authority to legislate upon matters contained in the Concurrent List of the Seventh Schedule of the Constitution. And if this amending Bill protects a certain legislation embarked upon by Parliament in pursuance of Article 39(b) and (c), certainly, the very same protection would have to be guaranteed to the State legislations. Otherwise, what will be the result. The result will be that a parliamentary legislation on a matter would be protected but a State legislation on that matter would not be protected. The result would be that more and more spheres of legislative activity would have to be taken by parliament itself. Take for example, land reforms. Land reforms is a matter which is largely embarked upon for legislative purposes by the State Assemblies. And if all the land reforms legislations in the country are to be struck down by courts on the ground that there is no protection by virtue of this Bill, certainly the pace of land reforms in the country would suffer and there would be no progress at all in the field of land reforms.

Then the aspect of non-justiciability in regard to certain types of legislations by Parliament and the State Legislatures has also been criticised. I submit that this is the most unworthy criticism that can be made in regard to the provisions of this Bill. As early as in the Seventeenth Amendment, Parliament accepted the scheme of giving protection to certain legislations against scrutiny by courts. What happened when article 31B was introduced in the amended form and the Ninth Schedule to the Constitution was legislated upon. The Ninth Schedule to the Constitution in terms of Article 31B contained legislations which had been invalidated by the courts in the country. The Ninth Schedule really contained an examination of the problem, post-mortem. By that time, a large number of socialistic legislations, particularly land reforms legislations—zamindari abolition legislations, etc. had been struck down by the Supreme Court or by the High Courts in the country and, therefore, all these legislations were included in the Ninth Schedule and they were made valid from their inception. The State Governments have implemented the various legislations contained in the Ninth Schedule and no difficulty has been experienced. Nobody has said so far that a fraud on legislation has been committed either by Parliament or by the State Legislatures in respect of legislations included in the Ninth Schedule of the Constitution. And therefore, what is now attempted upon is to see that no such post mortem examination of the invalidated legislations is attempted upon by Parliament. What is now put is that if a legislation is in terms of Article 39(b) and (c), that legislation would get the protection of the new clause that is embodied in the provisions of this Bill. I would only end by quoting small portions from certain judicial pronouncements in this regard. It is not as if justiciability has been conferred on every matter. As early as November, 1964, Mr. Justice Mathew of the Kerala High Court, now a member of the Supreme Court Bench, had stated in respect of certain areas of executive action:—

> "An area must be left to the free play or discretion and subjective judgment. The fact that that judgment and discretion are exercised by responsible persons is the only ultimate safeguard and guarantee of their proper exercise."

Again in 1962 when the Palai Bank case came before the Supreme Court Bench the Supreme Court stated thus in regard to a provision in the law so far as that aspect was concerned:—

> "It must not be overlooked that the winding up of a banking company takes place before the High Court under the process of law.

Judicial process is excluded in respect of the momentous decision whether a winding-up order should be made. This opinion is left to the Reserve Bank and the court merely passes an order according to the Reserve Bank's opinion and then proceeds to wind up the banking company according to law. The narrow question is whether this offends the principles of natural justice. These observations lay down clearly that there may be occasions and situations in which the legislature, with reason, thinks that the determination of an issue may be left to an expert executive like the Reserve Bank rather than to the courts without incurring the penalty of having the law itself declared void."

If the Judges have said that certain areas of executive action are outside justiciability, if certain provisions and legislations which say that the executive action shall be final and shall not be scrutinised by courts of law, are enacted, then certainly we are in a far better situation today because Parliament is legislating, State Assemblies are legislating, in pursuance of this amending Bill and it is only such legislations made by a responsible body of persons, to quote the Judges themselves, would be outside the scrutiny of justiciability. I submit that the provisions of this Bill are absolutely necessary and essential so far as the progress of this country is concerned, so far as the implementation of the socialistic ideals embodied in the provisions of the Constitution is concerned. And, therefore, I would appeal to every Member of this honourable House to give it a unanimity which has not been attained even in the Lok Sabha.

SHRI SASANKASEKHAR SANYAL (West Bengal): Mr. Deputy Chairman, it is said that however bright the sun may be, there must be shadow. So, however benevolent property may be, it has always cast its shadow on poverty. Therefore, it has been a propitious thing for us to have got rid of the impediments created by the Golaknath case and it was good that the last Constitution Amendment Bill was passed. It is also very good that today we are having a measure which is commented by so many of us from all sides as an enabling measure. Conceded, Sir. But after that, what are you going to do? During the last more than twenty years there were many enabling measures at the disposal of the Government, both at the Centre and in the States. One party ruled all over the country. The enabling measures were bypassed and the make-believe progressive measures which were passed in the legislatures assumed the character of a dead letter. It was only when there was a shaking of the bottle and when the Congress Party lost some of the governments in some of the States, that a little bit of seriousness was inoculated in their minds. Even then the position of the government is like the position of the proverbial witness in the witness box. The witness enters into the box and takes the oath: "I shall say truth, nothing but the truth and shall not hide anything". I will not say that the government is indulging in untruth. I am too decent a gentleman to say that. But their position is almost similar because they say: "We will try to do this; we shall try to do that". But in actual practice, the result is a big zero.

We are now going to touch properties which lie on earth such as houses on earth, land on earth, etc. Why don't deal with properties which are under the earth and which could not be unearthed so far? We have seen two big World Wars and some smaller wars. We are now in the midst of a war which will ultimately be a global war. Certain monopolist families emerged after the first World War and then black-marketing came into existence. They got Intermediate Degrees; they got the Bachelors' Degrees and Post-Graduate Degrees in black-marketing. Now they are all Doctors in black-marketing. And this war is going to give them as opportunity of becoming double doctorates in triple black-marketing. What are you going to do with them.

[Shri Sasankasekhar Sanyal.]

There are Rs. 40,000 crores of black money which is under the earth. Scrap the surface and unearth these Rs. 40,000 crores—to use the language of my friend Shri Kalyan Roy...

AN HON. MEMBER: 40,000 or 4,000?

SHRI SASANKASEKHAR SANYAL: I have read it in some book . . .

MR. DEPUTY CHAIRMAN: You have very limited time. Please go on.

SHRI SASANKASEKHAR SANYAL: There are so many things hidden inside the walls. Why don't you make a dent in those walls and bring out those hoarded gold and jewellery? Why don't you freeze the accounts which many have with foreign banks? The war is at our door and there is now unanimity in our mind in all these matters . . .

SHRI KALYAN ROY (West Bengal): Their Party will then disintegrate.

SHRI SASANKASEKHAR SANYAL: Some will go out and some others will come in. What about these 75 monopolist families who are controlling the biggest and largest business? Why don't you take over the management now when we are living under war conditions and produce more. Why don't you stop corruption. Otherwise, everything will go out through leaks in the cistern. You take their management and produce more yourself. These are some of the practical things. Merely an enabling measure will not do. There is a monopoly gress. Big capitalists are controlling the press and they are manipulating public opinion. Is it not high time that people's representatives should have some control upon this press combine so that ultimately the people will know what the things have been and what they are going to be? Therefore, I submit and maintain that this present Constitution which is being going to be amended by driblets will not answer the needs of the day. You must now sit and get hold of a new Constitution wherein the representatives of the people will have their say. After all, there are about fourteen or fifteen million people who are unemployed. Why are they unemployed? You are talking about property. Why are you not talking of unemployment? If you got rid of the industrial combines, if you get rid of the big monopoly concerns, you if you get rid of the big manufacturing concerns, and if you get rid of the big manufacturing concerns and if you get rid of the factories today, in this war condition, you can give employment to a substantial section of the unemployed people. My good friend, the Law Minister, has not spoken a word about them. Therefore, Sir, the time has now come when we should sit round the table once again, try to scrap this Constitution lock, stock and barrel, where the hidden and unhidden property of the wealthy people must be placed on the table, where the poverty of the people must be disclosed—of course, poverty is not hidden, it is naked—and, so Sir, the hidden and naked wealth and the naked poverty must sit on the same table and square and adjust the accounts finally so that socialism does not merely remain an oath of the witness in the witness-box, but a reality with sanctity to be observed and accepted for all time.

MR. DEPUTY CHAIRMAN: Yes, Mr. Raju.

श्री राजनारायण : श्रीमन्, यह सदन कितने बजे तक चलेगा?

श्री उपसभापति : दो बजे तक चलेगा।

SHRI BHUPESH GUPTA: How long will it go?

MR. DEPUTY CHAIRMAN: Up to 2 o'clock.

SHRI BHUPESH GUPTA: Sir, there is a demonstration before the American Embassy.

SHRI A. D. MANI: You go there.

SHRI ARJUN ARORA: You go there. You can make a speech.

MR. DEPUTY CHAIRMAN: All right. Yes, Mr. Raju.

SHRI V. B. RAJU (Andhra Pradesh): Mr. Deputy Chairman, Sir, the year 1971 is very significant for great decisions. Sir, the massive mandate has been actually secured in 1971, that is, the people of this country have contributed to political stability. Then, Sir, these three amendments, the 24th, 25th and 26th Amendments, are going to open a new chapter in our political history. And, Sir, the third thing is the recognition of Bangla Desh, that is, a new star has arisen in the sky. We have indirectly helped the emergence of a new nation which, I hope, will be recognised by the progressive nations of the world immediately. But, Sir, the years 1967 to 1970 have been the years of instability, the instability in the polity of the country caused by the people not being in a position to vote a majority party to rule, particularly in the States and the fronts, consortia and the groups which have tried to rule in a democratic way have failed to give the necessary stability.

Sir, while on the one side there was political instability, on the other hand, there was considerable judicial deviation contributing to stability of law in this country. Sir, the three judgements are responsible for these three amendments and they are a blessing in disguise. They have forced the political forces to recognise the imperatives, the imperative of social justice. But for these three judgments, the judgment in the Golaknath case, the judgment in the Banks Nationalisation case and the judgment in the Privy Purses cases, I do not think, Sir, the political forces in the country would have been awakened. I am in a way grateful to the judiciary of the country for its contribution to alert the political sphere.

Sir, particularly this amendment now relates to four factors: (i) Property rights; (ii) Right of compensation; (iii) Social Justice; and (iv) Justiciability.

Sir, why this amendment came in this form is something which has got to be taken note of. Something should be viewed in retrospect. Sir, particularly two items are under controversy and are being debated in greater length. About the word "compensation", I am afraid the Supreme Court has tried to play with the meaning of the word, and has not taken the intention of the framers of the law. Even though this must be taken into consideration while the court decides a particular matter, still for understanding of the court it is necessary what the framers of the law have intended to do. It is not playing with words. In fact, English was not our language. I do not think that even in Sanskrit or Hindi also we would be able to express more correctly than we do today.

Sir, about compensation, it started in 1953 in Bela Banerjee's case when the court held that compensation means just equivalent. Then, Sir, in 1955, the fourth amendment was brought purposely to say that Parliament never meant or does not mean that compensation means just equivalent, and that the adequacy of compensation is not justiciable. In spite of that, in 1965, in Bejrubelu's case the court persisted, and emphasized on the view, in spite of the 4th amendment, that compensation means just equivalent. But in 1969 in Shantilal Mangaldas case, the court was somewhat light and tried to appreciate. You see, Sir, how a great—and the highest—tribunal in this country has been faltering . . .

(Interruptions)

MR. DEPUTY CHAIRMAN: There will now be a statement by the Defence Minister. Thereafter, you may continue.

STATEMENT BY MINISTER BY LATEST SITUATION OF FIGHTING ON EASTERN AND WESTERN SECTORS

THE MINISTER OF DEFENCE

रक्षा मंत्री

(SHRI JAGJIVAN RAM): Sir, the hon. Members will recall the statement I made in this House in the afternoon on December 4th. I had then said that the Pakistani objective of inflicting substantial damage on us through a pre-meditated pre-emptive attack has been frustrated. The Pakistani forces have been making repeated and determined efforts to inflict damage on us and probe for possible weak spots in our defences. We have been endeavouring to blunt Pakistan's aggressive military machine.

The Pakistani Air Force has been visiting our airfields, but the damage they have been able to inflict has been negligible. We have been able to repair the damage inflicted and our airfields continue to be operational. There has been a gradual decline in the sorties mounted by the Pakistani Air Force. This may be the result of the damage inflicted by our Air Force on their air installations. So far we have destroyed 52 of Pakistani combat aircraft and 4 more probably damaged. Three Pakistani pilots are in our custody.

Our Air Force has been concentrating for the last two days on air defence of our forward positions and providing close support to ground operations. We have also successfully attempted to dislocate Pakistani lines of communication, supply dumps and oil installations. We have lost 22 aircraft in all.

Pakistan's repeated attacks on Poonch have been beaten back with heavy losses. There has been intense pressure in the Chhamb Sector. We have withdrawn our trops to prepared positions on the river Monavar Tavi. In the fighting that preceded this planned withdrawal, Pakistanis lost 25 tanks and they suffered heavy casualties. We are exercising counter pressure in the area Akhnoor and Shakargarh.

The Pakistan forces have been pushed out of the Dera Baba Nanak Enclave. The bridge across the Ravi is in our position. The attempts on the part of Pakistan forces to infiltrate behind our lines have been frustrated.

In the Amritsar Sector a few Pakistani border posts are now in our occupation. In the Ferozepur area, the Pakistani forces have been ejected from the Sejra Enclave.

In the Rajasthan Sector, a a Pakistani armoured column made a bid for the area around Ramgarh. This column was halted at Longanavala and has been practically decimated. Twenty tanks were definitely destroyed and seven more damaged. In all we have destreyed 96 tanks of Pakistan.

We have succeeded in effecting entry into Sind from two directions. Our troops have advanced around various points and our leading elements are about 10 miles short of Naya Chor. We have also captured Islamgarh.

In the Eastern Sector, our troops are acting in concert with Mukti Bahini. Under our pressure, the Pakistani occupying troops are falling back. The Jessore airfield was captured by us this morning. All areas west