CHAPTER I.
PROLEGOMENA.

A: PROLOGUE TO AN EPILOGUE:

The Sixth Parliament of India, controlled by a different party than the Congress for the first time in the postindependent parliamentary history of India proposed solemnly to write an epilogue to the drama of right to property in which the chief characters are the Parliament and the Supreme Court of India. The confrontation between the two chief organs of the State with respect to the right to property engaged the attention of many politicians, parliamentarians, jurists, political scientists, and the press. The confrontation culminated after a series of amendments to Constitution in the removal of right to property from the chapter on fundamental rights by the 45th controversial, compendious, comprehensive, counter amendment to the notorious 42nd amendment to the Constitution of India. The amendment on the anvil seeks to transfer the right to property from part III of the Constitution to part XII under a new Article 30QA. Judicial review of legislation in relation to property right is sought to be taken away. Safeguard is provided only against the executive. The long drawn out struggle between different forces and between legislative and constitutive and judicial processes perhaps comes to a conclusion by this attempt on the part of those who are in power now some of whom were the strong critics of the previous


2. The Bill which was passed by Lok Sabha and was sent to Rajya Sabha was returned by Rajya Sabha with amendments on 31.8.78. This created a deadlock. However Rajya Sabha did not interfere with the provisions relating to right to property as was sought to be amended and passed by Lok Sabha. Lok Sabha passed it again with the amendments passed by Rajya Sabha.
governments for emasculating the right to property as a fundamental right by attenuating amendments.

B. VILLAIN OR THE VICTIM:

The questing is who is the Villain or the Victim of this drama? Is it the innocent propertyless faceless masses of the country? Is it the unbridled, insatiated, endless, acquisitive instinct of the propertied few who knocked the doors of the Supreme Court repeatedly by hiring the best legal brains of the country whenever their vested interests were touched by the State for the public welfare? Is it the legislatures at the centre and the States who half heartedly, haltingly and ambivalently passed economic reformatory legislations in pursuance of the goals of socio-economic justice enshrined in sonorous words in the preamble and adumerated in platitudinous rhetoric terminology in the Directive Principles of State Policy? Is it the highest court - the Supreme Court of India, which by its antiquarian, individualistic oriented, dictionary bound, grammatical, conservative interpretative process over-zealously, perhaps unintentionally, put road blocks in the path of progress in establishing an egalitarian society by legislative process? Or is it the conflict between the lifeless words in part III the Fundamental Rights on the one hand and part IV the Directive

Principles of State Policy on the other hand? or is it the result of the collision between the Parliamentary sovereignty and the supremacy of judicial review of the Supreme Court?

Right from the inception of the Constitution different sections of the elitist segments of the nation comprising the representatives of the people, members of the judiciary, the hybro-politicians, the professional lawyers, the legal academics and the vociferous vested interests, the press and the cusioned intellectuals excepting the mute benumbed masses differed in their appraisal of the role of important institutions namely the Parliament and the Supreme Court in this matter. Some blamed the Parliament and others blamed the Supreme Court.

C. THE BACKGROUND CANVASS OF THE ECONOMIC PROBLEMS AND THE ENDS AND MEANS OF ECONOMIC JUSTICE SET BY FOUNDING FATHERS:

l. THE NEW PERSPECTIVE:

An appreciation of the gravity of the economic situation of the country with its myriad complex hard problems prevailing immediately at the time of attainment

1. Chandra Chud, J. (as he then was) observes: "Theories of political science, sociology, economics and philosophy were copiously quoted before us. Some of these contain a valiant defence of the right of property without which, it is said, all other fundamental freedoms are as writ in water. Others propound the view that of all the fundamental rights, the right to property is the weakest, from which the conclusion is said to follow, that it was an error to include it in the chapter on Fundamental Rights. Our decision of this vexed question must depend upon the postulate of our Constitution which aims at bringing about a synthesis between 'Fundamental Rights' and the 'Directive Principles of State Policy', by giving to the former a pride of place and to the latter a place of permanence. Together, not individually, they form the core of the Constitution. Together, not individually, they constitute its true conscience".

of independence and a close look at the ideals and goals of economic justice articulated in the preamble and the Directive Principles of State Policy\textsuperscript{1} is highly rewarding. The individuals' right to property cannot be studied as absolute, sacrosanct, immutable and eternal in isolation from the abysmal poverty and macro-economic problems of the vast majority of the population with glaring inequalities of wealth.

2. THE SOCIO-ECONOMIC PROBLEMS AND IMPERATIVES:

Excepting the apochryal stories of flowing of honey and milk in the ancient Indian History, and barring some periods in some parts of the country during the foreign domination for 1000 years resulting from widespread degeneration, India remained poor on the whole by the time we achieved independence in 1947. The national leaders suddenly faced the problems of widespread abject poverty, unemployment and underemployment, miserable inhuman conditions of the majority of the people, concentration of wealth in urban and rural areas, feudal agrarian exploitative system, absence of sanitary conditions and so on in urban areas, exploitation of industrial workers, low productivity, low levels of consumption, low percentage of growth rate of economy, threateningly increasing rate of growth of population, widespread illiteracy, bonded labour, untouchability and religious conflicts born out of partition of country. Independence raised high hopes and expectations among all sections of the society. In-

\textsuperscript{1} The Constitution envisaged a scheme to eradicate poverty and to impart distributive justice and distribution of instruments of production.

K. Subba Rao: op.cit., see pp. 37-38 for details of the scheme and the legislative measures taken by the State especially in the agrarian field.
dependent India had to give new direction to its economy. It was not realised, before 1947 the revolutionary changes that have to be made to escape from the disaster predicted by Malthus for Europe. It is not believed even by Western experts that it will be possible to carry out this urgently necessary, many faceted revolution by laissez-faire methods prevalent in Western Europe and the United States in the 19th century. The American author, Dean, in *New Patterns of Democracy in India*, observes "If the process of change is to keep pace with the growth of population and with its rising expectation for improved living standards, the government cannot do piecemeal patching of the economy here and there, without regard to its overall objectives and requirements. It must plan the most effective way of using the country's limited resources..." India has to modernise her archaic economy. At short notice it had to carry out a series of simultaneous telescoped revolutions which in the Western nations had been spread over several centuries. During the freedom struggle the Indian leaders had understandably concentrated primarily on political objectives. After independence they had to face the harsh realities of country's economy and poverty. They took responsibility to solve them. Julius Stone has rightly appreciated the unprecedented task before India combining democratic rule based on universal suffrage with economic planning for 'economic take off' in a short span of time which for England took a

1. "Often, of course, despite this dynamic movement, developing societies are merely trailing a century and more in the wake of developed ones. But the fact remains, even for them, that their cultures are thrust into a kind of time tunnel of instant change - into what is for them future shock*. Julius Stone "Thoughts on the supposed "Death of Law". *Some thoughts of Modern Jurisprudence*, (ed) by K. Agrawala, 1977 p.2.


century with long series of state intervention. He showed
great awareness of the significance of the issues involved
and observed "India's will to meet this challenge merits
not only admiration but the most generous aid which the
more developed can afford." For "very great issues for all
mankind depend on her example. The question whether India
and similar states can escape the Hobson's choice between
(On the one hand) mere pragmatic planning languishing on
the blueprint, and (on the other) resorting to dictatorship
to implement the plans, is only one of them, few issues
can be greater than these; but they are still different
issues from those confronting the older developed demo-
cracies"1.

3. CONSTITUENT ASSEMBLY AND OUR OBJECTIVES:

The objectives resolution moved in the Constituent
Assembly by Nehru on December, 13, 1946, and adopted solemnly,
unanimously, says, "wherein shall be guaranteed and secured
to all the people of India, Justice, Social, Economic and
Political; equality of status, of opportunity, wherein ade-
quate safeguards shall be provided for minorities, back-
ward and tribal areas, and depressed and other backward
classes".

"Nehru said that the first task of this Assembly is
to free India through a new Constitution, to feed the starv-
ing people and to clothe the naked masses, and to give every
Indian the fullest opportunity to develop himself according
to his capacity"2. The Congress Party elaborated these ideas
in the election manifesto in 1951.

The country had to pass through three revolutions as
described by K. Santhanam:

   p. 768.
2. C.A; II 3, 316.
"Political revolution would end, he wrote, with independence. The Social revolution is meant to get (India) out of the mediavalism based on birth, religion, custom and community and reconstruct her social structure on modern foundations of law, individual merit and secular education.

The third revolution was an economic one: "The transition from primitive rural economy to scientific and planned agriculture and industry".

"Dr. S. Radhakrishnan believed that India must have a "Socio-economic revolution designed not only to bring about the real satisfaction of the fundamental needs of the common man, but to go much deeper and bring about a fundamental change in the structure of Indian Society." Many in the Constituent Assembly held the same views. President Prasad assured the Nation that the Assembly's and the Government's aim was "to end poverty and squalor... to abolish distinction and exploitation and to ensure decent condition of living"; B. Das said "it is the Dharma of the Government to remove hunger and render social justice to every citizen".

The Survival of India is dependent on bringing such socio-economic changes, Nehru prophetically warned the Constituent Assembly, 'If we cannot solve this problem soon, all our paper Constitutions will become useless and purposeless'.

1. K. Santhanam in Magazine Section, The Hindustani Times (of which he was joint editor), New Delhi, 8, September 1946 as cited and referred in Granville Austin: The Indian Constitution: Cornerstone of a Nation. 1972 P. 26.
4. CHOICE BETWEEN PEACEFUL ACCELERATED EVOLUTIONARY SOCIO-ECONOMIC PROGRESS OR INVITATION TO VIOLENT INEVITABLE REVOLUTION:

India cannot lose time in this modern age of speedy communication and communist revolutions. K. Santhanam, a veteran congress leader observed "The choice for India....is between rapid evolution and violent revolution....because Indian masses cannot and will not wait for a long time to obtain the satisfaction of their minimum needs." 1 "The Constituent Assembly in the Objectives Resolution and the debate on it established that the Constitution must be dedicated to some form of socialism and to the social regeneration of India...." 2.

The preamble and part IV of the Constitution namely the Directive Principles of State Police eloquently speak about the duty of the State to establish a society with economic justice guaranteeing to all people minimum means of livelihood, protection to scheduled castes, backward communities, to children, women, sick and old, prevention of concentration of wealth and utilisation of national and natural resources for the welfare of all the people. In a nutshell some sort of socialist society 3 has to be established early. In pursuance of its declared policies and

1. The Hindustan Times, Magazine Section, 17th August, 1947 cited by Granville Austin, op.cit. p. 27.
2. Granville Austin op.cit, p. 41. M.H.Beg, J., observes "Thus, the direction towards which the nation was to proceed was indicated but the precise methods by which the goals were to be attained, through socialism or state action, were left to be determined by the state organs of the future". Kesavananda Bharathi vs State of Kerala, A.I.R. 1973 S.C. 1461, p. 1975.
3. "The Constituent Assembly in the objectives resolution and the debate on it established that the Constitution must be dedicated to some form of socialism and to the social regeneration of India". Granville Austin: The Indian Constitution: Corner Stone of a Nation, 1972, p. 41.
injunctions and instruments of instructions of the Constitution the Government earnestly, but very slowly and cautiously, started the implementation of these policies by legislative and executive action. The Congress and the Government were committed to bring socio-economic changes through constitutional methods. They are committed to speedy peaceful constitutional evolution and not to bloody violent revolution.

D. THE NATURE OF THE SUPREME COURT.

1. THE CONSTITUTION, JURISDICTION AND COMPOSITION OF THE SUPREME COURT:

The Supreme Court of India is the highest Court in the country. It is one of the principal organs of the

1. The First Five Year Plan emphasised the basic objectives as "Maximum production, full employment, the attainment of economic equality and social justice". First Five Year Plan, Planning Commission, New Delhi, p.269.

"Major decisions regarding production, distribution consumption and investment-and in fact all significant socio-economic relationship-must be made by agencies informed by social purpose". Second Five Year Plan, Planning Commission, Government of India, New Delhi, p.22-23.

The dominant role that the State would have to play in certain key sectors is further lighted by the Fourth Five Year Plan. The fourth plan emphasised economic growth with distributive justice. "Economic activity must be so organised that the tests of production, growth and those of equitable distribution are equally met". Fourth Five Year Plan, Planning Commission, Government of India, New Delhi, p. 4.

2. The efforts to press into service the Constitutional and legal machinery to achieve economic justice are not commensurate to the task. As it is felt that there is no co-ordination between planning commission and Law Commission, it is suggested by some quarters that a Commission for implementing the directive principles of State Policy for the achievement of socio-economic renaissance through ordered evolution. H.S. Ursekar: Law and Social Welfare,1973, p. 259.
government along with the union legislature and the union executive. Even though the Supreme Court is dealt under the heading union judiciary it does not deal only with union matters unlike union legislature and union executive, as there is a unified judicial system in the country with the Supreme Court at its apex. In this respect the scope and ambit of the reach of Supreme Court by its jurisdiction is wider and superior to the other two principal organs of the union government. The Supreme Court, under Article 129 is a court of record with the powers to punish for the contempt of itself. All the authorities civil and judicial in the territory of India shall act in aid of the Supreme Court. Its writ runs through out the length and breadth of the country. According to K. Subba Rao; "Its jurisdiction is very wide and is far more extensive than that of any other court of a similar stature in any part of the world". It has original, appellate, and advisory jurisdiction. It has also got ancillary powers. The law declared by the Supreme Court shall be binding on all the courts within the territory of India. The Supreme Court can be approached by any person in the country directly for the enforcement of his fundamental right.

1. Chapter IV of part V of the Constitution. See Articles 124 to 147, dealing with Union Judiciary.
2. Article 144.
4. Article 131.
5. Articles 132 and 133.
6. Article 143.
7. Article 141.
8. Article 32.
Originally the Constitution provided for eight judges\(^1\) including the Chief Justice of the Supreme Court. After a decade it has been raised to 13 judges\(^2\) recently the strength has been further increased to 18\(^3\). To date 64 judges adorned the bench of the Supreme Court of India\(^4\). Though attribution of any class interest or any class bias on the basis of their belonging to with the haves in our society may be punishable for contempt of court, perhaps, a general factual statement of the economic status of an average judge of the Supreme Court of India, is permissible. Fairly the following proposition with exceptions can be made with respect to the antecedent social and economic status and trends and tendencies of the judges\(^5\) of the Supreme Court of India:-

i) At a time when there was widespread illiteracy and only a very negligible percentage of the population could have got college education, the judges had higher education in obtaining a professional degree in law normally after obtaining a basic degree. As the higher education was not available in many places it is clear that they, or their parents had the social awareness and economic capacity to pursue their studies in metropolitan cities. Considerable number of them could even go abroad in those days, especially to England, and qualify themselves to enter into legal profession.

1. Article 124.
2. Supreme Court Number of Judges Act as amended by Act 17 of 1960 has prescribed a limit of 13 judges.
3. The Supreme Court (Number of judges) Amendment Act, 1977 increased the strength to 18 judges.
4. See the biodata of the Judges of the Supreme Court; and Rajeev Dhavan and Alice Jacob: Selection and Appointment of Supreme Court Judges: Appendix I, p.69.
ii) It may not be far from truth to say that most of the judges come from the rich class of the society according to the Indian economic standards.

iii) As only leaders of the bar or successful lawyers (generally the hall-mark of success in our society is measured in terms of the accumulation of wealth) are generally appointed as judges, it can be said safely that those who were elevated to the bench must have acquired enough property before they were elevated, even if some of them did not have much property when they started practice.

iv) As lawyers can acquire riches only by undertaking the briefs of the wealthy clientele it can be concluded that they fought their legal battles on behalf of the propertied class.

v) As most of the judges who occupied the bench of the Supreme Court were not only born but settled in the legal profession before independence after having a training in Austinian analytical jurisprudence and grounding in the common law system, it can be assumed that they were exposed in their formative educative years in the liberal socio-economic western \textit{laissez-faire} philosophy.

The propositions made above are not matters of opinion but based upon facts of common knowledge. If the proposition that the environment, the upbringing, the association, the occupation or profession and one's own interests determine, ordinarily, the socio-economic philosophy of a person and that the subconscious socio-economic philosophy cannot be totally kept away, are accepted in the judicial process, perhaps, one may be justified in coming to a conclusion that the composition of the Supreme Court is such that it cannot but inherently be sympathetic to the sanctity of right to property.
2. THE JUDICIAL POWER AND RELATIVE IMPORTANCE OF THE INSTITUTION:

The Supreme Court has power to strike down any law passed by Parliament or by any State legislature, if it violates any of the fundamental rights. It has similar power to declare any law ultravires if it is inconsistent with any provision of the Constitution.

Henry, J.Abraham defines judicial review thus: "Briefly stated judicial review is the power of any Court to hold unconstitutional and hence unenforceable any law, any official action based upon a law, or any other action by a public official that it deals upon careful, normally pains-taking reflection and in line with the canons of taught tradition of the law as well as judicial restraint to be in conflict with the basic law, in the United States, its constitution"1. As in the United States, the judicial review has become one of the most controversial and fascinating issues of the legal and political process in India in the last 28 years2.

A reputed Indian jurist observes "in this last quarter of the 20th century, very few people would venture to contest or deny the elementary proposition that appellate judges not merely declare the law, or apply it, but that they also make or create law. Judges of the Indian Supreme Court have demonstrated this truth not

merely by creating law but also by creating Constitution; they have not just amply exercised the legislative power but they have also exercised constituent power.\(^1\)

The power of judicial review combined with 'judicial legislation' and also 'judicial Constitution' making exercised by the Supreme Court of India raises three important problems: Firstly, exercising such vast judicial power, does the Supreme Court take the responsibility for interpreting the Constitution in a particular way when usually more than one interpretation is possible without invoking the alleged intentions of the Constitution-makers as expressed through the words in the text of the Constitution? Again one may ask, does the Supreme Court own the legal philosophy expressed through its decisions in the interpretation of the Constitution without attributing it to the letters of the Constitution? Secondly, in the context of the concurrent exercise of law making powers, what are relative roles of the Parliament and the Supreme Court in a developing society like India? Is it the Parliament or the Supreme Court that has to have a paramount role in transforming radically the antiquated, unjust socio-economic structure of the Indian society? Thirdly, are there constitutional limitations on the judicial power of the Supreme Court, in interpreting the Constitution contrary to the expressed intentions of the Parliament through its laws and amendments to the Constitution of India?

The power of the Supreme Court prima facie appears to be unlimited, illimitable, uncontrolled and absolute because the final word on the Constitution rests with the Supreme Court. The numerous, voluminous conflict-

ing and controversial, oceanic judicial output by the Supreme Court reveals the liberal exercise of this power. The pertinent question is, does this indulgence result in solving the basic urgent multi-dimensional socio-economic problems of the country?

E. CONSTITUTIONAL SIGNIFICANCE OF RIGHT TO PROPERTY AND CONFRONTATION BETWEEN PARLIAMENT AND THE SUPREME COURT:

Right to property has turned out to be the hotly discussed, mostly debated, controversial, constitutional conundrum since the inception of the Constitution in India. It created problems and conflicts, raised controversies, forced compromises, ever since it was taken up for consideration in the fundamental rights sub-committee for submitting it to the Constituent Assembly where it received the greatest attention. It was recognised as the most important article in the Constitution of India. Article 31 of the Constitution which deals with right to property was subjected to the maximum number of amendments which under their weight is falling from part III of the Constitution, down to part XIII ten places away from its original sanctimonious habitat. According to some critics the Parliament by passing 1st, 4th, 6th, 7th, 17th, 25th, 29th, 39th and 42nd Amendments to the right to property mutilated disfigured and emaciated the right to property as a fundamental right in the Constitution. There are other critics who put the blame at the door steps of the Supreme Court, for inflating the right to property of the individual and deflating the wheels of the State in its journey towards

1. Julius Stone observes "It will be obvious that with in the frame work of existing law few claims have had more industrious and elaborate support than the claim to property", op.cit. p. 248.
a socialistic pattern of society by interpreting Article 31 resulting not only in the nullification of number of progressive legislations but also the rectificatory Amendments to Article 31 for saving such laws retrospectively and prospectively. The Supreme Court of India handed down an incoherent inconsistent voluminous, juristic literature of about 3,400 closely printed pages through its judgments in about 270 reported cases by the exercise of its appellate and original jurisdiction. These judgments evoked a matching juristic literature. The seeds of

1. As per the All India Reporter it is 3,415 pages by the end of December, 1978.

2. To be accurate Supreme Court delivered 266 judgments relating to right to property under Article 19 (1) (f) and Article 31 till December 1978 as reported in the A.I.R. The number of petitions and appeals filed may be very much more. There may be some more judgments delivered as parts of main judgments. There may be unreported cases. Few other cases might have been reported in other reports than in A.I.R.

3. To cite few books and articles:
3. Foot Note continued:


confusion and division with respect to the scope and limitation on the right to property, judicial reviews and power of legislatures to pass progressive legislation were sown in the Constituent Assembly itself by the open texture words it adopted in drafting the Article. In this thesis an attempt is made to evaluate the role of Supreme Court in the exercise of its judicial review of right to property and examine the rival contentions of the praise or blame worthiness of the Supreme Court in its judicial process in reviewing economic legislation on the touchstone of right to property of the Constitution of India

In the first year of the Constitution itself the Parliament found it necessary to amend the provision relating to right to property under Article 31 by adding Articles 31A, 31B and 9th schedule to the Constitution of India, to save zamindari abolition laws which were challenged in different High Courts successfully and unsuccessfully and were pending before Supreme Court by way of appeal by defeated parties, The Madhya Pradesh and Uttar Pradesh High Courts upheld the validity. But the Patna High Court invalidated some provisions of the Bihar Land Reforms Act in Kameshwarsingh v. Province of Bihar, A.I.R. 1951.

It was argued by some jurists that Parliament should not have passed the First Amendment. Instead, it ought to have left to the Supreme Court to sort out the divergence in interpretation between different High Courts relating to the validity of Zamindari abolition laws. But

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1. "But, when it came to property rights and to social legislation affecting property the fear that courts might convert themselves into a third or revising chamber could not be repressed". H.M. Seervai, op.cit. p.57.

2. Virtually it was the Constituent Assembly itself as the same body was acting as the Parliament as well as Constituent Assembly.

the subsequent decisions of the Supreme Court do not bear testimony to this. In the initial stages, of course, the Supreme Court was not assertive and hesitant in questioning the wisdom and power of the Parliament. But from 1954 the confrontation between the Supreme Court and the Parliament commenced with the judgments of the Supreme Court in Mrs. Bela Banarjee's case\(^1\), in which the Supreme Court gave an imported, outmoded dictionary oriented connotation to the term 'compensation' in Article 31 of the Constitution and this decision was unnullified by Parliament by passing the fourth Constitution (Amendment) Act, 1954. Perhaps, this is the first round of the ding-dong battle between the Supreme Court and the Parliament. Subsequently this dialectics of stereotyped syndromes of the constitutional conundrums created by cantankerous judicial process of the Supreme Court in committing progressive legislative infanticide and frequent use by Parliament of the amending weapon under Article 368, in suffocating the judicial process by strangulating the unpalatable judicial decisions. Supreme Court in a series of cases of Vajravelu Mudaliar\(^2\), Metal Corporation\(^3\) culminating in Bank Nationalisation\(^4\) nullified 4th amendment by judicially virtually amending the 4th amendment and resurrected its conception of compensation. Parliament in its turn nullified these decisions by the 25th Amendment to the Constitution of India. The decision invalidating an agrarian reform law in Karimbil Kunhi Koman\(^5\) was nullified by 17th Amendment

to the Constitution of India. The decision of Supreme Court in Privy Purse case\(^1\) was nullified by the Constitution (Twenty-Sixth Amendment) Act. Very strangely, but, perhaps, not by accidental coincidence, all the cases in which the power of Parliament to amend the fundamental rights was challenged involved the validity of the Amendments to Article 31 of the Constitution of India. The first Amendment of the Constitution was unsuccessfully challenged in Sankar Prasad's\(^2\) case; the 17th Amendment was challenged firstly in Sajjan Singh's case\(^3\) unsuccessfully; and partially successfully in Golaknath's\(^4\) case; the 24th Amendment which nullified the Golaknath decision which denied prospectively the power of Parliament to amend the fundamental rights and the 25th Amendment which nullified the decision in Bank's case were challenged, partially successfully in Kesavananda's case\(^5\). The Privy Purse's decision was nullified by the 26th Amendment to the Constitution of India. The Constitution (Forty-Second Amendment) Act, 1976 nullified the decision in Kesavananda Bharathi's case by restoring the power to Parliament to amend even the basic structure of the Constitution. This time curiously instead of the Supreme Court the Parliament sought to nullify the 42nd Amendment to the Constitution in this respect by the Constitution (Forty-Fifth Amendment) bill, 1978. But, it could not succeed because of the opposition in Rajya Sabha which amended the relevant provision of the 45th Amendment Bill dealing with the amending

power of Parliament under Article 368. Simultaneously, equally curiously it is erasing right to property from the fundamental rights chapter which the previous regimes did not do.

F. THE NOVEL METHODOLOGICAL PROBLEM-CUM-PURPOSE ORIENTED PROJECTION:

In this study the judicial process of the Supreme Court of India relating to right to property is critically studied and appraised against the background of the real living multifarious problems of zamindari abolition, abolition of other estates, tenancy reforms ceiling on land holdings, consolidation of holdings; urbanisation with its attendant problems of water supply, sanitation, urban housing, slum clearance, preparation of master plans, rent control, zoning laws, traffic regulation, labour welfare, roads, parks, play grounds, educational facilities, hospitals and so on, control of the economy by labour regulations, industrial regulations, marketing, licences, winding up of companies, temporary management of sick industries, education, leases, trade marks and so on, nationalisation of key industries, financial credit and transport; and miscellaneous problems like, taxation, seizures and penalties, public health, evacuee property and so on. These problems are to be solved by democratic means through large scale

1. "Indian scholars, for example, need to identify the essential Indian problems in their evolving contexts and contemplate the law both as a resource for, and limitation upon development. For, it is to be recalled, the law in a particular area can be both. For, it is also essential that legal thought and research move in socially relevant directions, as indicated (for example) in the program script for sociological research designed by my friend and colleague Upendri Buxi". Julius Stone "Thoughts on the supposed "Death of Law", some thoughts on modern Jurisprudence (ed) by K.Agrawala, 1977, p. 5.
planning. In this thesis the sole pre-occupation with both the analytical approach of the lawyers of splitting and logically unfolding the meaning involved in the articles of the Constitution and in sections of the enactment and the doctrinaire approach of both West and East are eschewed. The writer is aware of the deficiencies and inadequacies inherent in this problem-cum-goal oriented methodological study which does not permit a deep conceptual critical analysis. However, a brief account of the different concepts applied and expounded by the Supreme Court is given in the concluding chapter apart from dealing at relevant places in different chapters. Even though the provisions of the Constitution relating to right to property are not studied articlewise and clausewise in continuous succession. All the relevant provisions are analytically studied as and when they appeared in different chapters. The writer is also aware of the inescapable inartistic, presentation of catena of cases involved in the critical study of the judicial process of the highest court as judicial process cannot be separated from the judicial decisions. A case is the only medium of expression of the Court.

Each socio-legal problem faced by the country, is briefly projected in its socio-economic dimension, and not

1. "One of the objects of the planning is reduction of inequalities in income and wealth and a more even distribution of economic power". The Prime Minister, 'strategy of the third plan', India, Government of Ministry of Information and Broadcasting, problems in the Third Plan - A critical miscellany, New Delhi, 1961 p. 33.
in isolation as a purely legal or constitutional problem. In this study an attempt is made to unravel and evaluate the underlying pattern of the dynamics of legislative and judicial process vis-a-vis the socio-economic problems of our country involving the exercise of right to property as a fundamental right. The pattern may be described as follows. A socio-economic problem comes to the surface and may pose a challenge to the law makers demanding a legal solution. The legislature being a representative body of all the people cannot close its eyes for long. Hence, it seeks to solve the problem by passing a law. The law so passed necessarily interferes with the

1. See generally for criticism of drawing clear lines between law and non-law and for constructing rigid refined formal definitions and of sealing off law from general social history, from politics and from morality, Lord Lloyd of Hampstead; Introduction to Jurisprudence, third edition, 1972.

2. "Ever since Walter Bagehot wrote his great book on the English Constitution, it is well known that in order to understand a constitution we must not be satisfied with technical forms and ceremonial formulas in which the working of its various organs may be concealed". H.M. Seervai: op. cit, p. 2.

3. "The whole complex ideology of planning, in all its manifestation, is thus essentially nationalist in approach and interventionist in conclusions. It is committed to the belief that development can be brought about or accelerated by government intervention". Gunnar Myrdal: Asian Drama, 1968 vol. 2 p. 709. Gunnar Myrdal, further, observes "Attempts to realise in any substantial measure the ideals of social and economic equality and welfare, which are declared policy goals in all the South Asian Countries, would also necessitate large scale state intervention". Ibid, at p. 718.
right to property of a section of the society by abridging or taking-away that right. The individual thus affected naturally takes recourse to a court of law challenging the validity of the legislation on the ground of the violation of his fundamental right to property. Thus the conflict between, the individual, usually a propertyed individual, and the society represented by the legislature is brought before the court. The court in its turn has to resolve this in the light of general principles incorporated in the basic law of the country. If the Parliament feels that the judicial process interferes with its performance of its duties in solving the problems of the nation and taking the country nearer to the goals1 enshrined in the Constitution, it may try to curtail the judicial power.

Following the above pattern in the study a particular problem is projected first; next comes the law passed by the legislature; in the third step, the major step, the judicial process of the Supreme Court unfolded in the chain of decisions is critically analysed. Finally, evaluation of the judicial process is attempted both qualitatively and quantitatively.

Law is considered as an instrument of social change. Constitution also is a means to an end. Hence, to this important right to property which was played like a ball between the Parliament and Supreme Court, the attention is focussed on the variety of the economic and social problems which the people face for which the modern

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1. "The Constitution makers had, among others, one dominant objective in view and that was to ameliorate and improve the lot of the common man and to bring about a socio-economic transformation based on principles of social justice". Shelat and Grover, J. J., in Keshavananda vs. State of Kerala, A.I.R., 1973 S.C. 1461 at p. 1607.
State has to find solutions. The emphasis is laid on the purpose of the legislation. The validity of an enactment which is judicially reviewed on the touchstone of the fundamental rights of the Constitution by the Supreme Court is tested on the basis of its socio-economic purpose and the mischief the State intends to eradicate and the needs which the State serves. Hence, an entirely new approach is adopted to study the relationship between the legislative and judicial process with respect to the right to property. Further, a departure is made from the conventional method of study of the constitutional provisions relating to the right to property clause-wise. Instead, all the decisions of the Supreme Court are categorised on the basis of the economic problems and legislative reforms intended to be effected for critical study. All the decisions of the Supreme Court with respect to right property without exception are considered. A thorough

1. The Supreme Court observed, "A modern state is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community". Ramjewaya vs. The State of Punjab, A.I.R. 1955 S.C. 549 para 6 at p. 554. The functions of the modern state like the police state of the old are not confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. Ibid, at p. 554.

2. Julius Stone observes "we can, then fully envision human justice only in terms which include this relation between wants, resources and outlets for tension. We must recognise, too, that this relation is fast moving and dynamic". op.cit. pp. 795-96.

3. As reported in All India Reporter upto December, 1978.
statistical analysis of all the decisions of the Supreme Court and of the participation of the judges is also made. The doctrines are critically analysed and attempts are made to evolve new juridical norms relevant to modern times especially to the developing societies. The judicial philosophy of property and poverty of the Supreme Court is outlined. The 45th amendment bill is closely examined and its consequences are projected. Finally, a pragmatic-idealistic alternative is suggested.