IS RIGHT TO PROPERTY NOT FUNDAMENTAL?

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"People must come to accept private enterprise not as a necessary evil, but as **an** affirmative good."

—Eugene Black

IS RIGHT TO PROPERTY NOT FUNDAMENTAL ?

C. K. DAPHTARY

Former Attorney-General of India

The right to property has been recognised as a vital and essential right of man in every country and in every age. Man has always been by nature acquisitive. He works and labours not merely to secure what is necessary for his daily living, but in order to accumulate property using that word in the widest sense. It is, as has been often stated, a realisation of Liberty or as has also been said, an extension of the human personality. If he can accumulate sufficient when he is fit and in a condition to work he protects himself against old age. He gathers property because it gives him comfort and security. It expresses his personality. It is the foundation of every other right and it gives him a status. Accordingly up to at any rate the turn of the century laws aimed at preserving and protecting property and securing it fully to the owner. It is obvious that some person can acquire property, more wealth than others and some not at all. It is equally plain that property when owned in a large measure can be used for the benefit of the community as, for instance, by way of encouragement of education, relief of the poor and so on. Equally it can be misused. By the end of the 1800s scientific progress and industrial development had given property a new dimension. It was no longer a matter of an element for bringing comfort or status, but a power factor which could be used, as it was often used, for dominating others, for exploiting them and denying them even a minimum status. There developed therefore a gross imbalance in the relationship between the individual and the community. Even in so-called capitalistic societies, it was realised that the right to property should no longer be treated as an absolute and untrammelled right and that the ownership and use

* The text of the speech delivered by Mr. C. K. Daphtary under the auspices of Forum of Free Enterprise, New Delhi Centre, on 6-2-1970.

of it needed control and regulation so as to turn it to the best advantage of the community as a whole. Even in such societies there came into existence a series of measures for ensuring that property should be used to better advantage. In 'fact, as has been said by a well-known writer, we all became socialists.

When our Constitution was in the process of being fashioned, it was a matter of much discussion and thought as to whether any of the human rights should be written into it. Even earlier, at the Round Table Conferences and elsewhere it had been a moot question hotly debated, hotly canvassed whether there should be a Bill of Rights or not. British tradition naturally did not favour any such inclusion in a Constitutional Instrument. However, the founding fathers decided ultimately that certain rights should be enunciated and protected as fundamental, that is to say, that they should not be liable to be curtailed except to the extent that is permitted by the Constitution itself, that they should not be exposed to the danger of irresponsible legislation or subjected to the winds of change in Governments. To ensure the protection so granted, the Courts had the power of judicial review and so important was that power considered to be that the Constitution expressly provided for a direct approach to the Supreme Court itself for relief in the event of any infringement of a fundamental right. The Articles of the Constitution enunciating the fundamental rights are in Chapter III. They are not definitions but statements of rights, the content of which is assumed to be well known. Included in that particular Chapter were sections 30 and 31 which dealt with property and its acquisition or its being taken possession of by the State. The original article ran as follows:—

Section 31 (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on

which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

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

(3) No such law as is referred to in clause (2) 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.

The Constitution itself though largely modelled on the Government of India Act, was nevertheless devised as an instrument for achieving a democratic welfare State. 'The preamble states, among other matters,

JUSTICE, Social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity.

The preamble states the desired objective in the most general terms. The abstract ideas thus proclaimed were reduced to a more precise form in the Chapter IV entitled "Directive Principles of State Policy". These are comprehensive and meant to be a guide to those in power pointing to the goals which they should strive to attain. Article 39 of that Chapter enjoins the State to direct its policy towards securing:—

(a) that the citizens have the right to an adequate means of livelihood; that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and see that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

What steps should be taken by way of law to secure

these objects was left to the discretion of the Legislature. The objects to be attained have been fully and clearly stated, immediately after the categorisation of the fundamental rights.

The effect was that by controlling and regulating the use, enjoyment and disposal of property must be within tho limits as prescribed in Chapter III. Obviously the Constitution makers did not consider that there was any conflict between the directive principles and the fundamental rights. They believed that the objectives in the directive principles could be attained within the limits as prescribed in Chapter III. They believed that the objectives in the directive principles could be attained within the limits and subject to the conditions set to every fundamental right. The substantive power of regulation and control was left to the law-making body and its discretion almost wholly. Judicial control as has already been stated was provided for but it was not anticipated that there could be any conflict between the power of the courts and the powers of the Legislature. Prime Minister Nehru himself considered that Article 31 protects both the individuals and the community and gave the final authority to Parliament.

Article 31, however, came before the Supreme Court almost immediately consequent upon legislation in respect of zamindari rights which aimed at securing that vast areas of surplus land either unused or used for the sole benefit of an individual or individuals should be made available to those who had no land and who had therefore been exploited by the large land owners. In one case the Supreme Court construed the article to mean, relying upon the use of the word "eompensation", that land could be taken by the State only on the payment of what was called a just equivalent, which may be equated, though not with absolute accuracy, with what is called the market price. This aspect had been contemplated or expected; indeed, a compliance with it would have involved payment of enormous sums of money to those who were considered not to deserve it and stand in the way of the distribution of surplus property for the benefit of the community. Thereupon the article was amended after which it ran as follows:—

> **(2)** "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.
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The plain effect of the amendment was that the Legislature could fix compensation or the manner of its ascertainment in each case having regard to the facts and circumstances. The court could only come in if the compensation was illusory, a word used by the Supreme Court itself.

There was thereafter certain additions to the article and two more articles introduced with regard to the property rights but they are not material here. Subsequently however by another decision the Supreme Court practically nullified the effect of the amendment. It held that since the word "compensation" still remained, property could not be acquired or taken except on payment of an equivalent as had been decided earlier before the amendment: the amendment was really nullified. It also held in another instance that the Constitution was inviolate in that Parliament had no power to make any amendment therein so as to affect any fundamental right and any provision relating thereto as it stood. This posed a dilemaa and ultimately a Private Member's Bill was brought forward to endow Parliament with power to amend the Constitution, the merits of which it is not necessary here

to discuss. In the meantime the Supreme Court made another pronouncement which turned the wheel full circle. It read the article on its plain term and said that the courts' power was limited entirely to seeing whether any compensation provided for in a law was illusory or not. This squared with what Prime Minister Nehru had said originally as to his interpretation of Article 31. This is what he said:—

"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 at all. 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."

In his opinion the article protected both the individual and the community and gave the final authority to Parliament subject only to the scrutiny of the Supreme Court in cases of some grave error, in case of contravention of the Constitution or the like and not otherwise. The right to property having then been defined as in that judgment and the article interpreted consistently with its plain language what need is there for any change and in particular for its removal from the Fundamental Rights Chapter? It is no obstacle to legislation on social welfare, on equality and for distribution of surplus wealth. It presents no hindrance to the most radical changes in relation to property.

The Legislature has been left with the amplest power and the role of the Judiciary could be to interfere only rarely and to a limited extent. Removal altogether would open the flood-gates of confiscation and expropriation. Have we that confidence in the Legislatures as they are today so that we can leave them wholly and absolutely at liberty without restraint of any kind? It can be gravely doubted whether there is such confidence. There has been much legislation in the twenty years which demonstrates that the Legislatures whether at the Centre or in the States do not always act with sound discretion and responsibility. There is haste and a blind adherence to slogans and there are laws put through simply with a view to satisfying some clamour and providing immediate satisfaction. There are oppressive laws and harsh laws and but for the protection of Chapter III, there would be more.

The right to property is fundamental in another sense in that it is the base of every other right. It is the foundation of liberty. It should therefore remain with that protection and it is the minimum protection which it has today. You cannot and should not eliminate the Judiciary altogether. The Courts are still looked upon as the only guarantee of the citizen's rights and bulwark against legislative and executive irresponsibility. The legislators do not look upon the Judiciary kindly and would prefer to do without it altogether and enjoy unbridled licence without the Judiciary's watchful eye being upon them, but, as was said by one of the founding fathers long ago:

> "Let there be no mistake; unless you revert to the tribal law, where the word of the tribal chief is the last word, you cannot escape the tribe of lawyers; but one thing is clear. The rule of the tribe of lawyers is any day better than the rule of the tribe of tyrants."

II

By A. *G.* NOORANI*

The clamour for the removal of the right to property from the chapter on Fundamental Rights in the Constitution originated, as might be expected, from Communist quarters. But that has ceased to be a notice for caution in some places in the political climate of today. The other day

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Mr. K. V. Raghunatha Reddy, Minister of State for Industrial Development, endorsed the demand at a seminar in New Delhi.

The arguments advanced in support are so patently wrong that one cannot help feeling that the clamour is a stimulated one. The main argument is that retention of the right to property as a fundamental right leaves it to the judges rather than to Parliament to decide the quantum of compensation payable when property is acquired for a public purpose. The implementation of the Directive Principles of State Policy in the Constitution is rendered impossible by the right to property, it is argued.

As to the first, Mr. Granville Austin has summarised well the effect of the Fourth Amendment to the Constitution, "Thus in the nine years from 1947 to 1956 the demands of the social revolution have taken the right to property out of the Courts and placed it in the hands of the legislatures; good sense, fairness, and the Commonwealth might still be served, but so far property was concerned, due process was dead." As to the latter argument, it is a fair presumption, surely, that since the framers of the Constitution made the fundamental rights justiciable and the Directive Principles only a guide to state policy, they intended that the latter be implemented only in conformity with those basic human rights which they deliberately placed beyond executive and legislative encroachment.

Some of the observations made by Mr. Justice Hidayatullah (as he then was) in the Golak Nath case, nearly three years ago, are being pressed into service. He had said: "Our Constitution accepted the theory that right of property is a fundamental right. In my opinion it was an error to place it in that category. Like the original Article 16 of the Draft Bill of the Constitution which assured freedom of trade, commerce and intercourse within the territory of India as a fundamental right but was later removed, the right of property should have been placed in a different chapter. Of all the fundamental rights it is the weakest. Even in the most democratic of Constitutions (namely, the West German Constitution of 1949), there was a provision that lands, minerals and means of production might be socialised or subjected to

control. Article 31, if it contemplated socialisation in the same way in India, should not have insisted so plainly upon payment of compensation. Several speakers warned Pandit Nehru and others of the danger of the second clause of Article 31, but it seems that the Constituent Assembly was quite content that under it the Judiciary would have no say in the matter of compensation." The learned judge went on to deplore that the old resolutions of the Congress were ignored.

These remarks are open to more than one criticism. In the first place, it is respectfully submitted that it is not open to a Judge to expound his social or political philosophy on the Bench. Imagine the consequences of this unfortunate example being emulated by other judges and on far more sensitive questions.

Besides, the learned Judge is himself in manifest error. The provision of "the most democratic of constitutions, namely the West German Constitution of 1949" does, indeed, provide for payment of compensation in the event of "socialisation" plus judical review, destroying the Judge's analogy completely.

Article 15 of the Basic Law for the Federal Republic of Germany which the Judge paraphrases actually reads:—

"Land, natural resources and means of production may for the purpose of socialisation be transferred into public ownership or other forms of publicly controlled economy by a law which provides for the nature and extent of the compensation. In respect of such compensation Article 14, paragraph (3), sentences 3 and 4, shall apply mutatis mutandis."

And what does Article 14(3) say but that, "Expropriation shall be permitted only in the public weal. It may take place only by or pursuant to a law which provides for the nature and extent of the compensation. The compensation shall be determined upon just consideration of the public interest and of the interests of the persons affected. **In case of dispute regarding the amount of compensation recourse may be had to the ordinary courts.**"

Mr. Nehru, as will be pointed out, did not ignore the old Congress resolutions at all nor did the resolutions advocate

expropriation without compensation. As Mr. Justice Hidayatullah himself recognised in this context "the rights of tha individual are not quite gone except where communism is firmly entrenched." Finally the transfer of the right of property "in a different chapter" as the judge suggests would only have affected the citizen's legal remedies. The constitutional restraint on the legislature would have remained unaffected. Any law in breach of it would have been void.

Article 31 of the Constitution, which deals with acquisition of property, was intended to be a fair compromise between the rights of the individual and those of the community and it received the imprimatur of Mr. Nehru's socialist approval wholeheartedly. Urging the adoption of the Article in the Constituent Assembly on September 10, 1949, Mr. Nehru said, "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 sometime there might be, if you like, some petty 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."**

Mr. Nehru proceeded to distinguish between the "acquisition of small bits of property" and the "large schemes of social reform" which involve "the future of millions of people."

So, he laid down two rules, "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."

Mr. Nehru was anxious to protect the rights of the individual and was careful to point out that "the individuals may lose their right completely by the functioning of various forces today both in the capitalist direction **and in the socialist direction."**

The crux of the matter was how far the courts could be permitted to judge the adequacy of compensation paid to the owner of the property acquired by the State.

Mr. Nehru stated: "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."**

Mr. Nehru was opposed to the Courts functioning "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."

He spelt out the limits of judicial review in such cases and concludes that Article 31 "protects both the 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."

Article 31 of the Constitution constituted, in Mr. Nehru's words, a proper provision for protecting both the rights of the individual and of the community. It read thus originally (in the material part):

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

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of Such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner, in which the compensation is to be determined and given."

However, in Mrs. Bela Banerjee's case, decided in 1953, the Supreme Court held that compensation meant "just equivalent," "full and fair money equivalent"; although the legislature could lay down principles of compensation, these principles had to ensure that what was paid was a fair equivalent. Thus, contrary to the intention of the Constitution-makers, the adequacy of compensation became justiciable.

To overcome the consequences of this judgment the Fourth Amendment to the Constitution was adopted in 1955. It laid down clearly that no law providing for compulsory acquisition of property for a public purpose "shall be called in question in any Court on the ground that the compensation provided by that law is not adequate."

The effect of this amendment has been well stated ill the Supreme Court's judgment in State of Gujarat v. Shantilal Mangaldas decided last year. "The right declared by the Constitution guarantees that compensation shall be given before a person is compulsorily expropriated of his property for a public purpose. What is fixed as compensation by statute, or by the application of principles specified for determination of compensation is guaranteed; **it does not mean however that something fixed or determined by the application of special principles which is illusory or can in no sense be regarded as compensation must be upheld by the Courts, for, to do so would be to grant a charter of arbitrariness, and permit a device to defeat the constitutional guarantee.** But compensation fixed or determined on principles specified by the Legislature cannot be permitted to be challenged on the somewhat indefinite plea that it is not a just or fair equivalent. **Principles may be challenged on the ground that they**

are irrelevant to the determination of compensation but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation. A challenge to statute that the principles specified by it do not award a just equivalent will be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable."

It will be noted that this sets the limit of judicial review exactly at the point where Mr. Nehru wanted it to be—insurance against fraud on the Constitution. Where, then, is the need for deletion of Article 31?

The Fourth amendment made some other changes besides. It placed beyond challenge on the ground of the violation of fundamental rights to equality, to property and to freedom (Article 19) the following among other acts:

"The taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

"The Amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

"The extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

"The extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral oil, or the premature termination or cancellation of any such agreement, lease or licence."

Further "where a law does not provide for the transfer of the ownership of right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property." For mere deprivation of property without its acquisition by the State, no compensation is payable.

The fundamental right to property in the form in which it exists today does little more than ensure protection against executive lawlessness, and wanton expropriation. All it guarantees is that if a person is to be deprived of his properky, or if property is to be acquired by the State, it must be by law not mere executive fiat. Additionally, the acquisition must be for a public purpose only and on payment of some compensation. Its quantum will be entirely for the legislature to decide. To argue that even such an attenuated right to property impedes social progress is to hunt for a scapegoat for governmental remissness. Indeed, it is to argue that social progress is incompatible with the rule of law. Article 31 contains a guarantee only against arbitrary action and it embodies the accepted international norms on the subject.

In February 1965, the International Commission of Jurists convened the South-East Asian and Pacific Conference of Jurists in Bangkok. Speaking for its Committee on Economic and Social Development within the rule of law, Mr. Justice Hidayatullah emphasised that "the key word was democratic practice." He raised the question "whether it was possible at all to reshape existing social conditions by procedures conforming to the rule of law," a question which he later answered affirmatively. He insisted that the ultimate goal of social reform in developing countries should be the realisation of a Welfare State, but at the same time "social and economic changes should be gradual and worked out by democratic procedures."

The conclusions of the Conference recognised the necessity of land reform and economic planning in the region. They held, "nationalisation of private enterprises by a democratically elected government when necessary in the public interest is **not** contrary to the Rule of Law. However, such nationalisation should be carried out in accordance with principles laid down by the Legislature and in a manner consistent with the Rule of Law, including the payment of fair and reasonable compensation as determined by an independent tribunal. The same considerations should apply to other governmental action taken with similar purpose and effect.

"lt is in accord with the Rule of Law to adopt, when necessary in the interest of public welfare, fair and reasonable measures with respect to price control, state trading, control of private and antitrust legislation."

Only the advocates of laissez-faire or "progressives" of a totalitarian hue will question these conclusions. The former are already in retreat. It is the latter who are so obstreperous today. Not social progress but the abolition of the Rule of Law is what they seek.

III

By A. G. MULGAOKAR*

The Indian Constitution in embodying in a separate chapter certain rights including those to personal freedom and to private property and designating this as the Chapter of Fundamental Rights recognised certain cardinal principles, some explicitly and others by implication. What is fundamental if it is not inherent and unalterable; and how much fundamental is a right if it can be restricted or taken away by just an ordinary legislative process as the fancy takes some legislators?

The issue involves not only legal or constitutional but moral as well as social and economic considerations. If all these considerations are fully and dispassionately weighed it will be seen that the move is an altogether retrograde step. The fundamental rights guaranteed to the Indian citizen in the Constitution are broadly his life and freedom, certain liberties like free speech and right to practice any profession or trade, and lastly acquire and hold property. It should be remembered that the term property covers a very wide field, but it is not necessary to go into all its details for the purposes of our discussion. What is attempted by the contemplated move is **for the present** to remove the right to acquire and hold property from those guaranteed to the citizen in

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the Constitution. How long, then, before the others are attacked? Perhaps one by one, as the whim or fancy takes the necessary number of legislators. Take the right to move to any place in the union territory given to every citizen. IS it difficult to imagine that it will be one of the next ones to be attacked? At this rate no right can be considered fundamental. If anyone can be taken away, so can all. Now the Indian Constitution in guaranteeing these various rights and freedom to the Indian citizen has not placed them in a totally rigid and inviolate form. They are subject to abridgement and even suspension provided this is reasonable and in public interest. So if the public interest necessitates it and it is reasonably done, a fundamental right can be by legislation restricted. If in spite of all this the move is to be persisted in, then who can believe in the fundamentalness of these fundamental rights? This, then, is the moral issue.

There is also another aspect to this moral issue which no sensible legislator can afford to omit from his consideration. Nature has planted in Man the instinct of self-preservation. We see evidence of it even in a child when it refuses to part with a battered toy and in an adult when he saves for his own future or for his dependents. The result of his savings is his property and he is entitled to do what he likes with it subject to what is known as social control. (Even the paper Constitution of the U.S.S.R. recognises this right.) This world-wide, not excluding communist countries, recognition is as much due to the natural instinct planted in man as also because thereby the national economy is strengthened. As the individual citizen saves he adds to national wealth. Therefore, if you take away the individual's rights over his property, two results can be expected to follow. We have already seen what disastrous results have followed from prohibition. This is what naturally happens when an attempt is made to fly in the face of public opinion or a natural human instinct. This is exactly what will happen, there will be widespread evasions and breaches of the law. In the second place there will be, if this step even partially achieves its desired results, so much dislocation in the country's economic structure as to prove a national calamity. Indian history tells of a Delhi King transferring his seat

from Delhi to Daulatabad and forcing the whole population to follow suit. The disastrous results that followed have to be read to be believed.

Having considered the moral and economic aspects of the question, it only remains briefly to consider the legal or constitutional aspect of the matter. By a recent decision of the Supreme Court it has been held that Parliament has no power to amend the Constitution so as to take away or abridge the fundamental rights. The Court has however expressly saved from the application of this ruling all the earlier amendments to the Constitution on the doctrine of prospective overruling. It held that under Art. 368 the Parliament has the power to amend the Constitution. But under 13(2) no law which takes away or abridges fundamental rights is valid. It answers the question whether an amendment is law affirmatively. Five of the six judges who expressed the majority view hold that amendment is made in exercise of residuary power under Art. 245 and Art. 368 prescribes the procedure to be followed. One judge, however, held that the power to amend was explicitly given in Art. 368. But as we see, in any case, as the result of an amendment to a law is also a law and therefore, if it abridges a fundamental right, it must attract the application of Art., 13(2) which prohibits the making of any law which takes away a fundamental right. The only alternative therefore would be the summoning of another Constituent Assembly charged with the specific task of either amending the Constitution or writing up another.

Here, again, another very important constitutional consideration arises. It cannot be said that the last general election was fought by any party on the issue of amendment of the Constitution. It is a cardinal principle of parliamentary democracy that no bill causing major constitutional change should be allowed to be brought in the life of a parliament unless this was placed before the electorate at the election time by the party concerned. Those who know their Constitutional Law will remember that Asquith fought a general election in January 1910 (in Edward VII's lifetime) and came to power. The issue had been the revolutionary

Budget of Lloyd George which the House of Lords was blocking. When Asquith approached George V (Edward VII had died in May 1910) to promise to create enough number of peers to ensure the successful passage of the Budget through the Lords, the King, though only a few weeks on the throne, insisted that Asquith face another general election on the specific issues of Budget and amendment of the powers of the Rouse of Lords. So that, although a general election had only taken place in January 1910, the ruling Liberal Party under Asquith had to fight another general election within a few months (in October 1910) and the country had to face all the inevitable dislocation and expense. That Asquith won the election and the two measures, the Budget and the Parliament Act, were duly passed is a matter of history. My object in recounting this important event in the constitutional history of British democracy is to point out the great lesson it holds for this country but in a great sense for President Giri. It is his bounden duty to warn the Prime Minister that whatever the Supreme Court does or does not do, he will be unable to accord his assent to an Act amending the Constitution in such a major way unless the people have had a chance of declaring their wishes in the matter in a general election.

"**Free** Enterprise **was** born with man and **shall** survive as **long** as man survives."

—**A.** D. Shroff
(1899–1965)
Founder-President,
Forum of Free Enterprise.

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