LAWLESS LEGISLATION

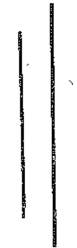
Edited by

A. P. JAIN

A SWATANTRA PARTY PUBLICATION

"Lawless Legislation"

Why Swatantra opposes the 17th Amendment ?



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A. P. JAIN

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F O R E W O R D

I am afraid that Parliament members, including the members of the Union Cabinet, have not realized the full legal impact of the Seventeenth Amendment. Otherwise they would not, I believe, have so lightheartedly sponsored it and refused to circulate it for public opinion. The Seventeenth Amendment is to act as an authorization charter for applying the zamindari laws to all ryotwari lands and other lands held by all kinds of owners. The effect will be immediate and final. It does not wait for any acquisition proceedings to be started by a State government or cooperative farming te be ordered. If a poor fellow has worked hard and through diligence and prudence acquired a field, say two acres of irrigated land or a five-acre plot of dry and, and he has invested his all in it, hoping to leave it to his children when he should die, by this new law the man becomes at once a mere rent collector. The property is lost, such as he had hitherto enjoyed and hoped to enjoy for all time and to bequeath. He cannot put any tenant in temporary possession and cultivate the land as he had been doing hitherto, because the tenant would be having the rights of tenants in a zamindari. This legal transformation, by mere decree of Parliament, operates at once. It is not only for purposes of acquisition by Government that it operates. The arguments about acquisition without paying full market value and about the intentions of Government to pave the way for collectivizations should not make people believe that that is the only consequence. Let it not be thought that the danger lies some time ahead. It is a change brought into being with immediate effect and in respect of the whole character of the ownership.

If particular legal difficulties were felt in the way of giving better security and tenure to tenants who were admitted into large holdings, the Government should make suitable laws for that purpose, not follow the Chinese example in Charles Lamb's story in which the cottage is set on fire to roast a pig.

MADRAS
12th October, 1963.

C. Rajagopalachari

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INTRODUCTION

(HISTORY OF LAND REFORMS IN INDIA)

The Ruling Party's Land Reform policy is based on two pillars : Firstly, that all land should belong to the actual tiller of the soil and hence all intermediary should be abolished and he should be made the proprietor of his holding. Secondly, to effect equitable distribution of land, there must be a ceiling on its possession. Excess land over and above the ceiling imposed must be taken over by the Government and distributed to the landless people.

Nobody has so far disputed with the first proposition of the Government. Undoubtedly it is essential that intermediaries between the Government and peasants should be removed. A number of unofficial movements were organised to help the Government to achieve this end. One such was founded in 1928 by Prof. N.G. Ranga himself to achieve this object.

Government's legislation for the abolition of Zamindari, Talukdaries, Malguzaries and Istamardaries etc. was hailed by most of the people because it was hoped that through them peasants who still have been (a) either tenants at will or (b) protected tenants, would become proprietors of their holdings.

These legislation, however, were questioned in the Supreme Court and the High Courts on the ground that they violated the Fundamental Right to Property as enshrined in the Constitution. These objections were held valid in the Supreme Court as well as a number of High Courts. The Union Government, therefore, had to come out with its first amendment to the Constitution in 1951, the very next year of its promulgation. By this amendment two new Articles and one Schedule were added to the Constitution. The new Article 31-A provided that no law providing for the acquisition by the State of any estate or of any rights therein shall be deemed to be void on the ground that it abrogates or abridges any of the Fundamental

Rights. With one sweep, all Fundamental Rights became non-available to the owner of an estate which was then understood to be a Zamindari, Jagirs, Inams and Muafi or other similar grants came within an 'estate'.

Introduction of Article 31-A and Schedule 'IX' under legislative acts cut away the Zamindari root and branch; and Zamindars had to be content with the meagre compensation paid to them.

The judicial verdict was overcome by Parliament by passing the new article 31-A, which drew the iron curtain against the enforcement of any Fundamental Right in favour of Zamindars.

Legislation passed by different States provided only for nominal compensation on the plea that the intermediaries were not the owners of the land but only the rent receivers.

Scope of Article 31-A soon came up before the Supreme Court. Article 31 (1) interdicted deprivation of property except by law and Article 31(2) stated that no property should be acquired except for public purpose in pursuance of law providing for compensation. There was hardly any difference between deprivation of property on the one hand and acquisition on the other. It was held by the Supreme Court that if any law morally deprived a person of his property, he was liable to be compensated and that it should really be just compensation or in other words the fair equivalent in money value of the property taken. The result was that deprivation of property by the Government was liable to be paid for in full market value.

The Government was not prepared to retrace its steps. Hence, the passing of the 4th Amendment in 1955 which substituted the old Article 31 with a new Article which made an important change. It said that no law of acquisition should be called in question in any court on the ground that *compensation provided by that law was not adequate.* It, therefore, followed that the State could acquire private property on

payment of, say, even 1 per cent of its money value. Consequnt upon this amendment, the government was no more under obligation to pay the market price of any land acquired by it. There were strong protests against this step of the government, as under this Amendment, legally speaking, the offer by way of compensation of any positive quantity of money above zero could easily satisfy the requirements of the Constitution.

The executive is thus armed with ample power to appropriate anybody's property at any price it desires, substantial or nominal provided it comes within the definition of 'estate'. There is no review of the amount of compensation. There is no review of the reasonableness of the amount of compensation. The result can be just compensation or almost "illusory" amounting to "a fraud on the Constitution". —dependent wholly on the mood of the executive.

Even if it is agreed that there could be some justification in acquiring land on nominal prices from those who had got the same free as *Jagir*, *grant* or *bakshish* or paying graded price depending upon the quantum of land of each person, so long as rights and asnctity of personal property are guaranteed by the Indian Constitution and India does not adopt the policy of confiscation of private property or communism as its pattern of society, what justification, moral or legal, is there to get free or on nominal price, the lands of those owners who had spent years or decades in reclaiming the same, or which they had purchased in the open market at the highest price and in many cases from this very Government from which they derive employment and in most cases, which is their main means of livelihood ?

In spite of the discriminatory nature of imposing ceilings on land holdings, after the abolition of the feudalistic landlordism *i.e.* system of rent-collecting intermediaries and its possible uneconomic consequences, the ceiling legislation has come to stay and has not been questioned by the Supreme Court.

The chief point in dispute now is, besides the quantum of compensation, the classification of these holdings of peasant

proprietors whico are below the ceiling limits 'estates'. Once the government have abolished the intermediaries, after having classified them as 'estates', it has ushered in its wake throughout the country the system of peasant proprietors and placed them on the same footing as peasants under the Ryotwari System, which is free from the defects of Zamindari System. The ryot or the cultivator under the Ryotwari System is supposed to be in direct link with the State.

Unlike the Zamindari system which was recognized by Lord Cornwallis, Sir Thomas Munro saw in the ancient Ryotwari of the South and other States so much similarity with the peasant proprietorship system of France, which was then being advocated by Arthur Young in England as most suited for the improvement of agriculture. It was Arthur Young who said that "magic of ownership would turn sand into gold and the chief merit of the ryotwari system lies in its recognition of this truth". Munro assured the peasant proprietor that as long as the ryot paid the revenue fixed on land regularly, the State would respect his possession and refrain from interference. *Acquisition of land by the State for transferring the ownership* to another person of the State's choice will, therefore, be repugnant to the spirit underlying the ryotwari system.

Prof. N. G. Ranga and all other Kisan leaders wanted that the tenants should be recognised as peasant proprietors on the abolition of the Zamindari, Jagirdari systems and placed on the same footing as Ryotwari peasants and indeed the Madras Legislature called its Acts as the Madras Estates (Abolition and Conversions into Ryotwari) Act. Under the circumstances, how can there be any justification for the Government or Parliament to seek to include under the definition of "estate" ryotwari pattas also. Ryotwari patta holders have *complete and absolute proprietorship rights* vested in them legally and traditionally. How can you convert them into intermediaries when overwhelming majority of them cultivate their own land and have no other important means of livelihood? As Rajaji has written in the Swarajya "it is a gigantic falsehood to make all owners of land 'intermediaries'

which the definition proposed in the Amendment seeks to do, reviving the exploded doctrine that all land in India belongs to Government, every peasant being only a tenant.

"The 'Patta' is a title deed, not a lease document; on the basis of these title deeds, people have paid from Rs. 1,000/- to Rs. 10,000 per acre and bought the lands. When the British were ruling, the Congress vigorously sought to protect the peasant and objected to this feudal doctrine. It now seems the position is reversed."

Once the present amendment comes to be passed and the term "estate" as contained in Article 31-A of the Constitution is redefined, all the land of old peasant proprietors and even the few tenants they admitted on their land (only 10 per cent of the peasant proprietors have admitted tenants on portions of their lands) and even agricultural workers who have house sites and small kitchen gardens are to be classified as "estates" and subjected to the consequent disabilities.

Legislation providing for security of tenure has been enacted in most of the States. Legislation for security of tenure has three essential aims—firstly, that ejectments do not take place except in accordance with the provisions of law; secondly, that land may be resumed by an owner, if at all, for personal cultivation only ; and thirdly, that in the event of resumption, the tenant is assured of a prescribed minimum area. Thus, under the already existing provisions enough safeguard for the interests of the tenants under peasant landholders is available.

Disabilities of estates : It can be compulsorily taken by the Government or any authority on its behalf including village Panchayat Board, Cooperative Farm, House Building Society or even a Sugar Factory or any other industrial concern, after making the prescribed notification by a prescribed Governmental agency. The so-called public purpose to be served thereby cannot be questioned in courts. The quantum of compensation to be paid is also non-justiciable. Moreover, the payment can be made in any form and in any number of

annual instalments. The courts are prevented from taking cognisance of question of the fairness of such settlements to be made under State laws by officers, etc.

We question the justice of this procedure and approach. How can this process of classifying peasant proprietors as estates and denying the peasants the right to seek the protection of Courts over the class-minded legislation to be passed by the state legislatures and arbitrary decisions to be made by the bureaucratic officers be treated as land reforms. This is not land reform but a tricky way of depriving peasants of their land.

What is the real motive behind this Government's legislation ? This amendment when passed will enable State Governments to carry out the Nagpur Resolution in favour of Cooperative farming in a sweeping and whole-sale manner. Government can then notify that the lands of certain villages or parts of the villages are to be given over to cooperative farms and give the option to the persants either to join the farm or to accept compensation. To pay market price for such lands may become too costly for the cooperatives. Hence the extension of the definition of estate to the peasant holdings, so that nominal compensation can be offered, without being questioned by the courts. The quantum and mode of payment of compensation are made non-justiciable under Article 31-A. Governments can claim that the admission of peasants into cooperative farming is even then voluntary—they had been forced to declare that cooperative farming will be voluntary because of the Kisan movement's opposition—when it gives the option to the peasants either to join it or to accept nominal compensation.

Secondly, the Master Plans for the development of cities and the growing number of industrial plants, i.e. factories and their own large-scale mechanised farms will demand more and more land. Government wants to have power to take over peasants land as has been recently done in the case of Ghaziabad peasants by offering nominal campensation and delaying its payment according to its own convenience. The sufferings of

Ghaziabad peasants are fresh in the memory of the people. So, they san easily imagine what will be the fate of the millions of peasants when their land come te be seized compulsorily by the Government for cooperative farm etc.

Another serious danger of including Ryotwari land in the definition of estate will be that the squatters who are not legally tenants, will also be in a position to claim rights over peasants holdings because the existence of estate implies the existence of two elements, the intermediary and the actual cultivator. Consequently, once the peasant proprietor is declared as an intermediary; the squatter automatically styling himself as the cultivator will be in a position to claim the land. I was because of this danger the ancient Chola Rulers of South used to specifically mention that both KUDIVARAM and MELVARAM i.e. rent collecting and cultivation rights were being granted to certain Inamdars.

Hence our vehement opposition to this Bill and its malacious attempt to place in the hands of executive authority and denying the protection of the Courts to peasants who would come to have own less than ceiling areas i.e. less than Rs. 400 per month per family and deprive them of their self-employment on their holdings.

We have stated in both Houses of Parliament that we are determined to fight this "obnoxious Bill and lawless legislation", because we are convinced that this move of the Government is calculated to undermine and destroy the Fundamental Right to Property to all people as enshrined in the Third Chapter of the Constitution and pave the highway to Communism. We are convinced that all those who stand for self-employment and self-respecting peasantry are the genuine progressives and liberals and those who want to undermine and abolish peasant proprietorship by such surreptitious means as this Bill are the enemies of freedom and therefore reactionaries.

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LAWLESS LEGISLATION*

By C. RAJAGOPALACHARI

Laws passed contrary to fundamental principles of law have been called 'lawless laws'. When they are contrary not only to fundamental principles but to the express articles of the Constitution embodying them, they are still more lawless. And the climax of lawlessness is reached when the *law actually seeks to amend the Constitution itself, in* order to bring it into line with itself. The lawlessness is aggravated by a spirit of open rebellion against the Constitution.

The Constitution has no doubt, laid down procedure for amending the Constitution. To utilize those provisions in order to legalise what is contrary to the intent and purpose of the articles relating to fundamental—that is, inviolable—basic rights is to use the letter of the Constitution to defeat the Constitution itself and to "make faith void and sacred promises of non-effect." These rights embodied in the Constitution were called fundamental, because they were not rights newly conferred on the citizen by the State but were a recognition and confirmation of freedom coeval with birth in a civilized country.

If each time the Supreme Court gives an adverse verdict against the Government in respect of the validity of a law passed at its instance, the Government organizes a constitutional amendment to be steam-rolled through Parliament in order to make the judicial pronouncement of non-effect, the image of the Supreme Court is bound to lose all public respect. It will ultimately lose its own sense of confidence and independence. It is superfluous to point out that this is against the spirit and the structure of the Constitution.

Nearly seventy two thousand petitions of protest are in hands of the Speaker of the Lok Sabha demanding the dropping of the measure going by the name of "Seventeenth Amendment", which has been brought in for the express

*Swarajya, 14-9-63.

purpose of nulifying a Supreme Court judgment. The petitioners are peasant proprietors of land rightly called the backbone of the nation, in whose favour the highest court of the land has given its verdict.

The absurdity of bringing about a demotion of the ownership rights of owners of land held under the ryotwari system, by defining a field as an 'estate' falling under the axe of the various Zamindari abolition Acts (about 120 or so in number) can be realized only by those who really know about land and cultivation in the villages of India and have acquainted themselves with the history of the *zamindari* system introduced by the East India Company, in order to reduce their own work of collection of the tax on land by farming out the land revenue. The status of the ryotwari-holder of land is clearly brought out in the following extracts from Sir Thomas Munro's minutes (see Arbuthnot's Minutes and Official Writings of Sir T.Munro, page 97 and page 254). It is well known that Sir Thomas Munro, a hundred and forty years ago, vigorously opposed the *system of farming out* Government revenue and the creation of the Zamindari system and pressed for what is called ryotwari, i.e., direct relation between Government and the real proprietor.

It (the ryotwari system) is better adapted to preserve the simplicity of manners and good order because every ryot will on his own estate be at once proprietor, farmer and labourer, and because he would be more likely to improve his land as a proprietor than as the tenant of a Zamindar.

Improved cultivation will of course regulate the rent between the proprietor, the ryot and his tenants but not between the ryots and the Government.

The Hindus never saw proprietory Zamindars until they were created by the Company's Government.

Some years ago, the late Dr. B.V. Narayanaswami Naidu made an economic enquiry and reported to the Madras Government in which the following passage appears :

"Under this system (Ryotwari) the peasant is the proprietor and taxpayer of the land. The ryot is entitled to remain in possession of the land acquired by him, so long as he pays the land revenue. He has absolute discretion to sell, mortgage, gift or lease his holding. The ryotwari lands are held by the owners on a simple and perfect title subject to the payment of fixed assessment".

The word "Revenue" was a peculiar Indian term for the *land-tax collected* by the East India Company Government and the term continues in use up-to-date. It is not to be *confused with* rent collected from a lessee. It is Government revenue, that is, tax.

It astonished the Prime Minister, even as it astonished and grieved every one in the country, that in spite of a tremendous amount of people's money spent through the agricultural departments, the production of foodgrains in the country, showed no progress, and every year the Government has to import cereals from abroad to prevent shortage and distress. Had the Government used the money in better ways, or even if it spent nothing at all through its departments, but left things to work under the normal incentives of ownership of land, without seeking to undermine the structure of the economy, without disturbing rights of ownership and free enjoyment of one's own property, without amending the Constitution to enable the infringement of fundamental guaranteed rights through new laws, agricultural production would have doubled, both in foodgrains and in the raw materials of industry. The uncertainty and the chaos resulting from the Government's policies in the name of 'land reform' have killed incentives for increased attention and enhanced production. No one would have objected to bettering the conditions of the tenants and workers on land, nor was it difficult to achieve this in increasing measure without creating chaos and destroying the interest of the owners of agricultural land and driving them to the cities, to escape from insults and disorders encouraged by the policies of Government. The consequences have been too tragic for words, especially when one contemplates how different the position would have been had not the State intervened to ruin the basic industry of the nation.

MONSTROUS LEGISLATION*

By Prof. N. G. Ranga

Sir, I consider this day to be the beginning of the long, dreary, black day for the Indian peasants in this country. I am sorry, the Government has thought it fit to draft this Bill, get it introduced and now proceed to rush it to the Joint (Select) Committee. It is typical of the non-chalant attitude of the Government that they are not even prepared to give this august House enough time for a detailed discussion on the subject. It is also typical of this Government's anxiety to *liquidate* the peasantry in this country. The hon. Law Minister (while moving the motion) did not think it necessary to refer even in this very short Bill with only three clauses, to the very important provision contained in item (ii) of sub-clause (a) of clause 2, which says :—

> "any land held under ryotwari settlement"

nor did he refer to item (iii) which reads :—

> "any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste *land*, *forest* land, land for pasture and sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans."

The hon. Law *Minister had no justification* to offer for these two very important clauses in this Bill. Supposing, he drops these *two clauses and confines himself* only to that particular proposition of ceiling, the attitude of the House may be different. But *ceiling is only* one of the many things that the Government seeks to bring within the mischief of this Bill. It in fact *comprehends all classes* of people, all cadres of people who live in our rural areas, not to speak of a section of the urban masses *also* who happen to own some land in villages all-round the cities.

**Speech in Lok Sabha on 18th September, 1963.*

My hon. friend said that the Supreme Court has raised several objections and has created so many doubts in the minds of many law-givers, like himself and others, who are in the Government.

SHRI A.K. SEN : You are the law-giver.

SHRI RANGA : You are the giver and I am only the receiver. What can I do ? Then, there are the other Ministers and Mini. tries all over the country. Look at these words in regard to their fixed, inflexible, invariable and some other principles of their land policy (1). Therefore, they are anxious to push this Bill through this Parliament.

What is it that this Bill seeks to do ? Unlike an ordinary Bill it seeks to amend the Constitution. Already, on another occasion, my hon. friend, Shri P.K. Deo, has created an opportunity for this House to express itself as to the unholy manner in which this Government has been amending the Constitution so frequently and so often during the past 13 years and has dealt with the Constitution as if it is only an ordinary law (2). Indeed many of the ordinary laws have fared much better than the poor Constitution. When we take our oath in this House as its members we swear by and promise to remain loyal to this Constitution. And who is more

(1) The entire land policy of the Government is based on the Nagpur Resolution of the Congress which states: "The future agrarian pattern should be that of cooperative joint farming in which the land shall be pooled for joint cultivation."

Whatever the Government is doing in the guise of land reform all that is directed towards their slogan of 'joint cooperative farming', which indirectly will lead to collective farming of Soviet type. The Nagpur Resolution is calculated to mislead the people as it envisages compulsorily pooling of land which is repugnant to the peasant's inherent source of ownership. In point of fact, the Nagpur Resolution will divest the peasant-proprietor of his land and replace him with one super Zamindar, namely the government.

The Swatantra Party is always for peasant-proprietors and hence is opposed to the present Amendment of the Constitution as the same is an attempt to filch the land away from the peasants.

(2) Reference here is to the Constitution (Amendment) Bill moved in the Lok Sabha on 16-8-63 by *Shri H.V. Kamath*. The Bill sought to amend Article 368 of the Constitution as a result of which any amendment of Constitution in future must have the support of not less than three-fourths of the members of the House present and voting and a two-thirds majority of the total membership of the House.

Contd.

disloyal to this Constitution than the Government themselves ? It is only through a kind of legal fiction that while they choose to change the character of their own mother so that she continues to be the mother ; they say does not happen to be the original mother that had given birth to these babies(3). This is the way in which they have been dealing with our Constitution, in such an unceremonious and contemptuous manner. We have been protesting against it—a number of Members from different parties.

It is wrong for the Government to consider their land policy which they have conceived with the aid of the Planning Commission to be of greater sacredness, of greater inflexibility and of greater fixity than the Constitution itself. They will have to answer before the bar of public opinion in this country in regard to this particular matter.

Secondly, this Constitution in regard to Article 31, has had a very chequered career. Every time the Supreme Court found any of these laws to be defective, to be violative of the Constitution and its spirit, the Government did not hesitate to come forward to this House with an amendment Bill in order to change the Constitution and in that way answered the Supreme Court(4), as it were. They have not said that "this is what we are doing, you may do whatever you like", but

It was essential that the amendment of the Constitution was made more difficult so that the Ruling Party could not use its overwhelming majority for that purpose. Such a step was essential as the Constitution was the basic law of the land and so it should not be allowed to be tinkered with or modified for narrow partisan ends of the Ruling Party.

Mr. P.K. Deo supporting Mr. Kamath said that the Bill was a timely measure and should be passed. The Constitution had been amended 16 times during the last 13 years and another amendment was on the anvil. Some of the amendments of the Constitution had curtailed some of the fundamental rights of the people. The amendments of the Constitution, therefore, must be made more difficult.

(3) On the question of the Ruling Party indulging in frequent amendments a number of constitutional experts have predicted that if the Congress continues in power for another 13 years little will remain of India's Constitution of 1950.

(4) The provisions of our Constitution relating to Fundamental Right to Property have, if we leave alone what is provided for in Clause (1), (5) and (6) of Article 19, been materially changed twice - once in 1951 and again in 1955 - and in the present Bill we see the third amendment which, when passed, will completely abrogate the Right to Property.

Contd.

it virtually amounts to that. Obviously they do not want to benefit themselves either from the wisdom of the Supreme Court or that of the fathers of the Constitution or even from the principles that are already enshrined in this Constitution.

1st Amendment :

Both before and after the promulgation of Constitution several States had passed Zamindari *Abolition Acts.* The Zamindars *feeling* aggrieved, appealed to the Courts that the Acts contravened the fundamental rights conferred on them by the Constitution. The High Court of Patna (A.I.R. 1951 Patna, page 91) held that the Bihar Act was unconstitutional, while the Allahabad and Nagpur High Courts, dealing with similar Acts, held them valid. Appeals were preferred to the Supreme Court against these decisions ; and there were also petitions filed directly to the Supreme Court under Article 32, *impugning the validity of* those Acts. The Union Government came out with what has now become the First Amendment to the Constitution. By this Amendment, two new Articles and one Schedule were added to the Constitution.

The new Article 31-A provided that no law providing for the acquisition by the State of any estate or of any rights therein shall be deemed to be void on the ground that it abrogates or abridges any of the Fundamental Rights. With one sweep, all Fundamental Rights became non-available to the owner of an estate which was then understood to be a zamindari, jagirs, inams and muafi or *other similar grants came within an 'estate'.*

Fourth Amendment :

Soon, the scope of the original Article 31 came up for consideration before the Supreme Court of India. Article 31(1) interdicted depriva*tion of property except by law ; and Article 31(2) stated that* no property shall be acquired except for public purpose in persuance of a law providing for compensation. What was the difference between deprivation of property on the one hand, and, *acquisition* on the other ? The majority of the Judges came to the view that clauses 1 and 2 of Article 31 were not mutually exclusive, but should be read together and understood as dealing with the same subject, viz., the prosecution of the right to property by means of the limitations on State power, deprivation contemplated in clause 1 being no other than acquisition or taking possession of property referred to in clause 2. Whether the property was destroyed or acquired by the State made no difference to the owner. According to the Court, Article 31 gave complete protection to private property as against governmental action, no matter by what process a person is deprived of its possession. *The conclusion reached by the Supreme Court* was far reaching. If any law merely deprived a person of his property, he was still liable to be compensated, no matter whether the property was acquired in the sense that the title thereto had passed to the State or not. Though Article 31 uses the word 'compensation', and not 'just compensation' as in the American Constitution, the Supreme Court of India came to the view that compensation in Article 31 was really just compensation or, in other words, the fair *equivalent in money* value of the property taken. The result was that any deprivation of property by the Government was liable to be paid for in full money value.

Contd.

And what is it they are doing, Sir ? They think they have a policy. That policy, they think, comes within the four corners of the Directive Principles. But the Directive Principles cannot be enforced in the courts. They themselves have stated it so in the Constitution (Art: 37). Even more important than the Directive Principles are the Fundamental Rights of the People. They are enshrined there in a separate chapter, and there is a separate Article 32 there which empower any citizen in this country anywhere to raise the question of the legality, the constitutionality of any one of the laws that are passed either here or there in the States and seek the protection of the Supreme Court. And those Fundamenta Rights are being set at naught in preference to what they consider to be the principles which they think, in their own judgment, flow from the Directive Principles of the Constitution. This, I think, is a very unfair way of dealing with the Constitution, and also a very reactionary approach towards the *Constitution*(5).

These decisions of the Supreme Court caused a flutter in the Governments of the *Union and of* the States. Out came a new amending Bill to the Constitution, which by that time had ecom the Fourth. For the old Article 31, a new Article was e substituted

That made the question of compensation non-justiciable.

---*M.K. Nambyar, in the Conference of Southen States on the 17th Amendment of the Constitution held at Bangalore.*

(5) In his speech in the Lok Sabha on 14th March 1955, the Prime Minister contended that Directive Principles of the Constitution were fundamental in the *governance* of the country. He said that if every time we accept the Supreme Court's interpretation as correct then "there is an inherent contradiction between the Fundamental Rights and the Directive *Principles of State* Policy". It is remove this contradiction and to make the Fuudamental *Rights subserve* that Directive Principles of State Policy, that the question of compensation is being made non-justiciable in *the first* instance, in regard to agricultural lands.

It is a curious anamoly as, *Prof.* Ranga has observed, that the justiciable part of the Constitution should now sought to be made to subserve the non-justiciable part. If we could always trust our legislatures, as per the defence given by *the Prime* Minister, there would have been no necessity of the chapter on *Fundamental* Rights in our Constitution. When the Prime Minister and other leaders gave such arguments in their defence they perhaps forgot that "the incorporation of a bill of rights (as we call them *Fundamental Rights)* in a Constitution acts as a great safeguard not only against any misconstruction or abuse of power on the part of a department of a Government, but also

Contd.

Now, coming to the question about the reason why they want these amendments—I question the very necessity for this Bill—they have themselves published about the working of the Third Five Year Plan only this year, March 1963, placed in our hands much later. And they have a chapter, Chapter XVIII, on Land Reforms. They have given copious information for State after State, for all the States except in the case of Kerala. In all other cases they have themselves stated that the ceiling Acts are being enforced, are being implemented. Statistics are being collected in certain areas as to how much land is available, to whom it is to be granted and so on. In certain other areas even distribution is taking place. If they are very keen only about ceilings and have no other ulterior motives in regard to this particular Bill, surely, Sir, there is not that urgency, there is not that need to come farward with this Bill.

True, I have been opposed to ceilings. Why? I have reasons: but I need not go into all that, because I cannot afford the time. But one thing I will tell you is that the Prime Minister himself was not willing to extend the principle of the ceiling to even salaried employees of the Government, not to speak of other classes of people in the country. He said : how would it ever be possible to get experts and experienced people for less than Rs. 2,500 a month? Whereas, in the case of agriculturists the maximum they have been good enough and liberal enough to agree to be the ceiling income is Rs. 400 for these very few people who are fortunate enough to have that much land which could yield that income. And against this Rs. 400 per mensem even Rs. 2,500 was not considered enough in the case of salaried Government employees. That alone is

against any excesses of party spirit and what is known in political speculations as 'the tyranny of the majority', which is now generally included, as John Stuart Mill has rightly said, 'among the evils against which society requires to be on its guard. And we cannot forget here that thanks to the requirements of party discipline in a parliamentary form of government, "the legislature practically means," as Acharya Kriplani rightly observed in the Lok Sabha on 12th April, 1955 "the executive".

D.N. Banerjee : Our Fundamentl, Rights : Their Nature and Extent 1960, p. 333.

enough, Sir, to condemn this Government as being a discriminatory, a partially-minded Government and one which is opposed to the interests of agriculturists. So, we have opposed the question of ceiling.

Nevertheless we have passed all this legislation all over India. Is it not their duty to have the patience and the legal conscience to re-examine their own ceiling Acts in all these various States and to so re-shape them wherever it is necessary so as to bring them within the four corners of this Constitution? Instead, like revolutionaries and reactionaries and people who are absolutely irresponsible and bureaucratic-minded they do not want to give any other consideration to any of these Acts but simply put them on the shelf nicely, in the wardrobe, lock them up with double locks, and then say, "These are part of the Constitution, therefore you, who are Members of Parliament, who took the oath here, and all other people who join in these representative institutions have no right whatsoever to question them, because these are part of the Constitution". Now, this is an extraordinary thing (6). It is something like the old grandmother putting whatever money that belongs to her son in some kind of a locker and then saying "this belongs to God, nobody should touch it". And what

(6) How can the Government take *carte blanche* power as to put all these 123 Acts in Ninth Schedule when most of them are discriminatory and also do not conform to the basic policies laid down by the Planning Commission itself. This can be seen from the quantum of compensation contemplated in different Acts, mode of payment, ceiling, etc. Moreover, under the same Act in one State there is serious discrimination from one man to another. At the same time, these Acts have unconstitutionally taken within their folds while dealing with intermediaries ryotwari land also. How can you make an unconstitutional thing constitutional? At best not with retrospective effect. Nobody seems to have realized the fact that land is not a static thing. It is dynamic. In these 13 years, various changes and creation of new rights in land must have taken place. There was no law prohibiting such changes. We cannot ignore all these and ride rough-shod over those rights.

Where is the question of putting these jumble of Acts in the Ninth Schedule when the Supreme Court has neither objected to the question of ceiling nor abolition of intermediaries? These Acts were passed to achieve only these two aims. What the Government should do is to ask the State Governments to modify these Acts so as to bring them within the fold of existing constitutional provisions and thus there should then be no apprehension as to their being challenged in the courts.

—For further details, please see Chapter VII.

does she do with it ? She goes on using it and giving it away to whomsoever she likes, in a partial way, just as this Government wants to do with the landed properties.

Then I come to the other question of the manner in which they have been using their power in regard to ceilings. Did they have a uniform rule ? No. Did they fix it in any sensible way ? No. Did they even accept the suggestions made by the Planning Commission in regard to certain classes of people ? No. They did it in whichever way they liked, in such an arbitrary manner that in certain areas temple lands have been included in certain other areas they have been exempted, in certain places lands owned by factories have been exempted while in other places they have been included, in certain areas they have calculated on an individual basis while in certain other areas they have calculated on the basis of families. There is no principle at all. They have just this principle of behaving and acting in an unprincipled manner.

I think—I speak subject to correction—the Supreme Court has not raised any objection to the principle of ceiling. They have, however, objected to the manner of implementation of ceiling and to the question of quantum of compensation to be paid. And why did they raise an objection ? Because, the principle which they had adopted earlier in clause 31-A in regard to estates is not fair. It cannot be applied and extended to the ceiling legislation also and rightly so. There it was intended for all intermediaries, functionless people who were created by the earlier Governments and whose function has lapsed or whose function has been terminated by this Government. They were rent collectors. Therefore they had to be sent out of their function and they did not have, it was felt by the Government, the same kind of right, the same magnitude of right for compensation as the ordinary people who own properties, landed as well as other types of properties. Therefore, they took for themselves the power to fix a tapering scale of compensation for them. This was objected to by the Supreme Court (7) when the Bihar and other

(7) Justice Patanjali Sastri observed in a judgment in the Sup-
(*Connt.*)

legislation came before them. So, to bring the payment of nominal compensation within the fold of the Constitution the Ruling Party took the opportunity of amending the Constitution and thus saved that particular policy of the Government (8).

Coming to the question of ceiling, these people are not estatedars or zamindars or talukdars or jagirdars or any of these people : they are mere tenants and also peasant proprietors. They own their lands. In regard to them, you wanted to fix the ceiling which I should consider to be discriminatory, one-sided. The Supreme Court, however, did not raise any objection in that regard. But consequent on the fixation and enforcement of the ceiling the surplus land which you wanted to take away the Supreme Court has held that the quantum of compensation fixed was not reasonable. It should be as good as a market price. Surely they should not be treated in any way worse than those others whose lands would be taken away compulsorily by the Government under the Land Acquisition Act where they have got to be paid an average of market price over a specified period of years, plus a solatium amount of 15 per cent. It should be within the power of the Government to so amend their own ceiling legislation as to accommodate this particular principle which has been reiterated by the Supreme Court. I am saying 'reiterated' because it has been there since 1890 ever since the other legislation was passed.

reme Court on 17th December, 1953, that though Article 31 uses the word 'compensation' but it really meant 'just compensation'. Moreover, it was only the judiciary which was compentent to judge whether the compensation afforded in lieu of the property was just compensation or not. It could of be left to the legislature or in a way to the whims and fancies of the executive. "It would be a startling irony if the fundamental rights of property were, in effect, to be turned by construction into an arbitrary power of State to deprive a person of his property *without compensation* in all ways other than acquisition or taking possession of such property. If the legislatures were to have such arbitrary power, why should compensation and public purpose be insisted upon in connection with what are termed two particular forms of deprivation ?"

—The Supreme Court Reports, 1954,
Vol. V, Parts VI and VII, June &
July 1954, pp. 600-606

(8) For objection as to the question of compensation having been made non-justiciable, please see Chapter, VI.

That principle has been enshrined in our own national tradition that nobody's property should be taken away without paying just compensation. And therefore the Supreme Court has done it. Why is it that the Government does not want to do this much of justice to themselves, as well as to the people of this country ?

Now, I come to the question of the ryotwari holdings. I wrote a letter to the Prime Minister(9) drawing his attention to the injustice of bringing the ryotwari peasants within the mischief of this Bill. He was good enough to send to me, after weeks time that he gave to his advisers, a note prepared by his advisers with the authority of the Deputy Chairman of the Planning Commission. And what do they say ? They say that already in Gujarat and Maharashtra and also in Punjab, ryotwari holdings also had been brought within the definition of the estate. Therefore, there is nothing wrong in bringing all the ryotwari peasants all over India within the mischief of that particular definition. Now, this is a very arbitrary way of looking at things and a bureaucratic way of looking at things, and an irresponsible way also. It is befitting only a dictator, not a democratic Government.

First of all, my friends who are there in Gujarat have advised me that it is not applicable to Gujarat ryotwari land holdings. Their holdings are treated and recognised by the Government and the public just as much as their property on the same lines as the holdings of our ryotwari system in the whole of South India and other places also. Similarly, in the parts of Orissa and in the whole of Maharashtra, everywhere, ryotwari land-holder has been recognised by the High Courts, the Supreme Court and the Government themselves till now to be the owners of their lands. They have the right to bequeath......

AN HON. MEMBER : He is sleeping.

SHRI RANGA : It does not matter.

They have the right to bequeath, to sell, to inherit and to pass on to.........

(9) For details of Prof. N.G. Ranga's correspondence with the Prime Minister on the subject, please see Chapter, X.

SHRI KAPUR SINGH : He is not interested.

SHRI RANGA : It does not matter. They are perfectly the owners of the land.

SHRI HARI VISHNU KAMATH : The Minister is meditating or sleeping ?

SHRI RANGA : It does not matter. It will all go into the records. Why bother about his listening to us ? Even if he listens to us, he is not going to be a free man to do what we want him to do. Don't disturb him.

SHRI KAPUR SINGH : It is discourtesy that the Minister should go on sleeping when points are being made here against the Bill which he has introduced.

AN HON. MEMBER : He is not sleeping.

SHRI A. K. SEN : When I reply, I shall convince the Hon. Members that I have heard every word of it.

SHRI HARI VISHNU KAMATH : He was meditating, not sleeping.

SHRI RANGA : I hope he will pay me the courtesy of recognising that I have not complained about his way of sitting. Whether he is sleeping or listening to me, I do not bother. But the only thing is, your presence is there. That is more than enough.

SHRI HARI VISHNU KAMATH : He can hear better with eyes shut.

SHRI A. K. SEN : I always listen to the Hon. Member with eyes shut so that I can hear him better.

MR. DEPUTY SPEAKER : So that he can hear him with greater concentration.

SHRI RANGA : Greater concentration ? Whatever it is whether he has gone into *Siddhopasanam* or *Shirshopasana*, it is not my concern. I am concerned with this Bill. I am concerned with the Government which is behind this Bill and the evil forces that are behind this Bill. Therefore it is my duty to appeal to these forces to be a little more sensible than they have shown themselves by introducing this Bill.

So far as the ryotwari[10] holders are concerned, they are the owners af their lands and they have been recognised as such. They are cultivators themselves ; they are their own employees ; they are their own employers ; they are self-employed people. The land belongs to them. And how many of them are very rich people ? Government have the information in regard to the ceiling legislation as to what percentage of these ryotwari land-holders are *patadars* and have been found to be possessing more than the ceiling. It is not more than 3 per cent in any State. As compared to other people, they are not well off. Their income is not to be more than Rs. 400 per month. Still they are to be dealt with by this legislation and how ? They are to be treated as *estatedars*. What will be the consequence ? Once a person comes to be treated as an *estatedar*, or the owner of an estate, all penalties that have visited the zamindars, talukdars, jagirdars, etc., will come to visit these unfortunate people also. Their land can be acquired compulsorily by the Government either for the use of the Government or for the use of coopera-tives or for the use of any other class of people even individuals, according to the wishes of not only this Government but also the State Government and all its agents right down to the zilla parishads and the village panchayats. This compulsory acquisition means the peasants need not have to agree to it. They will have to be helpless spectators. All that the Government has got to do or what it proposes to do is simply to pass an order that in such and such an area so much of this land is going to be acquired.

The question is for what purpose the land is to be acquired. For public purpose they say. What is that public purpose ? They have themselves failed to define it clearly. But that definition does not hold good for them. The Supreme Court also came to their rescue. Their planners are anxious to see that this definition of the public purpose is widened as much as possible so that to enable even the head of the panchayat

(10) For details as to the implications of redefining "estate" so as to include thereunder ryotwari land also, please see Chapter, V.

board or zilla parishad to name the land required for the public purpose. Even a managing director of a factory who is able to win the favour of the local collector or the local secretary of the land revenue department would be able to say that such and such land should be acquired. And that becomes the 'public purpose'. Why? Because it subserves the purpose of their Plan. Everything that is contained in their Plan is supposed to be the public purpose and that is expected to be an inflexible, a fixed and an invariable thing. Therefore, it must take precedence over everything. That is their public purpose. Can the Government say that cooperative farming will not come within that purpose? What about the land being given to factories and their favourites ? Will it not come within that ? It will because the Plan purpose is as wide as the legth of this country and its arms spread all over like those of *Kartaveervarjuna*. 'Public purpose', therefore, becomes a nebulous thing. It becomes the sweet will and pleasure of the Local Minister, the revenue board and all the other offices and also these so-called non-official agents who are now being brought into power at the head of all these various organisations[11].

Having so acquired the land compulsorily, what is the compensation they want to pay to their victims? They do not want to pay according to the Land Acquisition Act at all. They want to be free to pay whatever they like—yes, according to law. The local laws are there. They have given us a thesis

(11) The question as to the public purpose cannot be left to the sweet will and pleasure of the Executive as the amendment seeks to make it. It must be a question to be left to the decision of the Court. Otherwise, a residential house, or a shop or factory or land of any person who has not earned the favour of the party boss, is always in danger of being acquired for public purpose, which purpose could always be invented. Once this Bill comes to be passed, the Government will then be armed with sufficient power to resort to large-scale cooperative farming. Peasants holdings can be declared as coming within the sphere of public purposes as envisaged by the plan and as accepted by the Planning Commission, and peasants being presented with the alternatives of either pooling their lands with co-operative farm or being offered the compensation fixed by a land tribunal for compulsorily acquiring them.

Therefore it is essential that the question of public purpose should not be made a non-justiciable issue. If any person feel that his property has been compulsorily acquired or requisitioned for a purpose which he does not consider to be public, he should be allowed to approach the judiciary under Article 226 and 32 of the Constitution for the vindication of his fundamental right to property.

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of the 123 Acts that have been already passed. I have made a calculation in so many places. It is only twice as much as the land revenue. They call it waste land. Nevertheless, that land is there, to be developed by the owner. Then, it comes to four times, six times and from that the maximum runs up to 30 times, sometimes only upto 20 times the land revenue. Therefore, the payment to the peasants will depend upon the sweet will of the local land revenue commissioner whom they will appoint, or a tribunal. His decision will depend on the manner in which his pockets are lined and his palm is oiled. If he is satisfied, then it will be ten times; otherwise, it will be *only twice*. And in how many years' time would the amount be given ? Not straightway on the spot, but only in instalments and the number thereof depends upon the bribe that the man would be giving or the good-will of the officer concerned. The instalments too will be in bonds. Then, there is this wonderful inflation which will convert Rs. 100 of today to something worthless or only Rs. 10 in another ten years' time; and for ten years or twenty years, the man has got to go on waiting. This is the power that they want to take over in seizing the lands belonging to the ryotwari peasants(12).

Now, how has this Bill arisen ? It has arisen from the genius of our friends, the Communists in Kerala. Of course, they wanted to do a good thing, and that was in regard to the Zamindari tenants. For them, they wanted the land in the same way as we wanted the land for all the other Zamindari tenants all over India. Therefore, they were passing that legislation. But whether they knew it or not—I am inclined to think that they knew it—they included in it those ryotwari peasants also who happened to go, unfortunately for them, into the Kerala State because of the merger of a small portion of Kasergode. The tenants therein ware only about 2500 persons. In order to help those *jenman* tenants, they brought those ryotwari peasants also into that legislation, and they got that Bill passed there. It was held up here by the President. In the mean while they went out of power. They passed the very same Bill, out of good humour, perhaps out of repentance, I should think, because they had sent out the Communist Government

(12) For details of the State Acts, please see Chapter VII.

there by non-violent violence, and so, they wanted to save their conscience by accepting their Bill. So, they fathered their baby; that baby was later on struck down by the Supreme Court. The Supreme Court did not raise objection over so many other things, but they certainly raised objection over this, thanks to the genius and splendid pleading of Mr. Nambiar, a namesake of my hon. friend Shri Nambiar here in this House ; I am referring to Mr. Nambiar who is an eminent jurist and who pleaded, for peasants, and then, the Supreme Court was able to see reason in his plea that these ryotwari people had been brought in wrongly, and, therefore, they said that the measure should be struck down(13).

Instead of amending that Bill suitably, what has this Government done ? They wanted to oblige our (Communist) friends over there. In fact, it is not only that. They are themselves going that way, and they think that this is an excellent way. To avoid this bother of going before the judiciary to plead for such unconstitutional legislation, or, as the law Minister himself has said, of having to go and wait and see whether the Supreme Court would accept this or would not accept that, they thought 'Let us put the whole lot of these 123 Acts passed by all these legislatures in the Ninth Schedule'. It shows either they were asleep or they were half-awake, as the Law Minister has been awake during this debate, when they passed those things. Now our Government want to put the whole lot into the safe custody of the Constitution and make it a part and parcel of the Constitution.

That does not redound to the legal acumen or the legal conscience or the political commonsense or the sense of responsibility of this Government. And yet they have done this. This is a Communist way of approach and nothing else.

Now, what would be the consequences of this legislation ? About 65 million peasant families are going to be affected. There will be insecurity in their minds, and for years and years they will suffer from this insecurity, because they will not

(13) For further details please see Chapter V.

know when their lands are likely to be taken away at the dictates of the village panchayats or parishads or State legislatures.

Of course, it may be said that the State legislatures are also representative (bodies), and, therefore, they are not going to be so irresponsible and so they would not pass any such laws. But I ask : Have they not passed all these irresponsible laws and have they not passed so many of these things ? In the same way, they would do in the future. Have they not done it in such a manner in Bengal ? In Bengal, whereas the market price was Rs. 2000, the price that was to be fixed for the peasant was only a small figure and even the small figure was not being paid to the peasants. And when an appeal was made to the Prime Minister, he appealed to the local Chief Minister, and the local Chief Minister said 'We are completely safeguarded by article 31-A; so, you need not bother at all. Why do you worry at all unnecessarily ? This is the fate of the Bengali peasant land-owners and the same will be the plight of all other people. I have given you just one instance. Therefore, we cannot trust ourselves to the tender mercies of the State legislatures.

Now, why are the Government so very keen on it, and so very persistent with this Bill, in spite of my plea that they should not go ahead with it during this emergency. They themselves have stated that during this emergency everything that we do should have a defence slant. Is it a defence slant to sow insecurity in the minds and hearts of all these millions and millions of people ? Is this the manner in which you want to train our people in order to offer a united front against the Chinese, by threatening the security of their land-holdings ? And what are these land-holdings ? They are not mere houses. If you do not have a house, you can go and take shelter under a tree or in a choultry. But this is land which provides them employment. It saves them from social degradation and assures them of economic independence and their children of continuity of their employment as well as their freedom and independence. It is in this sphere that Government

wants to create this atmosphere of insecurity. So I charge them with irresponsibility in their duty towards our Motherland in this emergency.

Here was a Minister speaking only the other day. He said :

> "Our approach to agriculture must always be predominantly farmer-oriented. The crux of agriculture is the farmer everywhere and in all cases and the crux of prosperous agriculture is the persuaded and contented farmer." (14)

Is this the manner that you are going to persuade him by objecting to our having a ten-hour debate here and by coming down only to seven hours ? Is this the manner in which my hon. friend wants to persuade them by not referring to the two most important clauses here in this Bill, and by not agreeing to my proposition that it should be sent out for circulation ? I am aghast at the manner in which this Government wants to deal with the single largest interest, socially, politically and economically. I wish to warn the Government that the peasants are not going to take these things lying down in the same docile manner in which they had been accepting things all this time.

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(14) In a pamphlet entitled *"Production and Prices of Foodgrains"*, Shri S.K. Patil, former Food & Agriculture Minister, has observed : "I am more than ever convinced that no amount of planning or efforts can be or will be successful unless we make the farmer the focal point of our thinking and endeavour and unless we can plan and work from the farmer upwards. It is the facts, conditions and circumstances governing him that must form the base of our activity and it is on that base that we must build the super-structure of our planned action. Planning from above in terms of research and theories and ignoring or making light of the essentials of the farmers' problems in the field is bound to lead to failures and disasters."

How can the Government expect the farmers to produce more in the face of insecurity of their very holdings ? When the farmers get conscious of the fact that the sword of democles is to hang on their head continuously, which is sure to happen once this Bill comes to be passed, he will never invest any money on his holding in a bid to produce more. So, for intensive cultivation this sense of insecurity must be removed from the farmer's mind. Once the Government "recognise this cardinal fact and take into account the farmer's limitations", the futility and mischievous character of the 17th Amendment will be proved.

All over India, in some States *more, and in some* States fewer, peasants have begun to awaken themselves, and nearly 72,000 of these peasants have sent their petitions to the Secretary, Lok Sabha, protesting against the Bill and asking that this Bill should be dropped. It might not make any appeal to these friends opposite. Sir, 1967 is coming, and I *wish to* remind them that in 1967 they have got to go with this Act, and indeed, this unholy addition to the Constitution. I shall leave it at that. On an important thing like this, should they not be able to see from their own election manifesto, whether really the people have given them a mandate in regard to this matter when last time they had gone to the polls ? You have gone to the polls, I have *gone to* the polls and all of us have gone to the polls. Did you or did anyone *of us* give any kind of an inkling to the ordinary masses in the country that this kind of an insecurity was likely to be created as to the security and stability of their prosperity ? We have not done that. If we are to be a democracy, then, is it not our duty, and the duty of this Government to wait *until* the next *elections*, before they possibly can rush through this legislation ? Give an opportunity to those peoples, *explain things* to them, and tell them and get their consent. By all means, if they agree, if they want to commit political, social or economic suicide, then that is another matter.

I wish to refer to one or two more points that may be raised by some of our friends. In fact, it has become fashionable for some of these friends to say that we of the Swatantra Party are a reactionary Party. I wish to say that whoever wish to support this measure and the *threat that is* implied in it and is going to be hurled at the crores and crores of these *self-employed* peasants of this country who are producing nearly 50 per cent of the national wealth, are not only reactionaries but communists.

What has happened ? My hon. friend (Law Minister) himself said that it is necessary that peasants should be assured of their ownership of land, if they are to be encouraged to produce more and more. He gave the excellent example of small holders and their achievements in Japan. I wonder whether he was really aware of the clauses of this Bill. He was making out a case for myself and my peasant proprietors. Peasant proprietors he certainly wanted to have. Let him *know what the peasant proprietors want in this country.* Let him and his Government have the courage to go and face our peasant proprietors as voters. I will like to see then how he and his Government come back.

China has made experiments with what are called communes. Our friend and comrade, Khrushchev, called it ultra-leftism, deviationism and adventurism, because they in Russia had made their experiments and then gave them up. Only the other day, the erstwhile Food Minister was giving information as to how in Poland, in Czechoslovakia, in Yugoslavia, Rumania, Bulgaria and all the other communist and satellite *countries, as well as in Russia, the communist overlords* were obliged to yield to the sacred passion for owning land. They did not give it as ownership, but they certainly yielded from half an acre to two acres. I have myself seen those kitchen farms in Soviet Russia. This Government is publishing small pamphlets encouraging these educated ladies, fashionable ladies—I have seen their pictures also—they are fashionable—to take to kitchen gardening. They want kitchen gardens, in the few towns they want to destroy the holdings in the *vast rural India. That is what Soviet Russia has* done. That is her own bitter experience, so that today the production is lagging behind in Soviet land because of these wrong experiments that they have been carrying on, due to the hopelessly anti-peasant attitude and policies that they have pursued during the last 45 years. Is our country also to be forced to go through the same fire of suffering and struggle and sacrifice ? *And sacrifice at whose cost ? At the cost of the masses.*

Therefore, I wish to warn this Government that if they are really keen on this, and if their intention is that this *Bill* should be passed, as it is now, let them agree to go to the people and to make *an appeal to them.* Let us *go and face* the people, both of us; both the sides, and then we shall see how they will fare.

In conclusion, I wish to say that our party dissociates itself entirely from this Bill. That is why we have refused to go into the Joint Committee. That is why we are asking for circulation of the Bill. It is not at all fair that the Bill should be proceeded with in the way it is sought to be. Even parliamentary convention demands that a Bill like this, to which 124 other Acts have been tagged on, should be circulated among lawyers, peasant organisations, of which I am the head, and some other friends also have developed, like farmers' forum of Dr. Deshmukh. This Bill should have been given the widest publicity among these people. They have not done that.

Under the circumstances, they have no moral right to go ahead with this Bill. Hence it is my duty, to resist it. It is the duty of our party and the Kisan Sammelan, of which I happen to be the head, out of devotion to this Constitution itself, to resist this measure through parliamentary means in this House and through every other legitimate means which would be open to us in this country.

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THE SOCIALIST PATTERN

By KRISHNAPAL SINGH

I am a new comer to this House comparatively. I have been here only for a year and a half. But in this short period I have been able to make one or two discoveries. One of them is that so long as one can raise a few slogans, say that other people are exploiting and have vested interests and a few things like that, one can get away as a socialist or a communist, even though one may own any amount of property or may have any amount of balances in the bank. This is exactly what we have been seeing. These very people who want to teach socialism to us have been suspected to be, and some of them have actually been proved to be, accumulating large balances in banks.

The other point which strikes one when one hears the speeches of champions of labour and peasants is that probably these champions have not done a day's work anywhere, and worse still, they are incapable of doing any physical work or any hard work anywhere. So, Sir, these political or theoretical communists or socialists come here and preach us the benefits of socialism and communism. They may even say that we should be very happy when India becomes a country with a socialist pattern. I will not say very much on that. So many of the hon. Members have proved beyond doubt that the socialist pattern, which has been introduced by the present Government, is nothing but a method of destroying the traditional rural economy in this country; this is what it aims at. This socialist pattern of society which comes in the name of land reform is nothing but a method by which they could convert ninety per cent of the population—it is not 60 or 70 per cent as people say—into serfs and into hewers of wood and drawers of water, for the remaining 10 per cent who want to live in luxury and comfort at the expense of others. Unfortunately we have no statistics from other parts or provinces than Maharashtra. A gentleman from

*Speech in Lok Sabha, 19-9-63.

Maharashtra has gone into this subject in great detail and has produced this pamphlet.

DR. M. S. ANEY : What is his name?

SHRI KRISHNAPAL SINGH : Bhamburkar. This is what he says on page 14 :

> "The present Ceiling Act is neither an attempt to nationalise the land resources in the State nor to rationlise it. It is a hotchpotch arrangement and we think it has been arrived at without giving proper thought to the rural problems. Thus this has made one section of community and particularly the section which is coming up by dint of its own merits and labour and which has contributed substantially to the national development, better too. It is feared in some sections that this Act is a Governmental device to destroy a community which is coming up as the likely rival for power."

So, that is the real motive behind this legislation. By means of these land reforms, 90 per cent of the people are being converted into serfs and are deprived of their freedom. The very backbone of the country, the peasantry, is being destroyed. I say that if you want to have a good labourer for a good artisan, you cannot find him unless you draw him from the peasantry and that very peasantry is threatened with extinction.

The hon. Member just now quoted a person producing 20,000 or more maunds of paddy. What does it matter if he has developed his lands so well ? I thought that he would receive credit and he would be given credit.

SHRI VASUDEVAN NAIR : That is rent.

SHRI KRISHNAPAL SINGH : The Hon. gentleman will have to prove it. Anyway, the vast majority of the ryotwari tenants are peasants who cultivate their own land. There may be a few exceptions. I must say that I am not fully conversant with the ryotwari system as my friend here is, but I know that most of them, like most of the peasants here, cultivate lands themselves.

AN HON. MEMBER : What is the definition of personal cultivation ?

SHRI KRISHNAPAL SINGH : It is very difficult to say what personal cultivation is. If you do not let out your land to somebody else that should be considered personal cultivation. I do not agree with the hon. Member that he should cultivate it only with bullocks. If you can cultivate it with a tractor, well and good. Instead of 100 maunds you can produce 500 maunds ; then you deserve all the greater credit for it. So, the ryotwari cultivators of the South and the bhoomidari peasants here cannot by any stretch of imagination be considered as proprietors of any estate. Most of them, as my hon. friend mentioned, are heavily indebted. They cannot make both ends meet. To define their little patches of land as estates is something absolutely ridiculous. If you take the accounts of co-operative societies which advance money you will find that fifty per cent of the pepople who take short term advances are unable to repay the loans in time. They have to borrow money at exorbitant rates of interest in order to get a few furtther documents prepared in their favour to allow that loan to stand in their name. So, that is the position of these bhoomidars and the ryotwari tenants whom you want to define as estate-owners.

Now, an hon. Member said that the real intention of the Government appears to be to take these little parcels of land and convert them into cooperative farms. Well and good. It may be good. I do not wish to enter into the merits of cooperative farming. But it has been proved by agricultural economists that in places where it has already been practised it is not a profitable proposition. One thing I would like to suggest; if the present Government and our communist friends have great faith in cooperative farming, why should they not form cooperative farming societies of their own ? I would suggest that instead of the Ministers drawing big salaries here and their advisers drawing perhaps bigger salaries, they would go out to the village, form a cooperative society, take some land and prove to the cultivators and to the country that cooperative

farming is very profitable. That will be the better way. Afterall, practice is better than precept.

The people who want to introduce land reforms have never been near the land. They do not know what land is; they do not know how it is grown; they do not know what is the method to be adopted. By some theories, and by means of propaganda they want to introduce reform which is not reform, in fact, but which is only intended to be in the largest and the best section of the community in this country.

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LIQUIDATION OF PEASANTRY*

By LOKANATH MISRA

I was happy to listen to the hon. Shri Pathak's speech. It is really a very good indication that there are some people who are conscientious and thoughtful even in the ruling party. Previously, I had the impression that any measure, whether good or bad, had to be rushed through; that was the approach of the Congress Party. But now there are conscientious persons to indicate to the party that these things should not be rushed through, that there should be a cautious approach to these problems, intricate as they are. I will be very happy if the Government learns something from those hon. Members.

Now, Sir, it is a curious coincidence that there have been two Yamaraj Plans. One was the Yamaraj Plan for the Ministers. Now another has come for the peasants. The first was for the rulers and now the second one is for the ruled. This 17th Amendment to the Constitution has been aimed at the liquidation of the peasantry. Particularly during the Emergency, this Bill should not have been brought forward. It is a controversial issue and Government knows it pretty well. It is not only the Swatantra Party which says that it is controversial but a lot of people who do not belong to the Swatantra Party also hold the same view. So during this Emergency this Bill should not have been brought forward at all. And now after it has been brought forward, it should not only be sent to a Select Committee but it should also be circulated for eliciting the opinion of the people as a whole.

Sir, the Constitution was first amended in this context in 1951. That was in connection with the abolition of the Zamindari and all other intermediaries. It was not objected to generally because no party in India wanted that the Zamindari should continue. Then the second amendment in this connection came in 1955. That made the question of compensation

*Speech in Rajya Sabha 21-9-63

nou-justiciable. But now we object to this—and we vehemently object to the present amendment, because it affects the peasants directly. After the Communist Government in Kerala saw that there was an expropriatory trend in the Government of India, they took encouragement and they brought forward the Agrarian Relations Bill which was very fortunately vetoed by the President. To compete with them, it seems, the present Kerala Government has also brought fotward another Bill almost on the same pattern (1).

DR. A. SUBBA RAO : Was it vetoed by the President ? It was assented to by the President when it came up to him.

SHRI SHEEL BHADRA YAJEE :But the partern is the same.

SHRI LOKANATH MISRA : Now, the Congress Government there had also brought forward a similar Bill on almost the same pattern. But it was struck down by the Supreme Court. That is why, as the Deputy Minister said, this Bill has been brought forward.

Now, Sir, this is a matter of policy whether we should tamper with the *Constitution* or not. If Mahatma Gandhi would have been there, when Sardar Vallabbhai Patel, the iron man, was there, they would not dare to tamper with the Constitution even once unnecessarily(2).

After that this tampering business with the Constitution has started and endlessly *continues*. Within the last thirteen years they have amended the Constitution sixteen times

(1) The Bill, as emanated from the Communist Government int Kerala, *was not assented* to by the President. After the Communis- Government was forced out of power, the Coalition Government passed a similar Bill with minor changes. It was that which got the *President's assent.*

(2) Sardar Patel had strongly held the view that the rights of ownership of land were sacred to a peasant. And any interference with them would be "loot and robbery" *and* would produce "chaos and anarchy". It was therefore the duty of the State to protect them from wanton attack. *Contd.*

People feel if this party remains in power for another thirteen years, probably there would be little of the original Constitution left in it.

SHRI SHEEL BHADRA YAJEE : It is being done for the good of the society.

SHRI LOKANATH MISRA : Do not say that. You are doing *everything in the name of the society.* Everything you do in the name of the people. When you shield a Chief Minister, *it is in the name of the* people. When a Chief Minister, who did not have anything ten years back, now owns Rs. 10 *crores, it is also in the name of the people.* It is all for the good of the people that you are doing.

Sir, the Constitution is a charter propounded by the people of the country. It must be the paramount law. It must be something sacred, and to tamper with it for any difficulty that comes in the way, is very wrong. We must know how to defend the sanctity of the Constitution in whose name we have taken our oath here. And what is even worse is that Fundamental Rights are being *curtailed.* For "Fundamental Rights" I would give similar words. They are "essential", "primary", "original", "basic", "getting into the root of the matter". That is what fundamental right mean. Therefore on no occasion the Fundamental Right should be curtailed.

It now reminds me of the old story of the Mahabharata when the old king Dhritrastra, the blind man, asked for a fond embrace of Bhima. For fundamental rights I give the simile of Bhima. King Dhritrastra did not want Bhima just for an affectionate embrace. He wanted Bhima for a fatal clasp. And that is what the Fundamental Rights have come to. If

Prime Minister Nehru, however, belonged to the group with opposite convictions. That group held that socialistic progress would be held up if the rights of property were fully safeguarded. So long as the Sardar was alive the group could not get the chance to display its faculty. It was only after his demise that the group in one manner after another has started erroding property rights so as to place them at the mercy of the executive.

--- *Constitution Amendment Bill Hits Peasants Hard*
by A. P. Jain (*Trbiune*, 12-8-63)

the rulers go on curtailing these Fundamental Rights, it will not be a fond embrace, it will be going into their fatal clasp.

SHRI SHEEL BHADRA YAJEE : You want the Fundamental Rights to loot.

SHRI LOKANATH MISRA : You have been looting all these sixteen years. We do not want to take that responsibility.

Now, Sir, the Congress Party was the first party to give all sorts of assurances, alluring promises to the agriculturists. But I have found that the latter have been always kept under illusion. Sir, for unproductive labour a man gets a concession from tax up to Rs. 3,000; he does not have to pay even a pie. Even if he is a broker who does not produce anything, he is free from income-tax to the tune of Rs. 3,000. But in the case of an agriculturist his first rupee is being taxed. He pays rent for the first rupee he gets out of his land. So, how has social justice been meted out to the agriculturist after thirteen years of this independendence ? Has the Ruling Party done anything for the agriculturist ? Coming here to Parliament and making brilliant speeches does not ameliorate the condition of the agriculturist. They must do something genuine about it.

SHRI SHEEL BHADRA YAJEE : Mr. Vice-Chairman, what is the average rate of rent per acre ?

SHRI LOKANATH MISRA : It is for you to find that out. I do not hold here a class on political lessons. Sir, both the previous amendments (first and fourth) were done with the pretext of helping the agriculturist. That is why we were not opposing it. Even when the Government spent thousands of rupees on Bhoodan workers per day we did not object to it only because we wanted that something should be done for the agriculturist. But nothing has been done yet for them. The slogan "socialist pattern of society" is being repeated many times. Sir, socialistic pattern of society may be the means. It is not an end in itself. I

must add for the information of the hon. Member who interrupts me so often that it cannot be an end in itself. It is all meant for the welfare of the people. And if it has not served the people, we have to throw away that slogan. (Interruption by Shri Sheel Bhadra Yajee).

THE VICE-CHAIRMAN : Mr. Yajee, let him continue.

SHRI LOKANATH MISRA : Though he has had his say he will go on with his running commentary.

Sir, for the welfare of the people what we need most is higher production in agriculture. And if this has to come from the people, we must first give them the sense of security. The peasant must know that he owns his land, that he can do something for his land, that he can invest some money in his land, or else he is not going to put in the labour that is required for the land. It is a question of relationship between the farmer and the soil. It is not a relationship between Mr. Yajee and his Government. Naturally, the farmer must be given all the assurance that is needed to develop his land. And in this context, Sir, I would give some references.

Let us take acreage into consideration. My friends, who interrupt me so often, are mistaken because in Japan and Formosa, probably the acreage per head is the minimum. The normal acreage that any family holds there is about 2, and the entire world knows that the production in Japan and Formosa is the highest.

DR. A. SUBBA RAO : That defeats your own argument.

THE VICE-CHAIRMAN Mr. Subba Rao, let him continue. Time is running out.

SHRI LOKANATH MISRA : So, Sir, it is not the acreage that yields. It is the sense of assurance that yields results. With the enormous acreage of land brought together in Russia and China, there is starvation, there is famine. With all the co-operative farming brought about in these two countries till today there is starvation

and famine. And we would not like famine to come in here because of this land legislation and the socialistic pattern of society that is envisaged.

DR. A. SUBBA RAO : Does this legislation bring about socialisation of land or does it bring about collectivisation of land or anything of that sort ?

SHRI LOKANATH MISRA : It aims at collectivisation. It is the Communists who are working behind the scene and it is all to their advantage, to the advantage naturally of both to extreme right—I do not mean rightists—and to my left in this House, and they have come together. They are closer now than they had ever been.

Sir, in this country we have 52 per cent. of people who own land. They are self-employed people. They employ themselves. They do not beg of the Government for jobs. And we are going now to oust this 52 per cent. of the population from their land. And ultimately what is going to happen? If what my friend suggested, it is co-operative farming that is coming or the co-operatives, then what are we going to do ? These self-employed people would be brought into employment by the States. And these self-employed people would be converted into political slaves. Would you like to have 52 per cent. of the people to become political slaves ? It is the Communists who want it because the agriculturists as a whole, the peasants as a whole, are a bulwark of stability and so the Communists do not want them. Once they can destroy them, they can come into power and play their tricks(3). The Government, the ruling party, should not play into their hands.

(3) "One kind of person whom the Communist hates more than any other is the peasant with a *little bit* of land, because with the small farmer the Communist cannot have his way", writes Professor David Mitrar in his book 'Marx vs. The Peasants'.

The peasant is a bulwark of stablity and freedom. The Capitalist class can be attacked, the lawyers and Doctors can be ignored or destroyed, learned professions like those of law and accoutancy can be nationalised because they are only a few of them. The Communists cannot however win an election, they cannot put a government in or out of power without first liquidating the peasantry. *Contd.*

Nepotism and favouritism are rampant, as it is, and once these 52 per cent. of the people become political slaves, we can easily imagine their future. So, in the interests of these 52 per cent. of the people, we have to resist and object to this piece of legislation.

There has been an argument on behalf of the Government that they are going to distribute the surplus land once this Bill comes into operation. Almost each State in India has the ceiling legislation. What has stood in the way of implementing that legislation and distributing the lands to poor landless peasants ? I do not think there has been any difficulty in their way. If they had genuine interests in distributing the surplus land to the land-less, they could have long ago done that. Only because the intention is lacking, it has not been done and this Bill is brought to affect the ryotwaris who have little bits of land.

What is even worse is, this Bill is given retrospective effect from 1951. That complicates matters. There may have been so many transfers in the meantime. What would happen in those cases ? It would only develop litigation to a very large extent.

SHRI AKBAR ALI KHAN : This is a matter which the Select Committee would look into.

SHRI LOKANATH MISRA : I hope so. I hope they would not be rash as my friend Shri Yajee.

Then 'public purpose' should be defined and the compensation should be made justiciable. Unless compensation is made justiciable, nobody is going to get a reasonable compensation for his land. I can cite one instance from West Bengal where the attention of the Prime Minister was drawn and when the

In India, 52 per cent of the peasantry own land. Obviously there can be no Communism in this country, so long as this class exists. The Prime Minister is well aware of this and it is to extinguish them so that to have his way for peaceful and progressive socialism that he has come forward with the present amendment.

Prime Minister wrote to the Chief Minister of West Bengal, he wrote back 'I take shelter under Article 31 (2) (a) of the Constitution and I can pay as much as I like.' If that comes to be true in all cases, then people would be going on losing lands without fair compensation and they cannot go to the court. So, this is a very important issue. If you are taking away land from somebody, he must get an adequate compensation for it. Otherwise, it would amount to robbery. The present co-operative farming is shown as a glorious achievement. Those are only parasitical bodies, spoon-fed wherein money is being syphoned from all available sources. So, we cannot show these as glorious examples of our achievements in the matter of farming and agriculture. Once this Bill comes to be passed, the entire agricultural sector would fail, because it would be impossible to pour in money in the unsecure holdings.

Lastly, I would like to state on behalf of my Party that we disassociate ourselves from this Bill. That is why we have not gone into the Joint Select Committee.

SHRI AKBAR ALI KHAN : That is a mistake. If you will permit me, you should go and try to convince others.

SHRI LOKANATH MISRA : We are trying it here. I think many of my friends would have got persuaded by now.

THE VICE-CHAIRMAN : It seems they are not sure of their arguments.

SHRI LOKANATH MISRA : We are. That is why as a matter of principle we differ from it and that is why we have not gone into the Joint Select Committee.

This 52 per cent. of the population who are farmers in this country were able to rid themselves off from the British tyranny. They sent away the Britishers out of India and as to-day fortunately, I found a much lesser number has made the Government yield in regard to their Gold Scheme. I hope this 52 per cent. who form the majority of this county would be in a position to bring enough pressure on the Government to make them yield and to do away with this Bill.

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ROAD TO COMMUNISM*

By DAHYABHAI V. PATEL

Madam, I am grateful to you for having given me a few minutes at the fag end of the debate today.

SHRI AKBAR ALI KHAN : Because the last stroke is always important.

SHRI DAHYABHAI V. PATEL : We have decided not to go into the Select Committee. I am speaking on behalf of my Party because it is well known that going into the Select Committee means accepting the principle of the Bill. *Madam, we are opposed to the principle of the Bill.* Why are we opposed to the principle of the Bill ? It is because that this is the royal road to Communism. We have had the experience of land legislation and land reforms in Gujarat from where I come and I have given the illustration of how that land legislation is being applied in the name of giving land to the tiller. Land that has been taken away from the tiller has not been given to the other tillers but the surplus land is retained by Government. In the law in Gujarat, there is a provision that if a piece of land comes in between two pieces of land given to Government under the land legislation, the former piece of land, even if it cannot be taken over under this legislation, can be taken over by Government if Government wants to introduce co-operatives. Is that voluntary ? In that law, it is also provided that if certain percentage of the agriculturists of one village want to form a co-operative, the others will be compelled. This is the type of intentions of the Congress Party which they call voluntary and see how it works in practice. Therefore, Madam, we are opposed to the principle of this Bill and, therefore, we cannot go into the Select Committee.

The learned Member, a distinguished lawyer, has given warning to this House as to how far this law goes. I do not

*Speech in Rajya Sabha on 21st September, 1963.

know whether this can be discussed at length in the Select Committee after the House has committed itself to this measure. The place to consider it is here, whether we accept the principle of the Bill or not. Madam, I also know that the Government of Maharashtra has not accepted this Bill. It is opposed to it and yet Government is trying to force it on everybody. Why does not Government agree to circulate this Bill for public opinion ? Ask your own State Governments and find out what they think about it. That would be the proper way of doing it. Madam, I am glad to see Rajkumariji in this House, after a long time. The last time she spoke, she reminded us of Gandhiji and what happens when they do not heed to his advice. We heard a Finance Minister taking back his words. We repeated the warnings again and again. We said, when this Budget was introduced, that they were putting at naught the promise that they gave under the Constitution, that these measures were going to be oppressive and that they were driving the country to Communism. The new Finance Minister has had to take back his words. Let me warn the Government that if they go ahead with these measures which would oppress the poor peasants, what happened after the Gold Control Order in front of Parliament House will happen everyday and the Government will have to take back this oppressive measure. Madam, we have tried in deep humility to persuade the people in the House and outside. I have personally gone round to several Members of the Congress Party, their Executive, their important Members and pleaded with them : Why do you want to rush with this ? Circulate the Bill for opinion. Ask your own State Governments. There may be many other Governments like Maharashtra opposed to this but under the dictatorship of the unique dictator that we have, nothing can happen. What he says is right and what he does not like is wrong. What he says is just and what he does not like is unjust. If he likes a man, he is honest, he is uncorruptible and he is everything. If he does not like a man then he falls out, and what happens to him afterwards ? Let those who are saying 'yes', remember the words of Cardinal Wolsey, as perhaps some of the Ministers who have gone out under the KamarajPlan are remembering.

THE DEPUTY CHAIRMAN : What did Cardinal Wolsey say ?

SHRI DAHYABHAI V. PATEL : "Had I but served my God as I had served my King......". Madam, this is what he said. I hope some of the Ministers who have ceased to be Ministers will remember these words in their rooms ; at the fag end of their career in their life, after having served the country for so many years, after having sacrificed, they have come to a position when they have got to say these words, "Had I but served my God as I had served my King..."

SHRI AKBAR ALI KHAN : They have sacrificed for the country and they will be remembered.

SHRI DAHYABHAI V. PATEL : What Mr. Akbar Ali Khan was and what he is here for, we all know.

Madam, the most objectionable part of this Bill is the taking away of the rights of the ryotwari peasants. It is confusing the issue by saying that these people are taking away the rights of the high landlords. What about the ryotwari rights ? We have held the rights of the peasants as sacred.

(Interruptions from Shri Sheel Bhadra Yajee)

This is too much for your brain, Mr. Yajee. You keep quiet. It is too thick for you.

The ryotwari land, the ryotwari right and the peasant proprietor have all been held sacred in this country for all these years. And that is the strength on which this country has survived so many invasions, so much suffering. If that goes, the only that remains is collectivisation and the next step is what my friends here want. They staged a demonstration two days ago. The Government would not yield to repeated entreaties and requests from people who were their friends, who were their comrades in arms during the days of the freedom struggle because they want to take the country the wrong way. When we say that the Gold Control Orders and the Compulsory

Deposit Scheme are oppressive, when we say, 'Please do not rush with them', when an old Gandhian like Rajkumariji appealed, they would not listen but when the Communists staged a big demonstation, when they took charge of Delhi—and there was no Home Minister, there was no police and they controlled even Government property—the Prime Minister or the new Finance Minister is yielding.

SHRI P. K. KUMARAN : Correctly said.

SHRI DAHYABHAI V. PATEL : I am inclined to think that the Prime Minister wants to take us to Communism. He is giving the Communists an opportunity to have a demonstration, to have a trial, to have a drill, of how they will take over Dehli when they want to.

They have done so in Czechoslovakia ; they have done so in many other places. So the Prime Minister in this way is making the ground ready for them. Whenever he is in trouble, when the Chinese invasion comes, he tells us one thing but he calls Mr. Dange and sends him to Moscow. Now Mr. Namboodaripad has gone to Moscow and he has gone to Peking, When we ask why he has gone there the Prime Minister refuses to answer.

SHRI RAJ BAHADUR : How is it relevant ?

SHRI DAHYABHAI V. PATEL : It is very relevant because I am trying to point out that the Prime Minister is taking un towards communistic policies.

SHRI P. K. KUMARAN : It is a good thing.

SHRI DAHYABHI V. PATEL : According to my friends here it is good but according to others who believe in the Gandhian ideology this is wrong. Therefore we protest against this measure. I appeal to friends on the opposite side, who have been with Gandhiji, who have been in the struggle for freedom, to desist from this, to listen to reason. Otherwise if a small community like the goldsmiths could make this mighty Government yield, remember the peasantry forms more than 70 per cent of the country and they will make you yield.

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FREQUENT COSTITUTINAL* AMENDMENTS DOUBLY WRONG

The Gandhi School of Politics was holding its usual Seminar, when the subject of discussion was the proposed 17th Amendment to the Constitution. The discussion opened with the observation that in the course of thirteen years, our Constitution has already been amended 16 times, while the U. S. A. in its 174 years has passsd but 23 amendments. The obvious inference was that either our Constitution-makers had made a very bad job of it—in which case the wisest thing may be to recast it once for all in toto to avoid these six-monthly tinkerings—or that our present rulers are too prone to play with the Constitution in which case it would be wise to get rid of them with a view to seeing that the spirit of the Constitution was respected and not monkeyed with.

One speaker said the attitude of the Congress towards the Constitution was much like that of the Queen in Alice in Wonderland, who had just one ready solution for every difficulty—"Off with her head" ! Every time the Executive found itself thwarted by the Constitution, the Congress rulers who got irritated imitated that Queen of fiction, saying "Off with her head", and carried through an amendment, legalising fundamental illegalities and immoralities. The essence of parliamentary democracy of the West, which we are supposed to be following, is not universal suffrage, legislatures, cabinets, ministers and the rest of such paraphernalia, but certain fundamental human rights (of the individual man) which both in the US and in the French Revolution were the moral justification for the illegal revolts, and the foundations for the new governments set up, and embodied in the "Rights of Man" and in "The Declaration of Rights". To the extent that any government fails to uphold these rights, it was asserted in both the Revolutions, to that extent it ceases to have any moral right to govern, and the 17th Amendment, it was argued, was the last of a series of such failures on the part of the Congress

*B. R. Kumar (Swaraja 24-8-63)

Government. In a normal parliamentary democracy, it was argued, if the party in power was unable to function within the limitations of the Constitution, the normal course for it would be to resign ; in the alternative, to take the other parties into confidence and bring about the required constitutional change with the consent of all parties, in the way our Constitution was originally framed. The parallel was cited of Mr. Baldwin, who before taking up his final attitude which brought about the abdication of the Duke of Windsor, took the Opposition into his confidence and the King had to yield because he knew the opposition would refuse to form an alternative Government. The Constitution of a country is like a rock ; something fundamental like the rules of a game ; something of intrinsic value like gold—it is immoral to make it the playing of passing political power, as the Congress Government had been doing during the last 13 years.

The need for 17th Amendment arose not because of any general fundamental change in the social or political life of the nation, but because of a judgment of the Kerala High Court, upheld by the Supreme Court, against certain legislative enactments of the Kerala Government. In other words, the Congress Government was wrong in bringing it forward much in the spirit of defiance of the judiciary. The judiciary is the watchdog of the citizen against the Executive, it is the moral duty of the Government to respect its decisions as much against itself as against the public. If the Executive itself shows scant respect for the judiciary, it can hardly expect the public to hold it in greater honour. The attitude of the Government amounts to a contempt of the judiciary, and in any normal democratic government would expose it to impeachment.

"ESTATE" AND "RYOTWARI"

The expression "estate" has been defined as (based on Madras Land Estate Act of 1901) :

"(a) any permanently settled or temporarily settled zamindari ; (b) any portion of such permanently settled estate or temporarily settled zamindari which is separately registered in the office of the Collector ; (c) any unsettled palaiyam or jagir ; (d) any Inam village of which the grant has been made, confirmed or recognised by the British Government notwithstanding that subsequent to the grant the village has been partitioned among the grantees or the successors-in-title of the grantee or grantees."

The Constitution did not alter the meaning of the "estate".

On the other hand, ryotwari system was evolved by Sir Thomas Munro on the mode of the peasant proprietorship system. Arthur Young said about this :

"the magic of ownership would turn sand into gold and the chief merit of the ryotwari system lies in its recognition of this truth and the implied assurance that goes with that, as long as the ryot paid the revenue fixed on the land regularly, the State would respect his possession and refrain from interference. Acquisition of land by the State for transferring the ownership to another person of the State's choice will, therefore, be repugnant to the spirit underlying the ryotwari system."

The Supreme Court in its judgment in the case of K. Kunhikoman *vs.* State of Kerala, stated that "the basic idea of ryotwari settlement is that every bit of land is assessed to a certain revenue and assigned a survey number for a period of years which is usually thirty and each occupant of such land holds it subject to his paying the land-revenue fixed on that land. But it is open to the occupant to relinquish his land or to take new land which has been relinquished by some other occupant or has become otherwise available on payment of assessment."

It was in the face of these facts that the Supreme Court struck down Kerala Agrarian Relations Act in its application to ryotwari lands. It stated that ryotwari land "are not estates within the meaning of Article 31(2) (a) of the Constitution and therefore the Act (which included ryotwari land as coming under the definition of "estates" is not protected under Article 31A (1) from attack under Art. 14, 19 and 31 of the Constitution."

Evidently neither the framers of the Constitution ever intended nor the legal position contemplated that ryotwari land should come under the purview of "estate" otherwise it should have been defined as rights pertaining to all agricultural land, which was not the case when the local equivalent of "estate" in the then existing law relating to land tenures was specifically recognised as the thing intended. Sub-Clause (2) (b) of Article 31-A was even more specific when it referred to, by way of illustration "rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary" meaning that only the inter- mediaries were intended. Ryotwari land-holders are assuredly not of this kind.

There is, therefore, no justification on the part of the Government to include under the definition of "estate" ryotwari pattas also. Ryotwari patta holders have complete and absolute proprietorship rights vested in them legally and traditionally? How can you convert them into intermediaries when majority of them cultivate their own land? As Rajaji has written in the *Swarajya* "It is a gigantic falsehood to make all owners of land 'intermediaries' which the definition proposed in the Amendment seeks to do, reviving the exploded doctrine that all land in India belongs to Government, every peasant being only a tenant."

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COMPENSATION : DANGER THEREIN

While discussing the fourth amendment in 1955, the Prime Minister categorically stated that he did not want anything to be acquired except on payment of just compensation. Shri Govind Vallabh Pant stated that courts can be approached at any time where the compensation is almost illusory or where there has been a fraud on the Constitution. He stated that "justiciability (still) remains and in suitable cases reliefs can be obtained."

It is difficult to agree with Shri Pant's view. Apart from the difficulty of defining the expression "almost illusory" and "a fraud on the Constitution", we must not forget that a law may be duly made by a Legislature, Central or State,— and this is quite conceivable in these days of party discipline in the Legislature—, which may provide for the payment of only a nominal compensation for a very valuable piece of property acquired for a public purpose. For instance, the law in question may provide for the payment of Rs. 5000/- only for a property which is worth, at least, Rs. 50,000/-. If this happens, there will be no remedy in any court of law. Clause (2) of Article 31 will stand in the way. Legally speaking, any offer, by way of compensation, of any positive quantity of money above zero, will satisfy the requirements of the Constitution, and that it will be non-justiciable.

It actually happened in a number of cases immediately after the fourth amendment. Several states came out with Land Acquisition Acts which provided that the adequacy of the compensation shall be non-justiciable under Article 31-A.

There were large variations in the amount of compensation paid, from State to State. These variations in the amount of compensation cannot be explained by the extent of the areas of the intermediaries which were resumed. There were differences on the basis of calculation and the rates of compensation. The basis of 'net income', 'net assets', 'land revenue', and

'value of land' were all tried in one State or other. Even one common basis was adopted say, 'net income', the range of holders were paid 15 times of net income in Assam, while the land holders in the same category received 28 times the net income in Uttar Pradesh.

Now we venture to refer here a particular case of West Bengal Land Acquisition Act, where the compensation was so inadequate that it could be described as a fraud on the Constitution which was only to be expected as a result of Article 31-A. Under the West Bengal Act there were cases where people—small people—were deprived of their lands on payment of compensation which practically came to only 7% of the market value of land which was acquired by the State. This was in 1955. Although 8 more years have passed, even this small quantum of 7% of the value has not been paid by the State and the law provided that a major portion of this paltry compensation shall be paid to the owners of land in bonds re-payable over a period of 20 years. Even till today, neither is the value of the compensation quantified nor the bonds issued.

When the Prime Minister's attention was drawn to this, the Chief Minister concerned replied that the government was protected under Article 31-A, and the matter was non-justiciable. The Prime Minister did not care to raise even his little finger against this gross injustice and did nothing more after he received this reply. But truly speaking this all is in consonance with the views held by the Prime Minister himself. He had stated categorically that "if we are giving full compensation, well, the 'haves' remain the 'haves' and the 'have-nots' 'have-nots'; it does not change in shape or form if compensation takes place. Therefore, in any scheme of social engineering, if I may say so, you cannot give full compensation. Now in a matter of this kind therefore, where you have to consider all these facts, political, social, economic, I submit that the *judiciary is not the competent authority*".

Shri H.V. Pataskar, Shri T.T. Krishnamachari and Shri Govind Vallabh Pant spoke in the same veins. It was argued

that if we wanted to create in India a "socialist pattern of society" and to realise the ideal of a "Welfare State" in the *country, it was not possible to give full compensation and* hence it must be made non-justiciable.

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Now several eminent constitutional lawyers have commented that it is not possible to satisfy the requirements of the rule of law, which is a fundamental principle of democracy, if such an important as the question of compensation is made non-*justiciable*. as it amounts to erosion of our Fundamental Right to Property as originally guaranteed by our Constitution.

Now, "a right", says a great jurist, "is an interest, *recognised and protected by a rule of right.* It is any interest respect for which is a duty, and the disregard of which is a wrong". Further, a legal right......is an interest recognised gnised and protected by a rule of legal justice—an interest the violation of which would be a legal wrong done to him whose interest it is, and respect for which is a legal duty. 'Rights', says Ihering, 'are *legally protected interests*'. *A rights* therefore, implies a legal remedy to enforce it. But if there is constitutional bar to the judicial enforcement of a right, that is to say, its enforcement or vindication by an aggrieved party through the medium of a court of law, then the right in question has really no meaning and has, in fact, ceased to be a right. As Lord Chief Justice Holt of England observed in the course of his judgment in *Ashby v. Whtte and Others* (2 Anne, 1704), "It is a vain Thing *to imagine, there* should be Right without a Remedy ; for want of Right and want of Remedy are Convertibles". (1)

To make one more observation in this connection it was argued by more than one speaker in the Parliament in connection with the Constitution (*Fourth Amendment*) *Bill* that the new clause 2 of Article 31, which proposed to make the question of compensation non-justiciable would materially help to promote the economic well-being of our country. We are afraid

(1)D.N. Basu, *op. cit.*, p. 332

that it has acted otherwise. Regard being had to what economists consider to be the "fundamental principles of human nature," clause (2), as a great damper, has affected adversely the incentive on the part of our farmers to invest much money on their lands. Same is true in the case of other productive enterprises where this clause has hampered the investment of money on the part of our private enterprises.

In summary we may state that so long as rights and sanctity of personal property are guaranteed by the Indian Constitution and India does not adopt the policy of confiscation of private property or Communism as its pattern of society, what justification, moral or legal, is there to get free or at a nominal price, the lands of those owners who had spent years or decades in reclaiming the same land or which they had purchased in the open market at the highest price and, in many cases, from this very Government.

A recognition of the sanctity of the right to property means that it cannot be acquired but for public purpose and that there must be just compensation for the property so acquired. Unfortunately the Government has taken away the element of compensation. The right postulates the right to vindicate. There cannot be a right unless you have the right to vindicate. But Article 31 (2) has completely ousted the jurisdiction of the courts in so far as the question of compensation is concerned. Now the Government has placed this question in "hands of every crook-backed and mountebank politician that you flash across the political scene and say it is the right to property." It means nothing more than plain, simple confiscation and expropriation.

The Swatantra Party stands for the survival of democratic values in this country as opposed to the despotism of Communism. It has full respect for the sense of property of an individual unlike the Prime Minister who has repeatedly said "I have no respect for property at all". So, it is vehemently opposed to the acquisition of any property without *just compensation*.

STATE ACTS

The Swatantra Party is strongly opposed to the Government's proposal of putting the 123 State Acts in the Ninth Schedule of the Constitution. The Party feels there is no need of putting these jumble of Acts in the Ninth Schedule when the Supreme Court has neither objected to the question of ceiling nor abolition of inter-mediaries, the two objects with which these Acts were passsed. We are opposed to Clause 3 of the Bill as most of these Acts are harsh, oppressive, unjust, arbitrary in application, discriminatory in operation and confiscatory in effect.

How discriminatory these laws are, is shown from a couple of cases discussed below.

The first of the three heads of law into which the *Kerala Agrarian Relations Act* may broadly be divided was brought into force and sole-member land tribunals were constituted for fixation of 'fair rents'. There were no understandable principles or data adumbrated for estimating the yield of land and there were also strange doctrines enunciated as that the yield for purposes of fixation of 'fair rent' of the second crop should be regarded as half of that of the principle crop, and there was no definition as to which was the principle crop and which the second. The result was that, as has been said under the English Chancery law that equity varied with the Chancellor's foot, here, under the Kerala Agrarian Law, the oddities of land tribunals prevailed and so much of iniquities arose, as in one case a contract rent of 105 paras of paddy was reduced to 8 paras, in another 700 paras was reduced to 80 paras, and in a third and an extraordinary one, four edangalis of blackgram were substituted for a contract rent of 47 paras of paddy. (A para is six and two-thirds Madras Measures and an edangali is one-tenth of a para). These instances are only illustrative, and not exhaustive, and there are any number of more curious cases. And it also became impossible for landowners to recover even those reduced rents or any previous arrears because the land

tribunals themselves could not pass decrees for such amounts and civil courts had to be resorted to for the purpose. Even assuming that the small landowner had the wherewithal for it, the civil courts also could not be resorted to, because the original Act itself in some cases wiped out the arrears and in other cases extended the time for payment, and the Kerala Agrarian Relations Amendment Act, 1962, still further extended these concessions and the landowners were at their wits' end. (1)

The Madras Land Reforms (Fixation of Ceiling on Land) Act prescribes 30 standard acres as the ceiling area for an individual. For a family also, the ceiling area is 30 standard acres, if it consists of not more than five members, and an additional five standard acres is allowed for each additional member, subject to an overall maximum of 60 standard acres. Though a ceiling area is specified for an individual, where the individual concerned is a member of a family as defined in the Act, he will be governed by the ceiling rules prescribed for a family. A family will consist of husband, wife, minor sons and unmarried daughters. Adult sons will be eligible for the full ceiling area. Married daughters will, of course, be counted as belonging to their husbands' families. For the purpose of the ceiling, the aggregate of the lands, belonging to all the members, will be taken into account.

As a concession to women in respect to their Stridhana property, the Act permits a female member of the family to retain a maximum of 10 standard acres in addition to the ceiling area for the family. But the concession will apply only to lands held by the female member on the date of commencement of the act, viz., April 6, 1960. If the whole or any part of such Stridhahana property is included in the family's ceiling area, the extent so included will be counted against the 10-acre limit.

A partitioned minor son or minor grandson in a Hindu family will be treated as a separate member and will be entitled to an independent ceiling area. This is in accordance with the

(1) *Dressing up Defective Agrarian Law* by L. S. Krishna Aiyar (*Hindu*, 18.5.63)

rule of Hindu Law that a minor son or grandson, between whom and the other members of family a partition has been effected, can thereafter hold his property unaffected by the fortunes of the family. But, under the explanation to Sec. 3 (14) of the Act, the partition will be recognised only if it had been effected by means of a registered instrument or by a preliminary decree for partition prior to April 6, 1960. The object is no doubt to prevent parties claiming a separate ceiling area for minors, alleging oral partition prior to that date. But it may affect also cases of genuine partition where (1) the parties had not considered it necessary to draw up a written instrument and to have it registered and (2) where a written instrument had been drawn up before April 6, 1960 but registered only after that date but within the four months' time allowed under the Registration Law.

It is a well-known fact that many families, anticipating this legislation, effected partitions with a view to reduce the size of the individual holdings. In one case, the High Court accepted it as a legitimate ground for the disposal of some surplus lands belonging to a minor's estate that, unless the lands were disposed of, they were liable to be taken away under the ceiling law which was then in contemplation, and that the sale in the circumstances would be in the minor's interest. There was, therefore, nothing illegal in families effecting partition in anticipation of this measure.

It was, of course, competent for the Legislature to lay down that no case of partition on or after the date of commencement of the Act would be taken into account for purposes of the ceiling. But in regard to partitions that had taken place earlier, any rule should not, under the guise of being a rule of proof, affect substantive rights that had accrued under the pre-existing law. There are other enactments like the *Agricultural Income-Tax Act* where the genuineness or otherwise of an alleged partition will be a material question for decision, and those enactment have left the question to be decided after due investigation on the evidence forthcoming. The arbitrary rule of proof enacted by this clause makes for discrimination on the ground of an unreasonable classification.

In the Kerala case—*Karimbil Kunhikoman vs. State of Kerala*—the Supreme Court has held that the provisions of the Kerala Agrarian Relations Act 1961 fixing a ceiling by applying a double standard, one for an individual and another for a family, the family itself as defined in the Act, being an artificial unit, not conforming to any of the three kinds of families prevalent in the State, were bound to result in discrimination unfavourable to some families and were thus violative of Art. 14 of the Constitution. The Madras Act also provides for fixing the ceiling by applying one standard for an individual and another for a family, and the family, as defined in the Act, is an artificial unit.(2)

Now we take the case of the *Maharashtra Agricultural Lands (Ceilings on Holdings) Act, 1961.* That this Act too is highly discriminatory can be seen from the following examples. It does not give equal land of jirayat type (dry crop land). The land ceiling varies from 66 acres to 198 acres, minimum being in Thana, Kolaba and Ratnagiri districts and the maximum in Chanda district.

Section 5 of the Land Ceiling Act describes and lays down the principle on which ceiling area is fixed. Explanation to this section is as under :-

"EXPLANATION—The ceiling area in respect of each class of land is the local areas aforesaid, has been fixed regard being had, to the soil classification of land, the climate and rainfall of the area, the average yield of crop, the average prices of crops and commodities, the agricultural resources of the areas, the general economic conditions prevalent therein, and other factors."

All the above-mentioned factors in the Explanation also go to prove :

(a) productivity of the land,

(b) land revenue assessment of the land, and

(c) valuation of the land.

(2)Discriminatory Features of Land Legislation by R. Kunchithapadam (Hindu, 22-3-63.)

It would, therefore, be interesting to study the land ceiling from these three points.

(a) PRODUCTIVITY OF THE LANDS :
—Productivity examples—

1. Rice Crop : From the ceiling area land in Aurangabad district 192 mds of rice can be produced. This is lowest in the entire State of Maharashtra.

While in Thana district rice production from ceiling area comes to 739.2 mds.

2. Wheat Crop : Wheat production from the ceiling area in Poona district comes to 302.2 mds. This is the lowest wheat production in the State. From the ceiling area in Satara District 777.6 mds. of wheat can be produced. This is the highest.

3. Sugarcane : Production from ceiling area (18 acres) of sugarcane in Thana district comes to 343.8 mds. which is lowest. From the ceiling area (18 acres) in Poona district is 1675.08 mds. of sugarcane.

From the above figures it is clear that from productivity point of view there is wide discrimination in fixing ceiling areas.

Same case of discrimination is reflected if we consider the productivity in terms of money, that is gross income.

If we examine the ceiling areas from land revenue point of view we get the same discriminatory type of picture. The land revenue assessment for the ceiling area in Bhir village is Rs. 5.95 n.P. while in Alibag village the land revenue for the ceiling area is Rs. 16.50. This is the example of the lowest and the highest revenue assessment of the ceiling area in the State of Maharashtra.

We also find that for uniform ceiling area of 108 acres, revenue assessment per acre varies from lowest in Phaltan which is two annas and highest in the same village being Rs. 6.2

To take another example of this very type we find that for the ceiling area of 78 acres, per acre revenue assessment is lowest at Shahada at Re. 1 per acre and the highest per acre is at Sangali which is Rs. 6.12 per acre.

Considering valuation of the ceiling area by the same rate as applied by the Government for fixing the compensation on surplus land we get the following picture which exhibits considerable inequality and discrimination of a very high order. By this process the example of lowest valuation of the ceiling area is in Bhir village which comes to Rs. 831.50 and the highest valuation of the ceiling area land is in Alibag area the valuation comes to Rs. 99,000. This is the state of affairs when we consider Maharashtra State as a Unit.

Details regarding considerablev ariations and contradictions in the State legislation in regard to the scheme of compensation and mode of payment, are given below :-

(*i*) **Compensation :**

There are considerable variations in the scheme of compensation adopted in different States. The purchase price payable by tenants has been fixed as below :-

(1) It has been fixed as a multiple of land revenue in
Assam : 15 to 20 times.
Gujarat and Maharashtra (former Bombay area) : 20 to 200 times).
Madhya Pradesh : 15 times.
Pepsu (Punjab) : 90 times or Rs. 200 per acre whichever is less.
Rajasthan : 15 to 20 times.
Manipur : 30 times
Tripura : 30 times

(2) It has been fixed as a multiple of rent in
Andhra Pradesh, (Telangana area) : 12 times.
Marathawada area and Vidarbha area (Maharashtra) : up to 12 times.
Kutch area (Gujarat) : 6 to 12 times.

Kerala : 16 times the fair rent or 12 times the contract rent.
Mysore : 15 times the net rent (*i.e.* the rent minus land re-land revenue).
Uttar Pradesh : 10 times the rent.

(3) It has been related to market value in Orissa in respect of resumable area. (In respect of non-resumable area tenants become raiyats without payment). In Punjab area it is 3/4th of the market value.

(4) In Bihar, where the right of ownership accrue to under-raiyats on surplus lands above the ceiling limit of owners, it has been fixed at specified amount. The compensation is (a) in the case of occupancy under-raiyats, three-fourths of the rate applicable to surplus lands on which there are no under-raiyats (this varies between Rs. 50/- and Rs. 900/-); and (b) in the case of non-occupancy under-raiyats 7/8th of such rate.

(*ii*) **Mode of payment :**

When the land is acquired the compensation is payable by tenants in instalments as follows :
Assam : 3 annual instalments.
Bihar : 30 annual instalments.
Gujarat : 12 annual instalments (in special cases the Tribunal might allow payment in 16 instalments).
Kerala : 16 annual instalments without interest.
Madhya Pradesh : 5 annual instalments.
Maharashtra : As in Gujarat.
Mysore : 20 annual instalments.
Punjab : Pepsu area—6 annual instalments.
Punjab area—10 six-monthly instalments.
Rajasthan : 10 annual instalments.
U.P. : 10 annual instalments.
Delhi : 10 annual instalments.
Himachal Pradesh : 10 six-monthly instalments.
Manipur : 10 annual instalments.
Tripura : 10 annual instalments.

CO-OPERATION OR COERCION ?

The Congress Party in its wisdom passed a resolution at Nagpur on Joint Cooperative Farming in January 1959. Since then Congressmen have been mouthing loudly the slogan of Joint Cooperative Farming, claiming it to be a cure for all the ills of our countryside.

Cooperation, undoubtedly, is a noble ideal and mutual cooperation for the common good should really form the basis of all human activity. But any type of cooperative activity, to be genuine, must be absolutely free, democratic and voluntary. The slightest hint of coercion in any shape or form is incompatible with the true conception of cooperation.

The Swatantra Party whole-heartedly supports all types of cooperative activity, as it strongly believes in the principle of genuine cooperation. In fact, many of its leaders have pioneered cooperative movements in the country in various fields long before the Congress Government suddenly discovered the merits of the cooperative approach.

In India, more than 70% of the population is engaged in agriculture. Though ours is predominantly an agricultural country, the yield per acre is one of the lowest in the world. The object of cooperation in agriculture should, therefore, be two-fold : to increase food production and, at the same time, to generate forces that would stimulate the free development of the peasant's personality. This alone will strengthen our democracy and bring about prosperity to the countryside.

The yield of the land depends directly on the care with which the peasant cultivates and conserves the soil and protects the crop. Hired workers or members of large cooperatives can hardly be expected to cultivate the soil as intensively and well as the peasant proprietors or their tenants with secured long-term rights. This sense of property is so deep-rooted in the psychology

of the Indian peasant and his attachment to the land is so strong that any proposal which deprives him of the independent rights of cultivation and cropping in land arouses his deep and instinctive hostility.

So, the essence of genuine cooperation in agriculture is that the peasant must own and cultivate his own land. Then alone can the peasant feel that he is free and self-employed, toiling for his own betterment. This feeling would naturally give him an incentive for more efforts which would also benefit the country through increased production.

Unfortunately, however, the ruling party which does not believe in voluntary cooperative activity and wants, in the name of cooperation, compulsorily to herd peasants together in fake cooperatives and destroy their freedom and reduce them to the status of serfs. The Nagpur Resolution of the Congress states : "the future agrarian pattern should be that of cooperative joint farming in which the land should be pooled for joint cultivation." Thus, what the Congress intends to do is to uproot the boundaries of individual farm and pool the holdings of different farmers in big collective farms as has been done in Soviet Russia or China. Of collective farms will still be euphemistically called 'Cooperative farms', just as even today the communist rulers in Russia and China describe their collective farms as cooperatives. But, then, the peasant will not be the master of his own land. When the boundaries of the farm are uprooted and when it merges, along with many others, into a big mass of land, it ceases to be the personal property of the peasant who retains his property right only on paper. As a result, the peasant is deprived of his land and reduced to the position of a landless labourer in the service of the so-called cooperative controlled by the local bosses who act as officials or managers of the cooperative.

The main reason advanced by Congress leaders in favour of joint cooperative farming is that it will increase agricultural production. This claim is contrary to the actual experience of all the countries in the world who have tried joint cooperative or collective farming. Production, in fact, has invariably

gone down wherever this type of cooperative farming has been tried.

We have seen the dramatic failures of joint farming in Communist China, which has had to buy vast quantities of foodgrains abroad to maintain even the short rations on which its citizens subsist, and in the Soviet Union which recently introduced bread rationing in Moscow and has negotiated for the purchase of wheat from other countries including the United States of America. All these developments appear to have had little effect on the enthusiasts of cooperative farming in India, whose paper plans have, on the contrary begun to multiply.

The Congress-type cooperative farming, as we have seen during the last four years, wherever it has been put into practice, has not only adversely affected our food production, but has also increased unemployment and has consequently totally disrupted the fabric of our rural society. Still the Congress leaders are bent upon persuing their pernicious policy as, according to them, it is "part of the socialist pattern".

But there is a method in the madness of the ruling party. It is not that these leaders do not or cannot see the harmful effects of their policies. In fact these policies follow from the Marxist thinking of certain Congress leaders. Marxists and Socialists want to obliterate the peasants as a class by putting agriculture too on a "factory" basis, i.e. by reducing the farmer to the status of a landless labourer who would be totally at the mercy of the all-powerfull State. Karl Marx, in his Communist Manifesto, has characterised peasants as "petty bourgeoisie," as an unstable and reactionary class, Marxists have therefore, passed a death sentence upon the peasant in the interest of "socialism". The Soviet Union and China have, following Marxists reasoning, tried to exterminate the independent peasantry by resorting to methods of collective farming and people's communes. The result has proved disastrous. Millions of prasants bave been massacred in communist countries as they refused to be enslaved by their communist masters.

Yet as detailed above Russia has still not been able to raise her agricultural production above the pre-war level and China is now facing the most serious famine in her entire history.

The ruling Congress Party is trying to emulate the communist example and the results are bound to be equally harmful to our peasantry and the country.

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RAJAJI ON THE 17TH AMENDMENT*

Socialist dogmatism hates the small farmer because he is, in all countries, the devoted soldier for freedom. Congress dogmatism hates him but fears him also. The Congress operations against him are therefore marked by caution lest the victim may rise in revolt before he is struck down. Dealing with an uneducated mass of innocents through the coercion of legislation which they cannot understand and which, like a Trojan horse, holds treacherous force inside its harmless-looking exterior, the Congress High Command hopes to suppress the peasants by dividing them off from their natural leaders. The Congress Party's Drozdovs never tire of speaking in the name of the poor peasants whom they resolved on morally castrating and converting into bullocks for projected production under 'socialist' economy. What were the framers of the Constitution thinking when they wrote down certain rights, calling them 'fundamental rights'? 'Fundamental' implies a certain high degree of inviolability. Little did they anticipate that within twelve years so many legislative violations would take place under the same Prime Minister who had proudly signed the charter. The attack on the ryotwari peasant is indeed the last straw of the load under which freedom can no longer survive.

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It is a gigantic falsehood to make all owners of land 'intermediaries' which the definition proposed in the Amendment seeks to do, reviving the exploded doctrine that all land in India belongs to Government, every peasant being only a tenant. The 'Patta' is a title deed, not a lease document, on the basis of these title deeds, people have paid from Rs. 1,000 to Rs. 10,000 per acre and bought the lands. When the British were ruling, the Congress vigorously sought to protect the peasant and objected to this feudal doctrine. It now seems the position is reversed. The peasants have to wake up and

*Extrrcts From Various Issues of Swarajya.

protect themselves against the Congress which wishes to become the apex of a neo-feudal totalitarianism.

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The reason why the Swatantra Party has refused to participate in the committee is that it is a hopeless and dangerous task to seek to amend the Bill. When by a mere 'definition' all lands held on ryotwari title are transferred into the intermediary rent-collecting status known as 'estates', any amendment seeking to reserve this or that right will only serve to create difficulties.

There is the question as to the 'public purpose' for which this assault on the freedom of ownership is sought to be made; but that cannot be covered by any amendment of a Bill of two clauses, one defining all land to be 'estates' and the other enabling this definition to help a hundred and twenty (three) invalidated laws to be validated. The Bill in the present form cannot be amended and is a most dangerous, illegitimate invasion on law and justice.

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THE IMPLICATIONS OF THE PROPOSED SEVENTEENTH AMENDMENT TO THE CONSTITUTION

By K.M. Munshi

In the midst of conflicting speeches for and *against* the 17th Amendment to the Constitution, we must discover the real objective behind this sweeping measure.

The official protagonists of the proposed Amendment say that the Amendment is intended to protect the peasant-proprietors. Is it ? The plea is supported by the Communists who welcome all Congress-sponsored measures which pave the way to totalitarianism.

No one that I know in the country takes up the position that the peasant-proprietors and the land-tenants should not be protected. No one wants rent-collecting intermediaries to be protected. The Supreme Court has validated ceiling legislations and they require *no further protection. Then why this* Amendment ?

Neither the Supreme Court nor any Party in *the* country questions the validity of the Land Protection Acts which seek to help tbe tenants against the unjust claims of the Ryotwari Land-holders. Why then has arisen the necessity of giving a blanket immunity to an odd jumble of 123 land legislations in the Schedule of the proposed Amendment ?

The Second clause of the Bill is more dangerous still. It extends the definition of the term "Estate" so as to include Ryotwari holders and other holders of land who are in the category of peasant-proprietors and in no way rent-collecting intermediaries.

The real object of the Bill is, by one stroke of the pen, to deprive all holders of property—not only agriculture,but those connected with agriculture—of the protection of the guaranteed

Extract from the presidental speech at a public meeting held at Bombay on October 7, 1963.

rights, particularly with regard to the equitable *nature* of the compensation.

Shri M. K. Nambiar, an eminent lawyer, correctly summarises the position as follows :

"No Land Act made by any Legislature after the Bill becomes part of the Fundamental law, however harsh, oppressive or unjust, however arbitrary in application, discriminatory in operation or confiscatory in effect, could ever be touched by a Court of Law, nor injury caused thereby, however grave, ever be redressed''.

If the Amendment is accepted, the whole af rural India—the backbone of a democracy—will be placed at the mercy of the Congress Party, which, whipped into action by its leadership can easily travel to the bitter end of collectivisation.

The Amendment would, apart from being an expropriatory measure, undermine our democratic structure.

The constitutional structure, as originally set up by the Constitution of 1950, provided for the establishment of a Welfare State, as envisaged by the Directive Principles, but within *the framework of justiciable* Fundamental Rights. Part III of the Constitution codified the Rule of Law as applicable to India.

Under the Constitution of 1950, Article 31 guaranteed the right to property to every citizen in India. Exception was made only in the case of rent-collecting intermediary tenures like the Zamindaries ; they had to be liquidated because in a Welfare State, the land must belong *to the tiller.*

With the death of Sardar Patel, the built-in two-party system in the Congress came to an end. No sooner he died, the doctrine, on which the Constitution was based, that a Directive *Principle should not override* Fundamental Rights, was politically abrogated and steps were taken to circumvent the constitutional shape and content of the Welfare State, as given by the Constitution which is being twisted from time to

time to suit the aims and views of the leadership of the Ruling Party.

Under the juristic doctrine governing Constitutions such as ours, the Supreme Court has to prescribe the limits within which the Legislatures are to function. In India, under the new dispensation, if the Supreme Court differs from the leadership of the party with regard to the meaning and content of the Fundamental Rights, the Fundamental Rights have to go and the will of the leadership has to prevail.

Democratic Constitutions are intended to be a stabilizing factor, not subject to frequent changes. In U.S,A., during the last 175 years, there have been 22 amendments to the Constitution; most of them have broadened the liberty of the citizen. In India, during the last 13 years, there have been 17 amendments, most of them restricting the rights of the citizens. And every change in the constitutional structure was justified by the leadership on the ground of it being "progressive"—in effect, progressing towards party despotism. Far back in 1959, I had occasion publicly to note that the Congress leadership in the country is heading towards a "New Despotism".

After five years what do we see? The leadership holds Opposition Parties in scant respect and has been vigorously enforcing Democratic Centralism in its own ranks. It has no respect for the Constitution unless it is convenient to invoke a particular provision. It has tinkered with the Rule of Law as originally codified in Part III of the Constitution. It is unreconciled to the role of the judiciary as the arbiter and interpreter of the Constitution.

Several Congress speakers in the Parliament have voiced their distrust of the Amendment, but promptly and dutifully have voted for its reference to the Select Committee. The far-sighted among them have to support every such measure lest they become 'bad boys' and their political future be married.

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NANDA'S NOTE : TRAVERSITY OF TRUSTS*

In a letter to the Prime Minister on 14th August 1963, Prof. Ranga requested the Prime Minister not to rush through 17th Amendment Bill. Giving arguments in favour of his request, Prof. Ranga said that consequent upon the passage of this Bill "all agricultural holdings and house sites etc." will be placed "on the same plane as the 'estates' of the jagirdars, inamdars, istamardars and talukdars and thus subject them to all the disabilities of the latter. The executive authority will have freedom to compulsorily acquire the holdings of our peasants and pay whatever compensation might be decided upon by the local acts and deny our peasants the protection of the Court in regard to this matter".

Quoting eminent jurists who had denounced such a procedure of Constitution amendments as gigantic fraud on the Constitution because "rent receivers i.e. talukdars who are only rent collecting agents of the Government and their rights i.e. estates are sought to be equated with the self-emlpoyed cultivating peasant proprietors and even the tenants of some of them." Prof. Ranga said that "once this amendment comes to be passed, your assurance that co-operative farming will be entirely voluntary would be deprived of its real essence by placing the only alternative before the peasants either to join the co-operatives or allow their lands to be compulsorily acquired by the Government on nominal compensation i.e. without the protection of the time honoured Land Acquisition Act and also the freedom to seek redress in the Court against arbitrary acquisitions and inadequate compensation."

As this Bill seeks to deprive peasants of their holdings, Prof. Ranga was of the view that that would create a general sense of insecurity, continuance and enjoyment of the rights of cultivation and proprietorship over our peasants' holdings. He impressed upon the Prime Minister that it was not advisable

(1) Correspondence beteen Prof. N. G. Ranga and the Prime Minister.

to rush with this Bill at least during the pendency of the emergency.

In reply to Prof. Ranga's letter, the Prime Minister sent a note on the subject prepared by Shri G.L. Nanda, who is instrumental in preparing all our Plans which have forced the State Legislatures to pass unconstitutional Acts which are now sought to be validated with the help of the 17th Amendment Bill.

The entire note of Shri Nanda is nothing but a traversity of the words. Most of the facts stated therein are incorrect, some are misleading and the entire note is a design to usher Communism in the country and destroy parliamentary democracy.

In the first paragraph Shri Nanda writes that "the land policy to be pursued in the States as part of the National Plan has been set out in the Plan approved by the Parliament".

The Plans are of the Planning Commission, a body not known to the Constitution. It has no legal or constitutional stand. So, whatever plans have been adopted by the Parliament at the initiative of the Planning Commission, can only function within the limits of the constitutional provisions. The plans did not contemplate abrogation of Rights. As Mr. M. K. Nambiyar said in the Conference of Southern States on the 17th Amendment that "the institution of property has evolved through ages into basic framework of civilized society—next to liberty comes the property—the institution of property, of whatever kind, guaranteed by the Constitution.

In the name of giving effect to the policy of the planning, the Planning Commission, from the very beginning, have been forcing the States to pass unconstitutional laws, violative of the fundamental rights of the people as enshrined in Article 14, 19 and 31 of the Constitution. That the States have been forced, to pass, these unconstitutional laws, which now aggregate to 144, is no reason to amend the Constitution to give them constitutional validity so that the little sacred which is left in the Constitution may also be scrapped to suit the wishes of the Planning Commission.

In the next paragraph, Shri Nanda writes that "the proposal for land reform in the Plan relates to abolition of intermediaries tenancy reform, and ceiling on land holdings with a view to making the tiller the owner of the land, thus enabling him to maximise agricultural production".

Even a layman in the street can tell you that the Zamindar, inamdar etc. is categorised as an intermediary and not Ryotwari land holder.

Dr. Ambedkar, in 1951, in a statement on floor of the House as a Law Minister, said: "There is no intention on the part of the Government that the provisions in Article 31-A are to be employed for the purpose of disposing ryotwari tenants. I believe that whenever any such measure comes before the President for consideration, the undertaking given in this House would be binding upon the President in giving his sanction so far any such measure is concerned." (Parliamentary debates Vol. XXII, Col. 9913 and 9914, 1951). The Prime Minister said "normally speaking of course this Article (31-A) does not refer to Ryotwari System." "It is a contradiction in terms to call a ryotwari holder as an estate holder like a Zamindar".

It is a mere pretence to say that the policy of land reform is to make the tiller of the soil the ultimate owner of the land, to enable him to maximise agricultural production. Is not the occupant of the Ryotwari system the tiller of the soil? If he is, what is the object of saying that Ryotwari land is an estate? Why the taking away of Ryotwari land as an estate for a nominal or illusory compensation, necessary to be made immune from the attack that the taking is violating the fundamental rights? It is to nationalise the land even of tiller for ultimate collective farming on the communistic pattern. It is not to save the tiller of the soil that the 17th amendment of the Constitution is sought for but to ultimately destroy him and to ultimately nationalise land and to take the country to collective farming and communism.

In another paragraph, Shri Nanda states that "in a number of States such as Gujarat, Maharashtra, former Mysore and the Punjab, Ryotwari holdings are also 'estates' under the local tenures. They are not estates in some areas such as Madras, Andhra Pradesh and parts of Kerala and Orissa. Thus protection of Article 31-A is available in respect of similar tenures in some areas and not in others. The amendment of Article 31-A will remove this anomaly".

It is wrong on the part of Shri Nanda to say that the Acts of the State of Gujarat or in operation in Gujarat have already converted the Ryotwari Lands into 'ESTATES' within the definition of word "ESTATE" as given in Article 31-A of the Constitution.

The Bombay Land Revenue Code 1879 is the basic Act in operation in Gujarat which deals with land revenue and which sets up "Occupancies" which are private enfranchised heritable, and transferable property. The Occupancy is liable to forfeiture only for the non-payment of land Revenue. Barring that the private ownership of Ryotwari holdings, occupancies is complete. Even the forfeited holdings when again auctioned out it will be an occupancy of the purchaser as private enfranchised, heritable, and transferable property. The Bombay Land Revenue Code does not make out "Occupancies" to be Estates as defined in Article 31-A of the Constitution. The two other Acts, which deal with Agricultural lands, not applying to the State of Gujarat are the Bombay Tenancy and Agricultural Land Act 1948, and the Gujarat Agricultural Lands Ceiling Act 1960. The Bombay Tenancy and Agricultural Lands Act 1948, does not make occupancies to be Estates. The Gujarat Agricultural Lands Act 1960 does not make occupancies to be estates. Shri Nanda wants to confuse matters. There were other tenures in Gujarat like Talukadari, Jagiri, Malek, Vanta, Bhagdari, Narwadari etc. But lands comprised in such tenures, formed only infinitismal part of total agricultural lands in Gujarat. The character of those tenures would make lands thereunder to be estate, but 99% of Agricultural land in Gujarat are under the Ryotwari System. They have never been equated as estates. It is an incorrect

statement to say that Ryotwari system in Gujarat is already equated with estate.

After the Nagpur Resolution which states that "the future agrarian pattern should be that of cooperative farming in which the land will be pooled for joint cultivation" it is traversity of truth to assert that the cooperative and joint farming will be on voluntary basis. Let us see and examine a few States legislation to find out whether any compulsion is envisaged or not. Sections 27 and 28 of the Gujarat Agricultural Lands Ceiling Act, 1960, clearly provide for Joint Cooperative Farming. It is further provided that if a piece of land, comes in between two pieces of land under the land legislation, the former piece of land, even if it cannot be taken over under this legislation can be taken over by Government if Government wants to introduce cooperatives. It is also provided that if certain percentage of the agriculturists of one village want to form a cooperative, the others will be compelled to join it. Innumerable such examples can be cited. Is that voluntary ? So, there can be no faith in such declarations as that of Mr. Nanda that cooperative farming will be voluntary.

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