CHAPTER VIII.

NATIONALISATION AND THE SUPREME COURT.

A. GENERAL: - The need for State Ownership.

The Supreme Court and the Parliament came to loggerheads with respect to the nationalisation programme of the Government of India. It is common knowledge that the Bank Nationalisation case was one of the most controversial, politico-legal confrontation between the protagonists of the sovereignty of Parliament on the one hand and the champions of the cause of judicial review and individual right to property on the other. Both the Parliament and the Supreme Court were bitterly criticised by different sections for their postures in this respect.

On the whole the number of cases that have come before the Supreme Court for consideration with respect to Nationalisation are not many. Nationalisation of Transport, banks, electricity undertakings figured more prominently. Other aspects of nationalisation that reached the Supreme Court related to nationalisation of Coal mines, basic metals, Tendu leaves.

Nationalisation in some degree or other has become a universal phenomena in the 20th century not excluding the traditional laissez-faire countries like U.S.A. and England. The days of identification of nationalisation with only socialism or communism are gone. Independent India cannot be an exception to this. Hence, a steady but slow programme of nationalisation was taken up by the Government of India from 1948 onwards.

Nationalisation is an institutional change in the ownership and control of industry and an instrument for the prevention of concentration of wealth and better distribution of public services. It is a means for economic growth with social justice.
Unequal distribution of wealth and property in society resulting in inequalities in the living conditions of the people leading to abject poverty among the vast masses of the society provoked thinkers of political economy to find solutions through economic institutional changes. Ownership of land and property by the State is a phenomena which is known in ancient societies. The kings, emperors and conquerors who were the sovereigns exercised absolute ownership rights over vast lands and other types of property for their's and their followers' personal prosperity and enjoyment exclusively. The rulers also exercised regulatory powers over the property of an individual citizen.

R. Kelf - Cohen says "the concept of public ownership of industry is very old. The Ethinian State made a handsome profit from the silver mines of Lanrians." But nationalisation has acquired significance only after the industrial revolution. He says, "but the modern belief in public ownership is the result of the industrial revolution and the doctrine of 'laissez-faire' which went with it. The tremendous social upheaval which followed gave raise to socialism, and a fundamental doctrine of socialism is the public ownership of means of production, distribution and consumption."2

Economic justice with a full return for the work done for the labourer and equitable distribution of wealth and the satisfaction of the basic necessities of all the people form the basis and justification for the expropriation of capitalists who are considered to be rapacious in the exploitation of his fellowmen. Different types of socialist movements and socialistic thought gained prominence in different countries of Europe from the second half of nineteenth century onwards. Karl Marx is an outstanding socialist whose 'Das

2. Idem.
Capital and 'Communist Manifesto' issued along with his celebrated collaborator Fredrick Engles earned him the name of 'Father of Scientific Socialism' and generated tremendous political force, which has changed the face of the earth.

Socialism connoted automatically the nationalisation of wealth in different degrees. The Fabian society, formed in 1993 with an ambitious object of reconstructing the society in accordance with highest moral possibilities, though rejected Marxian doctrines, worked unceasingly for the development of public ownership. Sidney and Beatrice Webb who contributed enormously for the trade union movement in England and educated the middle class on public ownership were the protagonists of 'gas and water socialism'. Webs found that capitalism has become transformed into an impersonal entity with share-holders and managing directors and advocated for public ownership of the shares which would not create any difficulty, as even in private ownership, the capitalist only enjoying the fruits without contributing anything, leasing the organisation of production into the hands of salaried officers who can as well be employed by the Government. By the end of the 19th century Labour Party was formed in England. After the First World War the socialist thought and movement scored great victory. In 1926 a public corporation known as Central Electricity Board was constituted, by passing the Electricity Act. Subsequent history shows that many important industries were nationalised and the ownership was vested in the public corporations established by Government. From the year 1945 to 1949 England witnessed a series of nationalisation measures in nine Acts of Parliament, America.

1. The following important industries and undertakings were nationalised: (1) Bank of England (2) Civil Aviation (3) Coal (4) Cable and Wireless (5) Transport (6) Land Development Rights (7) Electricity (8) Gas (9) Iron and Steel. — "Nationalisation", Hanson London 1963, p. 36.
which was supposed to be another champion of laissez-faire philosophy has nationalised many industries.¹

Some leaders of Indian Freedom struggle also were attracted by the socialist movement in the west. Rather, one may say that the economic conditions in India compelled it to slowly know the path of socialism and nationalisation.² In 1931 itself the Karachi session of the Indian National Congress adopted a resolution, that the States should own or control "key industries and services and national resources" apart from "railways, water ways, shipping and other means of communication".³ Subsequently, number of policy declarations were made, moving further in the direction of socialism, nationalisation and public ownership. The 1948 and 1956 Industrial policy resolutions are instances for that; under the 1948 resolution three Government monopolies were established, manufacture of arms and ammunitions, production and control of atomic energy, and ownership of transport. The resolution further listed a number of industries for which the State has responsibility to establish. They are coal, mineral oils, iron and steel, air craft manufacture and the manufacture of telephone, telegraphs, wireless apparatus exclusive of radio receivers. The 1956 resolution included 17 more items including heavy industries. It listed twelve more industries for progressive State ownership, through undertakings without nationalisation of private enterprises.


In the subsequent five year plans, the same approach has been followed. The 1956 resolution of the Avadi session of the Indian National Congress adopting socialistic pattern of society as its economic creed and its incorporation in the preamble of Indian Constitution after two decades show clearly the policy of the country. Economic planning, public ownership, nationalisation and socialisation are inevitable for a developing country to achieve growth with justice simultaneously. An interventionist and nationalist approach by the state by taking an active and decisive role in the economy is in-escapable for the modernisation of the economy and for the establishment of welfare state.

Both principle and expediency are the motivating factors for the inclusion of an enterprise in the public sector. A.H. Hanson says "in any case, evolutionary socialism implies a series of priorities for nationalisation....".

A critical appraisal of the judicial process of the Supreme Court is made in the light of the policy, objectives and perspectives of public ownership.

B. NATIONALISATION OF ELECTRICITY UNDERTAKINGS:

The importance of electricity in the modern world can't be exaggerated. It appears that when Lenin, the Father of modern Russia, was asked to define socialism, he briefly observed that socialism means Soviet plus electricity. The production of electricity and its use in multifarious activities has increased enormously in the last few decades. It is one of the most essential items of public utility. Hence, the production, distribution and consumption of electricity being a key industry, cannot be left into the private hands.

2. A.H. Hanson, op.cit. p. 22
Consequently different State Government took steps to nationalise electricity undertakings.

The first case relating to electricity nationalisation was *R.E.S.Corporation vs. State of Andhra*, in which the Madras Electricity Supply Undertakings (Acquisition) Act, 1949 under which the Rajamundry Electricity Supply Corporation Ltd., was vested in the Government of Madras by an order under Section 4 clause (1) of the Act. The Act was challenged as ultravires in the High Court on the grounds of lack of legislative competency, absence of public purpose and illusoriness of the compensation provided.

The High Court rejected all the arguments on the ground that it was a legislation with regard to electricity under Entry 31 of Concurrent list in 7th Schedule to the Government of India Act 1935 and as the Act received the assent of President it could not be questioned.

On an appeal the Supreme Court held that in pith and substance gathered from the preamble and the sections, the Act provides for acquisition of electrical undertakings. Das, J., referring to the Entries and Lists of the Government of India Act, 1935 held "there was no entry in any of the three lists relating to compulsory acquisition of any commercial or industrial undertakings, although Section 299 clause (2) clearly contemplated a law authorising the compulsory acquisition for public purposes of a commercial or industrial undertaking". The Federal and State legislatures were given competence only to acquire land. The Governor-General, under Section 104, in his individual discretionary capacity by notification could empower either the Federal legislature or

2. Ibid, p. 259.
Provincial legislature to enact a law with respect to any other matters not covered by the Entries and Lists of Seventh Schedule of Government of India Act, 1935, Das, J., held, that prima facie there was no evidence of Governor-General's notification to that effect. He rejected the argument that each Entry carried with it an inherent power to provide compulsory acquisition of any property, either commercial or industrial undertakings or land while making law under such Entry. He said that if the doctrine of inherent powers was accepted, Entry 9 in List II and Entry 21 in List II dealing with the power of the provincial legislature for compulsory acquisition of land was unnecessary. Similarly, Section 127 of Government of India Act, 1935 empowering Federal legislature to acquire land in any province was unnecessary. On this point the court held, the Act was invalid, due to lack of legislative competence.

It is submitted that Section 299 clause (2) clearly contemplates and permits compulsory acquisition of property of any nature, land, industrial or otherwise. 'Eminent domain' is a universally accepted constituent element of the sovereign power and function of any State. The correct interpretation would have been that both Federal as well as State legislatures have power to acquire or requisition compulsorily of land as well as industrial undertakings or any other property for a public purpose by payment of compensation. The specific provisions dealing with the powers of Federal and Provincial legislatures for the acquisition of the land may be considered to be the species of general power of 'eminent domain' enumerated by way of abundant caution or as a result of the habit bound continuation of the philosophy of mercantilism under which the business and the trading community gained ascendency over the landed class. The court could have held the Act valid.
In Okara Electric Supply Company vs. State of Punjab, the Okara Electric Supply Company Ltd, to which sanction was granted under Section 28 of the Indian Electricity Act 9 of 1910 for engaging in the business of supplying electric energy set up an electricity undertaking. In 1958 the Government exercised its option by a notification to acquire the undertaking as an absolute property of Government. The company impugned the action of Government on the plea that notification was ultravires of Section 28 of the Act and Section 28 ultravires for offending Article 19 and 31 of the Constitution. Section 28 of the Act gave power to the Government to sanction for the business of supplying energy imposing conditions.

Gajendra Gadkar, J., held that as the grant of sanction contemplated by Section 28 could not be permanent, the conditional grant issued to the petitioners was not ultravires of Section 28 clause (l) of the Act. It did not violate Article 31 (2) as it was protected by 31 (5). It did not offend Article 19(1) (f) as "the limitations imposed by Section 2 clearly are reasonable restrictions and have been imposed in the interest of general public within the meaning of Article 19 (5)".

The question whether a law held void for contravention of fundamental Rights could be validated retrospectively or not was considered in M/s W.R.E.D. vs. State of Madras, the West Ramnad Electricity Distribution Ltd., Rajapalayam was declared to vest in the State of Madras under Section 4 (l) of the Madras Electricity Supply Undertakings (Acquisition) Act, 1949. An order under Section 24 of the Madras Electricity Supply Undertakings (Acquisition) Act 1954 which has been enacted for validating actions taken under the provisions of an earlier Act was impugned.

2. Ibid, p. 289.
Gajendra Gadkar, J., held "Article 31(1) does not use the expression 'law in force at the time'; it merely says by 'authority of law', and so if a subsequent law passed by the legislature is retrospective in its operation, it would satisfy the requirement of Article 31(1) and would validate the impugned notification in the present case". He observed, "If a law is invalid for the reason that it has been passed by a legislature without legislative competence and action is taken under its provisions the said action can be validated by subsequent law passed by the same legislature after it is clothed with the necessary legislative power. This position is not disputed. If the legislature can by retrospective legislation and the invalidity in actions taken in presence of laws, which were void for want of legislative competence and can validate such actions by appropriate provisions, it is difficult to see why the same power cannot be equally effectively exercised by the legislature invalidating actions taken under laws which are void for reason that they contravened Fundamental Rights. As has been pointed out by the majority decision in Deep Chand's case 1959 (srupp(2) S.C.R.8: (A.I.R. 1959)S.C. 648), the infirmity proceeding from lack of legislative competence as well as the infirmity proceeding from contravention of Fundamental Rights lead to the same result and that is that the offending legislation is void and non-est. That being so, if the legislature can validate actions taken under one class of void legislation, there is no reason why it cannot exercise its legislative power to validate action taken under the other class of void legislation. He cited many decisions in favour of this, which deal

1. Ibid, p. 1760.
2. Ibid, p. 1761.
with legislatures’ power to pass retrospective comment law. He negatived the challenge to the validity of the Act, on the ground that its important provisions contained in Section 5 which dealt with the principles for the determination of compensation offended against Article 31(2). He held that Section 5 mentioned three basis for the determination of compensation and the choice was left not to the Government in every case but to the person whose property was acquired. The petitioners failed to prove that the compensation which would be paid under every one of the three basis of the impugned statutory provision does not amount to a just equivalent.

In Godhra Electricity Company Ltd., and another vs. the State of Gujarat and another, the Company challenged the validity of a notice issued by the Gujarat State Electricity Board by which the Government purported to exercise the option of purchasing the electrical undertakings of the company under Section 6 of the Indian Electricity Act, 1910.

2. Ibid, p. 1764.
Sections 6, 7 and 7(a) of the Act were also impugned as ultra-vires of Article 14, 19(1)(f), 19(1)(g) and 31 of the Indian Constitution. On dismissal of the petition in the High Court the Company came on appeal to the Supreme Court. Under Section 6 (1) of the Act the State Electricity Board has the option of purchasing undertaking on the expiration of such period as specified in the licence or on the expiration of such period not exceeding 20 years if it is granted after the amended Act 1959. Mathew, J., held that the requirements of this section should be complied with strictly for acquisition. It was held that the licence was given in this case for 50 years, but as it was acquired 7 years earlier than the period, the acquisition was bad and there was no valid purchase. The Government took for computation of the period the date on which the licence was signed and the Court rejected it and took the date of commencement of licence as the date on which the notification granting the licence was published.

The important question involved in this case is about the 'locus standi' of appellants, namely, the Company and a shareholder who is the Managing Director of the Company. Of course, it is agreed that the Corporation has no Fundamental Right under Article 19. Hence, the question is whether the share holder has the right to challenge the validity of Act. Mathew, J., following R.C. Cooper vs. Union of India¹ and Bennett Coleman vs. Union of India² which followed up Bank Nationalisation Case, upheld the contention of the shareholder that the value of his investment in the company was "substantially reduced by the illegal delivery of the undertaking by the Board". It violated his right to carry on his business of supplying electricity through the agency of the company. Thus, his Fundamental Rights under Articles 19(1)(f) and 19(1)(g) were abridged. Reversing the Judgment of the

2. A.I.R. 1973 S.C. 106
High Court held that Section 6(6) violated the Fundamental Right under Article 19(1)(f) and 19(1)(g) as it deprived the licensee of his undertaking without payment of purchase price and asking him to go to a court to enforce the liability for the interests for the period for which the purchase price has been withheld as it was unreasonable.

C. NATIONALISATION OF ROAD TRANSPORT:

Transport and Communications are vital life lines of modern national as well as international economic systems. Communication received the attention of the State to render service in the 19th century itself. Transport by and large remained in the hands of the private entrepreneurs even for some decades in the twentieth century. The enormous increase in travel, the policy of providing transport to nook and corner even if they are uneconomic routes and the realisation of the significance of transport as the life line of the nation resulted in the launching of different schemes of nationalisation of Road Transport in many States. Uttar Pradesh is one of the States that took lead in this direction. Naturally, the vested interests lost no time in pressing into service the fundamental rights in challenging the nationalisation laws before the courts.

In *Saqhir Ahmad vs. State of Uttar Pradesh*¹, the Uttar Pradesh Road Transport Act of 1955 was impugned. The Uttar Pradesh Government conceived the idea of running their own buses in 1947. They ran the buses along with private operators and competitors. Subsequently, they wanted to run exclusively and took advantage of Section 42 (3) of the Motors Vehicles Act of 1939 under which Government could run buses without permit. The Government cancelled the permits issued to the private operators and refused permits to others.

This move was challenged by the private bus owners under Article 226 of the Constitution on the plea of illegal use of the provisions of the Motor Vehicles Act by the Government.

The High Court held: (1) under Section 42(3) of the Motor Vehicles Act the State could not discriminate against other persons in its own favour, (2) Exemption of State Road Transport buses from obligation to obtain permits conflicts with Article 14 of the Constitution, (3) Nationalisation of an industry was not possible by mere executive order. Appropriate legislation was necessary. Such legislation must be justifiable under Article 19 clause (6) of the Constitution.

The State consequently passed Uttar Pradesh Road Transport Act, 1951, giving exclusive right in the interest of general public and for the promotion of the suitable and efficient road transport by providing for State road transport services in Uttar Pradesh. Section 3 of the Act says that on the satisfaction of the Government that it is necessary in the interest of general public and for subserving the common good the road transport services in general and any particular class of such service or any route can be declared to be run and operated by the State Government exclusively or otherwise. The Act was again challenged in the High Court on the grounds: (1) Discriminatory and violative of Article 14 of the Constitution, (2) Violative of Article 19(1)(g) of the Constitution, (3) Violative of Article 31(2) as provision for compensation has not been made; (4) Violated the guarantee of freedom of inter-state and intra-state trade embodied under Article 301 of the Constitution. The High Court negatived all the arguments and dismissed the writ petitions.

The following arguments were advanced before the Supreme Court appeal.

1. The novel argument that right of the appellant to use a public highway for the purpose of trade is in the nature of an easement and as such can be reckoned as property in law.
There is a deprivation of such property. The Court felt this as untenable, it was abandoned.

2. The Government argued that the rights of the bus owner to ply the buses relate only to passing and re-passing over the highway, but the right to ply the buses as a trade or as business is created by State legislation and hence can be deprived by another legislation. This is not a fundamental right under Article 19(1)(g).

The Supreme Court referred to many American, English and Indian authorities. The American law clearly states and recognises what is known as the doctrine of franchise of privilege, under which the right to do transport business is on legislative grant of special rights to particular individual or companies as distinguished from ordinary liberties of citizen. According to English law, the origin of highway was considered to be a matter of inferred jurisdiction and the nature of rights of public on the highway is a matter of fact depending upon the facts and circumstances in each case. But some of the High Courts in India thought that the American rule is different from the Indian or English law on the subject. They refused to recognise special or extraordinary use of highways. The Supreme Court followed this line of thinking and held their right to use motor vehicles on the public road was not created by Motor Vehicles Act and existed anterior to any legislation on the subject as an incident of public rights.

over highway and once such right was conceded it was imma-
terial whether it was used for necessity or pleasure or for
purposes of trade or business. It was not a special or extra-
ordinary use of highway which can be acquired. The State has
always power to control and regulate for ensuring safety, peace,
health and good morals of the public.

The Court held that under the Indian Constitution
the right to carry on trade and business was guaranteed and
if any law takes away or curtails that right it could be
challenged under Article 19(1)(g). It is submitted that this
view of the Supreme Court is erroneous because distinction
between use of a highway for one self and for a profit can
be considered to be a reasonable one and the American doc­
trine of ranchise appears to be sound because the 'inferred
dedication doctrine' of England is outdated in the context
of the sovereignty of the State and the modern laying down
and maintenance of the highways at great cost by the State.
The motor vehicles cannot ply on any natural roads or foot
paths. Hence, it is inappropriate to follow a doctrine which
has its origin before the invention of motor vehicles.

B.K. Mukherjea, J., considered the argument whether
the State under Article 19(6) could impose such restriction
or prohibition under the proviso for reasonable restrictions
on the exercise of the right in the interest of the general
public. The question revolved on whether the word 'restric­
tion' includes prohibition also, by creating monopoly in fa­
vour of State; of course under the Constitution (First Amend­
ment) Act 1951 the exclusion of private citizens from the
business is permissible. But this Act is a preconstitutional
enactment. Referring to foreign and Indian decided cases and
consulting Oxford dictionary. He held that "although in our opinion the normal use of the word 'restriction' seems to be in the sense of 'limitation' and not 'extinction', we would on this occasion prefer not to express any final opinion on this matter". But he said if the word 'restriction' did not include total prohibition it could not be saved under Article 19(6) or Article 31. Adverting to whether restrictions were reasonable or not, he said, that would depend on the nature of the trade and prevailing circumstances. Referring to the impugned Act and to the nature of the trade, i.e., road transport, in this case he held that it was "perfectly innocuous". On the question of State monopoly, he observed that it was reasonable or not would depend upon the "facts of each particular case in its own setting of time and circumstances". Providing efficient transport was not a valid reason for exclusion. He observed "It is not enough that the restrictions are for the benefit of the public, they must be reasonable as well and the reasonableness could be decided only on a conspectus of all the relevant facts and circumstances". He said that it was unfortunate that no materials were supplied on record relating to the conveniences or inconveniences of the existing transport system and the additional amenities or advantages that could be conferred by nationalisation. He referred to the plight of employees engaged by the private transport bodies whose livelihood would be affected without getting any compensation. He invoked Article 39A of Part IV of the Constitution which deals

1. Municipal Corporation of the City of Toronto vs.
with right of every citizen to have adequate means of livelihood.

He observed that the Constitution (First Amendment) Act, 1951 empowers the State to create a monopoly in its favour and Article 19(1)(f) cannot stand in its way. But in this case the impugned Act is a pre-Constitutional Amendment law and the Amendment cannot be invoked to validate earlier legislations. Hence, the Act was invalid for contravening Article 19(1)(f) and not being protected by clause (6) of the Article as it stood at the time of the enactment.

It is submitted that this conclusion of the Court is erroneous. The impugned Act is a post-constitutional and a pre-constitutional first amendment law. When the impugned law was passed even if it is argued that it was violative of Article 19(1)(f) of the Constitution, it was not a non-est and void ab initio in toto. Article 19(1)(f) creates rights only in favour of citizens. Hence, the Act was applicable to non-citizens and valid to that extent. With respect to citizens it was only inoperative and it was eclipsed to that extent. The Constitution (First Amendment) Act 1951 removed that eclipse. Hence, the law was valid in 1954 when the judgment was pronounced.

On the question of compensation B.K. Mhukherjea, J., held following the Courts earlier decision, that clause (1) and (2) of Article 31 were not mutually exclusive in scope and the deprivation contemplated in clause (1) was only acquisition or requisition referred to in clause (2). The fact that buses were not taken possession of was immaterial. The property may be tangible or intangible. Hence, the Act contravened Article 31 (2) of the Constitution.

The contention of the appellant that the Act was discriminatory and violated Article 14 of the Constitution as it created monopoly in favour of State was negatived. The Court held that the State did not cease to be State when it entered trade. B.K. Mukherjea referred to the 'laissez faire' doctrine of last century and said the conditions were changed from that of a police state to a welfare State. He referred to part IV of the Constitution to show that the State's functions have changed radically.

It was held that the Act did not offend Article 14, even though the State chose the routes or portions of routes on which the private citizens were allowed to operate for the purpose of regulating the transport regarding the freedom of inter-State or intra-State trade and it was competent for a legislature of a State to impose reasonable restrictions under Article 304 (b). The Article was concerned with the passage of commodities within or outside the State.

The doctrine of ellipse was applied in Bhikaii Narain vs. State of Madhya Pradesh. The petitioners in this case were carrying on business as stage carriage operator for a considerable number of years under permits granted under Section 58 Motor Vehicles Act, 1939, as amended by C.P. and Berar Motor Vehicles (Amendment) Act 1947. The amendments to the Act made far reaching changes in the original Act. Power was given to Government to fix fares or price to cancel any permit after 3 months from the date of notification declaring its intention to do so on payment of compensation as might be provided by the rules, to declare its intention to engage in the business of Road Transport and to limit the period of licence to a period less than a minimum specified

1. Held, that Peninsular & Oriental Steam Navigation Company vs. Secretary of State 5 Bom. H.C.R. A.P.P. 1 (M), was not relevant in the changed circumstances.
specified in the Act and to issue permits to the Government. Very extensive powers were conferred on Government under which it could take up the entire motor transport business to implement the policy of nationalisation of Road Transport adopted by Government. As the Amending Act was passed in 1958, the question of infringement of fundamental rights did not arise. Following the decision in Saghir Ahmad's case, in which it was held that if the restriction becomes extinction the Act sanctioning the imposition of total prohibition offends Article 19(1)(g) read with 19(6). Das, C.J., held the impugned Act in this case violates Article 19(1)(g) read with Article 19(6) and becomes void under Article 13 (1). The Constitution (First Amendment) Act of 1951 was passed on 18,6,1951 and clause (6) of Article 19 was amended but not retrospectively unlike clause (2).

The Court held that the impugned amending law was not obliterated in its operation in its entirety nor wiped out of the statute book. It existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution 1.

The Act continues to be in operation even after the Constitution with respect to persons other than citizens. The Act was ineffectual, nugatory, and devoid of any legal face only with respect to the exercise of Fundamental Rights. Das, C.J., said "the true position is that the impugned law become, as it were, eclipsed, for the time being, by the Fundamental Right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity" 2. The Act remained dormant or in moribund condition only against

2. A.I.R. 1955 S.C. 785. The Court did not follow American authorities as they do not deal with pre-constitutional laws.
citizens; after the amendment of the Constitution "the im-
pugned Act ceased to be unconstitutional and became revi-
vified and enforceable against citizens". The notification
declaring the intention of the State to nationalise Road
Transport was published after the Constitution (First Amend-
ment) Act was passed. It was held that it was perfectly
Constitutional. The Court negatived the contention of vio-
lation of Article 31(2) for deprivation of property without
compensation in view of the Constitution (Fourth Amendment)
Act 1955. As writ petitions were filed later to the Consti-
tution (Fourth Amendment) Act 1955, the petitioners could
not succeed.

The effect of Constitution (Fourth Amendment) Act 1955
on the laws of deprivation was recognised by Subba Rao, J.,
in G. Nageswara Rao vs. A.P.S.R.T.C. The nationalisation
of Road Transport in Krishna district in Andhra Pradesh under
the Motor Vehicles Act 1939 as amended by the Act 100 of 1956
was impugned under Article 32 of the Constitution on the
plea that the provisions of Part IV A of the Act violated the
Fundamental Rights and that the scheme passed under the Act
is ultravires the Act. It was also contended that the Act
was colourable legislation for transferring ownership with-
out providing for compensation for the property transferred
under the guise of cancellation of permit. K. Subba Rao, J.,
delivering majority judgment, negatived the contention of
colourable legislation and held "we cannot see that the power
of cancellation of an existing permit and issuing one to
State Transport Undertaking should involve a transfer of the
previous permit-holders' business to the State Transport
Undertaking". Hence he said in view of Constitution (Fourth

1. Idem.
3. The amendment Act was passed for efficient, adequate,
economical, properly co-ordinated transport in the public
interest according to the objectives of the Act.
Amendment) Act, 1955 the question of payment of compensation does not arise and the invalidity of an Act for a total prohibition on a particular business and creation of monopoly in favour of State does not arise due to the former amendment.

However, K. Subba Rao, J., held that the principles of natural justice were violated as the authority which heard the objections for nationalisation raised by the petitioners was a quasi-judicial authority.

The Court in effect did not strike down any provision of the Act.

The Supreme Court considered the doctrine of eclipse, with respect to a post constitutional law in Deep Chand vs. State of Uttar Pradesh in which the Uttar Pradesh Transport Services (Development) Act 1955 was impugned on the ground that it violated Article 31. The Supreme Court unanimously held that it did not infringe Article 31. Subba Rao, J., delivering judgment on behalf of himself and N.H. Bhagawati and K.N. Wanchoo, JJ., held "having regard to the entire scheme of compensation provided by the Act, we hold that the Act provided for adequate compensation for the interest acquired within the meaning of Article 31(2) of the Constitution." S.R. Das, C.J., delivering judgment on behalf of himself and B.P. Sinha, J., held the same.

Most of the judgment of Subba Rao, J., is an obiter dicta without any necessity for the determination of the case dealing with the application or non application of the doctrine of eclipse to post-constitutional law which violates Fundamental Rights. He held it was not applicable. Das, J., on the other hand observed that it was applicable in the case of post-constitutional law, which applies both to citizens, as well as non-citizens and reserved his opinion in the case

2. Ibid, p. 673.
of law which applies only to the citizen.

The significance and relevancy of Article 39(b) of the Constitution with respect to nationalisation was impugned in State of Karnataka vs. Ranganatha Reddy. In this case an appeal was preferred against the judgment of the High Court which invalidated Karnataka Contract Carriages (Acquisition) Act (21 of 1976) for violating Article 31 of the Constitution.

Untwalia, J., (for himself and on behalf of Beg, C.J., Chandrachud and Kailasam, JJ.,) held that the acquisition of private carriages, their permits and other assets for running them for the purpose of the State Road Transport Corporation was in substance a nationalisation measure and undoubtedly it was for public purpose. It was held that the amount payable as compensation for the acquisition of property either fixed by the legislature or determined on the basis of the principles provided in the Act were not illusory or arbitrary.

Krishna Iyer, J., (For himself and on behalf of Bhagwati and Jaswant Singh) giving a separate but concurrent judgment observed that Article 39 (b) provides for the restructuring of the economic order and it embraces the nationalisation measures.

D. NATIONALISATION OF MINES.

In M/s. Burrakur Coal Company vs. Union of India, a notification by Central Government in 1960, under Section 4 of Coal Bearing Areas (Acquisition and Development) Act 1957, expressing the intention of Government of India to prospect for coal which in effect precluded M/s. Burrakur Coal Company Ltd., along with other companies from carrying on any mining operation in the collieries in which they acquired mining rights, was impugned as ultravires the Act and the Act itself

ultavires the Constitution.
The main contention was that the Act applies only to unworked coalmines in virgin land and not to those which are worked at present or which were worked in the past. Madhokar, J., delivering the judgment of the Court, held, that it applies both to virgin lands, abandoned and discontinued mines and collieries worked in consonance with the provisions of the Constitution. The main contention was that the Act applies only to unworked coalmines in virgin land and not to those which are worked at present or which were worked in the past. Madhokar, J., delivering the judgment of the Court, held, that it applies both to virgin lands, abandoned and discontinued mines and collieries worked in consonance with the provisions of law. It was contended that under Section 13 clause (4) of the Act which deals with the question of compensation, there is no provision for the payment of compensation for the deprivation of a mine from a mine owner or lessee to carry on his business. It was also contended that under Section 4 (1) of the Act read with Section 5 (b), the rights of the owner of the mine were suspended by the notification by preventing him from working his mine for a certain period of time. The suspension was different from modification. The Court held that sub-clause (1) of Article 31A inserted by the Constitution (First Amendment) Act 1951 saves extinction or modification of any rights accruing by virtue of any agreement lease or licence for the purpose of mining etc. and also saves premature termination or cancellation of any or each agreement lease or licence from the attack under Article 14, 19 and 31. Modification can be even for a short duration. It was held that Article 31A clause (1) (e) debar the challenge to the validity of the Sections 4 and 5 of the Act for infringement of the provisions of Article 31 clause (2) of the Constitution. He held that the entire Act could not be sustained under Article 31A (1) (e) and Article 31 (2A) of the Constitution as they do not deal with the question of acquisition. It was held that the provisions of the Act specifically provide compensation for land which is to be acquired including all that lies beneath the surface. Method of calculation of the value of the land was provided. Madhokar, J., held rightly, "the contention that the provisions made by Parliament
for computing the amount of compensation for the land do not take into account the value of the minerals is in effect a challenge to the adequacy of the compensation payable under the Act. The concluding words of Article 31(2) preclude such a challenge being made. He, further, observed "in our opinion the minerals cannot be regarded as a separate tenement, except perhaps in a case of trespass and, therefore, there is no question of the law providing for a separate compensation for them. Apart from that if minerals have become a separate enement then the present Act may not apply to such a tenement at all."

The petitions were dismissed as they did not hold separate tenement for the surface.

The process of nullification of the Constitution (IVth Amendment) Act started by the Supreme Court in State of Madras vs. Namasiyava. In this case Sections 2 and 3 of the Madras Lignite (Acquisition of Land) Act, Act 11 of 1953 which sought to amend the Land acquisition Act I of 1894 in their application to acquisition of lignite bearing lands were impugned for infringing the Fundamental Rights under Article 31 of the Constitution. The Government's proposal to undertake legislation reserving power to compel any person who had purchased land on or after the date prescribed in 1947 in lignite bearing areas to sell to the Government at a rate at which it was purchased. The three important amendments made to the land acquisition were:

1) Assessment of the market value of the land prevailing on April 28th 1947 and not on the date on which the notification was issued under Section 4 (1) of the Land Acquisition Act,

1. Ibid, p. 963.
2. Idem.
2) power to take possession of lands in cases of urgency for the purpose of working lignite mines under Section 17 of the Land Acquisition Act in the areas in which the Madras Lignite (Acquisition of Land) Act of 1953 extends.

3) Assessment of the market value of the land on April 28th of 1947 without taking due consideration any agricultural improvement on the land, commenced, made or effected after the date. In pursuance of the Act under Section 11 compensation was computed on the basis of the market value of the lands on April 28th, 1947 excluding the value of house sites or other non-agricultural improvements made on the land since that date.

The High Court held that the computation made on the basis of provisions of the Madras Act 1953 could not be sustained. The Act was passed before the Constitution (Fourth Amendment) Act 1955 was enacted which amended 31 (2) of the Constitution with retrospective operation. Shah, J., held "fixation of compensation for compulsory acquisition of lands notified many years after the date, on the market value prevailing on the date on which lignite was discovered is wholly arbitrary and inconsistent with the letter and spirit of Article 31(2) as it stood before it was amended by the Constitution (Fourth Amendment) Act, 1956". He rejected the argument that freezing the value of the land on some date anterior to acquisition was made on the assumption that the increase in the value was attributable to the purposes for which the State might use the land at some future date. He held, denial to the owner all increments in value of land between a fixed date and the date of issue of notification under Section 4(1), prima facie be regarded as denial to him, the true equivalent of the land. He further held that the onus of proving that the fixation of compensation anterior to the date of notifi-

1. Ibid, p. 193.
cation was not in violation of constitutional guarantee, was on the State, and that no material evidence had been supplied by the State to whom the 'press note' issued by government was not sufficient enough to show that any scheme for acquisition of land for mining of lignite was prepared in 1947 by the Government of Madras, the provisions of the Act arbitrarily fixing compensation based on the market value at a date ten years before the notification under Section 4(1) was issued, could not be regarded as valid; it was a flagrant infringement of the Fundamental Rights of the owner of the land under Article 31 (2).

Any restriction on this constitutional guarantee by subsequent Amendment on Article 31 (2) must be ignored as it had not been given retrospective operation.

The deprivation of compensation for non-agricultural improvements of the land which were made anterior to the Amending Act, to the owner, was also in violation of Article 31 (2). It was not 'just compensation'. The appeal was dismissed.

By this decision the legislature received another jolt by Supreme Court, in implementing its nationalisation policies. The Government had made it clear as early as in 1948 September that it was going to nationalise, by legislation, the lignite mines. Even earlier to the notification the geological survey made for finding lignite deposits was a matter of public knowledge. It is, but natural, that speculation in land transactions with the expectation of artificial, abnormal, hiking in prices must have taken place. Thus, the unearned income accrued to the land holders and subsequent purchases cannot be considered to be a factor of property which requires due compensation. Hence, it is not improper on the part of the Government to ignore it and compute compensation on the date of the Government of the survey or notification. However, the Government ought to have paid
compensation for the non-agricultural improvement which it acquired along with the land. It is also supposed that in all cases where an anterior date is fixed for calculating the compensation, it is just and proper that the person deprived of property should be paid the bank rate of interest on the basis of fixed deposits between the date fixed for the determination of compensation and the actual date of payment in all cases of owners whose total property did not exceed Rs. one lakh.

This process of reverting to Bela Banerjee\(^1\) with respect to justiciability of Vajravelu\(^2\) and Jeejeebhoy\(^3\) and was almost completed in a casual manner by a two judge bench in Union of India vs. The Metal Corporation of India Ltd.,\(^4\) under an ordinance promulgated by Presidency of India in 1965, the Central Government took over the possession, control and administration of the Metal Corporation of India Ltd., which was constituted under the Indian Companies Act for development of zinc and lead mines at Jawar, in the State of Rajasthan.

During the pendency of the writ petition challenging the validity of the promulgation, Parliament passed and act replacing the ordinance known as Metal Corporation of India (Acquisition of Undertaking) Act (44 of 1965). The Act was also challenged.

The High Court held that the ordinance and the Act were void for contravention of Article 31. The State came to an appeal to the Supreme Court. The impugned Act was passed for the purpose of enabling the Central Government in the public interest to exploit to the fullest extent possible, the zinc and lead deposits. The Act provided for

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compensation in accordance with the principles specified in the schedule whatever might be the valuation of different items such as land, machinery and so on. The single compensation was given to the undertakings as a whole.

The principle for determining the compensation for acquisition of the undertaking mentioned in the schedule of the Act was the main point of contention. Apart from the individual item, the general principle that was followed was that the compensation to be paid is equal to the sum total of the value of the assets of the company on the date of commencement of the Act calculated in accordance with the provisions of para 2 of the schedule deducting the total liabilities and obligations of the company calculated in accordance with para 3. In the case of the machinery, plant or equipment which has not been worked and used and was in good condition. The actual cost incurred by the company in acquiring them was taken into consideration. In the case of other machinery it was to be valued on the written down value determined in accordance with the Income Tax Act of 1961. The High Court considered that the two evaluations were not relevant for the determination of just equivalent compensation. It followed Vajravelu's Case¹, and held that the provisions in respect of machinery did not lay down a principle for fixing the compensation that was just equivalent of the machinery acquired.

Before the Supreme Court, the State contended that the Act embodied a principle relevant for the ascertainment of Compensation and the questioning of the product of compensation based on the principle amounts to questioning the adequacy which is outside the purview of judicial review. Further, the State contended that justness of the compensation should be viewed in the context of the public acquisition.

Subba Rao, C.J., delivering the unanimous judgment on behalf of himself Shah, J., held:

1) the principle for the determination of compensation for the acquisition of unused machinery etc., based on the cost price of the machinery at the time of purchase is an irrelevant principle because the price of the machinery must have gone up considerably at the time of acquisition.

2) the doctrine of written down value applied in determining the compensation for the used machinery is also irrelevant because for purposes of income tax, it is artificial and notional and actually the used machinery may cost more than its cost price in view of the rise in market price. Hence, the principles mentioned in the Act were not relevant in fixing the compensation for the machinery at the time of its acquisition under the Act. He also rejected the doctrine of inherent worth of a machinery on the plea that the worth of an article depends upon the market conditions and there was nothing like a fixed value for all times.

Subba Rao, C.J., followed the earlier decision of Supreme Court both before and after the Fourth Amendment Act to invalidate the impugned Act in the present case.

Subba Rao, C.J., held that "the law to justify itself has to provide for payment of 'just equivalent' to the land acquired or lay down principles which will lead to that result. If the principles laid down are relevant to the fixation of the compensation and are not arbitrary, the adequacy of the resultant product cannot be questioned in a Court of law. The validity of principles judged by the above tests, falls within the judicial scrutiny, and if they stand the tests, the adequacy of the product falls outside its jurisdiction.

Judged by the said tests (the impugned principles)....are irrelevant to the fixation of the value of the said machinery as on the date of the acquisition. It follows that the impugned Act has not provided for 'compensation' with in the meaning of Article 31(2) of the Constitution and, therefore, it is void". He held that clause (b) para 2 of the schedule to the Act laying down the principles for providing compensation to the machinery is invalid and as it affects the totality of the compensation payable to the entire undertaking it was not severable, the whole of the Act was void. Even though the decision in this case was overruled in Snantilal's case it merits a brief critical scrutiny. Apart from the reason given in the overruled case, it is submitted, that the decision in Metal Corporation Case is erroneous for the following reasons:

1) the logic applied not only in this case but also in the other case which equates the State in the process of acquisition of private property with that of an individual or a private company is wrong and outdated based on the 19th century laissez faire economic philosophy and conception of State ignoring the great responsibilities of a welfare State to satisfy the myriad and varied needs of the public at large. Hence, the insistence upon the market value for purposes of compensation amounts to standing in the way of the State in discharging its modern duties enumerated in the Preamble and reflected in Part IV of the Constitution.

2) The principle of cost price of the unworked machinery is not arbitrary in view of the fact, that the industries received many concessions, subsidies and favours from the Government in purchasing or importing machinery.

3) In the case of used machinery the application of the doctrine of depreciation value taken into consideration

for liability of income tax is valid because otherwise it amounts to double standards. Because, for purposes of claiming relief from income tax the principle of depreciation is applied which is less than a market value for the used machinery giving benefit to the owner. But, for purposes of claiming compensation market value of the used machinery is demanded. This is on the fact of it untenable. Double benefits cannot be allowed by double standards.

E. NATIONALIZATION OF TENDU LEAVES.

In A.K. Mahboob vs. State of Madhya Pradesh\(^1\), Madhya Pradesh Tendu Patta (Vyapar Viniyam) Adhiniyam Act 29 of 1964 which was passed in the public interest for regulating the trade of tendu leaves by creation of State monopoly in such trade was impugned. Hidayatullah, J., held that contract to collect tendu leaves was not right to property. He said "since there is no right to property before the leaves are plucked no such right can be said to be invaded by Adhiniyam"\(^2\).

In Vrailal M & Company vs. State of Madhya Pradesh\(^3\), Madhya Pradesh Tendu Patta (Vyapar Vinayamam) Adhiniyam Act 1964 was impugned. The movement of Tendu leaves were restricted not only from purchasing units to place of storage but also their subsequent movement for their consumption in the manufacture of beedies or for exporting them outside the state can be done only under Section 5 (2b) of the Act. This Act was enacted for regulating trade in Tendu leaves by creating a State monopoly in such trade. Shelat, J., held that as the restrictions under Section 5 were not only an integral part of State monopoly but also incidental thereto for effective

2. Ibid, p. 1643.
enforcement, it affects the right of the purchaser under 19 (l)(f) and (g) and have to pass the test of reasonableness under clause (5) and the first part of the clause (6) of Article 19. The burden of proving that such restrictions are protected under clause (5) and (6) of Article 19 is on those who seek protection and not the citizen.

Dealing with the fundamental principles of the continuation of the Constitutional provisions relating to the exercise of the legislative power, Shelat, J., observed "...a mere literary or mechanical construction would not be appropriate where important questions such as the impact of an exercise of a legislative power on constitutional provisions and safeguards, thereunder are concerned. In cases of such a kind, two rules of construction have to be kept in mind: (1) that courts generally lean towards the constitutionality of a legislative measure impugned before them upon the presumption that a legislature would not deliberately flout a constitutional safeguard or right, and,

2) that while construing such an enactment the court must examine the object and the purpose of the impugned Act, the mischief it seeks to prevent and ascertain from such factors its true scope and meaning."  

Shah, J., referred to the object of the Act which was to regulate trade in tendu leaves in the public interest, by creating a State monopoly to prevent the purchase from exploiting the needy and poor small farmers by paying least possible price and to fix reasonable prices. Hence the monopoly was not unreasonable and the restrictions imposed even on transport were reasonable.


In less than a year speaking through Shah, J., the Supreme Court changed the major policy of interpretation of the validity of a legislation by hundred and eighty degrees in Bank Nationalisation Case.
F. NATIONALISATION OF BANKS.

One of the most controversial judgments relating to property was handed over by the Supreme Court of India in R.C. Cooper vs. Union of India⁴, there was a bitter criticism that it created bottleneck for the welfare legislation to speedily ameliorate the conditions of the masses by not merely regulating from the remote control but by direct participation of the State by organising and utilising the credit facilities for the benefit of common man.

Rustom Cavasjee Cooper, who impugned the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance 1969 and the Banking Companies (Acquisition and Transfer of Undertakings) Act of 1969 which replaced the ordinance with certain modifications, was a share-holder in the Central Bank of India Limited, and other nationalised banks and also the Director of the Central Bank of India Limited.

There was no comprehensive legislation before 1949 in India governing banking business and institutions in India. The Banking Companies Act of 1949 to some extent regulated the banking business. This Act which was also called the Banking Regulation Act was amended in 1968 to give effect to the policy and social control over commercial banks. In 1969 a year later the political events perhaps hastened the Governmental process for directly dealing with the banking business. The result was the said ordinance and subsequent Act.

The Act was impugned under Articles 14, 19 and 31 of the Indian Constitution. Shah, J., who delivered the judgment reversed the earlier trends with respect to judicial policy over compensation and totally changed the Supreme Court's

approach towards the validity of legislation vis-a-vis individual's fundamental rights. The substantial question involved in this case revolves around the justiciability of compensation. The ordinance took over the entire undertakings of the every named bank by a correspondingly named new bank and transferring all contractual rights and obligations to the new bank. Before the Supreme Court decided the fate of the ordinance, it was replaced by the Act. Not even the names of the 14 nationalised banks were changed only the State has taken them directly. The Act made certain changes in the ordinance:

1) The old banks were not dissolved and cannot be dissolved by the order of the Government. They remain in existence for certain purposes.

2) Interim compensation should be paid to the named Banks subject to certain conditions. The principles of determination of compensation and the manner of payment was modified. The Act was impugned for: (1) Encroachment upon the State List in the Seventh Schedule of the Constitution and thus Parliament lacks legislative competence, (2) violation of Article 14, 19 (1)(f) and (g) and Article 31 (2), (3) violation of Article 301 which guarantees freedom of trade. The State argued that the petitioner had no locus standi in this case as he was not the owner of the property. As a shareholder and the Director of the Company he could not question the validity of the Act. Shah, J., negatived this argument and held that the test for determination of the impairment of the shareholders right was not formal and it was essentially a qualitative one. He observed, "....if the State action impairs the right of the shareholders as well as of the company, the Court will not, concentrating merely upon the technical operation of the action, deny itself jurisdiction to grant relief". It was argued on behalf of the petitioner

1. Ibid, p. 585.
that the vesting of the undertakings of the named banks in
the new Corporation was without a public purpose. Principles
and the basis for determination and the payment of a just equi-
valent for the property expropriated were not set out in the
ordinance. The nationalised banks were subjected to hostile
discrimination resulting in depreciation of the value of the
share-holder's investment. His right to carry on the busi-
ness through the agency was taken away, without his consent.
It was held, following the previous decisions of the Supreme
Court and distinguishing from others, that as a share-holder
the petitioner has right to question the validity of the Act
for the infringement of his own rights and not of the bank
of which he is a share-holder.

With respect to the legislative competence of the
Union, the power of Parliament to legislate under Section 13
of the Banking Regulation Act 1949 in respect of business of
banking, matters incidental thereto for, acquisition of the
business of banking of each named bank was not questioned.
But the power to legislative with respect to any other business
not incidental to banking in which the named banks were
engaged before 1947 was questioned as such other business falls
within Entry 26 of List II. The legislative power in respect
of acquisition in Entry 42 of List III can be exercised by
the Parliament only effectuating legislation under a head in
List I or List III. The object of the 1969 Act was to trans-
fer the undertaking of the business of all the banks nationalised
to a new bank set up with the authority to carry on banking
and other business. They are controlled by the Central Govern-
ment. The entire capital was vested in and allotted by the
Central Government. The question is what is the scope of the
business of banking. The expression 'banking' is not defined
in any other enactment excepting the Banking Act of 1949.
Shah, J., held that the Parliament had legislative competence
for acquisition of the undertaking carrying on the banking
business, trading activities incidental to banking and not
trading activities not incidental thereto. Shah, J., defined property. He held that under Entry 42 List III the expression property had a wide connotation and hence compulsory acquisition of an undertaking as defined in Section 5 of the Act of 1969 was valid and was within the competence of the Parliament.

With respect to non-banking business and lack of competence of Parliament for acquisition of assets of non banking business, Shah, J., said (1) that there is no evidence that the named banks held every asset for any distinct non-banking business and (2) that the acquisition is not shown to fall in any Entry in List II of the Seventh Schedule.

Shah, J., said "clauses 1 and 2 of Article 31 subordinate the exercise of power of the State to the basic concept of rule of law". If it means that (1) there should be a law passed by the legislature for compulsory acquisition or deprivation of property (2) the legislature should have competence to enact, (3) The law should not be violative of any fundamental right. Shah, J., said "the guarantee under Article 19(1)(f) does not protect merely an abstract right to property: it extends to concrete rights to property as well". He said Article 19(5) and Article 31(1) and (2), in our judgment, operate to delimit the exercise of the right to hold property.

Shah, J., made an important policy statement in the construction of the Constitution and the validity of legislation and made a departure from the principles enunciated by the Supreme Court till then. He said, "under the Constitution, protection against impairment of the guarantee of fundamental rights is determined by the nature of the right, the interest of the aggrieved party and the degree of harm.

1. Ibid, p. 591.
3. Ibid, p. 593.
resulting from the State action. Impairment of the right of the individual and not the object of the State in taking the impugned action, is the measure of protection. To concentrate merely on power of the State and the object of the State action in exercising that power is therefore to ignore the true intent of the Constitution. In this Court, there is, however, a body of authority that the nature and extent of protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual, but by its object. Thereby the Constitution scheme which makes the guaranteed rights subject to the permissible restrictions within their allotted fields fundamental got blurred and gave impetus to a theory that certain Articles of the Constitution enact a code dealing exclusively with matters dealt with therein, and the protection which an aggrieved person may claim is circumscribed by the object of the State Action.1

Referring to Gopalan's case2 he said "this case has formed the nucleus of the theory that the protection of the guarantee of a fundamental freedom must be adjudged in the light of the object of State action in relation to the individual's right and not upon its influence upon the guarantee of the fundamental freedom, and as a corollary thereto, that the freedoms under Articles 19, 21, 22 and 31 are exclusive each article enacting a code relating to protection of distinct rights"3.

In Gopalan's case itself, Das, J., suggested the application of this principle to right to property. He said this again in Charanjit Lal's Case more clearly, "...the right to property guaranteed by Article 19(1)(f) would...continue until the owner was, under Article 31 deprived of such

1. Ibid, p.
property by authority of law. He reiterated it in Subodh Gopal's case. Bose, J., followed it and made it more clear in Bharji Munji's Case. He said referring to Article 19(1)(f) read with (5) "...clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the Article postulates the existence of property over which these rights can be exercised." Bharji Munji was decided before the Fourth Amendment of the Constitution which nullified the Supreme Court's decisions that held that Article 31(1) and (2) dealt with the same subject. But Sita Bathi Debi's case and Babu Barkya's case were decided subsequently. In Kochuni's case Subba Rao, J., held that the expression "authority of law" meant authority of valid law and validity tested under Article 19(1)(f). He held that after the Constitution (Fourth Amendment) Act, Bharji Munji's Case did not hold good. However, it was not considered that "authority of a law" within the meaning of Article 31(2) was liable to be tested under Article 19(1)(f). It was considered the word 'law' had different meanings in the two clauses. For the first time in Madhya Pradesh vs. Ranoji Rao Shinde it was opined that the validity of law in clause (2) of Article 31 might be adjudged under Article 19(1)(f). Shah, J., reversed the philosophy of the invalidity or validity of a statute vis-à-vis the individual rights which was prevailing at least in theory for nearly two decades from

the inception of the Constitution. He observed, "we have carefully considered the weighty pronouncements of the eminent judges who gave shape to the concept that the extent of protection of important guarantees, such as the liberty of person, and right to property, depends upon the form and object of the state action, and not upon its direct operation upon the individual's freedom. But it is not the object of the authority making the law inspiring the right of a citizen, nor the form of action taken that determines the protection he can claim; it is the effect of the law and of the action upon the right which attract the jurisdiction of the Court to grant relief. If this be the true view and we think it is, in determining the impact of State action upon Constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the legislature nor by the form of the action, but by its direct operation upon the individuals right 1.

He further observed "we are of the view that the theory that the object and form of the State action determine the extent of protection which the aggrieved party may claim is not consistent with the constitutional scheme" 2. This line of thinking appears to be in contradiction with the scheme of the Constitution of India. In part III Fundamental Rights of individuals are stated first in general and absolute terms and then limitations and restrictions and grounds for impairment are mentioned. Further, the implementation of Directive Principles of State policy in Part IV will necessarily involve in all most all cases interference with the individual rights. Even the socio-economic goals in the preamble cannot be realised without abridging the Fundamental Rights to some extent. Hence it can be postulated that every law which

2. Ibid, p. 596.
creates rights and liabilities or disabilities and alters the distributions of benefits and burdens in the society involves interference with individual rights of some people or the other. The power of the State to interfere is an inevitable evil. The extent of the power which is vast in a modern welfare State is also inescapable. The Constitution itself provides for the interference of the State with individual rights specifically in many provisions. If the validity of a law which interferes with individual's rights is tested by the effect of the law upon the right every law becomes invalid because every law adversely interferes with the rights of one group or other of the individuals. Grounds on which interference with individual rights can be done by the State are generally and specifically mentioned in the Constitution. They are both express and implied. The grounds are nothing but the purposes and objects for interference. If a law is made on those grounds for those purposes and objects really it is valid. Hence, the law is tested on the basis of the grounds which incorporate the purposes and objects and not on the basis of the effect on the individual right because it necessarily affects them. A thing cannot be measured by itself. To say that interference with individual rights can be measured by individual rights itself is arguing in a circle. It is a tactology. It is an absurdity. Here there are three propositions: (1) individuals rights (2) State law interfering with individual rights (3) permissible grounds i.e. purposes and objects for which interference may be made. A law by itself which interferes with individual rights can not be said either valid or invalid by itself. The validity of a law cannot be tested by itself. In the same manner whether fundamental rights can be interfered or not cannot be tested by the touchstone of the fundamental rights themselves; both of them have to be tested by a third yardstick namely the grounds permitted under the Constitution expressly or impliedly i.e. the objects and purposes of State action.
Shah, J., held that clause (5) of Article 19 and clauses (1) and (2) of Article 31 are parts of a single pattern. "Article 19(1)(f) enunciates the basic right to property of the citizens and Article 19(5) and clauses (1) and (2) of Article 31 deal with limitations which may be placed by law subject to which the rights may be exercised." He observed "if there is no public purpose to sustain compulsory acquisition, the law violates Article 31(2). If the acquisition is for a public purpose, 'substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed, but enquiry into reasonableness of the procedural provisions will not be excluded'. He said that Article 19(1)(f) and 31(2) are not mutually exclusive. Thus, to say, in the teeth of Article 31 clause (2) which is a complete code of 'eminent domain', that a law which complies with Article 31(2) has to be further tested on the touchstone of the reasonableness under Article 19(1)(f) and (5) tantamounts to importation of an alien doctrine of due process which was specifically excluded by the framers of the Constitution. It is a judicial usurpation of power. It means right to property and 'eminent domain' are subject to due process which is excluded by the Constitution. It amounts to sitting on judgment on the wisdom of the Parliament or legislatures in making policy oriented laws with political and economic content.

He rejected the challenge to the Act under Article 19(6). But he held that the restriction imposed on the right of the banks to carry on non-banking business was unreasonable. This is unsound because the Act did not ban it in fact. But, it was pleaded that 'they had not finance to do so. If that is accepted the State which allows glaring inequalities of wealth allowing conditions to continue in which most of the people

1. Ibid, p. 596.
do not have any property worth mentioning has to be charged for violation of the right to hold property under Article 19(1)(f) and to do trade under Article 19(1)(g) as the people do not have the means to do both. With respect to challenge, under Article 31(2) Shah, J., referred to all the earlier cases. He tried to explain the difference of opinion on the matter of compensation between P. Vajravelu Mudaliar’s case and Shantilal Mangaldas’ case. In the former case the test of just equivalent of property was followed and in the latter it was rejected categorically and was held that the compensation paid was not illusory and was not determinable by the application of irrelevant principles. It cannot be challenged on the basis of inadequacy. If the principles are relevant it is enough. Shah, J., apply the conflicting ratios decidenti in both the cases superficially holds the impugned Act in the case invalid, for failing to provide the expropriated banks compensation determined according to relevant principles. He observed "the broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its potentialities". It means that

Shah, J., rejects his own decision in Shantilal's case. He held "even if it be assumed that the aggregate value of the different components will be equal to the value of the undertaking of the named bank as a going concern the principle specified, in our judgment, do not give a true recompense to the banks for the loss of the undertaking"). It is difficult to understand the change in his stand. Further, it is not known how the market value of a big bank could be ascertained and secondly if it is insisted on full recompense what would be the effect of Fourth Amendment to the Constitution. He held that the goodwill of a company business is a tangible asset and that should also be taken into consideration. He held that the determination of the compensation for an undertaking was vitiated for omission of certain important class of assets for following irrelevant method resulting in illusoriness of the compensation and the principle for determination of the aggregate value of liabilities was also irrelevant. He further held following Kameshwar Singh's case that taking over of the cash and payment of compensation in a future date amounts to levying a forced loan in the guise of acquisition without mincing words. He observed "the Constitution guarantees a right to compensation - an equivalent in money of the property compulsorily acquired". He further observes "the Constitution guarantees that the expropriated owner must be given the value of his property, i.e., what may be regarded reasonably as compensation for loss of the property and that such compensation should not be illusory and not reached by the application of irrelevant principles. In our view, determination of compensation to be paid for the acquisition of an undertaking as a unit, after awarding compensation for some items which go to make up the undertaking and omitting important

1. Ibid, p. 610.
items amounts to adopting an irrelevant principle in the determination of the value of the undertaking, and does not furnish compensation to the expropriated owner". Thus the Fourth Amendment to the Constitution is judicially killed by usurpation of the power of judicial review for reviewing the adequacy of compensation in the guise of full recom pense and relevancy of the principles.

Ray, J., in his dissenting judgment held that (1) There is a vital distinction between Article 31 (1) and Article 31 (2). Hence retrospective legislation as to requisition of property does not violate Article 31(2).

(2) "...Article 19(1) (f) does not have any application to acquisition or requisition of property for a public purpose under authority of a law which provides for compensation as mentioned in Article 31(2)....". The Constitution has to be interpreted in a harmonious manner and no provision of the Constitution is superfluous or redundant. "It will be pedantry to say that acquisition for public purpose is not in the interest of the public". Article 31(2) is a self contained code, as it stipulates the conditions of (a) authority of law (b) public purpose (c) payment of compensation (d) non justiciability of compensation. The meaning of the phrase 'public purpose' is predominantly a purpose for the welfare of the general public. These 14 banks were acquired for the purpose of developing the national economy. It was intended to confer benefit on weaker sections and sections 5. "What was true

1. Ibid, p. 614.
4. Idem.
of public purpose when the Constitution was ushered in the midcentury is a greater truth after two decades. One cannot be guided either by passion for property on the one hand or prejudice against deprivation on the other. Public purpose steers clear of both passion and prejudice.  

(3) "The legislation is valid with reference to the Entries, namely Entry 42 (Requisition) in List III; Entry 45 (Banking) in List I.

(4) "Constitutionality of the Act cannot be impeached on the ground of lack of immediate resources to carry on business. In the present case, the acquisition is not unconstitutional and the bank is free to carry on all business other than banking." Hence it cannot be questioned under Article 19(6).

(5) With respect to the freedom of trade "...Article 305 applies in the present case and therefore neither Article 301 nor Article 302 will apply".

(6) "The legislature found 14 banks to have special features namely, large resources and credit structure and good administration. The categorisation of Rs. 50 crores and over vis-a-vis other banks with less than Rs. 50 crores is not only intelligible but is also a sound classification.

(7) With respect to the challenge on the absence of the just compensation; "to my mind it is unthinkable that the legislature after the Constitution Fourth Amendment Act intended that the word 'compensation' would mean just equivalent when the legislature put a bar on challenge to the adequacy of compensation. Just compensation cannot be inadequate and

1. Ibid, p. 623. Meaning of property is given in page 630.
3. Ibid, p. 634.
4. Ibid, p. 634.
anything which is impeached as unjust or unfair is inpinging on 'adequacy. Therefore, just equivalent cannot be the criterion in finding out whether the principles are relevant to compensation or whether compensation is illusory'.

He concluded: "I am, therefore, of opinion that if the amount fixed is not obviously and shockingly illusory or the principles are relevant to determination of compensation, namely, they are principles in relation to property acquired or are principles relevant to the time of acquisition of property there is no infraction of Article 31 (2) and the owner cannot impeach it on the ground of 'just equivalent' of the property acquired''2'.

G. CONSTITUTION (TWENTY FIFTH) AMENDMENT ACT: 1971.

Nullification of Banks Nationalisation Case:-

The controversial law of the Nationalisation of the banks and the decision of Supreme Court invalidating it gained political overtones. The Parliament got offended and felt crippled by the judgment of the Supreme Court. The decision in Bank's case was followed by another controversial judicial dictum of Supreme Court in Privy Purses Case'. It was felt by the champions of Parliamentary sovereignty that the Supreme Court made a hatrick and created a judicial revolution by the trinity of judgments in Golaknath, Bank Nationalisation and Privy Purses cases, by exercising more powers than what was permitted under the provisions of the Constitution. Consequently, an important batch of amendments to the Constitution found a passage through the Parliament, namely, the 24th, 25th and 26th amendments to the Constitution of India nullifying the three decisions mentioned above.

1. Ibid, p. 638.
2. Ibid, p. 638.
According to the objects and reasons of the Constitution (Twenty-Fifth Amendment) Act 1971, the Act amends the Constitution to surmount the difficulties in the way of giving effect to the Directive Principles of State Policy created by Supreme Court by its interpretation in the Bank Nationalisation case in which it held that the Constitution guaranteed right to compensation, that is, the equivalent in money of the property compulsorily acquired and thus made the adequacy of compensation and the relevancy of the principles laid down by the legislature for determining the amount of compensation as virtually justiciable and in which it was further held that every acquisition or requisition of property for a public purpose should also satisfy the requirements of Article 19(1)(f).

Towards this object Article 31 was amended by substituting new clause (2) and clause (2B) and 31C. The word compensation was removed and in its place the word 'amount' was substituted which may be fixed by law or determined in accordance with such principles given and in such manner as may be specified in such law. Such a law shall not be questioned in any court on the ground that the amounts so fixed is not adequate or that it is to be given otherwise than in the cash.

In the case of compulsory acquisition of any property of an educational institution established and administered by a minority under clause (1) of Article 30, the State shall ensure that amount fixed by or determined by such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause. Clause (2B) says that Article 19 Clause (1)(f) shall not affect any law passed under clause (2) of Article 31.

Under Article 31 C laws giving effect to Directive Principles of State Policy for securing the principles specified in clause (b) or clause (c) of Article 39 are saved from being held void on the ground of inconsistency with or for taking away or abridging any of the rights conferred by Article 14, 19 and 31. A proviso is made by which any law containing
a declaration that it is for giving effect to such policy shall not be questioned in any court on the ground that it does not give effect to such policy. It is also provided for the assent of the President.

As has already been discussed in Chapter V, the 24th, 25th, 26th and 29th Amendments to the Constitution of India were impugned in the popular Fundamental Rights Case. Here the interpretation given to the word amount in amended clause (2) in Article 31 by different judges in Keshavananda Bharathi's case will be examined.

It appears that even the substitution of the word 'amount' in the place of 'compensation' and making it clear in the objects and reasons of the Amendment that the courts cannot sit on judgment with respect to the payment of any amount has not received a unanimous attestation of all the judges of the Supreme Court.

Whatever may be their interpretation all the judges held that Article 31C(2) as amended by 25th Amendment was valid. The minority of the judges consisting of Sikri, C.J., Hegde, Grover, Shelat, Jaganmohan Reddy and Mukherjea held that clause (2) of Article 31 valid conditionally based on their interpretation. Whereas the majority comprising Ray, Palekar, Khanna, Mitter, Beg, Dwivedi and Chandrachud, JJ., held Article 31(2) valid. At the same time Palekar, Mitter, Khanna and Chandrachud, JJ, referred their final opinion on the interpretation of Article 31 (2). As the issue of compensation is the focal point on which the ambit and scope of right to property is dependent, again, and as most of the judges preferred to express their views independently it is profitable, to know the interpretation of clause (2) of Article 31 in their own words. The following are the interpretations given by majority of the Judges:

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1. A.I.R. 1973 S.C. 1461
Ray, J., held "In amending Article 31(2) under the 25th Amendment by substituting the word 'amount' for 'compensation' the amount fixed is made non-justiciable and the jurisdiction of the Court is excluded because no reasons for fixing such amount would or need appear in the legislation. If any person aggrieved by the amount fixed challenges the Court can neither go into the question of adequacy nor as to how the amount is fixed. If adequacy cannot be questioned any attempt to find out as to why the particular amount is fixed or how that amount has been fixed by law will amount to examining the adequacy which is forbidden. If one alleges that the amount is illusory one will meet the insurmountable constitutional prohibition that the adequacy or the alleged arbitrariness of the amount fixed is not within the area of challenge in Courts. The amount fixed is not justiciable. The adequacy cannot be questioned. The correctness of the amount cannot be challenged. The principles specified are not justiciable. If on the other hand, the legislature does not fix the amount but specifies the principles for determining the amount, the contention that principles for determining the amount must not be irrelevant loses all force because the result of determining the amount by applying the specified principles cannot be challenged on the ground of inadequacy. If principles are specified for determining the amount and as a result of the application of the principles the result is less than the market value it will result in the same question of challenging adequacy. The relevancy of the principles cannot be impeached. Nor can the reasonableness of the principles be impeached."

Palekar, J., held: "All that the amendment has done is to negative the interpretation put by this court on the concept of compensation. Clause (2) recognizes the fundamental right

to receive an amount in case of compulsory acquisition or requisition and all that it wants to clarify is that the fundamental right is not to receive compensation as interpreted by this Court but a right to receive an amount in lieu of the deprivation which the legislature thinks fit....Whether a particular law fixes an amount which is illusory or is otherwise a fraud on power denying the fundamental right to receive an amount specifically conferred by clause (2) will depend upon the law when made and is tested on the basis of clause (2). One cannot anticipate any such matters and strike down an amendment which, in all conscience, does not preclude a fair amount being fixed for payment in the circumstances of a particular acquisition or requisition. The possibility of abuse of a power given by an amendment of the Constitution is not determinative of the validity of the amendment.\(^1\)

Khanna, J., held: "The amendment in Article 31(2) made by the 25th Amendment by substituting the word 'amount' for the word 'compensation' is necessarily intended to get over the difficulty caused by the use of the word 'compensation'. As the said word was held by this Court to have a particular connotation and was construed to mean just equivalent or full indemnification, the amendment has replaced that word by the word 'amount'. In substituting the word 'amount' for 'compensation' the Amendment has sought to ensure that the amount determined for acquisition or requisition of property need not be just equivalent or full indemnification and may be, if the legislature so chooses, plainly inadequate. It is not necessary to further dilate upon this aspect because whatever may be the connotation of the word 'amount', it would not affect the validity of the amendment made in Article 31(2).\(^2\)"

1. Ibid, p. 1824.
Mathew, J., held: "If the Parliament or State legislature can fix any amount, on consideration of principles of social justice, it can also formulate the principle for fixing the amount on the very same consideration. And the principle of social justice will not furnish judicially manageable standards either for testing the adequacy of the amount or the relevancy of the principle. The article as amended provides no norm for the Court to test the adequacy of the amount or the relevancy of the principle. Whereas, the word 'compensation', even after the Fourth Amendment, was thought to give such a norm, namely, the just equivalent in money of the property acquired or full indemnification of the owner, the word 'amount conveys no idea of any norm. It supplies no yardstick. It furnishes no measuring rod. The neutral word 'amount' was deliberately chosen for the purpose. I am unable to understand the purpose in substitution the word 'amount' for the word 'compensation' in the sub-article unless it be to deprive the Court of any yardstick or norm for determining the adequacy of the amount and the relevancy of the principles fixed by law. I should have though that this coupled with the express provision precluding the Court from going into the adequacy of the amount fixed or determined should put it beyond any doubt that fixation of the amount or determination of the principle for fixing it is a matter for the Parliament alone and that the Court has no say in the matter...I do not propose to decide nor is it necessary for the purpose of adjudging the validity of the 25th Amendment whether a law fixing an amount which is illusory or which is a fraud on the Constitution, can be struck down by Court.1

Beg, J., agreed with Ray, Palekar, Mathew and Dwiveci JJ. 2

1. Ibid, pp. 1959-60.
Dwivedi, J., held: "Unlike 'Compensation' the word 'amount' is not a term of art. It bears no specific legal meaning. The amount fixed by law or determined in accordance with the principles specified by law may be paid partly in cash and partly in kind. In such a case it may often be difficult to quantify the aggregate value of the cash and the thing given. Again, the amount may be paid in such a manner as may be specified in the law. Thus the law may provide for payment of the amount over a long period of years. Article 19(1)(f) shall now have no impact of Article 31(2). Having regard to all these circumstances it is, I think, not permissible to import the notion of reasonableness in Article 31(2) as amended by Section 2.

The phrase 'principles on which and the manner in which the compensation is to be determined and given' in the old Article 31(2) is now substituted by the phrase 'amount which may be determined in accordance with such principles and given in such a manner as may be specified in such law'. As the word 'compensation' found place in the former phrase, the court has held that the principles should be relevant to 'compensation' that is, to the 'just equivalent' of the property acquired. That phrase is no more there now in Article 31(2). The notion of 'the relevancy of the principles to compensation' is jettisoned by Section 2. Obviously, where the law fixes the amount, it cannot be questioned in any court on the ground that it is not adequate, that is, not equal to the value of the property acquired or requisitioned. The legislative choice is conclusive. It would accordingly follow that the amount determined by the principles specified in the law is equally unquestionable in courts."

Chandrachud, J., held: "The obligation to pay an 'amount' and in the alternative the use of the word 'Principles' for determination of that amount must mean that the amount fixed or determined to be paid cannot be illusory. If the right to

property still finds a place in the Constitution, you cannot mock at the man and ridicule his right. You cannot tell him: "I will take your fortune for a farthing".

But this is subject to an important, a very important, qualification. The amount fixed for being paid to the owner is wholly beyond the pale of a challenge that it is inadequate. The concept of adequacy is directly correlated to the market value of the property and therefore such value cannot constitute an element of that challenge. By the same test and for similar reasons, the principles evolved for determining the amount cannot be questioned on the ground that by application of those principles the amount determined to be paid is inadequate, in the sense that it bears no reasonable relationship with the market value of the property. Thus the question whether the amount or the principles are within the permissible constitutional limits must be determined without regard to the consideration whether they bear a reasonable relationship with the market value of the property. They may not bear a reasonable relationship and yet they may be valid. But to say that an amount does not bear reasonable relationship with the market value is a different thing from saying that it bears no such relationship at all, none whatsoever. In the latter case the payment becomes illusory and may come within the ambit of permissible challenge.

It is unnecessary to pursue this matter further because we are really concerned with the constitutionality of the Amendment and not with the validity of a law passed under Article 31 (2). If and when such a law comes before this Court it may become necessary to consider the matter closely.1

The following are the views of the minority.

Sikri, C.J., observed, "it is very difficult to comprehend the exact meaning which can be ascribed to the word 'amount'.

1. Ibid, p. 2051.
In this context it is true that it is being used in lieu of compensation, but the word 'amount is not a legal concept as compensation is"\(^1\).

Sikri, C.J., held: "Therefore, it follows that the amount, if fixed by the legislature, has also to be fixed according to some principles.

'It seems to me that the change effected is that a person whose property is acquired can no longer claim full compensation or just compensation but he can still claim that the law should lay down principles to determine the amount which he is to get and these principles must have a rational relation to the property sought to be acquired"\(^2\).

"Applying this to the fundamental right of property, Parliament cannot empower legislature to fix an arbitrary amount or illusory amount or an amount that virtually amounts to confiscation, taking all the relevant circumstances of the acquisition into consideration. Same considerations apply to the manner of payment. I cannot interpret this to mean that an arbitrary manner of payment is contemplated"\(^3\).

Grover and Shelat, JJ., observed, "clause (2) of the Article 31, as substituted by Section 2 of the 25th Amendment, does not abrogate any basic element, of the Constitution nor does it denude it of its identity because.

(a) the fixation or determination of 'amount' under that Article has to be based on some norm or principle which must be relevant for the purpose of arriving at the amount payable in respect of the property acquired or requisitioned;

(b) the amount need not be the market value but it should have a reasonable relationship with the value of such property;

\(^1\) Ibid, p. 1553.

\(^2\) Ibid, p. 1554.

\(^3\) Ibid, p. 1554.
(c) the amount should neither be illusory nor fixed arbitrarily; and

(d) though the courts are debarred from going into the question of adequacy of the amount and would give due weight to legislative judgment, the examination of all the matters in (a), (b) and (c) above is open to judicial review.

Hegde and Mukherjea, JJ., observed, "The word 'amount' is a neutral word. Standing by itself, it has no norm and is completely colourless. The dictionary meaning of the word appropriate to the present context is "sum total or a figure." We have to find out its connotation from the context. In so doing, we have to bear in mind the fact that Article 31 (2) still continues to be a fundamental right. It is not possible to accept the contention of the learned Advocate-General of Maharashtra and the learned Solicitor General that the right of the owner at present is just to get whatever the Government pleases to give, whenever it pleases to give and however it pleases to give. A position so nebulous as that cannot be considered as a right much less a fundamental right, which Article 31 (2) still claims to be.

It is difficult to believe that Parliament intended to make a mockery of the fundamental right conferred under Article 31 (2). It cannot be that the Constitution while purporting to preserve the fundamental right of the citizen to get an 'amount' in lieu of the property taken for public purpose has in fact robbed him of all his right.

Hegde and Mukherjea, JJ., observed, "The newly substituted Article 31(2) does not destroy the right to property because

1) the fixation of 'amount' under the Article should have reasonable relationship with the value of the property acquired or requisitioned;

1. Ibid, p. 1610.
2. Ibid, 1638.
ii) the principles laid down must be relevant for the purpose of arriving at the 'amount' payable in respect of the property acquired or requisitioned;

iii) the 'amount' fixed should not be illusory and

iv) the same should not be fixed arbitrarily.

(5) (B) The question whether the 'amount' in question has been fixed arbitrarily or the same is illusory or the principles laid down for the determination of the same are relevant to the subject-matter of acquisition or requisition at about the time when the property in question is acquired or requisitioned are open to judicial review. But it is no more open to the court to consider whether the 'amount' fixed or to be determined on the basis of the principles laid down is adequate.

Jaganmohan Reddy, J., held "clause (2) of Article 31 has the same meaning and purpose as that placed by this Court in the several decisions referred to except that the word 'amount' has been substituted for the word 'compensation', after which the principle of equivalent in value or just equivalent of the value of the property acquired no longer applies. The word 'amount' which has no legal concept and, as the amended clause indicates, it means only cash which would be in the currency of the country, and has to be fixed on some principle. Once the Court is satisfied that the challenge on the ground that the amount or the manner of its payment is neither arbitrary or illusory or where the principles upon which it is fixed are found to bear reasonable relationship to the value of the property acquired, the Court cannot go into the question of the adequacy of the amount so fixed or determined on the basis of such principles."

All the judges held that clause (2) of Article 31 as amended by 25th Amendment was valid. It means that they accepted without reservation the deletion of the word compensation which

1. Ibid, p. 1648.
2. Ibid, p. 1776.
was considered to be part of the concept of Rule of Law. Hence, the so-called sanctity attached to right to property is lost. However, the acceptance of all the judges does not mean the same. Excepting Khanna, J., all others interpreted the effect of the substitution of the word 'amount' for 'compensation' on the judicial review of the Court. Palekar, J., merely observed that the substitution of the word 'amount', negative the interpretation put by the Court on 'compensation'. Sikri, C.J., Shelat and Grover, Hegde and Mukherjea, Jagaramohan Reddy and Chandrachud, JJ., held that the judicial review still remains with the Courts. Among them excepting Chandrachud, JJ., others held that the amount paid in lieu of the acquisition or requisition of the property should bear a reasonable relationship with the property. Chandrachud, JJ., specifically held that the amount paid need not have any relation with the market value of the property acquired. But he held that the amount should not be illusory or fraud in which case judicial review is available. Ray, Mathew, Dwivedi with whom Beg agreed, categorically ruled out judicial review under any circumstances not excluding on the grounds of illusoriness or fraud.

As Palekar and Khanna did not express their views, it has to be concluded that Supreme Court again succeeded in retaining with sustained effort its power of judicial review to a limited extent. It means that the adequacy of the amount can't be questioned but a law can be challenged on grounds of illusoriness and fraud. We are brought back again to the Fourth Amendment position with respect to justiciability of compensation. The effect of 25th Amendment is reduced to nullification of the interpretation of Supreme Court in Bela Benerjee's Case. It means the 25th Amendment on this point is nullified because it is only the adequacy of amount that can be judicially reviewed but the illusoriness and fraud still remain as grounds of challenge.

1. Per Shah, J., in Bank Nationalisation Case.
One may go a step further and say that if judges who share the philosophy of K. Subba Rao or Shah with same intensity will sit on the bench of Supreme Court in future it is quite possible that the Bank Nationalisation decision may be resurrected as only fewer judges are against any judicial review. Hence, the interpretation placed by five will remain as the authoritative interpretation. The economic reformity legislation will again be on the perilous unknown sea of judicial review. The five judges headed by Sikri, J., propounded two standards (1) the standard of illusoriness and fraud, (2) the standard of reasonable or rational relationship between the amount and the value of the property acquired and requisitioned. The first standard of testing the validity of law is the one which was accepted by Nehru and was supported by Alladi, Krishnaswami Iyer and others in the Constituent Assembly. They hoped that the Court would invalidate any law of acquisition or requisition or deprivation with respect to compensation only on the grounds of illusoriness and fraud but the hopes were belied by Supreme Court in Mrs. Bela Benerjee's case by following dictionary oriented connotation and importing western concepts. The Parliament led by Nehru nullified this decision and ousted the jurisdiction of the court from reviewing adequacy of compensation. For nearly eight years this aspect of Fourth Amendment was not questioned by Supreme Court but in Vajravelu Mudulair and in Metal Corporation and ultimately in Bank's case the Supreme Court nullified the Fourth Amendment on the ground of retention of the word compensation by Parliament and revived the concept of market value. The Supreme Court, it is submitted, failed to distinguish between inadequacy and illusoriness and identified inadequacy and illusoriness. The 25th Amendment tried to bury the concept of market value forever. Sikri, C.J., and other judges who followed him could not supply any criteria for determining when the courts could interfere on the ground that the amount has no relation with the market value of the property acquired. Do they equate absence of rational and reasonable relationship with illusoriness or fraud?
If it is so, is payment of 50 per cent of the market value of the property permissible? Does it bear reasonable or rational relationship with market value? There is no clear test, standard or criteria. Hence, it is submitted that if the view of Sikri, C.J., and other judges who follow him is the view of the Supreme Court, there will be no difference between the word amount and compensation. The effort of Parliament is futile. The concept of rational or reasonable relationship between the amount to be paid and the market value of the property acquired or requisitioned has no place in the interpretation of the amended Article 31 clause (2) for the following reasons:

1. If this concept is the same as illusoriness or fraud there is no need for this concept.

2. If the concept is different it is impermissible as a ground of attack because the effect of 25th Amendment as well as the original Fourth Amendment is at best to permit judicial review only on the ground of illusoriness or fraud. Anything other than that amount to questioning the validity of the 25th Amendment. But it is held valid by all.

3. Even according to Sikri, C.J., and others who followed his line of thinking the word 'amount' is 'colourless', 'neutral', not a word of art', 'not a 'legal term', 'provides no criteria', 'no standard', and 'no yardstick'. It means that the lowest sovereign coin as well as the highest denomination of currency are amounts. There is absolutely no connection between the amount and the property as it is colourless and neutral. Hence any amount is an amount. It can't be questioned on any ground including illusoriness. It can't be questioned on the ground of fraud also as the 25th Amendment uses the word 'amount' which is neutral: Any law based on this, is a valid law. It can't be a fraud as the legislature has got power to fix any amount constitutionally. Moral grounds of objection can't be converted into legal grounds. It may be shocking yet it may be legal.
(4) According to the majority opinion which includes opinion of Khanna on 24th Amendment, right to property does not come under the umbrella of basic structure. Hence the provision relating to right to property can be taken away and together from part III of abridged. It may be said that by 25th Amendment it is abridged by substituting the word amount. It may continue as a fundamental right but it remains as abridged by 25th Amendment. Hence the Argument of the existence of right to property as fundamental right does not help for the introduction of concept of reasonable or rational relationship. It is not known on what grounds or basis or reasoning. Sikri, C.J., and others propounded this concept which is nebulous and impermissible after the nullification of Bank's case by 25th Amendment. It is open for Parliament as Ray, J., said to amend Article 31 (2) to permit literally confiscatory or expropriatory legislation. Under 25th Amendment, again as Ray, J., said legally speaking literal confiscatory legislation is not permissible but virtual confiscatory legislation is permissible.

G. CONCLUSION:

The total number of cases decided by the Supreme Court on the problem of nationalisation is only 15. The maximum incidence of invalidation of the impugned legislations is in nationalisation. Out of 15 judgments the court voted against the state 6 times i.e., 40% of invalidity. In the case of nationalisation of electrical undertakings out of the 4 cases decided by the court 2 went against the state. The court held invalid the Madras Electricity Supply undertakings (Acquisition Act) 1949 ultravires of the Constitution in R.E.S. Corporation case on the ground of lack of legislative competency. It is submitted that irrespective of entries in the 7th schedule of the Government of India
1935 the State has inherent recognised power under eminent domain to acquire any property and not only the land.

One of the major aspects of Indian economy brought under the State monopoly by nationalisation is transport and communications in general and nationalisation of Road Transport in particular. Five cases have been decided by the court with respect to the nationalisation of Road Transport out of which the court voted against nationalisation law in one case, Saghire Ahmed's case. Consequently, the Parliament amended the constitution to enable the state to create monopoly in favour of the state to undertake any trade, business industry or service to the exclusion of citizens. Bikaji Narayan and Deepchand cases are important from the point of view of the doctrine of eclipse.

In the case of Nationalisation of mines the court gave three judgments. It voted against the impugned laws in two cases. The two judgments delivered against the state are Namasivaya and Metal Corporation both of which are important stepping stones on the way to Bank's cases in the resuscitation of the concept of market value as compensation. Metal corporation was subsequently overruled in Santhilal's case, and Santhilal was overruled by the court in the Bank's case.

Two cases were decided with respect to the problem of nationalisation of Tendu leaves and both the laws impugned were upheld.

The judgment of the Supreme Court in the Bank's case is one of the water-sheds in the history of vicissitudes of right to property as fundamental right under the constitution of India. Only one case namely R.C. Cooper vs. Union of India, popularly known as Bank's case has been decided by the Supreme Court. The judgment went against the state. The nationalisation of Banks by the union Government was taken as a signal for elimination of the
dangerous monopolistic private credit control system in the country. Though the Government nationalised the banks for political expediency as alleged by some people, it is a step towards socialistic pattern of society and is in accordance with the Directive Principles of State Policy for the prevention of concentration of wealth. The judgment of the court attracted bitter criticism of the judicial process by the Government and leftist parties in the country. The drama of the compensation started with Mrs. Bella Banerjee, reached its climax in the Bank’s case and ended with anti climax with the demise of right to property as a fundamental right. The two principal characters are the Parliament and the Supreme Court. The Supreme Court challenged the parliament for claiming to be omnipotent. The parliament challenged supreme court for claiming to be omniscient. The Parliament nullified the judgment of the Supreme Court in Bank’s case by passing the Constitution (25th amendment) act 1971. In turn, the amendment itself was challenged. The court upheld the validity of amendment excepting the proviso to Article 31C.

As has been already mentioned 40% of the cases were decided against the State with respect to nationalisation. The break up of invalidity of the impugned laws in different aspects of nationalisation is as follows:- 50% in electrical undertakings, 20% in Road Transport, 67% in mines, 0% in tendu leaves and 100% in Banks.

39 judges participated in the 15 cases decided by the court with respect to nationalisation. The maximum participation was by S.R.Das J., who voted against nationalisation in two cases i.e., 40% invalidity. Subbarao, Sinha, Shah, JJ., participated each in three cases and voted against in 1, 1, 2, 2 and 2 respectively. The number of cases decided by each judge is small. It is hazardous to make any venture to deduce any positive or negative conclusions
on the basis of the statistics alone. To illustrate A.N. Ray participated in 2 cases and voted against the impugned legislation in 1 case. The statistical conclusion should be that he was half in favour and half against nationalisation. To further conclude he is neutral to nationalisation. However, if in addition specifically the cases are examined, some plausible and useful deductions can be made. The dissenting judgment of Ray J., in Bank's case judicial awareness and restraint in appreciating the public purpose in its connotation, the importance of nationalisation and due respect to the amendments passed by one of the great coordinating departments of the Government-Parliament, the vox populi.

With respect to nationalisation the Supreme Court appears to be too sensitive and failed to appreciate the importance of the public purpose and benefit to the common man involved in nationalisation. The courts decision in Banks nationalisation case was strongly resented in many circles, accentuated the controversy with the Parliament, aggravated the confrontation with the Government and resulted in its nullification by the Constitution (Twenty-Fifth Amendment) Act, 1971. The judgment delivered by the majority betrayed a conservative antiquarian conception of the functions of the state, persistence and tenacity in

breathing life into the moribund conception of the concept of compensation and fighting for the losing battle for judicial review of legislation.