APPENDIX

PROCEEDINGS

OF THE SEMINAR ON

PROPERTY RELATIONS IN

INDEPENDENT INDIA:

CONSTITUTIONAL AND

LEGAL IMPLICATIONS

DECEMBER 1966

THE CONSTITUTIONAL VISION

Chairman	:	Mr. Justice K. Subba Rao.
Rapporteur	:	Mr. R. K. Misra.
Date	:	December 26th, 1966.
Time	:	2 p.m. to 4 p.m.

Dr. R. B. Tewari and Dr. G. S. Sharma, presenting their respective papers, indicated the main points.

The Chairman then summed up the points for discussion. He said that they could ignore the historical aspect of property referred to by Dr. Tewari. The other points were

(1) The philosophy underlying the Constitution *vis-a-vis* property,

(2) The conflict with regard to compensation and its adequacy,

(3) The course that should be pursued to achieve the objectives of the Constitution, and

(4) How the Judiciary should approach the problem.

Mr. Rama Rao referred to Dr. Tara Chand's observation quoted in the paper and said that the Indian peasant was very much attached to his land. He felt that the judiciary had been unduly deferential to the Legislature in the matter of agrarian reform. In regard to compensation, there had been considerable inconsistencies in the interpretation of the articles of the Constitution. In his paper he had referred to the predominance of the rightist forces in the Constituent Assembly. Notions of co-operative farming had been abandoned by the party in power. All that he could say was that the peasant had won his battle in the political field.

In the Bombay Seminar, he had raised the question of compensation and said that it was wrong to think that clear guidelines had been given by the framers of the Constitution. A reference to the Debates in the Constituent Assembly would show that the Members wanted full compensation to be paid except in the case of zamindaris etc. Clear guidelines had not been laid down by the Legislature. He pleaded for a liberal interpretation in favour of the fundamental rights without undue reliance on article 39.

Dr. Markose observed that they should not take into consideration what the founding fathers had stated about the Constitution and that they

had reached a stage when they should try to interpret the Constitution to the best of their ability.

He then referred to the nationalisation of insurance business and transport undertakings and said that the moment something was nationalised, it would run at a loss and the whole thing was put in charge of three Secretaries *viz.*, Secretary, Deputy Secretary and Under Secretary who were less responsible than the enterpreneurs. Consequent to the nationalisation, the Government sustained an enormous loss of revenue through income-tax and licence fee. He felt that the Seminar should consider that aspect of the matter. At the same time, he pointed out that wherever there was monopoly of power—political or economic—the Government should take it up.

With regard to interference of the Government in the affairs of religious institutions, he said that their proprietary rights were sacred and the judiciary should not do anything to impair them.

Mr. V. K. T. Chari referred to the Preamble and article 19 of the Constitution and said that the restriction on the right of property could be as wide as the Legislature considered it necessary to achieve the objects in the Preamble and work out the directive principles for the social and economic well-being of the people.

As regards the problem of compensation for the lands acquired by the Government, he said that in modern life, land was only a small item of property as compared to other forms of property like the industrial property where 75 per cent of the income was taken away through income-tax. He was of the view that the compensation for lands should be treated as entirely different from the compensation for other forms of property like the acquisition of a property of a company including its goodwill. Since the land had, at the present time, become scarcer in relation to the population and the modern methods of agriculture, land should not be acquired without the payment of full market value. At the same time, he pointed out that compensation could be reduced in cases where the persons concerned did not make a specific contribution.

He then referred to the acquisition of lands for starting a company and pointed out that it might happen that a particular owner of land might be unwilling to part with his land and that would result in delaying the formation of the company. He added that he would deal with the matter separately.

Mr. Justice Sinha, Chief Justice of the Calcutta High Court, referred to the seven problems relating to the value indications of the Constitutions for property relations and said that it was difficult for the courts to consider

them, as with regard to most of the problems, they had not got the data. So, also with regard to the four attributes relating to the judicial task. He said that time had not arrived for amendments to be made to the directive principles and make them justiciable.

Mr. Rangarajan said that the transfer of ownership was one solution but he pointed out that the Soviet and the Yugoslavia experiments had failed in that respect.

He agreed with the suggestion of Mr. Chari that those persons who did not make a specific contribution to the value of the property should be given reduced compensation.

He then referred to the inefficient working of the public sector and said that they should not consider concentration of power in a few groups of people as an evil. He wanted the Seminar to consider how they should get over the evils attendant on the control of property. They had to make an intense study of the problem and solve it and it could not be solved by a mere transfer of property from the private people.

Dr. Setalvad said that according to the amendments in 1950, certain of the expropritary laws would be valid even if no compensation was made. That clearly showed that the Constitution framers wanted to exclude certain properties from the payment of compensation. Then various other amendments were made to the Constitution with that object in view. In this connection, he pointed out that the fourth amendment to the Constitution was wholly frustrated by the recent decision of the Supreme Court and said that what was set forth in the Metal Corporation Case was different from the one relating to the *Vajravelu Mudaliar* case.

He did not agree with the principle enunciated by Mr. Chari *viz.*, that those persons who did not make a specific contribution to enhance the value of the property should not be given adequate compensation, as that was most unlikely to work in practice.

In conclusion, he suggested that whatever came in the way of the implementation of the Land Reforms should be excluded from the purview of the Judiciary.

Dr. Hingorani pointed out that although under article 39 of the Constitution, all the means of production could be vested under the Government, it was not possible to have all the means of production in the public sector and some of them should be in the private sector also.

In conclusion, he said that the present state of affairs should continue.

Mr. Lakshmiah referred to the principles laid down in Part IV of the Constitution and said that that matter related to the legislative process and not to the judicial process.

Mr. Suresham observed hat in the case of self-cultivators whose lands had been taken away, compensation could be paid at least twice the market value.

Mr. Alladi Kuppuswami urged the Seminar to consider whether the amendments made to the Constitution after 1950 were in consonance with the philosophy behind the amendments proposed in 1950.

Mr. Justice Kailasam was of the view that so far as the judiciary was concerned, they had to go by the wording of the Acts and they should not try to legislate.

Mr. Mohan Kumarmangalam observed that in particular cases where the fundamental rights were violated, it was the duty of the Judiciary to point it out and it was for the Legislature to bring forward amendments to the Constitution and not for the Judiciary to do so. He added that ultimately it was a question of continuously changing the Constitution, as no Constitution had ever lived without it being changed.

Mr. A. A. A. Fyzee remarked that they had to uphold the Constitution as it was and not speak about 'functional interpretation'.

Dr. Markose stated that they should consider each case as it came and look at the situation prevailing then. He pointed out that the pragmatic approach was not illogical.

Mr. R. K. Misra pointed out that the late Pandit Jawaharlal Nehru wanted to retrieve the ancient rights of the people through the co-operative movement and the statements made by the national leaders before the framing of the Constitution and after it, would be useful, to understand the philosophy of the Constitution with reference to social objectives and ideologies and thus to arrive at some guide-lines.

Continuing, Mr. Misra said that there was no clearcut ideology and that only by reading the debates in the Constituent Assembly they could know the intention of the framers of the Constitution.

Mr. Lakshmiah said hat what was important was not what they said about the Constitution, but what the Constitution said.

Dr. Sharma said that in a transitional society whose law had yet to emerge, the task of the judiciary was great. At every turn of the phrase, they were involved in a creative function. In this creative function, they

could not escape ideological involvement. They had to go to economics, political science, indology, history etc. They could not adhere to the declaratory theory. It was necessary to go into the debates of the Constituent Assembly and perhaps even into past history. Property relations in land got geared up for 150 years which must be the basis for the judiciary to build upon. The framers of the Constitution themselves were not clear. Perhaps the best way to view the value indications of the Constitution for property relations was to list out the problems that seemed to emerge. He then listed out 7 problems. It was not necessary and it would even be harmful to have a single set of judicial formulae to apply to all the problems at all times. They should make a functional approach. Logical consistency could not be applied in a quickly changing society. The Supreme Court had shown very clearly that it was prepared to change its perspective if the situation demanded a change. While freedom had been granted, it had also been made possible to impose restrictions in social interests. The problem should be viewed as having three parts. The first part was the adequacy doctrine, which the Court was debarred from looking into. The second part was fraudulent use of power by paying illusory compensation. The third was the relevance of the principles of compensation.

Dr. Tewari said that the philosophy of the Constitution had been clearly expressed. Because the Supreme Court did not carry out the philosophy of the Constitution, Parliament thought it necessary to amend the Constitution to bring it into line with the original ideas. That was not due to disharmony, but due to difference of attitudes. He said that articles 31 and 39 should be taken together and the Court should keep this in view.

The Chairman, winding up the proceedings, said that the Constitution was a living organism and the Courts should not construe it as they would construe a Parliamentary Act. Many people did not appreciate this. That was why the criticisf that the Court must only consider the provisions and should not encroach upon law-making was generally voiced. According to him, the philosophy of the Constitution *vis-a-vis* Property was that the Constitution recognised private property subjject to social restrictions. When a matter came before him, he posed the question this way. There was a fundamental right to acquire, hold and dispose of property. Parliament had the right and even the duty to make a law to enforce the directive principles. Nobody questioned the right of Parliament. The duty of the Court was slightly different. When a law made by Parliament came make the law. What had to test was whether it amounted to a reasonable the sail, food production could not be increased for the simple reason that restriction on the fundamental right. The Constitution used three expressions: reasonable restriction, public interest, and public funds. The fourth

expression coined by the Court was 'Classification.' To these four concepts which were elastic, they could not give a definite content; they changed with time, place and circumstances. Therefore whenever a Judge decided whether a law was good or not, in one sense, within the limits of the philosophy laid down by the Constitution and within the scope of the elastic terms noticed in the Constitution, he made law to that extent. In effect and substance, they did make law, though they pretended not to do it. In one sense they could also say that there were fundamental rights and fundamental obligations. Fundamental rights were no doubt described as fundamental rights. But the fundamental obligations were imposed by law made by Parliament for enforcing the directive principles. After all the law made by Parliament for enforcing the directive principles, which stood the test of the things just referred to, was imposing obligations. A fundamental right was subject to fundamental obligations imposed by law made by Parliament. The duty of the Court therefore was to limit the scope of the obligation imposed on the rights having regard to circumstances. In that view, they could look at it. It was wrong to say that the Supreme Court was in a way obstructing the progress of the country. Indeed all this criticism was because of the fact that there was a confusion between the philosophy of the Constitution and the philosophy or the ideology of the party in power. When people criticised the Court, they tested the judgment by the ideology of the party in power. If one read the judgments, one would see that with rare exceptions what the Supreme Court was trying to do was to sustain the philosophy of the Constitution as against the ideology of the party in power which wanted to implement certain ideologies in derogation of the philosophy of the Constitution. The Supreme Court was discharging the functions given to it under the Constitution, whichever party came into power and whatever law it made. There was a philosophy underlying the Constitution and the Courts, though not expressly, but impliedly had got to follow it and it was no use saying that they were considering the Constitution as they were considering an Act. Dr. Setalvad and Dr. Tewari had criticised the recent judgments of the Supreme Court. Really the Supreme Court had defined what compensation was in the earlier case. When Parliament made a law, he presumed, it knew that the Supreme Court had given a particular meaning to that word 'compensation' and with open eyes it used that word. Parliament designedly used the word. People who proposed the law told the Parliament: "Don't think we are not giving compensation. We are certainly giving compensation. We are giving compensation in the sense intended by the Supreme Court." Parliament had said that the adequacy of compensation was not justiciable. What the Supreme Court said was nothing more than this. A duty was cast on Parliament to make a law prescribing payment of compensation in the manner defined by the Supreme Court. "Compensation" meant what the Supreme Court said in the earlier case.

Then it said that the question of adequacy could not be gone into. Then the Supreme Court laid down two propositions. If the compensation was illusory, it was an abuse of power. If Rs. 100 was given as compensation for a property worth Rs. 10 lakhs, the Court said that that was not compensation. The second thing the Supreme Court said was that the principles must be relevant to the question of compensation for the land acquired. The next thing the Supreme Court said was that the compensation must be with regard to the time at which the property was acquired. A property purchased 100 years ago after providing for depreciation year after year might be valued at Zero rupee in 1966, though in the market it might be worth Rs. 5 lakhs. The Supreme Court said it was relevant to the valuation of the property to consider the time it was sought to be acquired. It was necessary to evolve some principles of compensation which were relevant. They might not be the same as the principles obtaining in England. They would have to be evolved having regard to the circumstances obtaining in this country. The criticism which he heard was based upon a misapprehension of what the Supreme Court decided.

CONSTITUTIONAL PROVISIONS AND PROBLEMS OF INTERPRETATION

Chairman	:	Mr. Justice P. S. Kailasam
Rapporteur	:	Dr. R. B. Tewari
Date	:	December 27th, 1966.
Time	:	9-30 a.m. to 11-30 a.m.

Presenting his paper, the Hon. Mr. D. N. Sinha said that the most important form in which property could be held was land and in this connection traced the historical development of how the land was originally vested in the tilled of the soil and that they had not copied anything from the Western countries in that respect. But when the country was under foreign rule, the land was vested in the sovereign.

He then referred to the permanent settlement and the zamindary system and pointed out that sometimes even the ex-zamindars who were made responsible for collecting the rent, could not collect it from the ryots. When the zamindary system was abolished and compensation had to be paid to the ex-zamindars, even the late Pandit Jawaharlal Nehru had stated that compensation should be given. Even the late Pandit Govind Ballabh Pant had stated that compensation should be given in relation to the economy of the country.

Adverting to the various amendments made to the Constitution and the various land reforms Acts passed by the States, he said that in spite of those enactments, and in spite of the lands being given to the tillers of the tiller of the soil was miserably poor and thus the effect of land reforms had come to nought.

He then referred to the co-operative farming societies and pointed out that the co-operative farming societies in West Bengal were a failure, and that much corruption was prevalent there.

In conclusion, he said that the lands had not been properly distributed to the tiler of the soil and the necessary resources had not been made available to him. He suggested that the Government should make available the resources needed by the tiller of th soil. If the law obstructed the tiller of the soil, it should be set right to that extent. He also wanted the Seminar to find out whether he various Land Reforms Ac passed by the States had been properly implemented. So far as West Bengal was concerned, he said, it had been a failure.

Mr. R. K. Misra then briefly explained the salient points contained in the paper of Dr. P. K. Tripathi.

In his paper Dr. P. K. Tripathi raised three problems viz., (1) to explain the relationship between the provisions of article 19(1)(f) and those of article 31; (2) to ascertain and explain the relationship between the provisions of clause 1 and clause 2 of article 31; and (3) to ascertain the extent of justiciability of the quantum of compensation the State was bound to pay in cases of expropriation. He wanted the Seminar to examine in what manner and to what extent the supreme court had been able to propound solutions to those problems. In this connection, be referred to the various cases on which the Supreme Court had pronounced judgments.

In conclusion, he expressed the hope that with the insistence of the Supreme Court now on a 'just equivalent' based on 'relevant principles' for determining that equivalent, the temptation for acquiring private property for a fake public purpose would not remain too great.

Then, Mr. Lakshmaiah presented his paper and explained the theory of property. He said that so long as Property was the creation of Law, they had to consider the rights of the people. But he pointed out that at the present time, the theory of Property had shifted from rights to duties and he felt that there was no impropriety in considering the corporation as an entity under article 19(1)(g) and that they should secure a legitimate place for the corporation under the Constitution. He felt that the Corporation should be considered as a citizen.

Mr. Suresham then explained the salient features contained in the paper of Mr. P. R. Ramchandra Rao. In his paper, Mr. Ramchandra Rao pointed out that the courts were not concerned with the purposes for which the land was proposed to be acquired and that those were legislative questions with which the courts had nothing to do.

Mr. M. K. Nambiyar's paper was read by Sri Alladi Kuppuswamy. In his paper, Mr. Nambyar referred to the various pronouncements made by the Supreme Court with regard to the various cases and said that the Constitutional amendments became an effective weapon to overthrow the Constitution. The author had referred to the 4th Amendment to the Constitution as a sequel to the decisions of the Supreme Court as an instance. Then he referred to the decisions in the *Kochuni* Case, the *Vajravelu* case and the *Metal Corporation of India* case.

The general trend of the paper was that the decisions of the Supreme Court had throughout tried to give effect to the principle enunciated in the Constitution of right to property with some right of control. Up to a particular point the intentions of the framers of the Constitution were

given effect to. But the party in power which had a brute majority utilised the machinery of Constitutional amendment to such an extent that it had resulted in wiping out the concept of right to property.

Dr. Sharma submitted a few points for discussion. One was the relation between articles 19 and 31 which had been established by the *Kochuni* Case. Should it be taken as the future trend by this gathering of scholars and eminent judges and as a perspective from which to build upon? The second and most important point was the compensation pattern. The third point was the various principles of relevancy. Was it proper or not for a set philosophy which had been embodied in the Constitution at a particular point of time to continue till a revolution occurred and a new structure was evolved?

Mr. Mohan Kumaramangalam referred to the statement in Mr. Tripathi's paper that if the legislature laid down principles that were not relevant to the property asquired or to the value of the property at or about the time it was acquired, the Court would not hesitate to strike down the law.

If the law provides for an illusory compensation, or prescribes principles which do not relate to the property acquired, or to the value of such property at or within a reasonable proximity of the date of acquisition, or the principles are so designed and so arbitrary that they do not provide for compensation at all, it would be a fraud on power and the Court will strike down the law.

Reading these statements carefully, he was wondering what exactly was the meaning given to the last part of article 31(2). By the fourth amendment to the Constitution, certain area was taken out of the jurisdiction of the Court. The principle of just equivalent asserted in the *Bella Banerjee* case, *Subadh Gopal* case, *Vajravelu* case and the *Metal Corporation* of India case eliminated the last part of article 31(2) and he did not see when that last part would apply at all.

On the question of the philosophy of the Constitution, he submitted that it was incorrect to proceed from the position that the philosophy was something permanent or unchanging. The philosophy was changed by the people. From stage to stage the philosophy changed and naturally it would be changed according to the ideology of the ruling party. If the Court's interpretation of the Constitution stood in the way of implementation of that ideology, it was perfectly valid for Parliament and the Legislatures to amend the Constitution and the Court should give recognition to it.

On the question of the principles of relevance for compensation, Sri V. K. T. Chari expressed the view that they should take into account.

(1) the history of the acquisition (how the property was got),

(2) the present beneficial interest of the holder of the property, whether it is earmarked or decided for a particular use, and

(3) any existing legislation such as divided control, i.e. how much the shareholders can take out of the income from the property.

There were electricity undertakings. Supply of electricity was considered to be a municipal function in modern times. The licensee got various items of equipment like copper wire at controlled price through State help. For the acquisition of such undertakings there was no reason why they should be paid the present blackmarket price for the copper wire, electric posts etc. The same applied to the railways whose services were again considered now-a-days as a State function. Similarly with regard to banks and insurance. In the field of insurance, the entire property, except what the shareholders could take by way of dividend, was earmarked by law as the insurance fund available for payment of policies as they matured. When an undertaking was taken over, there would be complete justification for only considering the beneficial interest of the shareholders instead of taking into account the amount of property which was dedicated to the payment of policies as they matured.

Mr. Misra said that he could not visualise a situation in which it would be possible to decide upon relevance without going into the question of adequacy. Should the compensation be 'just' to the owner of the property taken away, should it be just to the State or just to the public? When one started examining whether a rule was relevant or not for the purpose of compensation to be paid, the question of adequacy did come in. The dividing line was very thin.

Dr. Tewari agreed with Mr. Mohan Kumaramangalam that a political party had the right to embody in the Constitution the pholosophy it advocated.

As had been said by Mr. Justice Sinha, agrarian reform legislations had failed to achieve the purpose which they were intended to achieve. Mr. Justice Sinha referred to the prevalence of corruption in co-operative societies in West Bengal. That was more or less universal.

Dr. Hingorani referred to the decisions in the *Vajravelu* case and the *Metal Corporation of India* case and said that, when they talked of principles, the principles should be relevant and not arbitrary.

Mr. Nambyar's reference in his paper to the various amendments and the slogans replacing great objectives to the Preamble was based on a terrible misconception and his statement that this scrap of paper was meant

to govern the country for all time also was based on a total misconception of what democracy stood for.

Mr. Rama Rao said that the philosophy of pragmatism had been adopted by the States Legislatures which were susceptible to pressure groups which ha dvoting strength. These pragmatic philosophers yielded to the extremists and left sufficient loopholes. There would be elaborate laws, but they would not be observed in practice.

So long as articles 19(1) and 31(2) were there, the Judges were right in saying that they would interpret the law in favour of the fundamental rights. By and large the consensus of opinion in society was in favour of protection of property.

Mr. Alladi Kuppuswami, referring to the statement of Mr. Mohan Kumaramangalam that the Party in power was entitled to implement its ideology by amending the Constitution if the Courts did not interpret it in the way in which it would like to be interpreted, said that the party should resort to amendment only if it was satisfied that it could not implement its ideology otherwise. The tendency seemed to be to treat the Constitution as a municipal enactment.

Dr. Markose said that the ideal democratic process referred to by Mr. Mohan Kumaramangalam was not working. He said that Judges formed part of the democracy and that the judiciary was the hard core of democratic process a part from the electoral process as such.

The Chairman, summing up the discussion, said that so far as the right to amend the Constitution was concerned; it would be better if they did not enter into that matter. It was presumed that the Constitution could be amended if there was a two-third majority vote. In the *Vajravelu Mudaliar* case and the *Metal Corporation of India* case, the court did not nullify the amendment and the Court acted as they understood the fourth amendment in the light of the *Bella Banerjee* case.

AGRARIAN REFORMS

Chairman	:	Mr. Justice D. M. Sinha.
Rapportour	:	Mr. S. Rangarajan.
Date	:	December 27th 1966.
Time	:	12 Noon to 1-30 P.M.

Dr. G. S. Sharma, presenting the paper by Dr. Baljit Singh, explained that there were four aspects of agrarian reform: (1) Abolition of intermediaries, (2) Fixity of tenancy tenure, (3) Ceiling on landholdings, and (4) Consolidation of holdings. He said that there were loopholes both administrative and legal in the matter of implementation of agrarian reforms. Even to-day more than one-fourth of the cultivable land in the country belonged to absentee land owners.

Focussing on the task ahead, stress was laid on the incentive-orientation of agrarian reforms and the plugging of legal and administrative loopholes. The burden of land revenue ought to be reduced to 1 per cent. following the Japanese example.

Discontnt among agricultural labourers and their hardships ought to be removed.

A proper atmosphere had to be created for gearing agrarian reforms towards better production and lessoning of inequalities.

Dr. R. C. Hingorani, presenting the paper of Mr. Narasaraju, said that the Paper Writer was not in favour of fragmentation of holdings or Bhoodan. He particularly referred to the problem posed by Mr. Narasaraju as to whether coilings, when once fixed, should still further be reduced.

Mr. Alladi Kuppuswami presenting his paper, which referred to the various land tenures in India, explained that articles 31(4) and 31(6) were placed on the Statute Book as a measure of compromise. He referred to the absence of incentive to the actual tillers of the soil. Referring to the way in which the whole approach towards agrarian reforms had proceeded, he wanted a clear-cut policy which would avoid doing merely lip service to certain ideologies.

The Chairman suggested that the listing out of the principles of relevance of compensation discussed in the previous session might be discussed in this session also. After some discussion it was agreed that this could be properly discussed at a later point of time, as suggested by Mr. Mohan

Kumaramangalam so that in the mean time the participants could think further about the subject and offer some concrete suggestion.

Dr. G. S. Sharma referred to what he called the technique of the 9th Schedule and wanted the Seminar to consider the said technique.

Mr. V. K. T. Chari referred to the fact that the small holder of about three or four acres in Madras was not ahle to produce any surplus which he could market and that only in delta districts like Thanjavur and Tiruchirapalli could there be any resultant appreciable surplus. He also referred to the difficulties in the implementation of agrarian policy.

Mr. Mohan Kumaramangalam said that the question of transferrence from small landholding to large-scale farming was ultimately a matter of legislative choice.

Dr. A. T. Markose made the suggestion that the question of large-scale cultivation should be private-property-oriented.

Sri V. Sureshram adverting to the 9th Schedule technique suggested that at least the matter of interpretation of the Acts placed in the 9th Schedule should be kept open.

Dr. A. Setalvad referred to the huge amount of litigation arising from agrarian legislation referred to in Bombay as the M.R.T. writs and suggested that the officers who dealt with those matters at the lowest level should be those who inspired public confidence. He wanted the legal loopholes in agrarian legislation to be investigated.

Dr. R. B. Tewari referred to the prevalance of similar conditions in that part of the country from which he hailed.

Dr. R. C. Hingorani referred to the twin objects of land reform being prevention of the exploitation of the farmer and the attempt to increase agricultural production.

Professor Pye referred to the conditions which obtained in the United States of America when there was redistribution of land consequent to the abolition of slavery and the difficulties encountered in the matter of providing for the transferrence of responsibilities which were discharged by the big land owners. He said that problems such as that of looking after the irrigation system etc. were not solved fully for a period of nearly sixty years.

Dr. T. S. Rama Rao said that the surplus land was not enough for distribution even after the land reforms and that there was no distinction practically speaking between the landed poor and the landlords poor.

Problems relating to consolidation of holdings were more difficult of solution than the attempted fragmentation. He referred to the Japanese small-sized farm of seven acres and expressed the view that small holdings were more productive than large holdings.

Mr. T. Lakshmaiah warned against the objective of production of food being confused with the distribution of holdings.

Dr. Markose referred to the Janus face of the ruling party which wanted larger food production and at the same time went about with the policy of land for the tiller which was hostile to the concept of increased production.

Concluding the proceedings the Chairman said that the concept of the 9th Schedule was a concept which could be understood. He wanted a study to be made of the various agrarian reform Acts, which were too large in number. Unless a full study of them was made, one could not have a full and complete idea of the effect as distinct from the intendment of those Acts.

URBANISATION

Chairman	:	Mr. Justice K. N. Wanchoo
Rapporteur	:	Dr. T. S. Rama Rao
Time	:	9-30 a.m. to 11-30 p.m.
Date	:	December 28th 1966

Presenting his paper on 'Property Relations and Urbanisation,' Mr. V. K. T. Chari said that the Government was not taking any interest in regard to the urbanisation of rural areas. He then pointed out that one-fifth of the population was in urban areas and there was a tendency to convert the agricultural area into a non-agricultural area by locating industries there. He suggested that there should be high level thinking for the consideration of this matter and that the terms 'urbanised areas' and 'rural areas' should be defined. He also pointed out that the municipalities were not able to cope up with those changes and suggested that the whole concept of municipal administration should be changed and that they should be made a department of the Government.

He then referred to town planning and said that Madras State was the earliest to prepare a master plan but it had not yet been implemented.

Adverting to the slum clearance scheme, he said that the slums in the big cities were a disgrace and pointed out that under that scheme, the Government acquired small areas in the middle of a residential locality and did construction work upto the plinth level and then handed them over to the people to put up thatched roofs. In this connection, he referred to the method adopted in New Delhi, under which in every residential house, quarters were built for servants. He suggested that if that method was adopted in regard to town planning, the problem of slum clearance could be solved to a certain extent.

He then referred to the influx of rural people who did not have any livelihood or job into cities and suggested that something should be done to limit the influx of people into cities.

As regards the Land Acquisition Act, he said that the compensation provided for in the Act was inadequate. In this connection, he also pointed out the uncertainty regarding the expression 'public purpose' and wanted to know why the Government should at all make a contribution to a company acquisition. He also pointed out the difficulties experienced by companies in regard to acquisition of small private lands in the middle of the proposed site for the location of industries.

With regard to the Rent Control Act, he said that the fair rent fixed under the Act was monstrously low. He then pointed out the delay in the disposal of cases under the Act and said that sometimes it took four years for disposal. He also pointed out that the application of the Act in selected small areas was unrealistic and that the Act was unworkable in practice.

The Chairman observed that three points arose out of the Paper presented by Sri V. K. T. Chari viz.,

1. Prevention of influx of people to cities.
2. Land Acquisition Act *vis-a-vis* company's difficulties in regard to acquisition of lands.
3. Rent Control Act.

He added that apart from them, they could also discuss the municipal administration with reference to town planning and slum clearance.

Mr. S. Rangarajan said that if influx into towns was forbidden by Act, the validity of the Act might be challenged under article 19(1)(e) of the Constituion. When cities expanded into rural areas, the problem of regulation became acute. He advocated a case study as to how the municipal administrations functioned prior to the Constitution and subsequently. He felt that the heirarchy of appeals in the matter of rent control was unnecessary and might be curtained.

Mr. Lakshmiah suggested that causes for the present developments had to be studied and that questions of Panchayat Raj and decentralisation might also be brought in for this purpose. He felt that Mr. Chari's suggestion for banning of slums was too radical.

Professor Kenneth Pye observed that industrialisation made influx of population in cities inevitable. The Ford Foundation was engaged in research regarding town planning and regional organisation in the Calcutta area and it was studying the question of providing for satellite cities and providing them with all amenities. He suggested that three or four States might have to co-operate in the matter of regrouping of industries and that federal initiative in this respect might be necessary.

In the case of land acquisition, Professor Pye suggested that compensation in kind might be necessary, and that original owners might be allowed to acquire lands along the fringes of the seized area.

Professor Pye pointed out that rent control was totally unsuccessful regarding commercial properties in the United States and that to solve the problem the United States Congress had utilised new devices like the rent

subsidy programme for low-income housing and allowing the people to acquire houses on a commercial market. He also pointed out that rent control resulted in excessive litigation. Thus in Washington which had a population of less than 80,000, about 90,000 eviction suits were pending and this was a strain on the legal process. He referred to the grants-in-aid by the Federal Government in the war against poverty. Thus 90 per cent of the amount spent by the local communities and municipalities was borne by the Federal Government, provided they agreed to act under federal guidance.

Mr. Sureshram argued that licensing of huts might be necessary to reduce the number of huts. He said that a company for public purpose should be started and it should be enabled to acquire land compulsorily for utilisation by it.

Mr. Hooker said that in the United States the population was mainly urban and tax measures to avoid population shifts did not work.

Dr. Setalvad disagreed with Mr. Chari on the question of forcible prevention of influx of population in cities. He warned that implementation of such a plan would create a Police State and the consequent evils would be many. As for acquisition of land for companies, he said that Government might acquire large tracts and allot plots to the companies.

As for rent control, Dr. Setalvad pointed out that pegging of rent at the rate that prevailed in a particular year was unfair, as it threw an undue burden on the landlords, and it often happened in cities like Bombay that the land became worth many times the value of the rent of the buildings on it.

Dr. Setalvad referred to the adoption of leave-and-licence device to evade rent control law in Bombay and to the practice of landlords paying counter-pugree to induce old tenants to leave their place. He also referred to the growth of a parallel blackmarket in Bombay in the matter of buildings as a result of the Rent Control Act. He also referred to the erection of shanty towns and hutments without permits in Bombay.

He pointed out that supersession of municipalities was often welcomed by the people in view of the evils rampant in them.

Dr. Tewari pointed out that all corporations in the United Provinces were superseded by Government. He referred to the practice in U.P. of exempting new structures from the operation of the Rent Control laws. He suggested the consideration of the feasibility of making the tenant the owner of the building under certain conditions.

Mr. T. S. Rama Rao pointed out that supersession of municipalities in large numbers was a sad portent for the future of the democratic process

in our country. To prevent congestion in cities, he suggested that Government might distribute some of the offices among several towns and this would result in savings in dearness allowance and house rent allowance. He pointed out that acquisition of lands by the Government for the purpose of town planning, conduct of public enquiries for the purpose etc. resulted in several interesting problems of administrative law which should be studied on a comparative basis gaining from the experience of countries like the United States of America and the United Kingdom.

Mr. Misra referred to the model town planning Act circulated by the Central Government to the various State Governments.

Mr. Mohan Kumaramangalam argued that influx of population in cities could not be forcibly prevented and suggested that creation of statellite towns should be encouraged and that Government offices not intimately connected with the public might be located in satellite towns.

Regarding land acquisition, he pointed out that when Government donated token amounts to companies to enable them to acquire lands, it was often difficult to prove *mala fides* on its part. He was of the view that the Rent Control Acts were good and beneficial in spite of the abuses and lacunae in them.

He welcomed the American practice of subsidising rents which, he said, was being done in India in the case of Government servants and which might be adopted by companies also.

He agreed with Mr. Rama Rao that supersession of municipalities was bad and pointed out that it was doubtful whether administration of municipalities by the Government was really better.

Dr. Markose was of the view that in fixing the market value under the Land Acquisition Act, the Civil Servants usually fixed a very low figure. They took into account the most recent registered sale deeds for this purpose, ignoring the fact that in registered sale deeds a lesser price was often indicated by the parties to reduce stamp duty. He argued that sale deeds should not be looked into for this purpose and that Civil Servants should voluntarily fix the correct market price adopting the principle that the community must pay for the benefit of the dispossessed owner.

Mr. Mohan Kumaramangalam however pointed out that Courts were very liberal in fixing the compensation when the matter went up before them in appeal.

Mr. Justice Kailasam pointed out that Section 4(1) notice often freezed the price, as a long time elapsed between the time of such notice and the time when compensation was paid to the owner.

Dr. Hingorani pointed out that Rent Control encouraged litigation and did not work properly.

Dr. G. S. Sharma referred to the study of urbanisation in Calcutta by Mr. Ramakrishna Mukherjee and referred to his conclusions, namely—

(1) People in the towns still retained the rural cultural pattern even several years after their migration to towns, and

(2) The sheer anonimity of the town resulted in a freer kind of life for townsmen.

Mr. Justice Kailasam pointed out that, when Section 17 of the Land Acquisition Act was invoked by the Government to avoid enquiries and consequent delay, writs were filed and this resulted only in further delay. He observed that a complaint was often voiced that, when rural areas were compulsorily acquired for the purpose of housing Harijans, the Harijans selected the best developed plots where pumpsets had been installed etc. He said that the one reason why companies resorted to Government acquisition was the fact that the title was perfected thereby.

Regarding rent control, he advocated revaluation and refixing of the rent periodically.

As for municipal administration, he took the view that supersession of municipalities was not a good remedy.

The Chairman, while winding up, pointed out that regulation of influx into towns might not work and doubted whether any set of regulations could be drafted which would satisfy the test of reasonableness under article 19(5).

Regarding Dr. Markose's reference to the plea for not referring to the registered sale deeds for the purpose of fixing compensation, the Chairman took the view that Courts could not take judicial notice of abuses by parties by way of undervaluation for reducing stamp duty. He pointed out that the delay in land acquisition and consequently delay in payment of compensation to parties very often resulted from the fact that these parties went on endless appeals before the Courts.

Regarding rent control, he agreed that rents should be periodically refixed and advocated a study of the working of the Rent Control Acts by the Indian Law Institute.

CORPORATE STRUCTURE

Chairman	:	Mr. V. K. T. Chari
Rapporteur	:	Dr. R. C. Hingorani
Time	:	December 28th, 1966
Date	:	12 Noon to 1-30 p.m.

Principal Tope's Paper was read by Dr. R. B. Tewari. In his Paper he observed that control over property had shifted from the individual to the corporation. He pointed out that there had been an absence of definition of the expression 'property' in all systems of law. According to him, article 19(1) of the Indian Constitution gave right to every Indian citizen to acquire, hold and dispose of property. This was interpreted by the Supreme Court in the Sirurmath case, as consisting of abstract and concrete rights. He remarked that although the legal systems recognised the corporation as a legal person, the Supreme Court in the State Trading Corporation Case, did not consider the Corporation as a citizen and thus it was not entitled to rights under article 19 of the Constitution.

He further observed that the right to carry on business amounted to property right and that right was curtailed by a State monopoly to carry on a given business under articles 298 and 19(6) of the Constitution.

As regards the State creating monopoly in favour of individuals, Prin. Tope cited some cases. He also added that the Indian Companies Act of 1956 was passed by the Parliament. According to clauses (b) and (c) of article 39, the ownership and control of material resources of the community are to be so distributed as best to subserve the common good and to ensure that there was no concentration of wealth and means of production. According to him, the Companies Act was so framed as to follow the above directive principles. However, he feared the concentration of wealth in some corporations and pointed to the political and economic effects of such concentration. In this connection, he observed that fortunately the Government of India was alive to the above problem and the Monopolies Inquiry Commission was appointed to go into it. In its Report it had appended the Monopolies and Restrictive Trade Practices Bill which would curb the above tendencies. While its report did not purport to strike at the concentration of economic power, it had asked for an independent body to keep a watch over the situation so that such companies did not assume a menacing role.

In conclusion, he asked the Seminar to consider the following four problems:—

(1) Advisability of depending upon a few corporations for the needs of society;

(2) How far corporations have lived up to their roles of responsibility;

(3) In whose interests these corporations should be controlled or regulated; and

(4) Monopolies in private and public sectors.

In his Paper, Mr. Rangarajan had stated that the corporate growth had great impact on the economy of the Nation. He therefore stressed the legal-cum-economic approach to the problem. In this connection, he referred to Professor Berle who had stated that individual ownership had been replaced by corporate ownership. According to him, the extent of economic policy as exercised by corporations, would definitely be of concern to all of them. He doubted the success of the public sector as was clear from the Soviet experiment. However, he thought that India could not do without public sectors although he advocated a mixed economy for India.

He also examined the functioning of monopolies and the Report of the Monopolies Inquiry Commission to the effect that there should be no curbs on monopolies serving the common good. As regards other monopolies, a permanent Monopolies Commission was contemplated to keep watch on corporation monopolies.

Finally he examined the *State Trading Corporation* Case of 1963 and the *Tata Engineering* Case of 1965. In the former case, the Supreme Court held that corporations could not be considered as 'citizens' for the purpose of benefit under article 19. In the latter case, the Supreme Court held that what could not be done directly could not be done indirectly also. This was in reply to the persistent view that there should be the theory of piercing the corporate veil and that the Corporation was the aggregate of shareholders who might be Indian citizens entitled to benefits under article 19. In view of the above two decisions, he was of the view that corporations might be declared as Indian citizens under articles 10 and 11 of the Constitution by passing an appropriate legislation without amending the Constitution.

Mr. Mohan Kumaramangalam did not present a written paper but spoke *extempore*. He stated that it was necessary to go into the origin and functions of the corporation and see whether the corporation had played or outplayed its role in India. He was of the view that major industrial and economic development through the Corporation alone. According to him, the corporation should be considered as a citizen but he did not agree to the proposal of Mr. Rangarajan to amend article 19 or declare the cor-

poration as a citizen under article 10 or 11 of the Constitution. He thought that that would be dangerous and unnecessary.

Proceeding further, he said that the trend in the post-Constitution period had been the concentration of wealth in a few corporations and in this connection, informed the Seminar that the assets of the Birlas had increased by 43 per cent in that period. He also was of the view that there had been some misuse of power by corporations and, therefore, he advocated an early enactment of the Monopolies and Restrictive Trade Practices Bil which was bebfore the Indian Parliament.

He further advocated a comparative study of a similar Act in the United Kingdom and the Anti-Trust Act of the United States of America, as also other legislations relating to the Continent.

He did not agree with the observations of Mr. Rangarajan that the Public Sector had failed. He was of the view that the public sector had an important role to play in a developing economy despite some failures.

The Chairman stated that the Indian view of the foreign capital companies had been a doctrinaire one in regard to the application of 49—51 ratio which applied to the Indians who lived abroad also. He was of the view that it should be the court and not the tribunal which should go into the restrictive trade practices as contemplated in the Report of the Monopolies Inquiry Commission.

Dr. Sharma was of the view that there was need for corporate devices to exploit the resources of the community and that the aim must be optimum production, whether it was by the public sector or the private sector or the combination of the two. He agreed with Mr. Chari that it should be left to the court and not to the tribunal to consider the restrictive trade practices. He advocated the doctrine of piercing the corporate veil as propounded by Friedmann. He thought that there was confusion with regard to the meaning of the expression 'monopoly'.

Mr. Rama Rao observed that the corporation was a recent innovation which was interfered with by the Government in a number of ways. According to him, the corporation was heavily taxed. In some cases upto 50 per cent which made the Government almost a shareholder in the company. He did not agree with the view that the 'corporation' should be considered as a citizen, as the corporation was incapable of enjoying the rights under article 19.

Dr. Tewari was of the view that the corporation should be treated as a citizen because it was treated as a natural person and very recently it had been held liable for a criminal act. He, however, advocated for regulation to avoid concentration of economic power in some corporations.

Dr. Setalvad was of the view that it was likely that the bigger the Corporation the higher was the efficiency. According to him, the Government encouraged monopolies. He was of the opinion that some guide-lines might be framed for controlling the corporations which manufactured consumer goods. He further stated that some public sector corporations functioned very well and therefore, wherever their functioning was faulty, the same could be improved.

Mr. Suresham was of the view that although the Corporation had no right to vote, yet the corporation financed elections and, therefore, created a lobby for itself in the Legislature.

Prof. Pye stated that the courts in the U.S.A. had encouraged the corporation as an institution depending upon convenience. If the corporation was good for economic growth, it might be treated as a citizen and where it was not good for economic growth, it might be denied citizenship.

Mr. Lakshmaiah stated that every person—natural or artificial—should be considered as a citizen.

The consensus of the participants in the Seminar was that the Corporation should be treated as an Indian citizen entitled to the benefits of article 19. They were of the view that such an interpretation would promote the economic growth of the Nation and in its absence it would impede the economic growth.

The tendency was to discourage monopolies unless they worked for the common good. It was also thought that there should be open court hearings about the restrictive practices and that they should not be heard by a Tribunal.

THE IMPACT OF TECHNOLOGICAL REVOLUTION

Chairman	:	Mr. A. A. A. Fyzee
Rapporteur	:	Dr. A. T. Markose
Time	:	December 29th 1966
Date	:	9-30 a.m. to 11-30 a.m.

Presenting his Paper, Dr. R. C. Hingorani said that he had confined his study to the problems of technological developments which had been witnessed in the field of outer space, sea and patents. He asked the Seminar to examine how far those developments had affected the property relations in general and with particular reference to its reactions in India.

With regard to outer space, he was of the view that the claim of the launching State would be formidable in view of the huge expenditure undertaken by it in space research and its liability in case of any mishap and consequent damage to property on surface. He was hopeful that the Legal Sub-Committee of the Committee on Peaceful Uses of Outer Space might find out an equitable solution with regard to the question of property rights in outer space.

As regards sea, he said that the property relations pertaining to sea had made enormaus advances in technological developments in the field. He pointed out that the sea presented a great source of national wealth like fisheries and the coastal States had begun to claim a greater part of the sea as belonging to them by extending their territorial waters. In this connection, he referred to the institution of continental shelf and suggested that India could exploit the natural resources of the shelf rich in mineral resources and also the fishing rights within at least 12 miles from the coast.

With regards to potents, he pointed out that after independence, patents had become a drain on the foreign exchange and suggested that a patent might be granted to a foreign firm only on the condition that they should make only a reasonable margin of profit. He also suggested that the process alone should be made patentable and not the product.

Dr. Raj Krishna's Paper was explained by Mr. R. K. Misra. In his Paper, Dr. Raj Krishna dealt with some aspects of taxation in the context of Economic Planning with particular reference to private foreign investments.

As regards taxation and social goals, he raised the question, whether the taxation should be levied only for the purpose of raising the revenue

of the Government or it should be used as an instrument to attain certain social goals and he himself answered it by stating that the structure in India had been geared to meet the requirements of a socialist State as was clear from the budget speeches of Finance Ministers after 1956, and the Judiciary had taken a lenient view of the matter.

He then referred to the tax incentives given to industries like Tax holiday to new industrial undertakings, development rebate, development allowance, tax-free interest on loans, concessional rates on inter-corporate dividends and tax credit certificates, and pointed out that the flow of foreign capital would not depend on internal concession only as a number of tangible and intangible factors were involved in the investment climate of a country.

Presenting his Paper, Dr. T. S. Rama Rao said that the industrial and technological revolutions had made their impact in the sphere of property relations. In this connection, he pointed out that the ownership was increasingly divorced from power and managerial control. A small managerial or directorial elite of vast corporations or industrial complexes wielded extensive powers and controlled the economy in both capitalist America and Communist Russia.

He then referred to the implications of the consequest of the sea, air and space to the existing scheme of property relations. In this connection, he cited the case of *Annakumaru Pillai* v. *Muthupayal* where it was contended that the chank fish from the chank bed in Palk's Bay (between India and Ceylon) could not be the object of theft because the sea-bed could not be owned by anybody and the court had rejected the claim. He felt that no one had got a right of exclusive enjoyment in the matter.

As regards fishing resources, he said that the coastal States had got sovereign right over the continental shelf and suggested that India could exploit the natural resources of the continental shelf.

Regarding air space, he examined the question whether the resources in outer space and celestial bodies could be exploited by any State endowed with adequate scientific equipment. In this connection, he quoted the views of Dr. Jenks in support of the view that International law did not forbid the exploitation of its resources. He was doubtful whether the space powers which became capable of exploiting those resources would surrender them to the United Nations if they were found valuable.

In conclusion, he expressed the hope that International law and the laws of property, torts and contracts might acquire a new dimension in future.

The Hon. Mr. Sinha pointed out that in many an international conference, there was difference of opinion with regard to the definition of the expression 'outer space' and it could not be defined. He suggsted that the most important conclusion that could be arrived at, was that the outer space should be used only for peaceful purposes and an international law could be framed on that basis. In this connection, he observed that so far as the Moon was concerned, the great Powers were agreed that it should not be colonized by any country and that there should be no contamination. He added that it was possible that in the distant future, some valuable minerals might be found there and then the question of framing a property law with regard to outer space would arise, and then this country should make a contribution to it. Continuing Mr. Sinha said that people were not sufficiently alive to the importance of the sea and the law relating to it. Near the Nicobar and the Andaman Islands there was valuable pearl fishery. He was told that there were shoals of fish in the Bay of Bengal.

With regard to the law of patents, the most important point so far as India was concerned was whether they should go the whole length and lay down that they would fall in line with the strict laws of preservation of patent rights. In Japan the law was greately relaxed in its developmental stage.

Dr. Sharma said that there was a growing gulf between the technology and knowledge of the highly industrialised Western countries on the one hand and those of the underdeveloped countries on the other. The underdeveloped countries should train technical personnel, as use of technology was not available except on the terms dictated by the countries of Europe.

Dr. Tewari said that with regard to outer space and property relations, there was a good deal of conjecture. The difficulties in this respect might be dealt with by international law.

With regard to Air, he said that problems might arise in future and the position would have to be considered.

Mr. Mohan Kumaramangalam , referring to the paper of Mr. Raj Krishna, said that the taxation structure in India was still directed too much towards the collection of revenue. Taxation laws should be framed in such a way as to increase industrial and agricultural production. There should be a study of taxation laws and policies. Taxation should be simplified and integrated to the social goal of lessening the disparity between the rich and the poor.

Dr. Setalvad said that patents should be recognised but not exploited.

With regard to taxation, he entirely agreed with Mr. Mohan Kumaramangalam. In America and Russia industries were developed by technocrats. In India the public sector was run by bureaucrats who were not particularly well-trained and who were subject to considerable interference from Government. Taxation might be one remedy. There might be other remedies to make the management more efficient. By introducing some reforms, this could be brought about.

Mr. Hooker said that in the United States tremendous money came from the Government for research purposes. Particularly in the field of atomic energy and space exploration, new co-operative institutions developed in the United States like the Air Space Corporation and the Corporation in California which was entirely managed by a group of people selected from business. Space research and development was promoted by the A.B.C.

Mr. Suresham said that continental shelf was about 5 per cent of the Oceanic area. Not only U.S.A., but even small countries like Peru and Chile had made proclamations. He said that outer space might be divided into 5 slabs. It was not sufficient to confine the discussion only to the last slab and they should take into account the other slabs also. Space sovereignty was a very fluctuating sovereignty, fluctuating every second.

Regarding taxation, he said that the length of the tax holiday should vary from industry to industry. Taxation should be such as to provide for incentives.

Mr. Hooker said that with regard to the sea, the most substantial property in the coming years would be utilisation of its water after desalination for irrigation.

On the question of taxation he felt that it should primarily be the instrument for encouraging industrial growth and distributing profits for social purposes.

Mr. Lakshmiah said that so far as space was concerned, whatever they said was merely speculative, as there was no proper data. To-day no phenomenon could be looked at in isolation. Their knowledge of any phenomenon would be inadequate or incomplete without the aid or assistances of disciplines forthcoming from anthropology, sociology and science.

Regarding taxation policy, he agreed with the views expressed by Mr. Mohan Kumaramangalam.

Dr. Hingorani said that the exploration of the contents of the outer space might be ostensibly for peaceful purposes, but latently for defence

purposes. Satellite launching had the dual purpose of scientific exploration as well as strategic exploration.

As regards patents, he said that there were two ways open. One was to exclude drugs from the patent system or to regulate the prices, allowing a sufficient margin of profit.

Replying to a point raised by Mr. Justice Kailasam about the trouble between India and Ceylon regarding fishing boats, Mr. Rama Rao said that there were certain tiny islands between India and Ceylon. The Ceylon Government had been disputing the sovereignty of India over those islands. therefore this problem arose when Indian fishing boats went to those islands.

Atomic energy was the only aspect which was relevant to property relationship. According to the Industrial Policy Resolution of the Government of India, atomic energy came in the public sector.

Replying to Mr. Hooker, he said that in the California case, the Supreme Court had held in favour of the United States. Subsequently the Congress passed an Act and permitted California to exploit the sea bed within the territorial waters.

Continuing Mr. Rama Rao said that article 297 of the Constitution provided that all lands, minerals and other things of value underlying the ocean within which the territorial waters of the continental shelf of India shall vest in India and be held for the purposes of the Union. When the Ramnad estate was taken over, the Raja of Ramnad leased out the right of chank fishing in the Palk Bay. The lessees were sought to be evicted by the Government of Madras. One of the points raised by the lessons in that connection was that the property belonged to the Union of India and not to the Madras Government. On this point the Court said that there was no reference to territorial waters in the Indian Constitution. Mr. Venkatarama Iyer took the view that the territorial waters belonged to the constituent units and not to the Union. The Constitution need not refer to territorial waters. That was implicit in the concept of sovereignty.

In summing up the discussion, the Chairman said that Mr. Mohan Kumaramangalam made the very valid point that tax should be levied not so much for the enrichment of the State but rather for the increase of production.

SOCIAL INSTITUTIONS

Chairman	:	Mr. Justice P. S. Kailasam
Rapporteur	:	12 noon to 1.30 P.M.
Date	:	December 29th 1966
Time	:	Dr. R. C. Hingorani

Mr. A. A. A. Fyzee initiated the discussion on his paper by saying that the Muslim community was a backward community and it required some consideration. He thought that India was not a secular State but a multi-religious State in which all religions were given equal treatment. He felt that there had been no reforms in India so far as the Muslim law was concerned with the result that malpractices, ill-treatment of wife, *talak* and polygamy were continued. He was also of the view that the law relating to succession, bequest, wakfs etc. had not been reformed. In this connection, he gave the examples of Tunisia and Turkey and other Arab countries where the Muslim law was prevalent but had been reformed. He pointed out that polygamy had been banned in Tunisia and the law of *wakf* had been drastically changed in Turkey. He thought that it was ridiculous to give two annas' share in a rupee to a wife with three daughters when her husband died and it was strange that the lion's share was taken away by the daughters and not by the wife. He felt that in a modern society the independence of an individual was necessary and the dispersal of families was inevitable. He suggested piecemeal legislation with regard to the following reforms which were necessary in the Muslim law:-

(1) Establishment of the Board of Conciliation, to advise married couples.

(2) Alimony to be given to the divorced woman, unless she is guilty of adultery or misconduct.

(3) Elimination of polygamy.

(4) Abolition of triple divorce.

(5) Elimination of the question of domicile in divorce cases.

(6) Encouragement of consensual arrangements for divorce.

He thought that a piecemeal legislation would be appropriate because the backward community like the Muslims might consider and wholesale reform as too revolutionary. He also suggested that until then, the Muslims should resort to the Special Marriages Act which permitted only one wife and the Indian Succession Act which was not so complicated .

Mr. R. K. Misra, in his paper, gave the history of the origin of the joint family which, according to him, killed the individual initiative. Then he referred to the decline of familism due to a number of reasons viz., import of western philosophy, economic development, industrialisation, rule of law, replacement of customary law, migration to urban areas and the narrow interpretation of a joint family. He also pointed out that a number of legislative changes had also disintegrated the joint family system inasmuch as the changes were made to benefit women who were otherwise not treated on a par with men. He added that the passing of the Hindu Succession Act, 1956 and the Ceiling Agricultural Holdings Act were also responsible for the dispersal of joint families. He was also of the view that the law of taxation had partly encouraged the joint family and that the dispersal of the joint family gave rise to a new family in the modern society and also gave initiative to the individual. In his opinion, the joint family played a retrogressive role in democracy and he cited a number of Western authors in support of his contention.

The Chief Justice of the Calcutta High Court, Mr. Sinha, said that there should be an enactment of the progressive law for all the communities, leading to the uniform Code.

Dr. R. B. Tewari said that it was wrong to think that family was an hindrance in the working of democracy.

Mr. Mohan Kumarmangalam said that the best thing would be that progressive persons in the Muslim community who advocated reforms in the Muslim law, should come forward with concrete proposals and draft legislation so that the Government could take early action on the matter.

Mr. Chari thought that family was a good system where protection was given to old men who were not taken care of in Western societies.

Dr. Hingorani agreed with the views of Mr. Fyzee with regard to reforming the Muslim law, elimination of polygamy, banning of triple divorce and provision of Alimony in addition to Mehar to divorced women. However, he did not agree that there should be encouragement of consensual divorce because that might lead to collusive divorce, in which case women would generally be the losers.

He disagreed with Mr. Misra's view that family was an hindrance in a democratic society. He was of the view that a joint family had some advantages.

Dr. Setalvad was of the view that a uniform Code was not possible.

The Consensus of the Seminar was that so far as reforms in the Muslim law were concerned, they were necessary but since it was a backward community, partly dominated by Mullahs, it was found difficult to change the law. The difficulty was not with regard to the law being passed but in the problem of who should bell the cat.

However, it was thought that a piecemeal legislation might benefit the Muslim community and until then the Muslims might resort to the Special Marriage Act which was an improvement upon the principles of the Muslim law relating to polygamy, divorce and succession.

IMPLICATIONS OF TRANSACTIONAL INSTRUMENTS

Chairman	:	Mr. M. Kumaramangalam
Rapporteur	:	Mr. R. K. Misra
Date	:	December 30th 1966
Time	:	9-30 a.m. to 11 a.m.

In his Paper, Dr. Atul Setalvad referred to the effect on the viability and sufficiency of existing modes of adjusting property relations to evidentiary or procedural rules and the operation and scope of the device of registration as one such evidentiary or procedural rule and examined its present working. He dealt with two aspects viz., registration as notice and registration of titles.

He then pointed out that in Bombay city there was usually a delay of more than four years between lodging a document for registration and its due registration and said that such delays should be avoided. In this connection, he suggested that the list of documents including a *lis pendens* notice to be compulsorily registered should be increased if the Registration Act was to be fully effective and said that such incompleteness of that list had resulted in considerable injustice and hardship to the people and also reduced the efficiency of the registration. He asked the Seminar to examine the matter.

He then referred to the exemption given to the co-operative house building societies in the matter of stamp duty and said that such exemptions should not be given.

He also pointed out that the delay between the execution of the document and its due registration arose from the misuse of the machinery of registration for tax collection.

As regards the registration of titles, he said that it was a revolutionary system. In this connection, he referred to the existing machinery in India relating to the records of rights and suggested that broad changes would have to be introduced in that machinery in order to create the system of registration of titles. He then referred to the advantages of the system in that the whole process of investigation of titles would be simplified and delay would be avoided. He wanted the seminar to examine the matter and suggested that it could be experimented in some regions and if it proved a success there, it could be extended to the rest of the country.

The Chairman said that Dr. Setalvad dealt with two aspects. One was the registration as notice and Dr. Setalvad stressed the need for increase in the list of documents to be compulsorily registered. He agreed

that there was need for it. The second important suggestion made by him was with regard to the registration of titles. He felt that the certificate of titles was possible and feasible in the circumstances existing in the country.

Dr. Sharma said that Mr. Pathak also wanted to present a paper on 'Evidence in Procedural Problems' and the Seminar could discuss that aspect of the matter also along with the points raised by Dr. Setalvad in his paper.

Mr. Fyzee agreed with all the points raised in his paper except the one suggesting that co-operative house building society should not be exempted from the stamp duty. In this connection, he pointed out that in Bombay a middleclass person could not get any house to live in, unless he joined the House Building Co-operative Society and said that it was very good to have introduced the co-operative system in regard to that sphere of activity.

Dr. Markose felt that the certificate system would work all right. He pointed out that unless the department dealing with the record of rights was efficient, the insurance plan referred to, in Dr. Setalvad's paper would be defeated.

Mr. Chari agreed that the scheme of registration of titles was desirable and in this connection, suggested that the English system could be effectively applied. He also felt that a good administrative set-up was necessary to deal with the matter.

As regards registration of documents, he suggested that there should be some up-to-date and effective machinery like a Tribunal for deciding things like, what was going to be in the register and whether certain authority should be removed or kept there. He said that the system could be tried, in the first instance, in some selected cities like Madras, Bombay and Calcutta and then extended to the rest of the country.

Mr. Hooker said that in New York there was a Title Insurance Company which would insure against any kind of title and suggested that such a scheme could be implemented in the country.

Mr. Suresham stated that if it was found that a particular document was under-stamped, it should be returned to the party concerned with the note that the deficiency in the stamp duty should be made good within a reasonable time and if he failed to do it, the stamp duty already paid would be forfeited.

Prof. Pye agreed with the observations of Mr. Hooker.

Mr. Rao referred to the record of rights and said that in Tamil Nad they had got an excellent system of rights called 'Patta Register' with regard to lands. He supported the suggestion of Mr. Setalvad with regard to the registration of titles.

Mr. Justice Kailasam referred to the registration charge and said that if the Government wanted to treat it as a revenue, they could raise it to 10 per cent but if they considered it as a fee, then it could be considered as far too high. So far as the suggestions re. registration of *lis pendens* notice and the certificate system were concerned, they were excellent ones and they would be able to implement them.

The Chairman, summing up the discussion, said that the discussion going on in the Legislature and in the Government circles about the need to change and improve the Registration Act. There was not much controversy on the issues raised, except on the question of practicability of the certificate of titles. As regards the question of increase in the number of registerable documents and *lis pendens* notice, everybody was agreed that that could be done. With regard to the certificate of titles, the only question that needed to be discussed was from the point of view of practicability and there again there was no doubt that people would agree to it. He suggested that they could be tried in a small area like a taluk or district and the Law Institute and the Government delegates attending the Seminar could give their help in that respect. He pointed out that such a system woud mean enormous advantage to the country with regard to the safety of property transactions.

He then referred to the American system of Title Insurance and said that that was a much bigger thing which their business economy could not afford.

Proceeding, he said that the delegates did not mention one aspect viz., the extremely high registration fee and suggested that the Seminar should examine the question, whether such a higher registration fee would increase the revenue of the Government or decrease it. He added that everybody gave a false value to his property and thus the purpose of the levy of the high registration fee was defeated.

Dr. Setalvad said that in that case, they should go into the real value of the property and that would involve practical consequences. For that purpose, a valuation machinery was necessary and that was not possible in the circumstances existing in the country.

Thereupon, the Chairman remarked that if a person had acted in a wrong way in not affixing the real stamp duty, a very heavy penalty might be imposed on him.

Dr. Setalvad felt that the subsequent penalty would not work and if they wanted to check the value of the stamp duty, it should be done only at the time of registration.

Mr. Justice Kailasam was of the view that he could prosecuted but penalty could not be levied.

Dr. Setalved then referred to a decision of the Supreme Court and said that once the duty was collected, they had no right to collect any amount subsequent to that.

The Chairman felt that there should be some method by which the person who evaded the law should be penalised.

Dr. Setalvad felt that, that would lead to complications.

TRENDS AND PROSPECTS

Chairman	:	Mr. M. Kumaramangalam
Rapporteur	:	Dr. Atul Setalvad
Date	:	December 30th 1966
Time	:	11-15 a.m. to 1 p.m.

The Chairman, opened the seminar by asking Dr. Markose to summarise his paper.

Dr. Markose, in summarising his paper, observed that he had deliberately used extreme language to provoke both thought and discussion. He stressed the fact that a great change had come about in property relations due to the vastly increased governmental activities in a welfare state, and thought that it was imperative that the legal outlook, and even legal concepts, must change to adequately and justly deal with this changed situation. In particular, he referred to the fact that many people were now dependent on the Government for sheer economic survival, because they were Government Servants, or dependent for their livelihood on licences or permits issued by the Government, or on contracts placed by the Government. In this context, Dr. Markose thought that the old notions of employment with the Government being at the pleasure of the Government, or the issuing of a licence being a privilege of the Government were wholly out of place. He further pointed out that the Government being a representative of the people as a whole, could never act as a private person. He felt that the citizen had a legal right to be awarded a contract, if he was otherwise qualified, or to a pension, and it was for lawyers to develop rules, and regulatory processes to ensure that this legal right became a reality. In this connection Dr. Markose regretted that many of the law schools still did not sufficiently stress the functional aspects of law.

Some of the other points made by Dr. Markose related to the problems raised by irresponsible trade union leadership; a very high rate of taxation; and the necessity of re-examining certain old-established rules of property law such as the rule against perpetuity, or the rules relating to restrictive covenants to consider whether, from a social point of view, they still served a useful function.

Mr. Misra, at the request of the Chairman, then briefly summarised Dr. Jain's paper. He pointed out that according to Dr. Jain, while the Constitution intended to exclude the payment of full compansation in the case of agrarian reforms, there was no such intention regarding urban

property, and that it was precisely in the case of urban property that difficulty had arisen. Dr. Jain agreed broadly with the decisions of the Supreme Court in the *Kochuni* case, and the *Metal Corporation* case, and felt that it was right that in the case of such property either the market value or something near the market value should be paid, but observed that such a requirement would make slum clearance and other such projects difficult to implement. He also criticised the decisions of the Supreme Court in the *Somavanti* and the *R. L. Arora* cases, and thought that the Court had given too wide an interpretation of the concept of "public purpose".

The Chairman framed the following two issues for discussion by the Seminar:

(1) The scope of article 31(2), and whether, in the light of the discussion held in earlirr sessions, and the suggestion made by Suba Rao, C.J., it was possible to evolve some principles of compensation which, while not necessarily giving a full market value, would be relevant within the meaning of the decisions in *Vajravelu's* case, and the *Metal Corporation* case.

(2) The scope of judicial review in respect of the powers of the Govenment in a Welfare State.

The Seminar then discussed these issues.

Mr. Justice Kailasam referred to the recent decision of the House of Lords in *Ridge* v. *Baldwin,* which had been referred to by our Supreme Court with approval. He observed that with that decision the scope of justiciability in administrative orders, and of *certiorari* jurisdiction in general had been so enlarged that half of Dr. Narkose's battle had been won. As an illustration he referred to a recent decision of his in the Madras High Court in which he had held that the mother of a student killed in a police firing was entitled to cross-examine witnesses in an enquiry held by the District Judge in the firing, as the rputation of the student was affected. He observed that contracts by the Government stood in a different category.

Professor Rama Rao was generally in agreement with Dr. Markose about the necessity of adopting a functional approach to law. He also agreed that the Judges had placed for too great a reliance on the technical rules of English law. As illustrations he referred to *Advani's* case on the scope of quasi-judicial inquiries, the doctrine of classification; the concept of contracts being a privilege; the concepts of "Crown" privilege and Act of State. Regarding Act of State, he thought it most unfortunate that in a recent decision, the Supreme Court had reverted to the English ruie,

evolved by English Courts to suit British imperial policy, and abandoned the more progressive test laid down by Bose, J.

Professor Pye stressed that the function of property to-day was to increase production and improve distribution. All aspects of property law must, therefore, be judged from the point of view of whether this function was being achieved or not. Though he agreed with Dr. Markose that it was necssary to enlarge the scope of judicial review in the field of governmental acts, he thought that Dr. Markose went too far, and also pointed out the practical effects on the Court's time of such an extension. He thought that Governmental functions could be divided into two categories: (1) where the Government operates as a sovereign; and (2) where it acts as a private citizen. In the latter case, Professor Pye did not think judicial review to be necessary.

Mr. Suresham said it was most necessary that a committee be appointed like the Franks Committee in England to thoroughly examine judicial and quasi-judicial tribunals, etc. He also thought that a system of training and refresher courses for all judicial and quasi-judicial officers would be beneficial.

Dr. Setalvad said that though he agreed that an extension of judicial review was necessary, it could not be extended to all governmental acts. In such cases, though the government ought to behave fairly, the remedy for any mis-behaviour could only be political. Administration would become impossible if every person disappointed by not getting a Government contract, or licence, could go to court. On the other hand, he pointed out that the decision of the Supreme Court in the *Coal Control* case about executive discretion was correct, while the series of subsequent decisions beginning with *Harishankar Bagla's* case which watered down that decision, were most unfortunate. If the Court went back to the principles of the *Coal Control* case, the State would be forced to be fairly precise in laying down standards, and prescribing proper rules and procedures. This would largely achieve what Dr. Markose advocated.

On article 31(2), Dr. Setalvad pointed out that it was not possible to evolve any principle "relevant" within the meaning of the *Metal Corporation* case, which could result in something less than the market value being given. This necessarily was so because the test of relevancy laid down by the Supreme Court in effect meant relevancy to "compensation", meaning a just equivalent, i.e. relevancy to adequate compensation.

Mr. Misra referred to the basic fallacy in the reasoning of the Supreme Court in the *Metal Corporation* case, viz., relevancy to what? In fact, the Court had in mind what "compensation" meant, and then evolved the doctrine of relevance to fit that meaning of "compensation". He stat-

ed that he was unable to suggest any correct or relevant principles; the only approach he thought correct was that suggested by Dr. K. M. Munshi in the Constituent Assembly, which upheld all principles which were not mala fide. He felt that the decisions of the Supreme Court had rendered wholly nugatory the amendment to article 31(2). He emphasised the necessity of the Courts looking at the reality of things, and considering this question from the point of view of the kind of persons from whom the property is taken, and the purpose for which it is taken. In this connection he referred to two very recent decisions of the Supreme Court in which the Court was considering two provisions of a consolidation enactment with an identical purpose, and practical effect; the Court upheld one because the land so taken vested in the common ownership of villagers; but struck down the other because it vested in the Panchayat. This was too technical an approach.

Mr. Misra also referred to the American concept of "preferred freedoms" and pointed out the strange position in India where the preference was inverted, in favour of property rights rather than personal liberty. This could clearly be seen by comparing the *Metal Corporation* case with the decision in *Kedar Nath Singh's* case.

Dr. Hingorani expressed the view that the decision of the *Metal Corporation* case was correct.

Mr. Fyzee though of the opinion that judicial review should be extended, thought it necessary to lay down limits, and was of the opinion that the best way to tackle the problem was to work out a series of solutions to individual problems.

Dr. Tewari questioned Dr. Makgse's very wide definition of property, and thought it better to adopt a narrower definition. On article 31(2), he said that he was unable to suggest any concrete line of interpretation. He thought that the decisions of the Supreme Court in *Vajravelu's* case and the *Metal Corporation* case placed undue importance on the mere fact that even after the 4th amendment, the word "compensation" had been retained. He thought it would be useful if the concept of reasonableness could be adopted to article 31(2) by reading article 19(5) with both articles 31(1) and article 31(2). If this could be done, the Court could, in examining the validity of legislation under article 31(2), consider questions of social and economic justice.

Dr. Sharma agreed with Dr. Markose that property relations should not nowadays be looked at from the old private law outlook, and thought that a more production-oriented or control-oriented outlook must be adopted. He disagreed with Dr. Tewari about reading article 31(2) together with article 19(5). He expressed the opinion that the attitude of the Court in the *Vajra-*

velu and *Metal Corporation* cases, though a good and logical approach was a "political-judicial" approach, formulated to stop development in a particular direction. He also felt that a fuller study was necessary to consider whether any principles of compensation could be adopted which made a distinction between adequacy and relevancy.

Mr. Misra, intervening, wondered whether what Dr. Sharma described as a logically consistent stand of the Supreme Court in the *Vajravelu* and *Metal Corporation* cases was desirable when the country was making every effort to bring about change. He also thought that Dr. Fyzee's criticism of Dr. Markose's views to be unjustified for these problems of changing property concepts, though new to us, had been faced from the beginning of the century in Europe and the United States, and even in the United Kingdom.

Dr. Markose replied to the discussion by reiterating his view that there could be no inherent or prerogative rights in the Government *qua* its citizens; it followed that there could be no right-privilege dichotomy. He agreed with Mr. Suresham that an inquiry such as that held by the Franks Committee was most necessary, and with Dr. Setalvad that limitations of judicial review must be borne in mind in order, among other things, to avoid bottle-necks. Replying to Dr. Tewari, Dr. Markose justified his very wide view of property in modern conditions.

Summing up the discussion, the Chairman observed:

1. There was no satisfactory measure of agreement about the relationship between articles 19(1)(f) and 31. Though the Court had linked the two in *Kochuni's* case, the link, and its scope was not clearly defined. He was personally of the view that article 19(1)(f) dealt with the enjoyment of property, while article 31 dealt with the deprivation of property.

2. On the question of compensation, the Chairman agreed with the views expressed by Mr. Mishra and Dr. Setalvad that no weight was given by the Supreme Court to the last clause of article 31(2).

3. On the points raised by Dr. Markose, the Chairman thought that though the Government, in matters such as contracts should not be in a privileged position, he did not see why it should be in an inferior position. He also thought it would be useful if the irigours of sec. 80 of the Civil Procedure Code could be relaxed, so as to enable the Court in appropriate cases to dispense with it and to grant interim relief. He also agreed with Dr. Setalvad that executive discretion should be controlled by proper policy or standards. The Courts should go back to the *ration* of *Coal Control* case. Legislation should, wherever pos-

sible, be upheld if standards are laid down though improper executive action could be struck down.

The Chairman then asked Mr. R. K. Misra to present the paper of Dr. M. P. Jain.

Mr. R. K. Misra, presenting the paper by Dr. M. P. Jain on 'Trends and Prospects,' said that the paper traced the major trends discernible in the area of property regulation in India. The framers of the Constitution intended and the Constitution laid down that in the area of agrarian reform, the Government could carry out the reforms. But the difficulty was in the area of urban property. Dr. Jain seemed to agree with the view of Supreme Court in the decisions beginning from the *Kochuni* case and coming up to the *Metal Corporation* case in which the Supreme Court had insisted that the exception carved out by the Constitution in article 31(1) was applicable only to agrarian reforms and not to other areas like urban property.

The author had expressed disagreement with the judgement of the Supreme Court as regards the interpretation of 'public use'. He felt that the Supreme Court had gone too far.

In the area of urban property he had simply said that difficulties might arise on account of the requirement to pay market value as compensation. But he had not offered any solution.

The Chairman said that two points could be discussed. He requested the participants to give their views on the principles of compensation with reference to the relevant articles in the Constitution. The second point was the point raised by Dr. Markose in his paper about the scope of judicial review in respect of the powers of the Government in a welfare State.

Mr. Justice Kailasam said that justiciability of administrative orders was rather a difficult field. It had been laid down that unless a duty was cast on the Government to act in a quasi-judicial manner, the order would not be open to judicial review. Any administrative order which adversely affected a person came within the purview of the Court.

However desirable or Markose's idea might be, there were difficulties in interfering with private contracts.

Mr. Rama Rao was glad that Dr. Markose adopted the conventional approach to the law of property. He found that in the earlier stages Judges had been influenced by English law.

With regard to withholding of documents, a liberal approach was needed. The doctrine of act of State was very wrong.

Mr. Suresham referred to Mr. Markose's Paper and suggested that with regard to contracts and licences, a quasi-judicial tribunal might be appointed to go into the matter and that they should be familiar with the principles of natural justice.

Dr. Setalvad was of the view that so far as abuses in regard to Government contracts were concerned, a judicial review would not be practicable and that the only solution was a good Government with the operation of Ombudsman.

Mr. R. K. Misra referred to article 31(2) and criticised the attitude of the Supreme Court in various cases with regard to the interpretation of the expression 'compensation'. He said that the Supreme Court had failed to evolve a doctrine as was in vogue in America in that respect. He added that it was very difficult for the Seminar to lay down a concrete principle regarding compensation etc. But they should consider whether the principle laid down by the Legislature was in accord with the principles of natural justice, from whom a particular property was taken and for what purpose it was taken. In this connection, he suggested that the courts should have a very limited jurisdiction and they should consider whether the principle which the Legislature had laid down took into account the loss the deprived owner was likely to suffer in regard to his property and the advantages of that property to the community.

Dr. Sharma referred to the pronouncements of the Supreme Court with regard to the *Metal Corporation of India* case and the *Vajravelu Mudaliar* case and said that its decisions with regard to cost price and the depreciation formula were not absurd.

Dr Hingorani was of the view that they should go into the question, whether the principles laid down for compensation were correct or not.

Mr. Fyzee said that he could not understand the expression 'New property' or 'New Jurisprudence.' But he agreed with Dr. Markose that new principles should be evolved and suggested that they might be incorporated in the Constitution. He pointed out that those principles should be clearly stated so that they clearly understood and capable of interpretation in a court of law.

Dr. Tewari referred to the new doctrine about the concept of 'Property' and said that the whole concept of property would have to be changed and suggested that article 31(2) might be read with article 19 as amended with regard to the reasonableness of the principles of compensation provided for certain types of land. As regards the question, whether the decision of the Supreme Court was in accord with the principles of justice, he was of the view that the Supreme Court should have a free hand in the matter.

Dr. Sharma observed that Dr. Markos should think in terms of production-orientation. As regards the remarks of Dr. Tewari with regard to interpretation of article 31(2) and article 19 as amended, he referred to the *Vajravelu Mudaliar* case and said that was a case of political-cum-judicial decision which was a revolutionary development in the property relations. He added that there should be further research with regard to the question, whether the relevancy or adequacy of compensation should be taken into consideration. He felt that they could not be generalised unless they had greater data relevant to it.

Dr. Markose said that the cases he had mentioned in his paper were enough and pointed out that in the Constitution there was no inherent prerogative as far as the rights affecting the citizens were concerned. He added that he was conscious of the limitations of the judicial review but he felt that the new Jurisprudence had created a particular type of property.

Mr. Mohan Kumarmangalam said that they had not been able to arrive at any common measure of agreement regarding the way in which property had been treated in the Constitution.

He was of the view that the Government should not be put at a disadvantage against other traders but should be treated like any other individual when Government entered trade or business.

Dr. Markose, on behalf of the delegates, thanked the Government of Madras.

Mr. Mohan Kumaramangalam specially thanked Professor Pye and Mr. Hooker for their presence and participation in the Seminar.

Then, Dr. G. S. Sharma, proposing a vote of thanks to the Chief Justic of India, the Law Minister of the Governmnt of India, the Chief Minister of Madras, Mr. Justice Wanchoo of the Supreme Court, the Chief Justice of the Calcutta High Court, the Law Minister of the Government of Madras and other participants to he Seminar, said hat there were three motivations for choosing the topic of *'Property Relations in India'*. The first motivation was to see how the Socialistic Pattern of Society could be fitted in with the indigenous values of propery relationship vis-a-vis the Western values of property relationship. The second was the complexity of property relationship in different areas with reference to the emerging Indian Economy. The third was the accumulated set of principles which the Supreme Court of India had set out with regard to the various articles of the Constitution and laws relating to the property relationship and particularly the later pronouncements of the Supreme Court. He expressed the hope that the deliberations of the Seminar in which jurists and lawyers were participating, would help in producing certain ideas, on the basis of

which the Law Institute would be able to make further research. He added that the object of the Seminar was to identify the problems of research and to examine the problems of law in society.

In conclusion, he expressed his thanks to the Hon'ble Chief Minister and the Law Minister of the Government of Madras for their invitation to hold the Seminar in Ootacamund where every arrangement was made to perfection by everyone belonging to the Madras Government.