CHAPTER IV.
ABOLITION OF ZAMINDARIS AND THE SUPREME COURT.

A. GENERAL:

Agriculture is the general occupation of the Indian people. It is the main spring of livelihood for the people. Nearly seventy per cent of the population of our country depend on agriculture. Land is dearer to the tiller than even his wife\(^1\) and life\(^2\). The village life, economic, social and political is very much determined by the proprietoryship in land. Hence, the distribution of land among the population and its ownership plays a vital role in the life of our nation. The development, prosperity and happiness of the vast multitude of our country conditioned by the structural set up of the ownership of the land system.

It is futile to find a solution to this problem by merely tracing the system of ownership of land from ancient times. There was no continuous uniform system for the entire country. There was both individual and community or collective ownership of land. In some parts of the country there was a system with village as a proprietary unit i.e., the village with a body of co-sharing proprietors. On the other hand there was also individual ownership. In some cases both the systems prevailed side by side. With respect to the cultivable land individual ownership existed mostly in all parts of the country. For instance in Bengal the village community did not exist in this special sense due to the growth of the zamindari system\(^3\). But, by and large, "from vedic times till about the end of the eighteenth century A.D., agrarian society

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1. At the time of imposition of ceilings in Andhra Pradesh number of fake divorces were affected through courts.

2. Many disputes over land resulted in loss of lives.

in India was organised in village communities. From earliest times the King did not claim the ownership of the land. He claimed a share in the produce of land i.e., land revenue. This system continued in spite of conquests and change of hands of power. Even in the Moghul period the cultivators of the soil were not disturbed by interfering with their private rights. The new concept of ownership of property and land ownership and exploitative land system are the concomitant products of British conquests. "This caused a revolution in the agrarian structure of the country and culminated in the destruction of village communities."

The right to collect land revenue by the political authorities were never disputed from ancient times. According to Manu the king has a legal right over one sixth of the crop. During the medieval period it was increased to one third and some times even more by the imperial authority. The British after experimenting with different systems of collection of revenue settled on the system of permanent settlement, "fixing in perpetuity the amount of land revenue that the zamindar would have to pay, and leaving him free to keep as his own income any additional sums he could collect from those lower in the hierarchy of interest in the land."

The permanent settlement though was mainly confined to Bengal and other northern parts it was also introduced in some districts of Madras and Bombay etc., in the beginning of the nineteenth century. The zamindars were only tax collectors sharing therein without any proprietary right. The Moghuls employed them for that purpose. But, when the Moghul rule weakened the tax collectors who abused their powers often,

1. Ibid, p. 89.
2. Ibid, p. 90.
3. According to a text of Katyayana, King was the lord of the soil. He was entitled to one sixth of the produce of the soil. Katyayana (Kane's collection) 16-7.
began to claim ownership of the land. The British partially acceded to that. The tax collectors of different types began to be collectively called as zamindars. The zamindars collected more from the cultivators paying a small portion of it, a fixed sum, to the Government. The exaction of excessive rent from cultivators became common. Special fees on occasions, forced labour or begar for the landlord and other forms of exploitation and domination were the features of the zamindari system. The British imported their model of ownership and gifted it to the then rapacious tax collectors and mini-king for their own convenience. But in Madras and Bombay and the North West the British administrators did not like to depend on any one and directly dealt with people. The result was "ryots, not the zamindars, became the building blocks of the social and political structure". Thus "....
the British created two major forms of ownership of land..." these were the ryotwaris (independent, usually small, free holders; variable assessment land revenue; direct and personal administration) and zamindaris (large landed estates, rates of revenue fixed in perpetuity, indirect administration that left it to the zamindars to collect the revenue from the actual cultivators)."

Broadly there are three categories of land systems in India namely zamindari, mahalwari and ryotwari. This classification embraces a bewildering variety of tenures with minor variations. "Theoretically, under the zamindari the State made the revenue settlement with the landlord in perpetuity and it was unalterable; under the Mahalwari the settlement was made with the village community conceived of as a number of co-sharing landlords with a fixed liability for revenue — but not in perpetuity which was either joint or both several and joint; under the ryotwari the State settled directly with the

1. Ibid, p. 15.
2. Ibid, p. 16.
cultivator for stated periods.\textsuperscript{1}

In course of time the difference among these systems began to disappear with each acquiring the qualities of the other. Lord Cornwallis was the protagonist of the zamindari and Sir Thomas Manro was that of the ryotwari system. Though the word 'ryot' is synonymous with the cultivator many of them for generations are only rentiers receiving rent from the tenants and remitting the land revenue to the Government. They had become landlords like zamindars. In the zamindari system sub-infeudation resulted in the increase of number of intermediaries between the actual cultivator and the Government. The landlords under the so called ryotwari system used to collect two thirds of the value of the total produce grown on a plot of land. As in Punjab more and more land went to the hands of landlords while most of the tillers of the soil are reduced to tenants at will. In West Bengal two thirds of the total settled area was under zamindari and a third under the ryotwari. In Uttar Pradesh half the area was under mahalwari with four districts under permanent zamindari and the remaining under temporary zamindari. In Madhya Pradesh major part was under zamindari and only \( \frac{1}{7} \)th under ryotwari. In Madras three fourths of the cultivated area was under ryotwari and only \( \frac{1}{4} \)th under zamindari. In Orissa half was under mahalwari. In Bombay most of the land was under ryotwari and a negligible area under zamindari. In princely States both systems were prevalent. In Rajasthan State nearly 2/3rd were under Jagirdari. In some cases the crown owned extensive lands and in some other cases the ruler was the biggest landlord.\textsuperscript{2}

Some attempts were made through legislation and administrative action under the sanction of custom and usage for protecting the interest of the cultivating tenants example, the Tenancy Act of 1885. It was also always recognised in

\begin{itemize}
\item \textsuperscript{1} H. Venkata Subbaiah - \textit{Indian Economy since Independence.}\, 1961, p. 51.
\item \textsuperscript{2} H. Venkata Subbaiah, op.cit. p. 53.
\end{itemize}
general that "the tiller in actual possession had some inherent right in the land however feeble it may be". Through successive tenancy legislation the rights of the tenants were sought to be enlarged. But the primary right over the land remained with the landlord. And, the landlords tried to circumvent the law.

With respect to the problem has to be resolved in the interest of production of more food and economic justice to the toiling masses. It could be done only by bringing structural changes in the ownership and equitable distribution of the cultivable land in the country. The Congress Party which spearheaded the national movement for freedom had no clear consistent economic philosophy for solving the economic problems of the country. "The early Congress accorded a step-motherly treatment to economic and social problems". The Congress had no systematic economic ideology and programme. Till the end of the First World War the Congress was in political mendicancy and hence nothing could be expected of it in formulating a policy for a just economic order. After Gandhi entered into the political field there was passion for reform. Gandhi was the champion of the down trodden masses. He had advocated the destruction of evils of the existing economic system without violence. Though not a revolutionary like Karl Marx, Gandhi shook the very foundations of the institution of private property. He advocated the doctrines of Sarvodaya and the theory of trusteeship. Gandhi observed "... an aspirant of Sarvodaya must attempt to bring about a social order in which man enjoys political freedom, economic emancipation and social dignity". Nehru wanted Congress to be an instrument in bringing an economic and social revolution.

The policy of Congress about the land question was in the beginning nebulous. It was expressed in general talk "in

1. Ibid, p. 54.
very general terms - "feudal relics" should be abolished and the zamindars were such relics; land should "belong" to or be "owned" by the tiller, what ever belonging and owning might mean in relation to land. Subhas Chandra Bose advocated abolition of landlordism. Nehru's economic programme included rent reduction, debt cancellation and zamindari abolition. Nehru stood for the "abolition of the permanent settlement in Bengal and the big zamindari system in the other provinces."

The Congress Party in its election manifesto 1946 categorically stated the removal of intermediaries between the peasant and the State. The economic programme committee of the All India Congress Committee in its report in 1948 said that all middle men should be replaced by non-profit making agencies such as co-operatives. Immediately after independence the Congress Government in different States took steps to enact legislation for abolition of zamindaris. Simultaneously the Constituent Assembly was debating on right to property. Abolition of zamindaris and the question of compensation received the attention of the Assembly.

The Government of India Act 1935 was almost followed in framing the provisions of right to property. Even though the British were against the policy of incorporation of fundamental rights in constitutions it wanted to protect as a special case the property rights of their Indian collaborators and supporters of their regime. The Parliamentary Joint Committee on Indian Constitutional reform though agreed with Simon Commission's comments on the "uselessness of abstract declarations" recommended safeguards to private property against expropriation. They made special provisions for the protection of

1. H. Venkata Subbaiah - op.cit, p. 57.
intermediaries. The Committee considered that the permanent settlement was binding on the Government. The Committee felt that the zamindars were the backbone of their revenue administration. The Committee was aware of the utterances of the National leaders about the elimination of intermediaries. It wanted to provide against any attempts towards that end. It provided for the Governor's or Governor-General's prior sanction for the introduction of any bill affecting permanent settlement. Two other safeguards against acquisition and confiscation are that there should be public purpose and compensation should be paid. These safeguards reveal the intimate relationship between the zamindars and the British. Thus the vested interest in land were protected by the British.

In the Constituent Assembly Nehru made it clear that the National Congress stood unequivocally for the abolition of zamindaris and said that they pledged for it. During that time bills for abolition of zamindaris were pending in the Assemblies. There were three views among the members. The interim report of the Advisory Committee on fundamental rights guaranteed right to property to every citizen in clause (8)(e) and provided the requirement of public purposes and compensation in clause (19). Clause (19) was criticised in the Assembly. Some wanted that the word compensation should be qualified by the word just. On the other extreme some members were afraid that clause (19) containing the requirement of compensation in every case of acquisition would stand in the way of socialisation like abolition of zamindari, nationalization of mines etc. Thakur Phool Singh said that "by passing the clause in its present form we would be running the risk of permanently obstructing the possibility of reform in this country for every".

1. Ibid, clause (2).
Ajit Prasad Jain said "it will protect the microscopic minority of propertied class and deny rights of social justice to the masses". R.K. Sidhwa commented that "we are helping the upper class people by passing this clause". Many others held the same view that this clause would be an obstacle in the abolition of zamindaris. In spite of it the Constituent Assembly approved clause (19) and referred it for consideration to the drafting committee. The Drafting Committee did not make any alteration excepting adding two new sub-clauses and making some verbal changes here and there and renumbered it as Article 24. It was more or less a replica of Section 299 of Government of India Act 1935. It had become difficult to reconcile Article 24 with the professions of the leaders on socio-economic reforms. Nehru said referring to the abolition of zamindari that "it has not been today's policy, but the old policy of the National Congress laid down years ago that the zamindari institution in India, that is the big estate system, must be abolished. So far as we are concerned; we, who are connected with the Congress shall give effect to that pledge naturally completely, one hundred per cent, and no legal subtlety and no change is going to come in our way. That is quite clear we will honour our pledges". There was practical difficulty also as the bills for abolition of zamindaris were pending for consideration in the Assemblies of Uttar Pradesh, Bihar and Madras.

As we have already seen, ironing out the differences

1. Ibid, p. 515.
2. Ibid, p. 515.
3. C.A.D., IX. 1195.
4. The Conference of drafting committee and the premiers of provinces which was held in July 1949 exposed the differences. Dr. Ambedkar's suggestion for dropping the Article altogether and only providing an entry in the legislative list as in Australian constitution was rejected as Alladi said that the question of compensation would still remain justiciable. Dr. John Matthai threatened to resign if the Article was dropped. Pandit Pant proposed new clauses under which payment of compensation cannot be questioned in any court. Alladi was against such a sweeping provision. The deep differences threatened even the existence of the Assembly. Hence a compromise was effected. The amended Article moved by Nehru contained three new clauses out of which two are relevant for the abolition of zamindaris.
between the top leaders a compromise formula incorporating in
the amendment to the draft Article 24 was moved by Nehru. It
was renumbered later as Article 31. This compromise was con-
sidered to be a retrograde step and surrender to the vested
interests. Clauses (4) and (6) were added providing for the
successful abolition of zamindari system. They are exceptions
to clause (2). Clause (4) saved all bills pending before the
legislatures in the States at the commencement of the Constitu-
tion, if they were passed by the legislatures and received the
assent of the President. Such laws cannot be questioned on
the basis of the violation of clause (2) of Article 31. Clause
(6) as it originally stood, was intended to save all laws en-
acted more than one year before the commencement of the Con-
stitution by the States if submitted by the Governor to the Presi-
dent and obtain his certificate. They cannot be questioned in
any court for the contravention of clause (2) and sub-section
(2) of Section 299 of the Government of India Act 1935. Mr.
Pant succeeded in obtaining a safe delivery for his baby i.e.,
law abolishing zamindaris which was conceived before the Consi-
tution was contemplated. As we have already examined it ap-
ppears that out of the three conflicting views only one view
with regard to abolition of zamindaris found clear expression
in the law where as the other two conflicting opinions regard-
ing the justiciability of compensation in the case of other
properties was only apparently resolved by the compromise for-
mula without making it free from divergent interpretations.
The pleas of zamindar members and their supporters for just
compensation were negatived. Naziruddin Ahmed1 pleaded for
compensation not less than twelve times the average net income
of the zamindar. His reference to Encyclopaedia Britannica2
for the meaning of the word compensation as sufficient, fair,

1. C.A.D. VI. 177-179.
2. "Reparation or satisfaction made to the owner
   of the property which is taken away by the
   State for state purposes"
legal or equitable compensation was of no avail. At the time of passing Article 24, later renumbered as 31, bill for the abolition of zamindaris was pending before the Uttar Pradesh legislature. Madras and Bihar also were ready with the laws. The Madras Act received assent in March 1949. It was apprehended that the passing of the Constitution and coming into force might be delayed beyond one year after passing of the Madras Act. Therefore, to avoid such a risk Kala Venkata Rao's amendment to substitute 'eighteen months' for 'one year' in clause (6) was accepted.

Shyamnandan Sahay, whom the President of the Constituent Assembly called as the representative of zamindars vehemently criticised clause (4) and (6). He said that these clauses run counter not only to clause (2) but also to many other fundamental rights. He complained that there was no equal protection of laws. Raja Jagannath Baksh Singh leader of Zamindar party in Uttar Pradesh described clause (4) as an outrage on the fundamental right to property and violation of past commitments of the Assembly\(^1\). Maharaja of Dharbhanga said that clauses (4) and (6) made a triple discrimination namely: (i) between the landlords of Uttar Pradesh, Bihar and Madras and those of the rest of India (ii) between the three provinces in Uttar Pradesh, Bihar and Madras in the matter of land reforms and the rest of India (ii) between zamindari property and industrial property\(^2\). All of them considered that clauses (4) and (6) were discriminatory and confiscatory in nature. They had no confidence in the legislature and President and were afraid of expropriation of their properties without any remedy in a court of law. On the other hand H.V.Kamat, Shibbanlal Saxena, Kishori Mohan Tripathi and others took objection that they were not dealing other properties also in the same manner. It is strange how, if not all other properties, zamindari property in all other provinces were

1. Ibid, p. 1287.
2. Ibid, p. 1270
given higher protection equal to that of other properties. Clauses (4) and (6) were expected to prevent litigation. Constituent Assembly and other landed interest and vested interest in the industrial sphere gained upper hand in protecting their interest.

B. CLAUSES (4) & (6) OF ARTICLE 31 AND THE COURTS.

(1) Ge n e r a l i-

By way of abundant caution clauses (4) and (6) were enacted as exceptions to clause (2) of Article 31. Both clauses relate to the laws passed during specified periods. Laws that were pending at the commencement of the Constitution in the State legislatures and which received the assent of the President after their passage in the legislatures are given immunity in clause (4) against the operation of clause (2). To be more specific clause (4) was intended to save the Uttar Pradesh zamindari abolition law, that was then pending in the legislature. Similarly clause (6) was enacted in relation to the compulsory acquisition of estates through laws enacted already in Madras and Bihar. Clauses (4) and (6), thus, protect laws for the abolition of zamindaris is only three States, passed only during specified periods. Perhaps the Constituent Assembly wanted to bring pressures and give encouragement simultaneously for passing zamindari abolition laws without delay within a fixed time. Further it may be presumed that they have given utmost importance for the abolition of the zamindaris in these States because most of the zamindaris were in those States only. It was feared that unless the jurisdiction of the courts was ousted it would result in prodigious, vexatious, prolonged litigation from the lowest court to the highest court. It may

1. According to K.M. Munshi the three States of Uttar Pradesh, Madras and Bihar have nearly five thousand zamindars vis-a-vis seven crores twenty lakh agriculturists or tillers of the soil covering seven crores forty lakh acres of land. C.A.D., IX. pp. 1301-02.
even lead to an agrarian revolution unless the functionless, degenerated privileged zamindars were dispossed of their rights over the land.

Taking advantage of clause (4), laws were passed in a number of States. Though clause (4) was intended mainly to cover zamindari abolition laws in Uttar Pradesh, Bihar and Madras, the language is general to encompass any law that was pending at the commencement of the Constitution. So the limitation in terms of area may be in fact, but not in law. But the limitation in time frame is both in law and fact as clause (4) relates only to laws that were pending at the commencement of the Constitution. The reason for this is already explained as due to the desire for speedy legislation. Hence, the conclusion that the vested interest in other states are protected under clause (2) which can be interpreted as justiciable in view of clauses (4) and (6) is unwarranted. Further, the condition that the clause applies only to bills pending in legislature of a State and not in the Parliament has no significance as agriculture being a State subject the question of Parliament passing laws on land reforms did not arise. Similarly the condition of the assent of the President which was criticised by B. Das and Kamath in the Constituent Assembly, that it would give additional safeguard, might not mean much in view of the fact that the central and State Governments were managed by the same party, for a long time and hence would not lead to conflicts between Union and the States in fact as envisaged by Kamath. The subsequent history shows that it was almost never denied by the President.

But, the courts of law considered this condition of the

1. The Bihar Land Reforms Act 1950, the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1951 the Madhya Bharat Zamindari Abolition Act 1951, the Orissa Estates Abolition Act 1952, the Madhya Pradesh Abolition of Proprietary Rights (estates-Mahals, Alienated lands) Act 1950, the Assam (Acquisition of Zamindaris) Act 1951.

2. C.A.D., XI. p. 121.
assent by the President under clause (4) to be important. Even then as the assent was almost a faith-accomplice made no difference in most of the cases.

(2) PENDENCY OF THE BILLS:

Several questions arose regarding the words "bill pending at the commencement of". The Patna High Court in Kameshwar's case held that the alterations made subsequently in the bill pending at the commencement of the Constitution should not be such as to make the Act distinguishable from the bill which was pending. But the Madhya Bharat High Court took the view that even material alterations making the bill unrecognisable cannot be impugned. The Supreme Court resolved this difference by holding that the expression "passed by the legislature" in Article 31(4) means "passed with or without amendments" in accordance with a normal procedure contemplated by Article 103 of the Constitution.

It was held that even a bill which undergoes amendment in the Legislative Council and goes back to Legislative Assembly amounts to a bill "pending in the legislatures" within the meaning of Article 31(4). The Supreme Court held that even if the Governor-General sends a bill back to the legislature with suggestions for certain amendments and even if the legislature gets dissolved at that point, the legislative process can be continued later.

1. The Patna High Court in Kameshwar vs. Bihar (1951) 130 Pat. 454 held that the assent of the President is not a matter of procedure but an essential and important part of the law making machinery set up by the Constitution. But the court held that the propriety of the Presidents action cannot be questioned.
2. Ibid.
5. Raja Suryapal case A.I.R. 1951 All. 674.
under Article 200 and the bill would not be killed. Dissolu-
tion of the assembly does not affect a bill pending the assent
of the Governor or President. It does not lapse as long as it
is pending or does not become an Act or not terminated by the
withholding of the assent by such authority. Under clause (4)
the word 'legislature' does not include the Governor and hence
does not require the assent of the Governor before it is reserved
for the consideration of the President. The words "law so
assented to" means only a Bill and not a fulfledged law. The
assent of the President under clause (4) is required only once
and not twice inspite of clause (3) under which all State laws
relating to the compulsory acquisition of the property require
the assent of the President.

In Article 31 (6) the word law means any Act or order
enacted by the State. Clause (6) is another exception to
clause (2). If it is not certified by President it won't re-
ceive protection against clause (2) of Article 31. Any law
earlier than eighteen months before the Constitution, is
not covered by clause (6); such a law is covered by clause (5)(a)
and no certificate from the President is necessary. Under
clause (5)(a) all existing laws as defined in Article 366 (10)
are saved from clause (2) if they were passed more than eighteen
months before the commencement of the Constitution. Clause
(5)(a) covers all existing laws excluding those covered by
clause (6). Then, the question may be asked, what is the
validity of law which is passed within eighteen months and has
not received the certificate from the President? Obviously it
is not covered by clause (6) as certificate was not received from
the President. Can it be said that it is invalid?

Madras 835.
According to clause (5)(a) all existing laws are covered by it excluding those covered by clause (6). Hence, such a law must be covered by clause (5)(a) as it is an existing law. But, this argument was rejected by the Court. The words "a law to which the provisions of clause (6) apply" was considered to refer only to a law enacted not more than eighteen months before the commencement of Constitution. The deciding factor is not the certificate of the President. Hence, such clause which contravenes clause (6) will be void. The Constitution makes a distinction between laws enacted more than eighteen months before the commencement of the Constitution and those enacted with in eighteen months before such commencement. Clause 5(a) covers the former and clause (6) the latter. The former need not require the certificate from the President where as the latter require it. 26th July, 1948 was the dividing line. The courts accordingly validated and invalidated the laws.

Number of existing laws passed more than eighteen months before the Constitution were held valid though they violated Article 31(2) regarding public purpose and compensation by various High Courts.

The Supreme Court changed the trend of the decisions by adopting a peculiar argument in Jee Jee Bhoy vs. Assistant Collector. It was held that clause (6) gives protection

1. A.I.R. 1951 Calcutta, III.
2. Sections (6) and (3) of the Land Requisition Act 1894 containing the declaration debarring justiciability of public purpose was held valid in spite of violation of Article 31(2) because it was an existing law. The West Bengal planning in 1948 enacted within eighteen months before the commencement of the Constitution was held to require President's certificate to claim immunity from 31 clause (2), because, it was passed within eighteen months before the commencement of the Constitution.
against Article 31 (2) and Section 299(2). But clause (5) saves a law only against Article 31 (2) and not against Section 299(2). The reason was that the words 'the existing law' means valid law. If it was inconsistency with Section 299(2) it was not a law at all. The legislature must have power to make law. In clause (6) compliance of the provision of Section 299(2) was expressly saved. But there was no such express protection under clause (5). This interpretation makes clause (5)(a) meaningless and totally inoperative. Clause (5)(a) deals with pre-constitutional laws older than eighteen months. They are saved from Article 31 (2). The question of their being saved arises only if they exist at the time of the commencement of the Constitution. If they are still born or already dead there is no application for clause (5)(a) as they are not existing laws. In this context they can be existing laws only if they comply with Article 299(2). It means they should satisfy the two conditions under Article 299(2), namely public purpose and compensation. Article 31 clause (2) also deals with the same conditions. Hence all the "existing laws" that satisfy section 299(2) also automatically satisfy Article 31 (2). Logically such a law do not require protection against Article 31 (2). But clause (5)(a) provides such protection against clause (2) for existing laws. Then the question is what are the existing laws that are covered by clause (5)(a). If they do not comply with Section 299(2) they were deemed void, hence not existing laws and hence not covered by clause (5)(a). If they do comply with Section 299(2) they don't require protection under clause (5)(a). Hence they are not covered by clause (5)(a). So there are no laws covered by clause (5)(a) relating to property. Then why should they put in a clause. The Supreme Court could have given effect to clause (5)(a) by interpreting that laws passed eighteen months before the Constitution though contravening Section 299(2) continue to exist as existing laws, in the sense that they were not challenged earlier and held void and continue to exist in statute book and actually were in operation. It
can be interpreted that clause (5) (a) protects all existing laws which were not already held void before the commencement of the Constitution. Contravention of the two conditions being the same in Article 31(2) and Section 299(2) clause (5)(a) saves expressly prospectively against Section 299(2). Following this reasoning the Supreme Court should have held the Bombay Act as valid. The Supreme Court should have considered the meaning of the word "existing law" as enacted law. Further the Calcutta High Court held in one case that if the words "a law to which the provisions of clause (6) apply" is interpreted as meaning only to those laws which obtain certificate of the President. That condition becomes rendered nugatory because of the interpretation of clause (5)(a) applying to all existing laws excepting those covered by clause (6). Hence, any existing law passed within eighteen months of the Constitution and does not obtain Presidential certificate will be protected under clause (5) (a). Then where is the necessity for Presidential certificate for laws passed within eighteen months to get protection under clause (6) against clause (2) when without such a certificate they get protection under clause (5)(a)? Hence the Calcutta High Court held that the argument of using and emphasising Presidential certificate giving identity for laws under clause (6) was a fallacious argument. It was held that the words "a law to which the provisions of clause (6) apply" refer only to the specified period of eighteen months and not to the Presidential certificate. Thus clause (6) was given effect. In the same manner by interpreting the words existing law as enacted law which was not held till then void the

1. A.I.R. 1951 Cal. 111.

2. Cf with reference to the question of the meaning of word "law" in clause (4) whether it should be a valid law before it was submitted to President under clause (4) for his assent in which case double submission would be required one under clause (3) and another under clause (4) the Madras High Court has taken the correct view that prior submission was not necessary under clause (3) as the words "any law of the State" mean any Act ordinance of order enacted by the State without any reference to its validity.
Supreme Court could have given effect to clause (5)(a). Otherwise clause (5)(a) becomes nugatory unless it is interpreted to cover laws violating also Section 299(2) as it was identical with Article 31(2) and as clause (6) by way of caution refers to Section 299(2) also. The difference between clause (6) and clause (5)(a) is only a question of period. In substance both are made to save laws, the former less than eighteen months old pre-Constitution laws and the latter older than these.

(3) CHALLENGE BY THE ZAMINDARS.

Before the ink was dry on the Statutes abolishing zamindaris the laws were challenged in the first year of the new Constitution itself. Sri Kameshwar Singh, Maharajah of Darbhanga, one of the biggest zamindars in India challenged the Bihar Land Reforms Act. Two such petitions were filed in High Courts of Uttar Pradesh and Madhya Pradesh. The Patna High Court struck down the Bihar Land Reforms Act 1950. The High Court held that the law was saved against clause (2) of Article 31 because it fell under clause (4). Clause (4) did not protect the Act on any ground other than arising under clause (2). The zamindars had invoked Article 14, guaranteeing equality before the law and equal protection of the laws. The High Court held that the provision of compensation on a graduated scale of the impugned Bihar Land Reforms Act relating to the size of the land holdings amounts to an unreasonable discriminatory classification and offends Article 14. Clause (4) would not cure the invalidity arising from a contravention of Article 14. The High Court construed very strictly and narrowly giving not even a restricted meaning to the words "notwithstanding anything in this Constitution" in clause (4). In effect the words were made ineffective. When the words are so clear there is no reason to refuse to give immunity to the Act against Article 14 and save the land reform legislation without obstructing the first socio-economic programme of a democratic Government. The Court held that the wording of clause is equivocal and took the view that
since clause (4) seeks to cut down a fundamental right it must be construed strictly. On the other hand the Madhya Bharat High Court took a correct view of the same words and held in *Ram Dubey vs. Madhya Bharat*\(^2\), that clause (4) gives protection not only against clause (2) but also against other provisions\(^3\).

An appeal was preferred from the decision of the Patna High Court to the Supreme Court. There were appeals from other High Courts also pending before the Supreme Court. At this juncture the Constituent Assembly functioning as the provisional Parliament acted swiftly and passed the Constitution (first Amendment) Act, 1951\(^4\) with retrospective effect. A new Article 31A was inserted protecting land reform laws or legislation relating to "estates" as defined therein from challenge under Part III of the Constitution of India. Another Article 31B was added along with Article 31A. Article 31B validates various Acts and Regulations enumerated in the ninth schedule to the Constitution and provides that none of the Acts and regulations nor any of the provisions thereof shall be deemed to void or ever to have become void on the ground that such Act, regulation or provision is inconsistent with or takes away or abridges any of the rights conferred by the provisions of Part III of the Constitution. A new schedule, namely, Ninth Schedule was added in which enactment which required immunity

3. Ibid. Dixit Judge observed that "it would appear from the words 'notwithstanding anything in this Constitution' which occur in clause (4) that it is not permissible to object to an Act on the ground that the compensation fixed or to be determined is no compensation in law as being contrary to other provisions of the Constitution. The protection by clause (4) is not confined to one ground only namely the ground arising out of the provisions of Article 31(2)".
4. See the objects and reasons for passing the Amendment given in the Act.

K.Santhanam says "there is no doubt that Articles 31, 31A and 31B amount to a clumsy compromise between those who hold that the right to property is fundamental to personal liberty and democracy and those who believe that it is an anachronism and should have no special protection so that the legislatures may modify property rights in any manner they please. In all matters of agrarian legislation, the courts have shut out". "Fundamental Rights: 1972 p. 32."
against all provisions of Part III were entered. Thirteen specified Acts were entered in ninth schedule and were protected from challenge under Part III. The Bihar Land Reforms Act 1950 was given the pride of place as entry one in the ninth schedule. Thus the Act was revived and protected against the provisions of fundamental rights in part III of the Constitution. Thus the first important amendment to the Constitution was passed to save the laws giving effect to the policy of agrarian reform and abolition of zamindaris the Supreme Court was not responsible for passing the first amendment of the Constitution. It is purely academic and conjectural to venture to say what the Supreme Court would have decided in those cases. But from what happened subsequently to the same enactment and other similar laws it can be said that the Parliament did a wise thing in passing First Amendment without waiting for the Supreme Court's decision.

The Supreme Court in Shankari Prasad vs. Union of India\(^1\) succinctly gave the reasons for Parliament passing the (First Amendment) Act, as to put an end to litigation and to cure the "defects brought to light in the working of the construction".

The Supreme Court observed, "Swiftly reacting to this move of the Government, the zamindars have brought the present petition under Article 32 of the Constitution impugning the amendment itself as unconstitutional and void"\(^2\).

Once the Constitution was passed the battle between the vested interests and half-hearted ruling economic reformers as representatives of the people shifted from the legislatures to the Courts. A clear continuous struggle between the vested interest and the workers and peasants is discernible in the legislative and judicial arena with representatives of the people and judges thrown in between.

2. Ibid.
Unending, vexatious, protracted litigation in the higher courts employing the best legal brains available in the lawyers market invoking invariably as many provisions as possible in Part III has become an inseparable constitutional history and constitutional law ever since the commencement of the Constitution of India.

The zamindars were not deterred by the First Amendment Act to the Constitution and boldly and ingeniously attacked the amendment itself before the Supreme Court under Article 32 in Shankari Prasad vs. Union of India. The court rejected all the arguments and upheld unanimously the validity of the Constitution (First Amendment) Act 1951.

Patanjali Sastri, Judge, rightly distinguished the ideas of the founding fathers that what was contemplated under Article 12(2) was the "invasion of the rights of the subjects by the legislative and the executive organs of the State by means of laws and rules made in exercise of their legislative power and not the abridgement or nullification of such rights by alterations of the Constitution itself in exercise of sovereign Constituent Power." Patanjali Sastri, Judge observed "On the other hand, the terms of Article 368 are perfectly general and empower Parliament to amend the Constitution without any exception whatever. Had it been intended to save the fundamental rights from the operation of that provision, it would have been perfectly easy to make that intention clear by adding a proviso to that effect. In short, we have here two Articles each of which is widely phrased, but conflicts in its operation with the other. Harmonious construction requires that one should be read as controlled and qualified by the other. Having regard to the considerations adverted to above, we are of the opinion that in the context of Article 13 "law" must be taken to mean rules or

2. Ibid.
regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of Constituent power, with the result that Article 13 (2) does not affect amendments made under Article 368.\(^1\)

Referring to the decision in Shankari Prasad vs. Union of India, Chief Justice Sastri opined that the First Amendment solved all the legal problems relating to the abolition of zamindaris:

> The fact of the matter is the zamindars lost the battle in the last round when this Court upheld the constitutionality of the Amendment Act...\(^2\).

But contrary to his assessment and expectations the zamindars from Bihar successfully attacked the constitutional validity of the Bihar Land Reforms Act in the same case in which a separate judgment Patanjali Sastri, C.J., expressed his optimism. In the most important case relating to the abolition of zamindaris namely, State of Bihar vs. Kameswar Singh\(^3\) in which actually three cases were decided in one common judgment the Land Reforms Acts abolishing zamindaris from three States, Uttar Pradesh, Bihar and Madhya Pradesh were assailed. The Acts attacked are the Bihar Land Reform Act 1950 (Bihar Act 30 of 1950,) the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated lands) Act 1950 (No. 1 of 1951) and the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950 (Uttar Pradesh Act No. 1 of 1951). The object of all these Acts is to abolish zamindari and other proprietary estates and tenures in the three States aforesaid, so as to eliminate the intermediaries by means of compulsory acquisition of their rights and interests, and to bring the Raiyats and other occupants of lands in those areas into direct relation with the

\(^1\) Ibid, p. 463.
\(^3\) A.I.R. 1952 S.C. p. 252.
Government. These cases came by way of appeals from the respective High Courts. The Bihar Land Reform Act was declared unconstitutional under Article 14 of the Constitution and the other Acts were upheld by some High Courts. Other zamindars filed writ petitions under Article 32. The main ground of attack in all these cases was the lack of the legislative competence of the State legislatures. Patanjali Sastri, C.J., and Das, J., held the Act valid in its entirety. But, Mahajan, Mukherjee and Chandra Sekhar Aiyer, J.J. declared that Section 4B and Section 23F of the Bihar Land Reform Act in valid. The court unanimously upheld the validity of both Uttar Pradesh and Madhya Pradesh Acts. According to Patanjali Sastri and Das:

"The pith and substance of the legislation is the transference of ownership of estates to the State Government and fall within the ambit of legislative Entry 36 of List 2. The Bihar legislative was certainly competent to make the law on the subject of transference of estates and the Act as regards such transfers is constitutional."

Article 31A and 31B of the Constitution provide protection against attacks based on Part III of the Constitution. They do not provide any immunity against attacks on the basis of lack of legislative competence under Article 246 read with entries in List 2 or List 3 of the Seventh Schedule to the Constitution. Hence, the main attack was advanced from this side by the zamindars. It was argued tracing the acquisitive legislation in the country from Regulation I of 1824 of the Bengal Code upto Land Acquisition Act 1894, that "the existence of a public purpose and obligation to pay compensation being thus the necessary concomitants of compulsory acquisition of private property, the term 'acquisition' must be construed as importing

1. Ibid, p. 261.
2. Ibid, p. 270.
by necessary implication, the two conditions aforesaid. It is a recognised rule for the construction of statutes that unless the words of the statute clearly so demand, a statute is not to be construed so as to take away the property of a subject without compensation—Attorney-General vs. "De Keyser's Royal Hotel", (1920) A.C. 508 at page 542. The power to take compulsorily, raises by implication a right to payment—Central Control Boards vs. Cannon Brewery", (1919) A.C. 744". It was argued that "the words"subject to the provisions of entry 42 of list3" in Entry 36 reinforce the arguments, as these words must be taken to mean that the power to make a law with respect to acquisition of property should be exercised subject to the condition that such law should also provide for the matters referred to in Entry 42, in other words, a two fold restriction as to public purpose and payment of compensation (both of which are referred to in Entry 42) is imposed on the exercise of the law making power under Entry 36. In any case the legislative power conferred under Entry 42 is a power copuled with a duty to exercise it for the benefit of the owners whose properties are compulsorily acquired under a law made under Entry 36. For all these reasons the State legislatures, it was claimed, had no power to make a law for acquisition of property without fulfilling the two conditions as to public purpose and payment of compensation". The zamindars employed the best legal brains in the country like K.M.Munshi in the Patna High Court and P.R. Das a senior advocate B. Somaiah a former judge of the Madras High Court and Dr. B.R. Ambedkar the Chairman of the Drafting Committee and Chief architect of the Constitution of India and many others in Supreme Court. The above arguments were advanced by PR.Das. He, basing on the above arguments examining elaborately various provisions of the impugned Acts soughts to show that the compensation had "by various shifts and contrivances", been reduced to an illusory figure as compared with the market value of the properties acquired. The principles laid down for the computation of compensation operated in reality as
'principles of confiscation', and the enactment of the statute was in truth a fraud on the Constitution, each of them being a colourable legislative expedient for taking private properties without payment of compensation in violation of Constitution while pretending to comply with its requirements. Nor were these statutes enacted for any public purpose; their only purpose and effect was to destroy the class of zamindars and tenure holders and make the Government a 'super landlord'.

Mr. Somaiah argued that the assent of the Governor was also required before the assent of the President was given as the word legislature includes the Governor under Article 168 and his assent is required under Article 200 for a bill to become law and if it is not done requirements under Article 31(3) are not fulfilled and Article 31A and 31B did not save as the infringement was not of fundamental rights.

Dr. Ambedkar strangely did not rely upon Entry 36 of List 2 or Entry 42 of List 3 and said that they referred only to legislative competence and did not imply obligation to pay compensation. On the other hand he advanced a novel and nebulous argument that the requirement of public purpose and compensation in case of compulsory acquisition was deducible from the 'spirit of Constitution' which might be taken as a valid test for judging the Constitutionality of a Statute. For this proposition he relied on American decisions and text books. Hence, 31A and 31B could not save the legislation. Patanjali Sastri, C.J., rejected these contentions as "devoid of substance and force". Comparing Article 31A with clause (4) of Article 31 Patanjali Sastri, C.J., said "the scope of Article 31(4) is at once narrower and wider than that of Article 31A; the former has application only to statutes which were pending in the legislature at the commencement of the Constitution, whereas the latter is subject to no such restriction. Again, Article 31(4) excludes attack only on the ground of contravention of Article 31(2) while Article 31A bars objections based on contravention of other provisions of Part III as well, such as Articles 14 and 19.
This indeed was the reason for the enactment of Article 31A and 31B as the words of exclusion in Article 31(4) were found apt to cover objections based on contravention of Article 14. On the other hand, the law referred to in Article 31(4) covers acquisition of any kind of property, while Article 31A relates only to the acquisition of a particular kind of property, viz., estates and rights therein and what is more important for our present purpose, the 'non-obstante' clause in Article 31(4) over-rides all other provisions in the Constitution including the List of the Seventh Schedule, whereas a law which falls within the perview of Article 31A could only prevail over the foregoing provisions of this part. He concluded "the three impugned statutes fall within the ambit of both Article 31(4) and Articles 31A and 31B". He said that Article 31(4) protected the impugned statutes against 31(2) and 31(2) was almost a reproduction of the conditions under Section 299(2) of the Government of India Act and it was absurd to say that only one condition regarding compensation was included rejecting the second requirement regarding public purpose. Hence, if an attack on those two grounds fell within Article 31(4) the non-obstante clause, "notwithstanding anything in this Constitution" gave immunity against attack on those grounds whatever might be their source....whether from the entries in the legislative Lists or from the spirit of the Constitution....for both alike are covered by those words. Otherwise "clause (4) of Article 31 would be meaningless surplusage". The purpose of Article 31(4) would stand defeated if that argument was accepted as the limitations on the States power of acquisition were specifically provided in Article 31(2). It was against the elementary cannons

1. Ibid, p. 263.
2. Ibid, p. 263.
5. Ibid, p. 264.
of statutory construction to bring them from the back door by implication. The common law of eminent domain had no application in view of the specific and express provision of limitations in the Constitution. Entry 36 of List 2 referred only to legislative competence and no conditions were mentioned. Article 31(4) and 31(5)(b) were exceptions to Article 31(2) and such laws were passed only under Entry 36 of List 2. The argument that there was a general sovereign power to tax without satisfying the two conditions was untenable as it was specifically provided in clause (5)(b). Hence, the power can be derived only from this. The argument that it was enacted by way of abundant caution did not carry conviction. The argument that the words "subject to the provisions of Entry 42 in List 3" refer to the two conditions was wrong. They referred only to the condition that the State could pass laws subject to the laws passed by Union Legislature under Entry 42 of List 3 because these words were absent in Entry 33 of List I which conferred on Parliament the power of making laws with respect to acquisition or requisition for the union purpose. It amounts to that Parliament can pass laws without those two conditions and the State legislature cannot. This leads to an absurd conclusion. Hence, the correct position as explained by Patanjali Sastri, C.J., was that the two restrictions were to be found in Article 31(2) and not in the entries. It was argued that the malguzari lands in Madhya Pradesh could not be considered as estates within the meaning of Article 31A read with tenancy Act in that State. The Advocate General of Madhya Pradesh however agreed that under 31B the Act was protected even though it was not an estate. But the counsel for the petitioners argued that the words "without prejudice to the generality of the provisions contained in Article 31A" showed that the mention of particular statutes in Article 31B read with the Ninth Schedule was only illustrative and hence Article 31B could be wider than 31A. Patanjali Sastri, C.J., rejected this arguments and said that the opening words in 31B were meant to state that 31A should not be restricted in its application due to 31B.
Mahajan, J., said that in pith and substance the legislation pertains to the transference of ownership of estates to the State Government and fell within the ambit of legislative head Entry 36 of List 2 and Bihar legislature had got competence to pass such a law. He traced the origin of power of State to compulsorily acquire property and said that both the power of eminent domain of the State and the obligation to pay compensation were well established. They could be separated. But Mahajan, J., agreed with the Attorney-General that "... the concept of acquisition and that of compensation are two different notions having their origin in different sources. One is founded on the sovereign power of the States to take, the other is based on the natural right of the person who is deprived of property to be compensated for his loss. One is the power to take, the other is the condition for the exercise of that power. Power to take was mentioned in Entry 36, while the condition for the exercise of that power was embodied in Article 31(2) and there was no duty to pay compensation implicit in the contents of the entry itself". He further held that there was no link between Entry 36 List 2 and Entry 42 of the Concurrent List inspite of the words subject to. He observed:

"The two entries referred to above are merely heads of legislation and are neither interdependant nor complementary to one another". They meant that the State laws were subject to Central Laws. He said "public purpose is a content of power itself". "Public purpose is an essential ingredient in the very definition of the expression 'eminent domain' as given by Nicholas and other constitutional writers, even though obligation to

1. Ibid, p. 271.
pay compensation is not a content of the definition but has been added to it by judicial interpretation. The exercise of the power to acquire compulsorily is conditional on the existence of a public purpose and that being so, this condition is not an express provision of Article 31(2). But exists 'Aliunde' in the contents of the power itself and that in fact is the assumption upon which this clause of the Article proceeds. He held that the protection under 31(4) was limited to what was expressly stated in 31(2) as a condition and hence public purpose was justiciable. He said 31A and B excluded the application of 13(2) in view of Article 31(3) and (4) the quantum of compensation was nonjusticiable, however, unjust and illusory it might be. He said "the court's hands are tied by provisions of Article 31(4) and that which has been declared by the Constitution in clear terms not to be justiciable, cannot be made justiciable in an indirect manner by holding that the same subject matter which is expressly barred in contained implicitly in some other entry and therefore open to examination. With regard to the question of public purpose he agreed with the opinion of the Patna High Court that the Constituent Assembly itself has decided that there is a public purpose in the abolition of zamindaris in view of the provisions of clauses (4) and (6) of Article 31. He held that there was a public purpose in the impugned Act. He repelled the contention that the legislation was nationalisation of land and half a million people would be ruined by legislation, it would not be beneficial to ryots, and there were other lands for them for grazing the cattle. He quoted Article 39 of the directive principles of State Policy and said "now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based." The purpose of the acquisition contemplated

1. Ibid, p. 273.
by the impugned Act therefore is to do away with the concentration of big blocks of land and means of production in the hands of a few individuals and to so distribute the ownership and controls of the national resources which come in the hands of the State as to subserve the common good as best as possible. In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this court to say that there was no public purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute certainly is in accordance with the letter and spirit of the Constitution of India. He did not consider the compensation was illusory in character in view of many exemptions given like homestead, minerals, etc. He said measures adopted for the welfare of the community by legislation to carryout the policy of nationalisation of land could not be said to be devoid of public purpose in the present day world. He said "the phrase 'public purpose' has to be construed according to the spirit of the times in which particular legislation is enacted and so construed, the acquisition of estates has to be held to have been made for a public purpose." With respect to the acquisition of arrears of rent, the contention of the Attorney-General that it was an acquisition of chooses in action and that the compensation paid for it was fifty per cent of the amount of arrears, Mahajan, J., said that the power of compulsory acquisition could be used for the mere purpose of augmenting the revenues of the State. He held that this was unconstitutional as there was no public purpose. With respect to the argument that the impugned Act was a fraud on the Constitution he said that the whole of the enactment could not be said

1. Ibid., p. 274.
2. Ibid., p. 274.
to be a fraud simply because few zamindars were expropriated without compensation. But he was of the opinion that Section 23(f)¹ was a colourable piece of legislation as it is well settled that Parliament with limited powers cannot do indirectly what it cannot do directly. He said under the entry compensation has to be paid by making principles for determining the equivalent price of the property taken away. He said "legislation ostensibly under one or other of the powers conferred by the Constitution but in truth and fact no falling within the content of the power is merely colourably Constitutional but is really not so"². He held that the mode of payment of compensation by way of bonds or cash in installments under Section 32(2) was not an unregulated delegation of power to the executive. He held that Sections 4(B) and 23(F) were both unconstitutional and the rest of the Act was valid.

B.K. Mukherjea said that the bar created by clause (4) of Article 31 covers both express and implied conditions under clause (2). But he said Section 23 (f) of the impugned Act unconstitutional which related to computation of net income by making many deductions in arbitrary manner from the gross assets. With regard to the arrears of rent under Section 4(b) read with Section 24 by which fifty per cent of the collected arrears were paid to the zamindars and the rest appropriated by the State. He said that the legislature under the guise of acting under Entry 42 of List 3 nullified the provisions in substance and evaded its responsibility. He said money could not be acquired under the right of eminent domain. It could be done only by way of taxation or penalty. He rejected the argument that it was chose in action and not money as there was no difference in principle between them. In providing compensation in this matter the legislature made a colourable use of Entry 42 of List 3. He said that it was a fraud

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¹ S. 32 (F) provides for collection.
Das, J., referred to the argument that the State's power of acquisition of private property was in essence a compulsion to the owner to sell when public interest required it. Blackstone's commentary is an authority for this proposition. Obligation to pay just compensation for compulsory acquisition of private property is recognised by all civilized Governments in the world. Right to compensation is an incident to the exercise of the power of eminent domain and cannot be separated. Both are parts of the same principle. Number of American, British decisions were cited in favour of this proposition. Lord Dunedin described the obligation to pay compensation as "a necessary concomitant to taking". It was argued that acquisition was a compound concept of power to take on just terms. Das, J., referring to the fifth amendment of the American Constitution providing for just compensation said that as originally even though there was no provision in the American Constitution it was accepted that there was an implied power for the sovereign to acquire and as such the specific provision for compensation in the amendment showed that payment of compensation was not an integral part of the power of acquisition. So also under the Indian Constitution it was provided under Article 31(2) it might be made as a legislative power and become a composite power. Referring to the Australian Constitution in which under Section 31 of the Commonwealth of Australia Constitution Act circumscribing the power to acquire by obligation to pay just compensation he said it was not necessary in all cases and depends upon the particular provisions of particular constitutions. Quoting the maxim "expressum facit cessare tacitum" he said the express provision in Article 31(2) for compensation excludes

any suggestion for an implied obligation for the same in the word "acquisition" in Entry 36 in List 2. He said Entry 42 in List 3 was only a legislative head giving power to the State legislatures and Parliament to act under Article 31(2). He also said the source of obligation to pay compensation is only in Article 31(2) and could not be implied and not to be found anywhere in the Constitution. With respect to many cases cited from England on the proposition of implied obligation to pay compensation he said they referred only to the executive power and not to the legislative power. He observed that if Entry 36 in List 2 was subject to Entry 42 List 3 independently giving rise to obligation to pay compensation other provisions became meaningless viz., Article 31(4) and clause (5)(b) and 31A and 31B. He said that the deductions made from the gross assent in arriving that compensation was a matter for legislature depending upon the capacity of the proprietors and tenure holders even if it did not produce fair compensation it might offend Article 31(2) but not Entry 42 in List 3 and could be challenged in view of Article 31(4), 31A and 31B. The words in Article 31(4) "notwithstanding anything in this Constitution" protected the Act against the legislative incompetency if any. With regard to arrears of rent under Section 4B of the Act the legislature wanted acquisition of the arrears of rent by the State for which it had got power. With respect to the argument that arrears of rent was money he said "it is not at all money in the till of the landlord but it is debt due by the tenants. It is, therefore, nothing but an actionable claim against the tenants which is undoubtedly a species of 'property' which is assignable. Therefore, it can equally be acquired by the State as a species of 'property'". He said that the market value cannot be equal to the face value of the rents. The State took risk in collecting the arrears involving cost and time. Hence, giving fifty

1. 79. Ibid, p. 287.
per cent of the arrears as compensation is reasonable.

Das, J. considered that the existence of public purpose is an essential and integral part of clause (2) and 31(4), 31A and 31B give immunity to a law against clause (2). He also felt that the two conditions could not be imported into the entries in List 1, List 2 and List 3. He said the American and English Constitutional connotations of public purpose which were changing and flexible could be a guide. He also said that in modern times the emphasis was shifting from the individual to the community. He said that under Article 31(1) deprivation of a person of his property could be made without payment of compensation if it was not acquired. He had rightly said that laws in furtherance of the principles under Part IV of the Constitution for the welfare of the people were all for public purpose. Abolition of zamindaris in the light of this was for public purpose. The Bihar Act was known to the Constituent Assembly when it passed Article 31(4) and as well as when it passed the First Amendment of the Constitution.

The provision with respect to the arrears of rent could not be questioned even if there was no public purpose in view of Article 31(4), 31A and 31B; secondly it was wrong to pick up a single provision and test it whether there was public purpose or not. The whole scheme of agrarian reform had to be taken into the consideration. There were huge arrears of rent. The tillers of the soil would become landless labourers if court proceedings were taken and enforced. So the State wanted to protect the tillers of the soil. Amelioration of conditions of tenants and cultivating ryots was a public purpose. He said "the acquisition of arrears of rent appears to me to be the integral part of the scheme and inextricable interwoven with it". The argument that the Act was a fraud on the Constitution as it purports to be in conformity with the Constitution but in effect constituted a defiance of it.

1. Ibid, p. 291.
as it confiscated fifty per cent of the arrears of rent was nothing but an attack on inadequacy or absence of compensation and could not succeed in view of Article 31(4) 31A and 31B.

Chandrasekhara held that the condition of public purpose was neither in Article 31(2) nor in Entry 42 but was a part and parcel of the law and was inherent in it and Article 31(4) did not debar a challenge of the constitutionality of an Act on this ground. He said that there was no public purpose in acquisition of money and even if arrears of rent were considered to be choses in action it could be so acquired. He cited number of authorities including Cooie's observations on it. He said that the reason for the exemption of money and choses in action from compulsory acquisition "is not on the ground that they are noble property but on the ground that generally speaking there could be no public purpose in their acquisition". Referring to the provisions in Section 23(f) that 4 to 12½ of the gross assets can be deducted from the amount as representing 'cost of works of benefit to the ryots", he held it is an obvious device to reduce a gross asset. Both the provisions in the Act about 'arrears of rent' and the

1. With regard to the view of Justice Das, Alladi Krishnaswamy observed, "it is submitted that there can be no difference in principle between the acquisition of the estate and the arrears of rent". Justice Das at p. 1008 (S.C.R. 1952), has given a very cogent reasons to show that there is much public purpose served in acquiring arrears of rent as in acquiring the estate. The splitting up of acquisition into two halves and arrives at the conclusion that for one half there is no compensation, is an artificial way of considering the matter and the difficulty of releasing them. If this argument is followed to its logical conclusion, the acquisition of property say by paying half its market value would amount to acquiring the other half without compensation and should be held to be illegal, though the legislature had laid down the principles and Article 31A and 31B are intended to prevent such contentions being raised". Krishnaswamy Aiyar, Alladi, The Constitution and Fundamental Rights, Madras, 1955, p. 52.

2. Ibid, p. 296.
'cost works of benefit' amount to naked confiscation". As the provisions of the Act are "inextricably interwoven into the texture of the rest", the whole Act is void.

In Vishweswar Rao Vs. State of Madhya pradesh decided at the same time the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Allocated Lands) Act I of 1951 was held valid. Even though the payment of compensation is not equivalent in money of the property taken and in that sense may not be adequate cannot be called illusory. This Act was better than the Bihar Act as the arrears of rent due to the zamindars were not appropriated. The compensation paid was not a negative sum or a zero or a minus figure; even though the amount of expenditure inflated and actual income deflated in computation. It might be grossly inadequate but not illusory even though market value was not paid. It was not justiciable because of Article 31(4).

The batch of petitions filed under Article 32 impugning the Madhya Pradesh Act were dismissed. In another case decided at the same time i.e., Suryapal Singh vs. State of Uttar Pradesh, the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950 was impugned by number of appeals filed under Article 132(1) of the Constitution against the judgment of the Allahabad High Court. Dr. Ambedkar did not contend that the compensation was illusory. But he argued that "in fixing the amount compensation the State was a judge in its own cause and this was against the spirit of the Constitution".

1. Ibid, p. 296. This attitude cannot be supported. For instance in a society in which concentration of wealth takes place with the common knowledge of various objectionable and questionable means resulting in maldistribution of wealth creating serious furious in society and if considerable part of the wealth is kept in the shape of bank balances, how can it be said that there is no public purpose in imposing a ceiling on the amount and money which an individual can own own and acquiring the balance. Suppose the wealthy people count their assets into money and keep balances, what is wrong in the acquisition of that.

2. Ibid, p. 311.
This was negatived by Mahajan, J., observing that a compensation was determined by an officer which was subject to appeal as provided by the legislature which was competent to pass. Referring to the contention that there was no public purpose Mahajan, J. rightly said that "it aims at destroying the inferiority complex in a large number of citizens of the State and giving them a status of equality with their former lords and prevents the accumulation of big tracts of land in the hands of few individuals which is contrary to the expressed intentions of the Constitution"\(^1\). He said "in my opinion, legislation which aims at elevating the status of tenants by conferring upon them the Bhumidari rights to which status the big zamindars have also been levelled down cannot be said as wanting in public purposes in a democratic state"\(^2\). Mahajan, J. said that the public purpose was not a rigid concept and had no settled meaning. It has positive and negative aspect. The negative aspect is that it should not be for a private purpose. The positive aspect is that it should be for a public benefit. Both are satisfied in this Act. The argument of Dr. Ambedkar that "the spirit of the Constitution is a valid test for judging the constitutionality of impugned Act"\(^3\) has been rejected by Das Judge. He observed that the spirit should be "inferred from some provision express or implied of the Constitution"\(^4\). He said that Article 31(2) contained two elements as a prerequisite to the existence of the power of the eminent domain and the impugned Act was taken out of the operation of those provisions. Hence, he observed "invocation of such an imaginary spirit will run counter to the express letters of Article 31(4) 31A and 31B"\(^5\).

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1. Ibid, p. 311.
2. Ibid, p. 311.
5. Ibid, p. 316.
The Supreme Court unanimously upheld the validity of the Uttar Pradesh Zamindari Abolition and Land Reform Act in Suryapal Singh's case. In computing the gross asset for determining the compensation the Act included: actual rents payable by tenants; average annual income for ten years prior to the vesting of the estates in the State from such items as bazars, fairs, and fisheries, average annual income for four years from rents of buildings, sites, and forests; and average annual income over the previous twelve years from mines and minerals. The deductions that are to be made from the gross assets arrived at are: land revenue land taxes, and agricultural income tax payable in the previous agricultural year; fifteen percent of gross assets as the cost of management and unrecoverable arrears of rent; average of income tax paid on royalties from mines directly worked; and an adjustment for lands held in personal cultivation. Thus the 'net assets' are arrived at eight times to the value of which was paid as compensation. A graduated scale of rehabilitation grants to the ex-zamindars were provided with proportionately higher payment to smaller zamindars. But the Uttar Pradesh Act unlike Bihar Act did not provide for graduated compensation. Yet, indirectly it amounts to graduation in the amount of compensation.

In K.C. Calapathi Narayan Deo vs. State of Orissa, the Orissa Estates Abolition Act (1 of 1952) was impugned. It received the protection of Article 31 (4) and 31A, though could not be included in schedule 9 under Article 31B. It was enacted on similar lines as the Acts of Madhya Pradesh and Bihar.

Apart from other grounds the main ground of attack was on the method of computation of compensation relating to the calculation of gross assets and deductions. In the High Court,

though Narasimham, J., agreed with C.J., in dismissing the petition filed under Article 226 suspected the bonafides of the Agricultural Income Tax (Amendment) Act 1949. He was inclined to hold it as a taxation measure and colourable (legislation) device to cut down drastically income for calculation. But he did not dissent from final decision on the ground that the benefit should go in favour of the constitutionality of an enactment.

In the Supreme Court also the main plank of attack was that the Agricultural Income Tax Act was passed hurriedly increasing the rate of Income Tax and reducing the slab so as to artificially cut down the income to reduce the compensation and that it was a colourable legislation and a fraud on the Constitution. Number of foreign judgments and the decision of the Supreme Court in Bihar Land Reforms Case have been cited. The Supreme Court explaining the doctrine of colourable legislation held that even if the motive was different it cannot be questioned: "under Entry 42, List III which is a mere legislative power, the legislature can adopt any principle of compensation in respect to properties compulsorily acquired whether the deductions are large or small, inflated or deflated they do not affect the constitutionality of legislation under the entry\(^\text{1}\). "Both in form and substance it was an agricultural income tax legislation and agricultural income tax is certainly a relevant item of deduction in the computation of net income of an estate and it is not unrelated to it as item number 23(f) of the Bihar Act was held to be\(^\text{2}\)."

"The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly\(^\text{3}\). It was held unanimously that the Orissa Agricultural Income Tax Act was valid and not a colourable legislation.

1. Ibid, p. 381.
2. Ibid, p. 381.
3. Ibid, p. 381.
B.K. Mukherjea, J., said "the whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power"\(^1\).

The substance of an act is important and not the form. "The legislature cannot violate the constitutional prohibition by employing an indirect method".

"For the purpose of this investigation the court could certainly examine the effect of the legislation and take into consideration its object, purpose or design—Vice Attorney-General for Alberta. V. Attorney-General for Canada 1939 AC 117 at p. 130(c). But these are only relevant for the purpose of ascertaining the true character and substance of the enactment and the class of subjects of legislation to which it really belongs and not for finding out the motives which induced the legislature to exercise its powers\(^2\).

It was held that "the amendments in Madras Estates Land Act are not part of the Estates Abolition Act of Orissa and there is no question of any colourable exercise of legislative powers in regard to the enactment of these provisions\(^3\). These provisions give power to the collector to reduce the rents due to the zamindars. The court unanimously rejected the appeal and upheld the Act.

In ZAMINDAR OF ETTAVAPURAM VS. STATE OF MADRAS\(^4\).

The appellants, land holders of Madras, holding zamindarships within the State, filed application under Article 226 against the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 which was passed by provincial legislature functioning under the Government of India Act 1935 with an

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1. Ibid, p. 379.
2. Ibid, p. 379.
object to abolish the zamindari system by repealing the Madras Permanent Settlement Regulation of 1802 and to introduce the ryotwari system. The Act received the assent of the President after the Constitution came into force. While the petitions were pending, the Constitution (First Amendment) Act of 1951 was passed knocking down the grounds of attack that the legislation was confiscatory in its character and subversive of the fundamental rights to property, by adding Article 31A and 31B in the Constitution and including the Madras Act in the Ninth Schedule of the Constitution which cures even against a judgment holding that the Act contravened fundamental rights. The Madras High Court dismissed the petitions. Relying on Kameshwar Singh's case, the appellants attacked not the entire Act but only few provisions on the ground that there was no public purpose behind the acquisition of some of the items of property mentioned and that the provisions for compensation were a colourable exercise of legislative powers. It was a fraud on the Government of India Act 1935. The High Court rejected the arguments and held that the principles of Bihar's case does not apply. It was held by the Supreme Court that Bihar Land Reform's case had no application because the impugned Act was passed under 1935 Act and not under the Constitution and that there was no entry in that corresponding to Entry 42 of List III of the Constitution of India. And Entry 9 of List II of Government of India Act, 1935 speaks only about compulsory acquisition of land and does not mention compensation at all. And Section 299 (2) which speaks about guarantee of payment of compensation is excluded by 31(6) of the Constitution of India.

In VEERAPPA CHEITTIAR vs. STATE OF MADRAS.

The Supreme Court unanimously held that the appeal was concluded by their decision in 'Zamindars of Ettayapuram vs. State of Madras'.

It was held that in view of absence of an entry in any of the legislative lists in the Government of India Act, 1935 corresponding to Entry 42 of List III, Sch. VIII of the Constitution of India; the plea that the provisions relating to compensation in the Madras Estates (Abolition and Conversion into Ryotwari) Act of 1948 was colourable exercise of legislative powers failed. Even if no compensation has been allowed in respect of large number of undertenures "we fell powerless to give any relief to appellants by reason of the express provision contained in Article 31(6) of the Constitution".

In **BHAIREBENDRA NARAYANA BHUP vs. STATE OF ASSAM**

The Assam State Acquisition of Zamindaris Act, 1951 was challenged on many procedural grounds and also on the ground of colourability of legislation and discrimination under Article 14. The Supreme Court received all the arguments and upheld the Act. Regarding the doctrine of colourable legislation the court rejected its application and reiterated its stand in **K.C. Gajapathi Narayan Deo case** that "The doctrine of colourable legislation was relevant only in connection with the question of legislative competency..." with respect to the attack on the ground and discrimination the Court said, "It is not difficult to find a basis for such classification of proprietors of different income groups".

In **Biswaambhar Singh vs. State of Orissa**, notification under the Orissa Estates Abolition Act, 1951 was questioned in High Court, and it was negatived and then an appeal reached the Supreme Court. The question turned upon whether the appellants, zamindars were intermediaries or not holding estates, for the State to acquire them. After discussing the meaning

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of the words 'zamindar', 'estate' and 'intermediary', the
Supreme Court held with reference to the definitions given in
the Act "The distinction is of importance of zamindars of vari­
ous kinds. Some are true intermediaries in that they are the
collectors of the revenue of the State from the ryots and other
under tenants of lands. They have an interest in the land but
not the true fee simple of English law. They were not lords
of the manner as in England and bear little or no resemblance
to an English lord though they have some of his attributes,
(See Baden-Powell's Land Systems of British India, Vol. I
pages 230, 519 and 53); others were either ruling chiefs or
court favourites with a mere courtesy title or just peasant
cultivators".

It was held that the petitioners are not "intermediaries"
within the meaning of Section 2(h). If they are not 'inter­
mediaries' then their lands are not an 'estate' with in the
meaning of Section 2 (g) and so cannot be taken over by the
State of Orissa under Section 3.*

In SMT, SHANTABAI vs. STATE OF BOMBAY, it was held
that if the right is based on a contract only, no fundamental
right is involved. A right based on contract simpliciter
gives rise only to personal right.

"To bring the claim under Article 19(1)(f) or Article
31(1) something more must be disclosed, namely a right to
property of which one is the owner or in which one has an in­
terest apart from purely contractual right. Therefore, the
claim founded in contract simplicited disappears."

It was held that the Madhya Pradesh Abolition of pro­
prietary rights (Estates, Mahals, Alienated lands) Act 1950

1. Ibid, p. 146.
2. Ibid, p. 150.
was valid and the contract between the zamindar and his wife giving right to her over the forest land to enter and cut was not binding on the Government.

In, RAGHUBAR SARUP vs. STATE OF UTTAR PRADESH, the action taken by the State of Uttar Pradesh under the Uttar Pradesh (Zamindari Abolition and Land Reforms) Act No. 1 of 1951 and the Rampur Thekedari and Pateldari Abolition Act No. X of 1954 were impugned under Article 32 and by way of appeal in some cases from the judgment of the Allahabad High Court. The Uttar Pradesh Act No.XIV of 1958 retrospectively amended the definition of the word estate in Section 3 (8) of the abolition Act and winded it to include jagirs and muafis. The Supreme Court rejected the argument that agreement between former ruler of Rampur and dominion of India is binding. Quoting Maharaj Umeg Singh's case it held Article 363 bars any resort to court for this purpose. All earlier contracts and agreements between the ruler and intermediaries fall under the general policy of the State to abolish all estates. The collateral letter for merger on which reliance was made speaks that the agreements were subject to the laws and the general policy of the Government. Question of compensation was not raised and the Act complies with the provisions of Article 32 (2). It was held valid.

In RAJAH OF VENKATAGIRI vs. STATE OF ANDHRA PRADESH, The Madras Estate (Abolition and Conversion into Ryotwari) Act, 1948 was challenged before the Supreme Court by way of an appeal against the judgment of the Andhra Pradesh High Court which dismissed the writ petitions. The Supreme Court held that the Act was valid in view of Article 31A and its inclusion in Ninth Schedule and protection under Article 31B and the termination of lease granted by Rajah previously was valid action.

In Sarwarlal vs. State of Hyderabad, Section 6(4) of the Hyderabad (Abolition of Jagirs) Regulation (1358 Fasli) and Section 41C and 42 of Hyderabad Jagirs "Accumulation" regulation "25 of 1359 Fasli" were challenged. It was held that the military Governor had powers to make such a regulation as the Nizam gave sovereign powers to him to administer the State which includes legislative power. At that time there was no Constitution of India. Hence the question of colourable legislation did not arise. The Constitution has no retrospective effect except to the extent it was clearly made. The regulations when made were competently promulgated and there was legislative competency. The Constitution did not operate retrospectively to revive rights which were extinguished before it was enacted. The Acts and regulations were further protected by being included in the Ninth Schedule and by Article 31B from being challenged on the ground that they were inconsistent with or take away or abridge any of the fundamental rights conferred by Part III of the Constitution of India. It was held, the abolition of jagirs was valid.

In the State of Vindhya Pradesh (Now Madhya Pradesh) vs. Moradhwaq Singh, Vindhya Pradesh (Abolition of Jagirs and Land Reforms) Act, 1952 was challenged on the ground that it was a piece of colourable legislation and violated Article 14. The Supreme Court held the legislation valid and dismissed the appeals by the jagirdars. It was held that jagirdars stood as a class by themselves when compared to the occupants of lands and even if there was discrimination it could not be challenged in view of the specific provision in Article 31A.
C. CONCLUSION.

Under the comprehensive land reforms programme envisaged and committed by the national party during the freedom struggle and the national Government after the attainment of freedom providing precautionary extra safeguards, in the Constitution for the protection of such legislation translating those aims into practice through democratic and legislative process, the first phase in that programme was the abolition of zamindaris which had been accomplished by the Government, in a fairly quickest possible time. Legislation was passed for the abolition of intermediaries in quick succession in almost all states; Madras, Bombay and Hyderabad in 1949-50; Bihar, Madhya Pradesh, Uttar Pradesh, Madhya Bharat and Assam in 1951; Orissa, Punjab, Saurashtra and Rajasthan in 1952; Pepsu, Vindhya Pradesh and Bhopal in 1953; West Bengal, Himachala Pradesh, Mysore and Delhi in 1954-55. Inspite of it some categories of intermediaries were not covered, which required additional legislative effort. But the major part and hard core of it had been acquired by the State and the programmes were promptly implemented:

"and by the middle of 1954 the back of zamindari system had been broken in the country as a whole"117.

The constitutional and legal battles between the zamindars and the States, had come to a successful conclusive end by passing the Constitution (Seventh Amendment) Act 1956. The Amendment Act omitted Entry 33 of Union List, Item 36 from List II and substituted for old Item 42 of List III a new item which reads: "Acquisition or requisitioning of property". The reference to compensation and principles of fixing it was omitted in Item 42. Hence, legislative enactments which do not make any provision or

117. H. Venkatasubbaiah, op.cit.
make any illusory provision for compensation in respect of property acquired or requisitioned by the State could not be challenged on the ground of want of legislative competence. This amendment nullified the ratio deciderendi of Kameshwar Singh's case: It is not known why this change had not been brought about under the Fourth Amendment to the Constitution of India, which has been passed in 1955, three years after the judgment in Kameshwar’s case.

Enormous amount of compensation had become payable to the zamindars\(^1\). The Planning Commission estimated it at about Rs. 450 crores. The State gets only about Rs. 40 crores towards additional revenue by this process. Some States like Bihar and Uttar Pradesh had to pay huge amounts. The fixation of compensation was based on the net income of net assets. There is no uniform method in calculating the gross assets or gross income out of which deductions were made for land revenue, cesses and local imposition, agricultural income, cost of management, recoverable arrears of rent and so on. A multiple of the net of the basic figure after making deductions is the compensation. The multiple is not the same in all states\(^2\). Uttar Pradesh, Madhya Pradesh, and Madhya Bharat followed a flat rate principle. They introduced schemes of rehabilitation grants

\(^1\) "Though it would have sounded harsh and undemocratic and against the Constitution as well, not to compensate the ousted zamindars and intermediaries under the land reforms, Daniel Thorner is also one of those who do not favour compensating the ousted aristocracy, the subsequent experience however has shown that the burden of paying such compensation was so heavy that a large number of tenants could not acquire those titles". V.S. Mahajan: Socialistic Pattern in India an Assessment p.31. cited Daniel Thorner: The Agrarian Prospect is in India, p. 24.

\(^2\) In Uttar Pradesh 8 times, in Madhya Pradesh 19 times, in Madhya Bharat 3 times, Rajasthan 6 times and in Punjab, Bihar, Orissa, Assam, West Bengal and Madras a sliding scale for different income brackets was made.
to the small zamindars. In Uttar Pradesh nearly an amount equal to half of the total compensation was set apart for rehabilitation grants. The bigger zamindars got sometimes half of one fourth of the market value of their estates and the smaller ones, sometimes full market value. If the Government were to pay full market value as it had no capacity to pay the zamindari abolition could not have taken place. Though the Supreme Court had in the majority of cases upheld the validity of zamindari legislation, in different States it cannot be said that it was because the court appreciated the significance of economic change. It cannot be forgotten that even in such a case of the abolition of unjust functionless economic anachronism like the intermediaries, it required great efforts on three fronts namely: the legislative, the judicial and the executive. Two amendments were passed, namely first and seventh, to the Constitution of India to effect the reforms. Number of battles were fought in High Courts. There are some judges in Supreme Court who showed extraordinary awareness to the gigantic problem. Nineteen judges participated in the judicial review of zamindari legislation. Only three judges voted against by partially invalidating the Bihar Land Reforms Act. There are others who showed more faith in the doctrines and concept, prevalent in the western countries in the 19th century ignoring the realities at home. If

many Acts were upheld relating to abolition of zamindaris, it is not because on the whole the Supreme Court showed awareness of the economic problems the country was facing, but because the Acts were given immunity under the original Constitution and by subsequent amendments.

1. In all 13 cases were decided by the Supreme Court relating to the abolition of zamindaris which fell under the category of legislation strictly so called and covered by Article 31 (4) and (6) including the one in which the power of Parliament to amend fundamental rights was questioned and conceded by the Supreme Court. Excepting some provisions in the Bihar Land Reforms Act all other Acts were upheld. It means in 12 cases the decision went in favour of the State. The percentage of invalidity was 74.7%. But as mentioned above it may not lead to the conclusion that the Supreme Court facilitated the abolition by progressive interpretation. The judges participated in this phase were Patanjali Sastry, Mahajan, Mukherjea, Chandrasekhar, Aiyer, S.R. Das, Chulam Hassan, Bhagwati, Venkatarama Aiyar, Sinha, Imam, S.K. Das, A.K. Sarkar, Vivian Bose, Wanchoo, J. Shah, excepting one (Kameshwar Singh) all judgments were unanimous.

2. See Appendix IV, in Chapter IV Shankari Prasad Case is included along with Sajjan Singh, Golaknath and Kesavananda, for convenient dealing of the question of power of parliament to amend the Fundamental rights.