

Shrimati Renuka Ray (West Bengal : General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed Article 24, the following be substituted:-

'(4) No law making provision as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles and the manner of compensation specific are fraudulent or inequitious.' "

I am compelled to move this amendment even at this late hour because we are faced with a very genuine and a real difficulty. By Clauses (4) and (6) of the draft that we are considering, we find that pending legislation or legislation that has already been enacted in regard to compensation for property is to be treated on a different basis to compensation for all other types of property. If it becomes necessary to have an exemption Clause for certain types of zamindari property for coming to brass tacks, it means the Zamindari Bills of U.P. and those of Madras and Bihar are to be exempted—it necessarily follows that all other property including zamindari property in other areas must be justiciable. It means that the authority of the sovereign Parliament is to be challenged by courts of law. I know that there is difference of opinion amongst some of the lawyers. Some hold that although other forms of property are included as justiciable, the courts of law will not challenge the authority of Parliament in laying down principles of compensation until and unless there is intent to fraud. Other lawyers again support the view of the Supreme Court of the United States that the word 'compensation' means equivalent value. I am not a lawyer and I have neither the merit nor the right to enter into the hair-splitting arguments that are the lawyers, paradise; but as a layman I would like to know that how it is that there has to be this differentiation. Is it then that the provision of the U. P. Zamindari Bill has shown an intent to defraud, or that no compensation to be paid under its provisions? Why is it that the special provisions have to be made for the Zamindari Bills of U.P., Madras and Bihar? If it were that the lawyers who hold the view that the justiciability would not be challenged unless there was intent to defraud, were correct then it would not be necessary to include, Clauses (4) and (6). Shorn of all legal technicalities, as we can see it, the position really comes down to this, that it is not the Sovereign Parliament that has the last word, but it is the Court of Law that will have the last word in case of other properties except those covered by Clauses (4) and (6). I would like to ask what justice is there for this procedure? There are other fundamental justiciable rights, but even these rights are subject to the proviso that it is under the authority of law, e.g., the right of freedom of speech and expression, to assemble freely without arms, to form associations or unions — all have limitations, by which they come under the authority of Parliament. What is the justification in 1947 for us to place property on a very different basis? Pandit Nehru said in his speech this morning that the very conception of property is changing. The sacrosance attached to property is no longer there. Surely when we are deciding this issue today we must make it so that it is Parliament whose authority shall be supreme and that we shall not lay down a vested interest for all times.

It is quite true that Parliament sometimes does pass hasty legislations. Well we have the Second Chambers as Panditji pointed out this morning. Apart from that there is Clause (3) of this article which gives the President, i.e., the Central Government, final power as assent has to be given by the President before any such legislation comes in. I think the safeguards here are surely enough. It is not for us to include provisions whereby there can be various interpretations given by courts of law. If there can be various interpretations amongst a few lawyers, even now just think of the varying interpretations that we shall have with different courts deciding differently. As I said before it will indeed become a lawyers paradise and litigation will become even more widespread.

Mr. President: You have made out that point.

Shrimati Renuka Ray (West Bengal: General): There is no question of expropriation of property. The question of nationalisation or socialisation really does not arise today. These are issues that have been raised to confuse the matter. The Government has laid down its economic policy. That policy does not include any nationalisation or socialisation except in the case of the abolition of zamindari property.

Shrimati Durgabai (Madras: General): May I know from the speaker through you, Sir, whether it is her intention to oust the jurisdiction of the Court even when the compensation so fixed is fraudulent?

Shrimati Renuka Ray (West Bengal: General): I say, who is to decide what is fraudulent? Is the Zamindari Bill of U.P. and the compensation fixed in it today fraudulent, and if that is not so, then why have we to make provision for an exemption Clause ? Therefore, I say that it must be Parliament that must have the supreme voice in the matter, and it cannot be left to courts of law to challenge the decisions of Parliament even on the excuse that it is fraudulent. A court of law may decide that even paying half the value is fraudulent. There will be nothing to debar it unless this amendment is included.

Now, as I said, there has been confusion of issues. This question of expropriation of property has been brought up. There is no question of expropriation today, and even in the Parliament of tomorrow, I do not think that so long as there is a constitutional authority and so long as there is responsible government, there can ever be any question of expropriation of property, without paying compensation. Even those people who want a new economic structure and who believe in the gradual transformation of the present structure into a new economic structure where economic justice prevails, even they do not want that a new class of destitute or poor should be created. We do not want and the government of the future will not want to create a new liability for the State. Thus, neither the Parliament of today nor that of the future will expropriate property without compensation, because their object will be to bring about a reduction in the disparity of wealth and not to create new class who will become the concern of the State.

Mr. President: I hope you have finished now?

Shrimati Renuka Ray: I have just one or two more points.

Mr. President: More points or more words?

Shrimati Renuka Ray (West Bengal: General): More points, Sir. Another point that has been raised in some of the speeches made today is that because of the economic difficulties of today it is essential for us to put this Clause in the draft. Mr. Himatsingka asked the question as to how production could be increased if you do not satisfy the capitalists on this point. I say, we have been making concession after concession to capitalists, and still production has not gone up so far. The question of capital for nation and of increased production is an urgent one today. Even if capitalists do not conform, we have to find ways and means towards this end. We cannot be at their mercy altogether if they do not play the game. But I fail

to see what this Article has got to do with this. This is not a provision that is being incorporated in an Act of the legislature, but something we are considering in a permanent Constitution for the future.

Sir, before I conclude, I just want to point out that if we do not allow constitutional remedies, if we bind and fritter the future, then a time will come when extra-constitutional remedies will be resorted to, and when this Constitution will be treated as a scrap of paper.

Sir, before I conclude, I would appeal most particularly and most especially to Pandit Jawaharlal Nehru who, above all, believes in economic justice and social justice, to accept this amendment and substitute Clause (4) by my amendment. I appeal to the Drafting Committee that if they have any differences of opinion, then this makes it quite clear. If they believe that the provision does not mean justifiability, then what objection can they have to my amendment?

Last of all, I appeal to this House and say, let us not accept something which posterity may point to and say that, we were more interested, and concerned at all in entrenching vested interests in the Constitution, than all other rights. Let them not say that the right of property was the only fundamental right in which we showed most concern as only to it we gave a double assurance by the incorporation of Article 24 in this manner let us not forget that no other economic right is incorporated in Fundamental Rights – all others are on directives as pious hopes for the future.

Summarising the Work of the Constituent Assembly: Hopes and Aspirations⁶⁷

Shrimati Renuka Ray (West Bengal: General): Mr. President, Sir, we are at last reaching the final stages of our Constitution-making, in three years. Three years, naturally, may appear to be a long time to frame a Constitution. But it must be borne in mind that since this Constituent Assembly first came into existence, swift-riding changes came in our country. With the partition of the country, the territorial orbit of the constitution-makers was circumscribed, while with the transfer of power, this House became a sovereign body, drawing up the constitution of a free country, and acting also in the dual role of Parliament. Thus the first seven months of its labour were largely wasted as changes had to be made. Much of the time of the Constituent Assembly was also spent in dealing with emergency situations and the day to day problems of Parliament. Again, Sir, with the integration of the Indian States, even changes which were not contemplated a year ago

⁶⁷Discussion on Draft Constitution, C.A.D., Vol. XI, L.S.S., 19 November 1949, pp. 715-718.