CHAPTER - VI

CONSTITUTIONAL AMENDMENTS IN INDIA (1950-79): THEIR CLASSIFICATION, NATURE AND IMPACT ON THE POLITICS, ECONOMICS AND SOCIETY IN INDIA.

I. INTRODUCTION:

Since the commencement of the Indian Constitution on January 26, 1950 upto the dissolution of the Lok Sabha in 1979 for the mid-term poll scheduled for January 1980, as many as forty-four Amendment Acts have been passed with a view to enabling the Constitution ' to respond to the needs' of the changed socio-political matrix of the Indian political system.

This spate of amendments of profound constitutional, political, social and economic significance, within thirty years of the working of the present Constitution, has set in motion conflicting speculations among constitutional lawyers and general public alike. It has rightly been observed: "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 seen(2) 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

Variety of the amending process.

by the ordinary legislative process, without being called amendment proper, 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 may not be out of place here to mention that the Indian political system, since the very beginning, "has been passing through ..... periodical crises and conditions of instability."(3) These crises became more acute during and after 1967, because of certain factors. These were manifested first in the institutional conflict in the Golaknath judgment of 1967; second in the changed political set up of the country after the Fourth General Elections in 1967; third, in the 'Historic' split in the Congress Part in 1969, and fourth, in the mounting economic crises caused by the failure of developmental efforts on the part of the Government.(4) These factors, along with others, "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 yet 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 centering

Systemic or Issue conflict?

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] For a political system like India which is not exposed to violence 'as a means of resolving systemic conflict', constitutional amendments "might go a long way in removing the constraints to stability and other systemic goals."[8]

Formal constitutional amendments are necessary not only to provide the 'safety-valve' for the political system but also to constribute "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]

Significance and effects of formal amendment.

The issue conflict which became manifest in the conflict between the 'justiciable' Fundamental Rights and the 'non-justiciable' Directive Principles, forced the Party in power to take recourse to the path of formal constitutional amendment. The result was the incorporation of the First Amendment Act of 1951 which was needed to remove the allegation that the ideals contained in the Constitution lacked the attribute of 'existential reality'. It is true that the Constitution of India 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]

Because of 'a surprising degree of adaptability,' the basic constitutional framework, although exposed to such internal contradictions and conflicts, has not broken down. With a view to making the

Constitution more-responsive and adaptable, it has been subjected to substantial changes since 1951. It is interesting to note that most of the constitutional amendments in India seek to remove "the serious spectre of systemic conflict involving either the nature and working of the political system or its basic institutional components."(11)

It is important to note that, though formal constitutional amendments are necessary to make the Constitution responsive to the socio-political environment, the emphasis should not be put on the 'procedure' of change, "but on the relative ease and frequency of actual change."(12) Here the importance of 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)

In order to preserve this element of dynamism of the Indian political system, the Constitution has been formally amended on forty-four occasions. For a proper understanding of the nature and impact of these Constitutional amendments, barring the forty-second, forty-third and forty-fourth, these may conveniently be placed into four main groups.

Four groups of constitutional amendments in India.

The first and the most significant but controversial group, consists of the First, the Fourth, the Sixteenth, the Seventeenth, the Twenty-fourth, the Twenty-fifth, the Twenty-ninth and the Thirty-fourth amendments. These are directly related to the nature and quantum of fundamental rights, especially the right to property

vis-a-vis the growing needs of the community.

The Second group comprise the Third, the Fifth, the Sixth, the Seventh, the Thirteenth, the Eighteenth, the Twenty-second and the Twenty-seventh amendments. The group is concerned with the nature and character of the federal structure and contributes simultaneously to the growth of federal power and authority and to the rationalization of the federal structure.

The third group, including the Seventh, the Eighth and the Thirty-third amendments, seeks to provide greater protection and safeguards to the Minorities and Scheduled castes and this group should be regarded as significant from the point of view of the operation and working of the democratic society.

The fourth group, a miscellaneous group, comprising the Second, the Eleventh, the Fourtheenth, the Fifteenth, the Nineteenth, the Twentieth, the Twenty-sixth, the Thirtieth, and Thirty-first, is designed to bring about desirable improvements in the organization and working of the governmental and administrative organs.

Of these four groups, the first demands greater emphasis and analysis, since all the amendments falling in this group were intended, as is evident from their declared objectives, to foster and promote the socio-economic development of the country by eliminating the obstacles to progressive land reform measure and social welfare legislation.(34) In most of these amendments the property right has been suitably amended so that the legislature may not face any constitutional barrier in introducing a uniform land reform measure

throughout the country. It is to be noted that in most of these amendments, either Art. 19 or Art. 31 of the Constitution relating to fundamental right to property has been sought to be amended.

II

The First group of Constitutional Amendments : their nature, objectives and impact.

It has already be noticed that these amendments were found necessary to resolve the institutional and issue conflict in the Indian political system. It has, therefore, been rightly observed 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)

First Amendment

The Constitution (First Amendment) Act, 1951, passed on June, 18, 1951, amended articles 15,19 and 31 by sections 2,3,4 and 5 of the Amendment Act. The need for bringing this Amendment can be realised 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 of 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)

The Bill (First Amendment), therefore, sought "to amend Art. 19 for the purposes indicated above and to insert provisions fully securing the constitutional validity of zamindary abolition laws in general and certain specific State Acts in particular."(17) It was proposed in the Bill that a few minor amendments to other relevant articles would be made.(18)

It was further observed : "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 begin with, the Amendment Act brought changes in Art. 15. Section 2 of the Amendment Act inserted 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."

Changes brought about by First Amendment.

Before this clause was inserted by the Amendment Act, Art. 15, which prohibits discrimination on grounds only of religion, race, caste, sex or place of birth, 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.

(3) Nothing in this article shall prevent the State from

making any special provision for women and children."

It is worthwhile here to mention Art. 14 of the Constitution related to right to equality. Art. 14 reads as follows:

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

Another relevant Article to be mentioned is Art. 29(2), which provides:

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

In order to appreciate the necessity of bringing about this amendment Act, it is necessary to look into the decision of the Madras High Court in Champakam Dorairajan and Another V. The State of Madras.(22) It appears that the Notification Govt. Order No. 1254 Education, dated 17th May, 1948, commonly known as the Communal Government Order was issued for the purpose of restricting the number of seats in certain Government Colleges for certain castes. This was necessitated with the object of affording facilities relating to admission in colleges to students belonging the socially and economically weaker sections of the community.

On June 7, 1950, Shrimati Champakam Dorairajan made an application to the Madras High Court, challenging the validity of this Government Order since it contravened articles 15(1) and 29(2). The learned Chief Justice Rajamannar held that as result of this government Order by which certain seats which have been

Facts of the case

kept reserved for certain students belonging to backward classes, by denying the right to students belonging to Brahmin Community, a definite case of discrimination has been made. Naturally it contravened Art. 15(1). The Chief Justice observed, 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 religions and castes merely on the ground that they belong to a particular religion or caste." He raised the question regarding the purpose of issuing the Communal Government Order. The Government Order definitely contravened 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 care 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 we hold 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 contrevened 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 over-ride the provisions of these two articles or justify any law or act of the State contravening their provisions."

Judgement of the High Court.

The decision of the Madras High Court was subsequently challenged in the Supreme Court. But the Supreme Court agreed with decision of the Madras High Court by observing, inter alia, that "the Directive Principles of State Policy have to conform and run subsidiary to the Chapter on Fundamental Rights" and in view of their non-justiciable character, they "can not override the provisions found in Part III" which are "sacrosanct."(23)

and the Supreme Court.

From this judgment, Parliament realised that it would not be possible for the State Legislatures to take effective steps to promote the social, educational and economic welfare of the citizens of backward classes in the face of the challenge posed by the judgment of the Supreme Court. The only alternative left before the Parliament was to amend Art. 15 by inserting a new clause i.e. clause (4). But a study of the later decisions(24) of the Supreme Court will establish the fact the it had no alternative in view of the categorical provision made in Art. 37 of the Constitution.

With regard to the amendment made by Section 3 of the Constitution (First Amendment) Act, it is necessary to mention

Art. 19(2). Art. 19(2) as it was originally included in the Constitution, read thus:

"(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 any matter which offends against decency or morality or which undermines the security of or tends to overthrow the State."

The amended form of the said sub-clause reads:

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions 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."

For An enquiry into the immediate cause behind the enactment of this Amendment Act reference will have to make to some judicial decisions relating to the explanation of Art. 19(2) as it originally stood.

In Romesh Thappar V. The State of Madras (25) the validity of section 9(1-A) of the Madras Maintenance of Public Order Act XXIII of 1949 was challenged. The petitioner lodged a complaint that the said order, whereby a ban was imposed upon the entry and circulation of a journal in the State, contravenes the fundamental right of the petitioner to freedom of speech and expression

conferred on him by Art. 19(1) (a) of the Constitution and he challenged the validity of section 9(1-A) of the Act as being void under Art. 13(1) of the Constitution by its being inconsistent with his fundamental right already said. The section authorised the Provincial Government "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 thereof of any documents or class of documents." It was clear that one of the reasons for which the power conferred by this section could be invoked by the State Government was to safeguard public safety or public order, and the question which was raised before the Supreme Court was that the consideration of public safety or 'public order', which was relevant in exercising the authority conferred by the impunged section, was outside the purview of Art. 19(2) as it then stood.

Romesh Thaper's case -- facts of the case

The validity of the argument mainly centred round the question as to whether 'the security of the State', which was mentioned in Art. 19(2) included or was synonymous 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-roads" printed and published in Bombay under Section 9(1-A) of the impunged 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 impunged 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 impunged section was constitutionally invalid and the impunged 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 Panel Code, he observed: "whatever ends the impunged section may have intended to sebserve, 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 authorised 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."

Supreme Court decision

Though an argument was advanced before the Supreme Court that the impunged section could not be considered wholly

void as, under Art. 13(1), an existing law, in so far as it is inconsistent with the Fundamental Rights, is void to the extent of the inconsistency and no more. The contention was that in so far as the securing of the public safety or the maintenance of public order would include security of the State, the impunged provision, as applied to the latter purpose, was covered by clause (2) of Art. 19 and should be held valid. While rejecting this argument, Justice Patanjali Sastri observed: "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."

The Supreme Court had to deal with a similar case in Brij Bhushan and Another V. The State of Delhi.(26) This is an application under Art. 32 of the Constitution praying for the issue of writes of 'certiorari' and 'prohibition' to the respondent, the Chief Commissioner of Delhi, with a view to examining the legality of and quash the order made by him in regard to an English weekly of Delhi, called the Organizer of which the first applicant is that printer and publisher, and the second is the editor. On 2nd March, the respondent, in exercise of powers conferred on him by section 7(1) (c) of the East Punjab Public Safety Act, 1949, which has been extended to the

Brij Bhushan case -- facts of the case.

Delhi Province, issued the following order:"(27)

"Whereas the Chief Commissioner, Delhi, is satisfied that Organizer, an English weekly of Delhi, has been publishing highly objectionable matter constituting a threat to public law and order and that 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.

Now, 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 Commissioner, Delhi, do by this order require you Shri Brij Bhushan, Printer and Publisher and Shri H. R. Malkani, 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."

The majority opinion, delivered by Sastri J., on behalf of Kania C.J., Mahajan, Mukherjee and Das, J.J., was the following:

"The petitioners claim that this provision infringes the fundamental right to the freedom of speech and expression

Supreme Court judgement.

conferred upon them by Art. 19(1) (a) of the Constitution in as much as it authorises the imposition of a restriction on the publication of the journal which is not justified under clause (2) of that 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)."(28)

Mr. Justice Fazl Ali, however, disagreed with the majority view and delivered a separate dissenting judgement. According to him, the expression "public safety" has, due to the result of a long course of legislative practice, acquired a well-recognised meaning and may be taken to denote safety or security of the State. The learned Judge had elaborately dealth with the various meaning of "public order", 'public tranquillity,' 'public safety' and 'security of the State.'

With regard to the meqning of the expression 'public order', he held that this expression in the general sense, may be construed to have reference to the maintenance of what is generally known as law and order in the Province. Not only that he was of the opinion that anything which affects public tranquillity will also affect public order and the State Legislature was therefore competent to frame laws on matters relating to public tranquillity and public order.

Dissenting judgement of Fazl Ali

In the opinion of the learned Judge, 'public order'

and 'public safety' are allied matters but in order to appreciate how they stand in relation to each other, it seems best to direct our attention to the opposite concepts which we may, for convenience of reference, respectively label as 'public disorder' and 'public unsafety'. If 'public safety' is, as we have seen equivalent to the 'security of the State', what I have designated as 'public unsafety' may be regarded as equivalent to 'insecurity of the State'. When we approach the matter in this way, we find that while 'public disorder' is wide enough to cover a small riot or an affray and other cases when peace is disturbed by or affects, a small group of persons, 'public unsafety' (or 'insecurity of the State') will usually be connected with serious internal disorders and such disturbances of public tranquillity as jeopardize the security of the State."

In order to understand the scope of the Act, it will be necessary to note that in the Act, 'maintenance of public order' always occurs in juxtaposition with 'public safety' and the Act itself is called 'The East Punjab Public Safety Act.' The prominence thus given to 'public safety' strongly suggests that the Act was intended to deal with serious cases in which, owing to some kind of emergency or a grave situation having arisen, even public disorders of comparatively small dimensions may have far reaching effects on the security of the State. It is to be noted that the Act purports to provide "special measures to ensure public safety and maintenance of public order."

However, the Court opined, inter alia, that it must be recognised 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 recognised 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 Vs. 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.

It may be observed that when Parliament considered the question of adding the expression 'incitement to an offence' in clause (2) of Art. 19, it had before it all these decisions wherein, different statutory provisions had been struck down. This is the background history why the Parliament thought it necessary to add this expression clause (2) of Art. 19. "This addition illustrates", observed Gajendragadkar, while delivering the Tagor Law Lectures at Calcutta University,(30) "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

Clause (2) of Art. 19

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 matter."

Here comes the necessity of examining the clause (6) of Art. 19. Art. 19(6) as it originally stood, read thus:

"(6) Nothing in sub-clause (g) of the said clause 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 shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."

Clause (6) of Art. 19

After amendment, clause (6) reads thus:

"(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 --

Clause (6) as amended.

(i) the professional or technical qualifications necessary for practising 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, whether to the exclusion, complete or partial, of citizens or otherwise".

Genesis of the amendment

The genesis of this amendment may be traced to the case of Motilal and others V. the Government of the State of Uttar Pradesh and others (31) in which the question of whether the State Government could bring about nationalisation of bus-routes by an executive order was examined by the Full Bench of the Allahabad High Court. The net outcome of the proceedings before the court was that the executive order leading to the nationalisation of bus routes was declared invalid. The learned Judges came to the conclusion that the question of nationalisation of bus routes cannot be authorised even by legislation, since such a step would surely contravene the underlying provisions of Art. 19(1)(g).

Confronted with this problem, the Parliament thought it wise to amend Art. 19(6) with a view to removing the constitutional barriers that had already set by the Court in Motilal's case.

In considering the scope, effect and significance of Art. 19(6) in its original and amended forms, an important pronouncement was made by the Supreme Court of India in Akadashi Pradhan Vs. State of Orissa (32) in which Gajendragadkar, J., made the following observation:

"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) cannot 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 questions, and that would necessarily involve the adoption of a liberal and not a literal and mechanical approach to the problem."

Moreover, the Court, while commenting on the scope and effect of the philosophy underlying the amendment, held 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. Pathak's argument that the creation of a State monopoly must be

Scope, effect & significance of this amendment

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 of 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 nationalisation would fall under, be protected by Art. 19(6) as it originally stood, but when judicial observations rendered the said assumption invalid, it was thought necessary to clarify the intention of the Constitution by making the amendment. It is because the amendment was made for the purposes 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 saved 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 nationalisation 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."

The origin of sections 4 and 5 of the Constitution (First Amendment) Act may now be considered. By section 4, Art.31A was inserted and it was provided that it shall be deemed always to have been inserted in the Constitution Art. 31A reads thus:

Amendment of Art. 31A

"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 compelling reasons behind this amendment are traceable inter alia, to two judicial pronouncements. Immediately after the commencement of the Constitution, the necessity of passing some agrarian reforms was felt by some of the State Govts. But in

Rationale behind this amendment

Kameswar Singh and other V. The State of Bihar and Another,(33) the Patna High Court struck down the Bihar Land Reforms Act.No.XXX of 1950, as contravening Art. 14 of the Constitution in as much as the relevant provisions of the impunged Act awarded different scales of compensation to different categories of land owners.

Again in The West Bengal Settlement Kanungoo Co-operative Credit Society Ltd. V. Mrs. Bela Banerjee and others,(34) the validity of the West Bengal Land Development and Planning Act XXI of 1948 was challenged. The Calcutta High Court held that the impunged Act was

Bela Banerjee case

not 'ultra vires' in its entirety; but the provision that in the case of land acquired under the Act, the maximum sum payable as compensation is to be the market value of the land on 31st December, 1946 as provided in the proviso (b) to Section 8 of the Act was ultra-vires. Dealing with this proviso, Chief Justice posed the question 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 finally, he observed: "The answer, I think, must be in

the negative."(35) The Court held that the compensation which was to be paid must be an equivalent or the market-value of property.

The 'Bela Banerjee' case may be taken to be a watershed in the history of judicial pronouncements on property right in India. The judgements of this case threw a direct challenge to the Government and the Parliament which wanted to fulfil their social and economic programmes for public well-being. Speaking on behalf of the majority, Sastri, C.J., held: "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 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".(36)

But on the contrary, the Allahabad High Court in Raja Survapalsingh and other V. The Uttar Pradesh Government(37) held that the Uttar Pradesh Zamindari Abolition and Land Reforms Act. 1950 (U.P. Act No. 1 of 1951) did not contravene any of the provisions of the Constitution and hence was valid. The decisions in the first two cases made the Parliament realise that the fact that judicial pronouncements would stand in the way of successful implementation of social welfare programmes. That is why the Constitution (First Amendment) Act was passed. Art. 31A was inserted by Section 4 and Section 5 made it possible for the inclusion of Art. 31B 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.

Fourth Amendment and its genesis

"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. Unrestricted and unfettered rights are no rights at all.

Thus, after providing generally for the citizens' fundamental right to acquire, hold and dispose of property by Art. 19(1) (f), Art. 31 proceeds further to deal with the question of compulsory acquisition of property. Originally Art. 31 consisted of six clauses of which the following two are relevant for our purpose. The relevant articles run as follows:

"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 authorising 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".

On the very first examination of the above mentioned article with two clauses, it will be revealed that clause (1) of Art. 31 adheres to the democratic principle that no one can be deprived of any right without authority of law clause (2) of Art. 31 has been inserted with a view to imposing certain other restrictions. At least, broadly speaking, two conditions have to be satisfied under Art. 31(2) before a citizen can be lawfully deprived of his property.

Art. 31 clauses (1) & (2)

The first condition is that the deprivation has to be for a public purpose under the provision of the law; and the second is that the said law must provide for compensation for the compensation for the property, taken possession of, or acquired, and either fix the amount of the compensation or specify the principles on which and the manner in which compensation is to be determined and given.

The word 'compensation' and in Art. 31 (2) has been the subject-matter of serious controversy in view of conflicting judicial interpretations which ultimately led to the enactment of the Constitution (Fourth Amendment) Act.

Before embarking upon a discussion on the circumstances leading to the passing of the Constitution (Fourth Amendment) Act, a cursory glance at the debates of the Constituent Assembly would be of much help. Conflicting views were expressed by the members on the question of the specified manner in which the compensation is to be determined. There was general agreement on the issue that once the Constitution guarantees citizens' right to property, it will be undemocratic, if not unlawful, to take

steps for the deprivation of a citizen of his fundamental right without making any provision for payment of compensation.

It will be out of place here to go deep into the debates of the Constituent Assembly on this particular issue. But for our present purpose, it may be noted that there were two extreme views — one represented by Munshi who upheld the cause of just and adequate compensation and the other, by K.T. Shah who held the view that compensation should be required to be paid only when property held by a religious body is sought to be taken over and even in such a case, the amount of compensation may be described to be such as may be deemed reasonable and appropriate. And after 'a very protracted and heated debate' a compromise was evolved which found expression in Art. 31, clauses (1) and (2), as they were adopted.

The members of the Constituent Assembly, while reaching a consensus on the drafting of Art. 31 (1) and (2), thought that if laws were passed to acquire private property for public purpose, the Judiciary, after considering the historical and political background of the philosophy of the law, might give their verdict in such a way as to accelerate the pace of welfare programme. But, in reality, this expectation of the Constitution-makers did not come true and the judicial pronouncements on property right, particularly on the interpretation of the word 'compensation' posed an insurmountable blockade in the path of social welfare legislation. The Parliament, considering the attitude of the Judiciary and the imperative need for Social Welfare, took resort to the Constitution (Fourth Amendment) Act.

Intention of Constitution-makers and attitude of Judiciary.

The question of interpreting the word "compensation" had already come up before the Court in Mrs. Bela Banerjee's case.(38) Again in Saghir Ahmed V. State of Uttar Pradesh,(39) the Court held that substantial deprivation of property amounts to acquisition' and hence compensation is to be given. That the Parliament was confronted with a serious problem with regard to the payment of 'compensation' and implementation of social welfare programmes, is clear from the Statements of Objects and Reasons, appended 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 difference 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."(40)

'Objects and Reasons'

Again, the same 'Objects and Reasons' said it categori-

cally 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:-

Tasks before the Government - Parliament

(i) While the abolition of Zamindaries 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 require the beneficial utilisation 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 licences, 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 challenge.

It is accordingly proposed in Clause 3 of the Bill to extend the scope of article 31A so as to cover these categories of essential welfare legislation.

4. As a corollary to the proposed amendment of Art. 31A, it is proposed in Clause 5 of the Bill to include in the Ninth Schedule to the Constitution two more State Acts and four Central Acts which fall within the scope of sub-clauses (d) and (f) of clause (1) of the revised Art. 31A. The effect will be their complete, retrospective validation under the provisions of Art. 31B.

5. A recent judgement of the Supreme Court in Saghir Ahmed V. The State of Uttar Pradesh (41) has raised the question whether an Act providing for a State monopoly in a particular trade or business conflicts with the freedom of trade and commerce

guaranteed by Art. 301, but left the question undecided. Clause (6) of Art. 19 was amended by the Constitution (First Amendment) Act in order to take such State monopolies out of the purview of sub-change (g) of clause (1) of that article, but no corresponding provision was made in Part XIII of the Constitution with reference to the opening words of Art. 301. It appears from the judgement of the Supreme Court that notwithstanding the clear authority of Parliament or of a State Legislature to introduce State monopoly in a particular sphere of trade and commerce, the law might have to be justified before the Courts as being "in the public interest" under Art. 301 or as amounting to a "reasonable restriction" under Art. 304 (b). It is considered that any such question ought to be left to the final decision of the Legislature. Clause 4 of the Bill accordingly proposes an amendment of Art. 305 to make this clear.

As has already been said in the State of West Bengal Vs. Mrs. Bela Banerjee and others,(42) the Supreme Court was called upon to consider inter alia, the question about the content and meaning of the world "compensation" used in Art. 31(2). In the appeal before the Supreme Court, the only point seriously urged was about the true meaning of the world "compensation". The Attorney General conceded that the world "compensation" taken by itself must mean a full and fair money equivalent but he urged that, in the context of Art. 31(2) read with Entry 42 of List III of the Seventh Schedule, the term was not used in any rigid sense importing equivalence in value but had reference to what the legislature might think was a proper indemnity for the loss sustained by the owner.

The material provision in the impugned Act had provided that, in determining the amount of compensation to be

awarded for land acquired in pursuance of the Act, the market value referred to in the first clause of sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of the land on the date of the publication of the notification under sub-section(1) of Section 4 for the notified area in which the land was included subject to the following condition, that is to say, "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 in 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.

Reverting to the argument urged by the Attorney General before the Court, Chief Justice Patanjali Sastri, who spoke for the unanimous Court, observed:

"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 prope appropriated, such principles must ensure that what is determined payable must be compensation, that is, a just equivalent of what owner has been deprived of. Within the limits of this basic requ ment of full indeminification of the expropriated owner, the Cons tution 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 matt

Court's unanimous decision.

which are to be neglected, is a justiciable issue to be adjudicated by the Court."

The result of this decision was that the authority conferred by Art. 31(2) upon the legislature to lay down principles for fixing the amount of compensation became subject to judicial scrutiny, and judicial scrutiny, it became clear from the observation of Chief Justice Patanjali Sastri, would in every case apply the test whether the amount to be determined as payable by way of compensation to the citizen for the deprivation of his property would be a just equivalent in the sense of affording him full indemnification for the property lost. This decision, by itself, authoritatively interpreted the meaning of the word "compensation" in Art. 31 (2) and Parliament thought it necessary to make its intention clear by amending Art. 31 (2) by the Constitution (Fourth Amendment) Act.

Effect of this judgement

Section 2 of the said Amendment substituted the following Clauses (2) and (2A) in Art. 31 for the original Clause (2):

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

the consequential amendment

"(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 that law is not adequate.

its result

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.

In P. Vajravelu Mudaliar V. Special Deputy Collector, Madras and Another,(43) Chief Justice Subba Rao posed 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?"

The learned Chief Justice tried to answer this question in the following words:

"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 an engineer, value reflected on comparable sales, capitalisation of rent and similar 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

Trend of judicial decisions -- Vajravelu case

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 a land or that though a house-site 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 scrutinised. 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 a use of the protection of Art. 31 in a manner which the article hardly intended (44)

The decision in this case tended to widen the scope of inquiry and considerably whittled down the effect of the amendment introduced in Art. 31(2) by the Constitution (Fourth Amendment) Act.

In the Union of India V. The Metal Corporation of India Ltd and Another,(45) while striking down the Metal Corporation of India (Acquisition of Undertakings) Act. No. 44 of 1965 as ultra vires the Court interpreted 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 lead 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 II 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 t

Metal Corporation case.

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." (46)

But, on the other hand, the Supreme Court in the State of Gujrat V. Shantilal Mangaldas and others (47) treated the observations of Chief Justice Subba Rao in the case of P.V. Mudaliar as 'orbiter and not binding'. Mr. Justice Shah, speaking for the Court held 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 sufficien for the purpose of the decision of the case, and the other observatior were not necessary for deciding that case, and cannot be regarded as a binding decision."

Shantilal Mangaldas case.

While agreeing with the observations of Justice Shah, Chief Justice Hidyatullah 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. Vajravelu's case must be

treated as orbiter and not binding on us."

He further observed in the same case:

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

Here a reference must be made to the famous case of R.C. Cooper V. Union of India and others,(48) popularly known as the 'Bank Nationalization case.' It struck down a parliamentary enactment intended to "serve better the needs of development of the economy in conformity with national policy and objectives."(49) 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."(50)

Bank Nationalisation case.

Mr. Justice Shah, while delivering the majority judgement of the Court, considered all the relevant decisions bearing on the interpretation of Art. 31 (2) and came to the conclusion that the impugned Ordinance 8 of 1969 and the Banking Companies Act. 22 of 1969, which replaced the said Ordinance with certain modifications, were invalid. The following is the observation made by him in the Bank Nationalisation case:

"The broad object underlying the principle of valuatio 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

the judgement of the Court.

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."

In considering the judgement of the Bank Nationalization case, there is another point which needs serious consideration. It was argued before the Court in this case that, in considering the validity of the impugned Act the test prescribed by Clause (5) of Art. 19 can also be invoked and this plea was accepted by the majority of the Court. With regard to this question, Mr. Justice Shah came to the conclusion that it would not be right to exclude the application of Art. 19(1) (f) and Art. 19(5) in discussing the constitutional validity of the impugned Act. He observed, inter alia:

Its implications

"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 authorised 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)."

Thus, according 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 parts of a single pattern; Art. 19(1) (f) enunciates the basic right to property of the citizen 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 in the State of West Bengal V. Subodh Gopal Bose and others,(51) a somewhat contrary view was taken. While rejecting

the argument that Art. 19(1) (f) and Art. 19(5) are available to a party challenging the validity of any statutory provision which authorises the acquisition of property for public purposes, Chief Justice Patanjali Sastri observed inter alia:

"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 owner should 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".

Subodh Gopal's case -- a contrary view.

In this case, the validity of Section 7 of the West Bengal Revenue Sales (West Bengal Amendment) Act, No. VII of 1950 was challenged on the ground that it contravened the fundamental right guaranteed under Art. 19(1) (f) and Art. 31 of the Constitution. Though the Calcutta High Court upheld the plea, but this conclusion was reversed by the Supreme Court in an appeal by the State of West Bengal. Chief Justice Patanjali Sastri held the view that Art. 19 (1) had no application in this case. The article in question deals with

Facts of the case.

abstract rights and does not deal with concrete rights of the citizens in respect of the property so acquired and owned by them. Art. 31 of the Constitution deals with concrete rights. The observation made by the learned Chief Justice in this regard may be mentioned:

"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 the judgement 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 (ii) of sub-clause (b) of Clause (5) o Art. 31 and exempted from liability to pay compensation under Clause (2)".

It has been observed by an eminent jurist (52) that this "inconsistent view" taken by the Supreme Court has given rise to two important issues: (1) Has Art. 19 (1) (5) read with Art. 19(5) any relevance in dealing with cases falling under Art. 31 (2) ?

(2) What is the nature and the extent of jurisdiction of the Court in considering questions of compensation after Art. 31 (2) h been amended by Fourth (Constitution Amendment) Act ?

The Constitution (Sixteenth Amendment) Act was passed i accordance with the recommendations made by the Committee on National

Seventeenth Amendment Act, 1964. Sixteenth Amendment Act, 1963.

Integration and Regionalism. This is evident from the Statement of Objects and Reasons set out while introducing the said Amendment Act. The Statement made the following observation:

"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."

'Objects and Reasons'

The Amendment Act consists of five sections of which, Section 2 appears to be most important and relevant for our purpose. It reads like this:-

"2. In Art. 19 of the Constitution --

(a) in Clause (2), after the wrods "in the interests of", the words " the sovereignty and integrity of India or", shall be inserted;

(b) in Clauses (3) and (4) after the words in the interests of 'the words' the sovereignty and integrity of India or shall be inserted."

The Constitution (Seventeenth Amendment) Act was passed as a reaction to decisions of the Supreme Court in Karimbal Kunhikoman and others V. The State of Kerala.(53) In that case, the validity of the Kerala Agrarian Relation Act IV of 1961 was challeng

A reaction to judicial decisions

and the Supreme Court struck down the Act in relation to its application to ryotwari land which had come to the State of Kerala from the State of Madras. Tha the decision was based on the narrow ground relating to the meaning of the word "estate" in relation to the impugned provisions of the Act, was clear from the following observation of the Supreme Court:

"As the definition of the word 'estate' came into the Constitution from January 26, 1950, and is based on existing law, t Court has to look into the law existing on January 26, 1950, for th purpose of finding out the meaning of the word 'estate' in Art. 31A Madras Estates 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 come 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 Reorganization 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. 31A (1) from the attack under articles 14, 19 and 31 of the Constitution."

With a view to removing the ambiguity in the definitio of the word "estate", Parliament introduced an amendment in 31A as inserted by Section 4 of the Constitution (First Amendment) Act. In the Statement of Objects and Reasons for introducing the Constitutic (Seventeenth Amendment) Act, 1964, the following observation was made:

"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 furthe struck down by the High Court of Kerala in its application to land other than estates in Malabar and Travancore. It was held that th 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, whe

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 reorganization 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 "State" in Art. 31A 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.

3. The Bill seeks to achieve these objects.

The Constitution (Seventeenth Amendment) Act amended Article 31A by inserting in Clause (1) of that article one more proviso after the existing one which reads follows:

Changes brought about by this Act

"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 h under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relati to the acquisition of such land, building or structure, provides fo payment of compensation at a rate which shall not be less than the

market value thereof."

For sub-clause (a) of Clause (2) of Art. 31A, the following sub-clause (a) was substituted with restrospective effect:-

"(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 muafi or other similar grant and in the States of Madras and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held 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 we pass over to the Constitution (Twenty-fifth Amendment) Act, a reference must be made to the Constitution (Twenty-fourth) Amendment Act. The statement of Objects and Reasons, appended to the Act, explains the reason for introducing the Bill. It reads like this:

"The Supreme Court in the well-known Golaknath case (1967, 2 SCR 762) reversed, by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution including Part III 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

Twenty-fourth Amendment Act, 1971

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 objectives 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.

Objects and Reasons

"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 precedure therefor. The Bill further provides that when a Constitution Amendment Bill passed by both Houses of Parliament is presented to the President for his assent he should give 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."

Since a detailed discussion about the question o amendable nature of the Fundamental Rights, has already been made i the previous Chapter, a further elaboration seems redundant. But the debate that took place at the time of passing this Bill, definitely indicates that an overwhelming majority of the members of Parliament in both Houses took the view that the majority decision in the Golak Nath's case would tend to jeopardise all future socio-economic progress of the country because the power of the Parliame to amend in future Constitution so as to abridge Fundamental Right was, in terms, denied by the said majority decision.

That the Constitution (Twenty-fifth Amendment)

Act, 1971 was an answer to the Bank Nationalization case will be evident from the following Statement of Objects and Reasons, appended to the said Bill. This is as follows:

"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.

Twenty-fifth Amendment Act.

In the Bank Nationalization 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 compulsorily 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 world '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

Objects and Reasons

in cash. It is also proposed 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 passed is give 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."

A similar sentiment was expressed by Shri H.R. Gokhale, the Union Law Minister when he said on the floor of the Lok Sabha that "in the .... Bank Nationalization 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 ..... completes renders nugatory the provisions of the Fourth Amendment which made the adequacy of compensation fully non-justiciable ..... what is now sought to be done in this amendment ~~in this amendment~~ is to restore the 'status quo ante' which prevailed after Shastilal Mangaldas's case and before the judgement in the Bank Nationalization case was delivered." (54)

It deserves to be mentioned 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."(55)

An analysis of the 25th Amendment Act will show that it tried to bring about at least three major changes in the sphere of Fundamental Rights, more particularly in relation to Right to Property. In the first place, it amended Art. 31(2) of the Constitution by substituting the expression 'amount' for the expression 'compensation'.

Changes effected by this Amendment Act -- a detailed analysis

This was felt necessary for the conflicting interpretations of the word 'compensation' by the Supreme Court. In the place of the old Cl. (2), a new Cl. (2) was inserted which provides that "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property 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. Secondly, the 25th Amendment Act inserted a new Clause 2(b) after Clause 2(A) in order to exclude the applicability of Art. 19(1) (f) to cases of acquisition or requisitioning of property under Art. 31(2). It categorically provides that "Nothing in sub-clause (f) of Clause (1) of Art. 19 shall affect any such law as is referred to in Clause (2)". This was included with a view to removing the defects concerning the property rights which saw their culmination in the judgement in the

Bank Nationalization case. The net effect of this amendment is the reduction of the power of judicial review almost to the point of elimination. Thirdly, the 25th Amendment inserted a new Clause 31C after Art. 31B which sought to attach due importance to the Directive Principles of State Policy in order to resolve a long standing conflict between the Fundamental Rights and the Directive Principles. The importance and significance of this clause has been summed up in these words: "It is plain that the 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."(56) A harsh criticism has been made against this part of Art. 31C when it has been said that "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."(57) That the Amendment did not constitute any departure from the basic framework of the Constitution was categorically stated by the Prime Minister herself.(58) The 'blanket ban' on the power of judicial scrutiny constitutes a radical departure. It has been made in this observation:(59) "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. 31C had provided that it would not be competent 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 widely worded that it would not be open to courts to consider whether there is any rational 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 Courts need not have been imposed by Art. 31C." With the adoption of this clause, it is feared that "Parliament has attempted to take the first step to claim complete sovereignty, almost similar to the sovereignty of the British Parliament."(60)

III

Subsequent challenge to Constitutional Amendments --- the case of Keshavanand Bharati and others - the general impact of the decision:

True to popular expectation, the 25th Amendment Act, along with the 24th Amendment Act, was challenged in the Court of law. The case, popularly known as the Fundamental Rights case, 1972, completely altered the relationship that emerged out of Golaknath case in 1967, between the Parliament and the Judiciary, within the constitutional framework of the country. In this case, the 24th, 25th and 29th Amendments to Constitution were challenged. As has already been said, the 24th Amendment was enacted to re-establish the power of the Parliament to amend any portion of the

Constitution, including the Chapter on Fundamental Rights, a power which was denied to it by the decision of the Golaknath case. Since the decision of the case has been dealt with more elaborately in an earlier chapter,(61) 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 Consitution and hence the judgement of the Golaknath case of 1967 is incorrect. Though the first part of Sec. 3 of the 25th Amendment was declared valid, but the second part, that is, the words "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 the 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 "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." Again, it also inserted a new provision, that is. Art. 31(c) which provided that "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

Brief review of the Keshavananda Bharati case.

The Supreme Court's majority judgement

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 fire 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.(62)

The minority view of A. N. Ray, J. (later C.J.)was, however, radically different. He thought that Art. 31(c) did not delegate or confer any power on the State legislatures to amend the Constitution. It merely removed the restrictions of the Part III from any legislation giving effect to the Directive Principles of State Policy under Art. 39 (b) and (c). Reddy, J., while considering Sec. 3 of the 25th Amendment as valid, introduced the doctrine of severability as applied to Art.31(c) and observed 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."(63) But Justice Beg did not subscribe to this view. According to him, the jurisdiction of the Court has not been ousted

The minority view of A. N. Ray and others

as a result of this amendment. Justice Dwivedi also followed the same reasoning. So far as the 29th Amendment was concerned, the Full Court upheld its validity. The Constitution (Thirty-fourth Amendment) Act, 1974 further widened the scope of the Ninth Schedule by inserting 20 Land Reforms Acts of different 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 State Government (Andhra Pradesh, Bihar, Gujarat, 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 to 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.

IV

Amendments relating to the federal structure - changes brought about by these amendments:

The second group of amendments is concerned with the federal nature of the country. The real nature of the Indian federalism has given rise to serious debate. That it is a queer combination of the American and the Canadian types is admitted on all hands. Some would like to call it a "flexible federation." A detailed discussion has been made in the next chapter regarding the true nature of the Indian Government. In this section, we propose to deal exclusively with those amendments which have a bearing on the nature of federalism as such.

Second Group of Amendments

In this group of amendments, the first important one is the Constitution (Third Amendment) Act, 1955. It was passed in order enable the Parliament to retain its control over the production, supply and distribution of certain commodities. This was evident from the statement of Objects and Reasons, appended to the said amendment. It says:

"Entry 33 of the Concurrent List enabled 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."

Objects and Reasons

By this amendment, Entry 33 of the Concurrent List

has been replaced by a new one which includes:

"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 oilseeds and oils;

(c) Cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

Thus the Third Amendment has been necessitated by the fact that while the concurrent power conferred on the Union by Art. 369 in respect of certain commodities was for a temporary period ending with the 25th January, 1955, the continuance of Central control over this sphere was found to be desirable in the interests of the national economy.

Entries 26 and 27 of Schedule II of the Constitution give exclusive power to the State with respect to 'trade and commerce within the State' and 'production, supply and distribution of goods' -- 'subject to the provisions of Entry 33 of List III'. The result is that the exclusive power regarding intra-state trade and commerce, and production, supply and distribution of goods belongs to the state legislature, excepting only such matters as are included in Entry 33 of List III under which the power is concurrent.

In the original Entry 33 of List III, the only provision which was included 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."

It may be mentioned that Entry 52 of List I empowers the Parliament to declare that the control of any industry by the Union is expedient in the public interest.(64) Hence, by the original Entry 33 of List III, only the products of those industries which were for the time being specified in Acts of Parliament made under Entry 52 of List I were expected from the exclusive jurisdiction of the State Legislature and taken into the concurrent sphere.

But Art. 369 of the Constitution made a further curtailment of the exclusive power of the State and gave to Parliament concurrent power over certain specified commodities for a temporary period of five years only from the commencement of the Constitution. The net effect of this provision was that certain other commodities (as specified in Art. 369) were also to be deemed as if enumerated in Entry 33 of List III for a period of 5 years, i.e. upto 25.1.55 only. The reason why concurrent power was sought to be given to Parliament with respect to these commodities, was explained by the Drafting Committee in the following words --

"The Committee is of the opinion that in 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 for a period of 5 years, although normally these matters fell in the State List. Similar power was conferred for a limited period by the India (Central Govt. 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 interests 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.

Effects of the amendment.

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 III. 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 List III. These are —

Cotton and woollen textiles; paper (including newsprint); coal (including coke and dirivatives 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 over these commodities, apart from Art. 369, so that 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.(65) 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 same kind as the products of centralised industries, in order that the Centre may be in a position to exercise full control over the development of such industries."(66)

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.

The Constitution (Fifth Amendment) Act, 1955:

The next important amendment in this group is the Constitution (Fifth Amendment) Act, 1955 which amended the proviso to Art. 3. The statement of Objects and Reasons declared:

"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

Objects and Reasons behind the Fifth Amendment, 1955

until after the expiry of such period. The Act amends the proviso to Art. 3 of the Constitution accordingly."

In order to appreciate the changes brought about by the Act, it is necessary to find out the actual provision of Art. 3 of the Constitution. The proviso to Art. 3, after it was amended, stood like this:

"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."

Changes effected by this amendment

The Constitution (Sixth Amendment) Act, 1956.

The Constitution (Sixth Amendment) Act, 1956 was effected to bring changes in the Seventh Schedule, Art. 269 and Art. 286. The statement of Objects and Reasons attached to this amendment proclaimed:

"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 V. The United Motors (India) Ltd,[67] 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 dealers 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. V. The State of Bihar;[68] but here too, the Court was not unanimous.

Objects & Reasons behind the Sixth Amendment, 1956

Further, in pursuance of Clause (3) of that Article, Parliament passed an Act in 1952 declaring a number of goods to be essential to the life of the community. Since this declaration could not affect pre-existing State laws imposing sales tax on these goods the result was a wide disparity from the State to State, not only in the range of exempted goods, but also in the rates applicable to them.

The Taxation Enquiry Commission, after examining the problem with great care and thoroughness, made certain recommendations which were generally accepted by all the State Governments.

The Act gives effect to the recommendations of the Commission as regards the amendments of the Constitutional provisions relating to sales tax.

The Constitution (Sixth Amendment) Act mainly amended the Seventh Schedule to the Constitution. The following are the changes brought about by the amendment:

Changes brought about by this Amendment

"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) in the State List, for Entry 54, the following entry shall be substituted, namely:-

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

3. In the Art. 269 of the Constitution -- (a) in Clause (1), after sub-clause (f), the following sub-clause shall be inserted, namely:-

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

(b) after Clause (2), the following clause shall be inserted, namely:-

"(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 Art. 286 of the Constitution --

(a) in Clause (1), the 'Explanation' shall be ommitted; and (b) for Clauses (2) and (3), the following clauses shall be substituted, namely:-

"(2) Parliament may by 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 authorises 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."

The Constitution (Seventh Amendment) Act, 1956.

The Constitution Seventh Amendment Act was enacted in order to implement the recommendations of the States Reorganization Commission. The statement of Objects and Reasons provides:

"It was considered necessary to make numerous amendments in the Constitution in order to implement the scheme of States Reorganization. The Act makes these amendments 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."

Objects and Reasons behind the Seventh Amendment, 1956

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 Govt. entrust any State functions to the officers of the Central Government. Of course, later on, this provision has been criticised as the 'erotion of State autonomy through the backdoor'.

its Significance

The Act lifted, partially the bar against practising by an ex-High Court Judge. A High Court Judge, according to the amended Art. 220, can plead or act in the Supreme Court and in the High Courts other than that of

Changes it brought about

which he formerly was a judge.

The power given to the Centre and the States under this amendment to carry on any trade or business even if it is not within their respective field of legislative jurisdiction is worth-mentioning. Provision of facilities for instruction in mother-tongue at the primary stage is another important addition. The President may issue directions to the States for provision of such facilities and, in such a case, he is to appoint a special officer to look after the safeguards provided in the Constitution for linguistic minorities.

The President has been enabled to entrust special responsibilities to the Governor of Bombay for the establishment of development boards and developments of technical education in the State. Here also there is scope for Union Control as special responsibility may mean that the Governor will act in his discretion and then he will be under the control of the President.

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 ratification from the State Legislatures within a very short time.

The Constitution (Thirteenth Amendment) Act, 1962 amended the Constitution by inserting a new Art. 371A in order to make a separate state of Nagaland. By virtue of this amendment, the sway of Indian federation extended to the eastern region. This was

Thirteenth Amendment Act, 1962 -- brief review.

possible because of an agreement between the Government of India and the leaders of the Naga People's Convention in July, 1960, for the formation of a separate State. The agreement, inter-alia, provided that the Government of Nagaland would be responsible for (1) law and order so long as the situation in the State continued to remain disturbed on account of the hostile activities inside the area; (ii) the funds to be made available to the new State by the Govt.of India; and (iii) the administration of Thensang district for a period of ten years. It was also decided that the Acts of Parliament in respect of certain specified subjects would not apply to Nagaland unless so decided by the Nagaland Legislature.

The Constitution (Eighteenth Amendment) Act, 1966 amended Art. 3 to widen its scope and give a categorical interpretation of the concept of "Union Territories". It was clear from the statement of Objects and Reasons, appended to this amendment which provides, inter-alia;

"Art. 3 of the Constitution provides for the formation of new States and alteration 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 Clauses (a) to (c) of that

Eighteenth Amendment Act, 1966 -- Objects and Reasons and effects.

article (but not in the proviso) includes "Union Territories". It is also considered proper to make it clear that power under Clause (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:-

Twenty Second Amendment Act of 1969 and its effects -- analysis.

"2. In Part X of the Constitution, after Art. 244, the following article shall be inserted, namely:-

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 therefor --

(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 is referred to in Clause (1) may in particular, -

(a) specify the matters enumerated in the State

List or the Concurrent List with respect to which the Legislature of the autonomous State shall have power 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 State; and

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

(3) An amendment of any such law as aforesaid in 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 purposes of Art. 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution."

In Art. 275 of the Constitution, after Clause (1), the following clause has been inserted, namely:

"(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 areas, referred to therein, be paid to the autonomous State, and if the autonomous State comprises only some of those tribal areas, he 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 the Government of India for the purpose of raising the level of administration of the rest of the State of Assam."

Again, after Art. 371A of the Constitution, the following article was inserted:

"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."

A few changes were brought about by the Constitution (Twenty-Seventh Amendment) Act, 1971 by which Art. 239A was amended suitably to include "Mizoram" within it. Again after Art. 239A of the Constitution,

Twenty-Seventh Amendment Act, 1971 -- changes effected

the following article has been inserted, namely:-

"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 articles in pursuance of instructions 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."

Again in Art. 240 of the Constitution, 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 whenever 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 good government of that Union territory."

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

After Art. 371B of the Constitution, the following

article shall be inserted, namely:-

"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 the 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."

Thirty-sixth Amendment Act

The boundary of the Indian federal structure was further extended by way of including Sikkim within its ambit by the Constitution (Thirty-sixth Amendment) Act.

V

Amendments relating to the improvement of the weaker section of the Community -- a brief survey:

Apart from these two broad categories, there is another category of constitutional amendments which is, in no sense, less important. The amendments falling within this group, assume great significance from the larger prospective of community interest. These were necessitated in view of the fact that social and economic development must be allowed to go hand in hand. Since India is committed to an egalitarian society based on equality, she cannot afford the luxury of paying special attention for the development of a small section of the population. If total development is to be achieved, then the grievances of the people belonging to the weaker section of the community must be heeded to and ameliorated. With this end in view, a few amendments were brought by which the condition of the Scheduled Castes and Scheduled Tribes with other people who are, in the real sense, downtrodden has been sought to be uplifted. At least two important amendments in this category deserve special mentioning, namely, the Constitution (Eighth Amendment) Act, 1960 and the Constitution (Twenty-third Amendment) Act, 1969.

Third Group of Amendments relating to minorities of weaker sections

The Constitution (Eighth Amendment) Act, 1960 in its Statement of Objects and Reasons, stated:

"The reasons which weighed with the Constituent Assembly of India in making provision for the reservation of seats for the Scheduled Castes and

Eighth Amendment Act, 1960

Scheduled Tribes and the Anglo-Indian Community in the House of the People and the State Legislative Assemblies have not ceased to exist. The Act, therefore, makes the aforesaid reservation and nomination continue for another ten years."

Art. 334 of the Constitution, as originally enacted, provided for the reservation of seats for the Scheduled Castes and Scheduled Tribes and representation by nomination of the Anglo-Indian Community in Lok Sabha and State Legislative Assemblies for a period of the years from the commencement of the Constitution. The Constitution (Eighth Amendment) Act has substituted "twenty-years" for ten years as it was thought that these communities require special protection of the State for a considerable period of time.

Again the Constitution (Twenty-third Amendment) Act, 1969, sought to extend the benefit of representation to the Scheduled Castes and Scheduled Tribes. This is evident from the following statement of Objects and Reasons, appended to this amendment Act --

Twenty third Amendment Act, 1969 -- Objects & Reasons

"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 Caste and Scheduled Tribes have made considerable progress in the last twenty years, the reasons which weighed with the Constituent Assembly in

making provisions 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 of the 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 Caste 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 Assemblies, 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 Assemblies until their dissolution."

Changes effected.

Thus the Constitution (Twenty-third Amendment Act) amended Art. 330, Art. 332, Art. 333 and Art. 334. In Art. 330 of the Constitution, in sub-clause (b) of 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 had been

substituted. 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~~ 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 Clause (2) of the article 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 of that Assembly. Lastly, in Art. 334 of the Constitution, for the words twenty-years", the words "thirty-years" has been substituted.

VI

Amendments relating to the improvements in Governmental Organisation and its working.

The last group, a miscellaneous group, appears to be of lesser significance from the point of view of our present discussion. As has already been pointed out at the outset of the present discussion, this group is composed of the Second, the Eleventh, the Fourteenth, the Fifteenth, the Nineteenth, the Twentieth, the Twenty-sixth, the Thirtieth and the Thirty-first Amendment Acts. A general survey of these amends will reveal that they were designed to bring about desirable improvements in the

The Fourth and Miscellaneous Group.

organization and working of the governmental and administrative organs.

The Constitution (Second Amendment) Act, 1952, amended Art. 81 of the Constitution with a view to relaxing 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."(69)

Second Amendment Act, 1952.

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

Eleventh Amendment Act, 1961.

In Art. 71 after Clause (3), the following clause was inserted, 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."

The Constitution (Fourteenth Amemdment) Act, 1962, further amended Art. 81 by substituting the words "twenty members" in sub-clause (b) of Clause (1) by the words "twenty-five members."

Fourteenth Amendment Act, 1962.

By amending the First Schedule, Pondicherry was included under the heading Union Territories.

It further amended Art. 240 and the Fourth Schedule in order to accommodate Pondicherry within the federal set-up of the country.

Fifteenth Amendment Act, 1963

The Constitution (Fifteenth Amendment) Act, 1963, amended Art. 124, Art. 128, Art. 217, Art. 222, Art. 224, Art. 226, Art. 297, Art. 311, Art. 316 and the Seventh Schedule. The entire Amendment Act was directed to remove difficulties relating to the services of the High Court Judges.

Nineteenth Amendment Act, 1966

The Constitution (Nineteenth Amendment) Act, 1966 was passed in the light of the recommendations made by the Election Commission in its report on the Third General Elections in India in 1962. The Government, after accepting the recommendations, amended Art. 324 in order to abolish election tribunals and trial of election petitions by High Courts.

Twentieth Amendment Act, 1966

The Constitution (Twentieth Amendment) Act, 1966, inserted a new Art. 233A for the validation of appointments of and judgements etc. delivered by certain distinct judges.

Twenty-sixth Amendment Act, 1971

The Constitution (Twenty-sixth Amendment) Act, 1971, omitted articles 291 and 362 inserted a new Art. 363A and amended Art. 366. This amendment Act related to privy purse. By inserting a new Art. 363A, recognition granted to the Rulers of Indian States was withdrawn and the institutions of privy purses were abolished.

By the Constitution (Thirtieth Amendment) Act, 1972, Art. 133 was amended. The article deals with the appellate jurisdiction of the Supreme Court in appeals from the High Court in regard to civil matters.

Thirtieth Amendment Act, 1972

Previous to this amendment under sub-clauses A and B, an 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.

The test of determining whether a question of law raised was substantial, in the words of the Supreme Court in Chunilal V. Century Spinning Co.(70) 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, therefor, 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

Background

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 cases which had been dismissed summarily as not raising even arguable matters and yet having to be certified 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 amendment of Art. 133.

By this amendment, Clause (1) of Art. 133 of the Constitution was substituted. Now appeals will lie only if the High Court certifies that the case involves a substantial question of law of general importance and that in the opinion of the High Court, the question needs to be decided by the Supreme Court. Valuation has now ceased to be a yardstick.

Significance of this amendment.

The amendment has considerably narrowed the scope of the certificate that can now be given by the High Court. While previously, a certificate could be issued if the case impinged on a question of public and private importance, it is now necessary to establish that a substantial question of law of general importance is involved. There is also a further restriction -- the High Court must certify that the question needs to be decided by the Supreme Court.

It is argued that the amendment will, in many cases, affect the poorer sections of the public more than the richer because no certificate can be given even if it involves a question of 'private importance'. Since in the majority of cases, it is a

private grievance that is being sought to be raised, it will not be possible to obtain a certificate from the High Court. In actual practice, the affluent who normally challenge the constitutionality of the Act and the various executive decisions may still be able to obtain a certificate because the question raised 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 Courts. But after this amendment Act, no appeal shall lie to the Supreme Court under Clause (1) of Art.133 of the Constitution unless such an appeal satisfies the provisions of the Clause 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 had to be certified.

Effects of this amendment.

The last amended Act which falls within this category is the Constitution (Thirty-First Amendment) Act, 1973. It amended Art. 81, Art. 330 and Art. 332. All the amendments are concerned with the question of representation in the House of the People.

VII

Impact of the Constitutional Amendments in India (excluding the 42nd, 43rd and 44th Amendment Act): a clear tendency to harmonise between Individual freedom and social demands.

General Impact of all these amendments -- a brief survey.

It is clear from this discussion that the overall impact of these amendments on Indian political system is tremendous. These amendments have altered the existing power-structure of the Government, i.e., the relationship between the executive and the legislature and again between the legislature and the Judiciary. Moreover, these amendments were aimed at achieving a social condition wherein individual freedom could be blended with community interest to augment 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. These 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 these 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 right. The First, Fourth, Seventeenth, Twenty-fourth and Twenty-fifth 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 pretention is hiding its motive. It clearly declared that the verdict in the Golaknath case of 1967 posed a challenge before the legislative competence with respect to constitutional amendment, by holding the view that Parliament had no authority amend the Chapter on Fundamental Rights which are "sacroscant 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."(71) 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.

Closely following the 24th Amendment Act came the 25th Amendment Act which was intended to surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy and with this end in view, replaced the word "compensation" by the word "amount". The Bill further introduced a new Art. 31C to provide that, if any law is passed to give effect to the Directive Principles, contained in Clauses (b) and (c) of Art. 39

and contains a declaration to that effect, such law shall not been deemed to void on the ground that it takes away or abridges the rights contained in articles 14, 19 or 31 and shall not be questioned on the ground it does not give effect to those principles. It has again been provided that 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. The main provisions of this Amendment may be laid down in the following way so as to bring out its impact on the Indian Political system --

(1) Art. 368 gives direct power to Parliament for amending the Constitution;

(2) It provides a procedure which was to be followed for the amendment of the Constitution.

(3) The President is bound to give his assent when the Bill is presented to him after it had been duly passed by the Parliament.

(4) That the amendment also eliminates the application of Art. 13 to any amendment made to the Constitution under Art. 368.

The main provisions of the 25th Amendment can be summarised as follows:

(1) the term 'compensation' has been replaced by the word 'amount' in Art. 31 (2) of the Constitution so that the legislature may determine what compensation is to be paid to the owner of the property when acquired by the State. It has also been made clear that the said amount may be given in cash or otherwise and the Judiciary has been denied the power to go into these questions;

(2) that Art. 19 (f) shall not apply to any law relating to the acquisition or requisition of property for public purpose;

(3) the Act has introduced a new clause Art. 32 (c) which provides that if any law is passed to give effect to the Directive Principles of State Policy contained in Clauses (b) and (c) of article 39 and contains a declaration to that effect, such a law shall not be deemed to be void on the ground that it takes away or abridges 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;

(4) provided that where such a law is made by the Legislature of a State or the provisions of this article shall not apply unless the President has given his assent to such a Bill.

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 party in decision making and decision implementation) has acquired 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 remember K. Santhanam's famous idea, (72) a social revolution in the country.

The Twenty-fourth, Twenty-fifth and the other amendments are the natural and logical extension of the promise made by the National Congress in their Election Manifesto of 1971 which promised to "seek such further constitutional remedies and amendment as are

necessary to overcome the impediments in the path of social justice."

The net impact of these constitutional amendments appears to be tremendous and far-reaching. Amendments have been made in such a fashion so as to bring about 'a social revolution' without destroying the basic features of the Constitution. To sum up their impact, the amendments have --

(a) established firmly the concept of parliamentary supremacy thereby ended the long-standing conflict between the Legislature and the Judiciary in the Constitution;

(b) removed the apparent conflict between the Fundamental Rights and the Directive Principles, by giving due weightage to the Directive Principles, considering their "fundamentalness" in "the governance of the country;"

(c) adhered to the principle that Constitution should not be an end in itself but a means to an end and reiterated that Gandhian concept of welfare State can be achieved within the structural framework of the present Constitution, even without substantially changing its basic feathers; and

(d) attempted to uplift the lot of the down-trodden in the community by assuaging their grievances through constitutional means with a view to establishing an egalitarian society along the lines set out in the Preamble and the Directive Principles.

To conclude the present discussion, it can be stated with some degree of certainty that these amendments have enabled the Parliament to emerge with greater strength.

Conclusion

Another point of interest to be noted in this connection is that these amendments were simply the beginning of a

process which found their culmination in the recommendations of the Swaran Singh Committee. The balance between the Legislature and the Judiciary has been made to tilt in favour of the former. That the 'power-balance' in the organisation of the Indian Government has undergone serious changes will be further evident when we propose to discuss the 42nd Constitution Amendment Act in the next Chapter of our discussion.

R E F E R E N C E S.

1. S. N. Ray - "Constitutional Amendment in India : Their Nature, Significance and Impact on Indian Government and Society," - An article published in the North Bengal University Magazine, 1971.
2. Chapter 4.
3. S. N. Ray - "Constitutional Amendments and the Indian Political System: Response to a Challenge or a symptom of systemic conflict" - Paper presented at the 36th. Indian Political Science Conference, Jodhpur, 1976. Reference has already been made to these crises born out of systemic and issue conflicts Chapter I, Section A.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid. This point has been discussed in Chapter I. Section A.
10. Ibid.
11. Ibid.
12. S. N. Ray - Constitutional Dynamics and the Political Process in India: a note on the interaction between constitutional amendments and judicial review. (Paper presented in the National Seminar, Calcutta, March, 1975, organised by the Council for Political Studies.

13. Leslie Wolf - Phillips - Comparative Constitutions, Macmillan, 1972, P.34.

14. References are:

    Lok Sabha Debates, Vol. II, no. 16;
    Keesing's Contemporary Archives, 1955, 14268 A;
    Lok Sabha Debates, Vol. 8, 1955, 4834;
    Lok Sabha Debates, Third Series, 1964, P. 638 and Fifth Series, Vol. IX, No. 12, 1971, Pp. 220 and 232-236.

15. P. B. Gajendragadkar - The Indian Parliament and the Fundamental Rights, Eastern Law House, Calcutta, 1972, P. 70.

16. Statement of Objects and Reasons, appended to the Constitution (First Amendment) Act, 1951.

17. Ibid.

18. Ibid.

19. Ibid.

20. Text of the Constitution (First Amendment) Act, 1951.

21. Ibid.

22. AIR 1951 Sc. 226: 1951 SCR 525.

23. Ibid.

24. M.H. Quareshi V. The State of Bihar (AIR 1958. Sc. 731: 1959 SCR 629)
    State of Bihar V. Kameswar (AIR 1952. SC. 252: 1952 SCR 889)
    State of Bombay V. F.N. Balsara (AIR 1951. Sc. 318: 1951 SCR 682
    Bijoy Cotton Mills V. State of Ajmer (AIR 1955. Sc.33: [1955]
    Kerala Education Bill, 1957: (AIR 1958. Sc. 956: 1959. SCR 998)
    Crown Aluminium Works V. Their Wormen (AIR 1958. Sc. 30: 1958. SCR 651)
    I.C. Golaknath V. The State of Punjab: (AIR 1967. Sc. 1643): (1967) 2 SCR 762.

25. AIR 1950 Sc. 124.

26. AIR 1950 Sc. 129: 1950 SCR 605.

27. Cited in D.D. Basu's Cases on the Constitution of India (1950-51), Calcutta, 1955, P. 46.

28. Ibid. Pp. 46-47.

29. AIR. 1951 Pub. 8.

30. Gajendragadkar - The Indian Parliament and the Fundamental Rights (Tagore Law Lectures, Calcutta, 1972) P. 81.

31. AIR 1951 All. 257.

32. AIR 1963 SC 1047: 1963 Supp. 2. SCR 691.

33. AIR 1951, Patna 91.

34. AIR 1951, Cal. 111.

35. Ibid.

36. AIR, 1951, Cal. 111.

37. AIR, 1951, All 674.

38. AIR, 1951, Cal. 111.

39. AIR 1954 SC 728 1955 SCR

40. Statement of Objects and Reasons, (appended to the Constitution [4th Amendment] Act) 1955.

41. AIR 1954, SC 728.

42. AIR 1951, Cal. 111.

43. AIR 1965 SC 1017: (1965)1, SCR 614.

44. Ibid.

45. AIR 1967 SC 637: (1967)1, SCR 255.

46. Op.cit. Pp. 264-265.

47. AIR 1969 SC 634: (1969)3 SCR 341.

48. AIR 1970 SC 564: (1970)3 SCR 531.

49. Quoted from the title of the Ordinance 8 of 1969 - the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance.

50. S. N. Ray - Judicial Review and Fundamental Rights. Eastern Law House, Calcutta, 1974, P. 239.

51. AIR 1954 SC 92: 1954 SCR 587.

52. P. B. Gajendragadkar - Op.cit. P. 99.

53. AIR 1962 SC 723: 1962 Supp. 1 SCR 829.

54. Lok Sabha Debates, Fifth Series, Vol. IX, No. 12, 1971, P. 220.

55. Ibid.

56. P. B. Gajendragadkar - Op.cit. P. 199.

57. Soli J. Sorabjee in The Statesman, Nov. 30, 1971.

58. The Statesman, December 2, 1971; Lok Sabha Debates, Fifth Series, Vol. IX, December 1, 1971.

59. P. B. Gajendragadkar - Op.cit. P. 200.

60. Ibid. P. 201.

61. Chapter 5.

62. Per Sikri, C. J.

63. Per Reddy., J.

64. In exercise of the power conferred by this Entry, Parliament enacted the Industries (Development and Regulation) Act (LXV of 1951) declaring that the control of certain industries, specified therein, was expedient in the public interest.

65. Vide Rajya Sabha Debates, 16.9.54, Cal. 2395 (cited in Commentary on The Constitution of India by D. Basu Vol. I. P. 826).

66. Statement of Objects and Reasons.

67. AIR, 1958, SCR 1069.

68. AIR, 1955, SCR 1140.

69. Statement of Objects and Reasons appended to the Constitution (Second Amendment) Act, 1952.

70. AIR 1962, SC 1314.

71. Statement of Objects and Reasons, appended to the 24th Amendment Act.

72. K. Santhanan thought in terms of three revolutions - the political, social and the economic. For a detailed study see Austin -- Indian Constitution : Cornerstone of a Nation, O.U.P., 1966, Pp. 26-27.