CHAPTER III.
CONCEPT OF PROPERTY AND CONFLICT AND CONFUSION IN THE CONSTITUENT ASSEMBLY.

A. Relevancy and value of the travaux preparationes in the interpretations of the provisions of the Constitution:

(1) General:

Words by themselves do not speak. They do not always possess a definite meaning. They do not mean the same for all. Words are only instruments. They are vehicles of expression. The meaning of a word is to be understood from the context and surrounding circumstances. There is no fixed meaning for a word for all times. The meaning changes from time to time.

If human beings can express their intentions through words which mean the same to all, we do not require wise judges, learned counsels and commentators. Hence, statutes whether ordinary or constitutional require interpretation to get to know what they say. The word 'interpretation' pre-supposes explanation. 'Explanation' in turn pre-supposes that the meaning is not clear at the first instance. It means it cannot be understood correctly, completely, directly without some one clarifying what a word means. It further connotes that the intention of the speaker, hidden in the word, requires further elucidation for understanding. In this process of the construction of the instruments, documents, enactments and constitution the judiciary as the sole interpreting agency follows some rules to facilitate the interpretative process. Otherwise this monopoly leads to judicial despotism.

The basic rule of interpretation of all enactments is: "They should be construed accordingly to the intent of the Parliament which passed the law". "But the expressed

intention must be gathered from the words of the enactment itself. "When the meaning of words is plain, it is not the duty of courts to busy themselves with supposed intentions." When the words are not plain, lack clarity and smack ambiguity, the intention behind the words has to be gathered. The courts have evolved number of rules, sub rules, doctrines, maxims, presumptions and aids to construction as guidelines in the interpretative process of the statutes.

The Constitution is also to be interpreted in the same manner as any other statute by reference only to its terms. According to the well established rules of interpretation the meaning and intention of the framers of the Constitution must be ascertained from the language of that Constitution itself. The court is not concerned with the motives of the framers.

But the importance and significance of Constitution is not overlooked by the Courts which emphasize its distinction so as to distinguish it in interpretative process from ordinary statutes. It is to be remembered that "it is a constitution, a mechanism under which laws are to be made, and not a mere Act which declares what the law is to be." The Constitution is not to be construed in any narrow pedantic sense. It is a living organic thing. The provisions should be given effect as far as possible following the maxim "Utres magis valeat quam pessim (it is better for a thing to have effect than to be made void).

1. Salomon vs. Saloman (1897) A.C. 22.
2. Pakala Narayana vs. Emperor, A. 1939, P.C. 47 (51)
3. In the Central Provinces and Berar Act, No. XIV of 1938 (1939) F.C.R. 18, 36.
According to the golden rule of interpretation the words should be read in their ordinary, natural and grammatical meaning. But in the interpretation of the Constitutional provisions conferring legislative power, the most liberal construction should be put upon the words so that they may have effect in their widest amplitude. The Legislature is supreme in its sphere and no restrictions or conditions are to be implied beyond what are expressly mentioned. The decisions of the High Courts of other countries should not be used ordinarily to influence the judgment, as invariably there is a world of difference in the historical and socio-economic conditions and provisions of the Constitution. Foreign precedents should be used only with caution and circumspection.

(2) RELEVANCY OF DEBATES IN THE CONSTITUENT ASSEMBLY:

The following discussion shows the question of relevancy and value of reference to the Constituent Assembly debates in the interpretation of the property provisions of the Constitution of India came up before Supreme Court for consideration and how it dealt with that. Sometimes the court took recourse to the Constituent Assembly debates and at other times an appeal for reference to the debates was negatived. But, it could not be denied that the debates provide an useful background for understanding the complicated controversial, conflicting provisions in the constitution. Further, a study of the debates gives a historical perspective to understand the spirit and philosophy of the Constitution as envisaged by the framers of the Constitution.

It is a general rule that debates in the Legislature and reports of the Committees of the Legislature are of no

aid in the interpretation of the provisions of an enactment. The final product, the enactment as placed on the statute book is the object of interpretation. The meaning of the words actually used in the Act cannot be ascertained from the statement made on the introduction of the enactment by the framers of the bill. The statement of Objects and Reasons cannot be referred to for the construction of a section. But the facts in the statements and objects can be looked for the limited purpose of ascertaining the conditions prevailing at the time that prompted the passing of the Act and the extent and urgency of the evil which is sought to be remedied. On the same grounds, generally, the debates in the Constituent Assembly are not admitted in the interpretation of the Constitution. The debates cannot be used as extrinsic aids for interpreting the Constitution. But they can be used to show that whether a particular phrase or word was referred or considered or rejected by the members and the meaning attached by the members and finally

4. Me Culloch vs. Maryland (1819) 4, Wh.316; South Australia, vs. Common Wealth (1942) 65 C.L.R. 373 (410).
the word chosen. Where there is a latent ambiguity in the words, the debates in the Constituent Assembly and other historical facts can be used as external evidence. The debates can be referred to find out the historical background and also what was accepted or rejected to determine the scope of an article.

1. The Central Provinces and Berar Act Case, 1939, F.C.R. 18 per Gwyer, C.J. in Suraj Narain Anand vs. North West Frontier Province (1941) F.C.R. 37, 41—2) Gwyer, C.J., explained his reference to white paper (the proposals for Indian Constitutional Reforms) and the Report of the Joint Select Committee. He did not mean that such references were permissible aids for ascertaining the meaning of the words used in the Government of India Act 1935. He referred to the white paper and Report upon it as 'historical facts' only to ascertain what the Parliament had in fact said. H.M. Seervai says that (Constitutional Law of India, Volume I, 1st Edn., p. 37) his original reference and subsequent disclaimer are "Correct because when a suggested meaning has been rejected by reference to legislative history, the task of ascertaining the real meaning from the words themselves still remains".

2. A.K. Gopalan vs. State of Madras, 1950 S.C.R. 88 per Mukherjee, J. In this case, the question arose whether Art. 21 embodied the due process clause of the U.S. Constitution. The draft Constitution contained the words "due process of law". The Report of the Drafting Committee makes it clear that these words are omitted and substituted by the existing words in Art. 21. Mahajan and Das J.J. did not say anything about the admissibility of this extrinsic material. Patanjali Sastri J., without speaking on the permissibility referred to the report of the Drafting Committee to support his conclusions. Kania formulated the proposition regarding the permissibility referred to the report of the Drafting Committee to support his conclusions. Kania formulated the proposition regarding the permissibility of extrinsic material. Opinion of individual members of Parliament are not permissible. Reference to debates is permitted to find out whether a particular phrase or impression was considered or not. The report of the Drafting Committee carries more weight than the debates in the Parliament. Even the Report of the Drafting Committee cannot be used to control the meaning of an Article. But the Court did not explain the meaning of ambiguity.

3. In Golaknath vs. State of Punjab the Supreme Court considered the utility of the Constituent Assembly Debates (1967). 2, S.C.J. 486. The Supreme Court spoke in contradictory terms. On the one hand it said the debates could be referred to find out the scope of Article 368. On the other hand it said what was spoken in the Constituent Assembly could not be referred to find out the scope of the article.
It is clear from the above discussion that resort to the Constituent Assembly Debates can be made only rarely and that too for limited purpose. Nevertheless, it can be formulated that in the interpretation of the provisions of the Constitution wherever there is controversy, doubt and ambiguity with the possibility of giving two or more meanings to a word it is not only permissible but advisable to refer to the debates. Secondly, that meaning of the word is to be preferred which is shared both by a section of the Constituent Assembly and also by the present Parliament. Thirdly, that meaning of the word is to be preferred which gives the maximum benefit to the maximum number of people rather the one which profits only an individual or a group of individuals. The imperatives of social justice and not the vagaries and vanities of individual prosperity shall determine the choice of the meaning.

No doubt, that the intention of those who drafted the Constitution is to be given effect as gathered from the words used in the Constitution. But, it is unreasonable and illogical to assume and attribute a static intention to the Constituent Assembly. The correct approach is to give meaning to the words in such a manner assuming that the members being representative of the people are bound to give effect to the hopes, aspirations, needs and demands of the people living today as it is undemocratic and unrealistic to deduce sterile meaning and impose a static intention gathered from the neutral words. The words to be alive must be given the living meaning of today.

The Constituent Assembly debates are referred and analysed with respect to property to throw light on the meaning of words used in the relevant articles and to gather the social and economic philosophy of the Constitution¹. But it should not

¹. For the importance of debates in the interpretation of the Constitution, see generally, C.H. Alexandroicz Constitutional Developments in India, 1957. pp. 1 to 3.
be forgotten that future generations cannot be tied down by the philosophy of the dead. Hence, either the words used by the framers are to be interpreted dynamically by the Courts or else the living Parliament is free to change the words if they do not express the *Vox Populi* at any given time.

B. THE CONSTITUENT ASSEMBLY - PREPARATION FOR DELIBERATIONS.

1. The Character and the Composition of the Constituent Assembly:

   Right to property is one of the most controversial, confused concepts that received the maximum attention in the Constituent Assembly. It was debated with passion and conviction by many members. Extreme views have been expressed.

   The composition of the Constituent Assembly reveals that the propertied sections of the society constitute an overwhelming majority. Maharajas, Rajas, Nawabs, Zamindars, big landlords, capitalists, rich businessmen and many others who inherited great wealth and those who were otherwise obliged to the above class of people, were the members of the Constituent Assembly. In fact the Constituent Assembly was elected on a limited franchise based on property and other qualifications which in that society were possible to acquire only with the assistance of political power and property. The patriotism, national spirit, sacrifice and great qualities of mind and character of the galaxy of the leaders in the freedom struggle who found their way in the Constituent Assembly should not be allowed to interfere with the clear understanding of the class composition of the Constituent Assembly.

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1. K.K. Mathew, J. says "The preamble to the Constitution of India states that the constitution was framed by the people. This is a doubtful proposition. The Constitution was framed by an Assembly which was indirectly elected by 28.5% of the population of India. Who would dare say that they constituted the people of India? "Poverty, power and the Constitution" The Academy Law Review, 1977 Vol.1 No.1 P.1 See also (A.D.V.O) VII p.1203 for the view of Shibbonal Saxan.

In 1922 itself, Gandhi said that Swaraj should be the outcome of "the wishes of the people of India as expressed through their freely chosen representatives". But it was only in 1929 Congress declared at Lahore Congress: "The word 'Swaraj' in Article I of the Congress Constitution shall mean complete Independence". In 1934, Congress went a step further and demanded for a Constituent Assembly. Subsequently, many times, it reiterated that only a Constitution framed by Indian People would be acceptable. There was great political awareness on the part of the people which would not accept a Constitution drawn by Parliament of Britain or any outside agency. The Cabinet Mission's statement of May 16, had set out in detail the procedure regarding elections to the Constituent Assembly. The Statement rejected the idea of election based on adult franchise on the ground that it would lead to a wholly unacceptable delay in the formulation of the new Constitution. The only practicable alternative, according to the statement, was to utilise the recently elected Provincial Legislative Assemblies as the electoral bodies the elections for which were held on communal basis. The Provincial Legislatures were elected in 1945 following the provisions of the Government of India Act, 1935. But, what is the nature of the indigenous Constituent Assembly? "The Constituent Assembly was in effect, a one party Assembly, in the hands of the mass party, the Indian National Congress, yet it was representative of India, and its internal decision making process were democratic". But it cannot be forgotten that it is only 5 per cent of the population of the country that was actually involved in this process of


choosing, who mainly belonged to the propertied classes. Even that is done indirectly. The biggest party, the Congress Party, which won the lion's share of the seats in the Constituent Assembly, itself is a medley of all nationalist forces. The Congress Party is a rainbow. It was composed of elements from every section of the society, but mostly dominated by the propertied classes. It was a chameleon identifying with every section of the society. The differences based on property were dissolved in the national struggle for political freedom and the upper propertied classes, naturally, by dint of their economic power and education totally controlled the caucus of the party during freedom struggle. That was the articulated class. When freedom dawned, they emerged as the weilders of power and entrenched themselves in the Constituent Assembly to determine the destiny and destination of the nation. The class and caste representation in the composition of the Constituent Assembly belonging to the propertied classes is an undisputed fact. Excepting in the case of few individuals, who can lift themselves above their self interest and be altruistic in practice and not merely in rhetoric, human nature is such that living in conformity with one's own class is a normal behaviour. No one would like to cut a branch on which he sits. Suicide is rare. Instinct to survive is common. Anything different is an extraordinary and rare phenomenon. However much idealistic a person might be, a statistical analysis of the composition of the Assembly reveals very clearly that one third of the members belong to the highest caste in India. If the first two upper castes people are taken, they constitute 63 per cent of the total membership of the Assembly. Even those few coming from the lower classes conform with propertied. It is difficult to decide against one's self when it comes to actual

1. Granville Austin, op.cit. Appendix III, Part B gives the list of all members of the Constituent Assembly with their caste, who have been named in the text. There are 60 Brahmans, 49 next upper caste people like Vysyas, Marathas, Kshatriyas, Rajputs etc., 19 non-Brahmins 13 Scheduled Castes, 17, Muslims, 5 Christians, 2 Parsees, 1 Jain and 1 Anglo Indian, 6 Sikhs and an Adivasi.
practice. It is as rare as a King abdicating his throne for what he loves. It is like a King or State renouncing war in practice when he or it is strong; like a landlord surrendering all the irrigated fields to his cultivating tenants; like a landlord leaving the house to a tenant freely; and like a factory owner giving ownership of the factory to the workers. What they cannot do individually cannot be expected from them collectively in a Constituent Assembly, Parliament or Assembly except when their existence is in peril. Every legislation protects some interests against other interests. The interests that are protected are always the interest of those who pass that legislation or in whom they are interested. Moralistic legislations are either general, vague with full of loopholes to violate whenever it is necessary. They are passed out of passion or compassion. But in practice the strong can save their interests by violation of the laws which they pass with the connivance of the administration and costly dilatory litigation in the courts. In some cases it may be possible for some individuals to believe unrealistically that certain laws work with all the loopholes or they may believe that they can achieve their goal with such laws. No doubt the Constituent Assembly contained idealists, socialists, vested interests and realists. The debates show clearly the divergence of views. But the class composition and unrepresentativeness is inherent in the evolutionary process of the Constituent Assembly.

Granville Austin succinctly states: "The electoral process itself could not have produced a representative body because it was based on the restricted franchise established by the Sixth Schedule of the 1935 Act, which exclude the mass of peasants, the majority of small shopkeepers and traders and countless others from the rolls through tax, property and educational qualifications. Only 28.5% per cent of the adult population of the provinces could vote in the Provincial Assembly elections of early 1946".1

But the defence of Granville Austin of the assumption of the representiveness of the candidates on the presumption that Congress is India and India is Congress is an unsound explanation and an apology for democratic practice.

Further, he emphasizes: "Economically and socially depressed portions of the populations were virtually disenfranchised by the terms of the 1935 Act". Hence, when the provisions of the Constitution are interpreted especially in situations of conflicts between individual's property rights and the social interests or social justice the character and class composition of the Constituent Assembly that drafted the Constitution shall not be forgotten.

2. EVOLUTION OF CONSTITUTIONAL PROTECTION OF RIGHT TO PROPERTY PRIOR TO CONSTITUENT ASSEMBLY.


A brief history of the constitutional protection of right to property will throw light on the subsequent deliberations in the Constituent Assembly on the relevant clauses dealing with negative and positive aspect of the right to property.

The national convention in 1925 passed the Common Wealth of India Bill 1925. This was the first formulation of the demand of protection against expropriation of property without the authority of law. The bill had its first reading in the House of Commons.

But the Bill was aborted due to the defeat of the Labour Government. In 1928, the Nehru Report further reiterated

1. Ibid., p. 10.
2. "The Constituent Assembly was a one party body in an essentially one party country. The Assembly was the Congress and the Congress was India". Ibid, p. 8.
the same. Parallel to this concern to the right to property, the Nehru Report of All Parties Conference showed its awareness to the needs of the common man by emphasizing the duty and responsibility of the State to make legislation for the amelioration of the conditions of working class. At Karachi session, the Indian National Congress passed a lengthy resolution on Fundamental Rights and Economic Changes dealing with the two dimensions of right to property—the individual and social.

So far, in all the proposals the protection to property is claimed only against executive encroachment and not against the legislature. Subsequently protection against expropriation even against legislature by prescribing conditions of the existence of public purpose and payment of compensation and previous sanction of Governor General were contemplated.

(ii) Government of India Act, 1935: And Protection against Legislature:

The British Government was supported mainly by the Princes, Zamindars, jagirdars, talukdars and other sections of rich class. Further, the British had their vested interests in urban and rural properties. Representations from landlords and the British industrialists for protecting their vested rights in property against expropriation by the legislature were effectively made to the Joint Select Committee of Indian Constitutional Reforms. The British Government also naturally felt that it was its moral duty to protect the interests of those in India who helped them.

1. Ibid.
2. Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, seduring a living wage for every worker, the protection of motherhood. It shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants. Report of the All Parties Conference, Ch.7 Cl.17 (XVII) p. 102.
5. Proposal for Indian Constitutional Reform, para 75 at p. 79.
in acquiring and perpetuating their power and also to pro-
tect its own interests against State action in future, when
the power would go into the hands of the representatives of
natives.

Written justiciable Bill of Rights is the betenoire of
the British. They believe with Dicey that the Constitution
is the result of the law of the land. Mere recital of the
rights in the Constitutional document under the high sound-
ing caption of "Fundamental" rights, unrelated to political
realities is of no significance to them. The doctrine of
supremacy of Parliament and the philosophy behind the Bill
of Rights are contradictory in theory. The Simon Commis-
sion did not favour the inclusion of such enumeration of
rights in the Indian Constitution^1. The Parliamentary Joint
Committee on Indian Constitutional Reforms shared the same
views. The committee expressed it vehemently that ....the
most effective method of ensuring the destruction of a
fundamental right is to include a declaration of its exis-
tence in a constitutional instrument"2.

In spite of this aversion for the incorporation of
Bill of Rights in the Constitution and fanatical belief
in the legislative sovereignty, the Parliamentary Joint
Committee influenced by the vested interests decided to
give statutory protection to property right in India Scared
by the pronouncements of nationalist leaders. Expropria-
tion by legislation would be lawful only if it is for pub-
lic purpose and if compensation is provided3.

It is further provided that previous sanction by the
Governor-General or Governor of a Province as the case may

   of 1930, para 36.
2. Report of the Joint Committee on Indian Constitutional
3. Ibid, para 369.
be has to be obtained for any legislation transforming private property to public ownership or extinguish or modify the rights of individuals in it. The landed interests of Taluk, Inam, Watan, Jagir and Muafi were to be given special protection by respecting them either for all time or for the duration of the grant\(^1\). With respect to Talukdars of Oudh the advance assent of Governor-General was required for any legislation affecting such grants. Zamindars also were given the same protection by stipulating the requirement of the Government's prior sanction for the introduction of any bill that would "alter the character of the permanent settlement". These safeguards were given to the vested interests after careful consideration and deliberations\(^2\). The result is the provisions\(^3\), in the Government of India Act 1935 under Sections 299 and 300 and entries 9 and 21 of Schedule VII. The genesis of these provisions produce the legal background of Article 31 of the Constitution of India as Article 31 is almost a total reproduction of those sections. But, the safeguards given by the Government of India Act 1935 to property rights were not interpreted by the pre-independent judiciary so as to fetter the legislature totally from touching them. In Thakur Jagannath Baksh Singh vs. United Provinces\(^4\), the U.P. Tenancy Act, 1939 was challenged by the plaintiff, a Taluqdar of Oudh, under sanad granted by Lord Canning, invoking S.299 and Entry 21, List II of schedule 7 of the Government of India Act, 1935, on the grounds that it cut down the absolute rights claimed by the taluqdars and that the provincial legislature lacked legislative competence. The privy council agreed with the Federal

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3. See Appendix
4. (1946) 73, I.A,123. This case was followed by Supreme Court in Maharaj Umeg Singh vs. State of Rajasthan (1955) 2 S.C.R,531 but this was noticed in State of W.B. vs. Subodh Gopal Bose (1954) S.C.R. 587.
Courts' judgment which upheld the validity of the impugned Act as it was covered by Entry 21, List II, Schedule 7 of the Government of India Act, 1935. And, under Section 299 of the Government of India Act, regulation of the relations of landlord and tenant incidentally diminishing the rights of the landlord is permissible. It is neither confiscatory legislation nor compulsory acquisition and hence the question of compensation does not arise. It was further held that no contract or grant could fetter the legislative power conferred by Constitution. Legislative power is limited only by the provisions of the Constitution.

(3) CONVENING OF THE CONSTITUENT ASSEMBLY:

The Constituent Assembly was first convened on December 9, 1946. The Objective Resolution of 13th December, 1946 drafted and moved by Pandit Jawaharlal Nehru, four days after the convening of the Constituent Assembly, had not contained any safeguard to private property. On the other hand the resolution spoke about socio-economic justice. The political revolution in the country had come to an end with the attainment of independence on 15th August, 1947. Nehru made it clear that the immediate task was to achieve economic democracy. He pointed out that freedom was only a means to an end and not an end in itself. Sir B.N. Rau, the Constitutional Advisor issued two notes on the subject of fundamental rights in September, 1946, for the use of the members of the Constituent Assembly. He quoted provision in German Constitution for right

1. B. Shiva Rao, op. cit. p. 4.
2. "The first task of this Assembly is to free India through a new Constitution, to feed the starving people, and to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity". (C.A.D. II, 3, 316).
to property, to show the difficulties in defining the precise limits of these rights. K.T.Shah in his notion Fundamental Rights quoted President Roosevelt to show the importance of economic and social rights and observed that

1. Art.153 of the German Constitution of 1919. Commenting on this provision Sri B.N.Rau says "In other words, rights of private property are said to be inviolable except where the law otherwise provides, which means that the rights are not inviolable. Ibid.
Sri B.N.Rau, after his masterly exposition of the vicissitudes of these rights at the vagaries of judicial review divides these rights into two parts, justiciable and non-justiciable and gives in part A, non-justiciable rights which later formed the basis of Part IV, Directive Principles of State Policy of the Constitution and in Part B merely quotes extensively from Lauterpacht's 'An International Bill of Rights of Man,' 1945, (pp. 186-190) and enters a caveat that though there is 'ample material available for the preparation of such a Bill but its drafting will require great care and must be reserved for a future occasion'.

2. "We have come to the clear realisation of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men. People who are out of a job are the stuff out of which dictators are made. In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second bill of rights under which anew basis of security and prosperity can be established for all regardless of station, race or creed. Among these are: The right to earn enough to provide adequate food and clothing and recreation. The right of every farmer to raise and sell his produce at a return which will give him and his family a decent living. The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad. The right of every family to a decent home. The right to adequate medical care, and the opportunity to achieve and enjoy good health. The right to adequate protection from the economic fears of old age, sickness, accident and unemployment. The right to a good education".
B. Shiva Rao, "The Framing of India's Constitution" Vol.II p. 46-47
"All rights are conditioned in civilised society, by the implicit requirement that similar rights of other members of the same society shall not be violated" 1. He also submitted draft on the power of 'eminent domain' of the State 2. He said that the state was free to provide or not to provide any compensation for acquisition 3. He further suggested that the right to acquire, hold and sell property was subject to regulation by the State 4. In pursuance of the Cabinet Mission's statement of May, 1946, laying down that at the preliminary meeting of the Constituent Assembly an Advisory Committee should be constituted to determine the Fundamental Rights of citizens, minorities etc., the Constituent Assembly immediately after the Objectives Resolution was adopted, had taken up the task of the constitution of an Advisory Committee for that purpose 5, and a sub-committee 6 was appointed on Fundamental Rights by the Advisory Committee. At five stages the provisions relating to the right to property had been proposed before they were finally adopted:

1. Ibid, p. 48.
2. Ibid, p. 52 (S. 28).
5. On January 24th, on a motion of Govinda Ballab Pant, the Assembly adopted a resolution setting up the Committee. The President was authorised to nominate 50 members initially and later 22 more including members who are not members of Constituent Assembly. At the first meeting of the Advisory Committee Sardar Vallabhbhai Patel was unanimously elected as the Chairman. Five Sub-Committees including one on Fundamental Rights were appointed. Ibid, p. 56-58.
1. Notes submitted by some members.
2. Fundamental Rights sub-Committee.
3. Advisory Committee.
4. Settlement.
5. Discussion of the Draft provisions by the Constituent Assembly.

Before the Fundamental Rights sub-committee took up the matter some notes were submitted by some members on the topic for the consideration of the Committee. Dr. K.M. Munshi proposed many provisions for the protection of right to property including the American due process of law¹ Dr. Harnam Singh's draft² on Fundamental Rights had not contained anything on acquisition or compensation. Dr. Ambedkar also in his draft³ suggested the due process of law but at the same time advocated state socialism. Alladi Krishnaswami Ayyar in his note posed the question whether due process of law of U.S. was to be adopted which was subjected to elastic interpretation by the Supreme Court in that country from time to time or to follow the model of other Constitutions where the same provision was followed incorporating the effects of American decisions⁴.

(4) THE DRAFT CONSTITUTION PREPARED BY THE CONSTITUTIONAL ADVISER:

In draft Constitution⁵ prepared by the Constitutional Adviser:

1. Mr. Munshi in his note on Draft Articles on Fundamental Rights, March 17, 1947, dealt with right to property in three articles, Art.III Cl.6, Art.V.C1.4 and Art.X. Ibid, 74, 75 & 78.
2. Ibid, p. 81-84.
4. Ibid, p. 68.
5. In pursuance of a recommendation of the order of Business Committee (See Vol.I Document No.81 (iii) which was subsequently adopted by the Constituent Assembly on July 14, 1947, the Constitutional Adviser undertook the preparation of draft of the Constitution embodying the various decisions of the Assembly on the reports of its Committees. B. Shiva Rao, The Framing of India's Constitution, Select Documents Vol. III,p.3.
Adviser, following the decisions of the Fundamental Rights Sub-Committee and the Advisory Committee, the word 'Property' was omitted in the due process clause which mentioned life and personal liberty.

In the 'Rights of Freedom' in clause 15, sub-clause(1)(a) 'right to acquire hold and dispose of property' had been guaranteed to all citizens. The provisions dealing with the conditions of compulsory acquisition of property were incorporated in clause 25 (1) and (2) under the heading 'Miscellaneous Rights'. Sub-Clause (1) gives protection against executive action as without law a person cannot be deprived of his property. Sub-clause (2) lays down that taking possession or acquisition of property shall be for public purpose and such law should either fix the amount and compensation or specify the principles on which and the manner in which the compensation is to be determined. The Parliament and the State legislatures were given legislative powers of acquisition of private property.

In his note on certain clauses of the Draft Constitution prepared by himself, Sri B.N. Rau, had clearly and prophetically visualised the conflict between the Directive Principles of State Policy and Fundamental Rights, i.e., between legislation to do socio-economic justice and individual right to private property and suggested the required modification to protect social welfare legislation from the...

1. Ibid, p. 9.
3. Ibid, p. 11, Cl. 25.
individual rights. After completing and submitting the draft of the Constitution for consideration by the Drafting Committee, the Constitutional Adviser, B.N. Rau, visited important countries in the west and had personal discussions with eminent legal luminaries and statesmen. In his report

1. "There is here a danger which ought to be pointed out. It may occasionally be necessary for the State for the proper discharge of one of its fundamental duties, e.g., the duty prescribed in Clause 39 (to raise the standard of living to improve public health), to invade private rights. In other words, there may be conflict between the Directive Principles of State Policy and one of the rights or freedoms of the individual guaranteed in the fundamental rights. The latter, being justiciable under the Constitution, will in effect prevail over the former which are not justiciable. That is to say the private right may over ride the public weal. For example, it may be necessary in the interests of public health for the State to take possession of unhealthy slums and demolish them. Cl. 25 may be an obstacle in the way of such action, unless adequate compensation is paid to the slum owner. In England a local authority can in certain circumstances enter and demolish an insanitary house without payment of compensation and can even sell the materials in order to cover demolition expenses. (S. 13 of the Housing Act 1936).

Plans for the nationalisation of mineral resources required by Cl. 32 may also be similarly hindered. There are only two illustrations of what may happen.

It is therefore a matter requiring careful consideration whether the Constitution might not expressly provide that no law made and no action taken by the State in the discharge of its duties under chapter III of Part III (which deals with Directive Principles of State Policy) shall be invalid merely for reason of its contravening the provisions of Chapter II of the same part (which deals with fundamental rights); Cl. 9 (2) of the Draft would then need consequential modification (ibid, p.199). It has taken 26 years after the adoption of the constitution as a result of conflict between the judiciary and Parliament on this matter to give effect to this under the Forty Second Amendment Constitution Act 1976.


3. On the conclusion of his visit the Constitutional Adviser submitted to the President of the Assembly a report on his discussions abroad, entitled "Result of discussion in Washington, Ottawa and New York". Ibid, P. 217, Vol.III.
he proposed two amendments as a result of his tour, one of which was with respect to property rights. He referred to the Irish experience of the trouble created by the property right. He proposed, quoting Learned Hand, that in a conflict between a legislation enacted by the legislature in the discharge of the fundamental duties imposed upon it by the Constitution and a fundamental right guaranteed to the individual, the former should prevail over the latter. The general welfare should prevail over the individual right. If means he suggested what has been done now for the supremacy of Directive Principles of State Policy over Fundamental Rights under the Constitution (42nd Amendment) Act, 1976.

(5) THE DRAFTING COMMITTEE:

The Drafting Committee made no change in clause 25. But the Committee was of the opinion that this clause should be placed under a new sub-heading "Rights to Property". In the Ninth Schedule in Item No. 44 of List I, Union List, it is mentioned "Acquisition or requisitioning subject to provisions of List III with respect to regulation of the principles on which compensation is to be paid for property acquired or requisitioned for the purpose of the Union or a State".

1. Ibid, p. 222-223.
2. Ibid, p. 218. "The first of them is designed to secure that when a law made by the State in the discharge of one of the fundamental duties imposed upon it by the Constitution happens to conflict with one of the fundamental rights guaranteed to the individual the former should prevail over the individual right." Indeed, Justice Frankfurter considered that the power of judicial review implied in the due process clause of which there is a qualified version in Cl. 16 of our Draft Constitution was not only undemocratic (because it gave a few judges a power of vetoing legislation enacted by the representatives of the nation) but also threw an unfair burden on the judiciary; and justice Learned Hand considered that it would be better to have all fundamental rights as moral precepts than as legal fetters in the Constitution.
4. Ibid, Appendix C, p. 492
In List II, the State List, of Item No. 8, it is mentioned "Compulsory acquisition of land except for purposes of Union subject to provisions of List III".1

In List III, Concurrent List, Item No. 34 A, it is mentioned "Regulation of the principles on which compensation is to be paid for property acquired or requisitioned for the purposes of the Union or a State"2. The Drafting Committee after a detailed and careful consideration of the Constitutional Advisor's draft of the Constitution submitted to the President of the Constituent Assembly a revised draft on February, 21, 1948. In this draft, Constitutional Right to acquire, hold and dispose of property was mentioned in Article 13 (1) (f). Article 24 dealt with right to property and conditions to be fulfilled for compulsory acquisition of property4. In the seventh schedule the Drafting Committee omitted the Entry 'requisitioning of lands for defence purposes including training and manoeurs' from Item No. 1 of List I, Union List, as the matter would be covered by Entry 43. Entry 43 of List I, related to "Acquisition or requisitioning of property for the purposes of the Union subject to the provisions of List III with respect to regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of the Union".6

The Committee omitted reference to compensation in this item and put it in the Concurrent List. List II, State List,
Item No. 9 dealt with "compulsory acquisition of land except for the purposes of the Union subject to the provisions of List III with respect to regulations of the principles on which compensation is to be determined for property acquired or requisitioned for the purpose of a State". Here, also for similar reasons as in the case of Union List, reference to compensation was omitted. Item 35, List III Concurrent List, dealt with compensation in the case of acquisition by the Union or the State.

(6) DISCUSSION IN THE SUB-COMMITTEE ON FUNDAMENTAL RIGHTS:

The sub-Committee in its meeting on March 24, 1947, decided not to pursue clause (6) of Article III of Mr. K.M. Munshi's draft as it was considered separately. When the due process clause, came up for discussion in the sub-Committee it was realised that according to judicial interpretation it covers both substantive as well as procedural rights. This would strike at the root of proposed tenancy legislation taking away lands without payment of just compensation. Sub-Clause (4) goes beyond a similar provision in the Government of India Act 1935. By a majority of five to two it was decided

1. Ibid, p. 667.
2. Ibid.
3. Ibid, 670. It needs "The principle on which compensation is to be determined for property acquired or requisitioned for the purposes of the Union or a State".
4. The sub-Committee on Fundamental Rights sat from Feb. 27 to March 31, 1947, l. a. Article III Clause (6) incorporated in Article III.
to retain the Clause. The sub-Committee in its long discussions of clause (4) studied it from different aspects. Finally, the clause was adopted covering movable property. The adjective 'JUST' was added before the word 'compensation'. The Fundamental Rights sub-committee sent its draft report on April, 13, 1947. In it, it reproduced clause (4) numbering it as Article 27 under 'miscellaneous rights'. The due process clause 4 of Article V was numbered as Article II under the heading 'Rights to Freedom' in Chapter I of Annexure to the report of the sub-committee submitted to sub-committee and clause..., and clause (4) of Art. X was numbered as 27 in the Annexure. Under Chapter II a number of non-justiciable rights were included.

1. During the discussion of sub-clause (4) it was pointed out to the Committee that the expression "Due process of law" has been judicially interpreted to cover not merely procedure but also substantive rights. If sub-clause (4) included as a fundamental right, tenancy legislation which takes away certain rights from landlords and transfers them to tenants without payment of compensation may become invalid except on payment of compensation which the court regards as just. To this extent the enactment of this clause might go further than the Government of India Act 1935. After discussion it was decided, by a majority of 5 to 2 that the clause should be retained (Ibid, p. 122).

2. March 28, 1947, Art.X Clause 4 of Mr. K.M.Munshi's draft on fundamental rights. "Expropriation for public reasons only shall be permitted upon conditions determined by law and in return for just and adequate consideration determined according to principles previously laid down by it. (Ibid, p. 128).

3. Ibid, p. 129.

4. It was decided to drop clauses (1) (2) (3) and (5) or Article 10 without any discussion without assigning any reasons. Article II, "No person shall be deprived of his life liberty or property without due process of law", (Ibid, p. 139 and clause 5 (1)(ii) Sir B.N.Rau, mentioned in his notes on the draft report of April 8, 1947, that Cl. II is adapted from the U.S.A. Constitution, Amendment V and Amendment XIV, Section I (Ibid, p. 148) and clause 27 was adapted from Section 299 of the Government of India Act 1935 (Ibid 149).
In his note on the effect of some of the proposed clauses—Sri B.N. Rau visualised the possible productivity of flood of litigation under the 'due process clause' resulting in the invalidation of progressive legislation. He cited the example of a case in which a progressive legislation passed by the Congress for the amelioration of the depressing condition of the farmers was held to be invalid by the Supreme Court of U.S.A. Hence, he advocated a 'middle course' reconciling the individual right with social justice by following the Irish model and suggested a new article 27A empowering the State to impose limitation on these rights to property in the interests of common good. Prof. K.T. Shah in his comments on the draft report advocated that the right to property shall be subjected to the power of the State to property utilise the natural wealth of the country unhindered by private interference. Reasonable compensation might be paid in cases

1. Clause 2, 11 and 27. Forty per cent of the litigation in Supreme Court of the U.S.A. during the last half century has centred round the 'due process' clause, of which it has been said that, in the last analysis, it means just what the courts say it means. No other definition is possible. Our draft not only borrows this clause (see Clause (11)) but also gives it retrospective effect (see clause (2) which makes it applicable even to pre-constitutional laws). The result is likely to be a vast flood of litigation immediately following upon new constitution. Tenancy laws, laws to regulate money-lending, laws to relieve department, laws to prescribe minimum wages, laws to prescribe maximum hours of work, and so on will all be liable to be challenged; and not only those which may be enacted in future but also those which have already been enacted. (Ibid, p.151). Even without the 'due process clause' in our Constitution the consequences predicted have become realities.


3. Irish Constitution 43(2)(i) and (ii).

4. 27A is to be inserted between clause 27 and 28. Ibid, p. 166.

of expropriation, but the benefit which the individual had already enjoyed in the exploitation on these resources should be taken in account.

The sub-Committee in its meeting has considered the draft report and accepted the due process clause on the first day and decided to redraft it on the next day. The Chairman of the sub-Committee on Fundamental Rights, Sri J.B.Kripalani submitted the report with the Annexure of the clauses on Fundamental Rights and minutes of dissent to the Report by many members, on different clauses with respect to property right only. Prof. K.T. Shah reiterated his earlier comments on the Draft in his dissenting note. Finally, right to property was safeguarded in three articles renumbered in the light of

2. Minutes of the meetings of the sub-Committee, April 15, 1947.
4. Ibid, pages 171 to 176 clause 11 renumbered as clause 12, p. 173 in the Annexure.
6. Nor should a private proprietor, individual or corporation, be entitled to keep these resources undeveloped if he cannot develop them himself. Such a dog-in-the-manager policy is no figment of imagination. Moreover, these are not all perennial assets. Once exhausted, a mine cannot be renewed. Once denuded, a forest will take long years to replace. Pearl fisheries need to be carefully protected, even as whale hunting has had to be regulated by international convention. Such protection or regulation will not be easy unless the rights of ultimate ownership in these forms of natural wealth are reserved to the community.
the discussions in the sub-Committee. Ultimately it is the provision in Mr. Munshi's note and Draft Articles on Fundamental Rights of March 17, 1947 that formed the basis for the right to property as they were adopted with minor modifications and were renumbered. The views of B.No.Rau, K.T. Shah and Ambedkar though expressed emphasising the social aspect of the right to property, illustrating the judicial unpredictabilities, revealing the gross inequalities exposing the oppressive power of exploitation of private dictatorship of property owners did not find place in the report and annexure. It may be due to the indecisiveness and imprecision in their final choice.

(7) PROCEEDINGS OF THE ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, MINORITIES, AND OTHERS.

The advisory Committee of the Constituent Assembly met under the Chairmanship of Sardar Vallabhbhai Patel on April 21, 1947 and considered the reports from the Fundamental Rights Committee, Minorities Committee etc.

When clause (5) in Fundamental Rights was taken up Dr. Ambedkar emphasised its importance as in some provisions there

1. Annexure to the report of J.B. Kripalani, Chairman, Fundamental Rights, sub-Committee, April 16, 1947; submitted to the Chairman, Advisory Committee, on minorities, Fundamental Rights etc.
Annexure: Fundamental Rights.

2. Ibid, P. 173, 174. No person shall be deprived of his life, liberty or property without the due process of law nor shall any person be denied the equal treatment of the laws within territories of the Union.

26. No property movable or immovable, of any person or corporation, including any interest in any commercial or industrial undertaking shall be taken or acquired for public use unless the law provides for the payment of just compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined.
were laws prohibiting specific Communities\(^1\) from holding property. Mr. K.M. Munshi prophecied that every word in the article would be contested in a court of law. Rajagopalachari pragmatically observed that these and similar clauses had been taken from countries which made laws at a time when they had no problems whatsoever. He rightly questioned "what is the good of our copying them?"\(^2\) Alladi commenting on the 'due process' clause predicted that the interpretation of this clause would depend on the individual philosophy of property of the particular judges and that there was such a danger but, yet, he was willing to take the chance. He depressed the fear that it might prove dangerous to expropriatory legislation\(^3\). Rajagopalachari had anticipated that this due process clause would make it very difficult to pass any laws which affect the property\(^4\). The Chairman, Patel, visualized that "There is a danger that certain old type of judges may misinterpret this due process of law\(^5\)."

Pant, hit the nail on its head by putting the questions. Firstly, can certain property be acquired for public purpose for

\(^1\) He quoted the examples of Punjab land alienation Act by which the whole scheduled caste population had been prohibited including certain Hindus. He wanted that every such legislation to be nullified by this clause in the fundamental rights. Second Part of clause 5: "No citizen shall on any of the grounds mentioned in the proceeding section prohibited from acquiring, holding or disposing, of property or exercising or carrying on any occupation, trade...." E. Shiva Rao, ibid, p. 224.

\(^2\) Ibid, 240.

\(^3\) There is all the danger that it may stand in the way of what may be called expropriatory legislation. If you have got a set of judges who are more inclined to property, then they might put a wide construction upon the words so as to hamper what may be called a social legislation, and if you have another set of judges who are imbued with modern ideas they might put a more liberal interpretation. (Ibid, p. 241, first para).

\(^4\) "There is that danger inherent in 'due process'...." I am not against that clause. I am willing to take that chance, but there is that danger". (Ibid, p. 241).

\(^5\) Ibid.
ten times its rental value while the market value is 20 times?"
Secondly, "Can tenant at will be protected by law from eviction?"

Alladi answered both the questions in the negative.
About the first one, he said, the courts might conclude it as not 'due process of law' because it would be illusory. For this answer G.B. Pant reacted realistically and anticipated the recent controversy between the Parliament and the Judiciary. He observed that the future of the country should not be determined by a handful of judges and definite connotation had to be given to the words 'due process'. He expressed the fears that the contemplated legislation in Uttar Pradesh for abolition of zamindaris which might prescribe graded compensation might flounder on the rock of judicial review and may delay the implementation of these schemes. He warned that it would be risky to allow the judiciary or even sometimes a single judge to invalidate a law. Pant showed awareness by saying that the Constituent Assembly should be clear in its mind about what to do and how to do. Panikkar very wisely suggested that the judicial review should be confined to the protection of life and liberty and the legislature should be left free to deal with right to property. Had this suggestion

1. Ibid, p. 243. "It comes to this. The future of this country is to be determined not by the collective wisdom of the representatives of the people, but by the fiat of those elevated to the judiciary. If this is the case, then I strongly oppose it. The words 'due process of law' should be altered. the language should be fool-proof so that every judge may be expected to give the same sort of ruling. We should not put in words which give rise to controversies".

2. Ibid, p. 245.

3. Ibid; 245. After a battle of 28 years between the Parliament and the Supreme Court the protagonists of the sanctity of the private property themselves became vexed and are prepared to relegate the right to property to a lesser position of mere protection against executive only by removing the property provision from the fundamental rights Chapter under the proposed 44th Amendment to the Constitution.
been followed by the Constituent Assembly the constitutional history of India in the past 28 years would have been entirely different and there would have been no confusion, controversy, conflict and confrontation between the Supreme Court and the Parliament and there would have been few constitutional amendments of serious nature. The Chairman, Patel proposed to deal with property separately. Munshi agreed for it. Ambedkar also expressed his agreement to drop property from this clause. The Chairman announced the proposal for the exclusion of the word 'property' from this clause as it stood. G.B. Pant did not agree but said 'that he would keep quiet'. When clause (26) dealing with eminent domain was moved, Pant asked whether the words 'public use' would cover tenancy legislation. Alladi assured that it would not interfere with that. Pant then told that he would quote Alladi if it would interfere. K.T. Shah once again reiterated his stand and made a suggestion for the addition of a proviso that no property should be guaranteed in the form of national wealth like flowing water in rivers, mines, etc. Rajagopalachari questioned: "Is it only to say that where Government acquires property for public use, they should pay compensation or do you mean to say it should not be taken except for public use and then compensation should be given?" Alladi replied that this clause "followed closely Section 299 of the Government of India Act". Ambedkar said that it should
be made clear whether tenancy law was for public purpose or not. In his answer to Pant, Munshi said this clause would not help zamindars, if zamindaris were to be abolished. Then, Pant put a hypothetical question whether the acquisition from landlords and distribution to tenants of the houses in the Connaught Place in Delhi comes under this clause? Alladi said "certainly". Pant said if it were so the "Government will not be free to determine the compensation that it will have to pay. If it is so, I am against it. I am prepared to accept it if public use here means some use for a purpose connected with the Government itself". Rajagopalachari also felt the same and said, "if this clause covers all cases of acquisition, then the question of just compensation will be taken into court with the result that Government functioning will be paralysed". Alladi quoted section 299 of Government of India Act, 1935 and said that clause (26) was based on it. He said, that section did not stand in the way of "Government acquiring any property". He pointed out that there was slight change in the language of clause (26). "The words 'Just compensation' have been used instead of the word 'compensation'. The expression 'just' has been borrowed from the American and Australian Constitutions." Ambedkar differed from Alladi and said that Alladi did not place proper construction of Section 299. He referred to sub-clause (3) of Section 299 and observed that 'the term 'public purpose' as introduced in Section 299 was a much wider term and not only includes acquisition of property for a

1. Ibid, p. 273.
limited Government purpose, for instance, building a police station, but for any purpose. He said that the reason why the previous sanction of the Governor-General is stipulated in sub-clause (3) is because the term 'public use' or 'public purpose' as used in Section 299 is a very wide one and not only includes limited Governmental purposes but also social purposes. Therefore, my submission is that unless you introduce some limiting clause to the broad Fundamental Right as indicated here, this clause will affect programmes of action such as the one mentioned by Pandit Pant. If you want to make distinction between acquisition of property for redistribution among the general public, then the clause as it is, may remain but it does seem very drastic if you want to cover all public purposes. My suggestion therefore is there ought to be some limiting clause or the words 'public purpose' should be substituted by 'Government purpose'. Panikkar observed that by putting 'just' before the word 'compensation' it was made justiciable whereas the compensation paid by Government was not questionable under Section 299 of the Government of India Act. Hence, he urged for the removal of the word 'just' from the clause. The Chairman, then announced that the word 'just' would be dropped. Pant decided to justify such a step. He drew the attention of the members, of the context of Section

1. Ibid, p. 274
2. Ibid, p. 274
3. Ibid, p. 274 (last para).
299 which "was put in order to reassure British commercial firms that their property would not be acquired by the Indian legislatures except on payment of adequate compensation". Pant observed that the restriction of adequate compensation could be put on acquisition for Government purposes. But, if the acquisition was for social purpose "payment of compensation should not even be compulsory and it should be left to the Government concerned to decide how they will achieve that purpose". Syam Prasad Mukherjee pleaded for a uniform procedure for the entire Union and "the principle that compensation should be paid should be uniformly accepted but the details may be worked out by the legislature concerned". Alladi suggested for the adoption of the language of Section 299 as it worked well in the Congress and non-Congress Governments for over 10 years without difficulties. He meant by it that the word 'just' to be dropped to make compensation non justiciable. Rajagopalachari pointed out that if it was a case of adoption of Section 299 "it should not be put in the Fundamental chapter but left to the Constitution". Is it a slip to say, 'left to the legislature', or it means that it should be somewhere in the Constitution and right to property and compensation should not be a Fundamental Right as Section 299 was not a Fundamental Right. Then the Chairman referred to the suggestion of Pandit Pant of the substitution of the words 'public use' by the words 'Government purposes' to make compensation payable for any property acquired for any purpose. The Chairman said that in other cases 'there will be compensation if the legislature chooses. If the word 'just' is there, it will have to be determined by the Federal or other Courts". Alladi observed that "it is a matter of

1. Ibid, p. 275.
2. Ibid, p. 275.
adjustment. Half of the loaf is better than no loaf\textsuperscript{1}. Pant in reply stated that he had no objection for the retention of the word 'just' if 'public' is replaced by 'Government'\textsuperscript{2}. It means that in the case of acquisition for 'government purpose' compensation might be justiciable but if it is for social purpose, legislature should be supreme to pay or not to pay or to determine the 'compensation'. Chairman pointed out that it was not an agreement\textsuperscript{3}. Munshi suggested that if there was no agreement it should be put to vote whether that it should be 'public use' or 'governmental use'\textsuperscript{4}. Chairman took a formal vote and declared the motion dropped. It means 'public purpose' is retained. The Chairman observed "if the word 'just' is kept we came to the conclusion that every case will go to the Federal Court. Therefore, 'just' is dropped. What remains in the clause is 'public purposes'\textsuperscript{5}". Pandit Pant's move to substitute "Governmental purposes" for 'public use', was defeated by just a majority of two votes\textsuperscript{6}. It was decided to delete the word 'just'\textsuperscript{7}. The Advisory Committee in its interim Report on April 23, 1947. In the Annexure entitled 'justiciable fundamental rights' under the sub-heading 'rights of equality' in Section 5, \textsuperscript{8} right to acquire hold and dispose of property is

\begin{enumerate}
\item Ibid, p. 275.
\item Ibid, p. 275.
\item Ibid, p. 276.
\item Ibid, p. 276.
\item Ibid, p. 276.
\item Ibid, p. 291 Meeting of the Advisory Committee, April 22,1947.
\item Ibid, p. 291.
\item Ibid, p. 296 (last para) No citizen shall on grounds only of religion race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade business profession within the Union.
\end{enumerate}
guaranteed. Under the sub-heading 'miscellaneous rights' in Section 19 the conditions to be fulfilled for the deprivation of a person of his property by State are mentioned.

(8) COMMENTS AND SUGGESTIONS OF THE DRAFT CONSTITUTION:

After submitting the draft constitution to the President Pattabhi Sitaramayya and others suggested a minor change of punctuation mark in Article 24 (2). The Constitutional Adviser did not agree this but recommended a different minor amendment. The Constituent Assembly published it on February 26, 1948 for comments and suggestions of members and to public.

Guptanath Singh suggested an amendment to clause (2) of Article 24 leaving the Government free to pay or not to pay compensation. This was not favoured by the Constitutional Adviser who quoted inappropriately a provision in the Constitution of U.S.S.R. in support of his contention. L.N. Sahu suggested the

1. Ibid, p. 298, S.19: No property movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined (page 298).
3. In clause (2) of Article 24, after the words 'any interest in' or the words 'any interest' be inserted. (p. 47 Vol. Iv).
4. Guptanath Singh: That in clause (2) of Article 24 for the words 'No property' the words 'All property' and for the words 'unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixed the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'with or without compensation as the Government thinks proper' be substituted.
5. This amendment, as it is worded, seeks to provide that all property, movable or immovable, shall be taken possession of or acquired for public purposes with or without compensation as the Government thinks proper. Even in the USSR "The right to citizens to personal ownership of their incomes from work and of their savings, of their dwelling-houses, their household furniture and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens is protected by law". (Article 10 of the Constitution of the USSR) p. 47.
addition of the words "The right of property cannot be exercised contrary to the good of the society". The Constitutional Adviser felt that this was not clear and suggested the possibility of an acceptable amendment without himself actually suggesting it. Perhaps, it would have been very useful if it would have been done. P. S. S. enquired about the purpose of Article 24 (3) (b) for which the Constitutional Adviser in his note replied that the exemption for reason of public health or on the ground of prevention of danger to life, were meant to enable the municipal or other local authorities to exercise the power of demolishing insanitary or insecure buildings, for the promotion of the health of the inhabitants of the locality or the prevention of danger to life and in the case of the State to exercise the power of destroying any infected fruit-trees or crops in order to prevent widespread range by any insect pest or plant-disease. "The Ministry of works, mines and power suggested that compensation should be equitable or 'fair' or 'just'.

1. Ibid, p. 47.
2. Note: Ibid, p. 47; the precise implications of this amendment are not clear. If the implication is that the state may by law delimit the Exercise of rights of private property in the interests of the general public, an appropriate amendment should be made in clause (3) (b) eg. by adding the words 'or for the general welfare of the community' at the end.
3. The ministry of works mines and power suggested that in clause (2) of article 24 the word 'equitable' should be inserted before the word 'compensation' in the first place where it occurs. Other possible alternatives are 'fair' or 'just'.
4. The Ministry of Industry and supply suggested that clause (2) of Article 24 should specifically provide for the payment of 'reasonable' compensation when property is acquired for public purposes and has pointed out that the Government of India resolution dated April 16, 1948, in which Government industrial policy was announced, declares that in the event of acquisition "the fundamental rights guaranteed by the Constitution will be observed and compensation will be awarded on a fair and equitable basis". The Ministry has further stated that the Draft Constitution, recognizes the right to compensation but a guarantee of 'reasonable' compensationshould, it feels, be also explicitely declared.
The minority of industry and supply suggested the payment of 'reasonable' compensation, when property was acquired for public purposes. The ministry quoted the Government of India resolution dated April 16, 1948. (The Industrial Policy Resolution) in which it was declared that 'compensation will be awarded on a fair and equitable basis'.

The Constitutional Adviser thought differently and stated in his note that it was not necessary 'to insert the word 'equitable' or the word 'just' or the word 'reasonable' before the word 'compensation' in the first place where it occurs in clause (2) of Article 24. He was of the opinion that even without these adjectives the noun 'compensation' carries the idea of an 'equivalent'.

Jayaprakash Narayan suggested entirely new Article in the place of Article 24 limiting and subjecting right to property to general welfare of the community and leaving the legislature free to pay or not to pay compensation. The Constitu-

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1. Page 48, Ibid. Note: This amendment involves a question of policy. In so far as it seeks to delimit the exercise of rights of private property in the interests of the general welfare of the community.

2. Jayaprakash Narayan suggested the following to be substituted for Article 24 regarding property.

- The property of the entire people is the main stay of the State in the development of the national economy.
- The administration and disposal of the property of the entire people are determined by law.
- Private property and economic enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.
- Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned expropriated or socialized but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.
- Expropriation orders against the Federated States, Provinces, sub-federations, municipalities and associations serving the public welfare may take place only upon the payment of compensation.
ational Adviser felt that amendment to delimit the exercise of rights of private property in the interest of general public, could be given effect to by adding "or for the general welfare of the community", at the end of Article 24(3)(b). He quoted Article 10 of the Constitution of USSR to negative. Jayaprakash Narayan's proposed amendment to regulate, limit acquire, requisition, expropriate or socialise private property and economic enterprises as well as their inheritances with or without compensation. Jayaprakash Narayan further suggested of the addition of new Articles 24-A and 24-B. Under 24-A private monopolies such as trusts, cartels, syndicates and the like are forbidden. Under 24-B freedom of association of trade union and other organisations by workers and protection against exploitation are guaranteed.

The Constitutional Adviser in his note on the other hand suggested item 28-A in the Concurrent List, "28-A monopolies and combines" to enable both the Parliament and the legislatures to create and control the operations of combines and monopolies by suitable legislation. With regard to 24-B, he said, that there was no need for the incorporation of these items.

The Drafting Committee met on March 23, 24 and 27 considered the comments and suggestions.

C. The Concept of Right to Property and Compensation - Conflict and Confusion in the Constituent Assembly:—

Provisions relating to right to property were taken

1. Ibid, p. 50.
2. Ibid, p. 50. 24-B.
   (a) to ensure protection against economic exploitation and the development of organisational initiative amongst them, peasants and workers are guaranteed the right to unite into public organisations, trade unions, Kisan Sabhas, cooperative societies as well as social, cultural and technical associations.
   (b) The State shall encourage them in their organisational activities.
   (c) All agreements between the employees and employers which attempt to limit this freedom or seek to hinder its exercise shall be illegal.
3. Ibid, p. 50.
up for discussion in the Constituent Assembly as many as five occasions.

(1) For the first time when the Constituent Assembly took up the property provisions for discussion Raja Jagannath Baksh Singh moved an amendment that the word 'just' precede the word 'compensation' in the article guaranteeing property rights.

S.C. Benerjee hoped that the provisions were sufficient enough to usher in socialism. A.P. Jain argued for the deletion of the clause as it would not do justice to the common man.

S. Nagappa expressed confused ideas of just compensation by proposing that it should be sufficient enough not only for the reasonable maintenance of the person deprived of property but also one or two generations after him. V.E. Tripathi worried about the burden of payment of compensation which would ultimately fall on the peasant under which he would continue to suffer all his life working only for discharging his liability of payment of compensation. V.C. Keshava Rao expressed the same fears. Raja Bahadur Shyamanadan Sinha and other Rajas on the

1. The first time (see III C.A.D. 505-18).
   The second time (see V C.A.D. 372)
   The third time (see VII C.A.D. 18, 75)
   The fourth time (see IX C.A.D. 1191-1302).
   The fifth time (see C.A.D. XI 717).
2. Ibid.
4. III C.A.D. 508-9. He feared that the clause "would protect the microscopic minority of propertied classes and deny the right of social justice to the masses".
6. A member of the U.P. Land Reforms Committee. III C.A.D. 510-13. He was afraid that the clause "may be so interpreted that any progress may be retarded and the Congress and public organisations may not freely advance in the direction, that they intend to".
8. III C.A.D. 514-6
other hand pleaded that the provision for compensation was useful to the peasants also. L. Sinha pleaded for early payment of compensation in view of the plight of the Orissa landlords.

R.K. Sidwa deplored the insistence for payment of compensation in every case of acquisition when legislations were pending in many Legislatures for the abolition of zamindaris by paying some compensation or no compensation. He said that such a provision would enable every owner of property to go to the Supreme Court and get his demand for compensation fulfilled under this clause. This conflict between those who demanded full compensation for the deprivation of any property by the State and those who argued for full powers for legislatures to deal with according to their best judgment without being questioned in a court of law was temporarily resolved at the suggestion of Sardar Patel by the postponement of the discussion to an appropriate time.

(2) When the fundamental right to property was due to be moved for consideration again on December 9, 1948 in the Assembly, T.T. Krishnamachari suggested that it might be taken up later as the Drafting Committee was considering various amendments to the draft article so as to arrive at a compromise. The Assembly accepted the suggestion and the consideration of the article was postponed.

The drafting committee met on March 23, 24 and 27 and considered the comments and suggestions.

(3) When the matter was taken up for the third time, the first of the two articles dealing with right to property namely the right to acquire, hold, and dispose of property was passed by Assembly without debate accepting the amendment proposed by

1. III C.A.D. 517.
2. III C.A.D. 509.
3. III C.A.D. 518.
Bhargava subjecting the right to 'reasonable' restrictions either in the public interest or in the interest of Scheduled Tribes.

(4) THE GREAT DEBATE:

But serious controversy arose with respect to the adoption of clause (24) dealing with eminent domain. The bone of contention was 'compensation'. The Congress Party, the majority party, representing broadly different sections of Indian society in different degrees was unable to give a clear cut solution as there were divisions and conflicting ideas of vested interests within the party.

According to Ambedkar there were three sections in the Congress Party lead by Sardar Patel standing for full compensation as provided in the Land Acquisition Act, i.e. market price plus 15 per cent solatium, another led by Jawaharlal Nehru standing against compensation in that sense, and a third led by Mr. Pant who was more concerned with the success in the abolition of zamindaris in the process of which he opposed to justiciability of compensation.

But there was no conflict originally between them as all the three leaders expressed earlier that right to property should not be allowed to obstruct the implementation of social welfare measures by the proposed class taking recourse to the courts.

When the matter was taken up in the Constituent Assembly on 10th September, 1949, the President said that, firstly, the amendment number 369 of Article 24 be taken up for discussion. He said that two months were spent on amendment No. 369 of Article 24 itself. Jawaharlal Nehru moved the amendment to Article 24 and a substituted new Article 24 was presented before the House.

1. Article 19 (5) of the Constitution C.A.D. VII 18,75.
2. Subsequently renumbered as Article 31.
3. (1955) Rajya Sabha Debates, Column 2450 Dr. Ambedkar explained it during the debates on the 4th Amendment to the Constitution.
4. IX C.A.D. p. 1191-92. Article 24: It is virtually that this amended article that was subsequently adopted as Article 31.
Jawaharlal Nehru gave a very long speech explaining the intricacies of the Article. He referred to the great argument that had taken place, not in the House but outside among members over this article, and said that the questions involved were relatively simple. It was true that there were two approaches to those questions, the two approaches being the individual right to property and the community's interest in that property or any other community's right. He said that "there is no conflict necessarily between the two: sometimes the two may overlap and sometimes there may be, if you like, some petty conflict. This amendment that I have moved tries to remove or to avoid that conflict and also tries to take into consideration fully both these rights—the right of the individual and the right of the community".

He emphasised, "But more important today the community has to deal with large schemes of social reform, social engineering, etc., which can hardly be considered from the point of view of that individual acquisition of a small bit of land or structure." He said "How is it going to balance all this? You may balance it to some extent by legal means, but ultimately the balancing authority can only be the sovereign legislature of the country which can keep before it all the various factors—all the public political and other factors—that come into the picture.".

He said and felt that he succeeded in the attempt of bringing together and compromising various approaches on this question. He observed "but I think it is a just compromise and it does justice and equity not only to the individual but to the community." Then he analysed Article 24 thus:

1. Ibid, p. 1192.
2. Ibid.
3. Ibid.
The first clause in this Article lays down the basic principle that no person shall be deprived of his property save by authority of law. The next clause says that the law should provide for the compensation for the property acquired and should either fix the amount of compensation or state the principles under which or the manner in which the compensation is to be determined. The law should do it. Parliament should do it. There is no reference in this to any judiciary coming into the picture. Much though has been given to it and there has been much debate as to where the judiciary comes in. Eminent lawyers have told us that on a proper construction of this clause, normally speaking, the judiciary should not and does not come in. Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally, the judiciary comes in to see if there has been a fraud on the Constitution or not. But normally speaking one presumes that any Parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as to the community. He said clause (4) was inserted to avoid hasty legislation by legislatures by providing presidential assents. He said: "When we pass through great ages of transition, the various systems—even systems of law—have to undergo changes. Conceptions which had appeared to us basic, undergo changes." He reaffirmed the pledge of congress for the abolition of zamindaris. We will honour our pledges. Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in judgment over the

1. Ibid, p. 1193.
2. Ibid, p. 1193.
Sovereign will of Parliament representing the will of the entire community".

It is clear that deliberately the provisions were kept in ambiguity excepting in the case of zamindari abolition. Shri Syamanandan Sahaya referred to clause (4) and said that the recommendations of the Fundamental Rights Committee and Prime Minister's opening speech both assumes that there was no question of expropriation without compensation but clause (4) says that a bill pending before legislature shall not be called in question in any court of law for contravening provisions of clause (2). He observed that it meant acquisition of private property by legislature without paying any compensation if the legislature wanted to do it. The President clarified Sahaya's point that clause (2) was modified in the case of pending bills.

Ghanshyam Singh Gupta said that there was no doubt that clause (4) was an exception for clause (2). Then, Damodar Swaroop Seth moved his amendment Number 369 for the provisions of Article 24, and suggested a substitution to Article 24 which completely gives right to the society over private property. He visualised, "this Article 24 which is now under discussion, I am sure, is soon going to be a Magna Carta in the hands of the capitalists of India". He said that the Prime Minister

1. Ibid, p. 1195-1196.
2. Ibid, p.1199. Article 24(a) The Property of the entire people is the mainstay of the state in the Development of the National economy. (b) The administration and disposal of the property of the entire people are determined by law. (c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses. (d) Private property, and economic enterprises as well as their inheritance may be taxed, regulated, limited acquired and requisitioned expropriated and socialised but only in accordance with law. It will be determined by law in which cases and to what extent the owner shall be compensated. (e) Expropriation over against the States, local self-governing institutions, serving the public welfare, may be taken place only upon the payment of compensation.
wanted to establish socialistic republic and avoid revolution. The Congress President promised every now and then that they would establish a classless society. But it would not fall from heavens. It should be planned. He said that it was not possible unless we discard the idea of natural right in property and also the idea that property was a projection of personality and invasion of property was an interference with the personality itself. He said "we cannot confuse personality with property nor can we forget the social and functional character of property. Man has no natural right in property. Claim to property was acquired by law recognised by community". "Property is a social institution and like all other social institutions, it is subject to regulations and claim of common interests". He noted that in United States of America when slavery was abolished no compensation was paid though the owners paid cash while acquiring slaves. The State should have full rights over property. He observed, "It is almost universally recognised that full compensation to the owners of properties will make impossible any large project of social and economic amelioration to be materialised. It is impossible for the State to pay owners of property in all cases and at market value for the property requisitioned or acquired in times of emergency or for the purpose of socialisation of big industries with a view to eliminating exploitation and promoting general economic welfare. Partial compensation is therefore suggested by many thinkers in the world as a via media and they maintain that partial compensation will neither hinder socialisation or at the same time will it deprive a large number of persons of means of their livelihood. Much can be said in favour of partial compensation if socialisation is to be carried on gradually and individual economy is retained over a wide field. Even partial compensation will have no justification when general transformation of economic

1. Ibid, p. 1200.
2. Ibid, p. 1200.
structure on socialist lines takes place. In such a case all that the persons of vested interests can claim in a socialist economy is an opportunity and a share on par with all other citizens of the State. Thus it is not possible, to be dogmatic on the question of compensation according to social will and prevailing social conditions. Then Professor Shibhonlal Saksena moved his amendment to substitute some clauses. He said that Clauses (1) and (2) of Article 24 moved by the Prime Minister was a mere reproduction of Section 299 of the Government of India Act 1935 minus three words "the payment of". He complained that we were perpetuating Section 299 with two exceptions in clauses (4) and (6). These amendments have been specially devised to protect the zamindari legislation of the Uttar Pradesh and Bihar and Madras, clause (4) to protect the zamindari abolition Bill in the Uttar Pradesh and clause 6 to protect the zamindari abolition Acts passed by the Bihar and Madras legislatures.

Then he referred to the world Constitutions and observed that in any law the word 'compensation' means fair and equitable compensation. He said that under Nehru's amendment the final authority with respect to compensation was not Parliament but Supreme Court. He apprehended that whatever principles would be made by Parliament and legislatures might be declared by the courts to be fraudulent and that defeat socio-economic reform.

He opined that under his amendment parliament would be the final authority and the Supreme Court could not sit on judgment over the principles laid down by the Sovereign Parliament. He questioned whether the House was prepared to fetter the hands of the future Parliament. He observed that present Constituent Assembly has been criticised on the ground that it has been elected on the basis of indirect votes of persons who themselves have been elected through a narrow adult franchise. The new Parliament has to be elected by adult franchise, and by this article we bind the Sovereign Parliament of the future which

1. Ibid, p. 1200.
will be elected by adult suffrage and say that it shall not be the final authority to determine the principles on which properties should be acquired for national purposes\(^1\).

He pleaded that the future Sovereign Parliament should not be bound on such a vital matter, and exposed that the House itself was keenly divided on this matter.

He observed that if this Article were to be passed in the form in which the Prime Minister has proposed "it will be the darkest blot on our Constitution\(^2\). He referred to clause (4) and (6) and then said that it was a sort of a Caryesion that the principles laid down in clause 2 of the Article would lead to chaos and revolution if applied to acquisition of huge zamindari properties in Uttar Pradesh, Bihar and Madras. He observed there "were discriminations between zamindari property already acquired or to be acquired under a pending bill and zamindari property to be acquired hereafter. There is thus also discriminations between industrial property and zamindari property\(^3\). He criticised Nehru's amendment and prophetically observed "It will be a lawyer's paradise if this Article is passed in this form\(^4\). He quoted Gandhi's statement at the Round Table Conference. "...I am afraid that for years to come India would be engaged in passing legislation in order to raise the down-trodden the fallen from the mire into which they have been sunk by the capitalists, by the land-lords, by the so called higher classes and then subsequently by the British Rulers. If we are to lift these people from the mire then it would be the bounden duty of the National Government of India, in order to set its house in order, continuously to give preference to these people and even free them from the burdens under which they are being crushed\(^5\). He said that protected discrimination in favour of weak was not discrimination.

1. Ibid, p. 1203.
2. Ibid, p. 1203.
5. Ibid, p. 1204.
Then Saksena said that Gandhi wanted that India should be engaged in passing legislation to equalise conditions. That was the first task of the National Government. Jawaharlal Nehru by his amendment made all this impossible. "There is no possibility of equalising conditions, because we cannot take away any property for public purposes without full compensation". The Father of the Nation provided one formula for it. He quoted again Gandhi and said that at the Round Table Conference Gandhi said that "every title to property should be examined, whether it is legitimate or not. He was fighting to see that whatever property has been acquired was acquired legitimately and that it was not in conflict with the interests of the nation. That was the view of the Father of the Nation".

When the President again intervened to be more specific, Saksena said that his amendment was that "the parliament is the ultimate authority to determine whether the compensation should be paid or not instead of the Supreme Court".

He said that was the only difference between his amendment and that of Prime Minister. He quoted Gandhi to say that in the interest of the people if any place is necessary whatever might be the interest of the concerned owner, he would be dispossessed without any compensation. "Because, if you want this Government to pay compensation it will have to rob Peter to pay Paul and that would be impossible". This was the view of Gandhiji on compensation. Saksena commented that Nehru was devoid of his usual high spirits in moving the amendment and it was clear that he was torn with in himself and moved the amendment which he did not believe. This shows clearly that the pressures brought about by vested interests prevailed over a more socialistic approach towards the problem of property and poverty.

1. Ibid, p. 1205.
2. Ibid, p. 1205.
Shri Brajeshwar Prasad moved his amendment according to which all private property and the means of production could be acquired by the Government and compensation should be decided by the President in each case. And, that within four years from the date of commencement of the Constitution all agricultural private lands shall be vested in the State. B. Das argued that there could not be justiciability of compensation. He again observed that "If we do not give compensation and concede justiciability there will be no industrial development in the country". He said the interest of the millions of people could not be sacrificed at the alter of a handful of persons.

He observed that a system of peasant proprietorship is the greatest hinderence in the way of socialism and progress. "There is much truth in the Marxist theory that the State is an instrument of exploitation in the hands of the dominant group in society." He noted that "this Constitution is not going to be a permanent Constitution of this Country". Hence all "the power should be vested in the hands of our leaders". In this connection he wanted that the power should be in the hands of the Central Government and not Provincial Government. Krishna Mohan Tripathi moved his amendment to Article 24 under which the entire category of property movable or immovable could be taken possession or acquired under any law passed by Parliament or Legislature of a State for the distinct purpose and object of gradually and peacefully establishing a classless society in India. The principles of law authorising the taking possession of or acquisition should in no case be called in question in any court of law.

He very rightly observed that the court might give relief in individual cases if any wrong should be done in the process.

1. Ibid, p. 1207.
2. Ibid, p. 1207.
4. Ibid, p. 1209.
of execution of the law providing for compensation. He said, in the Prime Minster's amendment, discrimination was shown between industrial property and landed estates. He pointed out that there was no provision for socialisation of landed property excepting in such Provinces as had either passed necessary Acts or as would pass Acts or introduce Bills by the 26th January, 1950. He said that Article 24 as described by others really represented the soul of the Constitution. He opined that the entire pattern of our national economy in India would resolve around Article 24, "and therefore if we make any mistake in denying private property. I feel that we shall be doing something which will be strongly hindering our progress on the path of establishing a classless society in India". He said that every fundamental right was conditioned by certain terms. So with respect to private property also the condition should be that it should be merely public trust, which could be utilised in the interests of the community at the instance of the Goverment. H.V. Kamath moved his amendment observing that it had a vital bearing on the socio-economic structure of the State. He quoted 'Ishopanishads' to show that private property was meant to be for the public good. He observed that "The Clause, as it stands, is somewhat ambiguous though the Prime Minster did remark that Parliament and Legislature will be ultimately Sovereign. But I feel that no loop-holes should be left for any one of those few who might take it into their heads to fight against the interests of the community. It is for this purpose in view that I want this clause to be made clear on this point that neither the principles nor the manner of compensation shall be called in question in any court of law". He opined

1. This discrimination continues to date as the President of India Dr. N. Sanjeeva Reddy referred to the concentration of wealth in the urban property. (His speech inaugurating the Golden Jubilee Celebration of Andhra University, June June 1978).
2. Ibid., p. 1210.
3. Ibid, p. 1215.
that only if the principles are wrongly or unjustly applied it could be questioned, and only the application of the principles should be justiciable. He also said that there should be no discrimination between landed property and industrial property in the matter of acquisition, both should be non-justiciable. He wanted safeguard only against executive.

K.T. Shah moved his amendment and reiterated his stand that the natural wealth and resources of the country should not be owned absolutely by any individual and they belong to all the people of India collectively and managed by the people collectively and the profit motive shall be eliminated in all such enterprises. He further suggested that in Article 24 clause (3) for the words 'unless the law provides for compensation' the words 'subject to such compensation' be substituted. He also pleaded that no compensation should be paid in respect of public utility in social service managed by individuals.

He also suggested any activity in agricultural lands for 10 years should be taken away from the owner and any urban land un-utilised should also be taken. He also questioned the proposition that "there shall be no expropriation without compensation". He observed it could not be applied to all properties indiscriminately without reference to the means by which such property was acquired. He said there are cases in United State of America and other countries where nefarious forms of property have not been compensated, example, slavery. "I may say the economics has suffered of this divergence from ethics, and holding property sacrosanct and demanding compensation even if the property is acquired, by force or fraud or is used or abused or even unused". He suggested that in such cases there should be no compensation. He referred to the concept of public purpose and said that it should be wide enough to include everything useful to the community and not to an individual. Compensation

1. Ibid.
2. Ibid, p. 1215.
need not be paid in all cases. He observed, "Now, it would be
the best course for the legislature to lay down only broad
principles according to which in any acquisition, where it is
decided to give compensation, that compensation will be cal-
culated and the calculation should be made by tribunals, which
tribunals as I have always been insisting should be free from
any influence or contact with any other organ of the Government
whether executive or legislative." 1 Then he mentioned categories
of property in which no compensation should be due on the basis
of economics and ethics, for example, agricultural property
utterly unused for a number of years. And, property used for
unsocial purposes should not be compensated. He argued that
in the same manner in the cases of public utility and social
services operated by private individuals no compensation be
paid as they earned profits in excess of conferment of benefit
on public. He also mentioned that "with regard to urban land
which, very often, is held merely in the hope that by develop-
ment social services, and of public utilities the values of the
land will be increased, people simply do not want to invest
any more capital and just wait, until purely by the conjunction
of and by the operation of social forces, the value of the land
will be increased. They simply allow the forces of nature to
play upon such lands, and therefore no compensation should be
paid to them. "With respect to industrial and commercial under-
takings as they have already earned sizable profits as in mines,
land and forests, they also were not entitled for compensation.
No compensation should be paid in the case of banking, indus-
tries where any artificial value was given to them" 2. Shri
Jadubaus Sahay moving his amendment observed:

"There is conflict and confusion in our minds. Therefore
I have informed you that only first clause should remain and all
others should be deleted. Let it be left to the State legislature.

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2. Ibid, p. 1220.
or Parliament or to our leaders who run the Government to give direction to the country to say how laws should be formulated regarding property in any province.\(^1\)

Shri B. Das in his amendment went to the other extreme and suggested for the words that "unless the law provides for compensation", the words "unless the law provides for fair and equitable compensation" to be substituted. He also referred to the Congress election Manifesto 1945-46 which promised equitable compensation in the abolition of intermediaries. S. Nagappa moved his amendment suggesting compensation not more than five per cent of the market value. He made it clear that they were not going to pay justiciable compensation and whatever they would give was supposed to be 'just and equitable'. He observed that the property should be at the disposal of the country as a whole. He advocated that the lands taken from the zamindars should not be given to the petty zamindars. The solution of the problem lies in nationalisation and socialisation of lands. "The tillers of the soils must be the owners"\(^2\).

Pandit Thakur Das Bhargava wanted the words "appropriate" before the word principles in clause (2) of Article 24 (now Article 31). In the case of the abolition of zamindaris the compensation should be what the legislature would think fair. In another amendment he wanted the words 'proper' or alternatively 'fair' to be inserted before the word 'principles'. Principles made by the legislature were unalterable and could not be questioned in any court of law. But, he said that the word compensation itself meant quid pro-quo\(^3\).

Dr. P.S. Deshmukh moved his amendment in which he wanted the words "and paid" added after the words "is to be determined in clause (2)". He said that the formula presented to the house

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1. Ibid, p. 1221. emphasis mine. Ultimately, after many battles at the bar between the Parliament and the Supreme Court this view is being incorporated in the 45th amendment to the Constitution of India.
2. Ibid, p. 1225.
3. Ibid, p. 1227.
was half hearted as it would neither protect nor confiscate the property. He recommended only clause (1) which was the same as Government of India Act 1935 by which "No person shall be deprived of his property save by authority of laws". He said none in the House had a clear conception of right to property including socialists, as they were also not for expropriation. No definite policy could be laid down by the House. Hence, he suggested Parliament should be left free to determine property rights from time to time. If his suggestion had been accepted along with the conditions of obtaining of signature of President of India for every bill of acquisition no serious litigation would have cropped up. Naziruddin Ahmed observed that the word 'compensation' would mean sufficient, fair, legal or equitable compensation. He said that payment of fair compensation was just and equitable. He quoted Encyclopaedia of Britanica Vol. 6 page 172 - 179, to show the meaning of compensation as understood in the civilised parts of the world. He said that in peace treaties in world war the principles of inviolability of private property was respected. He further defended zamindars as zamindary property was like any other's property.

Smt. Poornima Benerji in her amendment suggested in sub-clause (b) of clause (5) of Article 24 after the word 'property' the words "or for ensuring full employment to all and securing the just and equitable economic and social order". She said that the object of her amendment was to give effect to some of the principles in the Directive principles of the State Policy. Kala Venkata Rao in his amendment suggested that the word '18 months' be substituted for the words one year in clause (6).

1. The forty fifth amendment to the Constitution does precisely the same emphasis mine.
2. Ibid, p. 1234.
4. This is what has been done by the 25th and 42nd amendments to the Constitution of India.
He said that clauses (4) and (6) referred to a particular species of property namely zamindari property. He objected using the property in this connection because in 1802 when Sanad was granted it was only to collect the rent. They were only agents to collect the rents and were asked to pay a portion of it as Peshkash to the Government. There was no right to any property. Even the right to collect rent itself was restricted in principle by regulations. They were collecting more rents than was permitted and were swallowing. He said that the right of Parliament to fix compensation or the principle of compensation must not be challenged. Only when a fraud was committed on the Statute the courts could interfere in the matter. He said that he wanted 18 months period instead of one year in clause (6) for the reason that if the Constitution would not come into force on 26th January, 1950, there would be difficulty to Madras Bill which received assent in March, 1949. It was only a formal amendment.

Jaspat Roy Kappor said that the argument that the words 'fair or just', were redundant was not convincing as they were dropped after due deliberation. He said that as the feelings were running high in the house on these words at least the word 'equitable' should be inserted before the word 'compensation' to make it justiciable. He observed that there was no question of fraud as the Congress was committed for equitable compensation. He noted that every one had his faith in Parliament and legislature that they would provide equitable compensation. He said that "the word equitable" was a flexible one; what was equitable to-day might not be equitable tomorrow. It would change in accordance with the existing political theories and

1. Ibid, 1240. "In Madras, in the year 1802 the total rental of all estates was Rs. 72 lakhs of which 48 lakhs were paid to the Government as Peshkash. Now the zamindars of Madras are collecting Rs. 219 lakhs as rent but pay the same 48 lakhs as Peshkash even today".

2. Ibid, p. 1241.

the existing accepted economic principles of the society. He hoped "our judges and our courts of whom we had every satisfactory experience would never fail us". "My submission is that our judges have always interpreted laws in accordance with the needs of the society and in accordance with the accepted political, economic and social theories of the day". He said that they should not be afraid of using the word justiciable. He said that if the judiciary would be unreasonable in asking more compensation the Government could say yes, pay it, and whatever it wanted from the party could get under clause 5 (b) by taxation. K.T.M. Ahmed Ibrahim in his amendment to clause (1) suggested, "and except on payment of fair and equitable compensation based on the market value". He said otherwise "there will be no incentive to people to invest money in land or commercial undertakings or industries". He said the problem to zamindari abolition should not be mixed up with the general fundamental right to property. He said that if necessary zamindars might not be paid any compensation. Phool Singh in his amendment to clause (2) suggested that "private property and private enterprises are guaranteed to the extent they are consonant with the general interest of the toiling masses". He also suggested that compensation should not be questioned in any court of law. He said that in fixing the amount of compensation apart from the value of the property other considerations had to be taken in account, such as the capacity of the State to pay compensation, the profit that the owner of the property had already derived and the purpose for which the property had been acquired. So also he said whether it should be paid in cash or not at the time of acquisition could be left to the Parliament.

1. Ibid, p. 1245. His hopes appear to be belied.
2. Ibid, p. 1248. It is not known in such a case why he was pleading for the word justiciable.
5. Ibid, p. 1251.
Guptanath Singh in his amendment proposed in clause (2) for the words "no property" the words 'all property' and "with or without compensation as determined by law". He observed "if you trace the history of private property, you will be pained to find that it is a tale of awful woes, a story full of fraud, felony, exploitation, expropriation, inhumanity, injustice, treachery, torture, tyranny and tears". He cited Shanti Parva, Adhyaya 15, Shloka 2 where the Rishi described property beautifully, plainly and frankly.

According to vedic parlance all the property belonged to the nation. He also cited Manu who said that the land belongs to the cultivators. He said zamindars had no claim for compensation. He cited the example of some people from Uttar Pradesh claiming compensation for Red Fort from Nehru. He observed and pointed out the dichotomy in Nehru's speech on the amendment and his amendment. The speech was revolutionary and the amendment was different. He observed "Pandit Nehru was certainly a revolutionary mind but the Article in its present form seems to be framed by brains controlled by some unseen forces".

Prabhu Dayal Himatsingka moved his amendment and said that the Prime Minister in his speech stated that the compensation to be paid would be equitable and fair. This was in tune with the industrial policy declared on 6th April, 1948 inviting foreign capital. He pleaded for a clear definition of compensation as fair or just to remove all doubts. He said it would raise confidence and permit industrialization of the country. B.P. Jhunjhunwala in his amendment said that it should be considered whether the property in question was being utilised by the owner or holder so as to make a definite contribution to

1. Ibid, p. 1252.
2. "Colossal money, big capital, cannot be amassed unless and until you scratch the hearts of others, commit heinous acts and kill others by entrapping the people just as the fishermen butcher fishes by entrapping them".
4. "Always take wealth as a source of great evil. Surely, it cannot impart even little of pleasure. The maxim "those who are after riches are even afraid of their own progeny" has been proclaimed everywhere", Ibid, p. 1256.
the sum total of the country's wealth in applying the principles of compensation. He observed that the purpose for which the property was acquired in fixing the compensation should be taken into consideration and the capacity of the person from whom it was taken.

Lakshminarayan Sahu in his amendment proposed that persons who enjoy the fruits of property for 30 years should not get any compensation. He quoted some verses from Shankaracharya and said that capitalism should be abolished.

Mahaboob Ali Baig, in his amendment to clause (2) proposed the words "unless due compensation is paid for" or alternatively, "unless the law provides for due compensation". He observed that our Constitution did not propose abolition of private property unlike the constitution of U.S.S.R. He was mistaken because a limited right to property was provided in the U.S.S.R. Constitution. He advocated for justiciability of compensation as the provision was in Fundamental Rights Chapter.

Smt. Renuka Ray moved her amendment to clause (4) taking away justiciability of compensation even in the case of fraud and inadequacy. She said "Shorn of all legal technicalities as we can see it, the position really comes down to this, that it is not the sovereign Parliament that has the last word, but it is the court of law that will have the last word in case of other properties except those covered by clauses (4) and (6). I would like to ask that what justice is there for this procedure? There are other fundamental justiciable rights, but even these rights are subject to the proviso that it is under the authority of law. ex. The right of freedom of speech and expression, to assemble freely without arms, to form associations or unions—all have limitations, by which they come under authority of Parliament. What is the justification in 1947 for us to place property on a very different basis? She said even if Parliament some times acts hastily, there was second chamber and also

1. Emphasis mine.
2. Ibid, p. 1261.
President. She said that the safeguards here were surely enough. She observed,
"it is not for us to include provisions whereby there can be various interpretations given by courts of law. If there can be various interpretations amongst a few lawyers, even now just think of the varying interpretations that we shall have with different courts deciding differently. As I said before it will indeed become a lawyer's paradise and litigation will become even more widespread"\(^1\). She said, "A court of law may decide that even paying half of the value is fraudulent. There will be nothing to debar it unless this amendment is included"\(^2\).

H. Siddaveerappa proposed in his amendment that the explanation to clause (4) should contain a proviso to include Ryotwari tenure from the power of acquisition of legislatures\(^3\).

K.M. Munshi moved his amendment in which he wanted that in clause (5) the words "save as provided in the next succeeding clause" be omitted. Secondly for sub-clause (a) of clause (5) he proposed "the provisions of any existing law other than a law to which the provisions of clause (6) of this article apply" or he said it was a verbal change because the words SAVE etc., were intended to govern only sub-clause (a) and not (b) of clause 5. He mentioned one typing mistakes by which in clause (1) after the words "the compensation has to be determined" the words "and given" are omitted. He said that in the reading stage or at a suitable time the words "and given" will be accepted\(^4\).

Krishna Chandra Sarma in his amendment wanted addition of clause (7) in which "the Parliament by law in case the social and economic conditions so necessitate provides for the socialisation of any class of property on such terms and conditions as

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1. Ibid, p. 1261. Subsequent constitutional history testifies this.
2. Ibid, p. 1262.
provided in the law. He said "the present day conception of property is a functional conception." So, two things arise. What is the function, work or place of the property as such in the social and economic structure of the society? Secondly what does the man who claims the property do with the property? If the property does not help in the performance of any function or work and has no place whatsoever in the moving changes and structure of society, then the property is nothing, it is a useless thing and nobody can make any claim to it as property. He said "as regards to compensation, I beg to submit that property is a human institution. You cannot enjoy unless society permits you to hold it, to enjoy it. The right to property is limited by social conditions." He argued that as property was a social institution compensation would mean the will of the people. Property was always subject to discretion of the superior, community, King or State. The question of compensation should be determined with reference to the function of the property. Kameswara Singh of Darbhange questioned how the House made the descrimination between pre-constitutional confiscatory and post-constitutional confiscatory laws from the point of justiciability of compensation. He said "I am aware of the vote of the congress party which is in an overwhelming majority in the House is pledge bound to abolish the zamindari system but it is equally pledge bound to do so on payment of equitable compensation." He said that with respect to clauses (4) and (6) the amendment in fact was retrospective in effect and took away the justiciable rights under Section 299 of Government of India Act. Then, Alladi Krishnaswami Ayyar declared that all doubts were removed about the manner of payment which had given rise to some difficulty in interpretation. "The Article now drafted merely provides that the law must provide for compensation for the property taken into possession of or acquired.

1. Ibid, p. 1266.
2. Ibid, p. 1268. He followed the functional as well as collectivist theory of property.
3. Ibid, p. 1270
This, taken along with Entry No. 35 in the Concurrent List already passed by this House which enables the Legislature concurred to provide for the manner of payment, removes all possible manner of doubts in regard to the question whether compensation need be paid in the current coin of the realm and immediately\(^1\). Alladi referred to the controversy about compensation in clause 24 which was only a reproduction of Section 299 in substance and said "In this context, it is necessary to note that the language employed in Section 299 and that employed in Article 24 is not in Parimateria with the language employed in corresponding provisions in other Constitutions referring to the compulsory acquisition of property on payment of just compensation. The expression 'just' which finds a place in the American and Australian Constitutions is omitted in Section 299 and in Article 24. There is no reference to any principles and the manner in which the compensation is to be determined at all in the Australian or in the American Constitution. The principles of compensation by their very nature cannot be the same in every species of acquisition. In formulating the principles, the legislature must necessarily have regard to the nature of the property, the history and course of enjoyment, large class of people affected by the legislation and so on. There is the further point that the legislature, in Schedule seven, Item 35 of the Concurrent List already passed by this House, is clothed with plenary power to formulate the principles and the manner of compensation\(^2\). He observed "the Court is not to regard itself the super-legislature and sit in judgment over the act of the legislature as a court of Appeal or review. The legislature may act wisely or unwisely. The principles formulated by the Legislature may commend themselves to a court or they may not. The province of the court is normally to administer the law as enacted by the legislature within the limits of its power. Of course if the legislation is a colourable device or a contrivance to outstep the limits of power,

\(^1\) Ibid, p. 1271. Emphasis mine.
\(^2\) Ibid, p. 1272.
or to use the language of private law, is a fraudulent exercise of power, the court may pronounce the legislation to be invalid or ultra vires. The court will have to proceed on the footing that the legislation is intravires. A constitutional statute cannot be considered as if it was a municipal enactment and the legislature is entitled to enact any legislation in the plentitude of the power confided to it.1 Explain why the exceptions to clause (2) he said, "It was felt, however, that having regard to the fact that a most well-considered opinion by its very nature can be no guarantee against a different view being taken by the High Court in the land and the magnitude of the problem it was thought desirable in the best interests of all concerned to give a quietus to litigation and that is the reason for the insertion of clause (2) and (3) in the Article.2 Why not the same care in clause (2) itself? He said that under clause (4) and clause (6) the President should withhold his assent if the bill has not done justice3.

All this has been done to avoid the delay, trouble, expenses and misery that might result from litigation and conclusive effect is given to the legislation as a result of the President's assent.4 He also said that different High Courts might give different judgments creating uncertainty about the litigation, till the Supreme Court finally decides. Clause (6) is intended to give a quietus for all future litigation by providing for a "certification by President". He, explaining his preference for sociological aspect of law, observed "It must reflect the progressive and social tendencies of the age. Our ancients never regarded the institution of property as an end in itself. Property exists for Dharma"5.

Shri Sewayananand Sahaya said "Recognition of right to private property was a thing that was evolved as society

1. Ibid, p. 1272.
2. Ibid, p. 1272.
grew up. He said that if right to property was removed, might would become right. He observed that if without incentive for the development of private property, man ultimately would be reduced to an automation. He referred to the statement of Sardar Patel in 1939 that national and economic salvation of India did not lie in the abolition of zamindari system. The Congress manifesto said that "intermediaries should be acquired on payment of equitable compensation". He referred to Prime Minister's statement of 1948 and 1949 where he clearly stated that any acquisition of private property would only be on the basis of fair and equitable compensation. Equitable compensation therefore seems to be a recognised fact. He doubted under clause (4) and (6) whether a party could go to a court of law if no compensation would be paid. He also criticised the discrimination and the abolition of zamindaris prior and later to Constitution. He observed that it was not equal protection to law. He pleaded for the deletion of clause (4) and (6).

Pandit Balakrishna Sharma referring to clause (2) of Article observed that it would leave a loophole for a short of legal quibbling. He said that Alladi has very definitely told that "this clause does not empower any one to go to the Court and question the decision of the Government on the grounds that the compensation paid is inadequate or that the principles laid down is in any way inequitous or fraudulent". He pleaded if Alladi meant what he said and the House also thought it so they should accept Smt. Renuka Ray's amendment to clarify the issues by saying definitely that no law taking possession as aforesaid should be called in question in any court either on the ground that the compensation provided for was inadequate or that the principles or the manner of compensation specified was fraudulent or inequitious. He pleaded that no private

1. Ibid, p. 1275
interest should be permitted to stand in the way of achieving the common good.

He said clause (2) was defective. If it was not so as Alladi claimed there was no need for clauses (4) and (6). But, they were made to ensure certain social legislations. If clause (2) was beyond the jurisdiction of the court of the law then clause (4) and (6) were absolutely unnecessary. It meant that there was a doubt. He wanted that it should be absolutely made plain. He quoted Bhagwadgeeta2: "Geetarak has definitely stated that they are thieves and sinners who have only their own comfort before them in acquiring property and who forget that ultimately the whole society has been created with the spirit of Yagna, with the spirit of Sacrifice, with the spirit of mutual aid". He quoted another sloka to show Prajapati created whole universe. He said "if we make the acquisition on certain properties justiciable and acquisition of certain other sort of property, non-justiciable then we will be laying ourselves bare to attack that we are here definitely giving a scope to one section of the society, the capitalist section of society. Does clause 2 mean that we are keeping the door open for the capitalist to go to a court of law and claim that the principle on which compensation has been decided is fraudulent or that the compensation which has been given is not adequate or equitable? Is this the meaning of clause (2)3.

Jagannath Baksh Singh referred to a plea in the Uttar Pradesh Assembly on 8th August, 1946 in the resolution in which it was said equitable compensation would be paid in abolishing zamindari system. He argued that paucity of funds is no argument against payment of compensation to the zamindars when a State Government was making a clean profit of Rs. 45 crores out

1. Ibid, p. 1282.
2. Ibid, p. 1283.
3. Ibid, p. 1284. It is strange that even though so clearly the clauses were analysed showing the loophole in clause (2) the Constitution Assembly chose to keep it blissfully vogue, perhaps, for its own reasons.
out of sale to the tenants of transferable rights in the land acquired. Equality of treatment to all forms of private property was a principle to which commitment was made by virtue of declarations contained in the Objectives Resolution and the provisions of Article 15 already passed. He proposed deletion of clauses (4) and (6) and provide fair and equitable compensation as a justiciable issue. Pandit Govind Vallabhbai Pant observed: "there may be acquisition of an individual's property for a specific and limited purpose. There may be general acquisition of a class of property for the reconstruction of social order. The principles have to be determined in the light of the purpose, the circumstances and other germane and relevant considerations have a bearing on these issues." He observed "so I stand for equitable compensation. Equitable compensation for every one; but what is "equitable compensation". Equity cannot be defined in terms of any yardstick. When we introduce a large measure of social reform then it would be most inequitable to provide compensation on terms which the State cannot fulfil, which cannot possibly be discharged, which will either breakdown the machinery of the State or which will be crumbled under its weight. We have to guard against both these things. The capacity of the State is limited. After all, when we take a measure for the well being of the people while we have to be just to every class, we have to bear the main purpose constantly in mind and that is the welfare of the entire State and of the entire community." He said that "market value is more or less the creature of the State." If you demonetise your currency tomorrow the market value collapses or it may rise hundred fold under a different set of circumstances.

Biswanath Das criticised clause (6) saying that it should be treated apart with the clause (4). He considered provision

1. Ibid, p. 1236.
2. Ibid, p. 1287.
for the reservation of bills for the assent of President was against State autonomy. He questioned that why should the Bills of Madras and Bihar which were passed by both Houses with prior permission of Government should go to President abolishing zamindaris in Orissa, Bengal and Assam and the rest of India was impossible. He said "zamindars, clever as they are with their long purse, with their clever brain, their intelligence and intellect and above all with the hired brain that India is capable of placing and talented Universities are capable of providing them they will make this Constitution as a barricade against progress in future in this regard". He pointed out that the zamindari was only an office. That was the view expressed in the permanent settlement Regulations. He referred to the Prakasam Committee Report which was supported not only by the Lower House but also by the Upper House of the Madras legislature. He referred to the pledges in elections of 1937-46 made to the people for abolishing the zamindari.

Begam Aizaz Rasul said that the Article was neither fair nor just. She criticised clauses (4) and (6) for denying recourse to courts. She said clause (4) and (6) would be a blot upon its constitution. On the other hand Srimati Renuka Ray observed "....this is the most fundamental clause in the whole Constitution".

K.M. Munshi said after patiently bearing the speeches of those who moved the different amendments that he came to the conclusion that the Article moved by the Honourable Prime Minister could not be more aptly described than in his own words as a just compromise which should be accepted by the whole House unanimously. He observed "the amendments fall under four categories. One set of amendments says that there should be no compensation at all. The second set of amendments says that Parliament should not seize property under the Fundamental Rights but the President should, that is, the Executive should.

1. Ibid, p. 1291.
2. Ibid, p. 1297.
That is a reversal to barbarism. A third set says that Parliament should be fully empowered without any judicial review to take over property after fixing the compensation which may be "fradulent or inquitious"—"I am quoting the very words of the amendment, thus giving to Parliament the right by Constitution to pass a law which may be fradulent or inequitious....". Then he said that they were not going back from pledges given to all previously. He also said that provision was not made for zamindars in clause 2 because it was expected that zamindaris should be liquidated before the framing of the Constitution. What was now clause (1) and (2) were accepted unanimously in the Advisory Committee. He said that the Parliament was given full powers inspite of what had been said about justiciability by the tribe of lawyers. It was the supreme and sole judge in two matters: First, it is the sole judge of the principles laid down so long as they are principles. Secondly, it is authoritatively laid down, that principles may vary as regards different classes of property and different objects for which they are acquired. Parliament therefore is the judge and master of deciding what principles to apply in each case. He pointed, "the question is what is the extent of justiciability in this Article? The Article requires that if the legislature is to exercise the responsibility entrusted to it by the Constitution it must lay down the principles of compensation, it must determine the manner and form in which the compensation is to be paid, and provided it yields compensation that is an equivalent recompense, no court will go behind the policy of the measure. The courts will not substitute their own sense of fairness for that of Parliament; they will not judge the adequacy of compensation necessarily from the standard of market value, they will not question the judgment of Parliament unless the inadequacy is so gross as to be tantamount to a fraud on the fundamental

1. Ibid, p. 1298.
2. Ibid, p. 1299.
right to own property. He further observed "In the minds of people who fear justiciability, there is a lurking feeling that if a law laying down principles of compensation goes to court, the court will invariably apply the market value standard. This has never been the case. In America, where the words in the Constitution are 'just' compensation, and where the 14th Amendment arms the Supreme Court with the Due Process Clause it has never been so held. In one American case—it was an extreme and extraordinary case—one dollar was paid by way of compensation. The Court held that looking to the circumstances of that case, even one dollar was just compensation. We need not assume therefore that our Supreme Court will consist of a set of stupid people who indiscriminately apply the market value rule to every kind of acquisition. He gave reasons for and scope of judicial review: "In fairness, we cannot omit this kind of clause from our Constitution. It is necessary that the right of the legislature in matters relating to acquisition of property should be properly defined. It is equally necessary that judicial review should be permitted where there is a wrongful deprivation of the Fundamental Right to own property contained in our Constitution where the legislature has seized property by acting outside its powers or without fixing the amount of compensation or the principles on which to determine such compensation or where there is expropriation under the guise of acquisition, where the principles laid down are illusory or where the principles or the manner or the form of compensation are not calculated to yield a fair equivalent; or where the whole thing amounts to a fraud on the Constitution.

He made it clear that it was the best compromise and a just compromise and recommended to accept it.

1. Ibid, p. 1300. Balabanerjee case relied this expectation, emphasis mine. On the other hand the fears proved to be right.
2. Ibid, p. 1300.
3. Ibid, p. 1301. As the subsequent judicial process shows this live of thinking was not followed.
D. CONCLUSION.

Irrespective of the value of the debates in determining and controlling the meaning of the words in the provisions relating to property, the value of the background of preparation and the discussion in the Assembly in projecting the broad spectrum of the ideas and theories of the right to property cannot be under-estimated. Wherever there is an ambiguity, doubt, confusion and conflict in the process of interpretation recourse to debates may yield fruits. But it should not be forgotten that what is interpreted is constitution, a living constitution and not a cattle Tresspass Act. It should also be borne in mind that the Constitution lays down broad concepts and the conceptions of those concepts should be allowed to change and given effect to, according to the needs and aspirations of succeeding generations. Otherwise, it tantamounts to the tyranny of the dead over the living. Another point which should not be forgotten is the unrepresentativeness of the Constituent Assembly when compared to the subsequent Parliaments elected on the basis of universal adult franchise which pass laws.

The Constituent Assembly was a divided House with confusion and conflicting opinions. In all about 35 speakers only participated in deliberations relating to the main debate on property. About half of them took the problems seriously and spoke with conviction head and light. Broadly, four streams of thought can be identified from the debates. With the members participating falling into the four groups¹. According to the first Group, led by zamindars, just compensation i.e. market value of the property should compulsorily be paid in all cases of deprivation of property whatever

¹. See the table at the end of this chapter.
might be the purpose including the abolition of zamindaris. In addition they pleaded for solatium. They argued for deletion of clause (4) and (6) of Article 31. They favoured justiciability of compensation in all cases.

The second group headed by K.M. Munshi ostensibly and half heartedly supported Nehru's amendment with their interpretation of justiciability of compensation in all cases excepting in the cases of zamindars. They considered the word compensation carried the meaning market value and whereever it would fall short of that it was a fraud on the Constitution warranting interference by judiciary.

The third group lead by Nehru, including Alladi and Pant favoured supremacy of the legislature in making legislation for economic reforms without courts scrutinising the adequacy of compensation. They hoped, if not expected, non-interference by the Courts excepting in cases of colourable legislation, illusory compensation, and fraud on the Constitution. They justified the retention of clause (4) and (6) of Article 31 only by way of abundant caution and not because that clause (2) would permit justiciability of compensation ordinarily by Courts. But subsequent constitutional history disproved their expectations.

The fourth group of members consisting of stalwarts like K.M. Panikkar, Shibbanlal Saxena, Mrs. Renuka Ray, Biswanadh Das etc. vehemently argued for the total exclusion of judicial review of economic reformatory legislation giving absolute immunity for every legislation dealing with deprivation and acquisition of property against judicial scrutiny. Some of them wanted to have only clause (4) of Draft Article 24 deleting the rest of the clauses. All

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1. The irony of history is that this extreme view is now followed in passing the Constitution (Forty Fifth Amendment) Bill 1978 taking a further extreme course of shifting the Article from Fundamental Rights Chapter to part XII of the Constitution.
the ninety-seven amendments excepting two minor amendments to the compromise formula were rejected.

It is strange that the fourth group of speakers constituted majority among the participants. But the vociferous majority among the participants were outwitted and outvoted by the silent conservative majority of members of the Assembly. It is obvious that Nehru was cowed down and was compelled to compromise 1. It can be concluded without fear of contradiction that the debates in the Assembly and final shape of the Article run counter to each other and leave the matter perhaps deliberately and blissfully vague and undecided 2. Hence the courts are not free to say that they are not free with the choice to interpret the property provisions in the light of the directive principles of State Policy and the changing needs and aspirations of the masses.

1. See T.S. Rama Rao - "Property Rights - Attitude of the framers of the Constitution". Lawyer, November 1960, pp. 16-26. He says that the Constituent Assembly debates do not reveal fully how the compromise was effected as the matters were discussed before hand in the Congress Party. The threat of resignation by Dr. Mathaiah and other circumstances resulted in incorporating the views of the conservative group led by Sardar Patel.

2. One writer thinks the final outcome was a victory to vested interests. See H.M. Jain: Right to Property under the Indian Constitution, 1968 p. 56. Another writer thinks "in actual fact the Constituent Assembly followed very closely the terms of Section 299 of the Government of India Act, 1935, and left open the question whether "compensation" must be equal to a "Just" equivalent of the property acquired". Rajeev Dhavan: The Supreme Court of India, 1977 p. 169; H.C.L. Merillet: Land and the Constitution in India, 1970. He says "A certain measure of darkness as to its meaning was to remain for many years to come". p. 68.
TABLE SHOWING THE NAMES OF THE MEMBERS OF THE CONSTITUENT ASSEMBLY WHO ADVOCATED DIFFERENT PHILOSOPHIES IN REGARD TO THE RIGHT TO PROPERTY:

1st View: Wanted market value of compensation to be paid to all acquisitions of property including for the Zamindars.

2nd View: Wanted market value of compensation to be paid to all acquisitions of property but excluding for Zamindars.

3rd View: Wanted judicial review of compensation only when it amounted to fraud on the Constitution or when the compensation is illusory.

4th View: Wanted that there shall be no judicial review under any circumstances.

Names:

1st View: 1. B. Das.
2. Naziruddin Ahamed.
5. Jhun Jhun Wala.
7. Shyamendra Sahay.

2nd View: 1. Dr. Ambedkar.
3. S. Nagappa.
5. K.M Munshi.

3rd View: 1. Nehru.
3. Alladi Krishnaswamy Ayyar.
4. Pant.
4th View: 1. K.M. Panikkar.
2. Guptanath Singh.
4. Damodar Swaroop.
5. Shibbanlal Saksena.
7. H.V. Kamath.
11. P.S. Deshmukh.
12. Lakshminarayan Sahu.
15. Pandit Balakrishna Sharma.
16. Biswanath Das.