STATE OF KARNATAKA AND ANR ETC.

v.

SHRI RANGANATHA REDDY & ANR. ETC.

October 11, 1977

[M. H. BEG, C.J., Y. V. CHANDRACHUD, P. N. BHAGWATI, V. R. KUISHNA IYER, N. L. UNTWALIA, JASWANT SINGH AND P. S. KAILASAM, JJ.]

Constitution of India, Article 31(2)—*"Public purpose" Scope of, whether includes compulsory acquisition for Road Transport Corporation—Part acquisition of undertaking, validity of—"Amount" in lieu of acquired property, quantum and principles of evaluation, whether questionable under Art.* 31(2).

Karnataka Contract Carriages (Acquisition) Act, 1976, *vis-a-vis Constitution of India, Articles* 31(2) *and* 39(*b*) *and* (c) *and Schedule List* 1 *Entry* 42—*Whether on acquisition the State Govt. can transfer counter signed portions of Inter-State permits to Road Transport Corporation—S.*4(3), *"deemed", whether introduces legal fiction—S.*6(1), *fixation of amount by arbitrator S.* 6(1) *Schedule, Para* 1(1), *Explanation—Interpretation of "acquisition cost".*

The Karnataka State Road Transport Corporation published in the Karnataka Gazette dated May 16, 1974 a draft scheme for nationalisation of contract carriages in the State, under Chapter IV-A of the Motor Vehicles Act, 1939. Objections were preferred by some of the respondents, but the State Government and the Corporation dropped the idea of proceeding with the scheme without concluding the hearing. Later, on January 30, 1976 the State Government promulgated an ordinance followed by a number of notifications by which all contract carriages operating in Karnataka, and the permits specified in the notifications, vested in the State. Under Clause 20(1) of the Ordinance, the State Government transferred them to the Corporation which seized the vehicles and the relative permits. The High Court stayed the seizure of six vehicles operating under Inter-State permits, and quashed some of the notifications, holding that the ordinance did not empower the acquisition of the vehicles not covered by valid contract permits. The ordinance was replaced by the Karnataka contract carriages (Acquisition) Act, 1976, published in the Karnataka Gazette dated March 12, 1976. The Act was made effective retrospectively from January 30, 1976, and everything done under the Ordinance was deemed to have been done under the Act. Writ Petitions were filed by various contract carriage operators, financiers and others including those who had successfully filed the earlier Writ Petitions. The High Court allowed the writ petitions, struck down the Act as unconstitutional, and quashed the notifications. (Judgment reported in *K. Jayaraj Ballal and Ors.* v. *State of Karnataka and Ors.*, I.L.R. Karnataka 1976, Vol. 26, P. 1478).

Allowing the appeals and upholding the constitutional validity of the Act on merits, the Court

HELD : Per Untwalia. J. (Also on behalf of M. H. Beg, C.J., V. Y. Chandrachud, and P. S. Kailasam, JJ.)

1. Whether the law of ocquisition is for public purpose or not has to be gathered mainly from the statement of Objects and Reasons of the Act and its preamble. The matter has to be examined with reference to the various provisions of the Act, its context and set up and then it has to be judged whether the acquisition is for a public purpose within the meaning of Article 31(2) and the law providing for such acquisition while establishing a Road Transport Corporation, the State Government is obliged to keep in mind primarily the public interest. The acquisition for the purpose of the Corporation was, therefore, in public interest. [648 C—E]

H. H. Keshavananda Bharati Sripadagalavaru v. *State of Kerala* [1973] Suppl. S.C.R. 1, Applied.

A *The court observed* :

There may be many circumstances and facts to justify the acquisition of even a movable property for a public purpose. A particular commercial activity of the State may itself be for a public purpose. In a larger sense one can say that augmentation of the coffers of the State is also for a public purpose. Acquisition of property either movable or immovable, may in such a situation be for a public purpose. [651 C—D]

B *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors.* [1952] SCR 889, referred to.

(2) The scheme for the compulsory acquisition may be for a part of the undertaking also and that would mean a part of the property of the undertaking or a branch of the undertaking [651 F—G]

(3) The amount payable for the acquired property either fixed by the legislature or determined on the basis of the principles engrafted in the law of acquisition cannot be wholly arbitrary and illusory. In some respects it may C be inadequate but that cannot be a ground for challenge of the constitutionality of the law under Article 31(2). [653 B—C]

H. H. Keshavananda Bharati Sripadagalavaru v. *State of Kerala* [1973] Suppl. SCR 1, applied.

The State of West Bengal v. *Mrs. Bala Banerjee and Ors.* [1954] SCR 558, *P. Vajravelu Mudaliar* v. *The Special Deputy Collector, Madras* [1965] 1 SCR 614, *Union of India* v. *The Metal Corporation of India Ltd. & Anr.* [1967] 1 SCR 255, *State of Gujarat* v. *Shri Shantilal Mangaldas and Ors.* [1969] 3 SCR D 341 and *Rustom covarjee Cooper* v. *Union of India* [1970] 3 SCR 530, referred to.

(4) The Karnataka Contract Carriages (Acquisition) Act, 1976 does not seek to legislate in regard to any Inter-State trade and commerce. In pith and substance it is an Act to provide for the acquisition of contract carriage, the Inter-State permits and the other properties situated in the State of Karnataka. Any incidental encroachment on the topic of Inter-State trade and commerce cannot invalidate the Act. [661 D—E]

E *Prafulla Kumar Mukherjee & Ors. and Bank of Commerce Ltd., Khulna* v. *Advocate General of Bengal* [1947] Federal Court Reports 28, *Kerala State Electricity Board* v. *Indian Aluminium Co.*, [1976] 1 S.C.R. 552 *S. K. Peseri* v. *Abdul Ghafoor and Ors.*, Civil Appeal No. 306/1964 decided on 4-5-1964, *Narayanappa* v. *State of Mysore* [1960] 3 S.C.R. 742, and *Tansukh Rai Jain* v. *Nilratan Prasad Shaw and Ors.*, [1965] 2 S.C.R. 6 applied.

A. S. Krishna v. *State of Madras* [1957] S.C.R. 399, U.S.A., Plff. in *Crr.* v. *Can Hill* 63 Law Ed. 337, *Claude R. Wickard, Secy. of Agriculture of the* F *United States etal* v. *Roscoe C. Filburn* 87 Law Ed. 122 and *the Steamer Denial Ball, Bayron D. Ball and Jessie Ganoe, Claimants, Aptt.* v. *United States* 19 Law Ed. 999 referred to.

(5) The acquisition of permits of the vehicles kept and registered in the State of Karnataka, in respect of which initially Inter-State permits had been granted by the State, would be an acquisition of the permit operative within the territory of the State. Permits granted by one regional Authority and counter-signed by another Regional Authority either in the same state or in different G states are really different permits rolled into one. The counter-signed portion of the permit is in substance and in effect a separate permit authorising the permit holder to ply the bus in another State, and cannot be acquired. Such an acquisition would fall within the extra-territorial operation of the law. The State Govt. on acquisition and the vesting of acquired permits, therefore, cannot transfer their counter-signed portions to the Road Transport Corporation. Any particular vehicle which is kept and registered, or is plying, on an initial permit granted by another State, also could not be acquired under the Act and the notification issued, thereunder. [662 C-D, 663 B, C-D]

H *M/s Bundelkhand Motor Transport Company, Nowgaon* v. *Behari Lal Chaurasia and Anr.* [1966] 1 S.C.R. 485, and *Punjab Sikh Regular Motor Service, Moudhapara* v. *The Regional Transport Authority, Raipur and Anr.* [1966] 2 S.C.R. 221; applied.

The Bengal Immunity Co. Ltd. v. *The State of Bihar and Ors.* [1955] 2 S.C.R. 603, *R.M.D. Chamarbaugwala* v. *Union of India and Ors.* [1957] S.C.R. 930, *Gulabhai Vallabhbhai Desai etc.* v. *Union of India and Ors.*, [1967] 1 S.C.R. 602; and *In re. a Special Reference under Section* 213 of the Govt. of India Act, 1935 [1941] Federal Court Reports 12; referred to.

(6) Section 4(3) of the Karnataka contract carriages (Acquisition) Act, 1976, is worded with the object of putting the challenge to the factum of public purpose beyond the pale of any attack. The use of the word "deemed" does not invariably and necessarily imply an introduction of a legal fiction, but it has to be read and understood in the context of the whole statute. [651 A—B]

(7) In the absence of an agreement, the State Government shall appoint an arbitrator for fixing the amount payable in lieu of the acquired property. The arbitrator, reading section 6(1) of the Karnataka Contract Carriages (Acquisition) Act, as a whole, is not obliged to fix the amount as specified in the Schedule, but he has to fix an amount which appears to him just and reasonable on the totality of the facts and circumstances keeping primarily in mind the amount mentioned in the Schedule occurring in Sec. 6(1). [657 E—F, 658 D—E]

Saraswati Industrial Syndicate Ltd., etc. v. *Union of India* [1975] 1 S.C.R. 956, *Illingworth* v. *Walnsley* (1900) 2 Q.B. 142 and *Perry* v. *Wright* (1908) 1 K. B. 441; referred to.

(8) The correct meaning of "acquisition cost", used in the Explanation in the light of Para 1(1) of the Schedule of Sec. 6(1) of the Karnataka Act, would mean, the cost of the chassis fixed by the manufacturers for their dealers to charge from the purchasers. The acquisition cost *qua* the purchaser is the price which he pays to the manufacturer's dealer from whom he purchases and not the manufacturer's actual cost of manufacturing the chassis. The acquisition cost of the body of a schedule would be the actual cost charged by the body builder. [659 B—C]

Per Iyer. J. (Also on behalf of P. N. Bhagwati and Jaswant Singh, JJ.)

(1) The purpose of a public body to run a public transport service for the benefit of the people, operating it in a responsible manner through exercise of public power which is controlled and controllable by society through its organs like the legislature and, at times, even the court, is manifestly a public purpose. If the purpose subserves some public use or interest, or produces some public good or utility then everything considered for subserving such public purpose falls under the broad and expanding rubric. If the purpose is a private or non-public one, the mere fact that the hand that acquires or requires is Government or a public corporation, does not make the purpose automatically a public purpose. The acquisition of road transport undertakings by the State will undoubtedly be a public purpose, and it is a fallacy to deny the presence of public purpose merely because its satisfaction by readily available private purchase is possible. [672 D—E, 673 B, 676 D]

Black's Legal Dictionary, 'The Supreme Court of India' by Rajeev Dhavan (Tripathi Publications), 'Words and Phrases Legally defined' II Edn. P. 228; Sir Alladi Krishnaswami Ayyar's speech in the Constituent Assembly; Mr. Justice Mathew's speech in the second Kerala State Lawyer's Conference; *H. F. Peti* v. *Secy. of State for India*, 42 I.A. 44; *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga & Ors.* [1952] SCR 889; *The State of Bombay* v. *Ali Gulshan*, AIR 1955 SC 810; *A. K. Gopalan* v. *State of Madras*, AIR 1950 SC 27; *The State of West Bengal* v. *Anwar Ali Sarkar* [1952] SCR 284 and *The State of West Bengal* v. *S. B. Bose & Ors.* [1954] SCR 587, referred to.

(2) The amount payable when private property is taken by the State is a matter of legislative policy and not of judicial fixation. The 25th Amendment of the Constitution, while restructuring Article 31 and bringing in Article 31C, has excluded judicial examination even of the principles of evaluation. The Court can only satisfy itself about the amount not being a monstrous or unprincipled under-value. The payment may be substantially less than the

market value and the principles may not be all-inclusive, but the court can upset the taking only where the principles of computation are too arbitrary and illusory to be unconscionably shocking. The quantum of the amount or the reasonableness of the principles are out of bounds for the court. [680 B, 682 C, 685 A, C, G, H.]

H. H. Kesavananda Bharati Sripadagalavaru v. *State of Kerala* (supra) followed. Speech by Mahatma Gandhi at the Round Table Conference; Fundamental Rights & Socio-Economic Justice by K. P. Krishna Shetty, pp. 123 and 127-128; The 46th Report of the Law Commission and *R. S. Cooper* v. *Union of India* (supra), referred to.

(3) Article 39(b) fulfils the basic purpose of re-structuring the economic order and undertakes to distribute the entire material resources of the community, as best to subserve the common good. To exclude ownership of private resources from its coils, is to cipherise its very purpose of redistribution the socialist way. Article 39(b) is ample enough to rope in buses, as motor vehicles, are part of the material resources of the operators. Socially conscious economists will find little difficulty in treating nationalisation of transport as a distributive progress for the good of the community. [689 C—D, E—F, 690 C]

The Court observed :

(1) The State symbolises, represents and acts for the good of society. Its concerns are the ways of meeting the wants of the community, directly or otherwise, and the public sector in our constitutional system, is a strategic tool in the national plan for transformation from stark poverty to social justice, transcending administrative and judicial allergies. [672 D—E]

(2) Serious constitutional problems cannot be studied in a socio-economic vacuum, since socio-cultural changes are the source of new values. Our emphasis is on abandoning formal legalistics or sterile logomachy in assessing the vires of statutes regulating vital economic areas, and adopting instead, a dynamic, goal-based approach to problems of constitutionality. Our nation has, as its dynamic doctrine, economic democracy *sans* which political democracy is chimerical. The Constitution ensouls such a value system in Parts III and IV and elsewhere, and the dialectics of social justice should not be missed if their synthesis is to influence State action and Court pronouncement. Illusory compensation, nexus doctrine and 'distributed to subserve the common good, should not reduce lofty constitutional considerations into hollow concepts. [666 F, 667 A]

R. S. Cooper v. *Union of India* (Supra); *Towne* v. *Eigner* 245 U.S. 418= 62 L. ed. 372, 376; Dias Jurisprudence 4th Edn. p. 625 *H. H. Kesavananda Bharati Sripadagalavaru* v. *State of Kerala* (supra); Legal Theory and Social Evolution 5th Edn. p. 81 and Dr. Ambedkar's speech in the Constituent Assembly, referred to.

(3) Bills without sufficient study of their economic project, occasionally result in incomprehensibility and incongruity of the law for the lay and the legal. A radicalisation of the methodology and philosophy of legal drafting, and ability for the legislative manpower to express themselves in streamlined, simple, project-oriented fashion is, therefore, essential. [667 C—E]

'Laws are not for laymen'—Guardian Miscellany dated May 29, 1975, referred to.

(4) Sheer legalism cannot lightly upset legislative wisdom or efficiency while passing on the constitutionality of economic legislation based on national planning, public finance, private investments, cost accounting, policy decisions historical factors and a host of complex social variables. Raw realities like poverty and stark inequalities to abolish which, Article 31(2), 31C, 38 and 39 have been enacted, must inform legal interpretation. The Courts must be circumspect not to rush in where serious reflection will make them fear to tread, not to resort to adroit circumvention because of economic allergy to a particular legislative policy. [669 F, 670 A—B]

Burton v. *F[illegible]* .. 36 CLR 169, 179; Preface to the English Legal Aid System by Seton H[illegible]ick (Orient Longmans); referred to. A

(5) Part IV of the Constitution, especially Article 39(b) and (c) is a futuristic mandate to the State with the message of transformation of the economic and social order. Such change calls for collaborative effort from all the legal institutions of the system: the legislature, the judiciary and the administrative machinery. The Court and counsel have a justice constituency with economic overtones, the manifesto being the constitution designed to uphold the humanist values of life, liberty and the equal pursuit of happiness, material and spiritual. [690 D—E] B

'Lawyers for Social Change; Perspectives on Public Interest Law' by Robert L. Rabin, Standord Law Review Vol. 28, No. 2 January 1976; Law in America p. 34 by Bernard Schwartz; The nature of judicial Process by Cardozo, 1932, p. 170; The Indian Constitution by Granville Austin; *British Coal Corporation* v. *The Kind* 1935 AC 500; *Attorney General of Ontario* v. *Attorney General of Canada* 1947 AC 503; I Constituent Assembly Debates, p. 61, referred to.

C

CIVIL APPELLATE JURSDICTION : Civil Appeal No. 1085 and 1522-1894/76.

From the Judgment and Order dt. 20th September 1976 of the Karnataka High Court in *W. P. Nos.* 817 and 818-826/76 etc. etc.

L. N. Sinha, R. N. Byra Reddy, Adv. Genl., Narayan Nettar, K. S. Puttawany (For A. 2 in CA. Nos. 1085 & 1522) and Mr. Aruneshwar Gupta, Advs. for the appellants : D

A. K. Sen, K. N. Bhatt, and M. R. V. Achar, for the Respondents in Civil Appeals Nos. 1537, 1538-48, 1549, 1551-52, 1555, 1557-69, 1562, 1564-66 1967-68, 1569-72, 1574, 1576-80, 1586-89 1593-94, 1597-1611, 1612-1613, 1618-24 1628-29, 1631-32, 1635-36 1638-42, 1644, 1646-48 1660, 1662-63, 1664-65, 1668, 1670-74, 1676, 1684-85, 1689 1695, 1697, 1700, 1701, 1703-4, 1710, 1712-16, 1724-27 1729-30, 1732, 1734-37, 1738-39, 1741, 1746, 1748-50, 1753, 1759-60, 1761, 1763, 1765-66, 1768-69, 1771, 1774-76, 1786, 1785, 1803, 1805 (R-I) 1806-7, 1809, 1814-17, 1825, 1828, 1832, 1836-37 1840-41, 1844-46, 1850, 1858-59, 1863, 1865-66, 1868-71, 1873-77, 1879, 1882, 1884, 1887 & 1889/76 : E

A. K. Sen, A. T. M. Sampath, and M. R. V. Achar, for the Respondents in Civil Appeals Nos. 1677, 1758 & 1778/76 : F

G. L. Sanghi, S. K. Mehta, K. R. Nagraja & P. N. Puri and A. K. Sanghi, for the Respondents in Civil Appeals Nos. 1523-24 1528, 1530, 1532-33 1575, 1581, 1583, 1595-96, 1626, 1678-83, 1686-88, 1691-94, 1996 (R-I) 1717, 1720, 1723, 1742, 1747, 1755-56, 1779-80, 1782-83, 1785, 1787-90 1792, 1798, 1810, 1823, 1830, 1861 & 1878/76. G

S. S. Javali, A. K. Srivastava, and B. P. Singh, for the Respondents In Civil Appeals Nos. 1630, 1656, 1657 & 1854/76 CA. 1085/76.

Girish Chandra, (Not present) for Respondent No. 2 in CA 1085/76.

S. Narayana Bhat (In person) for Respondent in CA. No. 1804/76: H

R. N. Byra Reddy,. Adv Gnl. Narayan Nettar, for the Adv. Genl/Karnataka.

A The following Judgment were delivered :

UNTWALIA, J. This batch of 374 appeals by certificate is from the decision of the High Court of Karnataka given in 374 Writ Petition filed by different persons having various kinds of interest in the Contract Carriages which were taken over by the State of Karnataka Contract Carriages (Acquisition) Ordinance, 1976 (Karnataka Ordi-
B nance No. 7 of 1976) (for brevity, hereinafter, the Ordinance) followed by the Karnataka Contract Carriages (Acquisition) Act, 1976 (Karnataka Act No. 21 of 1976) (hereinafter to be referred to as the Act). The judgment of the High Court is reported in *K. Jayaraj Ballal, and others* v. *State of Karnataka and others.*(1) For the sake of convenience hereinafter in this judgment, reference to the High Court judgment wherever necessary will be made from the said
C report.

FACTS

The broad and the common facts of the various cases are in a narrow compass and not in dispute. At the outset, we shall state them mostly from the High Court judgment. We were not concerned
D to go into the special facts of some cases in these appeals. They may have to be looked into, if necessary, by the High Court in the light of this judgment. The Karnataka State Road Transport Corporation (hereinafter called the Corporation) was established by the State Government of Karnataka on August 1, 1961 under section 3 of the Road Transport Corporations Act, (Central Act 64 of 1950). The Corporation was a party respondent to the writ petitions and is an
E appellant before us alongwith the State of Karnataka. We are stating the facts mostly from Civil Appeal No. 1985 of 1976 arising out of Writ Petition No. 817 of 1976. The Corporation published in the Karnataka Gazette dated May 16, 1974 a draft scheme for nationalisation of Contract Carriages in the State under Chapter IV-A of the Motor Vehicles Act, 1939 (Central Act 4 of 1939). Objections were invited. Some of the writ-petitioners preferred their objections. It
F appears the State Government and the Corporation dropped the idea of proceeding with the scheme and without concluding the hearing and the disposal of the objections and the finalization of their scheme the Government came out with the Ordinance which was promulgated on January 30, 1976. As per clause 1(3) of the Ordinance, it applied to "all contract carriage(s) operating in the State of Karnataka". By a number of notifications issued under the Ordinance almost all the
G contract carriages and the permits specified in the notifications vested in the State. They were transferred to the Corporation under clause 20(1) of the Ordinance. The officers of the Corporation seized the vehicles and the relative permits pursuant to the notifications aforesaid except six vehicles which were operating under Inter-State permits belonging to some of the writ petitioners. The seizure of the said six vehicles was stayed by the Order of the High Court made on 5th April, 1976 in some of the earlier writ petitions. The earlier writ petitions
H were decided on February 26, 1976 and March 3, 1976 by a learned

(1) The Indian Law Reports (Karnataka) 1976 (Vol. 26), 1478.

single Judge of the High Court who held that the Ordinance did not empower the acquisition of the vehicles not covered by valid contract permits and consequently quashed some of the notifications. The Ordinance with some changes was replaced by the Act which received the assent of the President on March 11, 1976 and was published in the Karnataka Gazette dated the 12th March, 1976. The operation of the Act was, however, made retrospective from the 30th January, 1976—the day when the Ordinance had been promulgated and come into force. The Ordinance was repealed by section 31 of the Act and the saving clause in sub-section (2) says :

"Notwithstanding such repeal —

(i) anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act;"

Fresh notifications were also issued under the Act. The combined effect of all these actions was that whatever was done on and from the 30th January, 1976 either under the Ordinance or under the Act was all deemed to have been done or done under the Act. Fresh writ petitions numbering 374 were filed in the High Court by the various contract carriages operators, financiers and others including those who had filed or succeeded in the earlier writ petitions.

The High Court has allowed all the writ petitions, struck down the Act as unconstitutional and has declared it null and void. The notifications have been quashed. The respondents in the writ petitions, namely the appellants before us, were directed to restore the vehicles with the relative permits and all other assets to the operators from whom they were taken over. Some consequential directives for determination of damages in some later proceedings were also given.

We now proceed to state the findings of the High Court on the various points argued before it not in the order as finally recorded in para 98 of its judgment at page 1530 but in the order the points were urged before us by Mr. Lal Narayan Sinha, learned counsel for the appellants. They are as follows :

(1) The acquisition is not for a public purpose.

(2) The compensation or the amount provided for or the principles laid down in the Act for payment in lieu of the various vehicles, permits and other assets is wholly illusory and arbitrary.

For the two reasons aforesaid, the Act is violative of Article 31(2) of the Constitution and is a fraud on it. It is, therefore, null and void.

(3) The acquisition of contract carriages with Inter-State permits and other assets pertaining to such operators is *ultra vires* the legislative power and the competence of the State Legislature.

A (4) Article 31 C does not bar the challenge to the Act as being violative of Article 31(2) of the Constitution as there is no reasonable and substantial nexus between the purpose of the acquisitions and securing the principles specified in clauses (b) and (c) of Article 39.

We now proceed to deal with the points aforesaid seriatim in the B above order.

PUBLIC PURPOSE

It is indisputable and beyond the pale of any controversy now as held by this Court in several decisions including the decision in the case of *His Holiness Kesavananda Bharati Sripadagalaveru* v. *State of* C *Kerala*(1) popularly known as Fundamental Rights case—that any law providing for acquisition of property must be for a public purpose. Whether the law of acquisition is for public purpose or not is a justiciable issue. But the decision in that regard is not to be given by any detailed inquiry or investigation of facts. The intention of the legislature has to be gathered mainly from the Statement of Objects and Reasons of the Act and its Preamble. The matter has to be examined D with reference to the various provisions of the Act, its context and set up, the purpose of acquisition has to be culled out therefrom and then it has to be judged whether the acquisition is for a public purpose within the meaning of Article 31(2) and the law providing for such acquisition. The acquisition of the vehicles namely the contract carriages, their permits and other assets for running them for the purposes of the Corporation could not be challenged as being not for a public purpose E merely because it was for the purposes of transferring them to the Corporation.

Statement of Objects and Reasons for the impugned law runs as follows :

> "A large number of contract carriages were being operated in the State to the detriment of public interest and were also F functioning stealthily as stage carriages. This had to be prevented. Article 39(b) and (c) enjoins upon the State to see that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth to the common detriment.
>
> G In view of the aforesaid it was considered necessary to acquire the contract carriages run by private operators."
>
> Accordingly the Karnataka Contract Carriages (Acquisition) Ordinance, 1976 was promulgated. The Bill seeks to replace the Ordinance."

H The title of the Act indicates that it is "An Act to provide for the acquisition of contract carriages and for matters incidental, ancillary or

(1) [1973] Suppl. S.C.R.1.

subservient thereto." In the Preamble it is stated :— A

> "Whereas contract carriages and certain other categories of public service vehicles are being operated in the State in a manner highly detrimental and prejudicial to public interest;
>
> And whereas with a view to prevent such misuse and also to provide better facilities for the transport of passengers by road and to give effect to the policy of the State towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; B
>
> C
>
> And whereas for the aforesaid purposes it is considered necessary to provide for the acquisition of contract carriages and certain other categories of public service vehicles in the State and for matters incidental, ancillary or subservient thereto:"

A declaration was also made in section 2 that the Act is for giving effect D to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39. A deep probe into and investigation of the facts stated in the Statement of Objects and Reasons and the Preamble of the Act was neither permissible nor was it gone into by the High Court. Mr. A. K. Sen advanced the leading argument on behalf of the respondents followed by some other Advocates and one of the respondents in person. The main plank of the argument advanced on E behalf of the respondents was that acquisition of vehicles which are available for sale in the market cannot be said to be for a public purpose. Counsel submitted that the scheme of nationalisation in Chapter IV-A of the Motor Vehicles Act was given up, whole Undertaking of the various operators was not acquired but what was acquired was certain assets most of which were available in the market. Acquisition of chattels or movables can never be for a public purpose. The High Court in support F of its view, also refers to the wordings of sub-section (3) of section 4 of the Act wherein it has been provided that the contract carriage and other property vesting in the State Government shall "be deemed to have been acquired for a public purpose". We are of the opinion that neither the argument nor the decision of the High Court that the acquisition is not for a public purpose is correct.

G

On the fact of the Statement of Objects and Reasons of the Act as also from its Preamble it is clear, apart from further facts which were stated in the various affidavits filed on behalf of the State, that the operators were misusing their permits granted to them as contract carriages permits. In many cases the vehicles were used as stage carriages picking up and dropping passengers in the way. The Legislature thought that to prevent such misuse and to provide for better facilities to trans- H port passengers and to the general public it is necessary to acquire the vehicles, permits and all rights, title and interest of the contract carriage operators in or over lands, buildings, workshops and other places and

A all stores, instruments, machinery, tools, plants etc. as mentioned in sub-section (2) of Section 4 of the Act. It was not a case where some chattels or movables were merely acquired for augmenting the revenue of the State or for its commercial purposes. Mr. Sen heavily relied upon some passages in the judgment of this Court in *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and others*(1) to strengthen his submission. The said decision was concerned with the B vires of the Bihar Land Reforms Act, 1950 by which the Zamindaries or intermediaries' interest were acquired by the State. One of the provisions in the Act was for acquisition of arrears of rent due to the intermediaries from their respective tenants. This provision was struck down as being unconstitutional. And in that connection, Mahajan, J, as he then was, said at page 944 :

C "It has no connection with land reform or with any public purpose. It stands on the same footing as other debts due to zamindars or their other movable properties, which it was not the object of the Act to acquire. As already stated, the only purpose to support this acquisition is to raise revenue to pay compensation to some of the zamindars whose estates are being taken. This purpose does not fall within any definition, how- D ever wide, of the phrase "public purpose" and the law therefore to this extent is unconstitutional."

Mukherjee J., as he then was agreed with this view at page 957. Das J.,as he then was and Chandrasekhara Aiyar J., also concurred in the same. But the said decision given in respect of the debts due to the Zamindars from their tenants, which were merely choses in action is of E no help to the respondents.

In these appeals we are not called upon to decide and express any final opinion as to whether an acquisition of chattels or movables can be for a public purpose or not. What may only add that the preposition so broadly but is not quite correct. There may be many circumstances and facts to justify the acquisition of even a movable property for a public purpose. It may not be universally so but the converse is also not F correct. In the instant cases what has been acquired under the Act is not only movables and chattels namely the vehicles but also the permits, the workshops, land and buildings etc. Although the whole transport undertaking of any carriage operator was not acquired, the acquisition in no sense was of more movable properties available easily for purchase in the market. Several hundred vehicles were acquired by the various notifications. In substance it was a nationalisation of the contract G transport service in the State of Karnataka. Undoubtedly it was for a public purpose. We may just quote a few lines from the judgment of Mahajan J., in the case of *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbhanga and others* (supra) occurring at page 941 :

H "In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The

(1) [1952] 3 S.C.R. 889

Legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute."

The language of section 4(3) of the Act is not for the purpose of introducing a legal fiction as observed by the High Court but with the object of putting the challenge to the factum of public purpose beyond the pale of any attack. The use of the word "deemed" does not invariably and necessarily implies an intorduction of a legal fiction but it has to be read and understood in the context of the whole statute. It may well be that the State is not authorised to compulsorily acquire any property merely to augment its revenue although in a larger sense one can say that augmentation of the coffers of the State is also for a public purpose. But it is not always correct to say that a property cannot be acquired merely for a commercial need of the Government. Under the Land Acquisition Act, 1894 land can be acquired for commercial purposes of the Government a Public Corporation or a Company. Why can't movables be acquired for commercial purposes if the exigencies of the situation so require? A particular commercial activity of the State may itself be for a public purpose. Acquisition of property either movable or immovable may in such a situation be for a public purpose.

Mr. Sen referred to section 19 of the Road Transport Corporations Act and specially to clause (c) of sub-section (2) to lend support to his argument that without acquiring the whole undertaking only a portion of its assets leaving out the liabilities could not be acquired. For this purpose, he relied upon the provisions of Chapter IV-A of the Motor Vehicles Act also. The nationalisation of routes under the said Chapter of the Motor Vehicles Act does not necessarily imply the acquisition of the transport undertakings of the various operators, their vehicles or properties. That is a separate and distinct method altogether. In section 19 of the Road Transport Corporations Act are enumerated the powers of the Corporation. Sub-section (2) (c) gives a power to the Constitution "to prepare schemes for the acquisition of, and to acquire, either by agreement or compulsorily in accordance with the law of acquisition for the time being in force the state concerned and with such procedure as may be prescribed, whether absolutely or for any period, the whole or any part of any undertaking of any other person to the extent to which the activities thereof consist of the operation of road transport services in that State or in any area". It is plain that the scheme for the compulsory acquisition may be for a part of the undertaking also and that would mean a part of the property of the undertaking or a branch of the undertaking. Of course, the Corporation can purchase vehicles as provided for in clauses (a) and (g) of sub-section (2) of section 19. But it does not follow therefrom that in all cases it is obliged to do so. Compulsory acquisition is also provided for in clause (c). Under section 3 of Act 64 of 1950 while establishing a Road Transport Corporation the State Government is obliged to keep in mind primarily the public interest as provided for in clauses (a) to (c) thereof. The acquisition in question for the purpose of the Corporation was, therefore, in public interest.

A In our judgment, therefore, the decision of the High Court on the question of public purpose is erroneous. We hold that the impugned law of acquisition and the acquisitions are for public purpose.

AMOUNT TO BE PAID FOR THE PROPERTY ACQUIRED.

The High Court in paragraph 92 at page 1527 has come to the conclusion ".....the scheme for payment for the property acquired under B the Act is wholly illusory and therefore the Act violates the fundamental rights of the petitioners secured under Article 31(2)."

The history in relation to the provision of payment of compensation or the amount in Article 31(2) of the Constitution is interesting and clearly points out the difference in the approach to the question by this Court and the Parliament resulting in the amendments in the provisions C from time to time as and when some important and leading judgment were handed down by this Court which according to the Constituent Body did not correctly lay down the law as it intended the Article to mean. The word used in the original Article 31(2) was 'compensation'. In *The State of West Bengal* v. *Mrs. Bela Banerjee and others*(1) compensation was held to mean a just equivalent of what the owner has been deprived of. Then came an amendment in the Article by the Con- D stitution (4th Amendment), Act, 1955 stating in clause (2) of Article 31 ".....no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate." In spite of the amendment, this Court in some decisions—to with *P. Vajravelu Mudaliar* v. *The Special Deputy Collector, Madras* (2) and *Union of India* v. *The Metal Corporation of India Ltd. and Another* (3) largely, if not fully, stuck to its view in *Mrs. Bela Banerjee's case* E (supra). Then came the decision in *State of Gujarat* v. *Shri Shantilal Mangaldas* N *Ors* (4) where Shah J., as he then was in his leading judgment to which was appended a short concurring note by Hidayatullah C. J., made a conspicuous departure from the views expressed in *Vajravalu's* case and the case of *The Metal Corporation* (supra) and the said decisions were over-ruled. Thereafter came the decision of 11 Judges of this Court the leading judgment being of Shah J., on F behalf of himself and 9 others in what is known as the Bank Nationalisation case in *Rustom Cavasjee Cooper* v. *Union of India*(5). Although in terms the decision of this Court in the case of *Shantilal Mangaldas* (supra) was merely explained, in substance it was over-ruled. Thereafter, by the Constitution (25th Amendment) Act the word 'compensation' was substituted by the word 'amount' in Article 31(2), which, as in the G case of 'compensation', may be fixed by the law of acquisition or be determined in accordance with such principles and given in such manner as may be specified in such law. The law was sought to be kept beyond the pale of challenge in any Court by reiterating in a slightly different form that it cannot be assailed on the ground "that the amount

(1) [1954] S.C.R. 558.
H (2) [1965] 1 S.C.R. 614.
(3) [1967] 1 S.C.R. 255.
(4) [1969] 3 S.C.R. 341.
(5) [1970] 3 S.C.R. 530.

so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash". In the Fundamental Rights case (supra) the change in the phraseology of Article 31(2) came up for consideration before the Bench of 13 Judges. The High Court is not right in saying that decision in the Bank Nationalisation case still holds the field on the question of amount or compensation to be paid for the acquired property. A departure has been made from the view expressed earlier in the light of the 25th Amendment. It is not necessary to pin-point the details of such departure. For the purpose of deciding the point which falls for consideration in these appeals, it will suffice to say that still the over-whelming view of the majority of judges in *Kesavananda Bharati's* case is that the amount payable for the acquired property either fixed by the legislature or determined on the basis of the principles engrafted in the law of acquisition cannot be wholly arbitrary and illusory. When we say so we are not taking into account the effect of Article 31 C inserted in the Constitution by the 25th Amendment (leaving out the invalid part as declared by the majority).

Just to support the principle of law culled out above, we may refer to a few lines in some of the judgments in *Kesavananda Bharati's* case. Sikri C. J., has said at page 197 : "Applying this to the fundamental right of property, Parliament cannot empower legislatures to fix an arbitrary amount or illusory amount or an amount that virtually amounts to confiscation, taking all the relevant circumstances of the acquisition into consideration." Shelat and Grover JJ., in addition to what they have said earlier categorically say at page 285 : ".....and further that the "amount" is neither illusory nor it has been fixed arbitrarily, nor at such a figure that it means virtual deprivaton of the rght under Article 31(2). The question of adequacy or inadequacy. however, cannot be gone nto." Hedge and Mukherjee JJ., have observed at page 338 : "Therefore, stated briefly, what the 25th Amendment makes non-justiciable is an enquiry into the question whether the amount fixed or determined is an equivalent value of or 'compensation' for the property acquired or requisitioned.....

.....

It is difficult to believe that Parliament intended to make a mockery of the fundamental right conferred under Article 31(2). It cannot be that the Constitution while purporting to preserve the fundamental right of the citizens to get an "amount" in lieu of the property taken for public purpose has in fact robbed him of all his right." Ray J., as he then was goes to point out at pages 446 and 447 : ".....
the Article still binds the legislature to provide for the giving to the owner a sum of money either in cash or otherwise. The legislature may either lay down principles for the determination of the amount or may itself fix the amount.

.....

The Constitution does not allow judicial rview of a law on the ground of adequacy of the amount and the manner as to how such amount is to be given otherwise than in cash." At page 555 is to be found the view of Jaganmohan Reddy J., in these words :

A "Once the Court is satisfied that the challenge on the ground that the amount or the manner of its payment is neither arbitrary or illusory....."

Lastly we would refer to a passage occurring in the judgment of one of us (Chandrachud J.) at pages 992 and 993. It runs thus:

B "The specific obligation to pay an "amount" and in the alternative the use of the word "principles" for determination of that amount must mean that the amount fixed or determined to be paid cannot be illusory. If the right to property still finds a place in the Constitution, you cannot mock at the man and ridicule his right. You cannot tell him : "I will take your fortune for a farthing."

C As already stated the High Court took the view that the amount payable under the Act for the property acquired would be such that it will be wholly arbitrary illusory and leave the many operators in huge debts. Many of them were playing their contract carriages having taken loans of considearble sums of money from the various financiers on hire-purchase system, for whom also Mr. A. K. Sen appeared and D argued before us. They would not only be paupers but huge liability will remain on their shoulders if the interpretation put by the High Court were to be correct. Mr. Lal Narayan Sinha, learned counsel for the appellants, took a very just and proper attitude in advancing an argument before us which would take away the basis of the High Court Judgment in this regard. With respect to each and every relevant section on the question of payment of the amount in lieu of the property E acquired he suggested such a reasonable, harmonious and just construction by the rules of interpretation that we found no difficulty in accepting his argument-rather, were glad to do so. The other side on the interpretation so put, which we are going to mention hereinafter, felt satisfied to a large extent. Mr. Sinha also advanced some argument with reference to the valid part of Article 31 C read with clauses (b) and (c) of Article 39 but very wisely did not choose to heavily rely F upon it. On the interpretation of the statute as canvassed by him, there hardly remained any necessity of it.

Section 3 of the Act defines in clause (a) 'acquired property' to mean the vehicles and other property vesting in the State Government under section 4. The definition of 'contract carriage' is an inclusive one with reference to certain provisions of Motor Vehicles Act. Clause G (h) runs thus :

" 'contract carriage operator' means an operator holding one or more contract carriage permit and includes any person in whose name a public service vehicle is registered and is specified as a contract carriage in the certificate of registration of such vehicle."

H 'Permit' in clause (m) means the permit granted under the Motor Vehicles Act, authorising the use of a vehicle as a contract carriage. Then comes the important clause (n) which runs as follows :

A

> " 'Person interested' in relation to any acquired property includes the contract carriage operator and any secured creditor or financier under a hire purchase agreement, who has a charge, lien or any interest in the acquired property and any other person who is affected by the vesting of the acquired property and claiming or entitled to claim an interest in the amount."

B

Section 4 provides for vesting of contract carriages etc. with the permit or the certificate of registration or both absolutely free from all encumbrances. Various other properties mentioned in clauses (i) and (ii) of sub-section (2) also vest on the issuance of the notification under sub-section (1). While providing that the property shall vest absolutely free from all encumbrances, a safeguard has been provided for a person interested and having a claim to the amount in respect of such property under the Act. Under section 5, the operators are to furnish the required particulars. Section 6 which deals with determination of the amount must be read in full.

C

> "6. Determination of the amount.—(1) For the vesting of the acquired property under section 4, every person interested shall be entitled to receive such amount as may be determined in the manner hereinafter set out and as specified in the Schedule, that is to say—

D

> (a) where the amount can be fixed by agreement it shall be determined in accordance with such agreement;
>
> (b) where no such agreement can be reached, the State Government shall appoint as arbitrator a person who is an officer not below the rank of a Divisional Commissioner or a District Judge;

E

> (c) the State Government may, in any particular case, nominate a person having expert knowledge as to the nature of the acquired property to assist the arbitrator and where such nomination is made, the person interested may also nominate an assessor for the same purpose;

F

> (d) at the commencement of the proceedings before the arbitrator, the State Government and the person interested shall state what in their respective opinion is the amount payable;
>
> (e) the arbitrator shall, after hearing the dispute, make an award determining the amount which appears to him just and reasonable and also specifying the person or persons to whom the amount shall be paid; and in making the award he shall have regard to the circumstances of each case and the provisions of the Schedule so far as they are applicable;

G

> (f) where there is any dispute as to the person or persons who are entitled to the amount, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to the amount, he shall apportion the amount, amongst such persons;

H

A (g) nothing in the Arbitration Act, 1940 (Central Act X of 1940), shall apply to arbitrations under this section.

(2) Every award made by the arbitrator under clause (e) of sub-section (1) shall also state the amount of costs incurred in the proceedings before him and by whom and in what proportions such amount is to be paid."

B

A notice under section 7 is to be given to all persons interested in respect of the amount determined under section 6. Any person interested and served with a notice under section 7 can file a claim before the authorised officer under sub-section (1) of section 8. The language of sub-section (2) created some difficulty in harmonising it with the other provisions of the statute. It runs thus :

C

"The authorised officer shall forward the claim made under sub-section (1) to the State Government for the payment of the amount to the person interested in the manner specified under section 11."

Section 10 is important and provides for the various categories of the
D amount liable to deduction in certain cases. The nature of such amounts liable to be deducted are relatable to the Employees' Provident Funds and Family Pension Fund Act, 1952, Employees' State Insurance Act, 1948, salary, wags etc. due to an employee, taxes etc. But the important item to be noticed is mentioned in clause (iii) of sub-section (3) which makes "the amount due towards the claims of secured creditors" deductible under section 10. Sub-section (4) au-
E thorises the arbitrator to decide any dispute regarding the sum to be deducted under sub-section (3). Then section 11(1) providing for the manner of payment of amount for the acquired property says :

"The amount determined under section 6 shall, after deduction, if any, made under this Act, be given in cash by the State Government to the person interested,—

F (a) in one lumpsum where the amount does not exceed ten thousand rupees; and

(b) in ten equal annual instalments in other cases, the amount of each instalment carrying interest at the rate of six per cent per annum from the notified date."

G An appeal lies to the High Court from the award of the arbitrator as provided for in the 12th section. Certain powers of the Civil Court have been conferred on the arbitrator and the authorised officer under section 13. Section 19 enjoins the State Government to transfer the whole of the acquired property in favour of the Corporation. The permit stands transferred to the Corporation under section 19(2). Sub-section (6) says :

H

"(a) All sums deducted by the State Government under sub-section (3) of section 10 shall stand transferred to the corporation referred to in sub-section (1),

(b) The corporation shall credit the sums transferred to the appropriate funds or if any part of the sums is payable to the employee directly, such part shall be paid to him directly."

A monopoly is created in favour of the Corporation by the 20th section.

Then comes the Schedule spoken of in section 6 which provides for principles for determination of the amount in relation to the various properties acquired under the Act. Para 1 deals with the principle and the manner of determination of the amount for the vehicles. The acquisition cost is to be determined first and then a certain percentage is to be deducted in accordance with the Table appended to sub-para (1). The explanation says :

"For the purpose of this paragraph "acquisition cost" shall be the aggregate cost of the chassis as well as the body of the contract carriage as charged by the manufacturer of chassis and by the body builder."

In respect of almost all other properties acquired the amount to be paid is by and large the market value of the property; vide paras 2, 3 and 4. Provisions have been also made for payment of the amount in respect of the workshops in para 5 and in respect of stores in para 6. Some compensation has been provided in para 7 of the Schedule for every permit acquired under the Act, although the amount so fixed may not be adequate.

Now by the harmonious and reasonable rules of construction as also to save the Act from being violative of Article 31(2) of the Constitution, we proceed to discuss and accept in a large measure the interpretation put and canvassed by Mr. Sinha. If the amount is fixed by agreement, well and good. In the absence of an agreement, the State Government shall appoint an arbitrator who will be an officer of a high rank. Two assessors having expert knowledge as to the nature of the acquired property—one by the Government and one by the person interested, can be appointed to assist the arbitrator. Both sides will state before the arbitrator as to what should be the amount payable according to each. The arbitrator shall hear the dispute and make an award determining the amount which appears to him *just and reasonable*. He shall also specify the person or persons to whom the amount shall be paid. In making the award, he *shall have regard to* the circumstances of each case and the provisions of the schedule so far they are applicable. Some difficulty at the outset arose in reconciling the expression "as specified in the schedule" occurring in sub-section (1) of section 6 and the underlined expression occurring in clause (e) of that sub-section.

The content and purport of the expressions "having regard to" and "shall have regard to" have been the subject matter of consideration in various decisions of the Courts in England as also in this country. We may refer only to a few. In *Illingworth* v. *Welmsley*(1) it was held

(1) (1900) 2 Queen's Bench, 142.

A by the Court of Appeal, to quote a few words from the judgment of Romer C.J. at page 144 : "All that clause 2 means is that the tribunal assessing the compensation is to bear in mind and have regard to the average weekly wages earned before and after the accident respectively. Bearing that in mind, a limit is placed on the amount of compensation that may be awarded....." In another decision of the Court of Appeal in *Perry* v. *Wright* (etc. etc.) (1) Cozens-Hardy M.R. observed B at page 451 : "No mandatory words are there used; the phrase is simply "regard may be had". The sentence is not grammatical, but I think the meaning is this : Where you cannot compute you must estimate, as best as you can, the rate per week at which the workman was being remunerated, and to assist you in making an estimate you may have regard to analogous cases." It is worthwhile to quote a few words from the judgment of Fletcher Moulton L.J. at page 458. Under C the phrase" "Regard may be had to" the facts which the Court may thus take cognizance of are to be "a guide, and not a fetter." "This Court speaking through one of us (Beg J., as he then was), has expressed the same opinion in the case of *Saraswati Industries Syndicate Ltd. Etc.* v. *Union of India*(2). Says the learned Judge at page 959 : "The expression "having regard to" only obliges the Government to consider as relevant date material to which it must have regard."

D

The arbitrator, therefore, reading section 6(1) as a whole is not obliged to fix the amount as specified in the Schedule. But he has to fix the amount which appears to him *just and reasonable* on the totality of the facts and circumstances keeping primarily in mind the amount mentioned in the Schedule.

E Another apparent conflict was writ large on the phraseology of sub-section (2) of section 6 and the provisions contained in sections 10 and 11. Section 10 provides for the deductions of the various amounts at the outset from the amount determined by the arbitrator payable in respect of the acquired properties, including those due to the secured creditors, which undoubtedly, would include the financiers of the hire-purchase agreements. The amount payable under section 11 and F the manner of its payment is, after deducting all the amounts, provided in section 10. To that extent, for the purpose of harmonious construction, sub-section (2) of section 8 must mean the payments of the amounts as mentioned in section 10 and the balance to the operator in the manner specified under section 11. The Act thus interpreted to a large extent will satisfy not only the claims on account of wages and tax etc. but also the amount due to the secured creditors. Surely the G amount due, if any, to any unsecured creditor cannot be taken into account as there is no such provision made in section 10. Sufficient power has been conferred on the arbitrator to arrive at a just and reasonable figure of the amount payable for the property acquired. And further, a procedural safeguard has been provided by making a provision for an appeal to the High Court from the award of the arbitrator.

H

(1) [1908] 1 King's Bench, 441.
(2) [1975] 1 S.C.R. 956.

No attack with any reasonable justification could be made on paras 2 to 7 of the schedule. But a difficulty arose in interpretation of the term "acquisition cost" occurring in sub-para (1) of para 1. The literal meaning of that expression in sub-para (1) would have been the acquisition cost of the contract carriage operator or any other person interested therein. But the difficulty created was by the language of the explanation appended thereto when it said that "acquisition cost" shall be the aggregate cost of the chassis as well as the body of the contract carriage as charged by the manufacturer of chassis and by the body builder." Mr. Sinha rightly pointed out that the true and the correct meaning of the words used in the explanation in the light of sub-para (1) of para 1 would mean the cost of the chassis fixed by the manufacturers for their dealers to charge from the purchasers. Really the acquisition cost qua the purchaser is the price which he pays to the manufacturers' dealer from whom he purchases and not the manufacturer's actual cost of manufacturing the chassis. So far the acquisition cost of the body of the vehicle is concerned, no difficulty is created by the explanation. It would be the actual cost charged by the body builder.

On the interpretations aforesaid which we have put to the relevant provisions of the Act, it was difficult—rather impossible—to argue that the amount so fixed will be arbitrary or illusory. In some respects it may be inadequate but that cannot be a ground for challenge of the constitutionality of the law under Article 31(2). The respondents felt quite satisfied by the interpretations aforesaid and could not pursue their attack on the vires of the Act on that ground.

Legislative Competence Re : *Contract Carriages Plying on Inter-State Routes*

The number of such carriages and such permits compared to the total number of vehicles acquired was very few. It was about 20 to 25 only. It is no doubt true that under the Ordinance contract carriages with Inter-State permits were not sought to be acquired. The Act, however, has done so and with a retrospective effect. Question is whether the State Legislature of Karnataka has gone beyond its powers and competence in making such a provision. In that regard it was also canvassed before us whether it was possible to read down certain provisions of the Act to save it from constitutional invalidity. If so, to what extent and in what respect ?

The first attack on the legislative competence was that acquisition of such a contract carriage squarely fell under Entry 42 of List I of the Seventh Schedule to the Constitution that is to say, "Inter-State trade and commerce." In paragraph 97 of the judgment the High Court seems to have rejected the contention that the Act violated the freedom of trade and commerce guaranteed under Article 301 and 304. But the High Court in the earlier portion of its judgment appears to have taken the view that an Inter-State permit is, in fact and in substance, two or more permits rolled into one. The vehicle ply in the different States. The permit originally granted by the Karnataka authority under the Motor Vehicle Act has to be countersigned by the authorities of the other States. Some of the operators kept their

vehicles and have got their workshops in other States. The law made by the Karnataka Legislature cannot have extra territorial operation.

We do not think that the view expressed by the High Court is wholly correct. There are numerous decisions of the Privy Council, the Federal Court and the Supreme Court in support of the proposition that the pith and substance of the Act has to be looked into and an incidental trespass would not invalidate the law, vide for example *Prafulla Kumar Mukherjee and others* and *Bank of Commerce Limited, Khulna* and *Advocate-General of Bengal*(1); *Kerala State Electricity Board* v. *Indian Aluminium Co.*(2) The earlier case of this Court is reported in *A. S. Krishna* v. *State of Madras*(3). Almost a direct decision on this point is to be found in an unreported decision of this Court in *S. K. Pasari* v. *Abdul Ghafoor and Ors.*(4) The question for consideration in that case was whether the State Government had power under section 64A of the Motor Vehicles Act as introduced by the Bihar Amendment to deal with a revision in relation to an Inter-State permit. The High Court had taken the view that it had no such power, as such, a provision falls within item 42 of List I of the Seventh Schedule to the Constitution, namely, Inter-State trade and commerce and not Entry 35 of List III, namely, mechanically propelled vehicles. This Court following the principle laid down in the case of *Narayanappa* v. *State of Mysore*(5) reversed the view of the High Court and held that the impugned section fell within the legislative power of the State under Entry 20 of List III of Schedule Seven of the Government of India Act, 1935 corersponding to Entry 35 of List III of the Seventh Schedule to the Constitution. The said decision has been followed by this Court in *Tansukh Rai Jain* v. *Nilratan Prasad Shaw and others*(6).

Mr. Sen submitted that the portion of the Statute providing for acquisition of contract carriages running on Inter-State routes is in reality legislating on the subject of Inter-State trade and commerce. The State Legislature was not competent to do so. In support of his argument, learned counsel referred to some of the American decisions viz. *United States of America, Plff. in Err.*, v. *Dan Hill*(7); *Claude R. Wickard, Secretary of Agriculture of the United States etal* v. *Roscoe C. Filburn*(8); *The Steamer Daniel Ball, Byron D. Ball and Jessie Ganoe, Claimants, Appit.* v. *United States*(9). In *Dan Hill's* case (supra) it was held that the transportation of intoxicating liquor from one State to another was in itself Inter-State commerce, and the Congress in the

(1) [1947] Federal Court Reports, 28.
(2) [1976] 1 S.C.R. 552.
(3) [1957] S.C.R. 399.
(4) Civil Appeal No. 306 of 1964 decided on 4-5-1964.
(5) [1960] 3 S.C.R. 742.
(6) [1965] 2 S.C.R. 6
(7) 63 Law Ed. 337.
(8) 87 Law Ed. 122.
(9) 19 Law Ed. 999.

exercise of its plenary authority to regulate the Inter-State transportation of intoxicating liquors may prohibit such transportation even into a State which permits it. In the case of *Claude R. Wickard* (supra) the question arose entirely in a different context. A Federal regulation of the production of wheat not intended in any part for commerce but wholly for consumption on the farm was held to be within the power conferred by the commerce clause where the purpose of such regulation was to control the market price of wheat in Inter-State commerce. In the case of *The Steamer Daniel Ball* (supra) the question was whether the impugned Act applicable to a steamer engaged as a common carrier to carry goods in a navigable river between places in the same State when a portion of the merchandise transported by her is destined to places in other States could control such a steamer under the authority of the Congress to regulate an agency employed in commerce between the States. It was held that it could be so done.

In our judgment it is difficult to apply the principles of any of the cases aforesaid to the facts and the provisions of the Act. It is not an Act which deals with any Inter-State trade and commerce. Even assuming for the sake of argument that carriage of passengers from one State to the other is in one sense a part of the Inter-State trade and commerce, the impugned Act is not one which seeks to legislate in regard to the said topic. Primarily and almost wholly it is an act to provide for the acquisition of contract carriages, the Inter-State permits and the other properties situated in the State of Karnataka. In pith and substance it is an act of that kind. The incidental encroachment on the topic of Inter-State trade and commerce, even assuming there is some, cannot invalidate the Act. The Motor Vehicles Act, 1939 was enacted under Entry 20 of List III of Schedule Seven of the Government of India Act, 1935 corresponding to Entry 35 of List III of the Seventh Schedule to the Constitution. The subject being in the Concurrent List and the Act having received the assent of the President, even the repugnancy, if any, between the Act and the Motor Vehicles Act stands cured and cannot be a ground to invalidate the Act. Entry 42 of List III deals with acquisition of property. The State has enacted the Act mainly under this entry. It does not in any way violate or militate against the provisions of the Road Transport Corporation Act either, as argued by Mr. Sen.

Now we proceed to refer to some of the provisions of the Motor Vehicles Act, to repel Mr. Sen's arguments even with reference to that Act. But it cannot be rejected fully. A portion of it for the reasons to be hereinafter stated has got to be accepted.

Under Section 23, every owner of a Motor Vehicle has got to cause his vehicle to be registered by a registering authority in the State in which he has the residence or place of business where the vehicle is normally kept. Almost all the Inter-State vehicles (there may be a few exceptions) are registered in the State of Karnataka. They are normally kept there. If a vehicle registered in one State has been kept in another State for a period exceeding 12 months, then the registration has to be changed in accordance with section 29. Under the

second proviso to section 45(1) if it is proposed to use a vehicle in two or more regions lying in different States, an application for a permit has to be made to the Regional Transport Authority of the region in which the appellant resides or has his principal place of business. Almost all the Inter-State permits were initially granted by the Karnataka authority. Section 63(1) says :

> "Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any ohter region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned :"

This Court has expressed the view in the case of *M/s. Bundelkhand Motor Transport Company, Nowgaon* v. *Behari Lal Chaurasia and another*(1) followed in *Punjab Sikh Regular Motor Service, Modhapara* v. *The Regional Transport Authority, Raipur and another*(2) that permits granted by one Regional Authority and counter-signed by another Regional Authority either in the same State or in different States are really different permits rolled into one. If the initial granting authority does not renew the permit for plying the vehicle within the jurisdiction of another authority the latter by mere counter-signing the permit cannot empower the permit holder to ply the bus either in their region or another State. None of the Inter-State permits in these cases has been issued by any central authority in accordance with section 63A of the Motor Vehicles Act.

In the case of *The Bengal Immunity Company Limited* v. *The State of Bihar and others*(3) Venkatarama Ayyar J., delivered his separate judgment. Although he dissenting from the majority view in regard to the main contraversy in the case, in his judgment from page 811 onwards he discussed very lucidly, if we may say so with respect, the concept of extra territorial operation of a law. It has two connotations as pointed out by the learned Judge at page 814 : It ".....means a law of a State with reference to its own citizens in respect of acts or events which take place outside the State. In discussing questions relating to extra-territorial operation, it is desirable that the two connotations of the words should be kept distinct and separate". Two other connotation is the operation of the law itself to subjects or properties outside the territory of the State which has made the law.

For the reasons stated above by and large the law is not invalid. But to maintain its constitutionality in full, on the well-known principles of law established and noticed in several decisions, such as, in *The Hindu Women's Rights to Property Act* 1937, *and the Hindu Women's*

(1) [1966] 1 S.C.R. 485.
(2) [1966] 2 S.C.R. 221.
(3) [1955] 2 S.C.R. 603.

Rights to Property (Amendment) Act, 1938, and *A Special Reference under section* 213 *of the Government of India Act,* 1935:(1) *R.M.D. Chamarbaugwalla* v. *The Union of India*(2) and *Gulabhai Vallabhbhai Desai etc.* v. *Union of India & Ors*(3) a reading down of some of the provisions is permissible. And that reading down will be only to this effect . Vehicles kept and registered in the State of Karnataka in respect of which initially the Inter State permit has been granted by this State have validly been acquired. The permit acquired in respect of those vehicles will be the permit operative within the territory of the State of Karnataka. The counter-signed portion of the permit, which as pointed out above on the authorities of this Court is in substance and in effect a separate permit authorising the permit holder to ply the bus in another State, cannot be acquired. Such an acquisition will fall within the second connotation of the extra-territorial operation of the law, as referred to above from the *Bangal Immunity* case. The State Government on acquisition and the vesting of the acquired property cannot transfer the countersigned portion of the permit to the Corporattion. The Corporation in view of the transfer under section 19 will be able to utilize the unexpired portion of the permit for plying the vehicle only in the Sate of Karnataka until and unless it gets it signed by the Transport authority of the other State or States in accordance with the Motor Vehicles Act or take steps in accordance with section 20 of the Road Transport Corporations Act. This portion of the law, although it is a very minor one, has got extra-territorial operation in the connotation and sense which did not permit the Karnataka Legislature to enact such a law. If on the facts of a particular case it be found that any particular vehicle is kept and registered or is plying on an initial permit granted by another State, such a vehicle also would not stand acquired under the Act and the notifications issued thereunder. Since the High Court has not gone into the details of the facts, we were not concerned to go ino them. The Constitution Bench was formed merely to decide the constitutional issues.

At the end we may also indicate that under sub-section (6) of section 19 all sums deducted by the State Government under sub-section (3) of section 10 which include the sums payable to the secured creditors stand transferred to the Corporation which is obliged to credit the sums transferred to the appropriate funds. The said provision would take within its ambit the liability of the Corporation to pay forthwith the sum found due to the secured creditors. Since we have upheld the constitutional validity of the Act on merits by repelling the attack on it by a reasonable and harmonious construction of the Act, we do not consider it necessary to express any opinion with reference to Article 31C read with clauses (b) and (c) of Article 39 of the Constitution. Our learned brother Krishna Iyer J., has prepared a separate judgment specially dealing with this point. We must not be understood to agree with all that he has said in his judgment in this regard.

(1) [1941] Federal Court Reports, 12.
(2) [1957] S.C.R. 931.
(3) [1967] 1 S.C.R. 602.

A For the reasons stated above, we allow the appeals and set aside the judgment of the High Court. It will be open to any of the writ petitioners to file a petition in the High Court either in the same writ petition or a fresh one for adjudication and decision of the special facts of a particular case, if necessary, in the light of this judgment. It is hoped that since the matter has been considerably delayed by now, very early and expeditious steps would be taken for determination and B payment of the amounts in respect of the acquired property to the persons interested in accordance with the Act in the light of this judgment. We shall make no order as to costs in any of the appeals.

KRISHNA IYER, J.—We go wholly with our learned brother Untwalia J. Then *why a separate afterword* ?

C Because, to put it simplistically, a legislation for the nationalisation of contract carriages by the Karnataka State, where provision has been made for fair compensation under present circumstances, has still been struck down by the High Court on the surprising grounds of absence of public purpose, illusoriness of compensation State take-over being beyond the orbit of Article 39(b) and the like, and to express ourselves emphatically in reversal on the obvious, yet basic, issue we itemise be- D low which is necessary to obviate constitutional deraliment again. The public sector, in our constitutional system, is so strategic a tool in the national plan for transformation from stark poverty to social justice, transcending administrative and judicial allergies,, that the questions raised and rulings thereon are of larger import for the country than one particular legislation and its vires and one particular government and its E policies. What are those disturbing interrogatories ?

If the State, to subserve the objects of governmental or other like agencies, compulsorily takes movable property or realty of private citizens, the like of which are readily available in the open market, does the law authorising such taking violate the limitation of 'public purpose' imposed by Article 31(2) of the Constitution, in the absence of *urgency* F which brooks no delay whatever ? Further, does the prospect of easy purchase elsewhere, negate the presence of 'public purpose', implying thereby the resort to compulsory acquisition within the framework of Article 31(2) is interdicted save where there is '*State necessity*' coupled with *scarcity* of supplies in the market ? Secondly, does a legislation qualify for immunity under Article 31C read with Article 39(b), *only* where the scheme is to divide and deal out to a plurality of persons, to G disperse, diffuse or scatter ownership and control of material resources of the community compulsorily taken by the State ? Or does it embrace 'distribution' with a wider connotation of 'removal' from the private sector and allocation in the public sector, dividing and arranging, separating and allocating, acquiring from individuals and making over to collective institutions or State organs, acting for and in the interest of the community, according to the State Plan or policy decision on the H scheme of distribution and allocation of resources among the different sectors of economic activity so as best to subserve the public good ? How, in short, do we decode 'distribute' in Article 39(b) illumined by Article 38 ? As permitting or proscribing holding of 'resources' by

the State or its designated organ monopolistically, for the better production and/or distribution of goods and services to the community, for participative control by and distribution of profits among workers and for all those other benefits claimed to flow out of public ownership, social control, commitment to community, parliamentary accountability and vaster capability? Does *R. C. Cooper*(1) remain a legal tender even after demonetisation on the question of acquisition vis a vis compensation, by the 25th (Constitution) Amendment ? Can the theory of 'illusory compensation' be apocryphal or be exaggerated to apply to diminished compensation as a revised reincarnation of 'adequate compensation' still menacing projects of nationalisation ? How do we conceptulise 'material resources' and 'public purpose' in our current constitutional setting ? When cryptic phrases expressive of constitutional culture and aspirational future, fundamental to the governance of the nation, call for interpretative insight, do we merely rest content to consult the O.E.D. and alien precedents, or *feel* the philosophy and *share* the foresight of the founding fathers and their telescopic faculty ? Is the meaning of meanings an artless art ? Holmes(2) J. in lovely language, stated 'what oft was thought but never so well expressed' :

> "A word is not crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used."

Jerome Frank adopted a quotation from Holmes which drives home the same point :

> "We must think things not words, or at least, we must constantly translate our words into the facts for which they stand if we are to keep to the real and the true.(3)"

Be the High Court's judgment right or wrong, its socio-economic and jurisprudential repercussions for a social Welfare State or a 'Socialist Republic' are sufficiently profound to explain why, from us too, an *afterword.*

Is it otiose to ponder over these matters ariculately even though we generally concur in the reasoning and conclusion of our learned colleagues ? Some economic issues of moment, quiet in their legal look but critical in their later portent, come before the Court as has happened now, when, regardless of assent or dissent, the spelt-out opinion of the judges sitting on the same bench, separately or conjointly, becomes the right of the citizen, read in the context of the pregnant provision in Article 141. When major juristic problems of futuristic import involve constitutional probes, a plurality of opinions may bring out if we may mix metaphors—more facets, shifts in emphasis, finer notes, fresh vistas and seeds of development. not necessarily verbal re-hash or medley of repetitive prolixity. A hundred noetic flowers and some cerebral briars are not a confusing crowd of colours.

Judicial perspective vis a vis *constitutionality of economic legislation.*

(1) [1970] 3 S.C.R. 530.

(2) *Towne* V. *Eigner*, 245 U.S.. 418=62 L. ed. 372, 376

(3) Dias Jurisprudence, 4th Edn. p. 625

A When confronted by serious constitutional problems, judicial statesmanship drops the craft of a legal tinker or lexicographic borrower but transforms itself into that of social engineer who 'beholds the future in the present and his thoughts are the germs of the flower and fruit of latest time'. He gives conscious expression, in juristic tongue, to the Constitution's implicit purpose grounded on the permanent interests of man as a progressive being—here, the little yet large man of India breaking out of an iniquitous system, yet reaching out to a human society, shot with distributive justice. The presence of this people-oriented perspective in the court, as the interpreter of the Constitution and its imperatives and the laws designed to inaugurate a Human Tomorrow, compels us in all humility and aware of inadequacy, to lend our pen to the reversal of the decision under appeal which *de facto* proceeds on fastidious societal values of vanishing validity in the changed setting, and is partly C founded on exotic juridical doctrines (eminent domain) incongrous with the legitimate realities of the emerging Indian Order as are writ into Article 31(2) and more unmistakably in Article 31C read (in the manner of *Keshavananda Bharati*) (1) along side of Article 39(b) and (c).

The social philosophy of the Constitution shapes creative judicial D vision and orientation. Our nation has, as its dynamic doctrine, economic democracy *sans* which political democracy is chimerical. We say so because our Constitution, in Parts III and IV and elsewhere, ensouls such a value system and the debate in this case puts precisely this soul in peril.

Friedman has said in his 'Legal Theory and Social Evolution'.

E

> 'The lawyer cannot afford to isolate himself from the social process. His independence can never be more than relative, and it is only a clear awareness of the political, social and constitutional foundations of his function in general as well as of particular legal problems that enables him to find the proper balance between stability and progress."(2)

F

Our thesis is that the dialectics of social justice should not be missed if the synthesis of Part III and Part IV is to influence State action and court pronouncements. Constitutional problems cannot be studied in a socio-economic vacuum, since socio-cultural changes are the source of the new values, and sloughing off old legal thought is part of the process of the new equity-loaded legality. A judge is a social scientist G in his role as constitutional invigilator and fails functionally if he forgets this dimension in his complex duties.

The credal essence of the Constitution consists in its Preamble, Articles 38, 39(b) and (c), 31 and the bunch of Articles 31A, 31B and 31C (We do not deem it necessary to refer in this case to the 42nd Constitution Amendment Act).

H

(1) [1973] Supp S.C.R. 1

(2) Legal Theory and Social Evolution, p. 81, 5th Edn.

Our emphasis is on abandoning formal legalistics or sterile logomachy in assessing the vires of statutes regulating vital economic areas, and adopting instead a dynamic, goal-based approach to problems of constitutionality. It is right that the rule of law enshrined in our Constitution must and does reckon with the roaring current of change which shifts our social values and shrivels our feudal roots, invades our lives and fashions our destiny. The key issues argued at learned length in these appeals cannot suffer 'judicial separation' from the paramount principles in the Preamble and in Article 39(b) and (c). So we have to view the impugned provisions from the vantage point of socio-legal perception.

The semantic sin of dubious legislating drafting

Before entering the thorny thicket of debate on the questions arising in this batch of appeals a cautionary word may be uttered, without disrespect, about the unwitting punishment of the community by our legislative draftsmen whose borrowed skills of Westminster vintage and hurried bills without sufficient study of their economic project, occasionally result in incomprehensibility and incogruity of the law for the lay and the legal. Francis Bennion,(1) commenting on the Renton Committee Report, writes :

> "The Renton Committee points out that the problem of obscure statute law is important to every citizen.
>
> "There is hardly any part of our national life or of our personal lives that is not affected by one statute or another. The affairs of local authorities, nationalised industries, public corporations and private commerce are regulated by legislation. The life of the ordinary citizen is affected by various provisions of the statute book from credle to grave."
>
> The committee might have added that the rule of law and parliamentary democracy itself are imperilled if laws are incomprehensible. They did say that it is of fundamental importtance in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is opressive and deprives the citizens of one of his basic rights. It is also needlessly expensive and wasteful. Reed Dicerson, the famous American draftsman, said it cost the government and the public "many millions of dollars annually."

It must be said in fairness to both sides that Shri Lal Narain Sinha whole-heartedly agreed with Shri Asoke Sen (they appeared on opposite sides) that the legislation was illdrafted and made a big drift on the creative imagination and linguistic tolerance of the judges, to reconcile the verbal deficiencies and semantic difficulties besetting the text. Shri Sinha told the Court that a clarificatory bill was going before the House shortly as an amending exercise in this behalf. Our draftsmen

(1) Laws are not for laymen—Guardian Miscellany May 29, 1975.

A handle foreign know-how meant for different circumstances, and without full grasp of the economic regulation or the leisure and facilities for such study.

In a country where the people are, by and large, illiterate, where a social revolution is being pushed through by enormous volume and variety of legislation and where new economic adventures requir-
B ing unordhoodoz jural techniques are necessitous, if legal drafting is to be equal to the challenge of change, a radicalisation of its methodology and philosphy and an ability for the legislative manpower to express themselves in streamlined, simple, project-oriented fashion is essential. In the hope that a role-conscious court communicates to a responsive Cabinet, we make this observation.

C *What is the battle about* ?

Back to the challenging problems thrown up by the High Court's decision. The facts are there in the leading judgment and the formulation of the controverted propositions also needs no reiteration. Broadly speaking, we strike no note of dissensus but seek to bring out some social nuances even in consensus. Let us project the pegs on which
D our discussion may hang. Incidentally, conceptual differences about the dimensions of the change visualised by Article 31C read with Article 39(b) and (c) are bound to exist among judges who, after all, professionally objectify the social philosophy of the Constitution through the subjective prism of their own mentalism.

1. What is a 'public purpose', set as a constitutional limitation in
E Article 31(2), compliance with which conditions the immunity from attack based on Article 19(1)(f) or inadequacy of recompense when any person is deprived of his property ?

1. (a) What is the degree of nexus between the public purpose and the acquisition desiderated by Article 31(2) ?

F 1(b) Can *Cooper* (supra) be judicially resurrected, draped differently but with the same 'compensation' soul, even after the amendment of Article 31(2) ?

2. What are the pervasive ambience and progressive amplitude of the 'directive principle' in Article 39(b) and (c) in the context of nationalisation of public utilities ?

G 2(a) Can State monopoly by taking over private property be a modus operandi of *distribution* of ownership and *control* of the *material resources of the community* to subserve the common good, within the framework of Article 39(b) ?

2(b) Are distribution and nationalisation antithetical of overlapping ?

H

2(c) What is the connotation of the expression 'material resources' ? Can private buses be regarded as material resources of the community ?

These and cousin issues are the legal-economic points canvassed before us and are sure to occupy the centre of the stage when management and control of growth in effective measure for common weal expand the frontiers of public law with a view to implement the 'distributive justice' embodied in Articles 38 and 39 and, by Article 37, made fundamental in the governance of the country. Dr. Ambedkar, in words significant, said :

> "In enacting this part (Part IV) of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and executive power they will have. Surely it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip-Service to those principles but that they should be made the basis of all legislative and executive action that they may be making hereafter in the matter of the governance of the country."

The Directive Principles, being the spiritual essence of the constitution, must receive sweeping signification, being our socio-economic Magna Carta, quiddities apart.

They key etc. thought o the Constitution and the interpretative response.

The role of nationalisation of essential services for the better life of the people, an item on the country's urgent developmental agenda, must be gathered before the wide range of the companion set of constitutional articles can be spanned by the court in interpretative terms. Codified law is legislatively crystallised politico-economics and so the search of the jurist has to be wider and deeper and interlaced. Take care of the basics, the specifics will take care of themselves. So we have to go behind the legal facade to respond to the rhythm of the pulsating text of the Constitution which casts heavy developmental responsibilities on the Welfare State. Roscoe Pound's remark reflects this thought :

> "All he social sciences must be co-workers, and emphatically all must be co-workers with jurisprudence."

Moreover, sheer legalism cannot lightly upset legislative wisdom or efficiency while passing on the constitutionality of economic legislation based on national planning, public finance, private investments, cost accounting, policy decisions, historical factors and a host of complex social variables, Dixon C.J.(1) in a different context observed :

> "These matters of incidental powers are largely questions of degree, but in considering them we must not lose sight of the fact that once the subject matter is fairly within the province of the Federal legislatuure the justice and wisdom of the provisions which it makes in the exercise of its powers over the subject matter are matters entirely for the legislature and not for the Judiciary."

(1) Burton v. Honan : 1952, 86 C.L.R. 169, 179.

A This is no argument for abdication of judicial power; for where legislation is colourable, measures make-believe or orders *mala fide*, the judges are the masters of the situation, and this Court, under Article 141, declares the law in that supreme spirit. But courts must be circumspect not to rush in where serious reflection will make them fear to tread nor to resort to adroit circumvention because of economic allergy to a particular legislative policy.

B At this stage, a glance at the raw realities, to abolish which Article 31(2), Article 31C and Articles 38 and 39 have been enacted, is necessary. Poverty has, for ages, been the omnipresent reality of Indian life. Stark inequalities have been chronic and the 'hidden hunger' (to use Myrdal's phrase) of the people have pushed the Freedom Movement forward in the socialistic direction toward a better life. C The fasciculus of clauses in the Constitution we have referred to is calculated to prevent the revolution of rising expectations from becoming a revolution of rising frustrations. These compulsions must inform legal interpretation. For, in the words of Seton Pollock,

> "The law itself, though of crucial social importance, is only one element in the total human task. That task is to D meet and master those frustrations that diminish man in this humanity and obstruct the realisation of his freedom and fulfilment within the human society. Those frustrations stem from ignorance, poverty, pain, disease and conflicts of interest both within the person (the field of psychological medicine) and between persons (the territory of the law). These manifold and interacting frustrations cannot be met by any E one discipline but only by a coordinated attack upon the problem through enlightened political and administrative initiatives and by educational, medical, psychological and legal remedies.
>
> Our concern is with the human condition and the imperative need to improve it through such resources as we can develop. We are beginning to see more clearly the need for a F unitary view which is, in essence, spiritual in its character, reaching down to the realities that underlie our fragmented disciplines.
>
> The burning issue of our times is how our *resources* can be developed and combined to achieve the fulfilment of the human task and the improvement of the human condition." G (Preface to 'The English Legal Aid System' by Seton Pollock-Orient Longmans)

The Father of Nation long ago argued for 'the art and science of mobilising the entire physical, economic and spiritual *resources* of all the various sections of the people in the service of the common good of all'. Sir Leslie Scarman developed this new dimension of law in the H English climate when he said :

> "I shall endeavour to show that there are in the contemporary world challenges, social, political and economic,

which, if the system cannot meet them, will destroy it. These challenges are not created by lawyers; they certainly cannot be suppressed by lawyers; they have to be met either by discarding or by adjusting the legal system. Which is to be ?" A

A panoramic sociological view—not a narrow legal peep-alone can invest judicial power with capability to help solve the myriad problems of Mankind and Mother Earth. B

We have divagated to drive home the pertinence and power of poverty to change our social order through law, and the necessity of the constitutional court to appreciate this fundamental logos before voiding any 'law'. Ideas of the Old Order on 'public purpose', illusory compensation, nexus doctrine and 'distributed to subserve the common good' should not reduce lofty constitutional considerations into 'hollow concepts, tea-cup debates and impotent ideas (which) debase modern jurisprudence' and are 'intellectually subversive', to use the indignant expressions of John Batt. Nietzsche once said : 'The great problems are in the streets'. Abraham Lincoln warned that 'the dogmas of the quiet past are no longer adequate to the stormy present.' Our legal doctrines, canons of interpretation and constitutional attitudes must therefore take not of this adaptational potential and response to realities. C D

The scheme of the impugned statute

Coming now to the concrete provisions of the Act, tested on the anvil of Article 31(2) and 39(b) and (c), we have to get a hang of the legislative project. Its purpose is to acquire contract carriages from all private sources. The reason for this measure of nationalisation is set out in the 'whereas' paragraphs. In broad terms, it is.... that private contract carriages are being operated in the State in a manner highly detrimental and prejudical to the public interest. It is further claimed that with a view to prevent such misuse and also to provide better facilities for the transport of passengers and 'to give effect to the policy of the State towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment,' acquisition of contract carriages is being resorted to. The requisite declaration contemplated in Article 31C is thus made in the preamble as well as in Section 2 of the Act. Of course, in the light of the *Keshavananda Bharati Case* (supra) there is in this Court a power—and if demanded, a duty—to examine whether there is real nexus between the legislation and Article 39(b) and (c) or whether the ritualistic declaration is cutely but colourably designed to ward off attack from Article 14, 19 and 31. Make-believes cannot make-do. But if there is a reasonable relation between the two, the Court cannot constitute itself as a super-administrator and suggest that there are better ways of achieving the object than what the legislature has chosen to adopt. 'Quo modo' is not for the court. E F G H

A The anatomy of the Act has been set out in the leading judgment and we adopt it.

Let us now examine the fatal constitutional vices, embedded in the Act and discovered at the High Court level. One such lethal feature which appealed to the High Court, and has been repeated before us by Shri Asoke Sen with insistence, is that there is no public purpose involved in the acquisition of contract carriages and so the enactment is not invulnerable under Article 31(2). The statutory purpose was to acquire contract carriages in private ownership, and transfer them to the State Road Transport Corporation which was to enjoy the exclusive privilege of running contract carriages. The expected shower of benefits was elimination of misuse of contract carriages in private hands and augmentation of public good by plying these vehicles under public ownership and direction. The first question is whether such taking from a private person and vesting in a public body is not a public purpose. There are two sub-issues which are distinct and must be kept distinct if ideational confusion is not to vitiate our conclusion : (a) Is there a public purpose ?; and (b) If there is, what are the ways to fulfil that purpose ? The ends cannot be telescoped into the means. Once this perspicacity in thinking is present, it is unarguably obvious that the State Government's or the State Corporation's purpose is a public purpose. Putting aside the possible distortions, historically proved, of class domination of the State apparatus and assuming the values of our constitutional order, the State symbolizes, represents and acts for the good of society. Its concerns are the ways of meeting the wants of the community, directly or otherwise. The purpose of a public body to run a public transport service for the benefit of the people, operating it in a responsible manner through exercise of public power which is controlled and controllable by society through its organs like the legislature and, at times, even the court, is manifestly a public purpose. Does the purpose subserve some public use or interest or produce some public good or utility ? If it does, the purpose becomes public. 'Public' qualifies the object. Black's Legal Dictionary elucidates the expression :

> "*The term is synonymous with governmal purpose,* (State v. Dizon). As employed to denote the objects for which taxes may be levied, it *has no relation to the urgency of the* public *need* or to the extent of the public benefit which is to follow; *the essential requisite being* that a *public service or use shall effect the inhabitants as a community,* and not merely as individuals. (Stevenson v. Port of Portland). A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants of residents within a given political division, as, for example, state, the sovereign powers of which are exercised to promote such public purpose or public business. (Green v. Frazier)." (underscoring ours)

There may be many processes of satisfying a public purpose. A wide range of choices may exist. The State may walk into the open market and buy the items, movable and immovable, to fulfil the public

purpose; or it may compulsorily acquire from some private person's possession and ownership the articles needed to meet the public purpose; it may requisition, instead of resorting to acquisition; it may take on loan or on hire or itself manufacture or produce. All these steps are various alternative means to meet the public purpose. The State may need chalk or cheese, pins, pens or planes, boats, buses or buildings, carts, cars, or eating houses or any other of the innumerable items to run a welfare-oriented administration or a public corporation or answer a community requirement. If the purpose is for servicing the public, as governmental purposes ordinarily are, then everything desiderated for subserving such public purpose falls under the broad and expanding rubric. The nexus between the taking of property and the public purpose springs necessarily into existence if the former is capable of answering the latter. On the other hand, if the purpose is a private or non-public one, the mere fact that the hand that acquires or requires is Government or a public corporation, does not make the purpose automatically a public purpose. Let us illustrate. If a fleet of cars is desired for conveyance of public officers, the purpose is a public one. If the same fleet of cars is sought for fulfilling the tourist appetite of friends and relations of the same public officers, it is a private purpose. If bread is 'seized' for feeding a starving section of the community, it is a public purpose that is met but, if the same bread is desired for the private dinner of a political maharajah who may *pro tem* fill a public office, it is a private purpose. Of course, the thing taken must be capable of serving the object of the taking. If you want to run bus transport you cannot take buffaloes.

A public *purpose* is vastly wider than public *necessity,* even as a mere purpose is more pervasive than an urgency. That which one sets before him to accomplish; and end, intention or aim, object, plan, project—is purpose (Black's Legal Dictionary). A need or necessity is compulsive, urgent, unavoidable. In purpose, there is dires; in necessity, there is imperative demand. 'The presumption is that a use is public, if the legislature has declared it to be such, and the decision of the legislature must be treated with the consideration due to a co-ordinate department of the government of the state'. Its effect is not conclusive but considerable. 'Public purpose' should be liberally construed, not whittled down by logomachy.

The concept of 'public purpose' has been considered in some academic writings and judicial rulings and a glance at them may give theoretical nourishment to juridical ideas. We have to remember that neither socialist jurisprudence nor capitalist legal culture can govern the concept of public purpose in India's mixed economy and expanding public sector, in the context of progressive developmental programmes. Even the Privy Council, way back in 1914, in *Framjee Patit* 42 I.A. 44 approved of the wide definition of 'public purpose.' This court has also taken a liberal view of 'public purpose'. In a host of cases beginning with *Kameshwar* AIR (1952 SC 889). Agrarian reform, slum clearance to house the homeless, procuring a house for a diplomat (*Bombay* v. *Ali Gulshan* : AIR 1955 SC 810) or an office for the State Trading Corporation, acquisition of land to construct a dharmashala, houses for members of a cooperative society housing scheme,

houses for workmen or for a Mahatma Gandhi Memorial, as pointed out by an Indian Jurist (Rajeev Dhavan, in his study of 'The Supreme Court of India' (Tripathi) have been regarded in decided cases as public purposes.' Conceptually, it has a home-spun texture altho' that public transport is a public purpose is self-evidence anywhere. The dynamics of development must inform interpretation in this area.

There is a touch of swadeshi about a country's jurisprudence and so our legal notions must bear the stamp of Indian Developmental amplitude linked to constitutional goals. Counsel for the appellant, from his angle, produced before us the Industrial Policy Resolution of the Government of India of April 6, 1948 and April 30, 1956 wherein considerable importance was attached to the national economy securing a continuous increase in production and equitable distribution. The 1948 Resolution itself pointed out that the State must play an increasingly active role in the development of industries. Many other items were included for a progressive participation by the State by the time the 1956 Resolution was made. This fresh statement of Industrial policy took note of the constitutional preamble which, *inter alia* aimed at securing justice—social, economic and political. Articles 38 and 39 were also adverted to so that a precise direction might be given to the socialist pattern of society as the objective of social and economic policy. In particular, it was explicitly stated that 'the State will progressively assume the predominant and direct responsiblity from setting up new industrial undertakings and for developing *'transport facilities'*. Indeed, the State was to become the agency for planned national development and the socialistic pattern of sociey as the national objective required that all industries, of basic and strategic importance, or in the nature of *public utility services* should be in the public sector'. There was a division and distribution, in a broad manner, of industries and utilities between the private and the public sector. Stress was laid on the need to improve the living and working conditions of workers as well as their efficiency and a schedule in which *road transport* figures (Schedule B) was appended setting out those categories which would be progressively State-owned and in which the State would therefore generally take the intiative in establishing new undertakings.

When we ascertain the content of 'public purpose', we have to bear the above factors in mind which mean that acquisition of road transport undertakings by the State will undoubtedly be a public purpose. Indeed, even in England, 'public purposes' have been defined to mean such 'purposes' of the administration of the government of the country (p. 228, Words & Phrases Legally defined, II Edn.). Theoretically, or even otherwise, there is no warrant for linking up public purpose with State *necessity*, or in the court throwing off the State's declaration of public purposes to make an economic research on its own. It is indeed significant that in Section 40(b) of the Land Acquisition Act, 1894, the concept of 'public use' took in acquisition for the construction of some work even for the benefit of a company, provided such work as likely to prove useful to the public. Even the American Constitution, in the Vth Amendment, uses the expression 'public use' and it has been held in India in *Kameshwar* that 'public purpose' is

wider than 'public use'. Mahajan J. (as he then was) observed in that case : A

> "The phrase 'public purpose' has to be construed according to the times in which particular legislation is enacted and so construed, the acquisition of the estates has to be held to have been made for a public purpose." (p. 942)

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In the same judgment, the learned judge went on to state :

> "The legislatiure is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this court to say that there was no public purpose behind he acquisition contempated by the impugned statute." (p. 941)

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We have no doubt that this wider approach necessarily means that a comprehensive signification has to be given to the expression 'public purpose'.

It is true that Cooley and Willoughby and Willis and other American writings and rulings and theories like 'eminent domain' and 'police powers' have been eruditely referred to in the early days of this Court. However useful they may be in helping to understand the scope of 'public purpose', we have to be guided by the Directive Principles of State Policy while decoding the cryptic expression "public purpose'. Even in *Kameshwar* the Court referred to Article 39 and the preamble to the Constitution and the obligation to secure its citizens justice— Social, economic and political. The reference, here and there, in the separate judgments delivered in that case to the 'necessities of the State' cannot cut back upon the ambit of the concept. D E

It is significant that Das J. (as he then was) has in *Kameshwar*, observed :

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> "We have been referred to some American authorities for ascertaining the meaning and implication of 'public use' an expression which obviously *is of a more limited import than the expression* 'public purpose used in our Constitution."

The learned Judge explains that the notion of 'public use' is rapidly changing in America, for in the modern view, 'public use' means 'useful to the public.' G

It is right to remember, what has been mentioned in Shri Justice Das' judgment, that modern conditions and the increasing inter-dependence of the different human factors in the progressive complexity of the community make it necessary for the government to touch upon and limit individual activities at more points than formerly. In *Corpus Juris* the meaning of the term is stated to be flexible and varying with time and circumstances. All that can be said is that it embraces public utility, public advantage, public interest or object. H

A "It is thus quite clear that a fresh outlook which places the general interest of the community above the interest of the individual pervades our Constitution.... The words 'public purpose' used in Article 23(2) indicate that the Constitution used those words in a very large sense. In the never ending race, the law must keep pace with the realities of the social and political evolution of the country as reflected in the
B Constitution. If, therefore, the Sate has to give effect to this avowed purpose of our Constitution, we must regard as 'public purpose' all that will be calculated to promote the welfare of the people as envisaged in these Directive Principles of State policy whatever else that expression may mean."

This new outlook, in the words of Das J. brings in economic
C justice regarded yesterday as a fantastic formula, but is today a directive principle of State policy.

To conclude this branch of the discussion, there is no validity in Shri Sen's contention that because the Road Transport Corporations Act, 1950, speaks of business principles as guiding State Transport Services, therefore taking over of private buses is not a public purpose.
D Nor is there any force in reading compulsive need or State necessity of some imperative urgency as a component of the concept of public purpose. Speaking for ourselves, nothing that has been stated in the judgment of the High Court discussing the doctrine of 'eminent domain' and allied matters, or/in the submissions of Shri Sen conjuring up a grim picture of government acquiring even paper, pencil, ink, furniture, spares and tyres and cars and buses merely because they do not want
E to pay market price even when these items are abundantly available, does not deffect us from the conclusion that a Government which seeks to serve the community is entitled even for its commercial purposes to invoke its power of compulsory purchase, even when not driven by necessitous circumstances. We cannot confuse between abuse of public power and limitation of public purpose.

F The nexus between 'public purpose' and Part IV is also relevant. Sir Alladi Krishnaswami Ayyar in his speech in the Constituent Assembly said : 'No Government responsible to the people can afford light-heartedly to ignore the provisions in Part IV of the Constitution ! As early as *A. K. Gopalan* (1950 SC 27), Chief Justice Kania state, with reference to Directive Principles, that 'it represents not the temporary will of a majority in the Legislature but the deliberate wisdom of
G the nation'. Shri Justice Mathew explained this idea at the Second Kerala State Lawyers' Conference thus :

"...State is not an end in itself, but only an instrumentality, to be evaluated in terms of its contribution to the welfare of the political community. The concept of the laissez faire of the nineteenth century arose from a philosophy
H that general welfare is best promoted when the intervention of the State in economic and social matters is kept to the lowest possible minimum. The rise of the welfare State proceeds from the political philosophy that the greater economic

and social good of the greater number requires greater intervention of the Government and the adoption of public measures aimed at general economic betterment. Today, people cry for intervention of Government when anything goes wrong in any front. They demand interjection of Government in every aspect and sphere of life."

Will 'public purpose' run riot?

The consternation that if *anything* can be acquired compulsorily for a public purpose *everything* will be so acquired is understandable only if we readily grant that the Legislature and the Cabinet are the veils and vestments worn by a callous body irresponsible to the people and irresponsive to justice. There is a general presumption in favour of honest and reasonable exercise of power (*State of West Bengal* v. *Anwar Ali Sarcar*, 1952 SCR, 284, 301, per Patanjali Sastry J.). Of course not that gross abuse of power and demoniac departure from legal norms are unknown; even so we should have faith in Parliament which, ultimately, is responsible to the people who cannot be ignored by it for all time without imperilling it own existence. Repelling the argument of likely abuse of power, Das J. observed (1954, SCR 587) :

"What is abnormal if our Constitution has trusted the legislature, as the people of Great Britain have trusted their Parliament? Right to life and personal liberty and the right to private property still exist in Great Britain in spite of the supremacy of Parliament. Why should we assume or apprehend that our Parliament or State legislatures should act like mad men and deprive us of our property without any rhyme or reason? After all our executive government is responsible to the legislature and the legislature is answerable to the people. Even if the legislature indulges in occasional vagaries, we have to put up with it for the time being. That is the price we must pay for democracy. But the apprehension of such vagaries can be no justification for stretching the language of the Constitution to bring it into line with our notion of what an ideal Constitution should be. To do so is not to interpret the Constitution but to make a new Constitution by unmaking the one which the people of India have given to themselves. That I apprehend, is not the function of the Court. If the Constitution, properly construed according to the cardinal rules of interpretation, appears to some to disclose any defect or lacuna the appeal must be to the authority competent to amend the Constitution and not to the court."

(1954 SCR 587; 654; *Subodh Gopal Bose*)

To take Sri Sen's illustration, if a law authorises—or government does—resort to compulsory acquisition of all its requirements of stationary or routine needs of public sector undertakings, with a view to pay nominal sum and get away with it, that Legislature or Government will, without the Court's services, go the way world history

A has blown away gross mis-rule. The court is not the only sanctuary in a democracy against caprise dressed in 'little brief authority'. If the act becomes so shockingly iniquitious to violate the law of life, the Court will have enough reserve power *under* the Constitution to speak *for* law and to save the government from itself! These extreme lurid, recondite picturisations cannot be transformed into probabilities and realities. B especially in a case where we find little to complain in fairness of procedure or delivery of the end product. Of course, in a 'radical change' situation, certain classes, invoking varnishing values, may cry 'wolf!' and in any welfare legislation stray injustice is unavoidable. Perfection is God's property, to aim at its is human progress. We find no legal flaw in the measure under attack.

C We think it is a fallacy to deny the presence of public purpose merely because its satisfaction by readily available private purchase is possible in the circumstances. It is for the State to decide whether it should pay market price and buy or resort to Article 31(2) and pay an amount which may be administratively feasible but less than the market price. It may take on hire and not buy at all, it may requisition without paying full compensation. These are the means which D cannot be confounded with the ends and it is egregious error to roll up the two together. The entire object of Article 31(2) is defeated if such a constricted construction or cramped meaning were to be given to the provision. It is a social welfare handicap, a jurisprudential error and a truncation of the State's constitutional power to rule that it shall not 'seize' private property within Article 31(2) unless it proves beyond reasonable doubt a scarcity situation, a public necessity E and unavailability in the open market and the like. Yet this is the 'reasoning' which has had a fascination for the High Court. The specious submission is tersely put by the High Court thus :

> "It was argued that for compulsory taking over of the vehicles with permits and other effects of the contract carriage operators, there was *no necessity or need* or, in other words, F there was no nexus between the public purpose and the taking over of the particular property." (ILR 1976 Karnataka 1 1478, 1512)

The accent was on need or necessity. The Court felt the pell of this ratiocination and erroneously argued itself into convincing conclusiveness:

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> "State necessity or need for taking the particular property of a citizen is the very foundation for the exertion of the power of Eminent Domain. If there is no State necessity or need for the particular property, then, in my opinion, the power of Eminent Domain cannot be exerted. Let me assume that the law provides for paying just compensation for taking H the property of a citizen but there is no state necessity for taking over that property. In such an event, the property cannot be taken in an exercise of the power of Eminent Domain. The ambit of legislative power conferred by

Entry 42 of List II of the Seventh Schedule, 'Acquisition or requisitioning of property', in my opinion, cannot comprehend the taking of private property by the state even on payment of just compensation if there is no state necessity. If there is no nexus between the taking over or private property and State necessity such a power cannot be exerted. I am of opinion that even if Article 31 is deleted from Part III of the Constitution, the State cannot acquire property of a citizen or make a law for acquisition of private property if the taking over has no relation to State necessity. Such a legislation will be *ultra vires* of the powers of the State Legislature."

. . . . . .

"There is material in the Act itself to show that the Legislature was conscious of the fact that the acquisition under section 4 is not for a public purpose . . . . . When the purpose of the acquisition is 'deemed' to be a public purpose, the only meaning possible is that whereas the purpose of the acquisition is not in reality a public purpose, the State Legislature requires the purpose to be treated as if it were a public purpose. It is rather an admission on the part of the Legislature that the purpose of the acquisition is not a public purpose." (pp. 1515-16)

If this were good law and logic, the States' operations might shrink into midget size with large spaces for *laissez faire* economics. The flaw and fallacy of the law and the fetter on the State in this constitutional interpretation goes far beyond this Act and to mortality. We have no hesitation in visualising a wider horizon of public purpose as outlined by us earlier and consequentially to overrule the view of the High Court. The people in our welfare State await State undertakings in a wealth of ways most of which involve compulsory taking of private property and this futurism argues for a wider connotation of public purpose. The *aware* court must remember the hint of Francis Bacon that 'it is a hard thing to torture the laws so that they torture men—poor men hopefully looking forward for benignant State action. After all, ordinarily, the legislature will acquire compulsorily only if it considers it a proper measure to promote public good.

Compensation vis a vis the 25th Amendment

The constitutional salvoes of Shri Sen were fired on the target of illusory compensation granted according to him, by the impugned Act. The amendment and recasting of Article 31(2) would stand stiutified if the High Court were right that payment which is less than the dealer's price inclusive of sales-tax or does not make good the loans of the operators or spreads payments over long years awarding only 6% interest, is illusory and unconstitutional.

We are not dealing with the details of the arithmetic arranged by the statute for payment of the amounts to persons interested in the acquired properties since it is fairly clear, as explained by Shri Lal Narain Sinha, that the Act awards, through the arbitrator, an amount which is just and reasonable for those who suffer deprivation of their

property. Even so, the law bearing on Article 31(2), particularly in view of the exceptionable construction adopted by the High Court, needs to be clarified unambiguously and declared decisively. Indeed, if the High Court were right in its holding on this branch, 27 years of decisions and amendments and decisions and amendments have taken us back to square one ! Full compensation with a formal difference ! The Court will not question the 'adequacy' directly, but 'interpret' the amended articles into the same desideratum. In this condition of the law, we deem it proper to dive to the beginnings briefly.

Right from the start the framers of the Constitution have been clear in their minds, as the debates, drafts, reports and resolutions show, that the amount payable when private property is taken by the State is a matter of legislative policy and not of judicial fixation. Speaking with a sense of history, the Father of the Nation used prophetic words, as far back as the time of the Round Table Conference, while dealing with the issue of compensation :

> "If the national government comes to the conclusion that the step is necessary no matter what interests are concerned, they will be dispossessed and they will be dispossessed. I might tell you, without any compensation because if you want this Government to pay compensation, it will have to rob Peter to pay Paul, and that would be impossible."

He reminded the British masters again :

> "I have in mind many things I would have to do in order to equalise conditions. I am afraid that for years together India would be engaged in passing legislation in order to raise the down-trodden, the fallen, from the mire into which they have been sunk by the capitalists, by the land-lords, by the so-called higher classes and then, subsequently and scientifically by the British rulers."
>
> "If we are to lift these people from the mire then it would be the bounden duty of the National Government of India in order to set its house in order, continually to give preferences to these people and even free them from the burden under which they are being crushed.
>
> And if the landlords, zamindars, monied-men and those who are today enjoying privileges—I do not care whether they are European or Indian—if they find that they are discriminated against, I shall sympathise with them, but I will not be able to help them. It will therefore be a battle between the haves and the have-nots."

Speaking as one of the foremost jurists of the country and with a sense of far-sightedness, Alladi Krishnaswami Iyer, in the Constituent Assembly, argued for legislative autonomy, without forensic intervention in the matter of fixation of compensation and the principles in

that behalf. He rightly stressed that by their very nature the principles of compensation could not be the same in every species of acquisition : A

> "Law, according to me, if it is to fulfil its larger purpose, must serve as an instrument of social progress. It must reflect the progressive social tendencies of the age. Our ancients never regarded the institution of property as an end in itself. Property exists for dharma, dharma and the duty which the individual owes to the society from the whole basis of social framework. Dharma is the law of social well-being and varies from yuga to yuga. Capitalism as it is practised in the West came in the wake of the Industrial Revolution and is alien to the root idea of our civilisation. The sole end of the property is yagna and to serve a social purpose." B C

(Quoted from Fundamental Rights & Socio-Economic Justice—by K. P. Krishna Shetty—pp. 127-128)

Shri Jawaharlal Nehru, speaking in the Constituent Assembly with reference to determination and payment of compensation emphasized that it was left to Parliament to determine the various aspects thereof and D

> "there is no reference in this to any judiciary coming into the picture. Much thought has been given to it and there has been much debate as to where the judiciary comes in. Eminent lawyers have told us that on a proper construction of this clause, normally speaking, the judiciary should not and does not come in. Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason where it is thought that there has ben a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally the judiciary comes in to see if there has been a fraud on the Constitution or not. But normally speaking, one presumes that any parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community. (p. 123, Krishna Shetty, supra) E F

When complications arose on account of judicial interpretation of Article 31 not being in accord with what the framers of the Constitution fancied, amendments to the Constitution came in. Shri Jawaharlal Nehru, speaking on the 4th Amendment, which has since been upheld by this Court, said in Parliament : G

> "If we are aiming, as I hope we are aiming and we repeatedly say we are aiming, at changes in the social structure, then inevitably we cannot think in terms of giving what is called full compensation. Why? Well, firstly because H

A you cannot do it, secondly because it would be improper to do it, unjust to do it, and it should not be done even if you can do it for the simple reason that in all these social matters, laws etc., they are aiming to bring about a certain structure of society different from what it is at present. In that different structure, among other things that will change is this, the big difference between the have's and B the have-not's. Now, if we are giving full compensation, the have's remain the have's and the have-not's, have-not's. 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, apart from the patient fact that you are not in a position—nobody has the resources—to give it."

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The divergence of thinking between those who framed the Constitution and amended it and the summit judiciary showed up glaringly in *Cooper's* case and then came the Constituiton 25th Amendment Bill devoted primarily to overcome the effect of *Cooper*. While moving the Constitution 25th Amendment Bill which brought in Arti- D cle 31C, the then Law Minister emphasized :

"Critics of the present measure seek to invest property rights with an aura of sacrosanctity by regarding it as a primordial institution of the law of nature. It is this approach which led the Supreme Court in the Bank Nationalisation case to seek help from the now archaic and long-past dead E theories of Blackstone who regarded property as a natural right. Such a view is not only out of tune with the juristic approach to the institution of private property in modern jurisprudence, but it is not in tune even with the native genius of ancient and traditional juristic thought in India. The individual's right to private property must yield second place to the supervening right of society to acquire the pro- F perty for a public purpose. That is the eminent and dominant basis of the amendment which the House is called upon to consider today."

The Law Commission also had, in its 46th Report, supported Article 31-C in the sense that *Cooper's* case was not in keeping with what they regarded as the intendment of the Constitution :

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"Nehru described this position in his characteristically lucid words by observing :

"The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition H of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over."

The view of the Commission has a bearing on our understanding of the provision and were referred to in the parliamentary debates and so we excerpts portions thereof. Wrote the Commission :

> "Reverting then, to clause 2 of the Bill, it would be noticed that sub-clause (a) of this clause deletes the word 'compensation' and introduces in its place the word 'amount' in order to avoid any controversy about the adequacy of the amount which Parliament may direct to be paid in the manner specified by the clause, where property belonging to a citizen is compusorily acquired or requisitioned. It also provides, as did Article 31(2) in the unamended form, that a law passed by virtue of the powers conferred by Article 31(2) shall not be called in question in any Court on the ground that the amount so fixed or determined is not adequate; and it adds that the said law cannot also be challenged on the ground that the whole or any part of such amount is to be given otherwise than in cash.
>
> Sub-clause (b) of clause 2 of the Bill inserts clause (2B) after clause (2A) in the existing Article, and it lays down that nothing in sub-clause (f) of clause (1) of Article 19 shall effect any such law as is referred to in clause (2). In other words, an additional safeguard has been provided by clause (2B) which is sought to be introduced by the Bill to prevent any attack against the law passed under Article 31(2) on the ground that any of its provisions contravene the fundamental rights guaranteed by Article 19(1)(F)."

Specific mention is made of the *Bank Nationalisation* Case and its poignant pertinence consists in the High Court still clinging to *Cooper* :

> "On a careful reading of the several opinions of the learned Judges in Keshavananda Bharati's case, I am of the clear opinion that the law laid down in Cooper's case holds good." (ILR 1976 Kar. 1478, 1522)

The Commission remarks :

> "Every student of Constitutional Law knows that Parliament thought that it was necessary to make these provisions because of the recent decision of the Supreme Court in *Rustom Covasjee Cooper & Another* v. *Union of India*. Parliament presumably thought, and we think rightly, that the effect of this majority decision of the Supreme Court was in substance, to make compensation provided for by the impugned legislation justiciable and subject it to the test of reasonableness under article 19(5); and, to that extent the said decision is inconsistent with the view taken by the

A Supreme Court in *State of Gujarat* v. *Shantilal Mangaldass & others*. Indeed, ever since the Supreme Court had generally interpreted clause (2) of Article 31 to mean that the adequacy of compensation directed to be paid by laws passed under the said clause was not justiciable as we have explained earlier, except in cases where it reasonably appeared to the Court that the compensation was illusory or that B the whole legislative exercise was a fraud on the Constitution. But, in *Cooper's* case, the majority view appeared to strike a somewhat different note; and that, according to Parliament, made it necessary to introduce the amended clause (2) in Article 31. We think that, in the circumstances to which we have just referred, Parliament is justified in introducing the amendment in question."

C A seminal aspect of the changes wrought by the 25th Constitution Amendment Act is the immunization of 'Article 39 enactments' from the viral attack of certain fundamental rights (the attackers were almost never the poor!). The Commission commented :

"By introducing this clause (31-C), Parliament is taking the first major and significant step towards implementing D two of the Directive Principles enshrined in clause (b) and (c) of Article 39 in Part IV of the Constitution, and, in that sense, the clause under consideration can be appropriately described as historic. After it is adopted, Parliament will have heralded a new era in the pursuit of the goal placed before the nation by the Constitution to establish social and economic justice in this country. The Com- E mission is in full agreement with this object of the clause.

In the two decades after the Constitution was passed, the inter-relation between the Directive Principles and Fundamental Rights have been often considered by the Supreme Court. The Directive Principles enshrined in Part IV are, in terms, declared to be non-justiciable and yet, F Article 37, which makes this declaration, emphatically adds that the said principles are nevertheless fundamental in the governance of the country and it ordains that it shall be the duty of the State to apply these principles in making laws."

"In the Directive Principles, however, one finds an G even clearer statement of the social revolution. They aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from fulfilling their best selves."

H The High Court has referred to *Cooper's* case the ratio of which—to put it tersely—goes to the extent of saying that if any of the relevant consideration in ascertaining the market value were not included. It ceased to be 'compensation' within the meaning of Article

31. Then came the scenario—the 25th Amendment deleting the expression 'compensation' and substituting the neutral word 'amount' and restructuring the Article effectively to exclude judicial examination even of the principles of evaluation, the challenge to the constitutionality of that constitutional amendment and the elaborate *Bharati* ruling upholding, by a majority, the vires of the Amending Act. And yet, the High Court has, after selectively culling out passages from the bunch of opinions in *Bharati* come full circle to *Cooper* again. This about-turn is untenable in our view and it is necessary to run rapidly but in a short compass through the multiple views expressed by the many judges who heard and pronounced.

Bharati—the majority opinion—blinds us. What, on the question of payment for taking was the preponderant view ? Sikri C.J. permitted a narrow area for judicial inspection and readily accepted that full compensation was not a fundamental right. The Court could satisfy itself only about the amount not being a monstrous or unprincipled under-value. *Cooper* was dead by this test. The learned Chief Justice said :

> ". . . What meaning is to be given to the expression 'the amount so fixed'. The amount has to be fixed by law but the amount so fixed by law must also be fixed in accordance with some principles because it could not have been intended that if the amount is fixed by law, the legislature would fix the amount arbitrarily. *It could not, for example, fix the amount by a letter.*
>
> * * * * * *
>
> If I were to interpret Article 31(2) as meaning that even an arbitrary or illusory or a grossly low amount could be given, which would shock not only the judicial conscience but the conscience of every reasonable human being, a serious question would arise whether Parliament has not exceeded its amending power under Article 368 of the Constitution. The substance of the fundamental right to property, under Article 31, consists of three things : one, the property shall be acquired by or under a valid law; second, it shall be acquired only for a public purpose; and, thirdly, the person whose property has been acquired shall be given an amount in lieu thereof, which, as I have already said, is not arbitrary, illusory or shocking to the judicial conscience or the conscience of mankind."
>
> (196-197 pp)

The payment may be substantially less than the market value, the principles may not be all-inclusive, but the court would not, because it could not, upset the taking save where the principles of computation were too arbitrary and illusory to be unconscionably shocking.

Shri Justice Shelat, with the concurrence of Shri Justice Grover, put his viewpoint thus :

> "It is significant that the amount can be determined in accordance with specified principles, if it is not fixed by the

A law itself. Moreover, its adequacy cannot be questioned in a court. The use of the word 'principles' and the question of inadequacy can only arise if the amount has some norm. If it has no norm no question of specifying any principles arises nor can there be any occasion for the determination of its adequacy. *The very fact that the court is debarred from going into the question of adequacy shows that the 'amount'* B *can be adequate or inadequate. Even if it is inadequate, the fixation or determination of the amount is immune from any challenge.* It postulates the existence of some standard or norm without which any enquiry into adequacy becomes wholly unnecessary and irrelevant." (p. 283) (emphasis, added).

C * * * * * *

"It is true that the 'amount' to be paid to an owner may not be the market value. The price of the property might have increased owning to various factors to which no contribution has been made by the owner. The element of social justice may have to be taken into consideration..... D The Court will certainly give due weight to legislative judgment. But the norm or the principles of fixing or determining the 'amount' will have to be disclosed to the Court. It will have to be satisfied that the 'amount' has reasonable relationship with the value of the property acquired or requisitioned and one or more of the relevant principles have been applied and further that the 'amount' is neither illusory E nor it has been fixed arbitrarily, nor *at such a figure that it means virtual deprivation of the right under Article* 31(2). ***The question of adequacy or inadequacy, however, cannot be gone into"*** (pp. 284-85) (emphasis; added).

Hegde J. discussed the question from lexicographic, political and social angles and held :

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"The market value of a property is the result of an interaction of various forces. It may not have, any reasonable relationship with the investment made by its successive owners. The price of the property acquired might have shot up because of various contributions made by the society such G as improvements effected by the State in the locality in question or the conversion of a rural area into an urban area. It is undoubtedly open to the State to appropriate to itself that part of the market value of a property which is not the result of any contribution made by its owners. There may be several other relevant grounds for fixing a particular 'amount' in a given case or for adopting one or more of the relevant H principles for the determination of the price to be paid. In all these matters the legislative judgment is entitled to great weight. It will be for the aggrieved party to clearly satisfy the Court that the basis adopted by the legislature has no

reasonable relationship to the value of the property acquired or that the 'amount' to be paid has been arbitrarily fixed or that the same is an illusory return for the property taken. So long as the basis adopted for computing the value of the property is relevant to the acquisition in question or the amount fixed can be justified on any such basis, it is no more open to the court to consider whether the amount fixed or to be determined is adequate. But it is still open to the court to consider whether 'amount' in question has been arbitrarily determined or whether the same is an illusory return for the property taken. It is also open to the court to consider whether the principles laid down for the determination of the amount are irrelevant for the acquisition or requisition in question. To put it differently, the judicial review under the amended Article 31(2) lies within narrow limits. The court cannot go into the question whether what is paid or is payable is compensation. It can only go into the question whether the 'amount' in question was arbitrarily fixed as illusory or whether the principles laid down for the purpose of determining the 'amount' payable have reasonable relationship with the value of the property acquired or requisitioned." (pp. 341-342).

Even here we may excerpt Hegde J's highlight of Part IV :

"Part IV of the Constitution is designed to bring about the social and economic revolution that remained to be fulfilled after independence. The aim of the Constitution is not to guarantee certain liberties to only a few of the citizens but for all. The Constitution visualizes our society as a whole and contemplates that every member of the society should participate in the freedoms guaranteed. To ignore Part IV is to ignore the substance provided for in the Constitution, the hopes held out to the Nation and the very ideals on which our Constitution is built. Without faithfully implementing the Directive Principles, it is not possible to achieve the Welfare State contemplated by the Constitution. A society like ours stepped in poverty and ignorance satisfying the minimum economic needs of every citizen of this country. Any Government which fails to fulfil the pledge taken under the Constitution cannot be said to have been faithful to the Constitution and to its commitments." (343-344).

Reddy J. in short paragraph disposed of the question :

"Once the Court is satisfied that the challenge on the ground that the amount or the manner of its payment is neither arbitrary or illusory or where the principles upon which it is fixed are found to bear reasonable relationship to the value of the property acquired, the Court cannot go into the question of the adequacy of the amount so fixed or determined on the basis of such principles." (p. 555).

A Our learned brother Chandrachud J. explained his stand effectively thus :

> "The specific obligation to pay an 'amount' and in the alternative the use of the word 'principles' for determination of that amount must mean that the amount fixed or determined to be paid cannot be illusory. If the right to property still finds a place in the Constitution, you cannot mock at the man and ridicule his right. You cannot tell him : 'I will take your fortune for a farthing :." (p. 992-993).

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> "As at present advised, I am inclined to the view which as I have said is unnecessary to discuss fully, that though it is not open to the court to question a law under Article 31(2) on the ground that the amount fixed or determined is not adequate, Courts would have the power to question such a law if the amount fixed thereunder is illusory; *if the principles, if any are stated, for determining the amount are wholy irrelevant* for fixation of the amount, if the power of compulsory acquisition or requisition is exercised for a collateral purpose; if the law offends constitutional safeguards other than the one contained in Article 19(1)(f); or, if the law is in the nature of a fraud on the Constitution. I would only like to add, by way of explanation, that *if the fixation of an amount is shown to depend upon principles bearing on social good it may not be possible to say that the principles are irrelevant.*" (p. 993) (emphasis added)

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E It is regrettable that two significant points made by brother Chandrachud J. have slipped out of the scrutiny of the High Court and we have emphasized them for identification. Are the principles *wholly* irrelevant ? Do the principles bear on *social good* ? In the present case, few will agree that the principles are wholly irrelevant or not geared to social good.

F The majority view in *Bharati* was set out by the Court and there it was stated : Section 2(a) and (b) of the Constitution (25th Amendment) Act, 1971 is valid. Glosses apart, the provision excluding the court's power to investigate either the adequacy of the amount or the propriety of the principles to determine the amount was upheld. It follows that individual annotations notwithstanding the Court has set its seal of validity on Article 31(2). Nothing covered by it can now be available for examination using passages in separate opinions. The result is the quantum of the amount or the reasonableness of the principles are out of bounds for the Court. Article 31C has also been upheld subject to the rider that there should be nexus between Article 39(b) and (c) and the object of the acquisition. Our learned brother, Chandrachud J., has struck a middle note and pointed out that where the inputs of valuation prescribed by the statute are *wholly irrelevant* or unconnected with Social good, then Article 31(2) may not retrieve the statute. It is a far cry from this observation to the position that the 25th Constitution Amendment leaves untouched the ratio in *Cooper*. We have pointed out how the said constitutional amendment was ex-

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pressly undertaken, *inter alia,* to undo the effect of *Cooper* and to forbid forensic diagnostics into the question of compensation. In this light it is difficult to uphold the view of the High Court that *Cooper* survives after death and keeps virtually alive the obligation for payment of market value inclusive of the usurious rates of interest at which the owner borrowed to buy the property seized by the state.

This takes us to the non-negotiable minimum of nexus between the purpose of the acquisition and Article 39(b). Article 39(c) was feebly mentioned but Article 39(b) was forcefully pressed by the appellant. Better read Article 39(b) before discussing its full import :

> "39(b) Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good."

The key word is 'distribute' and the genius of the article, if we may say so, cannot but be given fully play as it fulfils the basic purpose of restructuring the economic order. Each word in the article has a strategic role and the whole article is a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is so to undertake distribution as best to subserve the common good. It re-organizes by such distribution the ownership and control.

'Resources' is a sweeping expression and covers not only cash resources but even ability to borrow (credit resources). Its meaning given in Black's Legal Dictionary is :

> "Money or any property that can be converted into supplied; means of raising money or supplies; capabilities of raising wealth or to supply necessary wants; available means or capability of any kind."

And material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public possessions. Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community. To exclude ownership of private resources from the coils of Article 39(b) is to cipherise its very purpose of redistribution the socialist way. A directive to the State with a deliberate design to dismantle feudal and capitalist citadels of property must be interpreted in that spirit and hostility to such a purpose alone can be hospitable to the meaning which excludes private means of production or goods produced from the instruments of production. Sri A. K. Sen agrees that private *means* of production are included in 'material resources of the community' but by some baffling logic excludes *things produced.* If a car factory is a material resource, why not cars manufactured ? 'Material' may cover everything worldly and 'resources', according to Random House Dictionary, takes in 'the *collective wealth* of a country

A or its *means of producing wealth* : money or any property that can be converted into money; *assets*.' No further argument is needed to conclude that Article 39(b) is ample enough to rope in buses. The motor vehicles are part of the material resources of the operators.

The next question is whether nationalisation can have nexus with distribution. Should we assign a narrow or spacious sense to this concept ? Doubtless, the latter, for reasons so apparent and eloquent. To 'distribute', even in its simple dictionary meaning, is to 'allot, to divide into classes or into groups' and 'distribution' embraces 'arrangement, classification, placement, disposition, apportionment, the way in which items, a quantity, or the like, is divided or apportioned; the system of dispersing goods throughout a community' (See Random House Dictionary). To classify and allocate certain industries or services or utilities or articles between the private and the public sectors of the national economy is to *distribute* those resources. Socially conscious economists will find little difficulty in treating nationalisation of transport as a distributive process for the good of the community. You cannot condemn the concept of nationalisation in our Plan on the score that Article 39(b) does not envelope it. It is a matter of public policy left to legislative wisdom whether a particular scheme of take-over should be undertaken.

Two conclusions strike us as quintessential. Part IV, especially Article 39(b) and (c), is a futuristic mandate to the state with a message of transformation of the economic and social order. Firstly, such change calls for collaborative effort from all the legal institutions of the system : the legislature, the judiciary and the administrative machinery. Secondly and consequentially, loyalty to the high purpose of the Constitution, viz., social and economic justice in the context of material want and utter inequalities on a massive scale, compels the court to ascribe expansive meaning to the pregnant words used with hopeful foresight, not to circumscribe their connotation into contradiction of the objectives inspiring the provision. To be Pharisaic towards the Constitution through ritualistic construction is to weaken the social-spiritual thrust of the founding fathers' dynamic faith.

An American political scientist, Benjamin Twiss, commented with jarring exaggeration upon the conservative perspective of the lawyer in the United States of the slump years in the 'thirties :'

> "It is not surprising that lawyers' fame is evanescent.... Allied with those who are pre-occupied with production and profits to the exclusion of standards of consumption and general well-being, lawyers have taken a negative rather than a creative and constructive attitude toward social development. In defending rights of untrammelled enterprise against rules of fair play and in presuming the unconstitutionality of legislative enactments, they have missed their cue to the role of constructive leaders and have been instead dogs in the manger."
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> (Lawyers for Social Change : Perspectives on Public Interest Law : by Robert L. Rabin Stanford Law Review Col. 28, No. 2, January 1976).

This does not apply to the Indian Bar on Bench at all and is referred to *ex abundanti cautela.* Law and Development in India should repel, as far as possible, such an unlovely judgment on Indian jural perspectives and performances. The Court and counsel have a justice constituency with economic overtones, the manifesto being the Constitution designed to uphold the humanist values of life, liberty and the equal pursuit of happiness, material and spiritual.

An Explanatory Post-script to our juristic Attitude

We have been guided by the thought that an all-too-large gap between the law and public needs, arising out of narrow notions, must be bridged by broadening the constitutional concepts to suit the changing social consciousness of the emerging Welfare State. Institutional crises and confrontations can be and should be avoided by evolving a progressive interpretation, discarding over-sensitivity to under-valuation when private property is taken for public good. 'A legal system that works to serve the community' says Bernard Schwartz, 'is better than the academic conceptions of a bevy of Platonic guardians unresponsive to public needs'. The law, in the words of Justice Holmes, is a magic mirror in which we see reflected not only our own lives but also the lives of those who went before us—and may we add, of those who come after us. But basically we have brought to bear upon the impugned legislation a value judgment in tune with the 'welfare' wave length of our Constitution and the still, and music of Indian humanity. 'The law moves with the main currents of the society it regulates. Each society has its own values which are necessarily reflected in the ends that the legal order seeks to further. The ends of law are attained by recognizing certain interest, defining the limits within which they shall be recognized legally, and endeavouring to secure those interests that are within the limits defined.' (Quoted from the Law in America—Bernard Schwartz—p. 34) We have recognised that rights and obligations of long ago do not acquire a static validity in our galloping age and a decent oblivision must put them back into forgotten antiquity if we, as a nation, are to run on the rails of the rule of law and so we have nullified the attempt to drift back from *Bharati* to *Cooper* on 'compensation'. A blend of law as a set of responses to the new needs of expanding society and of Daniel Chapman's advice that 'the known certainty of the law is the safety of all', has played upon our approach. We are aware that in constitutional construction, a limited judicial law-making is inevitable 'juristic chemistry', to borrow Roscoe Pound's expressive phrase. "The chemist does not make the materials which go into his test tube : He selects them and combines them for some purpose and his purpose gives form to the result.' Our constitution-makers have had due regard to the felt necessities of the time and the philosophical and political theories about what would best serve the country's progress; and so we have grounded ourselves on these solid prescriptions undeflected by speculative niceties lent by literal study and possible injuries inevitable in reshaping society. 'The object and end of all Government is to promote the happiness and prosperity of the community by which it is established', wrote U.S. Chief Justice Taney, 140 years ago in *Charles River Bridge* v. *Warren Bridge* and we, in a republic with an irrevocable tryst to give social justice in the

A midst of poverty, cannot diminish the power to accomplish those ends. To be stable is not to stand still; to move forward and reconcile is the road to the goal-juridical engineering geared to desiderated policy objectives, being the key to most constitutional problems. Not unoften, the subjective philosophy of the judge underpowers the philosophy of the Constitution while it should be overpowered by it. Cardozo, with apt elegance, struck this note :

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> "The great tides and currents which engulf the rest of man do not turn aside in their course and pass the Judges by." Cardozo, The Nature of Judicial Process, 1932, P. 170.

Taking this warning to head, we have also to take the Constituent Assembly's hope to heart :

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> "The Judiciary was to be the arm of the social revolution, upholding the quality that Indians had longed for in colonial days..... The courts were also idealised because, as guardians of the Constitution, they would be the expression of a new law created by Indians for Indians."
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> —Granville Austin, The Indian Constitution.

The Discovery of Law India by interpreting liberally to embrace the
D higher values of collective good and to curb, where necessary, individual property rights, is all that we have endeavoured to do. We have been cautioned by appellant's counsel that governments may usurp and destroy if judges do not cry halt. Where arbitrary, oppressive and *mala fide* misuse of power is a real peril, the court shall not fail. But to intervene and strike down, because a measure, within the constitutional bounds, may work hardship for some but is conceived for the
E good of the many in keeping with the planned process of Development, has a 'Tory' touch. Canonisation of *laissez faire* cannons by the Court is to move counter-clockwise. Lord Sankey held the view that in the field of constitutional Law, progressive and dynamic interpretation in the light of political developments must dominate (see : *British Coal Corporation* v. *The King* : 1935 AC 500). Lord Jowitt L.C. in *Attorney General of Ontario* v. *Attorney Gen. of Canada* (1947 AC 503)
F affirmed the same approach :

> "To such an organic statute the flexible interpretation must be given that changing circumstances require, and it would be alien to the spirit with which the preamble to the Statute of Westminster is instinct, to concede anything less than the widest amplitude of power to the Dominion legislature under section 101 of the British North America Act."

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Legalism has to yield when spacious issues arise. "Whatever the legal aspect of the thing, there are moments when it is a feeble need to rely on," said Nehru, in the Constituent Assembly (I Constituent Assembly Debates, p. 61).

There is another stark possibility the Administration sliding back from the progressive constitutional values to protect private interests;
H and then the Court may be activate the 'welfare jurisprudence' of the Constitution by appropriate commands.

M.R.