

**Volume IX**

**30-7-1949  
to  
18-9-1949**



# **CONSTITUENT ASSEMBLY DEBATES**

## **OFFICIAL REPORT**

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THE CONSTITUENT ASSEMBLY OF INDIA

*President:*

THE HONOURABLE DR. RAJENDRA PRASAD.

*Vice-President:*

DR. H.C. MOOKHERJEE.

*Constitutional Adviser:*

SIR B.N. RAU, C.I.E.

*Secretary:*

SHRI H.V.R. IENGAR, C.I.E., I.C.S.

*Joint Secretary:*

MR. S.N. MUKHERJEE.

*Deputy Secretary:*

SHRI JUGAL KISHORE KHANNA.

*Marshal:*

SUBEDAR MAJOR HARBANS LAL JAIDKA.

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## CONSTITUENT ASSEMBLY OF INDIA

*Saturday, the 10th September 1949*

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine, of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

### DRAFT CONSTITUTION—(Contd.)

#### Article 24

**Mr. President** : We shall take up article 24 this morning and we shall begin with amendment No. 369. I desire to impress upon honourable Members that we must finish the discussion of this article today, as we have fixed the other question regarding language for Monday and Tuesday.

I have got some 97 amendments to this amendment : many of them overlap each other and others repeat similar amendments. I hope Members will bear this in mind when insisting upon moving their particular amendments, so that we may not have the same arguments repeated by different Members while moving their amendments. The first amendment we shall take up is No. 369.

**Seth Govind Das** (C.P. & Berar : General) : Sir, may I take it that if the discussion of this article is not over by one o'clock it will be continued in the afternoon also, so that we will have Monday and Tuesday free for the language question ?

**Mr. President** : That we shall see on Monday. Today we shall have an afternoon session if necessary.

**The Honourable Shri Jawaharlal Nehru** (United Provinces : General) : Mr. President, I move :

“That for article 24, the following article be substituted

‘24. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property	(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
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compensation for the property taken possession of or acquired 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.

(3) No such law as is referred to in clause (2), of this article made by the Legislature of a State shall have effect unless such law having been reserved for the consideration of the President has received his assent.

(4) If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article.

(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article than affect—

- (a) the provisions of any existing law, or
- (b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the Promotion of Public health, or the prevention of danger to life or property.

[The Honourable Shri Jawaharlal Nehru]

(6) Any law of a State enacted, not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or sub-section (2) of section 299 of the Government of India Act, 1935.”

Sir, this House has discussed many articles of this Constitution at considerable length. I doubt if there are many other articles which have given rise to so much discussion and debate as this present article that I have moved. In this discussion many eminent lawyers have, taken part, in private discussions and discussion in another place, and naturally they have thrown a great deal of light—so much light indeed that the conflicting beams of light have often produced a certain measure of darkness. But the questions before us really are fairly simple.....

**Shri H. V. Kamath** (C.P. & Berar: General): Sir, the Honourable the Prime Minister is hardly audible on this side.

**Shri Jaspat Roy Kapoor** (United Provinces: General) : We want to hear every word of what he says.

**The Honourable Shri Jawaharlal Nehru** : Sir, I was saying that in spite of the great argument that has taken place, not in this House but outside among Members over this article, the questions involved are relatively simple. It is true that there are two approaches to those questions, the two approaches being the individual right to property and the community's interest in that property or the community's right. There is no conflict necessarily between those two : sometimes the two may overlap and sometimes there might be, if you like, some patty conflict. This amendment that I have moved tries to remove or to avoid that conflict and also tries to take into consideration fully both these rights—the right of the individual and the right of the community.

First of all let us be quite clear that there is no question of any expropriation without compensation so far as this Constitution is concerned. If property is required for public use it is a well established law that it should be acquired by the State, by compulsion if necessary and compensation is paid and the law has laid down methods of judging that compensation. Now, normally speaking in regard to such acquisition—what might be called petty acquisition or acquisition of small bits of property or even relatively large bits, if you like, for the improvement of a town, etc.—the law has been clearly laid down. But more and more today the community has to deal with large schemes of social reform, social engineering etc., which can hardly be considered from the point of view of that individual acquisition of a small bit of land or structure. Difficulties arise—apart from every other difficulty, the question of time. Here is a piece of legislation that the community, as presented in its chosen representatives, considers quite essential for the progress and the safety of the State and it is a piece of legislation which affects millions of people. Obviously you cannot leave that piece of legislation too long, widespread and continuous litigation in the courts of law. Otherwise the future of millions of people may be affected; otherwise the whole structure of the State may be shaken to its foundations : so that we have to keep these things in view. If we have to take the property, if the State so wills, we have to see that fair and equitable compensation is given, because we proceed on the basis of fair and equitable compensation. But when we consider the equity of it we have always to remember that the equity does not apply only to the individual but to the community. No individual can override ultimately the rights of the community at large. No community should injure and invade the rights of the individual unless it be, for the most urgent and important reasons.

How is it going to balance all this ? You may balance it to some extent by legal means, but ultimately the balancing authority can only be the sovereign legislature of the country which can keep before it all the various factors—all the public, political and other factors—that come into the picture. This article, if you will be good enough to read it, leads you by a chain of thought and refers to these various factors and I think refers to them in an equitable manner. It is true that some honourable Members may criticise this article because of a certain perhaps overlapping, because of a certain perhaps—what they might consider—lack of clarity in a word here or there or a phrase. That to some extent is inevitable when you try to bring together a large number of ideas and approaches and factors and put them in one or a number of phrases.

This draft article which I have the honour to propose is the result of a great deal of consultation, is the result in fact of the attempt to bring together and compromise various approaches to this question. I feel that that attempt has in a very large measure succeeded. It may not meet the wishes of every individual who may like to emphasize one part of it more than the other. But I think it is a just compromise and it does justice and equity not only to the individual but to the community.

The first clause in this article lays down the basic principle that no Person shall be deprived of his property save by authority of law. The next clause says that the law should provide for the compensation for the property and should either fix the amount of compensation or specify the principles under which or the manner in which the compensation is to be determined. The law should do it. Parliament should do it. There is no reference in this to any judiciary coming into the picture. Much thought has been given to it and there has been much debate as to where the judiciary comes in. Eminent lawyers have told us that on a proper construction of this clause, normally speaking, the judiciary should not and does not come in. Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally the judiciary comes in to see if there has been a fraud on the Constitution or not. But normally speaking one presumes that any Parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community.

In regard to the other clauses I need say very little except that clause (4) relates to Bills now pending before the Legislature of a State. The House will know that there are such Bills pending. In order to avoid any doubt with regard to those measures, it says that as soon as the President has assented to that law no question should be raised in a court of law in regard to the provisions of that enactment. Previous to this it has already been said that the matter has to go to the President. That is, if you like, a kind of a check to see that in a hurry the Legislature has not done something which it should not have done. If so, the President no doubt will draw their attention to it and suggest such changes as he may consider fit and proper for Parliament's consideration.

Finally, there are certain other saving clauses about which I need not say much. Clause (6) again refers to any law which has been passed within the last year or the year before the commencement of the Constitution. It says that, if the President certifies that, no other obstruction should be raised. Reading this article, it seems to me surprising that we have had this tremendous debate on it—not here but elsewhere. That debate was due perhaps not to this article but to rather other conflicts of opinion which are in the minds of Members and, I believe, many outside.



[The Honourable Shri Jawaharlal Nehru]

We are passing through a tremendous age of transition. That of course is a platitude. Nevertheless platitudes have to be repeated and to be remembered lest in forgetting them we land ourselves in great difficulties and in crisis. When we pass through great ages of transition, the various systems—even systems of law—have to undergo changes. Conceptions which had appeared to us basic undergo changes. And I draw the attention of the House to the very conception of property which may seem to us an unchanging conception but which has changed throughout the times, and changed very greatly, and which is today undergoing a very rapid change. There was a period when there was property in human beings. The king owned everything—the land, the cattle, the human beings. Property used to be measured in terms of the cows and bullocks you possessed in old days. Property in land then became more important. Gradually the property in human beings ceased to exist. If you go back to the period when there were debates on slavery you will see how very much the same arguments were advanced in regard to the property in human beings as are sometimes advanced now with regard to the other property. Well, slavery ceased to exist.

Gradually the idea of property underwent changes not so much by law, but by the development of human society. Land today, as it has been yesterday, is likely to be a very important kind of property. One cannot overlook it. Nevertheless, other kinds of property today are very important in industrially developed countries. Ultimately you arrive at an idea of property which consists chiefly in a millionaire having a bundle of paper in his hands which represents millions, securities, promissory notes, etc. That is the conception of property today; that is the real conception of the millionaire. It is rather an odd conception to have to protect carefully that property which, in the larger concept of vastly greater properties, is paper. In other words, property becomes today more and more a question of credit. It becomes more and more immaterial and more and more a shadow. A man with credit has more property and can raise property and can do wonders with that credit. But a man with no credit can do nothing at all. I am merely mentioning this to the House to show how this idea of property has been a changing one where society has been changing rapidly owing to the various revolutions, industrial and other.

Again, another change takes place. Property remains of course property, but the ownership of property begins to spread out. The individual, instead of owning a very small share, more or less begins to own a very large share partly and thereafter becomes the co-sharer of a very large property and gets the benefit of that, although he is not complete master of it. So co-operative undertakings, so in a sense the joint-stock system, etc., began. So in a sense also spread the idea of an individual becoming a part owner as a member of a group of properties on a big scale which no single individual can ever hold except very rarely. In recent years the tendency has been for monopoly of wealth and property in a limited number of hands. This does not apply to India so much, because we have not grown so much in that direction. But where industrially countries have grown fast there has been monopoly of capital with the result that even the old idea of property and free enterprise is not easily applicable, because in the ultimate analysis the few persons who possess a large monopoly of capital really dominate the scene. They can crush out the little shop-keeper by their methods of business and by the fact that they have large sums of money at their command. Without giving the slightest compensation, they can crush him out of existence. The small man is crushed out of existence by the modern tendency to have money power concentrated in some hands. Thus the old conception of the individual owner of property suffers not only from social developments, as we see them taking place and from new conceptions of co-operative ownership of property, but from the development on the old lines when a rich man with capital can buy out the small one for a song.

How are you going to protect the individual? I began by saying that there are two approaches—the approach of the individual and the approach of the community. But how are we to protect the individual today except the few who are strong enough to protect themselves? They have become fewer and fewer. In such a state of affairs, the State has to protect the individual right to property. He may possess property, but it may mean nothing to him, because some monopoly comes in the way and prevents him from the enjoyment of his property. The subject therefore is not a simple one when you say you are protecting the individual's rights, because the individual may lose that right completely by the functioning of various forces today both in the capitalist direction and in the socialist direction.

Well, this is a large question and one can consider the various aspects of it at length. I wish to place before the House just a hint of these broader issues, because I am a little afraid that this House may be moved by legal arguments of extreme subtlety and extreme cleverness, ignoring the human aspect of the problem and the other aspects which are really changing the world today.

The House has to keep in mind the transitional and the revolutionary aspects of the problem, because, when you think of the land question in India today, you are thinking of something which is dynamic, moving, changing and revolutionary. These may well change the face of India either way; whether you deal with it or do not deal with it, it is not a static thing. It is something which is not entirely, absolutely within the control of law and Parliaments. That is to say, if law and Parliaments do not fit themselves into the changing picture, they cannot control the situation completely. This is a big fact. Therefore it is in this context of the fast-changing situation in India that we have to view this question and it is with this context in the wide world and in Asia we are concerned.

It must be said that we have to consider these problems not in the narrow, legalistic and juristic sense. There are some honourable Members here who, at the very outset, were owners of land, owners of zamindaries. Naturally they feel that their interests might be affected by this land legislation. But I think that the way this land legislation is being dealt with today—and I am acquainted a little more intimately with the land legislation in the United Provinces than elsewhere—the way this question is being dealt with may appear to them not completely right so far as they are concerned; but it is a better way and a juster way, from their point of view, than any other way that is going to come later. That way may not be by any process of legislation. The land question may be settled differently. If you look at the situation all the world over and all over Asia, nothing is more important and vital than a gradual reform of the big estates.

It has been not today's policy, but the old policy of the National Congress laid down years ago that the zamindari institution in India, that is the big estate system must be abolished. So far as we are concerned, we, who are connected with the Congress, shall give effect to that pledge naturally completely, one hundred per cent. and no legal subtlety and no change is going to come in our way. That is quite clear. We will honour our pledges. Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in Judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, ultimately the whole Constitution is a creature of Parliament. But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the

[The Honourable Shri Jawaharlal Nehru]

detached atmosphere of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term. Therefore, if such a thing occurs, they should draw attention to that fact, but it is obvious that no court, no system of judiciary can function in the nature of a third House, as a kind of Third House of correction. So, it is important that with this limitation the judiciary should function.

You have decided, the House has decided, rather most of the Provincial Governments have decided to have a Second Chamber. Why has it been so decided ? The Second Chamber also is an elected Chamber mostly. Presumably, they have so decided because we want some check somewhere to any rapid decision of the First Chamber, which that Chamber itself may later regret and may wish to go back on. So, from that point of view, it is desirable to have people whose duty is, not in any small matters but with regard to the basic principles that you lay down, to see that you do not go wrong, as sometimes even the Legislature may go wrong, but ultimately the fact remains that the legislature must be supreme and must not be interfered with by the courts of law in such measures of social reform. Otherwise, you will have strange procedures adopted. Of course, one is the method of changing the Constitution. The other is that which we have seen in great countries across the seas that the executive, which is the appointing authority of the judiciary, begins to appoint judges of its own liking for getting decisions in its own favour, but that is not a very good method.

I submit, therefore, that in this Resolution the approach made protects both individual and the community. It gives the final authority to Parliament, subject only to the scrutiny of the superior courts in case of some grave error, in case of contravention of the Constitution or the like, not otherwise. And finally in regard to certain pending measures or measures that have been passed, it makes it clear beyond any doubt that there should be no interference. I beg to place this amendment before the House.

**Shri Syamanandan Sahaya** (Bihar: General) : Mr. President, Sir, before we proceed with the discussion of this amendment which is really the draft of article 24 now, I would like to raise a preliminary objection on a point of order. Before I make my submission, I would like to point out that I am doing so, not for obstructing this article, but in my own humble way to draw attention to a defect which exists in this. Sir, I wish to draw your attention and the attention of the honourable the Mover to clause (4) of this article which reads thus:-

“If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article.”

If you will kindly refer, Sir, to the discussion in this House on the recommendations of the Fundamental Rights Committee, you will find that they accepted the principle that no property shall be taken possession of or acquired without the payment of compensation. This view, Sir, has also just now been expressed by the Honourable the Prime Minister when he said in his opening speech that there is no question of expropriation without compensation. I take my stand on that principle which we accepted in this House and on the statement just now made by the Honourable the Prime Minister in moving his amendment. Now, if we carefully read the wording of clause (4).....

**Shri B. Das** (Orissa: General) : May I enquire what fundamental right my friend is referring to ?

**Shri Syamanandan Sahaya :** Clause 19 of the Fundamental Rights Committee's report. If you want the page, I will give you.

**Some Honourable Members :** But what is the article that we have passed ?

**Mr. President :** I would ask honourable Members to allow the Member to make his point. He has not yet come to his point of order. He is making his preliminary observations. Let him make his point of order.

**Shri Syamanandan Sahaya :** If you read clause (4) of this article, it will appear that a Bill which is pending before a Legislature, shall not be called in question in a court of law if it contravenes the provisions of clause (2) of this article. It is only in clause (2) that we have provided that any law that is passed for taking possession of or acquiring private property shall provide for compensation and either fixes the amount of the compensation or lays down the principles and the manner in which the compensation is to be determined. Now, clause (4) lays down that if a Bill contravenes the provisions of clause (2), even then no question can be raised in any court, which means that it is empowering the legislature to pass if necessary, a law taking possession of or acquiring private property without paying any compensation. The compensation provision is in clause (2) only and nowhere else.

**Pandit Balkrishna Sharma** (United Provinces: General) : May I point out, Sir, that the arguments that are being advanced by the honourable Member are in no way related to any point of order ? He is only discussing the proposition before the House, and therefore.....

**Mr. President :** So far as I have followed him, he is raising his point of order with regard to clause (4). I do not know whether he is right or wrong. I am just explaining what he is driving at, as I have understood him. Under clause (4) in the form in which it is at present presented, if a Bill which is now pending or which will be pending at the time of the commencement of this Constitution does not contain any provision for payment of compensation or for laying down the principles and the manner in which the compensation is to be determined, if that Bill is passed and if it receives the assent of the President, that cannot be questioned in any court of law. His point of order is that you are thereby nullifying clause (2) in the case of pending Bills. That is his point of order.

**Shri Syamanandan Sahaya :** That is precisely my point.

**Pandit Balkrishna Sharma :** Is there any point of order involved in it if we are modifying the previous clause ? We are a supreme body.

**Shri Syamanandan Sahaya :** Quite right. Let us understand it. Let the House be sure of what it is passing. If the House is prepared to pass a legislation which empowers the legislature to pass even a legislation of expropriation without compensation, and if that is precisely what is also the idea of the Honourable Premier, who is the mover of the amendment, then I have nothing to say. I take my stand, as I have stated, on what we have already passed in this House before in clause 19 of the Fundamental Committee Report and articles 13 and 15 of this Constitution and what is already incorporated in clause (2) of this very article; and when I find that clause (4) contravenes those provisions, and infringes upon them, then, Sir, I naturally feel that such a provision ought not to find a place in the Constitution, unless it is suitably amended. That is my whole point. Of course, these arguments relate to clause (6) also, but the point being similar, I do not want to take your further time.

What I desire to say before I sit down is that this is a point which is very vital. The House must know where we stand. We want to pass a law whereby we could expropriate without compensation. If that is not the view of the House

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and if that is not the underlying idea of this amendment, then this should be suitably amended. If, Sir, it is contended that it is not possible, that a legislation without compensation will be passed by the legislatures which have men of the highest ability and also in the various Governments and that we should not feel in any way apprehensive about such a legislation going through, I will only say that a democratic leader of the stature of the Honourable the Prime Minister would not advise us to depend upon the goodwill of individuals and not on the provision for the safety of our rights in the Constitution itself.

**The Honourable Shri Ghanshyam Singh Gupta** (C.P. & Berar: General): Mr. President, there is no doubt that clause (4) is an exception to clause (2). In all articles there are exceptions to previous articles. We always say “notwithstanding this”, “Provided that”, etc., and I do not see that any point of order arises because clause (4) is simply an exception to clause (2). Whether we should have such an exception is a different matter and whether there can be an exception to a substantive clause is quite different matter. We authorize such exception in every proviso. Therefore, all that I wanted to submit is no point of order has been raised by the honourable Member. Of course, if we remove the exception and give powers to the Prime Minister that such exceptions would not be made to clause (2) that is a different matter.

**Shri Biswanath Das** (Orissa : General): I wish to speak.

**Mr. President** : Do you want to support the point of order ?

**Shri Biswanath Das** : I want to oppose the point of order raised.

**Mr. President** : Then you need not.

**Mr. Naziruddin Ahmad** (West Bengal: Muslim) : Mr. President, I wish to partly support and partly oppose.

**Mr. President** : You have made out a case for speaking certainly.

**Mr. Naziruddin Ahmad** : Sir, the point of order raises two questions. The first is that we are going against our own decisions on the Fundamental Rights. So far as that part of the argument is concerned, I am here to support it. The decision which was taken in the House can be changed only in the regular way and if we are to accept clause (4), we must change our decision in the regular way, namely, in the manner laid down in the rules. So, this part of the point of order is conditionally right, subject to our decision being changed in the regular way.

With regard to the other part of the point of order, namely, that it contravenes clause (2), that is not really a point of order. It is rather an argument on the merits. I do not wish to go into the merits, but I think it is not a point of order. Legally this House has the power to make a law and provide exceptions.

**Mr. President** : I do not think that the honourable Member has raised a point of order. There are several clauses in this article, some of them qualify what is stated in the previous clause. That very often happens in all legislations and it does not raise really a point of order. It is a question whether this clause should remain as it is on its merits and that is for the House to decide, and therefore no point of order arises.

Then I will ask the Members to take up the amendments.

**Shri B. Das**: On a point of information, Sir, will each Member move his amendment and make the speech or will speeches be allowed after all the amendments, have been moved ?

**Mr. President** : I will expect every Member who moves the amendment to make his speech, so that he may not have to speak again.

**Shri H. V. Kamath** : Sir, there is another difficulty. I want to know whether the amendments will be taken up clause by clause, because I find from the lists that they are grouped together that way.

**Mr. President** : I will take the amendments and the discussion and then at the time of voting, I shall decide whether to take the whole article or take the clauses separately.

**Shri Damodar Swarup Seth** (United Provinces: General): Mr. President Sir, with your permission, I move :

“That in amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted :—

‘24 (a) The property of the entire people is the mainstay of the State in the development of the national economy.

(b) The administration and disposal of the property of the entire people are determined by law.

(c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.

(d) Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned, expropriated and socialised but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.

(e) Expropriation over against the States, local self-governing institutions, serving the public welfare, may take place only upon the payment of compensation.’ ”

Now, Sir, before actually speaking in support of my amendment, I hope I will be excused to say something by way of introduction to the proposed amendment. The Draft Constitution has, in my humble opinion, failed, and failed rather miserably to deal properly with the question of the economic rights of the people. This article 24, which is now under discussion, I am sure, is soon going to be a *Magna Charta* in the hands of the capitalists of India. While we were under foreign rule, a few years back, we had been hoping fondly, not against hope, that in a free India the people of this country will be able to frame a really peoples’ constitution which will as a whole be the *Magna Charta* of the toiling masses. But, *alas*, Sir, two years of Swadeshi rule have not only sadly disillusioned us, but all our hopes of better living and a prosperous India have been dashed to the ground. The standard of living of the masses is slowly going down and the index of prices of necessities of life is daily rising. It is not possible for one to say as to where and when this rise in prices and the worsening of the economic condition of the masses will end. The plight of the middle class-people, Sir, is indescribably piteous. All this is happening in the face of the famous and historical Quit India Resolution in which the toiling masses of this country were solemnly promised Ram Rajya, *i.e.*, that the power, political and economic, snatched from the foreigners will be vested in their hands. It is true that the toiling masses are even now attempted to be lulled into sleep by some tempting promises and sweet words. Even now if I correctly remember, Sir, the Honourable Prime Minister of India who has just moved this article 24, while speaking on the Objectives Resolution had declared in the most clear and emphatic terms that he stood for socialism and that India would go to the making of a Socialist Republic. If a Socialist Republic has actually to be established in this country, or as the President of the India National Congress promises every now and then, that there will be a classless society in this country during the next five years, then a Socialist Republic or a classless society are not to be dropped on this

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land of ours from Heaven like Manna. If they do mean anything, it requires some spade-work and clearing of way by dealing properly with the question of the economic rights of the people.

Now, Sir, this article 24 as a whole and clause (2) in particular, is worded not only vaguely, but unhappily. It is not clear whether the words "acquisition of property for public purposes" include socialisation of land and Industries or compulsory transfer of property from one set of persons to the other. It may well be argued that these words mean acquisition of property only for the general use of the Government, local self-governing, bodies and other charitable and public institutions and cannot be allowed to be stretched to nationalisation or socialisation. The subject therefore needs clarification, and that clarification, in my humble opinion, is not possible unless we discard the idea or I should say the theory, that man has natural right in property and also the idea that property is a projection of personality and any invasion on property is an interference with the personality itself. We cannot confuse personality with property; nor can we forget the social and functional character of property. Man has no natural right in property. Claim to property is acquired by law recognised by community. The community, Sir, has always reserved to itself the right to modify laws with respect to property and acquire it from its owners in the common, social and economic interests of the people. Property is a social institution and like all other social institutions, it is subject to regulations and claim of common interests.

Laws of property have been changed from time to time. Many proprietary laws of the middle ages have been abolished without compensation. For example, when the law of slavery was abolished in America, no compensation whatsoever was paid to the slave-owners although many of them had to pay hard cash while acquiring that claim. The property of the entire people, it must be understood, is the main-stay of the State in the development of national economy and the right to private property cannot be allowed to stand in the way or used to the detriment of the community. The State must have the full right to regulate, limit and expropriate property by means of law in the common interests of the people.' The doctrine of compensation as a condition for expropriation cannot be accepted as a Gospel truth. Death duty is a form of partial expropriation without compensation and it forms an essential feature of the financial systems of many a progressive country in the world.

It is almost universally recognised that full compensation to the owners of properties will make impossible any large project of social and economic amelioration to be materialised. It is impossible for the State to pay owners of property in all cases and at market value for the property requisitioned or acquired in times of emergency or for the purpose of socialization of big industries with a view to eliminating exploitation and promoting general economic welfare. Partial compensation is therefore suggested by many thinkers in the world as a *via media* and they maintain that partial compensation will neither hinder socialisation nor at the same time will it deprive a large number of persons of the means of their livelihood. Much can be said in favour of partial compensation, if socialisation is to be carried on gradually and individual economy is retained over a wide field. Even partial compensation will have no justification when general transformation of economic structure on socialist lines takes place. In such a case all that the persons of vested interests can claim in a socialist economy is an opportunity and a share on par with all other citizens of the State. Thus it is not possible, Sir, to be dogmatic on the question of compensation and the State should be left free to determine compensation according to social will and prevailing social conditions.

Now, public needs often require, Sir, transference of property from one authority to another. For instance public utility undertakings, owned and managed by various Municipalities, may after some time be required to be pooled together on a provincial basis. Public good, may thus need their transference from one authority to another, *i.e.*, to the provincial authority. But this transference must be accompanied with compensation, especially when different public authorities are allowed, by law, to keep separate accounts, finances, assets and liabilities. Transference of public property from one authority to another therefore without compensation may undermine the financial stability of the institutions or bodies, of lower grade and may also undermine the mutual harmony so essential amongst various constituents of a Federated State. It is therefore necessary to provide for compensation in cases of expropriation over against the provinces, the States, Local Self-Governing bodies and the associations serving public interests.

I, therefore, hope, Sir, that this amendment of mine will be given serious consideration by the Honourable Members of the House and if they think it desirable in the interest of the toiling masses of India that their economic rights should be dealt with properly and in the spirit in which they ought to be dealt, then I feel, Sir, that there will be no difficulty for the honourable Members of this House in accepting my amendment.

**Prof. Shibban Lal Saksena** (United Provinces: General) : Mr. President, Sir, I beg to move :

“That with reference to amendment Nos. 720 to 769 of the List of Amendments; for article 24, the following be substituted :—

‘24. (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 except on payment in cash or bonds or both of the amount determined as compensation in accordance with principles laid down by such law.

(3) Nothing in clause (2) of this article shall affect—

- (a) the provisions of any existing law, or
- (b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

Sir, may I also move amendment No. 516 which really forms part of this?

**Mr. President** : That is separate. We will take it up later.

**Prof. Shibban Lal Saksena** : Sir, before making any comments upon this I wish the House to understand the difference between my amendment and the amendment of the Honourable the Prime Minister. The Prime Minister’s Resolution in clause (1) says the same thing that none should, be deprived of his property without authority of law but it is in clause (2) that the chief difference lies. This clause (2) in his amendment is a pure reproduction of section 299 of the Government of India Act, 1935. Only three words have been taken away and these are the payment of I may read out clause (2):

“Neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.”

So then by this new article proposed by the Honourable Pt. Jawaharlal Nehru, we are really perpetuating the provisions of section 299 in our new Constitution. Only two exceptions have been made and these are in clauses (4) and (6).



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These amendments have been specially devised to protect the Zamindari legislation of the U.P. and Bihar and Madras, clause (4) to protect the Zamindari abolition Bill in the U.P. and clause (6) to protect the Zamindari abolition Acts passed by the Bihar and Madras Legislatures. Even there I am afraid the new amendment of which notice has been given by Shri Alladi and Shri Munshi Nos. 504 to 506—if they are accepted—then I think the Madras and Bihar Bills will also become somewhat *ultra vires* of this Constitution in their present form. So in fact the only Act protected will be the U.P. Zamindari legislation.

Now, Sir, I want to ask this question of the House. Is the House prepared to protect the position that, excepting the Zamindari property of the U.P., no other property in the country shall be acquired for public purposes, or in the interests of the State ? The words used in the article moved by the Honourable Prime Minister are—

“No property .... etc..... shall be taken possession of .... etc. unless the law provides for compensation for the property taken possession of or acquired 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.”

In law, the word ‘Compensation’ means ‘fair and equitable compensation’. What is to be fair and equitable compensation ? Parliament, under the amendment of Pt. Jawaharlal Nehru, is not the final authority to decide that. The Parliament or the State legislatures may fix any amount or specify any principles to determine compensation, yet the Supreme Court will finally decide whether the amount fixed or the principles specified to determine compensation ensure fair and equitable compensation. So the final decision lies with the Supreme Court in the amendment moved by Pt. Nehru, and it can well declare that the principles specified by the Parliament for determining compensation are ‘fraudulent’. The Supreme Court and not the Sovereign Parliament is thus the ultimate authority to decide what is ‘fair and equitable compensation’. So you cannot acquire the key industries of the country and nationalise them, because, you cannot pay fair and equitable compensation. You cannot acquire even the zamindari property in any other province, *e.g.*, in Rajasthan, for the same reason. If the article is passed in the form proposed by the Honourable the Prime Minister. It will mean permitting the capitalistic system in the country to remain intact. We cannot nationalise the key industries, nor even take over the zamindaries, except in the province of the U.P.

This being the position, I wonder if the House will accept this article as it has been proposed by Jawaharlalji. In my amendment, I say—

“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 *except on payment in cash or bond or both of the amount determined as compensation in accordance with principles laid down by such law.*”

So under my amendment Parliament can lay down the rules for fixing the compensation to be paid for taking over properties, and whatever Parliament thinks is the proper compensation for any particular property shall be the fair and equitable compensation, and the law made by our Sovereign Parliament shall be final. No Supreme Court or any other body will sit in judgment over the principles laid down by our Sovereign Parliament.

I want this House to consider this fundamental question, whether it is prepared to put some other authority over the sovereignty of the Parliament which will be elected on the basis of adult franchise. Is it prepared to bind the hands of the future Parliament in this manner ? Our present Constituent

Assembly has been criticised on the ground that it has been elected on the basis of indirect votes of persons who themselves have been elected on a narrow and not adult franchise. The new Parliament is to be elected by adult franchise and by this article, we bind the sovereign Parliament of the future, which will be elected by adult suffrage and say that it shall not be the final authority to determine the principles on which properties should be acquired for national purposes.

Sir, I feel that we should not bind the future sovereign Parliament in this manner in such a vital matter over which this House is itself so keenly divided. My amendment in fact, leaves the Parliament sovereign and it can determine the principles on which compensation shall be paid and nobody, not even the Supreme Court, can question its decisions regarding those principles. In some cases in the interests of the nation, property may have to be taken even without paying any compensation, and it is quite possible that Parliament may decide to give full compensation in some other cases, but it will be entirely according to the judgment of the Parliament, and we trust the judgment of Parliament will be quite fair. According to the article, 24 of the Prime Minister, the law made by Parliament can be questioned by the Supreme Court and the judgment of the Court will, be final, as to whether the compensation and the principles according to which this compensation is determined, are fair or not. The question to be decided is whether we should have article 24 in that form or in some other form as the one proposed by me according to which the decision of Parliament shall be final.

Sir, I have taken keen interest throughout in the making of this Constitution and I have vehemently opposed some of the articles. I have called these articles such as articles 15 and 280 which we have passed as wholly undemocratic and have said that they are a blot on the Constitution which we have framed. But I think that this article, if it is passed in the form in which the Prime Minister has proposed it, will be the darkest blot on our Constitution. I say this, firstly because as I have said, this amendment takes away the sovereignty of the Parliament and secondly because it will be a negation of all that the Congress has stood for all these so many years.

There is one interesting thing about this article which I must point out. Clauses (4) and (6) of this article are a sort of confession that the principles laid down in clause (2) of the article would lead to chaos and revolution if applied to acquisition of huge zamindari properties in the U.P., Bihar and Madras. Clauses (4) and (6) say that whatever Acts or Bills which are passed or are pending before legislatures on the commencement of this Constitution shall not be questioned before the Supreme Court, but all other Acts or Bills shall be liable to be questioned. Therefore there is discrimination here, even so far as zamindari properties are concerned, discrimination between zamindari property already acquired or to be acquired under a pending Bill and zamindari property to be acquired hereafter. There is thus also discrimination between industrial property and zamindari property. And let me tell the House that the Congress has always stood against discrimination.

I was surprised to hear the Honourable Prime Minister making a reference several times in his speech to the ultimate sovereignty of Parliament, and yet he has proposed an article in a form which will take away that sovereignty and this sovereignty has been put in the hands of the few judges of the Supreme Court who, however able they may be, will be empowered to set at naught the considered will of the Parliament. Now let us see who will really gain ultimately by this article ? I say only the lawyers will gain, lawyers who will fight out the cases in the Supreme Court, and the major portion of the property will find its way into the pockets of these lawyers. It will be a lawyer's paradise if this article is passed in this form.

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As I said, this article is a negation of all that the Congress has stood for during all these years and it goes against the various resolutions of the Congress. Here I will quote certain paragraphs from the speech delivered by the revered Father of the Nation, Mahatma Gandhi, at the Round Table Conference, so that we may know what he said. He said:

“India free, I would love to think, would give a different kind of lesson and set a different kind of example to the whole world. I would not wish India to, live a life of complete isolation whereby, it would live in water-tight compartments and allow nobody to enter her borders or to trade within her borders. But, having said that, I have in mind many things that I would have to do in order to equalize conditions. I am afraid that for years to come India would be engaged in passing legislation in order to raise the down-trodden, the fallen from the mire into which they have been sunk by the capitalists, by the landlords, by the so-called higher classes, and then, subsequently and scientifically, by the British rulers. If we are to lift these people from the mire, then it would be the bounden duty of the National Government of India, in order to set its house in order, continually to give preference to these people and even free them from the burdens under which they are being crushed. And, if the landlords, zamindars, monied men and those who are today enjoying privileges—I do not care whether they are Europeans or Indians—if they find that they are discriminated against, I shall sympathize with them, but I will not be able to help them, even if I could possibly do so, because I would seek their assistance in that process and without their assistance it would not be possible to raise these people out of the mire.

Look at the condition, if you will, of the untouchables if the law comes to their assistance and sets apart miles of territory. At the present moment they hold no land; they are absolutely living at the mercy of the so-called higher castes, and also, let me say, at the mercy of the State. They can be removed from one quarter to another without complaint and without being able to seek the assistance of law. Well, the first act of the Legislature will then be to see that in order somewhat to equalise conditions, these people are given grants freely.

From whose pockets are these grants to come? Not from the pockets of Heaven. Heaven is not going to drop money for the sake of the State. They will naturally come from the monied classes, including the Europeans. Will they say that this is discrimination? They will be able to see that this is no discrimination against them because they are Europeans; it will be discrimination against them because they have got money and the others have got no money. It will be therefore, a battle between the haves and the have nots.”

**Mr. President** : I do not want to interfere with the Honourable speaker. But I do not see the force of this long quotation that he is reading out. What relevance has it got to the article we are considering now?

**Prof. Shibban Lal Saksena** : I will just finish the sentence. Then show its relevance.

**Mr. President** : You need not have read the whole of the speech, but only that particular sentence.

**Prof. Shibban Lal Saksena** : No, Sir. It was also necessary.

“It will be therefore, a battle between the haves and the have nots; and if that is what is feared, I am afraid the National Government will not be able to come into being if all the classes hold the pistol at the heads of these dumb millions and say : ‘You shall not have a Government of your own unless you guarantee our possessions and our rights’.”

The relevancy of this quotation is this, that the Father of the Nation has said that in order to lift these untouchables and the downtrodden, and the fallen, from the mire, India would be engaged in passing legislation to equalise conditions. He said that the first burden of the National Government should be to equalise conditions. But this amendment of Pandit Jawaharlal Nehru makes all this impossible. There is no possibility of equalising conditions,

because we cannot take away any property for public purposes without full compensation. The Father of the Nation provided one formula for it. He said:

“I have got another formula also, hurriedly drafted because, I drafted it here as I was listening to Lord Reading and to Sir Tej Bahadur Sapru. It is in connection with existing rights :

‘No existing interest legitimately acquired, and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests.’

He was fighting on our behalf in the Round Table Conference that every title to property should be examined, whether it is legitimate or not. He was fighting to see that whatever property has been acquired was acquired legitimately and that it was not in conflict with the interests of the nation. That was the view of the Father of the Nation. In fact, he said :

“If they have obtained concessions which have been obtained because they did some service to the officials of the day and got some miles of land, well, if I had the possession of the Government I would quickly dispossess them. I would not consider them because they are Indians and I would as readily dispossess Sir Hubert Carr or Mr. Benthall, however admirable they are and however friendly they are to me. The law will be no respecter of persons whatsoever.”

He was for dispossessing them if he found that they had acquired property without legitimate right. In fact, my amendment, which I shall move later on, suggests that all properties confiscated from patriots, because they took part in the war of independence, shall be restored to them and those, who had got property merely because they did service to officials shall be deprived of them. With your permission, I would like to quote what Mahatma Gandhi said further. He said :

“Then you have ‘not being in conflict with the best interests of the nation’. I have in mind certain monopolies legitimately acquired undoubtedly, but which have been brought into being in conflict with the best interests of the nation. Let me give you an illustration which will amuse you somewhat, but which is on natural ground. Take this white elephant which is called New Delhi. Crores have been spent on it. Suppose that the future Government comes to the conclusion that seeing that we have got this white elephant it ought to be turned to some use. Imagine that in Old Delhi there is a plague or cholera going on.....

**Mr. President** : Mr. Saksena, I do not think you are justified in quoting all that. I have not followed what you are saying. Are you speaking about your own amendment or are you opposing the amendment which has been moved or are you supporting something else ?

**Prof. Shibban Lal Saksena** : I am quoting this to show that Mahatma Gandhi had said that he would be willing to expropriate property if it had not been acquired in a legitimate manner.

**Mr. President** : Your amendment does not say anything of that sort.

**Prof. Shibban Lal Saksena** : I have said in my amendment that the Parliament is the ultimate authority to determine whether compensation should be paid or not instead of the Supreme Court. That is the only difference between my amendment and that of the Prime Minister. The law is final. Parliament shall be the final arbiter according to my amendment. If you will permit me, I should like to quote a few lines more.

**Mr. President** : I think you should think of the time, also. At this rate we cannot go on. I have given you more time than I would have allowed to anybody else. You had better leave out the quotations. You may make out your point.

**Prof. Shibban Lal Saksena** : If you will permit me, I shall just read a couple of lines. Mahatma Gandhi had said:

“If the National Government comes to the conclusion that that place is necessary, no matter what interests are concerned they will be dispossessed and they will be dispossessed. I may tell you, without any compensation, because, if you

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want this Government to pay compensation it will have to rob Peter to pay Paul, and that would be impossible."

This is what the Father of the Nation said about compensation being paid.

I stand for these Congress principles. Socialists have come and attacked this article that it is not democratic. I oppose this amendment because this is a negation of all I have stood for in my life and of all that the Father of the Nation and the Congress stood for throughout all these years. I missed in the speech of the Prime Minister the fervour which usually is present in his speeches. It is clear that he is torn within himself and he has moved an amendment which he does not believe in and I wish to say that his amendment should not be accepted. I commend my amendment for the acceptance of the House.

**Mr. President** : Mr. Brajeshwar Prasad—385.

(Mr. Brajeshwar Prasad was cheered as he walked up to the rostrum.)

**An Honourable Member** : The cheers are an invitation to the Honourable Member to make his speech short!

**Mr. President** : The cheers are to cheer you out.

**Shri Brajeshwar Prasad** (Bihar : General) : Mr. President, Sir, I move:

'That for amendment No. 720 of the List of Amendments, the following be substituted :—

That for article 24, the following be substituted :—

24. (1) All private property in the means of production may be acquired by the Government of India.

(2) The President shall determine in each case, to what extent, if any, the owner whether a private individual, a State, a local self-governing institution or a company, shall be compensated.

(3) That within four years from the date of the commencement of this Constitution, the Union Government shall become the owner of all private property in land which is being used or capable of being used for agricultural purposes.....

With your permission, I want to delete.

(4) . . . . .

". . . . (4) The provisions of this article may be amended if ratified by the people signified by 51 per cent. of the total number of voters on the electoral list framed on the basis of adult franchise."

May I move the other amendments also—387, 390, 391.

**Mr. President** : I do not think you can move 391 because that is not consistent with 385. I think you had better content yourself with one amendment and be consistent.

**Shri B. Das** : Mr. President, I submit the amendment is out of order because it negatives all existing laws and negatives the resolution moved by the Prime Minister.

**Mr. President** : These are all amendments for substituting an article as it was originally moved just as the Prime Minister's is for substituting the article as originally framed.

**Shri Brajeshwar Prasad** : Moreover, Sir, I, would like to place before you that the procedure we have adopted today is not in conformity with the procedure that we have followed up till now, because it was Dr. Ambedkar who ought to have moved article 24 or some other article in an amended form. No Member of the House has got a right to move an amendment before an article has been moved on behalf of the Drafting Committee.

Sir, I am thankful to the honourable Members of the House for their cheers. It is in no spirit of out-Heroding Herod that I have moved this amendment or this substitute article. I am a man of simple ideas and I know one thing, that this question of how property should be regulated has been determined by members of the Congress High Command and it shall always be determined by them and them alone and Parliament will have no power to come to any decision on this question. As long as there is poverty and illiteracy in this country no Parliament will be able to play any vital part in Indian politics. It is in that light, that I have deleted the word 'Parliament' and substituted the word 'President'. When I say 'President' I do not mean one man the President. I mean the President in consultation with the Cabinet, the members of the Congress High Command which consists of men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel and others.

My whole intention in moving this article is to by-pass the controversy that has arisen on the question of compensation and justiciability. I am quite clear in my own mind that if we incorporate these principles in our constitution the result will be social injustice. The result will be that the whole country will hasten towards chaos, anarchy and civil war. With a view to avert that calamity I have moved this article. I am quite clear that no government in India as long as this Constitution is in operation, no democratic government—much less the Congress Government—will embark upon a course of expropriation of property without payment of compensation. But I feel that in the event of a crisis, when the country is confronted with dangers of insurrection and bloodshed, power must vest in the hands of the Government of India to change the very basis of society, so that the foundations of the State may be strengthened. At this moment the question of compensation and justiciability should not be allowed to thwart the greatest good of the greatest number. It is therefore with that view that I have moved this substituted article.

I hold the view that at the present moment there is a group of persons at the helm of affairs in Delhi who are in a position, by virtue of their high intellectual ability and attainments, by virtue of their nobility and character to take a long-range and disinterested view on the question of the regulation of the institution of private property. The argument may be urged that if we do not give compensation and concede justiciability there will be no industrial development in the country. Industrial development is very dear to my heart, but the sufferings of the millions, the starving masses in India, cannot be ignored. Therefore, I give preference to the masses. I do not care whether those investors, foreign or Indian, lose their profits or opportunities because in no case, under no circumstances, the interests of the millions can be sacrificed at the altar of a handful of persons.

Sir, I will enter into two or three arguments before I conclude. I am opposed to vesting power into the hands of Parliament, because I feel that a Parliament elected on the basis of adult franchise in a country where millions of people are illiterate and poor will not be able to discharge its functions as far as the question of the regulation of private property is concerned.

There is also the apprehension in our minds that most of the members of the future Parliament of India will come from the ranks of peasant proprietors who will each have their own property and therefore it would be very difficult for those who have got their own private property to rise to the height of the occasion and take a detached view of things. I hold the view that the system of peasant proprietorship is the greatest hindrance in the way of socialism and progress. There is much truth in the Marxist theory that the state is an instrument of exploitation in the hands of the dominant group in society.

[Shri Brajeshwar Prasad]

Therefore I say that this power should be taken away from the hands of Parliament and vested in the hands of our philosopher-kings.

I know that this Constitution is not going to be a permanent constitution of this country. The question may therefore be asked, why are you laying down such provisions in this Constitution which ought to incorporate only general principles of internal value? I think that this Constitution will not last more than ten years. With this feeling in view I want that all the powers should be vested in the hands of our leaders.

I have placed this question outside the purview of the provincial legislatures because I feel that it is very necessary for the sake of uniformity that no power should vest in the hands of the provincial governments. It is too vital a power to be placed in the hands of the provincial legislatures. I am not speaking against the intellectual merits of provincial-ministers but the provincial Ministers are accustomed to deal only with provincial problems and they cannot therefore take an all-India view of things. Hence I am in favour that this power should not be vested in the hands of any provincial government.

Lastly, I am of opinion that people expect more justice from the hands of the Central Government than from the hands of the provincial governments. So it will allay the apprehension of the minorities and the apprehension of all those people who have got some private property if exclusive power is vested into the hands of the Central Government. Hence I want that this power should be vested in the hands of the Central Government. A Kher here and a Pant there cannot basically alter the fact that provincial governments do not enjoy the confidence of the people.

One word more and I have done. I do not say that what I have said should be achieved within the twinkling of an eye. I do not want that private property should be liquidated on the 26th January 1950. I say that the power must be vested in the hands of the Government of India and the measure of advance in this direction must be left to be determined by the President and the Government of India. I strongly comment this amendment of mine to the earnest consideration of the House. It is not spirit of fravado that I have moved this amendment. I sincerely hold the view expressed in the amendment and people are quite free to agree or disagree with it.

**Mr. President :** There are two other amendments which seek to replace the whole amended article. I would like them to be moved first.

**Shri Kishorimohan Tripathi (C.P. & Berar States) :** Sir, I beg to move:

“That in, amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted:—

Private property.	24. (1) No person shall be deprived of his property save by authority of law.
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(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 under any law unless the law provides for compensation for the property taken possession of or acquired.

Provided that where an entire category of property, movable or immovable, is taken possession of or acquired under any law passed by Parliament or the legislature of a State for the distinct purpose and object of gradually and peacefully establishing a classless society in India the principles of law authorising the taking possession of or acquisition shall in no case be called in question in any court:

Provided further that it shall be the natural right of every citizen whose property is taken possession of or acquired to get rectified in a proper court of law any wrong done to in the process of execution of the law providing for compensation.

Sir, with all due deference to the observations and views by the honourable Pandit Jawaharlal Nehru, I do not agree with the draft article which he has moved. My reasons are these : firstly, that the title of the article is not proper. We are discussing Fundamental Rights, and in this particular article we are going to describe the extent of private property which a citizen shall have. It is not a subject of compulsory acquisition of property and therefore the title should be changed into "Right of Private Property" or "Private Property".

Then, although apparently the article as moved by the honourable Pandit Jawaharlal Nehru does not discriminate between property and property, as facts stand I feel that it discriminates between industrial property and landed estates. Such a discrimination between property and property as contained in this article is, I strongly feel very dangerous and may create a very unhealthy atmosphere in the country which is already full of discontent. I seek in my amendment to place the whole article in such a way that while in the very serious circumstances of the country we are not in a position to socialise property, industries and other things at present, we make the article sufficiently elastic so that in future whenever occasion arises it shall be possible for Parliament to take steps to socialise any property, whether industrial or landed. In the article as presented to us by Panditji there is provision for socialisation of landed property in such provinces as have either passed necessary Acts or as would pass Act & or introduce Bills by the 26th January, 1950, when we hope to enforce this Constitution.

But in the case of other provinces which may not be in a position to move a Bill or pass an Act for the abolition of zamindari to which we are pledged within the said time limit, the article as proposed makes no provision. This is a very vital part of the Constitution and it has been rightly observed that this article represents the soul of the Constitution, and therefore we must have a proper background to appreciate the importance of the article.

The Congress today as the largest single Organisation representing the aspirations of our people has accepted as its objective the establishment of cooperative commonwealth in this land, and this co-operative commonwealth is nothing but another name for the establishment of a class-less society in India. This article therefore must give us a proper lead towards that direction. But I feel, as it is proposed, it does not give that lead. We must also remember that the future pattern of our national economy in India will revolve round article 24, and therefore if we make any mistake in defining private property, I feel that we shall be doing something which will be very strongly hindering our progress on the path of establishing a class-less society in India. I have, therefore, amended the article in such a way as would enable the future Parliament of India, representing the wisdom of the people, to be in a position to give proper lead for the establishment of a class-less society.

At the same time I have made provision in my amendment that where in the process of execution of the principles as laid down by Parliament, or by a State Legislature, there is any mistake committed and any wrong is done to any individual, then it shall be open to the individual to seek redress in a court of law. Let us remember that that great man, the Father of the Nation, of whom, it has rightly been said that he moulded us into men out of dust, held before our people the view and the picture of Ram Rajya which to the common man never meant merely political emancipation but freedom from economic want. We must, therefore, in all earnestness see that in our Constitution this freedom from economic want is guaranteed to the common man.

If you look to the various other provisions of the different articles under the Chapter relating to "Fundamental Rights" you will notice that each



[Shri Kishorimohan Tripathi]

fundamental right is conditioned by certain terms. And each of the conditions, as laid down for example in the matter of Freedom of Speech, Freedom of Association, Personal Liberty, indicates a duty on the part of the citizen. So also there should be some condition in the matter of private property. And that condition should be that private property is merely a public trust and at the instance of the community or at the instance of the government it should come to the use of the community.

Some people have argued that this right should be made justiciable. While being a layman, I do not fully appreciate the implications of justiciability, I do not know how a section of our people fears that a Parliament elected under adult franchise, representing the solid will of the people and the wisdom of our leaders shall do anything but justice in paying compensation for any property that is taken possession of or that is acquired for the common good of the people. I will draw your attention to article 26 in the Yugoslavian Constitution relating to property which says :

“It shall be the right and duty of the State acting in the interests of the community and upon the basis of the law to intervene in economic, relations between citizens in a spirit of justice and with a view to averting social conflict.”

In the same Constitution article 37 lays down:

“Private property shall be guaranteed. The obligation imposed by the private ownership of property shall be recognised. The use of property must not be injurious to the interests of the community. The scope, extent and limits of private ownership shall be regulated by law.”

So also in the Irish Constitution there are limitations which have been placed upon the right to private property. In all these cases whenever necessary, at the instance of the community and at the instance of the Government representing the community, property is made available for the social good.

It is argued by a section that in drafting this article the members of the great Congress Organisation have departed from the pledges given to the people. The pledges were that whenever private property is taken possession of or acquired, we shall equitably and fairly compensate the owner. We do not deny them compensation. But it must be remembered that we have also held out promises to another greater section of the people, the common men, to the effect that we will strive hard to give them higher and higher standards of living. We have to achieve that objective also. Therefore the criticism levelled against us that we are denying something to a certain section of the people is utterly wrong. We have to adjust the promises given to the different sections and in this connection it has to be remembered that a dynamic nation has to shape and reshape its means for the achievement of objective according to the need and demand of time.

I have another point to make. During the last two years, since 15th August 1947, it has been our sad experience that the hand of co-operation that we extended to the vested interests in this country has not been greeted by them. Capital has been shy and industries and manufacturers have not played their part, their proper part in the matter of nation building. It is high time therefore that we now divert our attention and seek strength from the common man. We should change our policy suitably.

With these few words I commend my motion to the House for its acceptance.

**Shri H. V. Kamath :** Mr. President, it is with considerable trepidation that I rise to move the various amendments that stand in my name, amendments to article 24 which has a vital bearing on the socio-economic structure of our State.

Sir, the Prime Minister has told the House that the draft before the House, represents the fruit of the ceaseless cerebral activity of many eminent lawyers. Therefore I asked myself whether, in the face of this draft produced by so many experts, I should say anything at all. But it struck me that lawyers, however eminent they may be, are likely to have their vision clouded by legalistic formulae and are sometimes apt to miss the wood for the trees. I move therefore amendment Nos. 386, 395, 403, 410, 418 and 431 :—

“That in amendment No. 369 of List VII, (Seventh Week), in clause (1) of the proposed article 24, after the word ‘property’ the words ‘except in the national interest and’ be inserted.”

“That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the words, ‘taken possession of or acquired’, where they occur for the second time the words ‘to be taken possession of or acquired’ be substituted.”

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words ‘to be determined’ a comma and the words ‘provided that such principles or such manner of determination of compensation shall not be called in question in any Court’ be added.”

“That in amendment No. 369 of List VII (Seventh Week), clause (3) of the proposed article 24 be deleted.”

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

‘(4) Any Bill pending before the, Legislature of a State at the commencement of this Constitution shall not after its subsequent enactment, be called into question in any Court on the ground that it contravenes the provisions of clause (2) of this article.’ ”

“That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, the words ‘may’ within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by public notification so certifies, it’ be deleted.”

While commending these various amendments for the consideration of the House, may I, Sir, make a few observations ? The Prime Minister has told the House, firstly, that the policy of the State is that there should be no expropriation without compensation, and secondly, that the right of the individual can in no case over-ride the right or interests of the general community. He went on to say that notwithstanding these fundamental policies, the individual has got to be protected. He remarked that of course there are a few who can protect themselves. I was wondering whether this doctrine of protection of the few, should be the foundation of our State. To me, it seems that the few are entitled to justice, but that those who are to be protected and cherished by the State are vast many. The few can in no case, in no event, under no circumstances, be pampered or be treated in a manner which is detrimental to the interests of the larger whole. If this is not accepted, that the few can get only justice but it is the many who are to be protected, if this is not accepted, then, Sir, I feel that in this country of ours weighed down by centuries of poverty and misery, poets, prophets and leaders will arise who will tell the people, as did the poet of revolution in England in the last century. That poet exhorted the British people, saying :

*Men of England, wherefore plough for the lords who lay you low ?*

*Wherefore weave with toil and care the rich robes your tyrants wear ?*

*Rise like lions after slumber in unconquerable number,*

*Shake your chains to earth like dew, ye are many, they are few*

Therefore, Sir, I would suggest in all humility that the foundation of our State should be that the many should be protected and the few should be justly dealt with. Of course, nobody should be denied justice.

[Shri H. V. Kamath]

The Prime Minister went on to trace the evolution of the institution of property. I think that ideas about property have ranged from the divine right to property, in other words, the sanctity of private property, to the almost whilst dictum of M. Proudhon that "Property is theft." The movements for and against property have been based on this whole gamut of conceptions relating to property. On the one, hand, on the one extreme we have the divine right of property, the sanctity of private property; but that to my mind is now exploded. It is dead as the dodo, it has gone the way of the Divine Right of Kings. If at all there is right to property, I can only say that it is not the divine right of the individual to property, but it is the right of God himself to all property, and so for *all* His children on earth. All this trouble about property could have been obviated, could have been got over if only men had clearly understood what the divine right meant, that it meant that the property should be utilised justly and wisely in the interests of the whole of mankind.

It was on this basis that Mahatma Gandhi preached and lived his doctrine of "Aparigraha" that property holders should be mere trustees of that property for the good of the community. If this had been accepted in letter and spirit by the property holders in our country and in the world at large, then so much of misery could have been prevented; but man, in his foolishness has not heeded the advice of the Mahatma and other prophets that have preceded him in the history of mankind. If the great ideal of the Ishopanished"

तेन त्यक्तेन भूँ जीवा

"Renounce that you may enjoy  
Enjoy by renouncing."

had been followed by property holders, then all these conflicts, all these disputes about property would not have arisen. But, Sir, that unfortunately has not been the lot of humanity. The history of humanity, as had been stated by a great historian, is strewn with the crimes, follies and stupidities of mankind.

**Mr. President :** Let us not talk of the follies and stupidities of mankind, Let us confine ourselves to the article under consideration.

**Shri H. V. Kamath :** I was developing, my argument about the evolution of the idea of property, as Prime Minister has in his speech referred to the matter.

Now, Sir, about my amendments. No 386 is a very obvious amendment wherein I have sought to provide that no property shall be acquired save in the national interests. The Prime Minister has stated that the few must be protected. I agree that the few must get justice; and so if we specifically provide that property shall be acquired only in the national interest, we guarantee that the few who own property will be justly dealt with, because according to the Prime Minister, on his own showing, the few cannot override the interests of the people, of the nation as a whole. In the national interest any property can be and must be acquired. That is with regard to my first amendment.

My second amendment No. 395 is merely a verbal amendment and I leave it to the wisdom of the Drafting Committee to be dealt with at the appropriate stage.

Amendment No. 403 is a vital amendment and I therefore crave your indulgence to offer a few remarks thereon. In this amendment, I seek to provide that the principles of giving compensation, offering compensation or

fixing compensation and the, manner of determination shall not be called in, question in any court. The clause, as it stands, is somewhat ambiguous though the Prime Minister did remark that Parliament and legislatures will be ultimately sovereign. But I feel that no loop-hole should be left for any of those few who might take, it into their heads to fight against the interests of the community. It is with this purpose in view that I want this clause to be made clear on this point that neither the principles nor the manner or compensation shall be called in question in any court. What is justiciable, what can be called into question is merely the application of these principles. If an aggrieved party feels that the principles have been wrongly applied, have been unjustly applied, then it is open to him to go to a Court and question the application of the principles in that court of law, but if the Parliament or the legislature lays down the principles or the basis of the calculation of compensation and also prescribes the manner, for instance, spread over how many years in cash, bonds and all that, all these things shall not be called in question in any court. The amount of compensation fixed on this basis, that is to say the application of these principles may be made justiciable. The latest constitution to be framed in Europe, that is, the Bonn Constitution of Western Germany has a clause similar to this. The justiciable part of that clause with regard to property is only this, that “with regard to the extent of compensation an appeal may be made to the ordinary courts in case of dispute”. I seek through my amendment No. 403 that the principles and the manner of compensation shall not be justiciable, but only the amount of compensation or the application of those principles can be called in question in a Court.

Amendment No. 410 relates to clause (3) of the article which vests power in the President to assent to or withhold his assent from any Bill passed by a State Legislature. I feel that so far as that property is concerned which is within the purview of the State Legislature, so far as property listed in list II of Schedule Seven is concerned, if the State intends to acquire that property under this article, there should be no hurdles or obstruction placed in final acquisition of that property by the State. If clause (3) is adopted as it is, I am afraid it might result in unpleasant consequences for the State and the Union as a whole. Supposing for instance, one of the constituent units of the Union has passed a law acquiring property under this article, but some interests which are involved try to pull the strings at the Centre and the President, if unfortunately he, too, is not favourably inclined towards this measure, for various reasons into which we need not go, if the President withholds his assent from this Bill passed by the Legislature, then there is bound to arise a serious conflict between the State and the Union Government and once the seeds of discord have been sown between the State and the Union, Government, I cannot say how far this discord will go, this conflict will be waged between the State and the Union. To obviate this contingency I want to make the State Legislature sovereign in respect of such property as is within the purview of the State and want to provide that the President's assent to the legislation is not necessary before it becomes, operative. Then I come to amendment No. 418.

**Mr. President :** It is more or less a verbal amendment, I think.

**Shri H. V. Kamath :** My amendment No. 418 follows as a consequential amendment to the previous amendment to clause (3), wherein I have: Sought to delete the necessity for the President's assent to a Bill of the State legislature before it becomes operative; and so here also in amendment No. 418 I want to recast clause (4) on the same lines, to the effect that the President's assent is not necessary for it to become operative; when it is enacted in the usual course, it should take effect, and the rest of the clause, is all right.

[Shri H. V. Kamath]

Then I come to amendment No. 431. Clauses (4) and (6) are similar except that clause (4) refers to pending Bills and clause (6) refers to Bills already enacted by the State and therefore the amendment which I have moved to clause (3) seeking to delete the provision with regard to the assent of the President to State legislation applies both to clauses (4) and (6) and wherever the President has stepped in into these clauses, I have moved amendments to delete the provision for the assent of the President before the law of the State becomes operative. That is with regard to my amendment No. 431.

Before I close, I would like to urge only one consideration and that is this. We have provided in our fundamental rights, article 9, that there shall be no discrimination as between man and man. As regards women and children only there is a proviso to that article on non-discrimination. I feel that it would have been in the fitness of things if we had provided for no discrimination of whatever kind between landed property and industrial property (*hear, hear*), that if we wanted to lay down that the acquisition of landed property should be non-justiciable, I would have welcomed that the, acquisition of industrial property and commercial capital, ought also to be non-justiciable.

Another consideration in that regard is article 13, sub-clause (f) of clause (1) which confers the right to acquire, hold and dispose of property. There is, of course, a proviso to that, proviso No. (5); "Nothing in sub-clauses (d), (e) and (f) 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 reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public, etc., etc.". Bearing these two articles in mind, I have suggested this amendment to clause (2) of the proposed draft article 24. That is to say, I want to provide specifically that even in the case of industrial property including any interest in or in any company owning any commercial or industrial undertaking, the principles and the manner of payment of compensation shall not be justiciable. That would approximate to the principle of non-discrimination as between industrial property, and landed property with regard to which certain provinces have already taken action. I have provided for only the amount of compensation being made justiciable, because the Prime Minister stated in his speech today that the few have also to be protected, and therefore I feel that the only safeguard that they can, have is as regards the amount of compensation. On no other ground can they go to the court and question the principles or the manner of payment of compensation.

Lastly, I would refer to the Government of India Act mentioned in clause (6) of the proposed draft article 24. Section 299 of the Government of India Act lays down in sub-section (3) that Bills passed by the legislature of a State need not be submitted to the Governor-General for his assent. I fear that the power conferred on the President to give or withhold his assent might lead to serious complications in future and the only way to obviate any conflict between the States and the Union is to confer sovereign powers upon the legislature to acquire any property which is within the purview of the State.

Sir, I commend my various amendments to the House for its serious and mature consideration.

**Mr. President :** Mr. Brajeshwar Prasad, you have several amendments in your name; but it does not appear how they will fit in with the present discussion and the present amendments. Some of them are with reference to the present amendment which has been moved by the Prime Minister. Others refer

to the previous amendments which have not been moved. Those which refer to the previous amendments, I rule out. There is thus one amendment No. 387 where you want to substitute “President” for the word “law”. You have already spoken upon this subject at length and I take it as moved.

“That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the word ‘law’, the words ‘the President’ be substituted.”

**Prof. K. T. Shah** (Bihar: General) : Mr. President, I have also got several amendments. May I give you a list of the numbers ?

**Mr. President** : I have got a list.

**Prof. K. T. Shah** : These amendments are taking the place of those which I have submitted to the original article and therefore, those are not to be moved.

My first amendment is number 388:

“That in amendment No. 369 of List VII (Seventh Week), at the end of clause (1) of the proposed article 24 the following proviso be added :

Provided that no rights of absolute property shall be allowed to or recognised in any individual, partnership firm, or joint stock company in any form of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes, or seas surrounding the coasts of the Union; and that ultimate ownership in these forms of natural wealth shall always be deemed to vest in and belong to the people of India collectively; and that they shall be owned, worked, managed or developed by collective enterprise only, eliminating altogether the profit motive from all such enterprise.”

The next one is amendment No. 394.

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24,—

- (i) for the words ‘No property’ the words ‘Any property’ be substituted;
- (ii) for the words ‘shall be taken’ the words ‘may be taken’ be substituted;
- (iii) for the words ‘unless the law provides for compensation’ the words ‘subject to such compensation, if any’ be substituted;
- (iv) for the words ‘acquired 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 the words ‘acquired as may be determined by the principles laid down in the law for calculating the compensation’ be substituted;”

If you will permit me, Sir, I may read the amended clause which would be clear instead of in this disjointed manner. The amended clause will read thus :

“Any property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, may be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition subject to such compensation, if any, for the property taken possession of or acquired as may be determined by the principles laid down in the law for calculating the compensation.”

Then, Sir,

“(v) the following be added at the end :

‘Provided that no compensation whatsoever shall be payable in respect of :

(a) any public utility, social service, or civic amenity which has been owned, work managed or controlled, by any individual partnership firm, or joint stock, company for more than 20 years continuously immediately before the day this Constitution comes into force.”

I have added the word “immediately”. I have an amendment No. 490 in this respect. That means, not at any time, but immediately before.

[Prof. K. T. Shah]

Then, Sir,

- “(b) any agricultural land forming part of the proprietary of any land-owner, howsoever described, which has remained uncultivated or undeveloped continuously for ten years or more immediately before the day this Constitution comes into force;
- (c) any urban land, forming part of the proprietary of any individual partnership firm or joint stock company, which has remained unbuilt upon or undeveloped in any way for fifteen years or more continuously immediately before the day this Constitution comes into effect;
- (d) any agricultural land forming part of the proprietary of any landowner, howsoever described, which has remained in the ownership or possession of the same individual or his family for more than 25 years continuously immediately before the day when this Constitution comes into operation;
- (e) any mine, forest or mining or forest concession which has remained in the ownership or possession of the same individual, partnership firm or joint stock company for at least twenty years immediately before the day this Constitution comes into operation;
- (f) any share, stock, bond, debenture or mortgage on any joint stock company, owning, working, managing or controlling any industrial or commercial undertaking which has been owned, worked, controlled or managed by the same joint stock company, or any combination or amalgamation of it with any other company for more than thirty years continuously immediately before the day this Constitution comes into operation,

or

which has paid in the course of its operations and existence in the aggregate, in the shape of dividend or interests, a sum equal to or exceeding twice the paid up value of its shares, stock, bonds or debentures;

or

whose total assets (not including goodwill) at the time of the acquisition by the State of any such undertaking are less in value than its total liabilities.”

The next is No. 410 which has already been moved by Mr. Kamath and I do not wish to take the time of the House over that. Next is No. 419. I move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24,—

- (i) for the words ‘If any’ the word ‘Any’ be substituted,
- (ii) for the words ‘has, after it has been’ the words ‘may be’ be substituted;
- (iii) the word, ‘received the assent of the President,’ be deleted; and
- (iv) for the words ‘assented to’ the word ‘passed’ be substituted.”

Sir, I move :

“That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the article 24, for the words ‘not more than one year’ the words ‘at any time’ be substituted.”

I also move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words beginning with ‘may within three months’ and ending with ‘Government of India Act, 1935’, the following be substituted :

‘shall not be called in question in any court on the ground that it contravenes any provision of this article’.”

Sir, I now speak to all the amendments, which, taken together, make a constructive proposition, and an alternative to the policy laid down in the amendment moved by the Honourable the Prime Minister. The Prime Minister has advanced the proposition that under this Constitution, there shall be, no expropriation without, compensation. I am afraid I am unable to share this view, if

it is to apply to *all* property indiscriminately and without modification. For not all property is such that the present holder or owner of it can claim, in justice, in ethics, any right to be compensated since the origin of property is not always unquestionable.

A great French thinker asked the question ‘What is property’ and he answered it by saying ‘it is theft’. I am afraid ‘theft’ perhaps is very often too mild a Word because much of the property has been acquired—if you go into the origins of this—by force, fraud and violence which under any system of ethics can hardly be justified. If you are going to seek to compensate those who have acquired property, no matter how long since, by such means as force or fraud or violence or theft, I am afraid you would not be acting up to the ethical standards which are supposed to animate this Constitution.

Mention has been made by one of the previous speakers in the course of this debate, of slavery the right to own human beings, prevailing in the Southern States of the United States which was abolished at the cost of a civil war. That form of property had to be abolished, and to the best of my recollection, without any compensation. True, compensation was given for the slave-holding owners in the British West Indies Colonies by the British Government when they decided without any violence to abolish slavery. But the ethical proposition does not become objectionable because in the case of the United States, and many other countries instances can be quoted—where nefarious forms of property have not been compensated for by those who expropriated the owners of such properties.

In this case I suggest that there is a certain divergence between the sense of economics and of ethics. Property is not an ethical institution, I venture to submit. It is an economic institution with close connection with ethics. I may say the economics has suffered because of this divergence from ethics, and holding property sacrosanct and demanding compensation even if the property is acquired by force or fraud or is used or abused or even unused.

At a later stage I shall come to that part of the argument which seeks to give compensation without any condition, or according to my amendment, which restrict compensation by certain conditions. But at this stage I am concerned to point out that there are public utilities, social services and civic amenities which under the existing system are under private enterprise. They are owned by individuals who derive considerable profit. By their nature they are monopoly or they have become monopoly; and whether operated by individuals, partnership firms or joint stock companies, they tend to rob, in my opinion, the community of that which belongs and ought to belong only to the community.

For such, therefore, I venture to submit there should be no compensation. The amendment I have suggested says that whatever may have been the case hitherto, hereafter, under this Constitution, no absolute right of property shall be allowed or recognised, whether in any individual, in partnership firm or in joint stock company, which concerns the working, controlling managing or operating of any public utility, social services or civic amenity; and that these shall be in future operated entirely for the public benefit by public enterprise in which there shall not be any private profit in the least.

I trust the actual wording of my Amendment in that regard will be carefully scrutinised by those who may not take the same view as myself. I have been very moderate in laying down the conditions. I repeat I refer only to the future, without regard therefore to what has happened in the past, in regard even to these utility services and amenities. I consider, even in regard to that future, the absolute right of ownership should not be recognised under the Constitution in any



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private concern whether individual or firm or company. But hereafter they must be operated by collective enterprise for the common benefit without any profit motive. I trust the essential modesty of this demand will be accepted and recognised and the Prime Minister would agree to accept this amendment.

Passing on to clause (2), I have suggested that there should be a positive clause. Instead of opening the clause in a negative manner, which somehow seems to suggest that the primary right and overriding right is that of the individual. I would lay down rather positively the right of the State or of the community to acquire any property if for any purpose it deems it necessary to do so. It has been limited by the words 'for public purposes'. In 'public purposes' I include, not merely the non-remunerative and common civic amenities *e.g.*, when you want to clear the slum of a big city and acquire the ground held by tenements, you may keep up that ground for public purposes in the shape of parks or open spaces—I think that would be a very legitimate category of 'public purpose'. But there may be public purposes which are not only of that character—not only for building open spaces, parks or gardens; not only for building schools, hospitals or asylums, but even for building those lands on a more economic and more profitable scale— I mean profitable to the community and not to any single individual.

Acquisition of lands for public purposes, acquisition of any form of property, movable or immovable, for any public purpose, including the working of that enterprise for the benefit of the public, is, I think, an inherent right of the sovereign community which should not be subject to any exception of the type implied if not so much laid down in the wording of this clause (2). I have therefore suggested that any such property to be acquired can be acquired for public purposes without defining what is exactly meant by 'public purposes' subject to such compensation if any. I would like to sound a distinct note of warning in connection with the calculation of compensation—in fact on the very basis of compensation. Not all property is deserving of compensation nor should the Constitution recognise categorically without qualification or modification the right to compensation as appears to me to be the case in the clause under discussion and hence the amendment I have suggested to it. I would certainly leave the margin of doubt whether any compensation is ever due and must be paid in every case without question. Doubt having thus been expressed by the term "if any" I would also go further and say one thing more : *viz.*, that property having been acquired, movable or immovable, the law should lay down the general principles according to which the, compensation will be calculated and the law should not try to lay down the exact detailed amount for each case.

I would now give you my reasons for objecting to the laying down of the amount in law, and preferring to lay down the principles according to which compensation should be calculated. The amount, if laid down by the Legislature, which presumably will be dominated by parties, is liable to be fixed more, perhaps for party reasons than because of the inherent or intrinsic justice of each claim, apart from the fact that the Legislature would be involved in endless series of individual recognitions. I think it would be ethically wrong for the legislature to go into the details of each valuation, let us say of each estate, each share or stock or debenture as the case may be. Now, it would be the best course for the Legislature to lay down only broad principles according to which, in any case, where it is decided to give compensation, that compensation will be calculated. and the calculation should be made by tribunals which tribunals, as I have always been insisting, should be free from any influence or contact with any other

organ of the Government, whether executive or legislative. You will be doing the right thing if you entrust the administration of the principles that you lay down in your sovereign legislature to the judiciary.

Having said this, I next lay down certain categories of property in which, according to my judgment, no compensation should be due or be payable, and that I contend, is inherent both in the economics and ethics of the case I am trying to advance. That is to say, any agricultural property which may form part of any proprietary, which is utterly unused for a number of years, neglected for a number of years, may be taken over without payment of any compensation. The land has remained utterly unutilised, or the zamindari has become unsocial, and therefore for that unsocial act, for that act of negligence, or for that incompetence or indifference the community is not bound to compensate the owner. I, therefore suggest that in the case of any property which is capable of being properly used, which is capable of adding to the growth and wealth of the community, but which on account of the indifference, incompetence, negligence or otherwise of the owner is not so utilised, the owner does not deserve to be compensated and the community would be wrong if it gives any compensation in respect of such items of property.

I say the same thing with regard to public utility and social services which may have been hitherto operated by private individuals, corporations or firms and which, according to general principles, should not have been left in their hands. But since they have been there, let us compensate them, provided that these have not been held for a period exceeding the one I have suggested or some such period. Again, the basic principle of my argument is the same. They have gained from this kind of monopoly, from this kind of public service, a profit and a surplus far in excess of what should be legitimate, to the exclusion of the public benefit, and therefore, they have no right to demand compensation for such services. If the period for which they have held it is in excess of the one I have mentioned, the presumption is that they have already had more than enough, they have compensated themselves more than enough. Therefore no compensation is, in law or ethics or economics, due to them and should be paid to them.

Similarly too with regard to urban lands which very often is held merely in the hope that by development of population, by the growth of population, the development of social services, and of public utilities the value of the land will be increased. People simply do not want to invest any more capital and just wait, until purely by the conjunction of and by the operation of social forces, the value of the land is increased. They simply allow the forces of nature to play upon such lands, and therefore no compensation should be paid to them. I think they are social offenders and the community would be well within its rights to deal with them as social offenders for having taken potential sources of production and not utilised and developed by them. Therefore, they are not entitled to demand any compensation for this kind of unsocial or even anti-social behaviour.

I pass on now to other forms of natural wealth such as mines, forests and mining concessions which are also in the nature of monopolies. They are gifts of nature belonging to the community, but have been alienated from the community to private individuals—I will not use a harsher term. If these have fallen into hands of individuals because of our helplessness or by reason of the foreign rule, we see no reason why we should go on recognising this injustice, this robbery of the people's right. Therefore, I do not think that for these mines or mining concessions, forests or forest concessions, any compensation is due. If operated for the given number of years I have stated, the holders have in all conscience received more than enough and therefore, they

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cannot demand any more compensation, whether they be coal miners, or iron miners, or gold miners. Compensation for them would be utterly unjust and must not be allowed.

Apart from these forms of natural wealth, I pass on to the next, industrial and commercial undertakings which is their own way, are no less offensive than perhaps the primary sources of production like land, mines or forests. These too have got into private hands, because of the prevailing economy of those days, and it is now too late to complain. But they have been operating, and those of them which have been operating for a number of years, have been earning sizeable profits from this operation, these should not be entitled to demand compensation, as they have already received enough, in my opinion, and more, enough and to spare, for times to come.

The three categories I have laid down are, first, those who have been paid in the aggregate more than twice the amount of their share capital or debentures or stock or whatever it may be, so that in a period of so many years they have already reimbursed themselves, and consequently therefore it is necessary, it is but just and proper that the community should be called upon to take over their enterprise and conduct it in the way that it deserves to be conducted in a properly coordinated and planned economy for the nation: Those again, who have held it for the entire period, say for thirty years, whether with or without profit, have proved themselves either too, incompetent or unprofitable and therefore they do not deserve, to continue holding the property. Therefore they should be expropriated. The others have already received sufficient and more than sufficient to reimburse themselves for any investments they may have made, and therefore they are not entitled to any further compensation. I do not wish to offer examples of mining concerns and concerns connected with basic industries like iron and steel, banking and insurance which have in the last generation or more, particularly since the Swadeshi movement, tried and earned very fat dividends, very large, surpluses, which should be taken to have more than reimbursed them; and now in these cases, particularly those which are of basic necessity for the country's development, to pay compensation on anything like the artificial value which is given to them is, I submit, utterly unfair and ought not to be permitted. I have therefore suggested by this amendment that no compensation shall be payable to categories of property of this kind.

Lastly, in the case of the industrial and commercial undertakings, in the case of those whose liabilities and assets do not tally, whose assets are much below their liabilities and therefore it being always a losing concern, for compensation to be given to such concerns would be putting a premium on wastefulness and extravagance and uneconomic working and therefore ought not to be allowed. Time and again, the State has taken over in the past enterprises which were in the previous two, three or four years so wasting their resources as to make themselves a white elephant. I am particularly speaking of some of the railways which had to be taken over by the State and which under the terms of the agreement worked in such a manner that the assets received were much below any real value of the liabilities that they will put upon us. The any such case, therefore, I submit it is unfair, it is unwise, uneconomic, unethical, to offer any compensation merely because it is a losing concern or that the owners have, proved themselves utterly incompetent and undeserving of any compensation merely because of their own negligence they have failed to make both ends meet.

The other amendments which I have tabled are of a procedural character and as such I will not take too much time of the House on them. I do not think it is desirable that any room should be left for an avoidable conflict between,

for example, the head of the State and the legislature. Therefore clause (3) which suggests that every Bill of this kind may be reserved for the assent of the President and make it an item of importance is in my opinion unwise and therefore ought to be avoided. I have therefore suggested that that clause be deleted.

Similarly, in the case of pending Bills or Bills which have been passed one year before or at any time before this Constitution comes into force, there should be no need, in my opinion, for any reservation, for the approval or the assent of the supreme executive authority in the land and create a kind of tension between the Central authority, the national authority and the local or State authority as the case may be. I trust these points that I have advanced so briefly would meet with the approval of the House and the amendments work be accepted.

**Shri Jadubans Sahay** (Bihar : General) : Mr. President, Sir, I beg to move:

“That in amendment No. 369 of List VII (Seventh Week), clauses (2), (3), (4), (5) and (6) of the proposed article 24 be deleted.”

My justification for moving this amendment must have been very clear to the Members by this time. The draft article as it stands before us is, I venture to submit, one of the most wonderful examples of chaos and confusion of ideas. Nowhere possibly you will find such a conglomeration of things, such a confusion of ideas, on such an important and vital issue as this concerning the property of the country. As an august body, we are going to lay down the foundation of property for future legislatures and for the posterity of this country, but I venture to submit that we have utterly failed in this task. It must be apparent to the members of this House that the more the two differing schools of thought have tried to compromise their view-points the more confounded has this entire draft become. You know that the question of property has been engaging the attention not only of this country but of other countries as well. Agrarian and industrial reforms have set at naught centuries-old definition of property in many countries. It was expected of us that at least on a matter affecting the teeming millions, on a matter affecting the future economic structure of the country, we should come out with a clear-cut economic formulation of policy regarding property. But what we find is that the draft has not been able to inspire confidence in any class.

Take the industrialists and capitalists. They are not satisfied with it. Take the landed magnates They are not satisfied with it. So far as the teeming millions are concerned, they would not be satisfied with it, had they the voice to lay before you their feelings regarding this Draft Constitution. They in whose name we have come here and for whose sake no doubt all of us possibly are making this Constitution,—what are we giving to them ? I will not enter into the controversy as to whether compensation as provided in this article can root out the growth of capitalism that is taking place in this country so rapidly and which is bound to affect the future political economic and other growths of the country.

Suffice it to say that the conception of property has been changing. The world has been changing. From the Divine Right of the sovereign we have, come to the sovereignty of the people. But our mind have not been changing so far as the concrete realities of the question of property are concerned. Are we going to hold out hopes for the future that industry in this country will be nationalised or socialised in the interests of the masses of the people ? No. This Constitution does not hold out any hope; rather it binds down the future generation, the future legislatures, to pay full compensation to any industry which they may want to nationalise.

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This article has not created any enthusiasm in the mind of anyone. So far as Bills, are concerned, what do we find? There is confusion reigning there because in one province we find that a Bill which is pending is given recognition here. Is it the duty of the constitution-makers to deal with Bills which are pending, which have not gone, to the Select Committee. So far as the amendment is concerned, I am seeing that chaos and confusion reigns everywhere. What would be the effect on other provinces? Leave the case of the U.P., Madras and Bihar. What policy are you going to lay down for the guidance of Assam, Bengal and also C.P., where zamindari may be abolished in the future. Would they be asked to pay compensation or would they get protection under clauses (4) and (6)?

I would beg to you to consider that this article is the most important in the you whole Constitution and it is an acid test of the Members of this House. We have failed because like what we are on every other thing we have become victims of confusion. When problems face us we shirk them or we try to interpret them in two different ways. There are two schools of thought and one of them should have found place here—it is either compensation or no compensation. It is quite a different thing to say that we should not, in the present state of our country, in the present crisis in the country, proceed in a way that such a legislation might overawe our industrial magnates and make capital shy. I think the State legislatures and Parliament will certainly take note of the crisis in the country. But it is quite a different thing that for all generations to come you are going to bind the hands of the future by such provisions. It is because of this possibly that we have not enunciated clear economic policy to the country.

My forebodings may not be correct, but I fear that upon this Constitution, possibly the whole labour we have put in in this House for the last two years, might be thrown away, because it is bound to be one of the most controversial things, for we are taking a line which is neither to the left, nor to the right nor in the centre. There is conflict and confusion in our minds. Therefore I have in view that only the first clause should remain and all others should be deleted. Let it be left to the State legislatures or Parliament or to our leaders who run the government to give direction to the country, to say how laws should be formulate regarding property in any province. But for God's sake do not burden this Constitution with all such things which you do not find in any other constitution of the world.

**Mr. President :** Amendment Nos. 390, 391, 392 and 393 are ruled out. Amendment No. 396 is verbal and need not be moved. I call upon Mr. B. Das to move his amendment No. 397.

**Shri B. Das :** Sir, I move :

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed new article 24, for the words ‘unless the law provides for compensation’ the words ‘unless the law provides for fair and equitable compensation’ be substituted.”

With your permission, Sir, I would also move amendment No. 427:

“That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words ‘not more than one year before the commencement of this Constitution’ the words and figures ‘after August 15, 1947’ be substituted.”

Sir, I support the motion moved by the Honourable Pandit Nehru. I think if my two amendments are accepted by the House It will just clarify the situation so that we do not fall into the traps of which we just now heard from our honourable Friend Prof. K. T. Shah, who is going to be the leader of the Opposition in the Parliament a few days hence.

On the 9th August 1942 all our leaders were incarcerated for giving the nation the battle slogan "Quit India" and they came back sanctified, and determined to achieve our FREEDOM. In 1945-46 our leaders issued the Congress election manifesto to the nation in which, referring to the reform of the land system and acquisition of property, they declared :

"The reform of the land system which is urgently needed involves the removal of intermediaries between the peasant and the State. The right of such intermediaries should therefore be acquired on payment of equitable compensation."

It has been recognised by a majority of Congress leaders outside and some of them inside that equitable compensation should be paid for properties acquired. Somehow there has been a big controversy both inside and outside the House that nationalisation and expropriation should prevail and not fair and equitable compensation. Unfortunately when Congressmen came into power in 1947 some of the younger section of the party began to talk of nationalisation and expropriation. Today some of them are Members of this House and even of the Congress Government and they are silent over the word 'expropriation' which has been enunciated so definitely by the democratic socialist leader, my old friend Prof. Shah.

We Congressmen have an onerous duty to the country. Are we to fall into the trap of the Socialists and take shelter under the law and pay no compensation in the name of the law or are we to stand by the Congress Parliamentary manifesto that equitable compensation should be paid ? That is why I want the exact words of the manifesto to be introduced in the amendment of Pandit Jawaharlal Nehru.

As regards the second amendment where it has been said "any law that has been passed one year before the commencement of the Constitution," I find that others too have tabled amendments to the effect that it should be one and a half years. Why mince matters? We attained our freedom and independence—though that independence is today qualified by our kowtowing to the Commonwealth countries. Why not say "any law that has been passed after the 15th August, 1947"? This does not alter materially the amendment which Panditji has moved but it fixes a date which is well known and it is no use talking of one year before the commencement of this Constitution.

Coming to the motion moved by Pandit Nehru, whether my amendments are accepted by the House or not, I have to accept it, because there has been no fairer proposition that has been tabled or moved by any other member of the House. In accepting that we must admit that we recede from our original ideals. We go back on the election manifesto that gave to the country high hopes and high ideologies, for the last four years—the election manifesto of 1945-46. Perhaps as we exercised power, power-politics have upset the leaders of the nation and the leaders of the Congress Party feel that idealism is not the right thing and that there must be compromise in life.

But I am not one who will be cowed down by the Socialists. If the Socialists want to succeed the Congress in the country, let them plan out what they will do. Except making a few criticisms of Congress leaders in the press and on the platform the Socialists have not evolved or done any constructive work in the country whereby they show their fitness to succeed the great Congress Party in the country in the control of the administration of the nation, I was amused to read a little note in the "Statesman" this morning where the writer has mentioned that the Socialists have formed themselves into the Social Democratic Party in the Parliament to oppose the Congress Government. He says that besides irresponsible talks—irrelevant garrulity inside, the Assembly and little action outside, they have not so far produced any planned programme by which they can establish better Government in the country, or rather Government to usher in a peaceful era of constructive Socialism. If I am to

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understand the Socialist programme as my Friend Professor K. T. Shah enunciated a few minutes ago, they want expropriation of all properties. I interjected "Why does not my Friend Professor K. T. Shah want to expropriate all movable properties of the citizens of India?" That will give him and the Socialist Party a certain amount of property and wealth by which they can carry on their so called programme, as the Pakistan Government is carrying on by confiscating properties worth Rs. 4,000 crores of displaced Hindus and Sikhs who have migrated to India. That is not the right solution. Expropriation is not the right solution to produce better wealth. Expropriation will not work the industries that Professor K. T. Shah and perhaps the Socialists want to work in the country for greater production and larger prosperity and well being of the people. No industry can survive if it is expropriated. If expropriation will make the Socialist labour workers to do better work to produce more, I think they are thinking on wrong lines. Unless there is adequate production on man-hour basis, whether industries are private-owned or State owned, such industries must produce enough to maintain the national credit of India. If my Friend Professor K. T. Shah, who was the Secretary of the National Planning Committee, after writing those beautiful and studied volumes has come to the conclusion that national credit cannot be maintained unless you expropriate all property, be it landed property or be it public utility concerns or other concerns, if that is the sort of dreams that Socialism has, then I pity the Socialists and they will never be at the helm of the Government of India in the near future.

In supporting Pandit Jawaharlal Nehru's motion I accept the compromise. It does not satisfy my soul, but it satisfies the present exigencies and on that ground I support it.

**Mr. President** : Amendment 398 is to the same effect as 397. Also 399 the first part of it is to the same effect. Therefore these need not be moved.

**Shri Jaspal Roy Kapoor** : May I submit that part (a) is something different from amendment 397 or 398 ?

**Mr. President** : You may move clauses (b) and (c) of your amendment.

**Mr. Naziruddin Ahmad** : (b) and (c) have also been covered already by amendment 389.

**Mr. President** : Yes, that has been moved by Mr. Jadubans Sahay. Therefore all these amendments need not be separately moved.

**Shri S. Nagappa** (Madras : General): Mr. President, Sir, I move:

'That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words "for compensation for" the words "compensation not more than 5 per cent. of the market value of" be substituted.'

When these words are substituted the clause will read thus:

"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 compensation not more than 5 per cent. of the market value of the property taken possession of or acquired" etc.

We have made this article non-justiciable. When we do so there must be some principle. What is the maximum that we can pay as compensation? We are not going to pay justiciable compensation. Whatever we give is supposed to be just and equitable. All these days the State has given protection to the zamindars or capitalists to acquire the properties. Now we are requiring the properties for the State, for the good of the State, for the betterment of the common people in order to maintain the national economy of the

country. So we must also take into consideration how these capitalists and zamindars have been responsible for the fall of national economy by not utilising the property in a proper manner, that is to say, by not reducing the required amount of value out of the capital that has been in their possession. As a result of that they have been responsible for the fall of production. Let us for example take a zamindar who owns thousands of acres of land. At times because he may not find enough manual labour he may not cultivate the whole land and most of the land goes fallow. Or even if he does it he may not do it with all the intensity that is required and necessary, and he may not produce the quantity that can be produced from that land. So he has been responsible for the fall in the national wealth. He therefore deserves not compensation but something else. He must be taken to task for having deprived the nation of the national wealth.

Now we are glad that the country has realised that we should not allow properties to be owned by either individuals or corporations, but that all property should be at the disposal of the country as a whole. We have been abolishing the zamindari system. It has already been commenced in two provinces. Now, to whom does this land go? It should not go into the hands of petty zamindars. It must go to the State. We should not create innumerable petty zamindars in the place of a few. That is not abolition of zamindari. Now if you give more compensation, it will mean purchasing the zamindari and not abolishing them. When you acquire properties for State purposes, the State should have control over them. After all the person who is in possession is there only to make use of the land. He need not own it. A pattadar today is not the owner of the land he is using. Government is the owner because the Government has conquered it inch by inch and should therefore be the owner. The pattadar has only the right of using the land. He cannot say that the land belongs to him. Even the zamindars were there having the custody of the land on behalf of the people, that is all. They were collecting also rent from the people. Now you are taking away the right to collect rent and giving the land to the people who have been under the thumb of the zamindars cultivating it. You are not taking the land to the State. You are taking away the land from the zamindars and creating a number of chota zamindars, more numerous than the former. That way you cannot solve the land problem. The solution of the problem lies in nationalising or socialising the land. The people of the locality must be the owners of the lands; the tillers of the soil must be the owners. Then only you can say that you have acquired the land for State purposes. Until and unless this is done you can not say that you have solved your problem.

We decided in the beginning that our aim is to establish a co-operative commonwealth. Unless you socialise the land you cannot have that commonwealth. The lands acquired from the zamindars must be plotted out on a co-operative basis and given to well-trained cultivators with instructions that they grow more and more food. Now what I propose is that while you acquire land for this purpose it is just and proper that you pay 5 per cent. or less. With these few words I commend my motion for the acceptance of the House.

**Mr. President :** Amendment No. 401 of Mr. Naziruddin Ahmad is covered by the amendments already moved.

**Mr. Naziruddin Ahmad :** No, Sir.

**Mr. President :** All these expressions 'fair compensation', 'full compensation', etc., mean the same thing.

**Mr. Naziruddin Ahmad :** There is a shade of difference between them.

**Mr. President :** Well, shades of differences are matters for drafting. Amendment No. 402 is also covered.



**Pandit Thakur Das Bhargava** (East Punjab: General) : This item (iii) of 402 is entirely different. This is not covered.

**Mr. President** : Only item (iii) in amendment 402 which seeks to introduce appropriate before the word “principles” is new. You may move it.

**Pandit Thakur Das Bhargava** : I beg to move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24— before the word ‘principles’ the word ‘appropriate’ be inserted.”

Then, Sir, I move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24, after the word ‘Constitution’ the word ‘and designed to execute a scheme of agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors for such compensation as the Legislature of the State considers fair’, be inserted.” Mr. President: Your amendment No. 479 cannot be moved. It is covered by previous amendments. You may move amendment No. 487.

**Pandit Thakur Das Bhargava** : Then I move :

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words ‘or specifies the’ the word ‘proper’ or alternatively, ‘fair’ be inserted.”

Next I move, Sir,

“That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words ‘having been’ the word ‘is’ be substituted.”

**Mr. President** : Your amendment No. 503 is covered by amendment No. 389. Amendment No. 512 also cannot be moved.

**Pandit Thakur Das Bhargava** : Then with your permission I move:

“That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added :—

“(7) If any State passes a law designed to execute a scheme of agrarian reform in the State by abolition of Zamindari conferring rights of ownership on peasant proprietors or at least rights of occupancy for such compensation as the State Legislature considers fair on the lines of the law referred to in clause (4) of this article, such law shall be submitted by the Governor or the Ruler as the case may be, to the President for his certification. If the President by public notification certifies the law, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article’.”

In regard to the amendments, I beg to submit that the present principle of acquisition of property for public purposes is sought to be saved by clause (5) of the proposed article. The existing law is contained in Act 1 of 1894, according to which, before property is acquired or requisitioned, compensation is to be paid. The compensation which is laid down by the law to be paid is the market value of the property at the time of the acquisition plus 15 per cent. for disturbance. I understand that clause (5) of article 24 saves that law, so, that before any other provision is made by the legislature subsequently, this law will hold the field, and if any land is acquired, it will be acquired according to this law. Under the present law, an executive officer determines the compensation but his determination is not final. A person aggrieved from this order can go to a civil court or a District Judge and there get the order revised, if he is not satisfied by the order of the executive officer or the revenue officer or whoever the officer determining the compensation may be. After that, it becomes a civil suit and the civil court will find out what the market value is and add 15 per cent. to it. This is the present law. According to amendment No. 369, if any law is passed by the legislature subsequently, then that law will be on the lines given in article 24.

Now, this article 24, as it is, seeks to delude any person who reads it that he has got a justiciable right. We have been told times without number not in this House but in other places, that this right is justiciable. Exception was taken on the core that it should not be justiciable so far as zamindars are concerned. The whole dispute centered round this question whether the right given by article 24 of the Draft Constitution was justiciable or not. From the very start I have been of the opinion that there is little of justiciability in article 24 of the Draft Constitution because after the legislature has laid down the principles, those principles become unalterable. These principles cannot be questioned in any court of law. Nobody can agitate before a court that the principles which have been approved by the legislature fail to give adequate compensation. The word "compensation" itself means a good *quid pro quo* in the word "compensation" itself the adequacy and fullness of the consideration is implicit, though doubts have also been thrown on this connotation of the word "compensation". I do not know whether this word compensation has got this meaning or not, but as I understand this article 24, I am absolutely clear in my mind that if clause (2) remains as it is on the Statute Book, then the legislature and not the courts shall become the final arbiters of the compensation.

It would follow that if the principles are given in a piece of legislation, those principles will ultimately decide what the compensation has to be. Of course, if practically no compensation is given, a man can go to a court of law; otherwise he cannot go to a court of law. Thus if the compensation paid is a fraud upon this section, then in that case the matter can be taken to courts. It means that if instead of 100 rupees one rupee is paid, then it will be complete destruction of the word "compensation". If out of one hundred rupees one rupee is paid, it will be a fraud; if ninety-eight rupees are given or five rupees are given, it would not be a fraud. I think Sir, that this clause (2) is at present a fraud on us because I understand that it is not justiciable. It is made to appear to be justiciable to convince the general public. My submission is that it can only be justiciable in one way and that is what I have submitted for your consideration in my amendment No. 402 that the word "appropriate" be added before the word "principles". If the House accepts this it will mean that the principles must be appropriate, must be fair, and the application of these appropriate principles must result in one thing *viz.*, that full compensation, or fair compensation will be given. My submission, Sir, is that if the word "principles" remains here without any adjective, I am sure the clause is not justiciable. Therefore if the House accepts my amendment, then we can make this right justiciable, as it is evidently the intention of the framers of the Constitution that it should be so. And so my submission is that the House will be well-advised to accept my amendment.

I have heard the arguments of my Socialist friends who are of the view that if the legislature fixes some compensation, or the principles, then the courts should not have any power, should not have the final say in the matter. I do not quarrel with them because it is only a point of view, but to those of us who believe that the courts in this country, as in all other, countries, are the final arbiters of civil rights, to them it is very clear that this article 24 goes against the very principal of justiciability and the rights of property, even as recognised and guaranteed under article 13.

Now, Sir, the Honourable Prime Minister, when he moved this amendment, told us that the rights of the individual as opposed to the rights of the community should also be considered. I quite agree in the Objectives of our Constitution, we have already laid down that we want to ensure justice, economic and social. I want that the dignity of the individual and the

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unity of the nation must be there. I think, Sir, that we should arrive at a happy blend between the rights of the individual and the rights of the community, and in this regard the Congress and the whole country is committed to the abolition of the zamindari. We shall not be in the, right if we go back and say that there will be no abolition of zamindari. I do not want that the whole thing should be resolved in this manner. Every person in this country should understand and accept the principles, the broad principles of legislation in this respect.

With regard to clause (4) I have seen the legislation of the U.P. and I am satisfied with the principles which govern this legislation. The whole idea of that legislation is that the peasants should become owners of the property, that every person must be made the owner of his land, so that he may take full interest in the land and develop it as much as he can. I accept the principle that if for the purposes of agrarian reform by virtue of which the peasants or the tenants are made proprietors and the zamindari is abolished, then in that case such compensation may be given as is equitable and in that case the State Legislature may be the final arbiter and the best judge of it. Therefore, I have put in an amendment No. 514 which seeks to have another clause, namely clause (7) wherein I say that if such an occasion arises when any State in future also wants to have a law, like this, it can have the benefit of the law under clause (4).

In regard to clause (6) I have given an amendment that it should be deleted. I am not satisfied with the Bihar law at all. I went through the Bihar law and when I read its provisions, I was simply startled. Its provision says that from a certain date when the public notification is there, all rights of property will be confiscated and those persons who were owning properties today will become only occupancy tenants if they possess, Sir, lands. So far as this, law is concerned, the Bihar Government is not affected at all because if they want to have a law on this new basis, if they abolish zamindari and then create instead peasant proprietors with full rights of ownership, I am one with them. There is another amendment sought to be moved by Messrs. Munshi and Alladi Krishnaswami Ayyar and that amendment says that if such law goes to the President, the President shall have the power to require any specified amendments to be made in such law.

Moreover I cannot understand why Madras, U.P. and Bihar Governments should have such laws passed in this manner and other States should be denied the liberty of having the Zamindari dissolved. I think we ought to be fair and equitable. If the basis of the U.P. legislation is accepted by law, we should see that that principle is applied to all the other cases. These words "that there must be an agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors" are there in my amendment and these principles are sound. They have been sanctified by experience of ages, of course there are the people who have owned those properties for a long time and on account of their absence from their places the exercise of rights by those people cannot be so useful to the community as in the case of others. Unless this exception is made and this is made applicable to all the provinces, this will not be fair.

I have put in amendment No. 496 which seeks to substitute the word "is" for the words "having been". If my amendment is accepted it would mean that the Provincial Government will thereby be compelled to hold it for the assent of the President and then the President will give the assent because today, supposing a Provincial Government does not hold the Bill back for the assent of the President, then a difficulty would arise as it may not be allowed to go to the President at all.

In regard to all these, I have to submit that these fundamental rights we have been told are justiciable, times out of number. Now I see that attempts are being made to see that the rights which are guaranteed to the citizens of India are being taken away, one by one. Two or three days back, I had occasion to say that article 16 was sought to be taken away and it will be taken away and article 13 is also I see being burdened with such reservations and being subjected to such modifications that it is also being taken away. The accursed article 15 is neither fundamental nor justiciable.

If we really mean to have a Constitution of this nature for which we have been boasting all over the country, we should not enact a provision like article 24 because it is the very negation of the rule of courts in this country. In our country where we have got this freedom without going through any bloody revolution, it is necessary that we should see that discipline and democratic ideals are installed in our hearts and that the law of the land becomes the law by which every person is governed. Unless and until the courts are empowered, and the courts are the final arbiter of the civil rights and of the liberties of the people, I feel that if the legislatures alone are given the power we are coming to a point where fiat of executive officers will deny us our rights and this would be very wrong. I feel in the activities of the Government a tendency that everywhere we seek to destroy the powers of the courts and substitute therefore the power of the legislature or the executive.

What is an executive officer ? Supposing an executive officer has to decide my fate; he is the person who is interested in getting my property and giving me a very small compensation. That is not fair. He should not be a person who should represent the Government's interest in all the stages. The courts will also be appointed by the Government. Let those courts decide our civil rights so that people may have confidence; and moreover, Sir, in regard to ordinary properties excepting the Zamindari, etc., I am not fully satisfied as to how the principle of superiority of the rights of the community has precedence over the rights of the individual. After all where is the law that you should usurp the rights of the individual with a view to benefit the rest of the society excepting that individual ? The salutary rule which we have accepted for the last sixty years and more is that the present market value is the proper basis for fixing the amount of compensation and this should not be departed from, unless for scheme of agrarian reforms involving millions of people and multiplicity of litigious suits. I understand that my socialist friends come, here. Some of them are very rich themselves and do not practise what they preach and are engaged in amassing as much property as they can lay their hands upon. I just want to submit for the consideration of the House the views of the common man. The common man does not recognize your doctrines of "Property is theft". He believes in the sanctity of property. Supposing any land or house is taken away for the purpose of a railway line or some undertaking of the Government, no doubt for a public purpose, will any one be satisfied if he is not given full compensation, and is there any valid reason why he should not be fully compensated ? As a matter of fact no one will feel confident if you enact laws as you propose to enact that not the courts. but the executive officers should be the final arbiters of the civil rights of the people, and it is not politic to undermine the confidence of the people.

**Dr. P. S. Deshmukh** (C.P. & Berar: General): Mr. President, Sir, I move :

"That in amendment No. 369 of List If (Seventh Week), in clause (2) of the proposed article 24, after the words 'is to be determined' the words 'and paid' be added."

Sir, I have also given notice of another amendment which is No. 434, I do not propose to move the first portion by which I sought to add 24 A, but I would

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beg leave to move the last portion, Sir, which is styled here as 24 B and if it is accepted it will have to be numbered as 24A.

Sir, I move :—

“That with reference to amendment No. 369 of List VII (Seventh Week) after the proposed article 24, the following new article be added:—

‘24 A. Nothing in this Constitution shall prevent the Parliament from exercising jurisdiction over, and the State Legislature from acquiring any properties movable or immovable belonging to any public charitable trust without compensation and for the purpose of better utilization and management of the trust property.’ ”

Sir, this is undoubtedly a very important provision in the Constitution and it is not therefore surprising that we have been deliberating with regard to these provisions for a very long time. In spite of our efforts, it has not been possible to evolve a formula which is acceptable to everybody. Sir, the claims to property or our outlook towards property is next only to individual liberty the very essence of all political thought and constitutions. More and more as time advanced, the outlook towards private property has been undergoing very great changes. On the one hand there has been a system of excessive capitalism; on the other we have the instance of Russia where all private property was confiscated. India has come into its own as one of the greatest nations of the world and on this one thing as to how we regard private property is going to depend the state of politics if not the governance and fate of this country.

The formula that has been presented here in the shape of this article, in my opinion, is a half-hearted one. It neither protects private property, nor does it confiscate it. If it is necessary to respond to the cry of the people who are more and more being dominated by proletarian ideas that all land, all mines and all things belong to the people as such and there can be no preserved or separate right of any individual with respect to it. If we wanted to give effect to this or to respect the wishes of the people or act in consonance with this demand of the people, which, in spite of all our efforts to keep communism away, is getting more and more popular with our people, if we do not want to go back on the of-proclaimed promises held out under different conditions and circumstances, it would be necessary for us to go much further than we have been able to go in this particular formula. But, Sir, I wish to advise a cautious attitude. I believe, sooner or later, there will be no private property in India. We are fast approaching that ideal, that goal, or that catastrophe if you like to describe it in that way. But, for the present, I would have liked to keep the thing in a somewhat fluid, undefined and elastic condition by accepting the amendment that has been moved by my honourable Friend, Mr. Sahaya.

I think, Sir, as I have advocated on many occasions, that we should not try to commit or fetter the powers of Parliament in such a matter and at this stage any way. This is a matter which requires very careful and thorough consideration and I feel at the present moment it is impossible for us to spare for it the time that is needed. In my opinion we have hardly had time to collect all the relevant information and if I may say so, the worthiest amongst us has not been able to decide upon a definite policy with regard to property as a whole in the whole of India. It is clear from the nature of the amendments that have been given notice of and put forward in this House that very few people including my friends the Socialists have a clear conception as to how exactly we are going to deal with these rights to private properties, whether we are going to preserve them or whether we are going to abrogate them so far as all private property is concerned. Of course it is noteworthy that even Socialists have not advocated expropriation.

That being so, it is not at all easy to determine, where the limit may be set or where the line should be drawn. Especially when we are making a constitution, we have no time to investigate the various circumstances of this whole sub-continent, where the conditions vary from district to district and vary still more immensely from province to province. Each one of us has different ideas and there are every where different tenures of land, Jagirs, Zamindaris, Izardaris, Malgujaris, etc., and it is not possible for us to deal with them all in one way or to evolve a formula which would be not only acceptable to everybody, but of which we shall be able to say for certain that it is going to achieve the salvation of India, and that no other solution would be better fitted to meet the circumstances of the case.

From that point of view, I would have much rather liked that all that we say and provide is the first clause which is of course the same as in the Government of India Act: "No person shall be deprived of his property save by authority of law." If we had done this, then all the various things that we have included in the article as it has been placed before the House by the Honourable the Prime Minister would have been unnecessary. The article has perforce to be an involved one; there have got to be 'save' and 'except'; there have got to be "notwithstanding" this and that; "nothing in this will apply to that" and "subject to what is stated" etc. I do not think we are in a position to judge of the future so quickly and in such definite terms as to lay down a certain formula which will be, without doubt, of benefit to the whole country. I would therefore urge that all that we should say is that Parliament may by law determine property rights from time to time.

There have been two interesting speeches delivered by my honourable Friends, Mr. Kamath and Professor Shah. They have described property by quoting certain definitions. Mr. Kamath said that some one had defined property as theft. My honourable Friend, Prof. Shah has gone further and quoted that it was described as "robbery, dacoity, deceit" and what riot. shudder to think what will happen to the fine sherwani which Prof. Shah is wearing or the silken upper garment that Mr. Kamath puts on his shoulders if we were to accept any of these definitions and give effect to the purpose behind the definitions. But, we are unable to fly so high or accept the ethical and spiritual heights to which our spiritual friends, if I may be permitted to say so, have flown. We cannot in this important matter commit our future successors to any policy which will fetter their discretion, and which will probably create innumerable difficulties in their way. We are also in the midst of a financial crisis; it is not a crisis of this country alone; it is a crisis which the whole world has to face.

Under these circumstances also, even if we do not like it, we have got to curry favour with capitalists and those who have got large properties and in view of the results that may accrue, we cannot wholly disregard them. On the other hand, there, is the demand by the people that they want to own, and to re-distribute the whole land. In the province of Berar, more than two-thirds of the land, I think, is owned by money-lenders. It is natural when the whole nation is thinking and becoming conscious, that they should not like any individual proprietors to monopolise such extensive properties. Therefore, the pressure is going to be more and more that there shall be a re-distribution of property especially landed property. If we wish to resist this demand, then we will have to make up our mind solidly and plainly say that private property rights which are existing at the present moment shall continue to exist. But we cannot have a half-hearted, half-way house like the one which has been presented here, which neither takes us nearer those whom we wish to please, nor shall we be consistent with what we have declared from time to time. Under these circumstances, Sir, I think it would be better to leave the more detailed description of the rights to property to the future Parliament.

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Sir, the second amendment that I have moved refers especially to religious trusts. I know, Sir, that most people are aware of the way in which these religious trusts are managed and I think it is necessary that the question of compensation cannot arise in this case. The sooner we utilise these vast properties for the benefit of the nation, the better it would be. This is something that is extremely desirable, and I hope, Sir, that this addition that I have proposed to article 24 would also be accepted.

**Mr. President** : Amendment No. 405: that is covered by the amendment which has just been moved by Dr. P.S. Deshmukh. Amendment No. 406: Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad** : It is already one o'clock, Sir.

**Mr. President** : We shall then meet at four o'clock.

**Shri H. V. Kamath** : May I suggest, Sir, that we might meet at nine o'clock in the night, if that be convenient to you ?

**Mr. President** : I think it suits Members more to meet at four o'clock rather than at nine o'clock. The House stands adjourned to four o'clock.

The Assembly then adjourned till Four of the Clock in the afternoon.

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The Constituent Assembly re-assembled after Lunch at Four of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

**Mr. President** : Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad** : Sir, I beg to move:

“That in amendment No. 369 of List VII (Seventh Week) after clause (2) of the propose article 24, the following proviso be added :

‘Provided that when any such law provides for the acquisition by any State of the interests of the Zamindars of various degrees and other intermediaries for the purpose of abolishing the Zamindari system, it shall be sufficient if the law provides for the payment of compensation amounting to not less than twelve times the estimated average net income of the Zamindar of any degree or any intermediaries whose interests are to be acquired.’ ”

My amendment No. 417 is already covered.

I move :

“That in amendment No. 369 of List VI (Seventh Week) for clause (5) of the proposed article 24, the following be substituted :—

‘(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect the provisions of any existing law or of any law which the State may hereafter make which imposes or levies any tax or penalty which seeks to promote public health or to prevent danger to life and property.’ ”

I also move No. 425.

“That in amendment 369 of List VII (Seventh Week) in clause (5) and in clause (6) of the proposed article 24, the words ‘Save as provided in the next succeeding clause’ be deleted.”

I also move :

“That in amendment No. 369 of List VI[ (Seventh Week) in clause (6) of the proposed article 24, the words, figure and brackets ‘clause (2) of this article’ be deleted.”

I do not move No. 439.

The proposed new article 24, to say the least in effect though not in appearance, a most revolutionary provision. It indicates a serious departure in the policy of the Government. The article is simple-looking, but as I have already indicated in effect it is extremely dangerous.

The crux of the whole problem before the House, so far as this article is concerned and which affects the various, amendments, centres round one important principle *viz.*, the principle of compensation. Should you or should you not pay compensation for lands and properties acquired for public purposes ? Compensation, before this new article 24 was ushered into this House, had a definite meaning. Compensation meant that sufficient, fair, legal or equitable compensation must be given. Whatever be the description you must pay for what you take. That was the idea in India before article 24 was introduced and that is still the idea in all civilized countries. That was the idea in India before this article came into the scene. Sir, the payment of fair compensation seems to me to be so just, so fair and so reasonable that it would not have required any arguments to support the idea. There is the provision for payment of compensation in



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the new article. But in view of the context, and in view of certain pronouncements and in view of certain subtle provisions lying concealed within its meshes, one should proceed rather cautiously and warily in dealing with this subjects.

The situation has become much more difficult on account of certain pronouncements in this House by our honoured Prime Minister. Sir, I have the highest respect and affection—my humble respect and affection for him—but the legal proposition which he has enunciated requires respectfully to be dissented from. He has in effect said that property belongs to the public, to the people. I do not quote him verbatim, but this seems to be the effect of what he said, that “property belongs to the people, and the people want it, and therefore they must take it; compensation or adequacy of compensation does not enter into the picture”. But as I was submitting, the adequacy of compensation or its fairness and the like is the most vital thing. So, far as the entire civilized world is concerned, the law is that whenever you take property for public purposes, you pay fair and adequate compensation.

It is only in Russia that property is taken without compensation or only with mere nominal compensation. We are today going to imitate the example of Russia, a singular example in the civilized world in this respect. That is the example which we are going to follow. In fact, so far as this matter is concerned, there is no difference between the authors and the supporters of this article, and the Communists today, except in the manner of their approach, except in the method of the execution of their policy. Sir, believe the Communists, the Socialists and the supporters of this article would kill and extirpate the middle classes and the upper classes altogether. These three groups of persons agree amongst themselves in their ideal, they differ only in their methods of approach and in the practical way of attaining it. Whilst the Communists would kill them by use of force, and violence, while the Socialists would kill them—as apparently Prof. K. T. Shah would do by arguments and speeches and theories, the sponsors of the present article would kill them by legal means. There is essentially no difference in the ultimate effect or desire. The question now is this, We are in the middle of a road and the road bifurcates. Which way to proceed is the question, to proceed as the Communists have done or to proceed along the road that the entire civilized world has followed ?

Sir, I shall briefly state before you the law of compensation in all civilised parts of the world. The whole subject has been dealt with very elaborately in the Encyclopaedia Britannica, subject—Compensation, Vol. VI, pages 177 to 179. I do not want to go through all of it, but only mention certain points. Compensation, according to that great authority is “reparation or satisfaction made to the owner of the property which is taken away by the State for State purposes. The right of individual ownership is challenged in Russia which has abolished the right to private property and has expropriated it for alleged public purposes without compensation. But to a large extent however, the U.S.S.R. has been compelled to reverse its policy. They are now influenced by communism and these States, in the name of agrarian reform have expropriated private property either with inadequate compensation or without any compensation.”

Sir, I go to other parts of the world, the entire civilised world. There individual ownership is recognised not only in the civil law of the entire civilised world, but also in the international laws, both in times of peace and of war. It is stated in that authoritative work that even in peace treaties following World War one principle that was respected by the Nations was the inviolability of private property. So far as the civil law is concerned, the French Civil Code says that “no one can be deprived of his property except for purposes of public

utility and for adequate compensation” The Belgium law is to the same effect. The Italian Code says that in order to acquire property by the State, “previous payment of just indemnity” is necessary. The Spanish Code is to the same effect, namely, that compensation must be paid on a “just valuation”. The law in the South American States is similar. The German Code in article 153 says that “adequate compensation” must be given. The law of the United Kingdom is that “full compensation” must be given. The U.S.A. law says that “just compensation” shall be given.

**An Honourable Member :** You are repeating.

**Mr. Naziruddin Ahmad :** I am quoting from a very recognised authority and from a recent edition, and saying that this is the law in the whole civilized world. Should we follow the law which the civilised world is following or should we follow the Russian method of expropriation ? That is the question. So far as the present article is concerned, I wanted to insert certain words, such as “fair compensation” or “full compensation” or “just compensation”. But an Honourable Member has already moved a similar amendment and so I did not move mine as mine suggested merely verbal variations. The substantial question is whether we should provide in our Constitution that whenever there is a law for acquisition of property by the State for public purposes, we should provide therein that the law must also provide for “fair and equitable” compensation. As I said just now, up to yesterday, the law was thus, and the point would not have required any clarification. But in view of certain declarations in the House and the language of certain clauses and sub-clauses, I think this clarification is very necessary. In fact if we really want to expropriate private property for public purposes without compensation or with a nominal compensation, that should be stated fairly, fully and openly. Instead of that there is the provision for payment of compensation. It leaves the Provincial Governments free to expropriate land on a nominal compensation. The article provides a loophole, a linguistic loophole, through meaning in civilised countries all along has been the same.

I submit that compensation should be full, fair, just or adequate. If we do not state it, these will be serious mischief committed against private property. If we do not respect private property all talk of fundamental or constitutional rights will come to naught. We have already passed article 13 where in sub-clause (f) of clause (1) it is said “All citizens shall have the right to acquire, hold and dispose of property.” If we allow right to acquire, hold or dispose of property it follows that if anybody took it full price should be given.

We hear of nationalisation. If nationalisation is to be effected free of cost, it would degenerate to a kind of cheap nationalism. It would be just adding to the practical ruination of our credit structure which we have already succeeded in achieving. If we go to the public for subscription to large limited companies for industrialisation there is no credit and no money. Our capitalists are gone. Now we have been driven to go to the foreign markets not only for loans of very big sums but also to induce them to open commercial undertakings in our country. There are the glaring examples of some clauses in the article which stare us in the face to which I shall draw the attention of the House. Will any foreigners, who are to be credited with a little shrewdness and business acumen, think of investing their money in industrialising our country whereby they stand to lose in two ways ? They will stand to lose or partly lose through expropriation their capital and capital appreciation, if their business is successful, and then by helping India to be industrialised they lose their own business at home. In such circumstances there is a double check upon flow of foreign business in India.

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Then there is clause (5) of article 13 which limits to a certain extent by prescribing certain restrictions. The only restriction mentioned is "reasonable restriction on the exercise of any of those rights for the general public." The only condition is that I must not "exercise" my rights over property to the detriment of the public. Rights to property are never contemplated in article 13. I submit that article 24 will go directly against article 13 in this respect. However, as I said in the course of the debate earlier, in connection with a point of order, we have a right to be inconsistent. The point of order raised was no real one. It was only a glaring piece of injustice to which the honourable Member put his finger in raising the point of order. If we adopt clause (4) of the article then serious in-justice will be perpetuated. Hence I opposed the honourable Member who raised the point of order. But I fully sympathise and agree with him and lend my feeble support to his view that this clause is a most pernicious one which will perpetuate injustice on a large scale.

Coming to the vital matter which lies concealed behind these amendments is the question of the abolition of the zamindari. Somehow or other some persons think that zamindari property is no property at all and they should be expropriated without any mercy or compensation on the absurd ground that it would be for the benefit of the public, as if the zamindars do not form part of the public at large. I might state here frankly that I am not a zamindar and I have no interest in zamindars at all.

**Shri Biswanath Das :** I think you are zamindar.

**Mr. Naziruddin Ahmad :** Mr. Das says that he thought that I was a zamindar . . .

**An Honourable Member :** He might wish you the pleasure of the thought.

**Mr. Naziruddin Ahmad :** Mr. Das thinks of many things which are unreal. I was a very petty zamindar but I sold away my interests 5 or 6 years ago, for I saw what was coming. Today I am independent, free and dispassionate, a man having absolutely no interest in that question. I am safe and happy. But those poor zamindars who believe in the stability of the law of the land are today sadder, though wiser. In this business we should proceed upon constitutional principles—of rights of property and so on. If it is necessary that zamindari should be acquired, of which there is no doubt, all that I claim is that proper compensation should be paid. When the Bank of England was nationalised full compensation was given to the shareholders. In India when we nationalised the Reserve Bank the full market price was given, though at a time of depression. The question is, does zamindari property differ from other properties so as to receive this step-motherly treatment? The zamindars are small in number and are scattered. They have tenants to contend with and the Government find themselves in the happy position that they can kill them without anyone weeping for them. If we destroy civil rights the effect of it would be that it will recoil on us in no distant time.

With regard to zamindari property we should know what it means. There was nothing like a zamindar during the period of the Hindu kings. During the Muslim period they were unconsciously created as a matter of administrative necessity. On account of the exigencies of the situation military governors were despatched to distant corners of India to maintain law and order, to maintain military outposts and to maintain themselves out of the revenues of the local areas.

**Shri Biswanath Das :** We all know the history.

**Mr. President :** The honourable Member should remember that we have to finish the discussion of this article tonight. All this discussion may be interesting but let us confine ourselves to the article.

**Mr. Naziruddin Ahmad :** All that I am emphasising before the House is that zamindari property is like any other property. Zamindars were unconsciously created by the Moghul emperors in order to make it easy for them to realise rents to maintain themselves out of them and many people volunteered to collect rents. From these beginnings the zamindaries were formed. Zamindaries were transferable like any other properties and for the speedy realisation of revenue the early British administrators provided for the sale of the zamindaries for arrears. Zamindari is like an ordinary property. The present body of zamindars have paid for them with hard money. Therefore, if we can confiscate zamindari property without sufficient compensation, we would also confiscate any business concern or limited company on the alleged ground that they will be for the 'benefit of the public.' There are many properties or business concerns which come to people like windfalls. If they have acquired any right even by a windfall, should that be any reason for confiscating such property for the benefit of the public without paying compensation? I submit not. Then why is it that in the case of zamindari property this distinction is being made? I have in amendment No. 406 put a limit to the payment of compensation. I have put it at 12 times the estimated net annual income of the zamindar. In fact, the ordinary rule of valuation of such properties is twenty times on a 5 per cent. income basis. But I would put it at 12 times the annual net profit. That would be a via media between utter confiscation and . . . .

**Shri Biswanath Das :** On a point of order, Sir. We are not discussing the question of compensation; we are discussing amended article 24 wherein authority is being provided for legislation to be undertaken. There is therefore, no need for all this.

**Mr. President :** The honourable Member wants to limit the discretion of future legislation with regard to compensation by laying down a certain figure and I think he is perfectly in order in doing that.

**Mr. Naziruddin Ahmad :** I am grateful to you, Sir, for this clarification. Mr. Biswanath Das has not followed the amendment or my speech. I want to limit the payment of a minimum compensation to 12 times. For instance, in the U.P. they desire to pay 8 times. I want to make it 12 times. The U.P. legislation has another loophole. Out of the income, the estimated agricultural income-tax is to be deducted. The estimated agricultural income-tax has been introduced recently. It comes to half or even more than half in the higher regions of income in the case of big zamindars. In that case, 8 times the annual income would actually mean something like 4 times the annual income. This 8 times is an exaggerated and illusory figure. In reality it is much less. So I wish to put a limit by means of proviso to clause (2).

The other point to which I wish to draw attention is the deletion of clause (4). If we keep it, the effect will be that any law which has been passed and receives the assent of the President will be regularised, but any law which has not been passed or may be passed hereafter will not stand in this advantageous position. So the Provinces which have passed the law before will be in a more advantageous position. They will not need to pay compensation as required in clause (2). Why should this distinction be made between Provinces who were first in the run and those who were late? The principle of compensation is binding on all. There should be no discrimination between one Province and another on the mere ground that it has come earlier.

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With regard to another amendment,—to clause (5)—it amounts to certain verbal alterations to give effect to the principle I have chosen to submit.

Then there is an amendment to clause (6) which will also seriously affect the compensation question. This clause says that laws which have been passed within one year would be valid notwithstanding clause (2) of this article, *i.e.* notwithstanding it provides for even no compensation at all. These matters centre round the payment of adequate compensation. If we really do not pay adequate compensation, it will be injustice committed on a large scale and clauses (6) and (4) are so worded as not to give obvious and necessary information. One has to guess the object of these discriminatory provisions. The real purpose has been left concealed. If the principle of compensation is binding on one Province, it should be binding on all. If any Province has made any law which would contravene this principle, to that extent it should be *ultra vires* and void. We are inserting article 24 in the Fundamental Rights Chapter and in clause (2) we have provided that whenever any law is passed which contravenes wholly or partly the fundamental principles of these articles, the law would to that extent be void. Why should therefore there be any exception in the case of Provinces which have disregarded the principles of clause (2) ? These principles are immutable and must be respected in all cases, and if there has been any violation it has been a deliberate violation of a sound principle and should not be excused. I submit that the law of compensation should apply to all equally. I regret very much that I have taken a little more time than I might have, but I believe that the case goes without much attention in the House and that is my excuse for speaking at length.

**Mr. President :** Amendment 409—Mr. Bharathi.

**Shri L. Krishnaswami Bharathi** (Madras: General) : Not moving.

**Mr. President :** Amendments Nos. 416, 417 and 421 are covered by amendments which have been moved already. 423.

**Shrimati Purnima Banerji** (United Provinces : General): Sir, I beg to move:

“That in amendment No. 369 of List VII (Seventh Week), in sub-clause (b) of clause (5) of the proposed article 24, after the word ‘property’ the words ‘or for ensuring full employment to all and securing a just and equitable economic and social order’ be added.”

Sir, the object with which I move this amendment is to give effect to some of the principles and clauses which we have already passed when laying down the Directive Principles of State Policy. There we have stated that the State shall endeavour to secure a society in which justice, economic, political and social, shall inform all the institutions of the State. We have already said that an adequate means of livelihood to men and women shall be provided and the economic resources of the country shall be so handled as to avoid concentration in the hands of a few and to avoid its working to the detriment of the common people. At that time when these clauses were under consideration we also felt—and some of us felt very strongly—that in the Fundamental Rights the right of livelihood, the right of earning honourable bread, should be guaranteed to all people. But at that moment we realised that in order to do that a new order of society will have to come into being which possibly will take some time and therefore the right of livelihood was included in these Directive Principles of State Policy. We consider these Principles to be absolutely essential and in fact our guiding star in the future. For that reason, if provisions are not made in this article dealing with Property Rights and the economic policy of the future State is in any way fettered and made rigid, we feel that we shall not be able to succeed in these articles which we have already passed.

Mention has been made of the U.P. legislation, the Abolition of the Zamindari Bill. Perhaps some of us recall that at that moment we had also passed a resolution saying that the U.P. Assembly stands committed to the principle of abolition of capitalism. If that resolution has to have an effective meaning and if we are to see that the country does develop upon such lines as will harness the resources of the State for the common benefit, it is most essential that when public good should so demand we should be able to do so. Provision should be made that compensation should be paid, as it has been proved that we are all anxious to pay compensation, but if we are not able to do so, the clause should provide the taking of property without it. We are all anxious to see that a peaceful transference of society takes place and therefore there is no fear of our expropriating anyone. As you see, the U.P. Abolition of Zamindari Bill not only gives the zamindar compensation but also gives rehabilitation grant. So it proves that it is not in a vindictive spirit that the House in the future may or will function or the new order that is to be created will be pursued in any arbitrary way. If in keeping with this spirit an occasion should arise, as it may arise, when the capitalist system prevalent in the country should be taken in hand for the common good, a provision should be here so that this Constitution may provide for all future development and thus command proper respect from the people and may have in it the seeds of that future development upon which the welfare of our country depends.

With these words I move.

**Mr. President :** Amendment No. 424 is already included in some amendment. No. 428.

**Shri Kala Venkata Rao (Madras: General):** Sir, I move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words ‘one year’ the words ‘eighteen months’ be substituted.”

I will give my reasons in the end after speaking about another matter which is connected with this clause. I think it was Machiavelli who said that one will excuse the murderer of his own father but not the person who will take away his property. Perhaps that is the reason why there is so much discussion about this subject here and elsewhere. Property is not of a single species; property is of various species. I may particularly point out to you Sir, and the honourable Members, that clauses (4) and (6) of this amendment refer to a particular species of property, namely zamindari property. I really feel that the word “property” should not be applied to this particular species at all, because when the *sanad* was granted in 1802, or earlier than that in Bengal when the Permanent Settlement was introduced, the *sanad milkiyat intimrari*, gave the right to the zamindars to collect the rent only. They were only mere agents to collect the rent and were asked to pay a portion of it as *peshkash* to the Government. Therefore the belief that the zamindars have got a right of property in this business is far from the truth. It is a well-known maxim that nobody can confer on someone what he does not himself possess. From time immemorial the tradition and the law of this country has been that the tiller of the soil, or the society of which he has been a member, is the owner of the village or the particular holding. Therefore, when only the right to collect the rent was conferred on the zamindar it can never be said that a kind of property was conferred upon these gentlemen because the grantee himself had no proprietary right in that land.

Secondly, even this right to collect rent was restricted even from the beginning. Regulation No. 25 of 1802 in Madras granted the *sanad Milkiyat Intimrari* on the 13th of July 1802. On the same day four other Regulations were issued. Regulation No. 30, called the Patta Regulation, definitely said that the rent that was to be collected from the individual Pattadar should be

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the same as it existed on that date and should not be altered. The word “unalterable” was used in the Regulation No. 30 of 1802. These Regulations having been promulgated on the same day and by the same government, we have to draw the conclusion that while the *sanad* granted him the right to collect the rent, another Regulation of the same day stated that the rent to be paid by the particular pattadar, should not be increased by the zamindar. This was made clear after a long struggle, by Regulation No. 5 of 1802 which definitely said . . .

**Shri Alladi Krishnaswami Ayyar** (Madras: General): On a point of order, Sir, are we just now interested in going into the whole history of zamindari with reference to a consideration of clauses (4) and (6) of the draft article ?

**Shri Kala Venkata Rao :** The question has been asked on the floor of this House as to why there should be any discrimination as is shown in clauses (4) and (6) regarding zamindari property. My submission is that ‘zamindari’ is not a property at all and therefore it should be discriminated from the other types of property. From our knowledge of history and the zamindari legislation I assert that it was never deemed to be real property, as we know it to be in some other categories.

I will illustrate this. And I am telling you what His Excellency our present Governor-General said when he took part in the discussion on the Estate Lands Committee report in the Madras Legislative Assembly in 1939. Say that I have a house in a village near Delhi. I passed, say B.L., and was coming to Delhi for starting my practice. I gave that house on rent to Mr. Munshi saying “you please pay me Rs. 8 as rent every month”. But as I was just leaving I met Mr. Krishnaswami Ayyar and I said to him “please collect Rs. 8 from Mr. Munshi every month and send me Rs. 6 and for the trouble you take please take Rs. 2 as commission”. After ten years I returned to my place and found that there were few tiles on the roof or no cement at all on the flooring. Then I asked Mr. Munshi “How is it you have kept my house in bad repair though I gave it to you for a small rent of Rs. 8 ?” Mr. Munshi said to me “I was paying Rs. 24 as rent for this house all along and Mr. Krishnaswami Ayyar has all along been collecting it”. This increase of rent from Rs. 8 to 24 was unauthorised and has been pocketed all along by the gentleman whom I requested just to collect the rent. The result was that neither the owner of the house nor the tenant thereof got any benefit out of the increase. The gentleman who was mere rent collector has been pocketing this difference of Rs. 16. If Shri Krishnaswami Ayyar gets what is called property in this transaction the zamindars also have property.

In Madras, in the year 1802 the total rental of all estates was Rs. 72 lakhs of which 48 lakhs were paid to the Government as *peshkash*. Now the zamindars of Madras are collecting Rs. 219 lakhs as rent, but pay the same 48 lakhs as *peshkash* even today. I therefore say this is no real property as we ordinarily know it and so should be treated on a different footing.

Then I have to mention in this connection that the zamindar did not also always discharge his obligations as were fixed in the *sanad*. It has been laid down that he must maintain irrigation works, etc. He never did anything of the kind. All the irrigation works are in disrepair and everywhere rent was increased nonetheless without any benefit coming to the ryots. Mr. Veblen defined what a ‘vested interest’ in property means as “a marketable right to get something for nothing”. We could have terminated this authorisation to collect rent by issuing a notice but we are giving compensation and therefore be ought to thank us. Many of the zamindaries were created at the time of the decline of the Moghul rule when jungle law prevailed. We want today to

compensate them under the rule of law. Bihar has to pay 130 crores; United Provinces has to pay an equally big sum and Madras has to pay about  $15\frac{1}{2}$  crores. All these sums will go to the zamindars just because they possess some sanads. We are not treating those sanads as mere scraps of paper. As a matter of fact. We are treating them as scrips. We are paying for these scrips a value related to their history and based on equity. Therefore I maintain that from every point of view we have to treat this species of property called the zamindari right as one different from the ordinary type of property, which we come across ordinarily.

Section 299 of the adapted Government of India Act has practically been redrafted as the present article with only a few alterations. The only main change is the dropping of the word 'payment'. It has been held by an eminent jurist that as long the word 'payment' is there, we have to pay compensation only in the legal tender of the country and therefore in cash. Therefore many of the provincial legislatures have to suffer. Now under this clause the amount can be paid in bonds. So, the provincial Governments can reconsider the question of paying the first instalment of compensation at an early stage. As a matter of fact, it will benefit the provincial governments to pay like this in bonds, particularly in Madras where section 50 makes liberal provision for interim payments. If there is an estate with an income of 6 lakhs, the sum of one lakh will be the basic annual sum. We have to pay this one lakh till we pay the total compensation without counting these payments as part of it. If we pay in money or bonds now we will gain much in the shape of interest.

**Mr. President :** I would remind the honourable Member that we are not discussing the Madras Bill here.

**Shri Kala Venkata Rao :** I am only illustrating Sir.

**Mr. President :** I know that he was Revenue Minister there and knows more about that Bill than anybody here. But he need not give the benefit of that knowledge to this House. He may confine himself to the article.

**Shri Kala Vetkata Rao :** I will just conclude Sir. Instead of paying at the rate of one lakh of rupees as interim payment for some years we will be paying Rs. 30,000 only as interest on bonds.

I would like to say one thing more. The right of Parliament to fix compensation or the principles of compensation must be kept sacrosanct. Only when a fraud is committed on the Statute the courts can interfere in the matter.

Sir, as you pointed out, I am not justified in going into all these details. I was only trying to point out that the zamindari property is a different kind of property and therefore it has been rightly treated so in clauses (4) and (6) of this article.

I want in this connection to tell my friends what Mr. Fosdick said "History's current is sweeping us into the future and the illusion that security is dependent upon the absence of change is perhaps the most dangerous form of imbalance which plagues the mind of men". With these few words I request the honourable Mover to accept my amendment to substitute 'eighteen months' for 'one year' in clause (6), for the simple reason that if the Constitution does not come into force on 26th January 1950, there may be some difficulty for the Madras Bill which received assent in March 1949. If the mover accepts my amendment that anticipated difficulty can be removed. Mine is only a formal amendment and I request the honourable Mover to accept it.

Thank you, Sir.



**The Honourable Shri Krishna Ballabh Sahay** (Bihar: General): Sir, I do not move my amendment. My purpose will be served if the honourable Mover will see his way to accept the amendment moved by Shri Kala Venkata Rao.

**Shri Jaspat Roy Kapoor** (United Provinces: General): Sir, I move:

“That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added :—

‘(7) The provisions of clause (2) of this article shall not apply to any property belonging to evacuees to the Territory now included in Pakistan and declared as evacuee property by any law promulgated to deal with such property in the event of failure of any agreement being arrived at between India and Pakistan on the subject of property belonging to evacuees to both the countries.’ ”

The word ‘communities’ is a mistake for ‘countries’.

Sir, on the same subject there is another amendment which I have tabled, No. 510. It reads thus :

“That in amendment No. 369 of List VII (Seventh Week), after sub-clause (b) of clause (5) of the proposed article 24, the following new Sub-clause be added:—

‘(c) the provision of any law already enacted or which may be enacted for the administration or disposal of any property which may under or for the purpose of the law be regarded as evacuee property.’ ”

Sir, I had occasion to discuss both these amendments with the Honourable Shri Gopalaswami Ayyangar and as a result of that discussion, we have come to the conclusion that the purpose of these amendments will be well served if amendment No. 510 is slightly amended and I therefore seek your permission, to move this redraft.

**Mr. President** : Read out the Amendment.

**Shri Jaspat Roy Kapoor** : I move:

“That in sub-clause (b) of clause (5) of the proposed article 24 the word ‘or’ be added at the end.”

This is only a formal thing. The substantive thing follows—

“That after sub-clause (b) of clause (5) of the proposed article 24, the following sub-clause be added :—

‘(c) the provisions of any existing law made or of any law that the State may hereafter make in pursuance of any agreement arrived at with a foreign State or otherwise with respect to property declared by law to be evacuee property.’ ”

**Mr. President:** Yes, you can move it.

**Shri Jaspat Roy Kapoor** : Thank you, Sir. The other amendment that stands in my name is amendment No. 488.

**Mr. President** : What about 511 ?

**Shri Jaspat Roy Kapoor** : I do not propose to move it. The amendment that I have just now moved with your permission will take the place of 510 and 433. Amendment No. 488 which stands in my name reads thus:—

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the word ‘determined’ the words ‘and given’ be added.”

**Mr. President** : This is already covered.

**Shri Jaspat Roy Kapoor** : I am sorry, Sir. The other amendment which stands in my name is No. 495. Sir, I move—unless it is already covered by any amendment previously moved—

**Mr. President** : I do not remember. You may move it formally.

**Shri Jaspat Roy Kapoor :**

“That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words ‘unless such law having been reserved for the consideration of the President has received his assent the words ‘has received the assent of the President’ be substituted.”

Then there is another amendment, No. 508. Sir, I move—

“That in amendment No. 369 of List VII (Seventh Week), sub-clause (a) of clause (5) of the proposed article 24 be deleted.”

I must confess, Sir, that I am feeling very unhappy, and I believe I am expressing the view of many other Members of this House because I am sure they also feel unhappy, at the manner in which this question of compensation is being dealt with and the long debate that it has necessarily given rise to. This subject of compensation has not been placed before us as a new subject. It has been engaging the attention of the country for the last so many years. It has been discussed thoroughly in the country by various political parties, in the press and on the platform, it has been discussed here in the Constituent Assembly, while we were discussing the report of the Fundamental Rights Committee, and we have—all the political parties in their own way, the government of the day, the Prime Minister and the Constituent Assembly—all have reached definite decisions on the subject, and all that remained for us or for the Drafting Committee was to draw up an article in consonance with those definitely accepted principles and commitments.

But unfortunately we find that in the article now presented to us, all those things, to a very large extent, the whole question has been thrown open again for discussion and final decision. A point of order was raised by my Friend, Mr. Symanandan Sahaya but that was disallowed by you, Sir; but apart from that being a point of order, there was very great substance in his submission that a good portion of this article includes things which run contrary to the decisions arrived at even by the Constituent Assembly.

Let us see, Sir, what are those various things that have been discussed in the country and by the Constituent Assembly also and on which final decisions have already been arrived at. So far as the Congress is concerned, the government is concerned, the Honourable the Prime Minister is concerned and this House is concerned, these three things have already been decided : No. 1, that the zamindari system shall be abolished; No. 2, that just and equitable compensation shall be paid to those from whom these zamindari rights are acquired; and No. 3, with regard to any other property that we acquire, just and fair compensation shall be paid. These are the three things that have been decided, to which the Congress is committed. This was what we put down in our election manifesto. This is what was also incorporated in the resolution of the government as announced from the floor of this House on the 6th April, 1948. This again is the thing which was declared by the Honourable the Prime Minister on the floor of the Parliament on the 6th April, 1949. Not only this, during the course of the statement made by the Honourable the Prime Minister on the 6th April, 1949, he went further to assure the foreign investors that not only would they be given just and fair compensation for any industrial- concern of theirs that shall be acquired but that necessary facilities would also be given to them for the transmission of their money to their own country. These are the commitments of ours, of the Constituent Assembly, of the Government and of the Honourable Prime Minister.

Now, Sir, it does appear to me and I am sure it must appear to all other Members here that it is not fair, not proper, neither desirable, to go behind either wholly or even partially what we have already stated and promise in

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the past. Let us see, Sir, whether this article is in conformity with what we have decided or whether there is any departure from those commitments of ours. If there is any departure from these commitments of ours, surely this should not be accepted by us.

In clause (2) while it is conceded that no property shall be acquired without compensation therefor being determined, it does not say that the compensation shall be fair, just and equitable, the three essential words which we have always been using in our election manifesto, in the decision arrived at here and in the Honourable Prime Minister's statement and the Government's statement on industrial policy. These are essential words, Sir, and I see no reason why they should not be incorporated here. If it is contended that they are redundant and unnecessary, I do not think it is correct because these words have been deleted after due, deliberation and discussion and with a definite purpose. I submit, Sir, that it should not be so. It was, in one of the amendments that stood in my name, which, of course, is now barred by another amendment which is moved by another honourable Member and I desire that at least the word "equitable" should be inserted before the word "compensation". I was agreeable to delete the words "just and fair" even, because it appeared that feelings are running, very high on this and in order that it may not appear very irksome to some of our friends to incorporate them here. Of these three words, I thought if we have only the word "equitable" it may be acceptable to them and it may improve the draft at least to some extent. I do not see any reason, Sir, why at least the word "equitable" should not be placed before the word "compensation". After all, what is the intention of the framers of this resolution or of the honourable the mover of this article? Is it not his intention that an equitable compensation is paid? If it is his intention, then let the word be there; and if it is not, it is going behind our professions, assurances and commitments. It is said that if we insert the word "equitable" here it would become justiciable. Why should we be afraid of anything being justiciable? The Honourable the Prime Minister had said with very great enthusiasm and very loudly that "we are determined to stand cent per cent"—that was the expression used by him—"by all our commitments". I want no more than this and no less than this. If you make a statement with a good deal of enthusiasm, it does not convert anything into a fact, if really it is not. What were our commitments? That we shall abolish the Zamindari. Well and good. That we must reserve to ourselves the right of acquiring the industrial property. Well and good. But what about the third of the commitments which is given the go-bye, that we shall pay "fair, just and equitable compensation"? It is only 66 per cent. at best of the commitments that we have made: Out of these three, only two are accepted now. The third is thrown to the winds. I submit, Sir, it is not correct to say that we are prepared to abide by our commitments cent per cent.

Now, Sir, I was submitting, why is it that we are afraid of making these justiciable? I have faith in our legislatures; I have faith in our Parliament and I am sure that at no stage any State Legislature or our Parliament will enact any law whereby any property would be taken away for public purposes without provision being made for an equitable compensation being given. Well, if we really mean to give equitable compensation, why should we think that the judgment of a court will go against what we shall be providing in the law? Surely we should not think so. The word "equitable" is a very flexible one. What is equitable today may not be equitable tomorrow. "Equitable" as I understand, is something which is equitable in accordance with the existing political theories, the existing accepted economic principles of the society, and surely our judges and our courts of whom we have very satisfactory experience would never fail us. Have we not seen that the interpretation of the same

law has been different by different judges from time to time in accordance with the accepted political and economic principles of the day? Take, for instance, the case of the law of sedition. The particular section of this law is the same now as it was ever before. But then in the year 1906 in the days of Lokmanya Tilak the interpretation of the law of sedition was something entirely different from what the interpretation of it is today. What was sedition then is, now merely a criticism of the Government and even a fair criticism and is not only tolerated, but even encouraged not only by the courts but even by us here. My submission is that our judges have always interpreted laws in accordance with the needs of the society and in accordance with the accepted political, economic and social theories of the day. To take one more illustration, judgments in and interpretation of Hindu law have been changing with the changing views and needs of the society. I need not dilate further upon it now. Sir, I submit that there is no reason why we should be afraid of making all these provisions justiciable.

Then I submit, Sir, taking the worst into consideration, if a particular Bill, a particular Act is taken to a court of law by any person to test its legality, what will happen? If we provide in an Act that we shall pay Rs. 100 for the acquisition of a certain property and if the court of law declares that Rs. 100 is not equitable and it adjudicates that it should be Rs. 125 or Rs. 150, we do lose nothing, because the framers of this article have taken jolly good care to provide clause (b) to clause (5) wherein they say : “Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect—

- (b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying *any tax* or penalty or for the promotion of public health or the prevention of danger of life or property.”

I draw your attention particularly to the words “for the purpose of imposing or levying any tax”. Now this is a very big right which you are reserving to yourself. If in the place of Rs. 100 the court adjudicates that you must pay Rs. 150, why not say “Thank you, my Lord, we shall pay Rs. 150” and then come back and enact a law under clause 5 (b) saying “thirty-three per cent. of that shall be taxable” and realize that Rs. 50 by ‘way of taxes. I, therefore, submit with these powers reserved to us under clause 5 (b), it is absolutely unnecessary for us to be afraid of making the whole thing justiciable. It is what we say : “Gunah belazzat”. Why have the odium of all this? Why expose yourself to the charge that you are afraid of making your law justiciable? We have nothing to gain thereby and everything to lose. I would, therefore, submit that the word “equitable” at least must be added before the word “compensation” and certain consequential amendments in clause (2) may also be made, notice of which I have already given, but the consequential amendments are a minor matter.

Coming now, Sir, to clauses (4) and (6) which are sought to be incorporated in this article, what do we find? The first impression of a man who reads these two clauses is that they are something which are difficult to understand. Of course, we who know what really is behind these clauses can understand the reason and the motive behind them. But, if a foreigner were to read these two clauses, he would simply rub his eyes in wonder and enquire what is the logic behind these, what is the reason behind these? He may even say, what after all is the sense behind these?; for what purpose they have been incorporated? Clause (4) says: “If any Bill pending before the Legislature of a State at the commencement of this Constitution etc. Why should there be a particular sanctity attached to a Bill which is merely pending in a legislature on the date on which this Constitution comes into force? There is no logic behind it; there is no reason behind it. It is merely an arbitrary thing.

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Then, Sir, clause (4) makes a distinction between one State and another. It makes a distinction between a State which has a legislature and a State which has no legislature. We know that we have several States which have no legislature. If a Bill is pending in the legislature of a State, it will have the benefit of clause (4). But, if there is a State which unfortunately has no legislature, it cannot have the advantage of the provisions of clause (4). To make a distinction between one State and another certainly appears to me to be something ridiculous. Not only that, Clause (6) makes a distinction between a State which has a Governor and a State which has no Governor. Clause (6) says, "Any law of a State enacted not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor, of the State to the President" so on and so forth, and thereafter, if the President certifies that Act, it becomes very good law and the whole of the provisions of clause (2) may be nullified thereby. But if a State has, unfortunately or—I do not know—fortunately, a Ruler and not a Governor, that State even though it may have enacted a law heretofore or may enact a law tempted by these provisions, between now and January 26, 1950 on which date this Constitution is to come into force, that State cannot take advantage of the provisions of clause (6). Why this distinction? Is it our intention to encourage a revolution in those States? Is it our intention to ask the citizens to somehow stage a show-down and get a Governor so as to be able to take advantage of the provisions of clause (6)? Several honourable Members who are representatives of the States are very sore on this count and rightly, because they say "we also want to abolish Zamindaries in our States; we also want to abolish jagirdaris in our States; but we have neither a legislature, some of us; nor have a Governor." While a State having a legislature and a Governor can appropriate Zamindaries and industrial property by merely enacting a law between now and 26th of January 1950 without making the slightest provision for compensation—for that after all is the implication of clauses (4) and (6), your intention is a different thing—the States which have neither a legislature nor a Governor have no right to do that. Why this invidious distinction? Not that I want that they too should have the same right; but I am only submitting how absurd is the insertion of clauses (4) and (6) in their present form. (An honourable Member: Question).

There is one more defect in clauses (4) and (6), as I have already submitted, the intention of the framers in clause (4) is to safeguard the U.P. Zamindari Bill and the intention of clause (6) is to safeguard the Madras and Bihar Acts. If you had put it down specifically there, it would have been an evil only to that extent. You do not say that specifically; but you make this provision in a general way which means that any other State or even the States of U.P., Madras and Bihar may enact any law whereby they can take to themselves the right of appropriating the Zamindaries or any property whatsoever without making provision for the payment of one single cowrie. After all, that is the implication of these clauses. It is a different thing that in your fairness you may not go to that extent; but the law must be clear and definite on that subject.

One impression that we create on everybody's mind by having this article in this way, particularly by having clauses (4) and (6), would be that the period between now and the commencement of the Constitution is going to be one of the darkest periods in the history of India. Is the pre-republic period in this country being made so dark that the subsequent period after the republic comes into being must appear to be very bright? That period will indeed be bright in itself. It is no use making the pre-republic period, a period of five months or so, appear so dark and gloomy and arbitrary. I submit therefore that it looks very ridiculous to have particularly these clauses (4) and (6) in the Fundamental Rights. These do not give any fundamental rights; in fact,

they are a negation of the fundamental rights, which we have already adopted while adopting the Fundamental Rights Committee's report. With your permission, Sir, I would like to read the resolution adopted along with the report of Fundamental Rights Committee.

**Mr. President** : I would ask the honourable Member to finish.

**Shri Jaspat Roy Kapoor** : I am finishing, Sir; I will not take more than a couple of minutes.

I shall not even read; that honourable Members know that only too well. I will proceed immediately to my next amendment which seeks the deletion of sub-clause (a) of clause (5). Sub-clause (a) of clause (5) says : "Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect : (a) the provisions of any existing law." May I ask, what is the necessity for this sub-clause ? What are the existing laws which are in contemplation ? I know of one law, and that is the law relating to the acquisition of landed property, take Land Acquisition Act. So far as that Act is concerned, it is certainly in consonance with the provisions of clause (2), because, that Act specifically lays down the basis on which property must be acquired. That Act needs no safeguarding by this clause. Which other Acts are intended, I do not know. I certainly would wish that it must be made clear as to what other laws there are in force today in this country which are intended to be safeguarded by this clause. Is there any other law the provisions of which are not in consonance with the provisions of clause (2)? I am not aware of any; though I cannot venture to hazard an opinion on that subject being no expert on legal matters, I want to seek enlightenment on this subject from the honourable the Mover of this article as to what are those particular laws which he has in view and which he wants to safeguard. Even if there be one, the provisions of which are not in consonance with the provisions of clause (2), why should that Act be safeguarded ? The object of this article 24 is to make provision for Fundamental Rights. They are to be safeguarded and not any law which strikes at the root of a fundamental right.

I, therefore, submit that these clauses must go. Otherwise, it will encourage States to rush in for laws to appropriate property without any fair compensation during this intervening period, for all these laws will be considered to be existing laws on the date on which this Constitution comes into force and will be beyond the scrutiny of a court of law.

Lastly, I come to my amendment relating to evacuee property which, in fact, is the most important of all the amendments. Though it is the most important of the amendments, I would not dilate upon it, firstly because it is rather a very delicate subject, and secondly because I am glad it is going to be accepted by the honourable the Mover. One word only about it, I will say. Our refugee brethren who have come over from Western Pakistan have left their property worth about 1,500 crores and the evacuee property in this country is worth about 500 crores or so. Delicate negotiations are going on between this country and Pakistan and they are being carried on by no less able a negotiator than the Honourable N. Gopalaswamy Ayyangar. So far, he has failed to bring about any settlement on this issue in spite of his accommodating nature, in spite of his reasonable attitude, in spite of all the greatness he has in him. So far, he has to persuade Pakistan to come to a settlement, on this question. Perhaps a settlement may be found or it may not be found. In either case it is necessary that any law that we may be under the necessity of enacting hereafter and all the existing laws and Ordinances on this subject must be beyond the pale of the provisions of clause (2), because if it is not so, when unfortunately at a subsequent stage in the event of no agreement being arrived at, we have to appropriate evacuee property, not only then we shall be losing all the property of the refugees to the extent of 1,500 crores but we shall

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be compelled under clause (2) to pay compensation to evacuees also. Therefore I submit it is necessary, and since it is going to be accepted I need say nothing further on this subject. With these words and with my amendment I beg to support the article which has been moved.

**Mr. President** : No. 474—Mr. Ibrahim. I would remind honourable Members that we have to finish this article tonight whatever the time taken and I would request them to cut short their remarks as far as possible.

**Mr. K. T. M. Ahmed Ibrahim** (Madras: Muslim): Sir, I move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, the following be added at the end :—

‘and except on payment of fair and equitable compensation based on the market value of the property.’ ”

I also move :

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words ‘provides for compensation’ the word is ‘Provides for fair and equitable compensation based on market value’ be substituted.”

Article 24 lays down a vital fundamental right and I think I am not going too far in stating that the entire economy of the country depends upon the proper enforcement of this Fundamental Right. Clause (1) provides that no person shall be deprived of his property save by authority of law. That is a fundamental right which is sought to be created by this article. But the succeeding clause, *viz.*, clause (2), in effect deprives the citizen of the Fundamental Right that is sought to be secured by clause (1) because it gives to the Legislature power to determine the entire value of the right that is secured to him by clause (1). The value of any property depends upon the price it would fetch in the open market but clause (2) says that the value can be fixed by the Legislature according to its sweet will and pleasure. Then what would be the value of the property in the open market? On account of clause (2) there is bound to be uncertainty about the value of property and a sense of insecurity in the land. What would be the effect of such a sense of insecurity and uncertainty of the value of property in the economy of this country ? That is the question that arises. I would say that on account of this, clause (2) takes away almost completely what is sought to be secured to the citizen by clause (1).

Even now under the existing law we find that compensation is to be awarded to properties according to the market value of similar lands adjacent to the land sought to be acquired. That is the well-known principle of law that is being administered in this country but what would be the effect of this clause on that principle. That would be completely annulled. The Legislature can fix any amount of compensation. The scale of compensation depends upon the Legislature and the principle for awarding compensation also depends upon the Legislature. Such being the case there cannot be certainty about that value. There will be no incentive for people to invest money in lands or commercial undertakings or industries. It is very comprehensive and all sorts of properties are included in this clause with the result that there will be no incentive for people to invest in commercial undertaking or lands. That is the problem which arises out of this clause (2).

I would request the House to consider this impartially and without any passion and prejudice. This is a matter affecting the economy of the land. Will this clause ensure the confidence in the minds of people which is needed most for the success of any commercial undertaking or for the success of any agricultural undertaking? Surely not, because the whole thing is nebulous and nobody knows what value the legislature will attach to any kind of property at any time. It is only from that point of view I request the House to look at this clause and my amendment is based only with this perspective in view.

I do not think that in any part of the world compensation is awarded for any kind of property at the pleasure of the Legislature. Probably the framers of this article have been obsessed with the present question of the abolition of the Zamindari system. If you want that the Zamindari system should be abolished even without any compensation, you may frame some other article for that purpose. Let that question be not confused with the general idea of property and the general Fundamental right of property.

My Friend the Honourable Mr. Kala Venkata Rao said something about Zamindars. He proceeded on the assumption that the whole class of Zamindars comprises of only farmers of revenue; but I would remind him that that is not a proposition which can be accepted without any qualification. There are Zamindars who have been or who are descendants of Rulers and Princes and there are Zamindars who are descendants of persons who have paid full value for the lands which they originally bought from the East India Company; there are also zamindars who have paid full value to the descendants of the persons who were originally appointed as tax-gatherers. They have paid full value to them with the knowledge and with the full consent of successive Governments. Successive Governments have allowed even these farmers of revenue to treat their property as their own property and have allowed them to alienate, lease and mortgage them. Therefore are they not ostensible owners of these properties ? Have you not allowed them to sell these to others? Have they not paid their hard-earned money for these? That also has to be taken into account while you assess the compensation for these Zamindars.

Sir, I think nothing more need be said regarding the importance of my amendment. It is only intended to ensure confidence in the people and to enable them to feel that property will have full value in the eye of the administration of the country, and that properties will not be valued according to the whims and fancies of legislatures. So that there can be development of industry, development of agriculture and development of commerce. Sir, with these words, I commend my amendment to the House.

**Mr. President** : Amendment No. 475—Shri Phool Singh.

**Shri Phool Singh** (United Provinces : General): Mr. President, Sir, I beg to move :

“That in amendment No. 369 of List VII (Seventh Week), for clause (2) of the proposed article 24, the following be substituted :—

‘(2) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the toiling masses.

(2a) In the case of acquisition or taking possession of any property movable or immovable including any interest in or in any company owning an, commercial or industrial undertaking such property shall be acquired or taken possession of only in accordance with law which shall determine the cases in which compensation is to be allowed as also the amount of compensation to be allowed and the manner in which the compensation is to be given.

(3) No such law shall be called in question in a court of law on the points Stated in clause 2(a), above.’ ”

Sir, the only points that arise for consideration in this connection are, whether in case of acquisition, any compensation should be allowed, and if so, what should be the amount of compensation, and what should be the manner of its payment. The other point is, whether this right should be justiciable. This takes us to the question of private property, whether it should be an absolute right or whether it should be a right so far as it is consistent with the interests of the toiling masses. To hold that there should be no acquisition without compensation is to mortgage the future or to tie future generations so long as this law stands. Cases are quite conceivable when it may not only



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be just, but it may be necessary to acquire property without compensation. Under these circumstances, it will be best to leave it to the future Parliaments to decide as to whether compensation should be allowed in the different cases that will come before Parliament from time to time.

Similarly, the amount of compensation cannot be decided only with reference to the value of the property. There have been speakers who have even supported full compensation. I wonder why they hesitated to put in the word "market price". What is full compensation? Market price would have been the proper word. But I think if full compensation is conceded, then it is better to say that there should be no acquisition, because the few legislations that are before the different States, they alone show that if full compensation were to be allowed, there would be no acquisition.

When fixing the amount of compensation, it is not the value of the property alone but there are many other considerations that have to be taken into account. The capacity of the State to pay the compensation, the profit that the owner of the property has already derived and the purpose for which the property is to be acquired, these are only a few of the considerations that should be taken into account when making a decision as to what should be the amount of compensation. Similarly the question whether the compensation should be paid in cash or whether it should be paid at the time of acquisition or at a later date, also cannot be decided once and for all.

All these questions have to be decided when the particular case arises according to the circumstances of each case. Sir, to decide all these points once and for all is to lose faith in the national commonsense. I think those who will come afterwards and who will legislate and decide these points will take all the relevant factors into consideration, and I think it will be better not to fetter their judgment. It is for this reason that I neither take the view that compensation should always be allowed, nor support the view that there should be no compensation whatsoever. I think the best and the proper course will be to leave it to the Parliament to decide as each case arises.

The next point is about the justiciability of this right. The amendment that was moved this morning by the Honourable the Prime Minister states that only under two conditions the law passed will not be called in question by a court of law, and they are, either where legislation is pending when this Constitution is enforced, or when legislation is passed within one year of the date of coming into force of this Constitution. When this clause is applied to the facts, the position is this, that only in three cases, the cases of the U.P., Bihar and Madras, the courts will not be permitted to question the legality or otherwise of the legislation. But it does not take into consideration all the numerous States that have merged into our Union and where there are no legislatures, and consequently where it is not at all possible to introduce any legislation before the new Constitution is brought into force. It will not be out of place to say that it is probably those very States which most need such a provision as this. I therefore, suggest that it will be better to protect all such legislations, whether they be pending when the Constitution comes into force or they are introduced at a later date,—all such legislations should be protected from interference by courts of law.

I do not want to waste the time by repeating my previous argument. I think when the representatives of the nation sit, they will take care to pass a legislation which will be fair and just and if the representatives of the whole nation go wrong, I doubt if any court of law will be able to correct it. To allow a court of law to go into this question is to nullify the very purpose of introducing such law.

With these words, I commend my amendment to the acceptance of the House.

**Shri Guptanath Singh** (Bihar: General): Sir, I beg to move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24—

- (i) for the words ‘No property’ the words ‘all property’ be substituted; and
- (ii) for the words ‘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’ the words ‘with or without compensation as determined by law’ be substituted.”

If you trace the history of private property, you will be pained to find that it is a tale of awful woes, a story full of fraud, felony, exploitation, expropriation, inhumanity, injustice, treachery, torture, tyranny and tears. So, Sir, private property can briefly be described. In the words of a French writer, in a single sentence “all property is theft.” Certainly it looks very odd, but the fact is that property is theft. It has been declared and confirmed by Lord Christ, by Maharshi Vyas and Mahatma Gandhi. Sir, if you go through the Mahabharat, Shanti Parva, Adhyaya 15, Shloka 2 you will find that the Rishi has described property beautifully, plainly and frankly. He says :

ना छित्वा परमाणि, ना कृत्वा कर्म दुष्करम् ।  
ना हल्वा मत्स्यवातायं प्राप्तनोति महर्तौ श्रियम् ॥  
(महाभारत, शांतिपर्व, अध्याय 14, श्लोक 2।)

Colossal money, big capital, cannot be amassed unless and until you scratch the hearts of others, commit heinous acts and kill others by entrapping the people just as the fishermen butcher fishes by entrapping them. When I first came across this Shloka and the verdict of the French writer, I could not believe or agree to it, but gradually and gradually when I began to see the tendencies and forces working in the society, I came to the conclusion that these thoughts were quite correct. People claim compensation for their private property. If you will permit me to use Vedic phraseology, I will ask my capitalist friends and zamindar brothers :—

“कस्यस्विद्धनम् ।”

Whose property is this ? Our capitalist friends and zamindar brothers win come forward with red eyes, clenched fists and frenzied emotions and say, “Well, chap, Do not you know that the whole world dances on the tip of my finger ?”

“भामयन्सर्वभूतानि यन्त्रारूढानि मामया ।”

What is why, they will say, they are claiming compensation. But I tell you that what they claim as their private property is the property which belongs to, the nation. In Vedic parlance it may be said:

“ईशा वास्य मिदं सर्वम् ।”

All this property belong to “ईश” (Isha) and (Isha) is represented by the nation and nation is represented, by the society and society is represented by cultivators and labourers who represent the teeming millions. Thus all property belongs to the society and not to a particular individual.

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So, all the massive big buildings, mansions, and all the factories belong the nation and the society and not to a particular individual. People say that they have purchased some factories, built some buildings, and bought some lands. But I ask them where did they get the money from and how did they earn it and who erected the buildings and factories. They were erected by the teeming millions; they were cultivated by the farmers and labourers and not by those factory owners and land-lord zamindars. Therefore, these people do not deserve and cannot claim compensation for their property as a matter of right. On the merits, they have no claim, but if you examine the income of property owners, zamindars and capitalists, you will find that they have expropriated, they have consumed, they have enjoyed, several times more than the capital they invested. They have acquired and consumed lakhs of rupees. They have purchased jewelleries worth crores of rupees. They have created numerous sources of incomes.

According to Manu, the land belongs to the cultivators.

“स्थाणुच्छेदस्य केदारम्”।

The land belongs to the man who cultivates it, not to the big zamindar friend. Therefore, the claim of compensation made by our zamindar friends is not right. I ask them one single question, Will compensation for Red Fort and other things be allowed to the descendants of Moghul Emperors ? Sometime ago, I came across a news in some paper in U.P. that the descendants of Moghul Emperors had requested Pandit Jawaharlal Nehru that compensation should be given to them for their ancestral property. Is it not a fantastic thing? Have Britishers given any compensation to descendants of Moghul Emperors for the Red Fort and other massive mansions and buildings ? Numerous buildings were constructed by Britishers though the money belonged to us, but have we given anything, to them when they quitted ? These people cannot claim compensation for their property. They should not be given any compensation at all. They cannot claim it as a right but it is due to our generosity that we are allowing something to them. We have allowed compensation in Bihar, 20 times to 3 times. In Madras also the Government have allowed and in U.P. the Government are going to allow something; but as a matter of right Zamindars cannot claim any compensation. There is one thing which does not seem to me to be good.

There is some discrimination made as between abolition of capitalism and zamindaries, between nationalisation of factories and other means of production and the abolition of zamindaries. Lands and factories both belong to the same category and both must be nationalised or socialised in the course. Some provision must be made in the Constitution to abolish both these things when time is ripe for it.

Panditji has moved an amendment and made a speech. If you give the speech of Pandit Nehru to a person without telling him whose speech it is, as also the amendment moved by him, the man will say that the speech has been made by some revolutionary and the amendment has been moved by someone other than a revolutionary. Pandit Nehru has certainly a revolutionary mind but the article in its present form seems to be framed by brains controlled by sonic unseen forces.

On merit, people do not deserve compensation, but some provision must be made in the law that compensation should be given to those who deserve and for those properties for which compensation should be paid. The forces that are working in the country and the world are concentrating towards the elimination of capitalism, and the House and the country must realise this and act accordingly. Therefore I appeal to the House to accept nay amendment.

(Amendment No. 481 was not moved.)

**Shri Prabhu Dayal Himatsingka** (West Bengal: General): Sir, I move:

“That in amendment No. 369 of List VII (Seventh Week) in clause (2) of the proposed article 24, the words ‘and either fixes the amount of the compensation, or specifies the principle,; on which, and the manner in which, the compensation is to be determined’ be deleted.”

This amendment was one of several other amendments given notice of by me, but which have been moved by others. By my amendment I want to make it specific that the compensation to be paid should be fair and equitable for the property acquired. So far as the fixing of the price and the manner in which compensation is to be determined are concerned, we have already laid down in Concurrent List item 35 of the 7th Schedule that both the Centre and the States will have the right. The Prime Minister in his speech today has stated that the compensation to be paid will be equitable and fair. That has also been the considered statement of the Government in their declaration on their industrial Policy on the 6th April 1948. The same principle was repeated in the Honourable Prime Minister’s statement on the 6th April 1949 in which foreign Capital was invited.

Therefore there is no reason why the compensation should not be clearly stated to be equitable, fair or just, whatever word is acceptable to the framers of the article, so that there will be no doubt that the compensation intended to be paid will be fair and equitable if property is acquired. It is a question of creating confidence in the minds of investors and if we want the country to be more and more industrialised and that people should be encouraged to put in their money in industrial undertakings, there should be some sort of guarantee that if and when such properties or undertakings are acquired by the State a fair and equitable compensation will be paid. That will be a definite encouragement to the people, and, industrial development, also will be given an impetus. It is a psychological factor, and might act as a damper. Economic conditions are already bad and if the clause acts as a damper it will further aggravate the economic condition. Without economic improvement it will be very difficult to carry out any of the nation-building activities or other improvements we are anxiously aspiring for. My amendment is aimed at defining compensation payable for acquisition of property and I hope the drafting committee will accept it.

(Amendment No. 485 was not moved.)

**Shri B. P. Jhunjhunwala** (Bihar: General): Sir, I move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, the words ‘either fixes the amount of the compensation, or’ be deleted, and the following provisions be added at the end of the clause :—

‘Provided that in applying such Principles, due regard shall be paid to the consideration whether the property in question is being utilised by the owner or holder so as to make a definite contribution to the sum total of the country’s wealth:

Provided further that this proviso shall apply also in the case of all laws which have been passed within one year before the commencement of this Constitution and to all Bills pending at the time of the commencement of this Constitution.”

Before speaking on my amendment I wish to make a few remarks on the proposed article moved by our respected Prime Minister, the Honourable Pandit Jawaharlal ‘Nehru. There are two questions involved in this article. One is acquisition of property by the State and the other is the payment of compensation for the same.

The main principle enunciated by our respected Prime Minister, is that the interest of the individual is subordinate to the interest of the community or of the state, and no patriotic Indian should deny this principle. In other words if the interest of the state or community demands, the individual should ungrudgingly give. The whole question while acquiring the property is whether

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it is acquired in the interest of the State or not. Secondly, when the property is acquired, whether due compensation is paid to the property owner or not.

What are the circumstances under which property should be acquired by the State ? If the principle as enunciated by our Honourable Prime Minister is applied; certainly I presume that the State should acquire the property of any individual only when it is in the interest of the State but not by merely saying we want to nationalise a particular industry, and therefore we want to acquire it." Nationalisation of a particular industry may not be in the interest of the State at all. I shall just give an instance in respect of England which is such an advanced country where recently the transport was nationalised. And the report is (it appeared in day before yesterday's papers) that Britain's nationalised transport—road services, docks and waterways—ended its first year 1948 of State ownership with a loss of pound 4,733,000, and the report was summed up as unsatisfactory and prophesied that a further marked deterioration of the working result was "inevitable" in 1949.

As I have said, there are two principles which have to be taken into consideration in connection with this article. One is the acquirement of the property. My amendment relates particularly to this first principle. If any property or industry is to be acquired proper attention should be paid as to whether such principle is applied, and the State Legislature or the Parliament while fixing the principle for compensation as mentioned in clause (2) of the article should state whether and what if any advantage will accrue to the State—be it a zamindari property or an industrial concern,—and further in laying down the principle, it should be taken into consideration—as I have said here "whether the property in question is being utilised by the owner or holder so as to make a definite contribution to the, sum total of the country's wealth" or whether the owner was wasting the property along with his energy in anti-social and anti-national activities. If we find that the owners of the private owned properties or private-owned industries are making good progress in increasing the wealth of the country and have not in the past and are not indulging in anti-social activities, in that case there should not be any occasion' for the State to acquire that property, and if it is to be acquired full compensation should be given. That point has been made clear in our Industrial Policy enunciated in the Legislative Assembly where it is said that at least for ten years there are certain industries which shall not be nationalised and after ten years stock will be taken of the position as to whether there is any justification for acquirement of any industry or not and then that industry will be acquired.

If this principle is accepted, as has been accepted in the Legislative Assembly and as has been so many times made clear by our respected Prime Minister, I do not see any reason why there is so much stir among the industrialists or among the public and why the capital is becoming shy and is not coming forward for investment in industry.

The second question which is, engaging the attention of the people is, if our industry will be acquired at all, whether they shall be given proper compensation or not. On this point also our Prime Minister has said that there is no question of expropriation if any property will be required by the State. People are watching as to what this Constituent Assembly does regarding this article 24. So in moving this article our Prime Minister has made it explicitly clear that no property will be expropriated and that if any property is acquired it will be acquired by giving compensation.

The only question which remains is what sort, of compensation it will be, whether it will be equitable and fair compensation or any compensation which

Parliament will decide, and whether the decision and the principles which will be decided by Parliament will be justiciable or not. That is the only point which is engaging the attention of the public outside. There are differences of opinion on this point and I am not competent to say one way or the other. But if it is made clear that it will be justiciable, then there is no reason for any apprehension or any encroachment upon the fundamental right, as had been said by my honourable Friend Pandit Thakur Das Bhargava that this article is a sort of encroachment upon our fundamental right.

As I have said, when giving compensation the most important point which has to be taken into consideration is whether the person to whom compensation is given was utilising the property for improvement and in increasing the wealth of the country or not. That point should be included in the principle which the law lays down. If the industrialists or the zamindars have utilised and are utilising their wealth more in anti-social or anti-national work, and have outlived their utility that in my opinion should be a point which the Parliament should take into account while fixing the principle or amount, for compensation. If these points are covered by the article there is no necessity for any stir in the market.

There is a view that compensation should also depend upon the purpose for which it is acquired, *i.e.*, if it is acquired for philanthropic purpose for the benefit of the people or under any scheme, the compensation may be less. In this connection I have to say that if that point is contemplated in this clause. I do not know if it is there—a person of small means who happens to own a property which may be necessary for a benevolent purpose or under a scheme, these persons, should be fully compensated.

With these few words I support the article.

**Shri Lakshminarayan Sahu** (Orissa: General): \*[Mr. President, my amendment reads as follows :—

“That in amendment No. 369 of List VII (Seventh Week), at the end of the clause (2) of the proposed article 24, the following proviso be added :—

‘Provided that no compensation shall be payable to any owner or holder of any movable or immovable property, who, having owned or held such property for thirty years continuously immediately before the coming into force of this Constitution, has either not habitually resided within the State where such property is situated, or has not done anything to develop such property. ’ ”

Mr. President, we have stated earlier in our Constitution that we would provide social, economic and political equality to everybody. In view of this declaration that we so emphatically made to the whole world, it is our duty to consider how we can secure it and what provisions we should make for it. It is in view of that that many Members have stated that the question of property is the most important in the scheme of the Constitution. This should be decided after proper consideration.

We should first of all decide as to what would be the shape of, the free India. When we go on saying that we would abolish the class distinctions, we would not run our country on the basis of religion and that we would make it a secular State, we should think over the ways of securing these objectives. In the Directive Principles also we have stated that it shall be our duty to see that the operation of the ‘economic system does not result in the concentration of wealth and means of production to the common detriment’. When many a man accumulates vast wealth, we would scarcely be able to shape India in our way. We cannot do so. Thus we should give very deep consideration to the question. Take a few instances. Today there are big industries.

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\*[ ] Translation of Hindustani Speech.

[Shri Lakshminarayan Sahu]

In an industry, one person accumulates so much wealth; after ten or twenty years, he grows so rich that he does not regard anybody else as a man. The fact is that he begins to live in a dreamland, thinking very highly of himself and looking down upon others as petty men. This system will have therefore to be abolished. I belong to a poor family, I never put on a shirt since my childhood till my matriculation. I know what hunger is. When I was a student in the Engineering College, I had nothing to eat, so I left the College, and was on the verge of committing suicide.

I therefore wish that this matter should be decided properly. One man earns Rs. 600, or 800, or 1,000 in a day, but the average income of a person in this country is merely 6 annas daily. How then can we make the people of free India happy? People say that my province, Orissa, is a very poor province, and a very small province. Why is this so? This is the matter that needs consideration. When I talk of Orissa it may well be that some people may insinuate that it is the spirit of provincialism that makes me do so? It is not provincialism that makes me to talk of my province. It is out of sheer necessity of self-existence; I desire to live. But in order to do so I must also see as to how the people around me keep healthy and how they can live happily. I wish to tell you that all the land in Orissa has passed into the hands of the absentee landlords. They do not live in Orissa but live outside, and come there only to recover their dues. Now, if you look into the matter you would find that these people have not got their lands by spending much money. The people of Orissa lost their land through the operation of the Sunset Law. At that time the High Court was at Calcutta and not at Cuttack. Many people therefore lost their rights in land. In this way two-thirds of the land in Orissa passed into the hands of absentee landlords. How can Orissa progress in such circumstances?

I therefore wish that there should be such a provision as would ensure that the persons who have vast lands, who cannot improve them, and who have enjoyed them for 30 years should not get any compensation. We want to shape the world in a new fashion, and want to abolish capitalism at once. Even our ideal was this:—

अर्थमनर्थं भावया नित्यम्  
नास्ति ततः सुखलेशः सत्यम्  
पुत्रादपि धनभाजां भीतिः  
सर्वत्रैणा कथिता नीतिः॥

[Always take wealth as a source of great evil. Surely, it cannot impart even little of pleasure. The maxim “Those who are after riches are even afraid of their own progeny” has been proclaimed everywhere.]

This is from Shankaracharya. We used to prepare the people of this country for this ideal. Later on, however, new ideas began to pour into our country from the West, and the most powerful of this was the spirit of free competition; we had to adapt ourselves to their values. But the consequence of all this was that the poor man was ruined while the man with the means became almost like a conqueror, knowing not moral law. Might became right and the powerful acquired domination over the people and the country.

I therefore submit that keeping in view our goal of building up India, on new principles, it is our duty to keep before us the outlines of the new system, and we should think out how these ideas can be realised in the various provinces. I have suggested this proviso from the view-point of my province. I believe that you would be taking a correct decision in this matter but if you fail to do so, it will not be in the interests of my country; I have therefore suggested this proviso I wish that you consider it thoroughly.

Among the aboriginals, a system obtains that all the land is distributed equally among the people and in case somebody accumulates more land the position is readjusted after every 10 or 12 years. Our society is static. It has been standing still like the Himalayas since long, has been unmoving; it does not move. Those who joined the western new-comers began to perpetrate cruelty on their people and lowered their status. For this reason we should have a provision like this while we are constructing a new India. I want to say only this much.]\*

**Mr. President** : Mr. Mahboob Ali Baig, No. 493.

**Mr. Mahboob Ali Baig** (Madras: Muslim) : I have 482 also,

**Mr. President** : You can move that also.

**Mr. Mahboob Ali Baig** : Sir, I beg to move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words ‘unless the law provides for compensation for the property taken possession of or acquired 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’ the words ‘unless due compensation is paid for’, or, alternatively, ‘unless the law provides for due compensation’ be substituted.”

I also move:

“That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, the following be substituted :—

‘(3) No such law as is referred to in clause (2) of this article made by the Legislature of the State shall have effect, unless such law receives the assent of the President.’ ”

“Sir, the other amendments have been covered already and therefore I do not propose to move them, but I will offer my comments on them. Sir, my amendments have a two-old purpose. The first is that they seek to declare the right of a person to property as fundamental in character, independent of the legislature or any other authority. Secondly, my amendment seeks to declare this right justiciable beyond any shadow of doubt. While the Government must have the unquestioned right to acquire property owned by individuals for public purposes, it cannot compel the owners thereof to part with them for any value less than their proper value, and the right of the person whose property is acquired to have the value determined by a court of law cannot be taken away. Our State has not yet abolished private property; at any rate this Constitution does not abolish and is not abolishing it. I refer to article 13, clause (1) sub-clause (f), that is, “subject to the other provision of this article, all citizens shall have the right to acquire, hold and dispose of property” and the sub-clause which controls this right is sub-clause (5) and there it is stated “Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses. . . .”. Even this sub-clause (5) which modifies the fundamental right says you can impose only restrictions on the exercise of any of these rights.

Therefore, Sir, it is clear that our Constitution does not propose to abolish private property, as the U.S.S.R. has done in its Constitution. The U.S.S.R. has clearly abolished private property. Our society is still based on what is technically called capitalistic system of economy, meaning thereby that property is held by individuals and not by the entire people. Our system is similar to the system prevailing in the U.K. and U.S.A. and in the Constitution for the U.S.A. it is clearly laid down that the State cannot deprive a man of his life, liberty or property without due process of law. So is the case in the U.K. To illustrate, when the present socialistic Government of England



[Mr. Mahboob Ali Baig]

acquired mining rights from private owners, it awarded compensation which was found to be in excess of what the courts themselves determined the value of the mines to be.

Thus, Sir, their society is based on the recognition of private property and is based on the capitalistic system of economy. The persons whose property is acquired must be paid the proper price and the machinery to determine what the proper price is, is the court. So, Sir, two important and inevitable concomitants of the nature of property as private property are these two, that the rights are fundamental and the rights are justiciable beyond any shadow of doubt, but it is open to us to abolish private property altogether, which we have not done till now. It would be a different matter if private property is abolished altogether and people are assured free medical aid, free education and they are assured of employment. The structure of the society has not changed.

What I am seeking today now is, while we recognize private property under article 13 and also by implication under clause ( 1 ) of this article itself, what we are trying to do under clause (2) is that we are giving power to the legislature to grant any compensation it pleases or retain principles for assessing value of the properties. Now, Sir, whether it is permissible under any Constitution which frames fundamental rights, whether the legislature of the country should be given the power, the jurisdiction to deal with those fundamental rights, tinker with them and abridge them, is the question before us. My submission is this, that this article finds a place in the chapter which deals with fundamental rights. Fundamental rights are those with are beyond the jurisdiction of a legislature, especially of party legislature in parliamentary democracy. As soon as they are, subject to the jurisdiction of the legislature, they cease to be fundamental. What is the fundamental right that you are giving to the people under article 24 as sought to be amended by the Prime Minister ? There is nothing at all. Therefore, it would be better not to have mentioned these rights at all under the chapter dealing with fundamental rights. The only thing that I could understand from the speech of the Prime Minister is “Your rights are recognised” yes and “when they are going to be acquired, compensation will be given to you”, “What is the amount of compensation that will be given to you will not be determined by a court of law”. In fact he would have, nothing to do with courts and law. He would vest this power, to determine what the compensation will be, in the legislature. He calls the legislature ‘sovereign’. It would be more correct to say that the Constitution is “sovereign”. The legislature, the executive and the judiciary and all of us are governed by the Constitution. A legislature cannot have overriding powers over the provisions of a Constitution. It is the Constitution that is binding until it has been amended by the will of the people.

Therefore, Sir, the legislature is sovereign in the sense that the people are sovereign and if the people elect members with a particular purpose of changing the Constitution, then it is correct to say that that body which is elected by the people for the purpose of changing the Constitution, that is sovereign, This question of a legislature being sovereign overriding fundamental rights is not correct at all. Either you declare under article 24 fundamental rights or not at all. It would have been better if article 24 had not been enacted at all and not been proposed at all; I could understand that. It will be open to the legislature provided that is liable under law to grant compensation in any way it pleases. Therefore, Sir, my submission is that it is a misnomer to say, it is incorrect, it is misleading to say that we are under article 24 declaring rights in property.

**Mr. President :** The honourable Member has made that point formerly.

**Mr. Mahboob Ali Baig :** Therefore, the amendment which I have moved, No. 482, proposes that in the matter of granting compensation, the, fixation of the amount of the laying down of the principles on which compensation should be determined be entirely taken away from the jurisdiction of the legislature. If it is necessary that a certain land should be acquired for a public purpose, it would then pass an enactment saying that this property shall be acquired giving compensation. What the compensation should be must be determined by a court of law.

Now, Sir, one word with regard to clause (3). I have stated that the law that may be passed by a State legislature or the Union legislature must receive the consent of the President. In the clause as proposed, it is stated "such law having been reserved for the consideration of the President". I want that to be categorically stated that all such laws whereby property is sought to be acquired must necessarily receive the assent of the President. Sir, one word with regard to clause (4) I have to offer and it is this. The Prime Minister said in the morning that under clause (1), unless the legislature has abused its powers, the court's jurisdiction is ousted. What he meant perhaps is that if the legislature granted compensation which is a pittance or merely illusory, then, the courts can interfere. Now, Sir, my point is this. Why not you give that benefit at least to the cases that come under clause (4) ? Is it fair, I ask, that even that chance of a person who is deprived of his property to contend that the compensation that has been given to him is a pittance or merely illusory, or is a fraud on the statute should be taken away? Why should we deprive a person who is aggrieved in that way of his right to have the matter agitated in a court, and ask it to decide whether the compensation is merely illusory, whether it is a fraud on the statute, while it grants this right under the circumstances in clause (2) ? Therefore, it is very unreasonable and as my honourable Friends Pandit Thakur Das Bhargava and Mr. Jaspat Roy Kapoor have said clearly, such a thing is unknown to law, unjust and unfair and discriminatory. Therefore, clause (4) must go.

My comment with regard to clause (6) is this. When some Acts were passed by some local legislatures, the law prevailing was the Government of India Act of 1935, section 299. Laws were enacted for the abolition of Zamindaris and that was the law applicable. Is it fair, I ask that you should prevent those persons from going to court and asking the court to determine whether the enactments were *ultra vires* or *intra vires*. Even in this case, as I have said, whatever chance a man may have under clause (2) to show in a court that the compensation is merely illusory is taken away. I have not come, across any such constitution where rights which accrued previously and which were enacted under certain laws, were purposely taken away. As I said, Sir, in this case also, it is very unjust, unfair and discriminatory.

One word more before I sit down, that is, with regard to certain remarks made by my honourable Friend Mr. Kala Venkata Rao. I agreed with him in the legislature of the province of which he was the Revenue Member that these Zamindaris should be abolished. Even earlier, than he thought of it, in 1938, as a member of the Zamindari Abolition Committee I have clearly advocated that these Zamindaris must be abolished because they were anachronisms and they have ceased to serve their purpose. I also held that owner of the property must be the tenant and not the Zamindar. I agreed with him so far. But, I found that from 1802, rightly or wrongly, according to me wrongly. Sir, the Permanent Settlement Regulation XXV vested the proprietary rights in the Zamindar.

**Mr. President** : It is not necessary to go into that.

**Mr. Mahboob Ali Baig** : I am just pointing out. My Friend Mr. Kala Venkata Rao is wrong in saying that that Regulation did not vest the proprietary rights in the Zamindar. The very expression "Sanad Milkiyat Istimrari" when translated, means, Sanad of Permanent Settlement of proprietorship in the land. Not only by enactment, but the highest courts have held that the Zamindar is the owner, as I said, on the basis of legislation which according to me was passed wrongly. On this basis several transactions have taken place : sales, mortgages and all sorts of things. Over a period of 150 years these Zamindars and their transferees have acquired substantive legal rights.

I differ from my honourable Friend on the question of compensation. I said that compensation must be given. I am not going to refer to the several inaccuracies in the statement of law and facts made by them. Therefore, the question whether the compensation that these Zamindari abolition enactments have given is just, fair or equitable, or is merely illusory, must be left to the court to determine. As I have said, till we change the structure of society from a capitalistic system of society, to a socialistic society, where it is not the individual, that owns the property but it is the entire people or the State or the co-operative agency, till then, we cannot get away from the fact that due, proper compensation should be given.

I am compelled to remark, Sir, that in this matter, we are not very definite and bold enough. If we think that this society must be changed, we must take courage in both the hands and act. This sort of dealing with property will land us in difficulties.

**Mr. President** . The honourable Member is repeating himself.

**Mr. Mahboob Ali Baig** : As Mr. Naziruddin Ahmad asked, what is the impression that is going to be created on the public, especially on persons who are asked by us, who are asked by the Government to invest money in factories and industrial ventures? Would they dare to do it? Would anybody come forward with his money to invest his money in any venture ? He would read this and say.....

**Mr. President** : I think you have taken more than enough time. You may finish now.

**Mr. Mahboob Ali Baig** : Sir.....

**Honourable Members** : Order, Order.

**Mr. President** : No. 499.

**Shri Ajit Prasad Jain** (United Provinces : General): Sir, I do not propose to move it.

**Mr. President** : No. 500.

**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 inequitable."

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** : 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** : 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** : 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 fetter 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 justiciability, 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.

**Mr. President** : Shri Siddaveerappa, No. 502.

**Begum Aizaz Rasul** (United Provinces: Muslim): Sir, may I invite your attention to the fact that it is quarter past seven now and we have been sitting for more than seven hours ? There are still a large number of speakers who want to take part in this important subject. Therefore, may I request you, to adjourn the discussion after taking the consent of the House till Monday and resume it again on Monday ?

**Shri R. K. Sidhwa** (C.P. & Berar: General): No, Sir. Most of us want to finish this subject today.

**Shri Mahabir Tyagi** (United Provinces: General): Sir, even if they cannot have full compensation, let the zamindars have their full say!

**Sardar Hukum Singh** (East Punjab: Sikh): Yes, let them have their dying sobs and sighs.

**Shri Deshbandhu Gupta** (Delhi) : Sir, may I suggest that the general discussion may be postponed to Monday and the discussion on amendments finished today ?

**Shri H. V. Kamath**: I suggest, we may meet after dinner, say, at ten o'clock tonight.

**Mr. President** : My intention was to finish this article today and I expressed this intention to the House more than once, and I wanted the speakers also to take this into consideration while speaking. But unfortunately, it is not possible for me to stop speakers when they are dealing with their amendments and when they are to the point. Therefore, I have not been able to stop them and more time has been taken than I had anticipated. Now it has been suggested by some Members that we should adjourn till Monday next. I should like to know the view of the House.

(Cries of “Adjourn” and “Do not adjourn.”)

The Assembly divided (by show of hands) :

Ayes : 48

Noes : 47

**Shri Syamanandan Sahaya** : There has been some misunderstanding, Sir. I thought those who wanted to bring up this article on Monday should raise hands now.

**Mr. President** : The House is almost evenly divided, 48 being for adjournment and 47 against.

**Pandit Hirday Nath Kunzru** (United Provinces: General). Sir, if I may respectfully interpret this voting, it means that there is a very large section of this House desiring adjournment. We have discussed matters of much smaller importance for a much longer time. We are now holding two sessions. But we are trying to bring the discussion of a very important article to an end speedily, merely in order that the second reading may practically come

[Pandit Hriday Nath Kunzru]

to an end on the 17th September. Is this such an important purpose, that we should go any length to achieve it rather than allow more time for such a debate?

**Mr. President** : The House stands adjourned till nine o'clock on Monday morning.

The Assembly then adjourned till Nine of the Clock, on Monday the 12th September 1949.

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