

CHAPTER-IV

CONSTITUTIONAL DYNAMICS, FEDERAL GOVERNANCE IN INDIA AND CONSTITUTIONALISM: A STUDY

I

Since the beginning of the Indian Constitution on January 26, 1950 upto the breaking up of the Lok Sabha in 1979 for the mid-term voting list for January 1980 as many as forty-four Amendment Acts have been passed with the purpose to enable the Constitution 'to respond to the needs' of the altered socio-political matrix of the Indian Political System.

The amendments of the Indian Constitution within sixty three years of the working of the present Constitution, creates conflicts among the general public and Constitutional lawyers alike. An observation has been as: "While they have caused consternation among the political purists who find little sanctity left in the Constitution as a result of the supposedly arbitrary changes much debate is still going on as to the probable impact of these changes on the Constitutional evolution, socio-economic progress and the general transformation of the Indian Society."¹

It has already been seen² that the Indian Constitution provides a novel amending provision in Art.368 by which the Constitution can be amended in more than one manner. While some of the provisions of a 'tentative nature' can be altered by the Parliament by the ordinary legislative process, without being called amendment process, and some others relating to the federal character of the Constitution, being entrenched, need a difficult additional requirement of consent by one half of the State Legislatures, the large bulk of the Articles of the Constitution can be amended after the Bill for such purpose is approved by an absolute majority of the total membership of each

House of Parliament as well as a two thirds majority of the members present and voting in terms of Art. 368.

It can also be mentioned that since the very commencement, the political system of India "has been passing through periodical crises and conditions of instability".³ During and after 1967, these problems became more critical due to some sure factors which were like first in the conflict of institutions in the Golaknath judgement of 1967; Secondly, after the fourth general election in 1967, the political change in the country; thirdly, in the 'historic' split in the Congress party in 1969; and fourthly, the gradual change in the economic setting, started as result of the failure of developmental efforts on the part of the Govt.⁴ With the others, all these factors, "brought the societal goals face to face with serious and crippling constraints, and instability resulted in unforeseen political conflict within the system."⁵ But it is still to be decided "Whether the conflict that occurred is a systemic conflict involving the very nature and operation of the political system itself, or an issue conflict involving specific issues and problems not concerning round the basic institutions."⁶ It is apprehended that any failure to deal effectively with systemic conflict brings disaster and disintegration to the political system...."⁷ Like India, for a political system is not exposed to violence 'as a means of resolving systemic conflict', the amendments of Constitution might go a long way in removing the constraints to stability and other systemic goals."⁸

According to form constitutional amendments are important not only to supply the 'safe-valve' for the political system but also to help to bring about "to an increased and more effective 'regulative' and distributive capability of the political system by introducing the much needed structural and institutional adjustments within the basic framework."⁹

The conflict between the 'justiciable' Fundamental Rights and the 'non-justiciable' Directive Principles, compelled the party in power to

get hold to recourse to the way of formal constitutional amendment. The effect was the incorporation of the First Amendment Act 1951 that was required to take off the assertion that the ideals contained in the constitution wanted the attribute of 'existential reality'. It is true that the Indian Constitution is a 'derivative' and 'adventitious' document, "divorced from the mainsprings of Indian culture or heritage, and conveniently accommodating the accepted principle of Western Constitutionalism."¹⁰

Due to 'a surprising degree of adaptability', the fundamental framework, although disclosed to such inner conflicts and denials, has not informed. Willing to make the Constitution more responsive and adaptable, since 1951 it has been ensalved to strong changes. It is good to note which in India most of the amendment of Constitution search to remove "the serious spectre of systemic conflict involving either the nature and working of the political system or its basic institutional components."¹¹

Importantly notable, though formal amendments of constitution are important to do the constitution responsive to the socio-political environment, the importance should not be kept on the 'procedure' of change, 'but on the relative ease and frequency of actual change."¹² The necessity of the drafting skill comes in order to "ensure the stability of the fundamental constitutional norms whilst avoiding the rigidity that would make evolution, adaptation to changing circumstance, and the growth of consensual opinion for peaceful change difficult to achieve."¹³

Preserving the aspects of dynamism of the political system of India, the constitution has been basically amended on 94 times. These amendment may be kept into five main groups which in a proper way help us to understand the nature and impact of these Constitutional amendments including the forty second; forty third, forty fourth.

In the first group, the First, the Fourth, the Sixteenth, the Seventeenth, the Twenty-fourth, the Twenty-fifth, the Twenty-ninth and the Thirty-fourth amendments are the most important but controversial group. The substance and quantity of fundamental rights, mostly the right to property vis-à-vis the growing needs of the community are narrated directly with these amendments.

The second group consists the Third, the Fifth, the Sixth, the Seventh, the Thirteenth, the Eighteenth, the Twenty Second and the Twenty Seventh amendments.

These are related with the nature and character to the federal structure and contributions along with the progress of federal power and authority and to the rationalization of the federal structure.

The Seventh, the Eighth and the Thirty third amendments are comprised in the third group which tries to give greater protection and defences to the Minorities and Scheduled Castes and from the point of view of the effect and activities of the democratic society these should be obeyed as important.

The fourth group, mingled group, combining the second, the Eleventh, the Fourteenth, the Fifteenth, the Nineteenth, the Twentieth, the Twenty sixth, the Thirtieth and Thirty first, is shaped to fetch about agreeable developments in the organization and working of the administrative and governmental parts.

The fifth group of amendments is of miscellaneous nature which includes 45th, 52nd, 59th, 61st, 62nd, 71st, 73rd, 74th, 76th, 77th, 79th, 81st, 84th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd and 94th amendment acts relating to reservation, defection, lowering the voting age, inclusion of state language in the Eight Schedule, local self governments, delimitation of constituencies right to education, census, taxes on services, creation of separate commission for Schedule Castes, provision regarding the Bodoland Territorial Areas, Provision for

strengthening of council of ministry, special provisions for the advancement of SCs and STs.

Among all these groups, the first claims weighty emphasis and analysis, since all the amendments being in this group were designed, as is obvious/evident from their asserted objectives to nourish and advance the socio-economic improvement of the country by delegating the hindrances to advancing land reform measure and social prosperity legislation.¹⁴ The right to property has been adequately amended through most of these amendments for that without any type of constitutional restriction, the uniform land reform measure can be introduced throughout the country by the legislature. Most of all these amendments, either Art.19 or Art.31 of the Constitution related with fundamental right to property has been sought to be amended which must be noted.

II

By the time in question, it has attended to these amendments being casted importantly to melt the issue and foundational (institutional) struggle in the Indian political system. According to that, it has been exactly noticed that "in considering the problem about the genesis of the amendments by the Indian Parliament in several provisions of the Indian Constitution, affecting fundamental rights, the relevance of the challenge which Indian democracy was determined to meet, cannot be overlooked or underestimated."¹⁵

Through the First Constitutional Amendment Act, 1951 which was passed on June 18, 1951, articles 15, 19 and 31 by sections 2,3,4 and 5 of the Amendment Act were amended. The necessity for doing this amendment act can be observed from the "Statement of Objects and Reasons" of the Bill which observed inter-alia.

"During the last fifteen months of the working of the Constitution, certain difficulties have been brought to light by judicial

decisions pronouncements, specially in regard to the Chapter on Fundamental Rights. The citizen's right to freedom of speech and expression, guaranteed by Art.19(1)(a) has been held by the Courts so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. In other countries with written Constitutions, freedom of speech and the press is not regarded as barring the state from punishing or preventing abuse of this freedom. The citizen's right to practice any profession or to carry on any occupation, trade or business conferred by Art.19(1)(g) is subject to reasonable restrictions which the laws of any State may impose 'in the interests of the general public'. While the words cited are comprehensive enough to cover any scheme of nationalization which the State may undertake it is desirable to place the matter beyond doubt by clarificatory addition to Art. 19(6). Another Article in regard to which unanticipated difficulties have arisen, is Art.31. The validity of agrarian reform measures passed by the State Legislature in the last three years has, in spite of the provisions of clauses (4) and (6) of Art.31, formed the subject matter of dilatory litigation, as a result of which the implementation of these important measures, affecting large number of peoples has been held up."¹⁶

Therefore, the First Amendment (Bill), sought "to amend Art.18 for the purpose indicated above and to insert provisions fully securing the constitutional validity of zamindari abolition laws in general and certain specific State Acts in particular."¹⁷ In the Bill, it was intended that a few minor amendments to other relevant Articles would be made.¹⁸

In addition, it was noticed: "In order that any special provision that the state may make for the economic or special advancement of any backward class of citizens may not be challenged on the ground of being discriminatory, it is proposed that Art.15(3) should be suitably amplified. Certain amendments in respect of articles dealing with the

convening and proroguing of the sessions of Parliament have been found necessary and are also incorporated in this bill. So also a few minor amendments in respect of Articles 341, 342, 372 and 376."¹⁹

To start with, through this Amendment Act, some changes were brought in Art.15. Section 2 of the Amendment Act included the following clause as Clause (4) in Art.15:²⁰

"(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

Art.15 restricts discrimination on grounds only of religion, caste, race, sex or place of birth. Before this clause (4) was included by the Amendment Act, it ran as follows:²¹

"Art.15(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them; (2) No citizens shall on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to –

a) Access to shops, public restaurants, hotels and places of public entertainment; or

b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

c) Nothing in this article shall prevent the State from making any special provision for women and children."

It is also here to indicate Art.14 of the Constitution related to right to equality. Art.14 is as follows:

Art. 14 "The state shall not deny to any persons equality before the law or the equal protection of the laws within the territory of India."

Art.29(2) which can be mentioned provides:

29(2), "No citizen shall be denied admission into any educational institution maintained by the State or receiving and out of state funds on grounds only of religion, race, caste, language or any of them."

To welcome the importance of taking about this amendment Act, a necessary look must take into the decision of the Madras High Court in Champakam Dorairajan and Others Vs. The State of Madras.²² It comes into sight that the Notification Govt. Order No.1254 Education, dated 17th May, 1948, commonly known as the communal Government Order was came out for the aim of restricting the number of seats in certain Government Colleges for certain castes. It was compelled with the purpose of providing opportunities relating to admission in colleges to students of the socially and economically weaker sections of the community.

Claiming the soundness of this Govt. order till it transferred into Articles 15(1) and 29(2), Srimati Champakam Dorairajan made a request to the Madras High Court on June 7, 1950. The learned Chief Justice Rajamanner held that as effect of this Govt. order that provided certain seats which have been kept in deposit for certain students of the backward classes, by disowning the right to students belonging to Brahmin Community, a fixed case of discrimination has been made. By nature, it opposed Art. 15(1). The Chief Justice noticed, Inter alia: "what the article says is that no person of a particular religion or caste shall be treated unfavourably when compared with persons of other religious and castes merely on the ground that they belong to a particular religion or caste." He asked the question in regard of the purpose of sending out the Communal Govt. Order. The govt. Order strongly went against Art.15 (1) and Art.29(2) since it limited number of seats for a particular caste.

The Advocate General, appearing on behalf of the State, drew his argument from the provision of Art.46. Art.46 provides that the state shall promote with special case the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. But the argument advanced by the Advocate General did not stand in view of Art.37 which has categorically declared the non Justiciable character of the Directive Principles in the Courts of Law. In this connection, the Chief Justice observed inter alia, "Granting that one of the objectives of the Constitution is to provide for the uplift of the backward and weaker sections of the people which inter alia, is embodied in Art.46, can be held that the state is at liberty to do anything to achieve that object? The obvious answer is "yes", so long as no provision of the Constitution is contravened and no fundamental right declared by the Constitution is infringed or impaired." By way of conclusion, the Chief Justice observed inter alia, "In our opinion, Art.46 cannot override the provisions of these two Articles or justify any law or Act of the State contravening their provisions."²³

Though, the decision Uudgement of the Madras High Court was generally challenged in the Supreme Court, this Court supported the Madras High Court's decision by observing, inter alia, that "the Directive Principles of State Policy have to confirm and run subsidiary to the Chapter on Fundamental Rights" and in view of their non-justiciable character, they "cannot override the provisions found in Part III" that are "sacrosanct."²⁴

On the basis of this decision, Parliament felt that the state legislatures were unable to take effective steps to increase the economic, social and educational welfare of the people of backward classes when facing the challenge posed by the judgement of the Supreme Court. Then there was only option for the parliament to

amend Art.15 by including a new clause that is clause (4). On the basis of earlier decision of the Supreme Court,²⁵ a study will put on the fact that in view of the categorical provision which was made in Art.37 of the constitution, it had no other option.

Appreciating the amendment of Section 3 of the Constitution (First Amendment) Act, it is important to indicate Art. 19(2) which was really inserted in the Constitution. It read as :

"(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the state from making any law relating to, libel, slander, defamation, contempt of court on the exercise of the right conferred by the said sub-clause in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

An investigation into the present motive behind the decree of this amendment act of referring will have to execute to some judicial conclusions in connection with the description of Art. 19(2) as it really was located.

The legal strength of Section 9(1-A) of the Madras Maintenance of public order Act XXIII of 1949 was objected to in Romesh Thapar Vs. The State of Madras.²⁶ The earnest humble prayer placed a complaining that the mentioned order, whereby a prohibition was laid on upon the right of entering and circulation of a journal in the state, opposes the fundamental right of the earnest humble prayer to freedom of speech and expression compared on him by Art.19 (1) (a) of the Constitution and he objected the soundness of Section 9(1-A) of the Act as being quit under Art. 13(1) of the Constitution by its being irreconcilable with his fundamental right already remarked. The Section empowered the Government of the religion "for the purpose of securing public safety or the maintenance of public order, to prohibit or regulate the entry into,

or the circulation, sale or distribution in the provinces of Madras or any part there of any documents or class of documents." Clearly one of the causes due to the power conferred by this section could be summoned by the Government of the State was to secure public protection, and the enquiry which was made up before the Supreme Court was that the delimitation of public security or 'public order', that was related in exercising the power conferred by the impugned section, was the exterior limit of Art.19(2) as it stood at that time.

The justness of the discussion chiefly located around the question as to whether 'the security of the state' that was noticed briefly in Art. 19(2) comprised or was same with 'public order' or 'public safety'.

The Supreme Court held that by prohibiting the entry into Madras of a weekly Journal in English called "Cross road" printed and published in Bombay under Section 9(1-A) of the impugned Act the freedom of speech and expression of the petitioner Romesh Thapper had been adversely affected in as much as the said freedom is ensured by the freedom of circulation and was prohibited by the impugned order so far as Madras state was concerned. In their decision the court held, with Justice Fazl Ali dissenting, that the concept of public order or public safety was not exactly synonymous with the concept of security of the State. The court further held that since Art.19(2) did not refer to public order or public safety, the impugned section was constitutionally invalid and the impugned order was therefore illegal. Justice Patanjali Sastri observed inter alia; "public safety ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent danger to public health may also be regarded as securing public safety. The meaning to the expression must, however, vary according to the context." After examining some of the provisions of the Indian Penal Code, he observed: "whatever ends the impugned section may have intended to

deserve, and whatever aims its framer may have had in view, its application and scope cannot, in the absence of limiting words in the statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the state. Nor is there any guarantee that those authorized to exercise the powers under the Act will in using them discriminate between those who Act prejudicially to the security of the state and those who do not."²⁷

Even if a process of reasoning was come forward the Supreme Court that the impugned section could not be regarded as totally invalid as under Art. 13(1), a living law, in so far as it is contradictory with the Fundamental Rights, is invalid to the extent of the incongruity and no more. The controversy was as the saving of the public security or the defence of public order would add the safety of the public security or the defence of public order would add the safety of the state, the impugned region, as referred to the earlier intention, was over spreaded by Clause (2) of Art.19 and should be maintained valid. When denying this process of reasoning, Justice Patanjali Sastri noticed: "So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. In other words, clause (2) of Art 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutionally valid to any extent."

A same case in Brij Bhushan and other Vs. The State of Delhi was also held to deal with by the Supreme Court.²⁸ It is a petition under Article 32 of the Constitution entreating for the matter of writs of 'certiorari' and 'prohibition' to the defendant, with the chief Commissioner of Delhi taking to the purpose to examine the lawfulness of and annual the order which is made by him in an English Weekly of

Delhi, the Organiser of that the first petitioner is which publisher and printer, and the second is the editor. The defender on 2nd March, in trial of powers of given on him by section 7(1) (c) of the East Punjab Public Safety Act, 1949, being extended to the Delhi region, given the following order."²⁹

"Whereas the Chief Commissioner, Delhi, is satisfied that Organiser, an English weekly of Delhi, has been publishing highly objectionable matter constituting of threat to public law and order and the action as is hereinafter mentioned IS necessary for the purpose of preventing or combating activities prejudicial to the public safety or the maintenance of public order.

No, therefore, in exercise of the powers conferred by section 7(1) (c) of the East Punjab Public Safety Act, 1949, as extended to the Delhi Province, I, Shankar Prasad, Chief Commission, Delhi do by this order require you Shri Brij Bhushan, Printer and Publisher and Shri H.R. Halkani, Editor of the aforesaid paper to submit for scrutiny; in duplicate, before publication, till further orders, all communal matter and news and views about Pakistan including photographs and cartoons other than those derived from official sources and supplied by the news agencies, viz., Press Trust of India, United Press of Indian and United Press of America to the Provincial Press Officer on in his absence, to Superintendent of Press Branch at his office at 5, Alipur Road, Civil Lines, Delhi, between hours 10 a.m. and 5 p.m. on working days."

On behalf of Kania C.J., Mahajan, Mukherjee and Das, J.J., the greater number of judgement, made by Sastri J. that was as:

"The petitioners claim that this provision infringes the fundamental rights to the freedom and speech and expression conferred upon them by Art.19(1)(a) of the Constitution in as much as

it authorizes the imposition of a restriction on the publication of the journal which is not justified under clause (2) of the Article.

There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Art.19(1)(a)."³⁰

But still Mr. Justice Fazl Ali did not consent with the most of the views and gave a distinct opinion about the judgement. To him, for the effect of a far reaching channel of legislative practice, the meaning 'public safety' got a well-acknowledged expression and it may be taken to mark out protection of the state. The judge in detail had managed with the different expression of "public order", 'public tranquility', 'public safety' and 'security of the state'.

Regarding the signification of the meaning of 'public order', to him, in common perception, this expression may be interpreted to have allusion to the defence of what in common is acknowledged as law and order in the region. To him, the affecting public quietness along with the influence on public order and the State legislature were then the aspects to make laws for the subjects which are related with both the public order and calm.

According to the learned judge, though the 'public order' and 'public safety' are related but it likes to be best to give our attention to the adverse aspects that we may for suitableness of allusion, in the order named label as 'public disorder' and 'public unsafety'. When 'public safety' seems to be alike of the 'security of the state', to me then, 'public unsafety' may be seemed as same to 'insecurity of the state'. Like this, it may be noted that while 'public disorder' is sufficient to overspread a small riot or other cases when peace is interrupted by or acts on, a little group of people, 'public unsafety' generally related with

the serious inside disorders and such disorder of public calm as endanger the safety of the state.

Perceiving the scope of the Act, it seems importance to note that 'maintenance of public order' in the act always creates in contiguity with 'public safety' and the act as 'The East Punjab Public Safety Act.' Then it can be found that, the act was liked to deal with serious cases in that having arisen some type of emergency or a serious situation. The act purposes to provide "special measures to ensure public safety and maintenance of public order."

However the court opined, inter alia, that it must be recognized that freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Courts. It is also recognized that free political discussion is essential for the proper functioning of a democratic government and the tendency of modern jurists is to deprecate censorship though they all agree that "liberty of the Press" is not to be confused with its "licentiousness". In *Amarnath Bali V. The State of Punjab* the majority view expressed by Justices Khosla and Harnam Singh of the Punjab High Court, struck down section 4(1) (h) of the Press (Emergency Powers) Act. 1931, and their conclusion was also based entirely upon the observations of Patanjali Sastri, J. In *Romesh Thapper's case*.³¹

Whereas, the parliament took into account the question of summing up the meaning 'incitement of an offence' in clause (2) of Art.19, before it, it had all these conclusions wherein, various type statutory regions had been pulled down. It is about the origin about the Parliament thinking important to sum up this meaning clause (2) of Art. 19. When distributing the Tagore Law Lectures at Calcutta University, "This addition illustrates", noticed Ganjendragadkar,³² "That sometimes an erroneous judicial decision may create a situation where Parliament would feel justified in resolving the difficulty by making of

suitable amendment in the relevant provisions of the constitution. It is true, as I have already mentioned, that the view taken by the Patna High Court was reversed by the Supreme Court, but sometimes, as in this case, parliament may feel that it is not desirable to await the decision of the Supreme Court which would take time and it is necessary in the Public interest to clarify the correct position by making an amendment which would clearly bring out the correct position by making an amendment which would clearly bring out Parliament's intention in the matters."

Now, there is the importance to examine the Clause (6) of Art.19. In originally stand, Art.19(6) read as:

"(6) Nothing in sub-clause (g) of the said Clause [Clause (1) of Art.19] shall affect the operation of any existing law in so far as it imposes, or prevent the state from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to-

(i) The professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or (ii) The carrying on by the state, or by a corporation owned or controlled by the state, or any trade, business, industry or service, whatever to the exclusion, complete or partial of citizens or otherwise."

The origin of this amendment may be followed in the case of *Motilal and others Vs. The Government of the State of Uttar Pradesh and others*.³³ The total Bench of the Allahabad High Court searched into the enquiry of an executive order about the nationalization of bus-routes by the State Government. The result of this proceedings was to declare invalid about the nationalization of bus routes. The Judges

concluded that the nationalization of bus-routes cannot be empowered even by legislation. Though this type of step certainly would oppose the underlying provisions of Art. 19(1)(g).

According to the Parliament while facing boldly with this problem, to remove the constitutional barriers already set by the court in Motilal's case it is sagacious to amend Art.19(6).

Regarding as the sphere for action, result and importance of Art.19(6) in its real and amended shapes, an significance judgement was given by the Indian Supreme Court in *Akadashi Pradhan Vs. State of Orissa*.³⁴ Gajendragadkar, J., in this made the following notices:

"In attempting to construe Art. 19(6) it must be borne in mind that a literal construction may not be quite appropriate. The task of construing important constitutional provisions like Art. 19(6) can not always be accomplished by treating the said problem as a mere exercise in grammar. In interpreting such a provision it is essential to bear in mind the political or economic philosophy underlying the provision in question, and that would necessarily involve the adoption of a liberal and not a literal and mechanical approach to the problem."

Thereafter the court when it commented on the sphere for acting and result of the philosophy underlying the amendment, maintained inter alia "the amendment made by the legislature in Art. 19(6) shows that according to the Legislature, a law relating to the creation of State monopoly should be presumed to be in the interests of the general public. Art.19(6)(ii) clearly shows that there is no limit placed on the power of the State in respect of the creation of State monopoly. The width of the power conferred on the state can easily be assessed if we look at the words used in the clause which cover trade, business, industry or service. It is true that the State may, according to the exigencies of the case and consistently with the requirements of any trade, business, industry or service, exclude the citizens either wholly

or partially. In other words, the theory underlying the amendment in so far as it relates to the concept of state monopoly, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which socialism accepts. That is why we feel no difficulty in rejecting Mr. Pathank's argument that the creation of a state monopoly must be justified by showing that the restrictions imposed by it are reasonable and are in the interests of the general public. In our opinion, the amendment clearly indicates that state monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of the general public, so far as Art.19(1)(g) is concerned.

The amendment made in Art. 19(6) shows that it is open to the state to make laws for creating state monopolies, either partial or complete, in respect of any trade, business, as a monopolist either for administrative reasons, or with the object of mitigating the evils flowing from competition, or with a view to regulate prices, or improve the quality of goods, or even for the purpose of making profits in order to enrich the state exchequer. The Constitution makers had apparently assumed that the state monopoly or schemes of nationalization would fall under, be projected by Art. 19(6) (6) as it originally stood, but when judicial observations rendered the said assumption invalid, it was though necessary to clarify the intention of the Constitution by making the amendment. It is because the amendment was made for the purpose of clarification that it begins with the words "in particular". These words indicate that restrictions imposed on the fundamental rights guaranteed by Art. 19(1)(g) which are reasonable and which are in the interests of the general public, are save by Art. 19(6) as it originally stood, the subject matter covered by the said provision being justiciable, and the amendment adds that the state monopolies of nationalization schemes which may be introduced by legislation, are an illustration of reasonable restrictions imposed in the interests of the general public and must be treated as such. That is why the question

about the validity of the laws covered by the amendment is no longer left to be tried in Courts. This brings out the doctrinaire approach adopted by the amendment in respect of a state monopoly as such."

Now it may be regarded as the birth of Sections 4 and 5 of the Constitution (First Amendment). Art. 31A by section 4 was included and it was prepared that it shall be considered always to have been included in the Constitution Art.31 (A) is as:

"31A saving of laws providing for acquisition of estates etc. (1) Notwithstanding anything in the foregoing provisions of this part, no law providing for the acquisition by the state of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that, it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part. Provided that where such law is a law made by the legislature of a state, the provisions of this Article shall not apply thereto, unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this Article:

a) the expression 'estate' shall, in relation to any local area have the same meaning as that expression or its local equivalent that has in the existing law relating to land tenures in force in that area, and shall also include any *jagir*, *inam* or *muafi* or other similar grant,

b) the expression 'rights', in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under proprietor, tenure holder or other intermediary and any rights of privileges in respect of land revenue."

The obliged grounds at the back of this amendment are capable of being traced inter-alia, to two judicial decisions. Instantly after the beginning of the Constitution, the unavoidableness of enactive some agrarian amendments was affected by some of the State Governments.

But the Patna High Court in *Kameswar Singh and other Vs. the State of Bihar and others*³⁵ beat down the Bihar Land Reforms Act No.XII of 1950 as opposing Art.14 of the Constitution in the very same pertinent conditions of the opposed Act awarded separated gradations of the act of compensating to distinct classes of land owners.

Once more, in the *West Bengal Settlement Kanungoo Cooperative Credit Society Ltd., Vs. Mrs. Bela Banerjee and Others*,³⁶ the challenge was made for the justness of the West Bengal Land Development and Planning Act III of 1948. The Calcutta High Court maintained that the impugned Act was not "Ultra vires" in its completeness; but the stipulation that in the case of land owned under the Act, the greatest amount payable as the act of compensating is according to market price of the land on 31st December, 1946 as indicated in the proviso (b) to Section 5 of the Act was Ultra-Vires. Having relations with this proviso, Chief Justice propounded the subject of discussion in these words:

"Is compensation assessed in accordance with proviso (b) of Section 8 determined according to a principle and in a manner which would result in a just or reasonable equivalent being paid for the land." And atlast he noticed: "The answer, I think, must be in the negative."³⁷ The court maintained that the compensation that would be payable must be the same value or the market value of property.

In the history of judicial decisions on right to property in India, the 'Bela Banerjee' case may be looked as watershed. The Indian Parliament and the Government which liked to fulfill their economic and social programmes for the share of public good, were challenged by this case's judgements. Sastri, C.J. on behalf of major people, maintained: "While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner of the property appropriate, such principles must ensure that what is

determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of."³⁸

But antagonistically, the Allahabad High Court in *Raja Suryapal Singh and other Vs. The Uttar Pradesh Government* maintained that the Uttar Pradesh Zamindari Abolition and Land Reforms Act., 1950 (UP Act No.1 of 1951) did not oppose any of the conditions of the Constitution and from this time was legal. From the decisions of the first two cases, Parliament understood that judicial decisions would be for the successful application of social welfare programmes. Due to this, the First Amendment Act of Constitution was passed. Art. 31A was included by Section 4 and Section 5 which made it easy for the inserting of Art. 31 B after 31A.

Now the genesis of the Constitution (Fourth Amendment) Act, 1955 may be traced. As has already been pointed out that sections 2 and 3 of this Amendment Act made changes in Art. 31 and Art. 31A respectively, whereas Section 5 made certain additions to the Ninth Schedule which had already been inserted in the Constitution by Section 14 of the Constitution (First Amendment) Act. "Right to Property" has been guaranteed by the Constitution in Art. 19(1) (f) which provides that all citizens shall have the right to acquire, hold and dispose of property, subject, of course, to certain limitations prescribed by clause (5) of Art.19. the scheme underlying Art.19 with necessary conditions attached thereto strictly conforms to the Principle that rights can never be absolute. Under stricted and unfettered rights are no rights as all.³⁹

Thereafter preparing commonly for the citizens fundamental rights to acquire, hold and dispose of property by Art.19(1) (f), Art.31 goes on more distant to manage with the question of obligatory acquisition of property. Primarily Art.31 composing of six clauses of which the following two are related with our aims. The pertinent Articles are as:⁴⁰

“31(1) No person shall be deprived of his property save by authority of law. (2) No property, movable or immovable including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given.”

The above named article with two clauses, in the very first examination disclosed that clause (1) of Art.31 sticks fast to the principle of democracy that any person cannot be bereaved of any right except the authority of law. Clause (2) of Art.31 has been included with a purpose to lay on convinced other restraints. Generally there may be two conditions which have to be pleased under Art.31(2) before a citizen can be legally bereaved of his property. According to the first condition, under the stipulation of the law, the deprivation has to be for the purpose of the people. The second one is that remarked law must prepare for compensation for the property, taken the act of possessing of, or earned and either make firm the sum total of the compensation or mention particularly the principles on which and the method in which compensation is to be resolved and bestowed. In sight of clashing judicial explanations that finally led to the enactment of the constitution (Fourth Amendment) Act, the term 'compensation' in Art.31(2) becomes the subject-matter of solemn disputation.

Before engaging in the discussion on the events preceding to the reasoning of the Constitution (Fourth Amendment) Act, a hasty flash at the arguments of the constituent assembly would be so much help. Clashing opinions were made known by the members on the specifying manner of the determination of the compensation. Generally it was argued that once the right to property of Indian citizen are guaranteed

by the constitution, it will not be democratic, if not then unlawful, so it is important to take some steps for those citizens who are deprived of their fundamental rights paying any provision for payment of compensation. There were two important opinions. First one is represented by Munshi holding the reason of lawful and sufficient compensation. Another one represented by K.T. Shah who argued that compensation should be needed to be given only when property took by a religious body. That sought to be held over and even in this type of matter, the sum total of compensation may be analysed to be such as may be considered, reasonable and suitable. After a very healthy warmth and defended argument, a settlement of difference by mutual promise was involved. It is made known in Art.31, Clauses (1) and (2), as they were taken.

When the representatives of the Constituent Assembly came to the consensus on the drafting of Art.31(1) and (2), they argued that after deeming the political and historical background of the law's philosophy, the judiciary might provide their verdict with a view to increase the speed of welfare plans if laws were approved to get private property for public aims. But this hope proved itself as wrong in reality. The judgement of judiciary on the right of property, mainly on the meaning of the word 'compensation' propounded on insuperable blockade in the way of social welfare programmes. The parliament deemed the role of the judiciary and the act.

In the court in Mrs. Bela Banerjee's case⁴¹ the asking about the meaning of the word 'compensation' had generally come up. The court in Saghir Ahmed Vs. State of Uttar Pradesh⁴² argued that the real act of depriving of property amounts to acquisition and compensation is to be provided. For this, the parliament had to face the problems regarding the payment of 'compensation' and implementation of social welfare programmes, is distinct from the statement of Objects and Reasons,

attached to the Constitution (Fourth Amendment) Bill, 1954. The statements declared inter-alia.

"Recent decisions of the Supreme Court have given a very wide meaning to clauses (1) and (2) of Art.31. Despite the in the wording of the two clauses, they are regarded as dealing with the same subject. The deprivation of property referred to in clause (1) is to be construed in the widest sense as including any curtailment of a right to property. Even where it is caused by a purely regulatory provision of law and is not accompanied by an acquisition or taking possession of that or any other property right by the state, the law, in order to be valid according to these decisions, has to provide for compensation under clause (2) of the Article. It is considered necessary therefore, to re-state more precisely the State's power of compulsory acquisition and requisitioning of private property and distinguish it from cases where the operation of regulatory, or prohibitory laws of the state results in "deprivation of property."⁴³

The same 'Objects and Reasons' again said it categorically that "it will be recalled that the Zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to Articles 14, 19, 31 and that in order to put an end to the dilatory and wasteful litigation and place laws above challenge in the Courts, Articles 31A and 31B and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g. the following:

(i) While the abolition of Zamindari and the numerous intermediaries between the state and the tiller of the soil has been achieved for the most part, our next objectives in land reforms are the fixing of limits to the extent of agricultural land held in excess of the

prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings.

(ii) The proper planning of urban and rural areas requires the beneficial utilization of vacant and waste lands and the clearance of slum areas.

(iii) In the interests of national economy the state should have full control over the mineral and oil resources of the country, including, in particular, the power to cancel or modify the terms and conditions of prospecting licenses, mining leases and similar agreements. This is also necessary in relation to public utility undertakings which supply power, light or water to the public under licences granted by the state.

(iv) It is often necessary to take over under state management for a temporary period a commercial or industrial undertaking or other property in the public interest or in order to secure the better management of the undertaking or property. Laws providing for such transference to State management should be permissible under the Constitution.

(v) The reforms in company law under contemplation, like the progressive elimination of the managing agency system, provision for the compulsory amalgamation of two or more companies in the national interest, the transfer of an undertaking from one company to another, etc., require to be placed above change."⁴⁴

Generally it is offered in clause 3 of the Bill to enlarge the scope of Article 31A so as to take all these categories of important welfare legislation.

4) As a natural consequence to the offered amendment of Art. 31A, it is offered in clause 5 of the Bill to include in the Ninth Schedule to the Constitution four central Acts and two more State Acts that come within the scope of sub-clauses (d) and (f) of Clause (1) of the revised

Art. 31A. The result will be their finished, referring to the past validation under the condition of Art. 31B.

5) The decision of the Supreme Court in *Saghir Ahmed V. The State of Uttar Pradesh*⁴⁵ has asked the question if an act preparing for a state monopoly in a special business or trade contests with the freedom of trade and commerce guaranteed by Art. 301, but the question remained unanswered. Clause (6) of Art. 19 was amended by the Constitution (First Amendment) Act with a view to take such state monopolies out of the limit of sub-clause (g) of Clause (1) of that Article; but no adequating stipulation was made in Part XIII of the Constitution with the relation to the opening words of Art. 301. It arrives from the decisions of the Supreme Court that in spite of the clear legal power of parliament or of a State Legislature to bring in state monopoly in a special sphere of commerce and trade, the law might have to be vindicated before the Courts as being "in the public interest" under Art. 301 or as adding up to a "reasonable restriction" under Art. 304(b). It is regarded as that any such question supposed to be left to the last decision of the Legislature. Clause (4) of the Bill accordingly offered an amendment of Art. 305 to make this clear.

In the *State of West Bengal Vs. Mrs. Bela Banerjee and others*,⁴⁶ already has been said that, the Supreme Court was prayed to regard as inter alia, the question about the satisfied and interpreting of the word "compensation" which was used in Art. 31 (2). The only important plea was made before the Supreme Court about the real interpreting of the word 'compensation'. The Attorney General granted that the word "compensation" by itself must understand as a full and fair money equal in meaning but he requested that in the discourse of Art. 31 (2) read with Entry 42 of List III of the Seventh Schedule, the term was not employed in any inflexible sense signifying equivalence in value but had aluvion to what the legislature might consider was a right punishment for the loss suffered by the owner.

In the impugned Act, the provision composed of matter had prepared that in resolving the amount of compensation to be awarded for land gained in consequence of the Act, the market value pointed out to in the first clause of sub-section (1) of Section 23 of the said Act shall be considered to be the market value of the land on the publication of the notifications date under sub section (1) of Section 4 for the informed area in that the land was enlisted matters to the following circumstances, which is as, "if such market value exceeds by any amount the market value of the land on 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it is fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration. This provision was struck down by the Supreme Court as being unconstitutional."

Referring to again the process of reasoning impelled by the Attorney General before the Court, Chief Justice Patanjali Sastri, speaking for the unanimous court, followed:

"While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the constitution allows free play to the legislative judgement as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the Court."

As a result, the authority compared by Art.31 (2) upon the legislature to submit the principles for settling the price of

compensation was the subject matter to judicial minute search, it was distinct from the comment of Chief Justice Patanjali Sastri; in every case would administer the test whether being resolved as ought to be paid by the means of compensation to the public for the deprivation of his property, the price would be justified as same legal in the sense of supplying him total securing compensation for the property lost.

Dictatorially, by itself, this decision expounded the interpretation of the word "compensation" in Art.31(2) and to parliament by amending Art.31 (2) by the Constitution (Fourth Amendment) Act; it is important to make the intention clear.

Substituting the following Clauses (2) and (2A) in Art.31 for the real Clause (2), Section 2 of the said Amendment:

"(2) In Art.31 of the Constitution, for Clause (2), the following clauses shall be substituted, namely:-

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which and the manner in which; the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate.

(2A) where a law does not provide for the transfer of ownership or right to possession of any property to the state or to a Corporation owned or controlled by the state, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

In brief, the result of this amendment was that the question as to whether compensation directed to be paid by the relevant statute or which became payable under the principles laid down by the statute

was a just equivalent of what the owner has been deprived of portion of amended Art. 31 (2) expressly provided that no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate. Here a few other cases may be cited with a view to showing how, despite the clear provisions of Art. 31 (2), as amended by the Constitution (Fourth Amendment) Act, the Supreme Court has from time to time; taken somewhat different and conflicting views on the question about the effect of the said amendment. ⁴⁷

Chief Justice Subba Rao in *P. Vajravelu Madaliar Vs. Special Deputy Collector, Madras and others*⁴⁸ propounded the question: "What is the effect of the ouster of jurisdiction of the court to question the law on the ground that the "compensation" provided by that law is not adequate".

In the following words, the learned Chief Justice tried to give the answer:

"It will be noticed that the law of acquisition or requisition is not wholly immune from scrutiny by the Court. But what is excluded from the court's jurisdiction is that the said law cannot be questioned on the ground that the compensation provided by that law is not adequate. It will further be noticed that the clause excluding the jurisdiction of the court also used the word "compensation" indicating thereby that what is excluded from the court's jurisdiction is the adequacy of the compensation fixed by the Legislature. The argument that the word 'compensation' means a just equivalent for the property acquired and, therefore, the court can ascertain whether it is a just equivalent' or not makes the amendment of the constitution nugatory. It will be arguing in a circle. Therefore, a more reasonable interpretation is that neither the principles prescribing the "just equivalent" nor the "just equivalent" can be questioned by the court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. To illustrate a law is made to acquire a house; there are many modes of

valuation, namely, estimate by a engineer, value reflected on comparable sales, capitalization of rent and similar others. The adoption of one principle may give a higher value and the adoption of another principle may give a lesser value. But nonetheless they are principles on which and the manner in which compensation is determined. The court cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31 (2) of the constitution. If a law says that though a house is acquired it shall be valued as an agricultural land or that though it is acquired in 1950 its value in 1930 should be given, or though 100 acres are acquired, compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property acquired. In such cases, the validity of the principles can be scrutinized. The law may also prescribe a compensation which is illusory; it may provide for the acquisition of a property worth lakhs of rupees for a paltry sum of Rs.100. The question is that context does not relate to the adequacy of the compensation, for it is no compensation at all. The illustration given by us are not exhaustive. There may be many others falling on either side of the line. But this much is clear. If the compensation is illusory, or if the principles prescribed are irrelevant to the value of the property at or about the time of its compensation, it can be said that the legislatures committed a fraud on power, and therefore, the law is bad. It is abuse of the protection of Art. 31 in a manner which the Article hardly intended.⁴⁹

In this case, the conclusion attempted to spread the scope of investigation and much pared down the impact of the amendment which is made known in Art.31 (2) by the constitution (Fourth

Amendment) Act. When the Metal Corporation of India (Acquisition of understandings) Act. No.44 of 1965 as ultra vires in the Union of India Vs. The Metal Corporation of India Ltd. And Another⁵⁰ the court did the meaning of Art. 31 (2) in the way:

"Under Art.31 (2) of the Constitution, no property shall be compulsorily acquired except under a law which provides for compensation of the property acquired and either fixes the amount of compensation or specifies the principle on which and the manner in which compensation is to be determined and given. The second limb of the provision says that no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate. If the two concepts, namely, 'compensation' and the jurisdiction of the court are kept apart, the meaning of the provision is clear. The law to justify itself has to provide for the payment of a "just equivalent" to the land acquired or lay down principles which will read to that result. If the principles laid down are relevant to the fixation of compensation and are not arbitrary, the adequacy of the resultant product cannot be questioned in a court of law. The validity of the principles judged by the above tests, falls within judicial scrutiny, and if they stand the tests, the adequacy of the product falls outside its jurisdiction. Judged by the said tests, it is manifest that the two principles laid down in clause (b) of paragraph 11 of the Schedule to the Act, namely, (i) compensation, and (ii) written down value as understood in the Income tax law as the value of used machinery, are irrelevant to the fixation of the value of the said machinery as on the date of acquisition. It follows that the impugned Act has not provided for 'compensation' within the meaning of Art. 31(2) of the Constitution and, therefore, it is void."⁵¹

In the State of Gujarat Vs. Shantilal Mangaldas and others⁵² the Supreme Court on the other hand, looked the comments of Chief

Justice Subba Rao in the case of P.V. Mudaliar as 'orbiter and not binding'. Speaking for the court, Mr. Justice Shah observed the view:

"In our view, Art.31(2) as amended is clear in its purport. If what is fixed or is determined by the application of specified principles in compensation for compulsory acquisition of property, the courts cannot be invited to determine whether it is a just equivalent of the value of the property expropriated. In P. Vajravelu Mudaliar's case (Supra) the Court held that the principles laid down by the impugned statute were not open to question. That was sufficient for the purpose of the decision of the case and the other observations were not necessary for deciding that case, and cannot be regarded as a binding decision."

Being agreed with the comments of Justice Shah, Chief Justice Hidayatullah held:

"The Amendment (Fourth) was expressly made to get over the effect of the earlier cases which had defined compensation as a just equivalent. Such a question could not arise after the amendment. I am in agreement that the remarks in P. Vajravelul's case must be treated as orbiter and not binding on us."

He also held the observation in the same case:

"I am also of the opinion that the Metal Corporation's Case wrongly decided and should be over-ruled."

The famous case popularly known as 'the Bank Nationalisation Case, the B.C. Cooper Vs. Union of India and others'⁵³ here must be made of reference. A parliamentary enactment was struck down by it with a view to "serve better the needs of development of the economy in conformity with national policy and objectives."⁵⁴ It "exhibited once again the confusing and bewildering pattern of judicial decision in the field of property rights by reversing the trend established by the Shantilal Mangaldas' Case and adopting instead the path followed by the 'Vajravelu' and 'Metal Corporation' Cases."⁵⁵

When Mr. Justice Shah delivered the majority judgement of the court, he maintained all the relevant discussions carrying out the meaning of Art. 31 (2) and concluded the impugned ordinance 8 of 1969 and the Banking Companies Act., 22 of 1969, that situated the said ordinance with certain changes, were not valid. He made the observation in the Bank Nationalisation case which was as :

"The broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its potentialities. Where there is an established market for the property acquired, the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with the property, and the benefit which the acquirer is likely to obtain by the acquisition. Under the Land Acquisition Acts, compensation paid is the value to the owner together with all its potentialities and its special adaptability if the land is peculiarly suitable for a particular use, if it gives an enhanced value at the date of acquisition."

Another important deliberation is to be noted along with the contemplation of the judgement of the Bank Nationalisation case. This important contemplation was disputed before the court in this case which in deliberating the justness of the impugned Act, the examination gave direction by Clause (5) of Art. 19 can also be summoned and this urge was taken by the majority of the court. Considering this question, Mr. Justice Shah concluded that it would be wrong to exclude the implication of Art.19(1)(g) and Art.19(5) in opinions of the soundness of the Constitutional impugned Act. He held, inter-alia:

"Limitations prescribed for ensuring due exercise of the authority of the state to deprive a person of his property and of the power to compulsorily acquire his property are, therefore, specified classes of limitations on the right to property falling within Art. 19(1)(f). Property may be compulsorily acquired only for a public purpose. Where the law provides for compulsory acquisition of property for a public purpose, it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Art.31(2). If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established be presumed, but enquiry into reasonableness of the procedural provisions will not be excluded. For instance if a tribunal is authorized by the Act to determine compensation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to be struck down under Art. 19(1) (f)."

Then to the learned Judge: "Art. 19(5) is a broad generalization dealing with the nature of limitations which may be placed by law on the right to property. The guarantees under Art. 31(1) and (2) arise out of the limitations imposed on the authority of the state by law to take over the individuals property. The true character of the limitations under the two provisions is not different Clause (5) of Art. 19 and clauses (1) and (2) of Art. 31 are post of a single pattern; Art. 19(1) (f) enunciates the basic right to property of the citizens and Art. 19(5) and clauses (1) and (2) of Art. 31 deal with limitations which may be placed by law, subject to which the rights may be exercised."

But something opposed view point was taken in the state of West Bengal Vs. Subodh Gopal Bose and others.⁵⁶ When there was the rejection of the argument as Art. 19(1) (f) and Art. 19(5) are applicable to a party treating the justness of any statutory provision that

empowered the acquisition of property for public aims. The following is the observation made by the Chief Justice Patanjali Sastri: "Both by the Preamble and the Directive Principles of State Policy in Part IV, our Constitution has set the goal of a social welfare state and this must involve the exercise of a large measure of social control and regulation of the enjoyment of private property. If concrete rights of property are brought within the purview of Art. 19(1)(f), the judicial review under clause (5) as to the reasonableness of such control and regulation might have an unduly hampering effect on legislation in that behalf, and the makers of our constitution may well have intended to leave the legislature free to exercise such control and regulation in relation to the enjoyment of rights to property, providing only that if such regulation reaches the point of deprivation of property, the owners should be indemnified under Clause (2) of Art. 31 subject to the exceptions specified in paragraph (ii) of sub-clause (b) of Clause (5) of Art. 31."

The justness of section 7 of the West Bengal Revenue Sales (West Bengal Amendment) Act, No.VII of 1950 in this case was objected to on the basis of disputing the fundamental right guaranteed under Art. 19(1)(f) and Art.31 of the Constitution. Even if the Calcutta High Court sustained the request, but this assumption was reserved by the Supreme Court in a plea by the state of West Bengal. Chief Justice Patanjali Sastri viewed that Art. 19(1)(f) in this case had no application. It is basically dealt with the abstract rights not with solid rights of the people with regard to the property so earned and owned by them. The solid rights also are dealt with the Right to Property (Art. 31).

The learned Chief Justice Observed inter-alia: "Under the scheme of the Constitution, all those broad and basic freedoms inherent in the status of a citizen as a free man are embodied and protected from invasion by the State under Clause (1) of Art. 19, the powers of State regulation of those freedoms in public interest being defined in relation

to each of those freedoms by Clauses (2) to (6) of that article, while rights of private property are separately dealt with and their protection provided for in Art.31, the cases where social control and regulation could extend to the deprivation of such rights being indicated in the paragraph (11) of sub-clause (b) of Clause (5) of Art.31 and exempted from liability to pay compensation under Clauses (2)."

According to the observation of an eminent jurist⁵⁷ this "inconsistent view" that was taken by the Supreme Court has arisen to two essential issues:

1) Has Art.19(1)(5) read with Art. 19(5) any applicability in regarding the cases which fall under Art.21 (2)?

2) What is the character and scope of jurisdiction of the court in regarding questions of compensation after Art.31 (2) has been amended by Fourth (Constitution Amendment) Act?

On the recommendations which were made by the Committee on National Integration and Regionalism, the Constitution (Sixteenth Amendment) Act was passed that is the prove from the expression of objects and Reasons in words began when the said Amendment Act was introduced. The following observation is made by the statement:

"The Committee on National Integration and Regionalism appointed by the national Integration Council recommended that Art.19 of the Constitution be so amended that adequate powers become available for the preservation and maintenance of the integrity and sovereignty of the Union. The Committee were of the view that every candidate for the membership of a State Legislature or Parliament, and every aspirant to, and incumbent of public office should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union and that forms of oath in the Third Schedule to the Constitution should be suitably amended for the purpose. It is proposed to give effect to these recommendations by amending clauses

(2), (3) and (4) of Art.19 for enabling the State to make any law imposing reasonable restrictions on the exercise of the rights conferred by sub-clauses (a), (b), (c) of Clause (1) of that article in the interests of the sovereignty and integrity of India. It is also proposed to amend articles 84 and 173 and forms of oath in the Third Schedule to the Constitution so as to provide that every candidate for the membership of parliament, or state legislature, Union or State Ministers, Members of Parliament or State Legislatures, Judges of the Supreme Court and High Courts and the Comptroller and Auditor General of India should take an oath to uphold the sovereignty and integrity of India."

The two out of the five sections of the Amendment Act seem to be very evaluable and suitable for our aim. It is like as:

"2. In Art. 19 of the Constitution - (a) in clause (2), after the words "in the interests of the words "the sovereignty and integrity' of India or", shall be inserted; (b) in clauses (3) and (4) of the words "the sovereignty and integrity of India or shall be inserted."

As a reaction to the judgement of the Supreme Court in *Karimbal Kunhikoman and others Vs. The State of Kerala*,⁵⁸ the Constitution (Seventeenth Amendment) Act was passed. The validity of the Kerala Agrarian Relation Act IV of 1961 in this matter was objected to and Supreme Court made to cause of the Act relating to its implication to the *ryotwari* lands. These *ryotwari* lands had come to the state of Kerala from the State of Madras. On the little breadth basis which related to the interpretation of the word 'estate' relating to the impugned provisions of the Act, the decision was taken which cleared from the observation made by the Supreme Court. This is as follows:

"As the definition of the word 'estate' came into the Constitution from January 26, 1950, and it based on existing on January 26, 1950 for the purpose of finding out the meaning of the word 'estate' in Art. 31A. Madras Estate Land Act of 1908 was a law relating to land

tenures. In that Act which was in force in the State of Madras, including South Canara district when the Constitution came into force the word 'estate' was specifically defined. The Act of 1908 however, did not apply to lands held on *ryotwari* settlement. There could be no question of seeking for a local equivalent so far as South Canara district of the State of Kerala which had come to it from the former State of Madras was concerned. Hence lands held by *ryotwari pattadars* in this part which had come to the state of Kerala by virtue of the States Reorganisation Act from the State of Madras are not estates within the meaning of Art. 31A(2) (a) of the Constitution and therefore the Act was not protected under Art. 31(a)(1) from the attack under articles 14, 19 and 31 of the Constitution."

Parliament passed out an amendment in 31A as included by section 4 of the Constitution (First Amendment) Act to take off the double meaning of the word "estate". In the statement of objects and Reasons for introducing the Constitution (Seventeenth Amendment) Act, 1964, it observed:

"The Kerala Agrarian Relations Act, 1961 was struck down by the Supreme Court in its application to *ryotwari* lands transferred from the State of Madras to Kerala. The Act was further struck down by the High Court of Kerala in its application to lands other than estates in Malabar and Travancore. It was held that the provisions of the Act were violative of articles 14, 19 and 31 of the Constitution and that the protection of Art. 31A of the Constitution was not available to those lands, as they were not estates.

2. "The protection of Art. 31A is available only in respect of such tenures as were estates on 26th January 1950, when the Constitution came into force. The expression "estate" has been defined differently in different states and, as a result of the transfer of lands from one state to another on account of the recognition of states, the expression has come to be defined differently in different parts of the same state.

Moreover, many of the land reform enactments relate to lands which are not included in an "estate". It is, therefore, proposed to amend the definition of "Estate" in Art. 31(a) of the constitution by including therein lands held under *ryotwari* settlement and also other lands in respect of which provisions are normally made in land reform enactments. It is also proposed to amend the Ninth Schedule by including therein the State enactments relating to land reform in order to remove any uncertainty or doubt that may arise in regard to their validity."⁵⁹

3. These purposes are seek to get by this Bill : "Provided further that where any law makes any provision for the acquisition by the state of any estate and where any land comprised there is held by a person under his personal cultivation, it shall not be lawful for the state to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof." One more proviso was existed from the Constitution (Seventeenth Amendment) Act amended Articles 31A by including in Clause (1) of that Article.

This sub-clause (a) was taken with effect for sub-clause (a) of clause (2) of Art. 31A.

"(a) the expression 'estate' shall, in relation to any local area; have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include -

- i) Any jagir, inam or moufi or other similar grant and in the state of Madras and Kerala, any janmam right;
- ii) Any land held under *ryotwari* settlement;

iii) Any land lend or let for purposes of agriculture or for purpose ancillary thereto, including waste land, forest land, land for pasture or sites for buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans."

Before, going through the Constitution (Twenty fifth Amendment) Act, the Constitution (Twenty fourth) Amendment Act must be referred. The statement of Objects and Reasons, attached to the Act, provides the causes for making known the Bill. It is as like:

"The Supreme Court in the well-known Golaknath case (1967, 2 S.C.R. 762) reversed, by a narrow majority, its own earlier decisions upholding the power of parliament to amend all parts of the constitution including Part 111 relating to Fundamental Rights. The result of the judgement is that Parliament is considered to have no power to take away or curtail any of the Fundamental Rights guaranteed by Part III of the Constitution even if it becomes necessary to do so for giving effect to the Directive Principles of State Policy or for the attainment of the objective set out in the Preamble to the Constitution. It is therefore, considered necessary to provide expressly that Parliament has power to amend any provision of the Constitution so as to include the provisions of Part III within the scope of the amending power.

The Bill seeks to amend Art. 368 suitably for the purpose and makes it clear that Art. 368 provides for the amendment of the Constitution as well as procedure to the President for his assent he should gave his assent thereto. The Bill also seeks to amend Art. 13 of the Constitution to make it inapplicable to any amendment of the Constitution under Art.368."

In the earlier chapter, though a elaborate discussion regarding the question to amend the Fundamental Rights, the next adding details to it looks like superfluous. On the other hand yet, a contradiction that

placed in the passing this Bill, finally aims that an over powering majority decision in the Golak Nath's case would like to endanger in future all the socioeconomic development of the country due to the authority of the parliament to amend constitution in next times/future so as to shorten in terms of Fundamental Rights were rejected by the decision of the said majority.

The answer of the Bank Nationalisation case was the Constitution (Twenty fifth Amendment) Act 1971. It also will be the prove from the statement of objects and Reasons, attached to the said Bill which is as like:

"Art. 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principle on which and the manner in which the compensation is to be determined and given shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

In the Bank Nationalisation Case (1970, 3 S.C.R. 530), the Supreme Court has held that the Constitution guarantees right to compensation, that is equivalent in money of the property compulsory acquired. Thus, in effect, the adequacy of compensation and the relevancy of the principles laid down by the legislature for determining the amount of compensation have virtually become justiciable in as much as the court can go into the question whether the amount paid to the owner of the property is what may be regarded reasonably as compensation for the loss of property. In the same case, the court has also held that a law which seeks to acquire or requisition property for a public purpose should also satisfy the requirements of Art. 19(1)(f).

(2) The Bill seeks to surmount the difficulties placed in the way of giving effect to the Directive Principles of state policy by the aforesaid interpretation. The word 'compensation' is sought to be omitted from

Art. 31 (2) and replaced by the word 'amount'. It is being clarified that the said amount may be given otherwise than in cash. It is also propose^{3d} to provide that Art.19(1)(f) shall not apply to any law relating to the acquisition or requisitioning of property for a public purpose.

3) The Bill further seeks to introduce a new Art.31C which provides that if any law is purred is given effect to the Directive Principles contained in clause (b) and (c) of Art.39 and contains a declaration to that effect, such law shall not be deemed to be void on the ground that it takes away or abridges any of the rights contained in Articles 14, 19 or 31 and shall not be questioned on the ground that it does not give effect to those principles. For this provision to apply in the case of law made by the state legislatures, it is necessary that the relevant Act should be reserved for the consideration of the President and receive his assent."

On the floor of the Lok Sabha, the Union Law Minister Shri H.R. Gokhale, expressed same thoughts as like "in the Bank Nationalisation case, the continued use of the word 'compensation' led to the interpretation that the money equivalent of the property acquired must be given for any property taken by the state for a public purpose This interpretation ... completely renders nugatory the provisions of the Fourth Amendment which made the adequacy of compassion fully non justiciable . . . what is now sought to be done in this amendments is to restore the 'Status quanta' which prevailed after Shantilal Mangaldas's case and before the judgement in the Bank Nationalisation case was delivered."⁶⁰ It is necessary to mention here that, the Amendment sought to "provide for the exclusion of the applicability of Art. 19(1) (f) in property which is covered by Art.31."⁶¹

More significantly relating to the Right to property, the 25th Amendment Act tried to change in the area of Fundamental Rights. Firstly, by exchanging the word 'amount' for the expression 'compensation', it amended Art.31(2). This became important for the

contradicting meanings of the expression 'compensation' by the Supreme Court. A new Clause (2) was placed in the old Clause (2). This new clause held that 'No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash.' In the second place A new clause 2(b) after clause 2(a) was included by the 25th Amendment Act. It was with a view to exclude the implication of Art. 19(1) (f) which was in the matter of acquisition or requisitioning of property under Art. 31(2). Positively, it held that "Nothing in sub-clause (f) of Clause (1) of Art. 19 shall affect any such law as is referred to in clause (2)." It was inserted in order to take out the defects regarding the property rights that saw their highest point in the decisions in the Bank Nationalisation case. The impact of this amendment is the minimization of the authority of judicial review mostly to the point of elimination. Thirdly, a new Clause 31C after Art. 31B was included by the 25th Amendment Act. This mainly tried to match up the due necessary to the Directive Principles of State Policy with a view to dissolve a far reaching contradiction between the Fundamental Rights and the Directive Principles of state policy.

The significance of this clause is as follows: "It is plain that substantive provision introduced by the first part of Art. 31C marks the beginning of a new era in the Constitutional and Political history of our country. It recognizes the primacy of two important economic principles enshrined in Art.39(b) and (c), and enables the legislatures to give effect to them by appropriate legislation and in doing so, it provides that, even if the implementation of these two principles is not consistent

with the fundamental rights guaranteed by articles 14, 19 and 31, it will not be struck down as constitutionally invalid."⁶² A rough review has been created against this part of Art. 31 C at the time, it has been said, "it seeks to destroy the basic structure of the existing constitution by making Fundamental Rights, which are justiciable, subservient to Directive Principles, which expressly are not enforceable in a court of law."⁶³ The amendment did not compose any deviation from the fundamental skeleton of the constitution was positively told by the Prime Minister herself.⁶⁴ On the authority of judicial scrutiny, the 'blanket ban' composes a radical deviation. The observation is made as like.⁶⁵ "Art.31C, however, makes a radical departure and precludes the jurisdiction of the courts from considering the question whether or not impugned legislative enactment is really intended to give effect to the economic principles enshrined in Clauses (b) and (c) of Art. 39. If Art. 31 C had provided that it would not be compliant to courts to consider whether the impugned legislation is adequate to bring about the implementation of the two economic principles, it would have been another matter; but the clause is so wide there is any national nexus between the provisions of the impugned law and the economic principles intended to be achieved by it. I am inclined to think that such a blanket ban on the jurisdiction of the court need not have been imposed by Art. 31C." It is dreaded with the taking of the Clause that "Parliament has attempted to take the first step to claim complete sovereignty, almost similar to the sovereignty of the British Parliament."⁶⁶

III

The high expectation of the people about the 25th amendment act with the 24th amendment act was objected to in the court of law. The popular case, the Fundamental Rights case, 1972, totally changed the relationship which came out of Golaknath Case in 1967, between the Judiciary and the parliament, within the skeleton of the

Constitution of the country. In this case, challenges were made for the 24th, 25th and 29th Constitutional Amendments. Through the 24th Amendment Act, the Parliament got the power to amend any part of the Constitution, along with the Chapter of Fundamental Rights which was rejected by the decision of the Golaknath Case. Since the decision of the case has been dealt with more elaborately in an earlier chapter,⁶⁷ a brief analysis of the judgement appears to be sufficient for the present purpose. In this case, by a 7-6 majority, the court held that the constitution has empowered the Parliament to alter, abridge or abrogate the Fundamental Rights guaranteed by the Constitution and hence the Judgement of the Golaknath case of 1967 is incorrect. The first part of Sec.3 of the 25th Amendment was announced legally just. But, the second part, that is "no such law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" was held to be unconstitutional and void. The 25th Amendment, as has already been said, substituted the word "Compensation" in Art. 31 (2) by the word "amount" and provided, in categorical terms, that no law fixing the amount or specifying the principles determining the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash." It again also included a new provision which is Art. 31 C that held which, "notwithstanding anything contained in Art.13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Art. 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Art.14, Art.19 or Art.31". In declaring these amendments valid, Sikri, C.J., had his own reservations. In his opinion, the substance of the fundamental right to property under Art.31 includes at least three conditions, that is, in the first place, the property shall be acquired by or under a valid law; secondly, it shall be

acquired for a public purpose and thirdly, the person whose property has been acquired shall be given an amount in lieu thereof, which is not arbitrary, illusory or shocking to the judicial conscience or the conscience of mankind.⁶⁸

Fundamentally, the small opinion of A.N. Ray, J., (Later C.J.) was not same. To him, Art. 31 (c) failed to delegate any authority on the State legislatures which is to amend the constitution. It purely took off the confinements of the Part III from any legislation providing impact to the Directive Principles of State Policy under Art.39(b) and (c). When Reddy, J., considered Sec 3 of the 25th Amendment as legally sound, they made known the belief of deniability as put to Art.31 (c) and noticed that "the new Art.31(c) is valid only, if the words 'inconsistent with or takes away or', the words 'Art. 14' and the declaratory portion 'and no law containing a declaration that it is for giving effect to such policy be called in question in any court on the ground that it does not give effect to such policy, is served."⁶⁹ But to Justice Beg, the legal authority of the Court has not been the beginning as a effect of this amendment. This similar reason was also followed by Justice Dwivedi. As according to the 29th Amendment, the Full Court sustained its validity. The Thirty-fourth Constitutional Amendment Act. 1974 in addition enlarged the scope of the Ninth Schedule by including 20 Land Reforms Acts of various States and adding items 67-86 to the Ninth Schedule. In July 1972, in a conference of the Chief Ministers of the States, some suggestions were mooted with regard to reduction in the level of ceiling on land holdings, application of ceiling on the basis of land held by a family consisting of husband wife and three minor children and withdrawing of exemptions. The twenty laws passed by 11 states Government (Andhra Pradesh, Bihar, Gujrat, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Karnataka, Punjab, Rajasthan and West Bengal) for prescribing lower land ceilings and for abolishing intermediary tenures. Apprehensive of the possibility of the Courts

holding up the pace of taking over surplus land and redistributing it among the tillers and the landless, the Union Government sought to provide constitutional protection of these laws by enacting the Constitution (Thirty fourth Amendment) Act. It was a natural and logical continuation of the process initiated by the Constitution (First Amendment) and Constitution (Seventeenth Amendment) Acts of 1951 and 1964 respectively.⁷⁰

IV

The second group comprising the Third, the Fifth, the Sixth, the Seventh, the Second and the Twenty Seventh amendments is dealt with the federal nature of the country. The true character of the federal system of India has created the starting to serious argument. A odd connection of the Canadian and the American types is agreed on all hands. Some of them would want to say it a 'flexible federation.'" Considering the real features of the Indian Government, an in detail debate has been done in the next chapter. In this section, we try to provide exclusively with those amendments. Which particularly are for the nature of federal system as like.

Firstly, the Third Constitutional Amendment Act, 1955 was passed to make able the parliament to engage its government over the composition, supply and dispensation of sure merchandises. This was prove from the line of objects and reasons, pointed to this amendment. It holds:

"Entry 33 of the concurrent list enables Parliament to legislate in respect of products of industries declared to be Under Union Control. In addition, Parliament was empowered by Art. 369, for a period of five years, to legislate in respect of certain specified essential commodities. The Bill sought to amplify entry 33 of the concurrent list accordingly."

Through this amendment, an entrance 33 of the concurrent list has been put again by a new one which comprises:

"33. Trade and Commerce in, and the production, supply and distribution of-

- a) The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the Public interest, and imported goods of the some kind as such products;
- b) Foodstuffs, including edible oil seeds and oils;
- c) Cattle fodder, including oilcakes and other concentrates;
- d) Raw cotton, whether ginned or un-ginned, and cotton sees; and
- e) Raw jute."

Thus the Third Amendment has been compelled by the truth that the duration of Central Control over this area was felt to be agreeable for the interest of the economy of the nation when the concurrent power gave on the Union by Art. 369 in respect of convinced merchandises was for a temporary time period concluding with the 25th January, 1955.

Fully 26 and 27 of Schedule II of the Constitution provide, exclusive authority to the state in regard to 'trade and commerce within the state' and 'production, supply and distribution of goods'- 'subject to the provisions of Entry 33 of list III.'

Considering the intra-state trade and commerce, and merchandises, supply and dispensation of things belongs to the state legislature, the effect is which the exclusive authority hoping only such affairs are inserted in Entry 33 of List III under the concurrent power.

The only condition including in the real Entry 33 of List III, was -

"Trade and commerce in and the production, supply and distribution of the products of any industry where the control of such

industry by the Union is declared by Parliament by law to be expedient in the public interest."

The Entry 52 of List I which gives the Parliament to declare controlling of any industry by the Union is fit for the interest of the people.⁷¹ Though by the real Entry 33 of List III the products of only those industries being indicated in Acts of Parliament made under Entry 52 of List I were hoped from the exclusive areas of the State Legislature and included in the concurrent list.

But, Art. 369 of the Constitution provided a further abridgment of the exclusive authority of the State and made to Parliament concurrent authority over some located merchandises for a temporary term of five years only from the enactment of the constitution. The impact of this stipulation was that other merchandises indicating in Art. 368 were to be considered as if counted in Entry 33 of list III for the tenure of 5 years that is till 25.1.55 only. With regarding these commodities, the cause of providing the concurrent power to the Parliament was analysed by the Drafting Committee this is as-

"The Committee is of the opinion that is view of the present conditions regarding the production, supply and distribution of foodstuffs and certain other commodities and special problem of the relief and rehabilitation of refugees, power should be provided for parliament to make laws with respect to these matters fell in the State List. Similar power was conferred for a limited period by the Indian (Central Government and Legislature) Act, 1946."

Before the expiry of the period of five years, the Government appointed a Committee on Commodities Control to examine the question of control exercised by the Govt. of India in exercise of its existing powers and the need for the exercise of such powers in future. The Committee recommended that continuance of Central control over the commodities specified in Art. 369 was necessary for an indefinite

period not only in the interests of proper distribution and supply of these essential commodities but also in the interest of the maintenance of the industries themselves which produced these commodities. The committee, accordingly, recommended that the power conferred by Art. 369 in respect of the commodities specified therein should be incorporated in Entry 33 of List III. So that parliament would get concurrent power over these commodities whether or not the industries producing those commodities were subject to control of the Union by reason of being specified in an Act passed under Entry 52 of List I.⁷²

As has already been stated, the object of the amendment is to perpetuate the concurrent power conferred by Art. 369 by transferring the contents of that Article to Entry 33 of list 111. But in making the amendment, the Act has made certain other changes. Thus- (i) Some of the Commodities Specified in Art. 369 (a) are not sought to be reproduced in Entry 33 of the List III. These are-

Cotton and Woolen textiles paper (including newsprint), Coal (including coke and derivatives of coal), iron and steel mica.

The reason for non-inclusion of these commodities in Entry 33 of List III is that the industries producing these commodities were already specified in the Industries (Development and Regulation) Act, 1951 (as amended) as industries the control of which by the Union was expedient in the public interest, under power conferred by Entry 52 of List I. Hence under the general power conferred by the existing Entry 33 of List III, Parliament already possesses concurrent power would not be affected by the expiry of Art. 369. It was, accordingly unnecessary to specify these commodities in Entry 33 of List III.

(ii) A new commodity, viz., 'raw jute' which was not in Art. 369(a), has been included in Entry 33. The reason for extending control of the Union over this commodity has already been given in the statement of objects and Reasons in the following words-

"Since Jute goods are the most important item in our export trade, it is desirable that the centre should have the power to control the production, supply and distribution of raw Jute." It may be mentioned here that such control had also been recommended by the Jute Commission.⁷³ The Amendment Act thus, gives to the Union the power of control over a new commodity which it did not so far possess and to that extent, the exclusive state sphere is narrowed down.

(iii) A more important respect in which the central power is enlarged by this Amendment is the inclusion 'imported goods' in part (a) of Entry 33 of List III. The object of this is 'to include also imported goods of the mass kind as the products of centralized industries, in order that the centre may be in a position to exercise full control over the development of such industries.'⁷⁴

The result is that the moment an industry is declared by Parliament to be an industry the control of which by the Union is expedient in the public interest, Parliament would have concurrent power under Entry 33 of List III to control the trade and commerce in and the supply and distribution of, all the products of such industry, whether produced in India or imported from abroad so that the national interests may be promoted or maintained by the exercise of such power.⁷⁵

The Constitution (Fifth Amendment) Act, 1955 is also an important amendment of this group. The proviso to Art.3 was amended through this constitution Act. The Statement of Objects and Reasons was:

"Under the proviso to Art. 3 of the Constitution, as it stood before amendment, no bill for the purpose of forming a new state, increasing or diminishing the area of any State or altering the boundaries or name of any state could be introduced in Parliament, unless the views of the State Legislatures concerned with respect to the provisions of the Bill

has been ascertained by the President. It was considered desirable that when a reference was made to the State Legislatures for the said purpose, the President should be able to prescribe the period within which the States convey their views and it should be open to the President to extend such period whenever he considered it necessary. It was also considered desirable to provide that the Bill would not be introduced until the expiry of such period. The Act amends the proviso to Art. 3 of the Constitution accordingly."

After appreciating the changes which were brought by the 5th Constitutional Amendment Act; the proviso to Art.3 is as like:

"2. In Art.3 of the Constitution, for the proviso, the following shall be substituted, namely:

Provided that no. Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States specified in Part A or Part B of the First Schedule, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired."

The Seventh Schedule, Art. 269 and Art. 286 were affected with the changes of the Sixth Amendment Act, 1956. The statement of Objects and Reasons declared:

"High Judicial authorities had found the interpretation of the original Art. 286 a difficult task and had expressed divergent views as to the scope and effect, in particular, of the explanation in Clause (1) and of Clause (2). The majority view of the Supreme Court in the State of Bombay Vs. The United Motors (India) Ltd.⁷⁶ was that sub-clause (1) prohibited the taxation of a sale involving inter-state elements by all

states except the State in which the goods were delivered for the purpose of consumption therein, and furthermore, that Clause (2) did not affect the power of that State to tax the inter-state sale even though Parliament had not made a law removing the ban imposed by that clause. This resulted in declares resident in one state being subjected to the sales tax jurisdiction and procedure of several other states with which they had dealings in the normal course of their business. Two and a half years later, the second part of this decision was reversed by the Supreme Court in the Bengal Immunity Company Ltd. Vs. The State of Bihar;⁷⁷ but here too, the Court was not unanimous."

In accordance with Clause (3) of that Article, Parliament passed an Act in 1952 which declared a number of goods to be important to the life of the community. Till this announcement which could not influence pre-existing State laws imposed on sales tax on these commodities, the effect was a broad inequality from state to state; both in the range and rates' of exempted goods.

The Taxation Enquiry Commission which examined the question for solution with great care and fullness framed convinced recommendations that the Governments of all State accepted generally.

The Act provides result to the recommendations of the Commission regarding the Constitutional amendmental provisions related to sales tax.

Mainly the Seventh Schedule of the Constitution was amended by the Sixty Amendment Act. The amendment made the following changes:

"2. In the Seventh Schedule to the Constitution-

(a) In the Union List, after Entry 92, the following entry shall be inserted, namely:

"92A: Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce" and

(b) For Entry 54 in the state list, the following entry shall be exchanged, namely-

"54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of List 1."

3. The sub Clause shall be included in the Art. 269 of the Constitution- (a) in Clause (1), after sub-clause (f) which is as follows:

(g) Other than newspapers, taxes on the sale or purchase of goods where such sale or purchase takes place in the course of inter-state trade or commerce; and

(h) the clause shall be placed after clause (2) which names as follows:

"(3) Parliament by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-state trade or commerce."

(4) In the constitutional Art. 286-

a) in Clause (1), the 'Explanation' shall be deleted; and

b) The following clauses shall be exchanged for clauses (2) and (3), namely:

"(2) Parliament may be law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so-far as it imposes, or authorizes the imposition of, a tax to be of special importance in inter-state trade or commerce, be subject to such restrictions and conditions in regard

to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

For the implementation of the recommendations of the States Reorganisation Commission, the Constitution (Seventh Amendment) Act was enacted. The Statement of Objects and Reasons declares:

"It was considered necessary to make numerous amendments in the Constitution in order to implement the scheme of States Reorganisation. The Act makes these amendment and also some other amendments to certain provisions of the Constitution relating to High Court and High Court Judges, the executive power of the Union and the States and a few entries in the legislative lists."

The Seventh Amendment Act is by far the biggest amendment and among the important changes introduced by it the following may be noted. It has abolished the different categories of states and placed them on a uniform level. Certain territories on the other hand have been placed under Union Control. So a total change has been effected in respect of the First Schedule to the Constitution. It also makes some consequential changes in the number of membership of the House of the people and in the allocation among the States and Union Territories of the seats in the council of states. Originally, the total membership of the House of the people was fixed at 500. Now, according to this amendment, the House of the people is to consist of not more than five hundred members from the States and not more than twenty members from the Union Territories. Provision has also been made to appoint the same person as Governor of two or more states. In the case of state Legislatures it drops the requirements of not more than one member per every 75000 of population though it retains the same upper and lower limits of membership (i.e. not more than 500 and not less than 60). The size of the Legislative councils has been enlarged from one fourth of the Strength of the legislative assemblies in the respective states to one third of that. An important addition has been made to the

Union State administrative relationship. Under Art. 258A, the Governor of a state may, with the consent of the Central Government entrust any state functions to the officers of the Central Government. Of course later on, this provision has been criticized as the erosion of State autonomy through the backdoor.⁷⁸

The Act raised partially the bar against performing by an ex High Court Judge. According to the amended Art. 220, a High Court Judge can request or act in the Supreme Court and in the High Court's other than of which he formerly was a Judge.

Under this amendment, the centre and the states were given the authority to carry on any business or trade along with the respective field not mentioning in legislative jurisdiction. The another essential addition is to provide the provision of opportunities for instruction in mother tongue at the primary stage. The President may also give the directions to the state for stipulation of such cases and in such a case, he is to choose a special officer to attend to the protections given in the constitution for linguistic minorities. The President has been made able to trust upon the special obligations to the Governor of Bombay for the set up of development boards and development of education of techniques in the state. Here, as special obligation, provides a scope for the Union Control. It may interpret that the Governor will do in his discretion and then the control of the President will be provided on the Governor.

It also provides that until Parliament otherwise provides, the function of administering a Union Territory, whether through an administrator or through a Governor of an adjacent state independently of his council of Minister is the responsibility of the President. It may be noted that the Bill received a reification from the State Legislatures within a very short time.⁷⁹

Through the Thirteenth Amendment Act, 1962, a new Art. 371A with a view to make a separate state of Nagaland inserted in the Constitution. By means of this amendment, the influence of the federal system of India increased to the eastern region which was possible due to the agreement between the Government of India and the leaders of the Naga People's Convention in July, 1960, in order to form a separate state. According to this agreement the Government of Nagaland would be obligation for (1) the capitals to be made possible to get to the new state by the Govt. of India, (ii) law and order so long as the condition in the State prolonged to stay disturbed on account of the inimical functions inside the area; (iii) the government of public affairs of Thensang district for the time of ten years. It was also mentioned that the Acts of Parliament regarding of some sure indicated subjects would not be applicable to Nagaland unless so decided by the Nagaland Legislature.

Through amending the Art.3, the Constitution (Eighteenth Amendment) Act, 1966 widened its scope and provide a categorical meaning of the idea of "Union Territories". The Statement of Objects and Reasons attached to this amendment proclaimed:

"Art. 3 of the Constitution provides for the formation of new States and alternation of areas, boundaries or names of existing states. Before the Constitution (Seventh Amendment) Act, 1956 was enacted, the expression "States" occurring in that Article meant Part-A States, Part-B States and also Part-C States. By the Seventh Amendment of the Constitution in 1956, the concept of "Union Territories" was introduced in our Constitution but Art.3 was not amended to include in terms "Union Territories". It is considered proper to amend this article to make it clear that "State" in clause (a) to (c) of that article (but not in the proviso) includes "Union Territories." It is also considered proper to make it clear that power under clauses (a) of Art.3 includes power to

form a new state or Union Territory by uniting a part of a State or Union Territory to another State or Union Territory."

By the Constitution (Twenty Second Amendment) Act, 1969, a few major changes were brought about. It added at least three new Articles with a view to making certain new arrangements within the State of Assam. The following are the changes effected by the Amendment:

244A:(1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule and create therefore-

a) A body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous state, or

b) A council of Ministers; or both with such Constitution, powers and functions, in each case as may be specified in the law.

(2) Any such law as in referred to in Clause (1) may in particular,

a) Specify the matters enumerated in the state list or the concurrent list with respect to make laws for the whole or any part thereof, whether to the exclusion of the legislature of the state of Assam or otherwise;

b) Define the matters with respect to which the executive power of the autonomous state shall extend;

c) Provide that any tax levied by the state of Assam shall be assigned to the autonomous state in so far as the proceeds thereof are attributable to the autonomous state;

d) Provide that any reference to a state in any Article of this Constitution shall be construed as including a reference to the autonomous states; and

e) Make such supplemental, incidental and consequential provision as may be deemed necessary.

3) An amendment of any such law as aforesaid is so far as such amendment relates to any of the matters specified in sub-clause (a) or sub clause (b) of Clause (2) shall have no effect unless the amendment is passed in each House of parliament by not less than two thirds of the members present and voting.

4) Any such law as is referred to in this Article shall not be deemed to be an amendment of this constitution for the purpose of Art.368 notwithstanding that it contains any provision which amends or has the effect of amending this constitution."

The following clause has been included in Art.275 of the Constitution which name is:

“(1A) On and from the formation of the autonomous State under Art. 244A-

(i) Any sums payable under Clause (a) of the second proviso to clause (1) shall, if the autonomous State comprises all the tribal autonomous state comprises only some of those tribal areas, be apportioned between the state of Assam and the autonomous states as the President may by order, specify;

(ii) There shall be paid out of the consolidated Fund of India as grants-in-aid of the revenues of the autonomous state sums capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous state with the approval of Government of India for the purpose of raising the level of administration of the rest of the state of Assam."

Once more, after Art.371 A of the Constitution, the article was included which is as like:

"371B. Notwithstanding anything in this constitution, the President may, by order made with respect to the State of Assam, provide for the Constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule and such number of other members of that Assembly as may be specified in the order and for the modifications to be made in the rule of procedure of that Assembly for the Constitution and proper functioning of such committee."

The Twenty Seventh Amendment Act, 1971 brought a few changes; By these changes with a view to include 'Mizoram' within it, Art. 239 a was amended adequately. Once again the article has been included after Alter, 239A of the Constitution which is as :-

"239B. (1) If at any time, except when the Legislature of a Union territory referred to in Clause (1) of Art. 239A is in session, the administrator thereof is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that no such Ordinance shall be promulgated by the administrator after obtaining instructions from the President in that behalf:

Provided further that whenever the said Legislature is dissolved, or its functioning remains suspended on account of any action taken under any such laws as is referred to in Clause (1) of Art. 239A, the administrator shall not promulgate any ordinance during the period of such dissolution or suspension.

(2) An ordinance promulgated under this Article in pursuance of instruction from the President shall be deemed to be an Act of the

legislature of the Union territory which has been duly enacted in any such law as is referred to in Clause (1) of Art. 239, but every such Ordinance-

(a) Shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the legislature or if, before the expiration of that period, a resolution disapproving it, is passed by the legislature, upon the passing of the resolution; and

(b) May be withdrawn at any time by the administrator after obtaining instructions from the Parliament in that behalf.

(3) If and so far as an Ordinance under this Article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in Clause (1) of Art. 239A, it shall be void, further in Art. 240, the following changes were effected-

(a) in Clause (1),

(i) after entry (e), the following entries shall be inserted, namely :-

(f) Mizoram

(g) Arunachal Pradesh;

(ii) In the proviso, for the words "Union territory of Goa, Daman and Diu or Pondicherry; or Mizoram" shall be substituted;

(iii) after the proviso as so amended, the following further proviso shall be inserted, namely:-

Provided further that whatever the body functioning as a legislature for the Union territory of Goa, Daman and Diu, Pondicherry or Mizoram is dissolved, or the functioning of that body as such legislature remains suspended on account of any action taken under any such law as is referred to in Clause (1) of Art. 239A, the President

may, during the period of such dissolution or suspension, make regulations for the peace, progress and goods government of that Union territory."

(b) For the words "any existing law", the words "any other law" in Clause(2) shall be exchanged.

The articles which shall be included after Art.371B of the Constitution are as follows:-

371C. (1) Notwithstanding anything in this Constitution the President may, by order made with respect to the State of Manipur, Provide for the constitution and functions of a Committee of the Legislative Assembly of the State consisting of members of that Assembly elected from Hill areas of that State, for the modifications to be made in the rules of business of the Government and in that rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of such committee.

(2) The Governor shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Hill Areas in the State of Manipur and the executive power of the Union shall extend to the giving of directions to the state as to the administration of the said areas.

Explanation - In this Article, the expression "Hill Areas" means such areas as the President may, by order declare to be Hill Areas. The area of the Indian federal structure was once more enlarged by way of inserting Sikkim within its ambit by the Thirty-Sixth Amendment Act.

V

Another category of constitution amendments apart from the two broad categories is less essential. This group signifies the interest of the community from the larger perspective. For the equal Socio-economic development, these were important. Being an egalitarian society on the basis of equality, India cannot carry on the special attention for the luxury and development of a small part of the population.

If where development is to be gathered, then the hardships of the people of weaker community must be led to an improvement. Some amendments become necessary for the development of the condition of the Scheduled Castes and Scheduled Tribes along with other people being in really down trodden. Among these constitutional amendment acts, the Eighth Amendment Act, 1960 and the Twenty third Amendment Act, 1969 specially mentioned.

In its statement of Objects and Reasons, the Eighth Amendment Act, 1960 stated:

The reasons which weighed with the constituent Assembly of India in making provision for the reservation of seats for the Scheduled Castes and Scheduled Tribes and the Anglo-Indian community in the House of the People and the State Legislative Assemblies have not closed to exist. The Act, therefore, makes the aforesaid reservation and nomination continue for another few years."

The reservation of seats for the SCs, STs and representation by nomination of the Anglo-Indian Community in Lok Sabha and State Legislative Assemblies for a time of the commencement of the constitution were enacted and provided in Art. 334. The Eighth Amendment Act has exchanged "Twenty-years" for ten years as it was thought about the special safeguards of the state of these communities for an important time of period.

The twenty-third amendment Act, 1969 tried to enlarge the profit of representation to the SCs and STs. The following Statement of Objects and Reasons is evident which included to the amendment Act.

"Art. 334 of the Constitution lays down that the provisions of the Constitution relating to the reservation of seats for the Scheduled Castes and Scheduled Tribes and the representation of the Anglo-Indian Community by nomination in the House of the People and the Legislative Assemblies of the States shall cease to have effect on the expiration of a period of twenty years from the commencement of the Constitution. Although the Scheduled Casts and Scheduled Tribes have made considerable progress in the last twenty years, the reasons which weighed. With the Constituted Assembly in making provision with regard to the aforesaid reservation of seats and nominations of members have ceased to exist. It is, therefore, proposed to continue the reservation for the Scheduled Castes and the Scheduled Tribes and the representation of Anglo-Indians by nomination for a further period of ten years.

2. More than ninety percent population of the State of Nagaland, which came into being in 1963 is tribal. It would be anomalous to make provisions for reservation for Scheduled Carte and Scheduled Tribes in legislatures in the States where they are in a majority. It is, therefore, proposed, as desired by the Government of Nagaland, not to make any reservation for the Scheduled Tribes in Nagaland either in the House of the people or in the State legislative Assembly Articles 330 and 332 of the constitution are being amended for this purpose.

3. Under Art. 333 of the Constitution, the number of Anglo-Indians, who may be nominated in the State Legislative Assembly, it is left to the discretion of the Governor. It is now proposed to amend that Article so as to provide that not more than one Anglo-Indian should be nominated by the Governor to any State Legislative Assembly. This

amendment will not however affect representation of the Anglo-Indian community in the existing Legislative Assembly until their dissolution."

Thus, Art. 330, Art. 332, Art. 333 and Art. 334 were amended by the Constitution (Twenty third Amendment) Act. The words "except the Scheduled Tribes in the tribal areas of Assam" was in Art. 330 of the Constitution, in sub-clause (b) of Clause (1). The words "except the Scheduled Tribes in the tribal areas of Assam and in Nagaland" had been exchanged. In Art. 332 of the Constitution, in Clause (1), for the words except the Scheduled Tribes in the Tribal areas of Assam the words "except the Scheduled Tribes in the Tribal areas of Assam and in Nagaland" has been substituted. In Art. 333 of the Constitution for the words Nominate such number of members of the Community to the Assembly as he considers appropriate" the words, "nominate one member of that Community to the Assembly", has been substituted. Again it has been provided by clauses (2) of the articles that nothing contained in sub-section (1) shall affect any representation of the Anglo-Indian Community in the Legislative Assembly of any State existing at the commencement of this act until the dissolution, for the words twenty years", the words "thirty years" has been substituted.⁸⁰

VI

The miscellaneous category seems not to be of more importance from the point of our present discussion. This category will be for that they were drawn to bring about pleasing developments for the functions and organization of the administrative and governmental organs.

Art. 81 of the Constitution was amended by the Second Amendment Act, 1952. The view was to relax the limits (of number of population) prescribed therein "so as to avoid a constitutional irregularity in delimiting the Constituencies for the purpose of readjustment of representation in the House of the People as required under Art. 81 (3) of the Constitution."⁸¹

Once more, the Eleventh Amendment Act, 1961, amended Art. 66 and Art.71. the words "members of an electoral college, consisting of members of both Houses of Parliament" were exchanged for the words "members of both Houses of Parliament assembled at a joint sitting" in Art. 66 Clause(1).

The following Clause was inserted in Art. 71 after Clause (3) namely:"(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him."

Art. 81 further by exchanging the words "twenty members" in sub-clause (b) of Clause (1) by the words "twenty five members" was amended by the Fourteenth Amendment Act. 1962.

Pondicherry was inserted under the heading Union territories through the amendment of First Schedule. In addition with a view to accommodate Pondicherry within the federal structure of the country, Art. 240 and the Fourth Schedule were amended.

Art. 124, Art. 128 Art. 217, Art. 222, Art. 224, Art. 226, Art. 297, Art. 311, Art. 316 and the Seventh Schedule were amended through the fifteenth amendment Act. 1963. This total amendment was for removing the obstacles relating to the working of the High Court Judges. On the recommendations which the Election Commission made in its report of the Third General Elections, 1962 in India, the nineteenth Amendment Act. 1966 was passed.

With the acceptance of the recommendations, the Government amended Art. 324. It was to abolish election tribunals and trial of election positions by High Courts.

For the legality of appointments of and judgment etc provided by certain distinct Judges, a new Art. 233A was inserted through the Twentieth Amendment Act. 1966.

Articles 291 and 362 were left out by the Twenty - sixth Amendment Act, 1971, It also included a new Art. 363A and amended Art. 366. It narrated to Privy Purse. The institutions of Privy Purse were done away with an acknowledgement of granted to the rulers of Indian States was taken away by inserting a new Art. 363A.

The Thirteenth Amendment Act, 1972 amended Art. 133 of the constitution. The appellate Jurisdiction of the Supreme Court in regard to civil cases in appeals from the High Court is dealt with this Article.

Previous to this amendment under sub-Clauses A and B, as appeal lay as a matter of right to the Supreme Court from any judgment, decree or final order in civil proceedings of the High Court if the amount or value of the subject matter was not less than Rs. 20,000. But if the judgment was one of affirmance, there could be no appeal unless the High Court certified that it involved some substantial question of law. Sub-Clause(c) of Clause (1) of Art. 133, however, provided that an appeal was possible if the High Court certified that the case was qualified for appeal. ⁸²

The trial of resolving if a question of law lifted up was actually existing, in the words of the Supreme Court in *Chunilal V. Century Spinning Co.*, ⁸³ was "whether it is of general public importance or whether it directly and substantially affects the rights of the parties But if the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles, the question would not be a substantial question of law."

Sub-Clause (c) has been held to apply in special cases in which the point in dispute was not measurable by money though it might be of great public and private importance. It is strictly correct, therefore, to state that prior to the amendment if a party of modest means wanted to file an appeal, a certificate would have been refused because of a low valuation if the question involved was of a great public importance.

Except in the eventuality of the judgment of variation and the amount being more than Rs. 20,000, in the first instance, all the litigants were treated alike. But this was a serious drawback as a certificate from the High Court needed to be obtained in causes which had been dismissed summarily as it involved a valuation of more than Rs. 20,000. This was indeed, an anomaly and also resulted in creating unnecessary arrears. That is why the Law Commission recommended the amended of Art. 133.⁸⁴

Clause (1) of Art. 133 of the Constitution was exchanged by this amendment. At present, appeals will be situated only whether the High Court provides the Certificate that the case is in a substantial question of law of common value and that in the opinion of the High Court, the question seems to be decided by the Supreme Court. Valuation has now discontinued to be a yardstick.

The amendment has generally contracted the scope of the certificate. The High Court gave this certificate. It is at present important to found that the substantial question of law of common value is rolled up. Again importantly the High Court must give the certificate to be decided by the Supreme Court.

Even if a question of 'private importance' involves with, the certificate cannot be given. So it is criticized that in most of the cases, the amendment acts on the poorer part of the public more than the richer. Since in most of the cases, the private grievance is being sought to be lifted up, it will be impossible to get a certificate from the High Court. In reality, the rich who simply object to the constitutionality of the Act and the different types of executive decisions may still be able to get a certificate due the question lifted by them would be of 'general importance'.

It is however, curious that instead of taking the stand that the amendment has been deemed necessary to reduce the backlog in the

Supreme Court, the impression has been given that it is a measure to reduce the disparity between the rich and the poor. The amendment has, however, saved the appeals which had earlier been certified by the High Court. But after this amendment Act, no appeal shall lie to the Supreme Court under Clause (1) of Art. 133 of the Constitutions unless such an appeal satisfies the provisions of the Clauses as amended. Thus a certificate now has to be given under the amended Art. 133 of the Constitution even if the appeal had been decided by the High Court earlier. This, of course, is a wholesome provision. Otherwise, hundreds of appeals now qualified would have to be certified.⁸⁵

The Thirty - first Amendment Act, 1973 amended Art. 81, Art.330 and Art. 332. The question of representation in the House of the people concerns all the amendments.

VII

The last group, a miscellaneous group appears to be significance in our discussion. This category is composed of the Forty. Fifth, the Fifty Second, the Fifty nine, the Sixty one, the Sixty second, the Seventy one, the Seventy third, the Seventy fourth, the Seventy sixth, the Seventy seven, the Seventy nine, the Eighty one, the Eighty four, the Eighty sixth, and Ninety first, Ninety second, Ninety third Amendment Acts. These amendments were designed to bring about desirable developments in the organization and working of the governmental and administrative organs.

The constitution (Forty fifth Amendment) Act, 1980 extended the reservation of seats for SCs and STs (Articles-330 and Articles-332) and representation of Anglo India's in the house of the people (Article-337) for a further period of 10 years that was upto 1990. The fifty second amendment act 1985 put a restriction on detections from one political party to another and it also provided for the first time legal recognition to political parties. This act added a new schedule -Tenth Schedule, to

the Constitution which was entitled provision as to disqualification on ground of defection.

The constitution (Fifty nine Amendment) Act, 1988, stated that the government was empowered to extend President's rule and to impose the emergency along with suspending operation of Article 21 in Punjab. Along this, it also reintroduced that the internal disturbance in any part of the Country on grounds for the application of emergency now stands repealed though it had been removed by the 44th Amendment Act. The Sixty first Amendment Act, 1989 reduced the voting age from 21 years to 18 years for the house of the people and Assembly elections. Now all men and women of 18 years or of above age and whose names appears in the electoral lists can vote in the election.

With a view to safeguard the interests of SCs, STs in Parliament and State Assemblies, Once more after the Forty fifth amendment act, 1980, a new amendment Sixty two Amendment Act, 1989 was passed. It also provided for reservation for another ten years to the members of the SCs, STs and it also argued for reservation for the Anglo-Indian Community by nomination. This act extended the time upto 2000 years. Again through the Seventy nine Amendment Act, the reservation for SCs and STs (Art. 330 and 332) and the representation of the Anglo-Indian community (Art. 337) by nomination in the Lok Sabha and the State Assemblies were extended to another ten years that is till January, 2010.'

The Constitution (Seventy first Amendment) Act, 1992 included Kankani, Manipuri and Nepalese Languages in the Eighth Schedule. It thus raised the member of languages in the Schedule from 15 to 18.

The Seventy third amendment act, 1992 got Presidential assent on April 25, 1993 after ratification of the required number of states, provided constitutional of guarantee for formation of Panchayats. This act has added a new Part- IX to the Constitution which is entitled as

'The Panchayats' and consist of provisions from Articles 243 to 243O: It also added a new. Eleventh Schedule to the Constitution which contains 29 functional items of the Panchayats. This act has given a practical shape to article 40 of the Constitution which is that "The state shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government". This article form a part of the directive Principles of State Policy. The act gives a constitutional status to the Panchyati raj institution.

The Constitution (Seventy fourth Amendment) Act, 1992 has added a new Part- IX-A to the Indian Constitution entitled as "The Municipalities" and contains Articles 243 P to 243ZG. It also inserted a new twelfth Schedule containing eighteen functional items. Through this act the state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act. The act provides for the constitution of three types of municipalities in every state. The three types are as (i) A Nagar Panchayat rural transitional area, (ii) A municipal council for a smaller urban area and (iii) A municipal corporation for a lager urban area.

The Constitution (Seventy sixth Amendment) Act, 1994, tried to include the Tamil Nadu Reservation Act which provides for 69% reservation for educational institutions and jobs in the State. It also was included in the Ninth Schedule, so that it will be outside judicial review.

The Seventy Seventh Amendment Act, 1995 made a provisions for the reservation for SCs, STs in the promotions in Public Services. It added a new Clause 4(a) to Article 16 of the constitution. This act provided that the State is empowered to make provisions for reservation in promotions in Government jobs in favour of Schedule Castes and Schedule Tribes.

The institution (Eighty first Amendment) Act, 2000 stated that the unfilled vacancies of a year reserved for SCs and STs for being filled up in that year in accordance with any provision for the reservation under Art. 16 was to be regarded a special class of vacancies to be filled up in any succeeding year. It removed limitation of 50% reservation on total reservation which I imposed by the Supreme Court.

Through the Eighty four constitutional amendments Act, 2002, the new States of Chhattisgarh, Uttaranchal and Jharkhand were created. It also raised the free fee on the delimitation of constituencies which was imposed by the 42nd Amendment. It allowed delimitation within states on the basis of the 1991 census.

In 2002, the Eighty Sixth amendment act amended article 21. It included a new article 21 (A) which is that State shall provide free and compulsory education to all children of the age of Six to fourteen in such a manner as the State may determine. Thus act is la major milestone in the country's aim to achieve "Education for All" This step is described by the Government as "the dawn of the second revolution in the chapter of citizens rights". The act also tries to compel parents to provide opportunities for education to his child or ward between the ages of Six to fourteen years. It is the Eleventh Fundamental Duties of Indian Citizens, in Art. 51(A) Part- IV. This act amends Article 45 of the Directive Principles of State Policy (Part-IV, Art-36 to 51) to make the state Endeavour to provide early childhood care and education for all children until they complete Six years of age.

The Eighty eight Amendment Act, 2003 provided taxes on services including the Union list. Provisions for creation for separate Commission for Schedule Castes also made by the Eighty Ninth Amendment Act.

The Ninetieth Amendment Act, 2003, made the Provisions through these provisions, STs and non STs in the Boroland Territorial

Areas District, so notified and existing prior to the Constitution of the Boroland Territorial Areas District were be maintained.

To strength of the Council of ministers in Union as well stage to 15% of the total member of house of the people or concerned Vidhan Sabha respectively the Ninety first amendment act made provisions. The Bodo, Dogri, Maithilli and Santhali were added in the Eight Schedule of Constitution which now came to have 22 languages were added through the Ninety second amendment act, 2003. 52nd Amendment Act. for providing more teeth to the Anti Defection Law, the 91 St Amendment was incorporated in the constitution. The Constitution Ninety first Amendment Act, 2002, aims at putting an end to the defection from one political party to another.

The Constitution (Ninety third Amendment) Act Amended Art. 15 and 19. In these Articles anything was not to prevent the state from creating special provisions for the advancement of any backward classes mainly socially and educationally of citizens or for the advancement of Schedule Castes and Schedule Tribes in so far as such special provisions relate to their admission to educational institutions containing private institutions if aided or unaided by the state, other than minority institutions accordance Art. 30.

VIII

The total influence of all these amendments on Indian Political system is tremendous which clears from the above discussion. These amendments had great impact in the relationship between the executive and the Legislature and also between the Legislature and the Judiciary. Through these acts, it was aimed at to achieve a social stipulation where in the liberty of individual could be mixed with the interest of the community to increase socio-economic development.

It hardly calls for any explanation to establish the fact that of all these amendments, the first group, dealing with the nature and

quantum of Fundamental Rights, occupies a very crucial position in any discussion of constitutional amendments. Three amendments have got a direct relevance in an egalitarian society, sought to be brought about by the makers of the constitution. The Statement of Objects and Reasons, appended to each of three amendments reveals that these were aimed at fostering and promoting socio-economic development by extirpating the obstacles to progressive land reform measures and social welfare legislation. In almost all these amendments, the property right has been suitably amended so that any future legislature may not have to face any constitutional barrier in introducing a uniform land reform measures throughout the country. It may be noted that almost all these amendments have sought either to amend Art. 19 or Art. 31 the articles directly related with property. The First, Fourth, Seventeenth, Twenty Fourth and Twenty constitutional amendments were brought about only to resolve the long standing conflict between the legislature and the judiciary. This is evident from the statement of Objects and reasons appended to the Twenty fourth Amendment Act. The Government made no pretension in hiding its motive. It clearly declared that the verdict in the Golak Nath case of 1967 posed a challenge before the legislative competence with respect to constitutional amendment, by holding the view that Parliament had no authority to amend the chapter on Fundamental Rights which are "Sacrosanct and not liable to be abridged" by legislative action. It is therefore, considered necessary to provide expressly that Parliament has power to amend any provision of the constitution so as to include the provisions of Part-III within the scope of the amending power. Thus the Act had substantially changed Art. 13 and Art.368 with a view to removing the long standing points of contradiction between these two articles. The Act directly vests the Parliament with constituent power to amend any portion of the Constitution and made it obligatory on the part of the President to give his assent to such an amendment Bill.⁸⁶

In a close manner understanding the meaning of the 24th Amendment Act which came to the 25th Amendment Act that was designed to get over the objections set in the way of providing result to the Directive principles of State Policy and with this final in view, put again the word “Compensation” by the word “amount”. In addition the Bill made known a new Art. 310 to give that, whether any law is approved to provide result to the Directive principles, comprising in Clauses (b) and (c) of Art. 39 and comprised announcement to that result, such law shall not be deemed to be quit on the basis that it abridges the rights comprised in articles 14, 19 or 31 and shall be unquestioned on the basis it does not effect to those principles. It has once more mentioned that should be reserved for the deliberation of the President along with his assent for this condition to put to the purpose. To indicate its effect on the political system of India, the main stipulation of this amendment may be as like-

(a) For amending the Constitution, the Parliament directly is empowered by Art, 368.

(b) It gives a process following for the amendment of the Constitution.

(c) If the Bill that had been passed by the Parliament is placed to President for his assent, He is compelled.

(d) The amendment also removes the petition of Art, 13 to any amendment which made to the Constitution under Art, 368.

The main conditions regarding article 25 may be as follows-

(a) The word 'amount' has inserted of the term 'compensation' in Art.31 (2) of the Constitution. For that, the Legislature may resolve the compensation which is to given to property holder after gaining by the State. It also clearly mention that the judiciary has been disowned the authority to enter into these questions and the said amount may be provided in cash or in another way.

(b) In only law which related to the act of acquiring or supplying of property for public goal, Art 19 (f) shall not administer.

(c) A new Clause Art, 82 (c) has been introduced by the Act. It gives that whether any law is made to provide effect to the Directive Principles of State Policy comprised in Clause (b) and (c) of art, 39 and includes a proclamation to that effect, such type law shall not be considered to invalid on the basis that it abridges the rights included in articles 14, 19 or 31 and no questions will be placed on the basis that those principles are not affected.

(d) Without the assent of the President to such a Bill, no law shall apply which is made by the State Legislature or these articles conditions.

These amendments together with subsequent ones have been hailed as the manifestation of the victory of the people. The Parliament or for that matter the executive being a Cabinet form of government where there is close co-operation between the cabinet and the largest majority has drastic powers to make changes in the property clause of the Constitution so as to facilitate speedy socio-economic reforms in the country besides the Directive principles of State Policy have been given precedence over the Fundamental Rights with a view to bringing about, to removing K. Santhanam's famous idea, a social revolution in the country.⁸⁷

The constitutional and reasonable enlargement of the pledge which was made by the National Congress in their Election Manifesto of 1971 that assured to "seek such further constitutional remedies and amendment as are necessary to overcome the impediments in the path of social justice," Are come from the twenty fourth, twenty five and the other amendments.

The total effect of these amendments of the Constitution seems to be astounding and far reaching. Without destroying the basic

characteristic of the Constitution, 'a social revolution' is brought about through the way of fashion which are made by these amendments. The effect of the amendments has been sum up as like-

(i) The idea of Parliamentary supremacy firmly has settled down which finished the long existing contest between the legislature and the judiciary in the constitution;

(ii) The amendments have removed the evident conflict between the Fundamental Rights and the Directive Principles, by providing due value to the Directive Principles, regarding their "fundamentalness" in the governance of the country";

(iii) These acts have tried to elevate the fate of the oppressed community by soothing their hardship through constitutional intermediate steps with a goal to setting up an egalitarian society along the outlines provided in the preamble and the Directive Principles; and

(iv) Through these acts, the principles as constitution should not be a finish in itself but a way to the finish are adhered. These also repeated that the idea of Welfare State of Gandhiji can be gained within the structural framework of the today's constitution, even not changing its basic characteristics.

To provide a conclusion to this present discussion, it can be narrated with some measures of surely that the acts have made able the Parliament to come out with larger solidity. These acts were generally the starting of a method that created their highest point in the recommendations of the Swaran Singh Committee. The adjustment of power between the Legislature and the judiciary has been formed to cause in favour of the former. [The power adjustment' in the organization of the government of India has endured solemn alterations will be additional obvious when we suggest to argue the 42nd Amendment act of the Constitution].

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