SUPREME COURT OF INDIA

Rustom Cavasjee Cooper

Vs.

Union of India

Writ Petns. Nos. 222, 300 and 298 of 1969

(J. C. Shah, S. M. Sikri, J. M. Shelat, V. Bhargava, G. K. Mitter, C. A. Vaidialingam, K. S. Hegde, A. N. Grover, A. N. Ray, P. Jaganmohan Reddy and I. D. Dua, JJ.)

10.02.1970

JUDGEMENT

SHAH, J.

1. (For Majority):- Rustom Cavasji Cooper - hereinafter called `the petitioner' - holds shares in the Central Bank of India Ltd., the Bank of Baroda Ltd., and the Bank of India Ltd., and has accounts - current and fixed deposit - with those Banks; he is also a Director of the Central Bank of India Ltd. By these petitions he claims a declaration that the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance 8 of 1969 promulgated on July 19, 1969, and the Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969 which replaced the Ordinance with certain modifications impair his rights guaranteed under Articles 14, 19 and 31 of the Constitution, and are on that account invalid.

2. In India there was till 1949, no comprehensive legislation governing banking business and banking institutions. The Central Legislature enacted the Banking Companies Act 10 of 1949 (later

called "The Banking Regulation Act") to consolidate and amend the law relating to certain matters concerning banking. By Section 5 (b) of that Act, "banking" was defined as meaning "the accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise"; and by Section 5 (c) a "banking company" meant "any company which transacts the business of banking in India". By Section 6 it was enacted that in addition to the business of banking as defined in Section 5 (b) a banking company may engage in one or more of the forms of business specified in clauses (a) to (o) of sub-s. (1). By sub-s. (2) of Section 6 banking companies were prohibited from engaging "in any form of business other than those referred to in sub-section (1)". The Act applied to commercial banks, and enacted provisions, amongst others, relating to prohibition of employment of managing agents and restrictions on certain forms of employment; minimum paid up capital and reserves; regulation of voting rights of shareholders and election of Board of Directors; prohibition of charge on unpaid capital; restriction on payment of dividend; maintenance of a percentage of assets; return of unclaimed deposits; and accounts and balance-sheets. It also enacted provisions authorising the Reserve Bank to issue directions to and for trial of proceedings against the Banks and for speedy disposal of winding up proceedings against the Banks.

3. The Banking Regulation Act was amended by Act 58 of 1968, to give effect to the policy of "social control" over commercial banks. Act 58 of 1968 provided for reconstitution of the Boards of Directors of commercial banks with a Chairman who had practical experience of the working of a Bank or financial, economic and business administration, and with a membership not less than 51 per cent consisting of persons having special knowledge or practical experience in accountancy, agriculture and rural economy, banking, co-operation, economics, finance, law and small-scale industry. The Act also provided that no loans shall be granted to any Director of the Bank or to any concern in which he is interested as Managing Director, Manager, employee, or guarantor or partner or in which he holds substantial interest. The Reserve Bank was invested with power to give directions to commercial banks and to appoint directors or observers in the interest of depositors or proper management of the Banking Companies, or in the interest of Banking policy (which expression was defined by Section 5 (ca) as "any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources". The Reserve Bank was also invested with power to remove managerial and other personnel from office and to appoint additional directors, and to issue directions prohibiting certain activities in relation to Banking Companies. The Central Government was given power to acquire the business of any Bank if it failed repeatedly to comply with any direction issued by the Reserve Bank under certain specific provision in regard to any matter concerning the affairs of the Bank and if acquisition of the Bank was considered necessary in the interest of the depositors or in the interest of the banking policy or for the better provision of credit generally or of credit to any particular section of the community or in a particular area.

4. During the last two decades the Reserve Bank reorganised the banking structure. A number of units which accounted for a small section of the banking business were amalgamated under directions of the Reserve Bank. The total number of commercial banking institutions was reduced from 566 in 1951 to 89 in 1969 - 73 scheduled and 16 non-scheduled.

5. In exercise of the authority conferred by the State Bank of India Act 23 of 1955 the undertaking of the former Imperial bank of India was taken over by a public corporation controlled by the Central Government. The State Bank took over seven subsidiaries under authority conferred by Act 38 of 1959. There were in June 1969, 14 commercial banks operating in India each having deposits exceeding Rs.50 crores. The following is an analysis of the commercial banking structure in India in June 1969:

	No. of Banks	No. of Offices	Deposits (in Crores)	Credit (in Crores)
State Bank of India	1	1,566	948	967
Subsidiaries of State Bank of India	7	888	291	219
Indian Scheduled Commercial Banks (each with deposit exceeding Rs. 50 Crores)	14	4,130	2,632	1,829
Banks incorporated in Foreign Countries	15*	130	478	385*
Other Indian Scheduled Banks	36	1,324	296	197
Non-Scheduled Commercial Banks	16	216	28	16

* Only 13 were operating.

6. Late in the afternoon of July 19, 1969 (which was a Saturday) the Vice-President (acting as President) promulgated, in exercise of the power conferred by clause

(1) of Article 123 of the Constitution, Ordinance 8 of 1969 transferring to and vesting the undertaking of 14 named commercial banks in corresponding new banks set up under the Ordinance. The long title of the Ordinance read as follows:

"An Ordinance to provide for the acquisition and transfer of the undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto."

By Section 2 "banking company" was defined as not including a foreign company within the meaning of Section 591 of the Companies Act, 1956. An "existing bank" was defined by Section 2(b) as meaning "a banking company specified in column 1 of the First Schedule, being a company the deposits of which, as shown in the return as on the last Friday of June, 1969, furnished to the Reserve bank under Section 27 of the Banking Regulation Act, 1949, were not less than rupees fifty crores". In the Schedule to the Act were included the names of fourteen commercial banks:

(1) The Central Bank of India Ltd.

(2) The Bank of India Ltd.

(3) The Punjab National Bank Ltd.

(4) The Bank of Baroda Ltd.

(5) The United Commercial Bank Ltd.

(6) Canara Bank Ltd.

(7) United Bank of India Ltd.

(8) Dena Bank Ltd.

(9) Syndicate Bank Ltd.

(10)The Union Bank of India Ltd.

(11)Allahabad Bank Ltd.

(12)The Indian Bank Ltd.

(13)The Bank of Maharashtra Ltd.

(14)The Indian Overseas Bank Ltd.

These banks were hereinafter referred to as the named banks.

A "corresponding new bank" was defined in relation to an existing bank as meaning "the body corporate specified against such bank in column 2 of the First Schedule". By Section 2(g) it was provided that the words and expressions used in the Ordinance and not defined, but defined in the Banking Regulation Act, 1949, had the meaning respectively assigned to them in that Act. Thereby the definitions of "banking" and "banking company" in Section 5 (b) and Section 5 (c) of the Banking Regulation Act were incorporated in the Ordinance.

7. The principal provisions of the Ordinance were. - (1) Corporations styled in the ordinance "corresponding new banks" shall be established, each such corporation having paid-up capital equal to the paid-up capital of the named bank in relation to which it is a corresponding new bank. The entire capital of the new bank shall stand vested in the Central Government. The corresponding new banks shall be authorised to carry on and transact the business of banking as defined in clause (b) of Section 5 of the Banking Regulation Act, 1949, and also to engage in one or more forms of business specified in sub-section(1) of Section 6 of that Act. The Chairman of the named bank holding office immediately before the commencement of the Ordinance shall be the Custodian of the corresponding new bank. The general superintendence and direction of the affairs and business of a corresponding bank shall be vested in the Custodian, who shall be the chief executive officer of that bank.

(2) The undertaking within or without India or every named bank on the commencement of the Ordinance shall stand transferred to and vested in the corresponding new bank. The expression "undertaking" shall include all assets, rights powers, authorities and privileges, and all property movable and immovable, cash balances, reserve fund investments and all other rights and interests arising out of such property as are immediately before the commencement of the Ordinance in the ownership, possession, power or control of the named bank in relation to the undertaking, including all books of accounts, registers, records and all other documents of whatever nature relating thereto. It shall also include all borrowings, liabilities and obligations of whatever kind then subsisting of the named bank in relation to the undertaking. If according to the law of any foreign country, the

provisions of the Ordinance by themselves do not effectively transfer or vest any asset or liability situated in that country in the corresponding new bank the affairs of the named bank in relation to such asset or liability shall stand entrusted to the chief executive officer of the corresponding new bank with authority to take steps to wind up the affairs of that bank. All contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the commencement of the Ordinance, and to which the named bank is a party or which are in favour of the named bank shall be of as full force and effect against or in favour of the corresponding new bank, and be enforced or acted upon as fully and effectively as if in the place of the named bank the corresponding new bank is a party thereto or as if they are issued in favour of the corresponding new bank. In pending suits or other proceedings by or against the named bank, the corresponding new bank shall be substituted in those suits or proceedings. Any reference to any named bank in any law other than the Ordinance, or in any contract or other instrument shall be construed as a reference to the corresponding new bank in relation to it.

(3) The Central Government shall have power to frame a scheme for carrying out the provisions of the Act, and for that purpose to make provisions for the corresponding new banks relating to capital structure, constitution of the Board of Directors, manner of payment of compensation to the shareholders, and matters incidental, consequential and supplemental. Corresponding new banks shall also be guided in the discharge of their functions by such directions in regard to matters of policy involving public interest as the Central Government may give.

(4) On the commencement of the Ordinance, every person holding office as Chairman, Managing Director, or other Director of a named bank, shall be deemed to have vacated office, and all officers and other employees of a named bank shall become officers or other employees of the corresponding new banks. Every named bank shall stand dissolved on such date as the Central Government may by notification in that behalf appoint.

(5) The Central Government shall give compensation to the named banks determined according to the principles set out in Second Schedule, that is, to say,-

(a) where the amount of compensation can be fixed by agreement, it shall be determined in accordance with such agreement.

(b) where no such agreement can be reached, the Central Government shall refer the matter to the Tribunal within a period of three months from the date on which the Central Government and the existing bank fail to reach an agreement regarding the amount of compensation.

Compensation so determined shall be paid to each named bank in marketable Central Government securities. For the purpose of determining compensation, Tribunals shall be set up by the Central Government with certain powers of a Civil Court.

(6) The Central Government shall have power to make such orders not inconsistent with the provisions of the Ordinance which may be necessary for the purpose of removing defects.

8. Under the Ordinance the entire undertaking of every named commercial bank was taken over by the corresponding new bank, and all assets and contractual rights and all obligations to which the named bank was subject stood transferred to the corresponding new bank. The Chairman and the Directors of the Banks vacated their respective offices. To the named banks survived only the right to receive compensation to be determined in the manner prescribed. Compensation, unless settled by agreement, was to be determined by the Tribunal, and was to be given in marketable Government securities. The entire business of each named bank was accordingly taken over, its Chief Executive Officer ceased to hold office and assumed the office of Custodian of the corresponding new bank, its directors vacated office; and the services of the administrative and other staff stood transferred to the corresponding new bank. The named bank had thereafter no assets, no business, and no managerial, administrative or other staff; it was incompetent to use the word "Bank" in its name, because of the provisions contained in Section 7 (1) of the Banking Regulation Act, 1949, and was liable to be dissolved by a notification of the Central Government.

9. Petitions challenging the competence of the President to promulgate the Ordinance were lodged in this Court on July 21, 1969. But before the petitions could be heard by this Court, a Bill to enact provisions relating to acquisition and transfer of undertakings of the existing banks was introduced in the Parliament, and was enacted on August 9, 1969, as "The Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969". The long title of the Act was in terms identical with the long title of the Ordinance. By sub-section (1) of Sec. 27 of the Act, Ordinance 8 of 1969 was repealed. In the First Schedule were included the names of the 14 banks named in the Ordinance in juxtaposition with the names of the corresponding new banks. By sub-section (2) of Section 1, the Act came into force on July 19, 1969, and the undertaking of every named bank was deemed, with effect from the date, to have vested in the corresponding new bank. By Section 27 (2), (3) and (4) actions taken or things done under the Ordinance inconsistent with the provisions of the Act were not to be of any force or effect, and no right, privilege, obligation or liability was to be deemed to have been acquired, accrued or incurred under the Ordinance.

10. The general scheme of the Ordinance relating to the transfer to and vesting in the corresponding new bank of the undertaking of each named bank, payment of compensation, and management of the corresponding new bank, remained unaltered. The Act departed from the Ordinance in certain matters;

(1) Under the Act the named banks remain in existence for certain purposes and they are not liable to be dissolved by order of the Government. If under the laws in force in any foreign country it is

not permissible for a Banking Company, owned or controlled by Government, to carry on the business of banking in that country, the assets, rights, powers, authorities and privileges and property, movable and immovable, cash balances and investments of any named bank operating in that country shall not vest in the corresponding new bank. The directors of the named banks shall remain in office and may register transfers or transmission of shares; arrive at an agreement about the amount of compensation payable under the Act or appearing before the Tribunal for obtaining a determination as to the amount of compensation; distribute to shareholders the amount of compensation received by the Bank under the Act for the acquisition of its undertaking; carrying on the business of banking in any country outside India if under the law in force in that country any bank, owned or controlled by Government, is prohibited from carrying on the business of banking there; and carry on any business other than the business of banking. The Central Government has power to authorise the corresponding new bank to advance the amount required by the named bank in connection with the functions which the directors may perform. Reference to any named bank in any law, or in any contract or other instrument shall be construed as a reference to the corresponding new bank in relation to it, but not in cases where the named bank may carry on any business and in relation to that business.

(2) Principles for determination of compensation and the manner of payment are modified. Interim compensation may be paid to a named bank if it agrees to distribute to its shareholders in accordance with their rights and interests. A major change is made in the principles for determining compensation set out in Sch. II. By Explanation I to Cl. (e) of Part I of Sch. II, the value of any land or buildings to be taken into account in valuing the assets is to be the market value of the land or buildings, but where such market value exceeds the "ascertained value", that "ascertained value" is to be taken into account, and by Explanation II the "ascertained value" of any building wholly occupied on the date of the commencement of the Act is to be twelve times the amount of the annual rent or the rent for which the building may reasonably be expected to be let out from year to year, and reduced by one-sixth of the amount of the rent on account of maintenance and repairs, annual premium paid to insure the building against risk of damage or destruction, annual charge, if any, on the building, ground rent, interest on any mortgage or other capital charge on the building, interest on borrowed capital if the building has been acquired, constructed, repaired, renewed or re-constructed, with borrowed capital, and the sums paid on account of land revenue or other taxes in respect of such building.

(3) The Central Government may reconstitute any corresponding new bank into two or more corporations; amalgamate any corresponding new bank or with another banking institution; transfer the whole or any part of the undertaking of a corresponding new bank to any other banking institution; or transfer the whole or any part of the undertaking of any other banking institution to a corresponding new bank. The Board of Directors of the corresponding new banks are to consist of representatives of the depositors of the corresponding new bank, employees of such banks, farmers, workers and artisans to be elected in the prescribed manner and of other persons as the Central Government may appoint.

(4) The profits remaining after making provision for bad and doubtful debts, depreciation in assets,

contributions to staff and superannuation funds and all other matters for which provision is necessary under any law, the corresponding new bank shall transfer the balance of profits to the Central Government.

(5) Provision of law relating to winding up of corporations do not apply to the corresponding new banks, and a corresponding new bank may be ordered to be liquidated only by the order of the Central Government.

11. The petitioner challenges the validity of the Ordinance and the Act on the following principal grounds:

I. The Ordinance promulgated in exercise of the power under Article 123 of the Constitution was invalid, because the condition precedent to the exercise of the power did not exist;

II. That in enacting the Act the Parliament encroached upon the State List in the Seventh Schedule of the Constitution, and to that extent the Act is outside the legislative competence of the Parliament;

III. That by enactment of the Act, fundamental rights of the petitioner guaranteed by the Constitution under Articles 14, 19 (1) (f) and (g) and 31 (2) are impaired;

IV. That by the Act the guarantee of freedom of trade under Article 301 is violated; and

V. That in any event retrospective operation given to Act 22 of 1969 is ineffective, since there was no valid Ordinance in existence. The provision in the Act retrospectively validating infringement of the fundamental rights of citizens was not within the competence of the Parliament. That sub-sections (1) and (2) of Section II and Section 26 are invalid.

12. The Attorney-General contended that the petitions are not maintainable, because no fundamental right of the petitioner is directly impaired by the enactment of the Ordinance and the Act, or by any action taken thereunder. He submitted that the petitioner who claims to be a shareholder, director and holder of deposit and current accounts with the Banks is not the owner of the property of the undertaking taken over by the corresponding new banks and is on that account incompetent to maintain the petitions complaining that the rights guaranteed under Articles 14, 19 and 31 of the

Constitution were impaired.

13. A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholders has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the profit. Again a director of a Company is merely its agent for the purpose of management. The holder of a deposit account in a Company is its creditor: he is not the owner of any specific fund lying with the Company. A shareholder, a depositor or a director may not therefore, be entitled to move a petition for infringement of the rights of the Company, unless by the action impugned by him, his rights are also infringed.

14. By a petition praying for a writ against infringement of fundamental rights, except in a case where the petition is for a writ of habeas corpus and probably for infringement of the guarantees under Articles 17, 23 and 24, the petitioner may seek relief to respect of his own rights and not of others. The shareholder of a Company, it is true, is not the owner of its assets; he has merely a right to participate in the profits of the Company subject to the contract contained in the Articles of Association. But on that account the petitions will not fail. A measure executive or legislative may impair the rights of the Company alone, and not of its shareholders; it may impair the rights of the shareholders and not of the Company: it may impair the rights of the shareholders as well as of the Company. Jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual shareholder are impaired, if that action impairs the rights of the Company as well. The test in determining whether the shareholder's right is impaired is not formal; it is essentially qualitative; if the State action impairs the right of the shareholders as well as of the Company, the Court will not, concentrating merely upon the technical operation of the action, deny itself jurisdiction to grant relief.

15. The petitioner claims that by the Act and by the Ordinance the rights guaranteed to him under Articles 14, 19 and 31 of the Constitution are impaired. He says that the Act and the Ordinance are without legislative competence in that they interfere with the guarantee of freedom of trade and are not made in the public interest; that the Parliament had no legislative competence to enact the Act and the President had no power to promulgate the Ordinance, because the subject-matter of the Act and the Ordinance is (partially at least) within the State List; and that the Act and Ordinance are invalid because they vest the undertaking of the named banks in the new corporations without a public purpose and without setting out principles and the basis for determination and payment of a just equivalent for the property expropriated. He says that in consequence of the hostile discrimination practiced by the State the value of his investment in the shares is substantially reduced, his right to receive dividend from his investment has ceased, and he has suffered great financial loss, he is deprived of the rights as a shareholder to carry on business through the agency of the Company, and that in respect of the deposits the obligations of the corresponding new banks not of his choice are substituted without his consent.

16. In Dwarkadas Shrinivas v. The Sholapur Spinning and Weaving Co. Ltd., 1954 SCR 674 = (AIR 1954 SC 119) this Court held that a preference shareholder of a company is competent to maintain a suit challenging the validity of the "Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance" 2 of 1950 (which was later replaced by Act 27 of 1950), which deprived the Company of its property without payment of compensation within the meaning of Article 31, Mahajan, J., observed:

"The plaintiff and the other preference shareholders are in imminent danger of sustaining direct injury as a result of the enforcement of this Ordinance, the direct injury being the amount of the call that they are called upon to pay and the consequent forfeiture of their shares."

Das, J., in the same case examined the matter in some detail and observed at p. 722 (of SCR)=(at pp. 134-135 of AIR):

"The impugned Ordinance * * directly affects the preference shareholders by imposing on them this liability, or the risk of it, and gives them a sufficient interest to challenge the validity of the Ordinance, * * Certainly he can show that the Ordinance under which these persons have been appointed was beyond the legislative competence of the authority which made it or that the Ordinance had not been duly promulgated. If he can, with a view to destroy the locus standi of the persons who have made the call raise the question of the invalidity of the Ordinance * * , I can see no valid reason why, for the self-same purpose, he should not be permitted to challenge the validity of the Ordinance on the ground of its unconstitutionality for the breach of the fundamental rights of the company or of other persons."

A similar view was also taken in Chiranjit Lal Chowduri v. Union of India, 1950 SCR 869 = (AIR 1951 SC 41) by Mukherjea, J., at p. 899 (of SCR) = (at pp. 52-53 of AIR), by Fazl Ali, J., at p. 876 (of SCR) = (at p. 44 of AIR), by Patanjali Shastri, J., at p. 889 of SCR)=(at p.49 of AIR) and by Das, J., at p. 922 (of SCR)=(at pp.61-62 of AIR).

17. The judgment of this Court in State Trading Corporation of India Ltd. v. Commercial Tax Officer, Visakhapatnam, (1964) 4 SCR 99 = (AIR 1963 SC 1811) has no bearing on this question. In that case in a petition under Article 32 of the Constitution the State Trading Corporation challenged the infringement of its right to hold property and to carry on business under Article 19 (1)(f) and (g) of the Constitution, and this Court opined that the Corporation not being a citizen was incompetent to enforce the rights guaranteed by Article 19. Nor has the judgment in Tata Engineering and Locomotive Co. Ltd. v. State of Bihar, (1964) 6 SCR 885 = (AIR 1965 SC 40) any bearing on the question arising in these petitions. In a petition under Article 32 of the Constitution filed by a Company challenging the levy of sales-tax by the state of Bihar, two shareholders were also impleaded as petitioners. It was urged on behalf of the shareholders that in substance the interests of the Company and of the shareholders were identical and the shareholders were entitled to maintain

the petition. The Court rejected that contention, observing that what the Company could not achieve directly, it could not relying upon the doctrine of "lifting the veil" achieve indirectly. The petitioner seeks in the case to challenge the infringement of his own rights and not of the Banks of which he is a shareholder and a director and with which he as accounts - current and fixed deposit.

18. It was urged that in any event the guarantee of freedom of trade does not occur in Part III of the Constitution, and the petitioner is not entitled to maintain a petition for breach of that guarantee in this Court. But the petitioner does not seek by these petitions to enforce the guarantee of freedom of trade and commerce in Article 301: he claims that in enacting the Act the Parliament has violated a constitutional restriction imposed by Part XIII on its legislative power and in determining the extent to which his fundamental freedoms are impaired, the statute which the Parliament is incompetent to enact must be ignored.

19. It is not necessary to consider whether Article 31A (1)(d) of the Constitution bars the petitioner's claim to enforce his rights as a director. The Act prima facie does not (though the Ordinance purported to) seek to extinguish or modify the right of the petitioner as a director: it seeks to take away expressly the right of the named Banks to carry on banking business, while reserving their right to carry on business other than banking. Assuming that he is not entitled to set up his right to enforce his guaranteed rights as a director, the petition will not still fail. The Preliminary objection raised by the Attorney-General against the maintainability of the petitions must fail.

I. Validity of Ordinance 8 of 1969 -

20. Power to issue Ordinance is by Article 123 of the Constitution vested in the President. Article 123 provides:

"(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinance as the circumstances appear to him to require.

(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of Parliament, but every such Ordinance -

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

Explanation.- Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void."

21. Under the Constitution, the President being the constitutional head, normally acts in all matters including the promulgation of an Ordinance on the advice of his Council of Ministers. Whether in a given case the President may decline to be guided by the advice of his Council of Ministers is a matter which need not detain us. The Ordinance is promulgated in the name of the President and in a constitutional sense on his satisfaction: it is in truth promulgated on the advice of his Council of Ministers and on their satisfaction. The President is under the Constitution not the repository of the legislative power of the Union, but with a view to meet extraordinary situations demanding immediate enactment of laws, provision is made in the Constitution investing the President with power to legislate by promulgating Ordinances.

22. Power to promulgate such Ordinance as the circumstances appear to the President to require is exercised - (a) when both Houses of Parliament are not in session; (b) the provision intended to be made is within the competence of the Parliament to enact; and (c) the President is satisfied that circumstances exist which render it necessary for him to take immediate action. Exercise of the power is strictly conditioned. The clause relating to the satisfaction is composite: the satisfaction relates to the existence of circumstances, as well as to the necessity to take immediate action on account of those circumstances. Determination by the President of the existence of circumstances and the necessity to take immediate action on which the satisfaction depends, is not declared final.

23. The Attorney-General contended that the condition of satisfaction of the President in both the branches is purely subjective and the Union of India is under no obligation to disclose the existence of, or to justify the circumstances of the necessity to take immediate action. He relied upon the decisions of the Judicial Committee in Bhagat Singh v. King Emperor, 58 Ind App 169 = (AIR 1931 PC 111); King Emperor v. Benoari Lal Sharma, 72 Ind App 57 = (AIR 1945 PC 48); and upon a decision of the Federal Court in Lakhi Narayan Das v. Province of Bihar, 1949 FCR 693 = (AIR 1950 FC 59) which interpreted the analogous provisions of the Government of India Act, 1935, conferring upon the Governor-General in the first two cases, and upon the Governor of a Province in the last case, power to issue Ordinances. He also relied upon the judgment of the Judicial Committee in Hubli Electricity Co. Ltd. v. Province of Bombay, 76 Ind App 57 = (AIR 1949 PC 136).

24. The Attorney-General said that investment of legislative power upon the President being an incident of the division of sovereign functions of the Union and a "matter of high policy", the expression "the President is satisfied that circumstances exist which render it necessary for him to take immediate action" is incorporated as a guidance and not as a condition of the exercise of power. He invited our attention to the restraints inherent in the Constitution on the exercise of the power to promulgate Ordinance clauses (1) and (2) of Art 74; clauses (3) and (4) of Article 75 and Article 361, and submitted that the rule applicable to the interpretation of Parliamentary Statutes conferring authority upon offices of the State to Act in a prescribed manner on being satisfied about the existence of certain circumstances is inept in determining the true perspective of the power of the head of the State in situations of emergency.

25. On the other hand, Mr. Palkhivala contended that the President is not made by Article 123 the final arbiter of the existence of the conditions on which the power to promulgate an Ordinance may be exercised. Power to promulgate an Ordinance being conditional, counsel urged, this Court in the absence of a provision - express or necessarily implicit in the Constitution - to the contrary, is competent to determine whether the power was exercised not for a collateral purpose, but on relevant circumstances which, prima facie, establish the necessity to take immediate action. Counsel submitted that the rules applicable to the interpretation of statutes conferring power exercisable on satisfaction of the specified circumstances upon the President and upon officers of the State, are not different. The nature of the power to perform an official act where the authority is of a certain opinion, or that in his view certain circumstances exist or that he has reasonable grounds to believe, or that he has reasons to believe, or that he is satisfied springing from a constitutional provision is in no manner different from a similar power under a Parliamentary Statute, and no greater sanctity may attach to the exercise of the power merely because the source of the power is in the Constitution and not in a Parliamentary Statute. There is, it was urged, nothing in the constitution scheme which supports the contention that the clause relating to satisfaction is not a condition of the exercise of power.

26. Counsel relied upon the judgments of this Court in Barium Chemical Ltd. v. Company Law Board, 1966 Supp SCR 311 = (AIR 1967 SC 295) and Rohtas Industries Ltd. v. S.D. Agarwal, AIR 1969 SC 707; upon the decisions of the House of Lords in Padfield v. Minister of Agriculture, Fisheries and Food, (1968) 1 All ER 694; and of the Judicial Committee of Duryappah v. Fernando, 1967 AC 337; Nakkuda Ali v. M. F. De S. Jayarathne, 1951 AC 66; Ross-Clunis v. Papadopoullos, 1958-2 All ER 23 and contended that the decisions of the Judicial Committee in Bhagat Singh's case, 58 Ind App 169 = (AIR 1931 PC 111) and Benoari Lal Sharma's case, 72 Ind App 57 = (AIR 1945 PC 48) interpreted a provision which was in substance different from the provision of Article 123, that the decision in Lakhi Narayan Das's case, 1949 FCR 693 = (AIR 1950 FC 59) merely followed the two judgments of the Judicial Committee and since the status of the President under the Constitution qua the Parliament is not the same as the constitutional status of the Governor-General under the Government of India Act, 1935 the decisions cited have no bearing on the interpretation of Art. 123.

27. The Ordinance has been repealed by Act 22 of 1969 and the question of its validity is now academic. It may assume significance only if we hold that Act 22 of 1969 is valid. Since the Act is in our view invalid for reasons hereinafter stated, we accede to the submission of the Attorney-General that we need express no opinion in this case on the extent of the jurisdiction of the Court to examine whether the condition relating to satisfaction of the President was fulfilled.

II. Authority of Parliament to enact Act 22 of 1969-

28. On behalf of the petitioner it is urged that the Act is not within the legislative power of the Parliament and that, in any event, to the extent to which it vests in the corresponding new banks the assets of business other than banking, it trenches upon the authority of the State Legislature, and is on that account void. The relevant legislative entries in the Seventh Schedule and the constitutional provisions which have a bearing on the question of acquisition and taking over of undertaking of a bank may first be read.

29. The Parliament has exclusive legislative power with respect to "Banking" Entry 45 List I; "Incorporation, regulation and winding up of trading Corporations including banking, insurance and financial corporations, but not including co-operative societies"; Entry 43 List I; and "Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including Universities": Entry 44 List I.

30. The State have exclusive legislative authority with respect to the following subjects in List II:

Entry 26 - "Trade and commerce within the State, subject to the provisions of entry 33 of List III."

Entry 30 - "Money-lending and money-lenders; relief of agricultural indebtedness."

31. The Parliament and the States have concurrent legislative authority with respect to the following subjects in List III:

Entry 33 - "Trade and commerce in, and the production, supply and distribution of,-

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oil-seeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

Entry 42- "Acquisition and requisition of property."

32. The argument raised by Mr. Setalvad, intervening on behalf of the State of Maharashtra and the State of Jammu and Kashmir, that the Parliament is competent to enact Act 22 of 1969, because the subject-matter of the Act is "with respect to" regulation of trading corporations and matters subsidiary and incidental thereto, and on that account is covered in its entirety by Entries 43 and 44 of List I of the Seventh Schedule, cannot be upheld. Entry 43 deals with incorporation, regulation and winding up of trading corporations including banking companies. Law regulating the business of a corporation is not a law with respect to regulation of a corporation. In List I entries expressly relating to trade and commerce are Entries 41 and 42. Again several entries in List I relate to activities commercial in character. Entry 45 "Banking"; Entry 46 "Bills of exchange, cheques, promissory notes and other like instruments", Entry 47 "Insurance"; Entry 48 "Stock exchanges and future markets"; Entry 49 "Patents, inventions and designs". There are several entries relating to activities commercial as well as non-commercial in List II - Entry 21 "Fisheries"; Entry 24 "Industries x x x"; Entry 25 "Gas and Gas works"; Entry 26 "Trade and commerce"; Entry 30 "Money-lending and money-lenders"; Entry 31 "Inns and Inn-keeping"; Entry 33 "Theatres and dramatic performances, cinemas etc.". We are unable to accede to the argument that the State Legislatures are competent to legislate in respect of the subject-matter of those entries only when the commercial activities are carried on by individuals and not when they are carried on by Corporations.

32-A. The object of Act 22 of 1969 is to transfer the undertaking of each named bank and to vest it in the corresponding new bank set up with authority to carry on banking and other business. Each such corresponding new bank is controlled by the Central Government of which the entire capital is to stand vested in and allotted to the Central Government. The principal provisions of the Act which effectuate that object relate to setting up of "corresponding new banks" as statutory corporations to carry on and transact the business of banking as defined in Section 5 (b) of the Banking Regulation Act, 1949, and one or more other forms of business specified in Section 6 (1) of that Act, with

power to acquire and hold property for the purpose of the business, and to dispose of the same; administration of the corresponding new banks as institutions carrying on banking and other business; the undertaking of each named bank in its entirety stands transferred to and vested in a new corporation set up for that purpose; principles for determination of compensation and method of payment thereof to each named bank for transfer of its undertaking; and that the named bank may not carry on banking business, but may carry out business other than banking.

32-B. Mr. Palkhivala submitted that the Parliament may legislate in respect of the business of banking as defined in Section 5 (b) of the Banking Regulation Act, 1949, and matters incidental thereto, and also for acquisition of that part of the undertaking of each named bank which relates to the business of banking, but not in respect of any other business not incidental to banking in which the named bank was engaged prior to July 19, 1969, for the power to legislate in respect of such other business falls within Entry 26 of List II. As a corollary thereto, counsel submitted that power to legislate in respect of acquisition under Entry 42 of List III may be exercised by the Parliament only for effectuating legislation under a head falling in List I or List III of the Seventh Schedule.

32-C. It is necessary to determine the true scope of "banking" in Entry 45 List I, the meaning of the expression "property", and the limitations on the power of the Parliament to legislate in respect of acquisition of property in Entry 42, List III. Matters not in contest may be eliminated. Power to legislate for setting up corporations to carry on banking and other business and to acquire, hold and dispose of property and to provide for administration of the corporations is conferred upon the Parliament by Entries 43, 44 and 45 of the first list. Power to enact that the named banks shall not carry on banking business (as defined in Section 5 (b) of the Banking Regulation Act) is incidental to the power to legislate in respect of banking. Power to legislate for determination of compensation and method of payment of compensation for compulsory acquisition of the assets of the named banks, in so far as it relates to banking business is also within the power of the Parliament.

33. The expression "banking" is not defined in any Indian statute except the Banking Regulation Act, 1949. It may be recalled that by Section 5 (b) of that Act "banking" means "the accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise, and withdrawable by cheque, draft or otherwise". The definition did not include other commercial activities which a banking institution may engage in.

34. In support of his contention Mr. Palkhivala relied upon the observation of Lord Porter in Commonwealth of Australia v. Bank of New South Wales, 1950 AC 235 that banking consists of the creation and transfer of credit, the making of loans, purchase and disposal of investments and other kindred transactions; and upon the statement in Halsbury's Laws of England, 3rd Edn., Vol. 2, Article 270 at pp. 150 and 151 that:

"A 'banker' is an individual partnership or corporation, whose sole or predominating business is

banking, that is the receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid by a customer",

and in the foot-note (g) at p. 151 that:

"Numerous other functions are undertaken at the present day by banks such as the payment of domiciled bills, custody of valuables, discounting bills, executor and trustee business, or acting in relation to stock exchange transactions, and banks have functions under certain financial legislation. X x x. These functions are not strictly banking business."

35. The Attorney-General said that the expression "banking" in Entry 45 List I means all form of business which since the introduction of western methods of banking in India, banking institutions have been carrying on in addition to banking as defined in Section 5 (b) of the Banking Regulation Act, and on that account all forms of business described in Section 6 (1) of the Banking Regulation Act in clauses (a) to (n) are, if carried on in addition to the "hard-core of banking", banking and the Parliament is competent to legislate in respect of that business under Entry 45, List I. In support of his contention that apart from the business of accepting money from the public for lending or investment, and withdrawable by cheque, draft or otherwise, banking includes many allied business activities which banking institutions engaged in, the Attorney-General invited our attention to clause 21 of the Charter of the Bank of Bengal (Act VI of 1839); Sec. 27 of Act 4 of 1862; to Sections 36 and 37 of the Presidency Banks Act XI of 1876; to Section 91 (15) of the British North America Act; to Paget's Law of Banking, 7th Edn., at p. 5; to the standard form of memorandum of association of a Banking Company in Palmer's Company Precedents Form 138; and to the Statement of Objects and Reasons in support of the Bill which was enacted as the Indian Companies (Amendment) Act, 1936.

36. The Charter of the Bank of Bengal, the Presidency Banks Act 4 of 1862, Ch. X-A of the Indian Companies Act, 1913, as incorporated by the Indian Companies (Amendment) Act, 1936, merely described the business which a banking institution could carry on. It was not intended thereby to include those activities within the expression "banking". The Acts exacted after the Banking Regulation Act, 1949, also support that inference. Under Section 33 of the State Bank of India Act, 1955, the State Bank is entitled to carry on diverse business activities beside banking. Similarly the Banks subsidiary to the State Bank were by Section 36 of the Act 38 of 1959 to Act as agents of the State Bank, and also to carry on and transact business of banking as defined in Section 5 (b) of the Banking Regulation Act, 1949, and were also competent to engage in such one or more other forms of business specified in Section 6 (1) of that Act. These provisions do not aid in construing the Entry "Banking" in Entry 45 List I.

37. In modern times in India as elsewhere, to attract business, banking establishments render and compete in rendering, a variety of miscellaneous services for their constituents. If the test for

determining what "banking" means in the constitutional entry is any commercial activity which bankers at a given time engage in, great obscurity will be introduced in the content of that expression. The coverage of constitutional entry in a Federal Constitution which carves out a field of legislation must depend upon a more satisfactory basis.

38. The legislative entry in List I of the Seventh Schedule is "Banking" and not "Banker" or "Banks". To include within the connotation of the expression "Banking" in Entry 45 of List I, power to legislate in respect of all commercial activities which a banker by the custom of bankers or authority of law engages in, would result in rewriting the Constitution. Investment of power to legislate on a designated topic covers all matters incidental to the topic. A legislative entry being expressed in a broad designation indicating the contour of plenary power must receive a meaning conducive to the widest amplitude, subject however to limitations inherent in the federal scheme which distributes legislative power between the Union and the constituent units. But the field of "banking" cannot be extended to include trading activities which not being incidental to banking encroach upon the substance of the entry "trade and commerce" in List II.

39. Rejection of the argument of the Attorney-General does not lend any practical support to the argument of Mr. Palkhivala that Act 22 of 1969, to the extent it makes provisions in respect of the undertaking of the named banks relating to non-banking business, is ultra vires the Parliament. In the first instance there is no evidence that the named banks were before July 19, 1969, carrying on non-banking business distinct and independent of the banking business, or that the banks held distinct assets for any non-banking business, apart from the assets of the banking business. Again by Act 22 of 1969 the corresponding banks are entitled to engage in business of banking and non-banking which the named banks were engaged in or competent to engage in prior to July 19, 1969, and the name banks are entitled to engage in business other than banking as defined in Section 5 (b) of the Banking Regulation Act, but not the business of banking. By enacting that the corresponding new banks may carry on business specified in Section 6 (1) of the Banking Regulation Act and that the named banks shall not carry on banking business as defined in Section 5 (b) of that Act, the impugned Act did not encroach upon any entry in the State List. By Section 15 (2) (e) of the impugned Act the named banks are expressly reserved the right to carry on business other than banking, and it is not claimed that thereby there is any encroachment upon the State List. Exercise of the power to legislate for acquisition of the undertaking of the named banks also does not trespass upon the State List.

40. Before the Constitution (Seventh Amendment) Act, Entry 33, List I invested the Parliament with power to enact laws with respect to acquisition or requisitioning for the purpose of the Union, and Entry 36, List II, conferred upon the State Legislature the power to legislate with respect to acquisition or requisitioning for the remaining purposes. Those entries are now deleted, and a single Entry 42, List III invests the Parliament and the State Legislature with power to legislate with respect to "acquisition and requisitioning" of property. By Entry 42 in the Concurrent List power conferred upon the Parliament and the State Legislatures to legislate with respect to "Principles on which compensation for property acquired or requisitioned for the purpose of the Union or for any other public purpose is to be determined and the form in which such compensation is to be given".

Power to legislate for acquisition of property is exercisable only under Entry 42 of List III, and not as an incident of the power to legislate in respect of a specific head of legislation in any of the three lists. Rajahmundry Electric Supply Corporation Ltd. v. State of Andhra, 1954 SCR 779 at p. 785= (AIR 1954 SC 251 at p. 253). Under that entry "property" can be compulsorily acquired. In its normal connotation "property' means the "highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy: it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copy-rights, patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured". The expression "undertaking" in Section 4 of Act 22 of 1969 clearly means a going concern with all its rights, liabilities and assets - as distinct from the various rights and assets which compose it. In Halsbury's Laws of England, 3rd Edn., Vol. 6, Article 75 at p. 43, it is stated that "Although various ingredients go to make up an undertaking the term describes not the ingredients but the completed work from which the earnings arise."

41. Transfer of and vesting in the State Corporations of the entire undertaking of a going concern is contemplated in many Indian statutes: e.g, Indian Electricity Act, 1910, Sections 6, 7 and 7A; Air Corporation Act, 1953, Sections 16 and 17; Imperial Bank of India Act, 1920, Sections 3 and 4, State Bank of India Act, 1955, Section 6(2), (3) and (4); State Bank of India (Subsidiary Banks) Act, 1959; Banking Regulation Act, 1949, Section 36 AE: and Cotton Textile Companies Act, 1967, Ss. 5 (1) and (50 1 (6 (1)?) Power to legislate for acquisition of "property" in Entry 42, List III therefore, includes the power to legislate for acquisition of an undertaking. But, says Mr. Palkhivala, liabilities of the banks which are included in the connotation of the expression "undertaking" cannot be treated as "property". It is however the assets, rights and obligations of a going concern which constitute the undertaking; the obligations and liabilities of the business form an integral part of the undertaking, and for compulsory acquisition cannot be divorced from the assets, rights and privileges. The expression "property" in Entry 42, List III has a wide connotation, and it includes not only assets, but the organisation, liabilities and obligations of a going concern as a unit. A law may therefore, be enacted for compulsory acquisition of an undertaking as defined in Section 5 of Act 22 of 1969.

42. The contention raised by Mr. Palkhivala that the Parliament is incompetent to legislate for acquisition of the named banks in so far as it relates to assets of the non-banking business fails for two reasons - (i) that there is no evidence that the named banks held any assets for any distinct non-banking business; and (ii) that the acquisition is not shown to fall within an entry in List II of the Seventh Schedule.

III. Infringement of the fundamental rights of the petitioner-

43. Clauses (1) and (2) of Article 31 subordinate the exercise of the power of the State to the basic

concept of the rule of law. Deprivation of a person of his property and compulsory acquisition may be effectuated by the authority of law. It is superfluous to add that the law limiting the authority of the State must be within the competence of the Legislature enacting it and not violative of a constitutional prohibition, nor impairing the guarantee of a fundamental right. This Court held in Kavalappara Kottarathil Kochuni v. State of Madras, (1960) 3 SCR 887 = (AIR 1960 SC 1080); Swami Motor Transport Co. (P) Ltd. v. Sri Sankaraswamigal Mutt 1963 Supp 1 SCR 282 = (AIR 1963 SC 864) and Maharana Shri. Jayavantsinghji v. State of Gujarat, 1962 Supp 2 SCR 411 at p. 438 = (AIR 1962 SC 821 at p. 833) that a person may be deprived of his property by authority of a statute only if it does not impair the fundamental rights guaranteed to him. It is again not contested on behalf of the Union that the law authorising acquisition of property must be within the competence of the law-making authority and must not violate a constitutional prohibition or impair the guarantee of any of the fundamental rights in Part III. But it is claimed that since Article 31 (2) and Article 19 (1) (f) while operating on the same field of the right to property are mutually exclusive, a law directly providing for acquisition of property for a public purpose cannot be tested for its validity on the plea that it imposes limitations on the right to property which are not reasonable.

44. By Articles 31 (1) and (2) the right to property of individuals is protected against specific invasions by State action. The function of the two clauses - clauses (1) and (2) of Article 31 - is to impose limitations on the power of the State and to declare the corresponding guarantee of the individual to his right to property. Limitation on the power of the State and the guarantee of right are plainly complementary. Protection of the guarantee is ensured by declaring that a person may be deprived of his property by "authority of law": Article 31 (1); and that private property may be compulsorily acquired for a public purpose and by the "authority of a law" containing provisions fixing or providing for determination and payment of compensation: Article 31 (2). Exercise of either power by State action results in abridgement - total or partial - of the right to property of the individual. Article 19 (1) (f) is a positive declaration in the widest terms of the right to acquire, hold and dispose of property, subject to restrictions (which may assume the form of limitations or complete prohibition) imposed by law in the interest of the general public. The guarantee under Article 19 (1)(f) does not protect merely an abstract right to property: It extends to concrete rights to property as well: Swami Motor Transport Co. (P) Ltd's case, 1963 Supp 1 SCR 282 = (AIR 1963 SC 864).

45. The constitutional scheme declares the right to property of the individual and then delimits it by two different provisions: Article 19 (5) authorizing the State to make laws imposing reasonable restrictions on the exercise of that right, and clause (1) and (2) of Article 31 recognizing the authority of the State to make laws for taking the property. Limitations under Article 19 (5) and Article 31 are not generically different, for the law authorizing the exercise of the power to take the property of an individual for a public purpose or to ensure the well-being of the community, and the law authorising the imposition of reasonable restrictions under Article 19 (5) are intended to advance the larger public interest. It is true that the guarantee against deprivation and compulsory acquisition operates in favour of all persons, citizens as well as non-citizens, whereas the positive declaration of the right to property guarantees the right to citizens. But a wider operation of the guarantee under Article 31 does not alter the true character of the right it protects. Article 19 (5) and Article 31 (1) and (2), in our judgment, operate to delimit the exercise of the right to hold property.

46. Under the Constitution, protection against impairment of the guarantee of fundamental rights is determined by the nature of the right, the interest of the aggrieved party and the degree of harm resulting from the State action. Impairment of the right of the individual and not the object of the State in taking the impugned action, is the measure of protection. To concentrate merely on power of the State and the object of the State action in exercising that power is therefore to ignore the true intent of the Constitution. In this Court, there is, however, a body of authority that the nature and extent of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual, but by its object. Thereby the constitutional scheme which makes the guaranteed rights subject to the permissible restrictions within their allotted fields fundamental got blurred and gave impetus to a theory that certain Articles of the Constitution enact a code dealing exclusively with matters dealt with therein, and the protection which an aggrieved person may claim is circumscribed by the object of the State action.

46-A. Protection of the right to property or personal freedom is most needed when there is an actual threat. To argue that State action which deprives a person permanently or temporarily of his right to property or personal freedom, operates to extinguish the right or the remedy is to reduce the guarantee to an empty platitude. Again to hold that the extent of, and the circumstances in which, the guarantee of protection is available depends upon the object of the State action, is to seriously erode its effectiveness. Examining the problem not merely in semantics but in the broader and more appropriate context of the constitutional scheme which aims at affording the individual the fullest protection of his basic rights and on that foundation to erect a structure of a truly democratic polity, the conclusion, in our judgment, is inevitable that the validity of the state action must be adjudged in the light of its operation upon the rights of the individual and groups of individuals in all their dimensions.

47. But this Court has held in some cases to be presently noticed that Article 19 (1) (f) and Article 31 (2) are mutually exclusive.

48. Early in the history of this Court the question of inter-relation between the diverse provisions affording the guarantee of fundamental rights in Part III fell to be determined. In A. K. Gopalan v. State of Madras, 1950 SCR 88= (AIR 1950 SC 27) a person detained pursuant to an order made in exercise of the power conferred by the Preventive Detention Act 4 of 1950 applied to this Court for a writ of habeas corpus claiming that the Act contravened the guarantee under articles 19, 21 and 22 of the Constitution. The majority of the Court (Kania, C. J., and Patanjali Sastri, Mahajan, Mukherjea and Das, JJ.) held that Article 22 being a complete code relating to preventive detention, the validity of an order of detention must be determined strictly according to the terms and "within the four corners of that Article". They held that a person detained may not claim that the freedom guaranteed under Article 19 (1) (d) was infringed by his detention, and that validity of the law providing for making orders of detention will not be tested in the light of the reasonableness of the restrictions imposed thereby on the freedom of movement, nor on the ground that his right to personal liberty is infringed otherwise than according to the procedure established by law. Fazl Ali,

J., expressed a contrary view. This case has formed the nucleus of the theory that the protection of the guarantee of a fundamental freedom must be adjudged in the light of the object of State action in relation to the individual's right and not upon its influence upon the guarantee of the fundamental freedom, and as a corollary thereto, that the freedoms under Articles 19, 21, 22 and 31 are exclusive - each article enacting a code relating to protection of distinct rights.

49. Kania, C. J., proceeded on the theory that different articles guarantee distinct rights. He observed at p. 100 (of SCR) = (at p. 35 of AIR):

".....it (Article 19) * * means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of Article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, * * * the question of the application of Article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenu's life."

The learned Chief Justice also observed that Article 19 (1) (d) had nothing to do with detention, preventive or punitive, and the concept of personal liberty in Article 21 being entirely different from the concept of the right to move freely throughout the territory of India, Article 22 was a complete code dealing with preventive detention.

50. Patanjali Sastri, J., observed at p. 191 (of SCR) = (at pp. 69-70 of AIR):

".....article 19 seems * * to presuppose that the citizen to whom the possession of these fundamental rights is secured retains the substratum of personal freedom on which alone the enjoyment of these rights necessarily rests. * * Article 19 guarantees to the citizens the enjoyment of certain civil liberties while they are free, while articles 20-22 secure to all persons-citizens and non-citizens-certain constitutional guarantees in regard to punishment and prevention of crime."

51. Mahajan J., was of the view that Article 22 was self-contained in respect of laws on the subject of preventive detention. " Mukherjea, J., observed (at p. 254) (of SCR) = (at p. 93 AIR) that there was no conflict between Article 19 (1) (d) and Article 22, for the former did not contemplate freedom from detention either punitive or preventive, but speaks of a different aspect or phase of civil liberty. In his view Articles 20 to 22 embodied the entire protection guaranteed by the Constitution in relation to deprivation of life and personal liberty with regard to substantive as well

as procedural law. He proceeded to observe at p. 261 (of SCR)= (at p. 96 of AIR):

"..... by reason of preventive detention, a man may be prevented from exercising the right of free movement within the territory in India * * *, but that is merely incidental to or consequential upon loss of liberty resulting from the order of detention."

But the learned Judge observed at p. 263 (of SCR)= (At p. 97 of AIR):

"It may not, I think, be unite accurate to state that the operation of Article 19 of the Constitution is limited to free citizens only and that the rights have been described in that article on the pre-supposition that the citizens are at liberty. The deprivation of personal liberty may entail as a consequence the loss or abridgment of many of the rights described in Article 19, but that is because the nature of these rights is such that free exercise of them is not possible in the absence of personal liberty."

52. Das, J., observed at p. 304 (of SCR) = (At p. 113 of AIR):

"Therefore, the conclusion is irresistible that the rights protected by Article 19 (1), in so far as they relate to rights attached to the person i.e., the rights referred to in sub-clauses (a) to (e) and (g), are rights which only a free citizen, who has the freedom of his person unimpaired, can exercise."

The learned Judge further observed:

"..... a lawful detention, whether punitive or preventive, does not offend against the protection conferred by Article 19 (1) (a) to (e) and (g), for those rights must necessarily cease when the freedom of the person is lawfully taken away. In short, those rights end where the lawful detention begins. So construed, Article 19 and Article 21 may, therefore, easily go together and there is, in reality, no conflict between them."

53. Fazl Ali, J., struck a different note: he observed at p. 148 (of SCR) = (at pp. 52-53 of AIR):

"the scheme of the Chapter dealing with the fundamental rights does not contemplate * * that each article is a code by itself and is independent of the others. * * * The case of a person

who is convicted of an offence will come under Articles 20 and 21 and also under Article 22 so far as his arrest and detention in custody before trial are concerned. Preventive detention, which is dealt with in Article 22, also amounts to deprivation of personal liberty which is referred to in Article 21,. and is a violation of the right of freedom of movement dealt with in Article 19 (1) (d)."

At p. 149 (of SCR) = (at p. 53 of AIR) the learned Judge observed:

"The words used in Article 19 (1) (d) must be construed as they stand, and we have to decide upon the words themselves whether in the case of preventive detention the right under Article 19 (1) (d) is or is not infringed. But, * * *, however, literally we may construe the words used in Article 19 (1) (d) and however restricted may be the meaning we may attribute to those words, there can be no escape from the conclusion that preventive detention is a direct infringement of the right guaranteed in Article 19 (1) (d)."

At p. 170 (of SCR) = (at p. 61 of AIR) he observed:

"..... this Article (Article 22) * * does not exclude the operation of Articles 19 and 21, and it must be read subject to those two articles, in the same way as Articles 19 and 21 must be read subject to Article 22. The correct position is that Article 22 must prevail in so far as there are specific provisions therein regarding preventive detention, but, where there are no such provisions in that Article, the operation of Articles 19 and 21 cannot be excluded. The mere fact that different aspects of the same right have been dealt with in three different Articles will not make them mutually exclusive except to the extent I have indicated."

The view expressed in A. K. Gopalan's case. 1950 SCR 88= (AIR 1950 SC 27) was re-affirmed in Ram Singh v. State of Delhi, 1951 SCR 451= (AIR 1951 SC 270).

54. The principle underlying the judgment of majority was extended to the protection of the freedom in respect of property, and it was held that Article 19 (1) (f) and Article 31 (2) were mutually exclusive in their operation. In A. K. Gopalan's case. 1950 SCR 88= (AIR 1950 SC 27), Das, J., suggested that if the capacity to exercise the right to property was lost because of lawful compulsory acquisition of the subject of that right, the owner ceased to have that right for the duration of the incapacity. In Chiranjit Lal Chowduri's case, 1950 SCR 869= (AIR 1951 SC 41), Das, J., observed at p. 919 (of SCR) = (at p. 60 of AIR):

" ..... the right to property guaranteed by Article 19 (1) (f) would * * * continue until the owner was under Article 31 deprived of such property by authority of law."

In State of West Bengal v. Subodh Gopal 1954 SCR 587 = (AIR 1954 SC 92) the same learned Judge observed that "Article 19 (1) (f) read with Article 19 (5) presupposes that the person to whom

the fundamental right is guaranteed retains his property over or with respect to which alone that right may be exercised." The principle so stated was given a more concrete shape in a later decision: State of Bombay v. Bhanji Munji, 1955-1 SCR - 777 = (AIR 1955 SC 41). In Bhanji Munji's case 1955-1 SCR 777 = (AIR 1955 SC 41), speaking for a unanimous Court, Bose, J., observed:

".....it is enough to say that Article 19 (1) (f) read with clause (5) postulates the existence of property which can be enjoyed, and over which rights can be exercised because otherwise the reasonable restrictions contemplated by Clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the right to acquire, hold or dispose it of, and as Clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the Article postulates the existence of property over which the rights are to be exercised."

Bhanji Munji's case, 1955-1 SCR 777 = (AIR 1955 SC 41) was accepted without any discussion in Babu Barkya v. State of Bombay, (1961) 1 SCR 128 = (AIR 1960 SC 1203); Smt. Sitabati Debi v. State of West Bengal, 1967-2 SCR 949 and other cases. In these cases it was held that the substantive provisions of a law relating to acquisition of property were not liable to be challenged on the ground that they imposed unreasonable restrictions on the right to hold property.

55. Bhanji Munji's case, 1955-1 SCR 777 = (AIR 1955 SC 41), it must be remembered, arose under Article 31 before it was amended by the Constitution (Fourth Amendment) Act. It was held by this Court that Clauses (1) and (2) of Article 31 as they then stood dealt with the same subject-matter i. e., compulsory acquisition of property: see Subodh Gopal's case, 1954 SCR 587 = (AIR 1954 SC 92) and Dwarkadas Shriniwas's case, 1954 SCR 674 = (AIR 1954 SC 119). But since the amendment by the constitution (Fourth Amendment) Act it has been held that Clauses (1) and (2) deal with different subject-matters. In Kavalappara Kottarrathil Kochuni's case, 1960-3 SCR 887 = (AIR 1960 SC 1080), Subba Rao, J., delivering the judgment of the majority of the Court observed that Cl. (2) of Article 31 alone deals with compulsory acquisition of property by the State for a public purpose, and not Article 31 (1), and he proceeded to hold that the expression "authority of law" means authority of a valid law, and on that account validity of the law seeking to deprive a person of his property is open to challenge on the ground that it infringes other fundamental rights, e. g., under Article 19 (1) (f). It was broadly observed that Bhanji Munji's case, 1955-1 SCR 777 = (AIR 1955 SC 41) after the Constitution (Fourth Amendment) Act "no longer holds the field". But Kavalappara Kottarathil Kochuni's case, 1960-3 SCR 887 = (AIR 1960 SC 1080) did not deal with the validity of a law relating to compulsory acquisition. With the decision in Kavalappara Kottarathil Kochuni's case, 1960-3 SCR 887 = (AIR 1960 SC 1080) there arose two divergent lines of authority: (1) "authority of law" in Art. 31 (1) is liable to be tested on the ground that it violates other fundamental rights and freedoms including the right to hold property guarantee by Article 19 (1) (f); and (20 "authority of a law" within the meaning of Article 31 (2) is not liable to be tested on the ground that it impairs the guarantee of Article 19 (1) (f) in so far as it imposes substantive restrictions - though it may be tested on the ground of impairment of other guarantees. The expression "law" in the two clauses had therefore different meanings. It was for the first time (obiter dicta apart) in State of Madhya Pradesh v. Ranojirao Shinde, 1968-3 SCR 489 = (AIR 1968 SC

1053) this Court opined that the validity of law in Clause (2) of Article 31 may be adjudged in the light of Article 19 (1) (f). But the Court in that case did not consider the previous catena of authorities which related to the inter-relation between Article 31 (2) and Article 19 (1) (f).

56. We have carefully considered the weighty pronouncements of the eminent Judge who gave shape to the concept that the extent of protection of important guarantees, such as the liberty of person, and right to property, depends upon the form and object of the State action, and not upon its direct operation upon the individual's freedom. But it is not the object of the authority making the law impairing the right of a citizen, nor the form of action taken that determines the protection he can claim: it is the effect of the law and of the action upon the right which attract the jurisdiction of the Court to grant relief. It this be the true view and we think it is, in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of Legislature nor by the form of the action, but by its direct operation upon the individuals rights.

57. We are of the view that the theory that the object and form of the State action determine the extent of protection which the aggrieved party may claim is not consistent with the constitutional scheme. Each freedom has different dimensions. Article 19 (1) (f) enunciates the right to acquire, hold and dispose of property: Clause (5) of Article 19 authorizes imposition of restrictions upon the right. Article 31 assures the right to property and grants protection against the exercise of the authority of the State. Clause (5) of Article 19 and Clauses (1) and (2) of Article 31 prescribe restrictions upon State action, subject to which the right to property may be exercised. Article 19 (5) is a broad generalization dealing with the nature of limitations which may be placed by law on the right to property. The guarantees under Article 31 (1) and (2) arise out of the limitations imposed on the authority of the State by law to take over the individual's property. The true character of the limitations under the two provisions is not different. Clause (5) of Article 19 and columns (1) and (2) of Article 31 are parts of a single pattern. Article 19 (1) (f) enunciates the basic right to property of the citizens and Article 19 (5) and Clauses (1) (2) Article 31 deal with limitations which may be placed by law subject to which the rights may be exercised.

58-60. Limitations prescribed for ensuring due exercise of the authority of the State to deprive a person of his property and of the power to compulsorily acquire his property are, therefore, specific classes of limitations on the rights to property falling within Article 19 (1) (f). Property may be compulsorily acquired only for a public purpose. Where the law provides for compulsory acquisition of property for a public purpose it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Article 31 (2). If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed, but enquiry into reasonableness of the procedural provisions will not be excluded. For instance if a tribunal is authorised by an Act to determine compensation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to be struck down under Article 19 (1) (f).

61. In dealing with the argument that Article 31 (2) is a complete code relating to infringement of the right to property by compulsory acquisition, and the validity of the law is not liable to be tested in the light of the reasonableness of the restrictions imposed thereby it is necessary to bear in mind the enunciation of the guarantee of fundamental rights which has taken different forms. In some cases it is an express declaration of a guaranteed right: Articles 29 (1), 30 (1), 26, 25 and 32; in others to ensure protection of individual rights they take specific forms of restrictions on State action -legislative or executive-Articles 14, 15, 16, 20, 21, 22 (1), 27 and 28; in some others, it takes the form of a positive declaration and simultaneously enunciates the restriction thereon: Articles 19 (1) and 19 (2) to (6); in some cases, it arises as an implication from the delimitation of the authority of the State, e. g., Articles 31 (1) and 31 (2); in still others, it takes the form of a general prohibition against the State as well as others: Articles 17, 23 and 24. The enunciation of right either express or by implication does not follow a uniform pattern. But one thread runs through them: they seek to protect the rights of the individual or groups of individuals against infringement of those rights within specific limits. Part III of the Constitution weaves a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields; they do not attempt to enunciate distinct rights.

62. We are therefore unable to hold that the challenge to the validity of the provision for acquisition is liable to be tested only on the ground of non-compliance with Article 31 (2). Article 31 (2) requires that property must be acquired for a public purpose and that it must be acquired under a law with characteristics set out in that Article. Formal compliance with the conditions under Art. 31 (2) is not sufficient to negative the protection of the guarantee of the right to property. Acquisition must be under the authority of a law and the expression "law" means a law which is within the competence of the Legislature and does not impair the guarantee of the rights in Part III. We are unable, therefore, to agree that Article 19 (1) (f) and 31 (2) are mutually exclusive.

63. The area of protection afforded against State action by the freedom under Article 19 (1) (f) and by the exercise of the power of the State to acquire property of the individual without his consent must still be reconciled. If property is compulsorily acquired for a public purpose, and the law satisfies the requirements of Articles 31 (2) and 31 (2A), the Court may readily presume that by the acquisition a reasonable restriction on the exercise of the right to hold property is imposed in the interests of the general public. But that is not because the claim to plead infringement of the fundamental right under Article 19 (1) (f) does not avail the owner; it is because the acquisition imposes a permissible restriction on the right of the owner of the property compulsorily acquired.

64. We have found it necessary to examine the rationale of the two lines of authority and determine whether there is anything in the Constitution which justifies this apparently inconsistent development of the law. In our judgment, the assumption in A. K. Gopalan's case 1950 SCR 88 = (AIR 1950 SC 27) that certain articles in the Constitution exclusively deal with specific matters and determining whether there is infringement of the individual's guaranteed rights, the object and the form of the State action alone need be considered, and effect of the laws on fundamental rights of

the individuals in general will be ignored cannot be accepted as correct. We hold that the validity of "law" which authorises deprivation of property and "a law" which authorises compulsory acquisition of property for a public purpose must be adjudged by the application of the same test. A citizen may claim in an appropriate case that the law authorising compulsory acquisition of property imposes fetters upon his right to hold property which are not reasonable restrictions in the interests of the general public. It is immaterial that the scope for such challenge may be attenuated because of the nature of the law of acquisition which providing as it does for expropriation of property of the individual for public purpose may be presumed to impose reasonable restrictions in the interests of the general public.

65. Whether the provisions of Section 4 and 5 of Act 22 of 1969 and the other related provisions of the Act impair the fundamental freedoms under Articles 19 (1) (f) and (g) now falls to be considered. By Section 4 the entire undertaking of each named bank vests in the Union, and the Bank is prohibited from engaging in the business of banking in India and even in a foreign country, except where by the laws of a foreign country banking business owned or controlled by Government cannot be carried on, the named bank will be entitled to continue the business in that country. The business which the named banks carried on was-(1) the business of banking as defined in Section 5 (b) of the Banking Regulation Act, 1949, and business incidental thereto; and (2) other business which by virtue of Section 6 (1) they were not prohibited from carrying on, though not part of or incidental to the business of banking. It may be recalled that by Act 22 of 1969 the named banks cannot engage in business of banking as defined in Section 5 (b) of the Banking Regulation Act, 1949, but may engage in other forms of business. By the Act, however, the entire undertaking of each named bank is vested in the new corporation set up with a name identical with the name of that Bank, and authorised to carry on banking business previously carried on by the named bank, and its managerial and other staff is transferred to the corresponding new bank. The newly constituted corresponding bank is entitled to engage in business described in Section 6 (1) of the Banking Regulation Act, and for that purpose to utilize the assets, goodwill and business connections of the existing bank.

66. The named banks are declared entitled to engage in business other than banking: but they have no assets with which that business may be carried on, and since they are prohibited from carrying on banking business, by virtue of Section 7 of the Reserve Bank of India Act, they cannot use in their title the words "Bank" or "Banking", and even engage in "non-banking business" in their old names. A business organization deprived of its entire assets and undertaking, its managerial and other staff, its premises, and its name, even if it has a theoretical right to carry on non-banking business, would not be able to do so, especially when even the fraction of the value of its undertaking made payable to it as compensation, is not made immediately payable to it.

67. Validity of the provisions of the Act which transfer the undertaking of the named banks and prohibit those banks from carrying on business of banking and practically prohibit them from carrying on non-banking business falls to be considered in the light of Article 19 (1) (f) and Article 19 (1) (g) of the Constitution. By Article 19 (1) (f) right to acquire, hold and dispose of property is guaranteed to the citizens and by Art. 19 (1) (g) the right to practise any profession, or to carry on

any occupation, trade or business is guaranteed to the citizens. These rights are not absolute: they are subject to the restrictions prescribed in the appropriate clauses of Article 19. By Cl. (5) it is provided, inter alia, that nothing in sub-cl. (f) of Cl. (1) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law, imposing in the interests of the general public, reasonable restrictions on the exercise of the right conferred by that sub-clause either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Clause (6) as amended by the Constitution (First Amendment) Act, 1951, reads:

"Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making law relating to-

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation-owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise." Clause (6) of Article 19 consists of two parts: (1) the right declared by sub-cl. (g) is not protected against the operation of any law imposing, in the interests of the general public, reasonable restrictions on exercise of the right conferred by that sub-clause; and (2) in particular sub-cl. (g) does not affect the operation of any law relating, inter alia, to carrying on by the State or by a corporation-owned or controlled by the State, of any trade, business, industry or service whether or not such law provides for the exclusion, complete or partial, of citizens.

68. According to Mr. Palkhivala it was intended by the use of the expression "in particular" to denote a special class of trade, business, industry or service out of the general class referred to in the first part, and on that account a law which relates to the carrying on by the State of any particular business, industry or service, to the exclusion-complete or partial-of citizens or otherwise, is also subject to the enquiry whether it imposes reasonable restrictions on the exercise of the right in the interests of the general public. Counsel urged that the law imposing restrictions upon the exercise of the right to carry on any occupation, trade or business is subject to the test of reasonable restrictions imposed in the interests of the general public, likewise, the particular classes specified in the second part of the Article must also be regarded as liable to be tested in the light of the same limitations. Counsel strongly relied upon the decision of the House of Lords in Earl Fitzwilliam's Wentworth Estates Co. v. Minister of Housing and Local Government, (1952) 1 All ER 509. House of Lords in that case did to lay down any general proposition. They were only dealing with the meaning of the words "in particular" in the context in which they occurred and it was held that the expression "in particular" was not intended to confer a separate and distinct power wholly independent of that contained in the first limb. It cannot be said that the expression "in particular" used in Article 19 (1)

(g) is intended either to particularise or to illustrate the general law set out in the first limb.

69. It was observed in Saghir Ahmed v. State of U. P., 1955-1 SCR 707 = (AIR 1954 SC 728) by Mukherjea, J., at p. 727 (of SCR) = (at p. 739 of AIR):

"The new clause-Article 19 (6)-has no doubt been introduced with a view to provide that a State can create a monopoly in its own favour in respect of any trade or business; but the amendment does not make the establishment of such monopoly a reasonable restriction within the meaning of the first clause of Article 19 (6). The result of the amendment is that the State would not have to justify such action as reasonable at all in a court of law, and no objection could be taken to it on the ground that it is an infringement of the rights guaranteed under article 19 (1) (g) of the Constitution."

70. In dealing with the validity of a law creating a State monopoly in Akadasi Padhan v. State of Orissa, 1963 Supp 2 SCR 691 = (AIR 1963 SC 1047), this Court unanimously held, that the validity of a law creating a State monopoly which "indirectly impinges on any other right" cannot be challenged on the ground that it imposes restrictions which are not reasonable restrictions in the interests of the general public. But if the law contains other incidental provisions which do not constitute an essential and integral part of the monopoly created by it, the validity of those provisions is liable to be tested under the first part of Article 19 (6). If they directly impair any other fundamental right guaranteed by Article 19 (1), the validity of those provisions will be tested by reference to the corresponding clause of Article 19. The Court also observed that the essential attributes of the law creating a monopoly will vary with the nature of the trade or business in which the monopoly will vary with the nature of the trade or business in which the monopoly is created. They will depend upon the nature of the commodity, the nature of trade in which it is involved and other circumstances. At p. 707 (of SCR) = (at p. 1054 of AIR) Gajendragadkar, J., speaking for the Court, observed:

" 'A law relating to' a State monopoly cannot, in the contest, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. In our opinion, the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly. It is only those essential and basic provisions which are protected by the latter part of Article 19 (6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the first part of Article 19 (6)." He also observed at p. 705 (of SCR) = (at p. 1054 of AIR):

"....the amendment (First Amendment) clearly indicates that State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of general public, so far as Article 19 (1) (g) is concerned."

This was reiterated in Rasbihari Panda v. State of Orissa. Civil Appeals Nos. 1472-1474 of 1968, D/- 16-1-1969 = (reported in AIR 1969 SC 1081); Vrajlal Manilal and Co. v. State of Madhya Pradesh, Civil Appeal No. 2262 of 1966, D/- 25-4-1969 = (reported in AIR 1970 SC 129) and Municipal Committee, Amritsar v. State of Punjab, Writ Petn. No. 295 and other Petns. of 1968, D/- 30-1-1969 = (reported in AIR 1969 SC 1100). These cases dealt with the validity of laws creating monopolies in the State. Clause (6) is however not restricted to laws creating State monopolies, and the rule enunciated in Akadasi Padhan's case, 1963 Supp (2) SCR 691 = (AIR 1963 SC 1047) applies to all laws relating to the carrying on by the State of any trade, business, industry or service by Art. 298 the State is authorized to carry on trade which is competitive, or excludes the citizens from that trade completely or partially. The "basic and essential" provisions of law which are "integrally and essentially connected" with the carrying on of a trade by the State will not be exposed to the challenge that they impair the guarantee under Article 19 (1) (g), whether the citizens are excluded completely or partially from carrying on that trade, or the trade is competitive. Imposition of restrictions which are incidental or subsidiary to the carrying on of trade by the State whether to the exclusion of the citizens or not must, however, satisfy the test of the main limb.

71. The law which prohibits after July 19, 1969, the named banks from carrying on banking business, being a necessary incident of the right assumed by the Union, is not liable to be challenged because of Article 19 (6) (ii) in so far as it affects the right to carry on business.

71-A. There is no satisfactory proof in support of the plea that the enactment of Act 22 of 1969 was not in the larger interest of the nation, but to serve political ends, i.e. not with the object to ensure better banking facilities, or to make them available to a wider public, but only to take control over the deposits of the public with the major banks, and to use them as a political lever against industrialists who had built up industries by decades of industrial planing and careful management. It is true that social control legislation enacted by the Banking Laws (Amendment) Act 58 of 1968 was in operation and the named banks were subject to rigorous control which the Reserve Bank was competent to exercise and did in fact exercise. Granting that the objectives laid down by the Reserve Bank being carried out, it cannot be said that the Act was enacted in abuse of legislative power. Our attention was invited to a mass of evidence from the speeches of the Deputy Prime Minister, and of the Governor and the Deputy Governor of the Reserve Bank, and also extracts from the Reserve Bank Bulletins issued from time to time and other statistical information collected from official sources in support of the thesis of the petitioner that the performance of the named banks exceeded the targets laid down by the Reserve Bank on its directives; that the named banks had effectively complied with the requirements of the law; that they had served the diverse interests including small-scale sector, and had been instrumental in bringing about an increasing tempo of industrial and commercial activity; that they had discouraged speculative holding of commodities; and had followed essential priorities in the economic development of the nation coupled with a vigorous programme of branch development in the rural sector, brining about a considerable expansion in deposits, and large advances to the small-scale business and industry. Mr. Palkhivala urged that under the scheme of social control the commercial banks had achieved impressive results comparing favourably with the performance of the State Bank of India and its subsidiaries in the public sector, and that the performance of the named banks could not be belittled by referring to the banking

structure and development in highly developed countries like Canada, Japan, France, United States and the United Kingdom. On the other hand, the Attorney-General said that the commercial banks followed a conservative policy because they had to look primarily to the interests of the shareholders, and on that account could not adopt bold policies or schemes for financing the needy and worthy causes; that if the resources of the banking industry are properly utilised for the weaker sections of the people economic regeneration of the nation may be speedily achieved, that 28 per cent of the towns in India were not served by commercial banks; that there had been unequal development of facilities in different parts of the country and deserving sections were deprived of the benefit of important national resources resulting in economic disparities, especially because the major banks catered to the large-scale industries.

72. This Court is not the forum in which these conflicting claims may be debated. Whether there is a genuine need for banking facility in the rural areas, whether certain classes of the community are deprived of the benefit of the resources of the banking industry, whether administration by the Government of the commercial banking sector will not prove beneficial to the community and will lead to rigidity in the administration whether the Government administration will eschew the profit-motive, and even if it be eschewed, there will accrue substantial benefits to the public, whether an undue accent on banking as a means of social regeneration, especially in the backward areas, is a doctrinaire approach to a rational order of priorities for attaining the national objectives enshrined in our Constitution, and whether the policy followed by the Government in office or the policy propounded by its opponents may reasonably attain the national objectives are matters which have little relevance in determining the legality of the measure. It is again not for this Court to consider the relative merits of the different political theories or economic policies. The Parliament has under Entry 45 List I the power to legislate in respect of banking and other commercial activities of the named banks necessarily incidental thereto: it has the power to legislate for acquiring the undertaking of the named banks under Entry 42 List III. Whether by the exercise of the power vested in the Reserve Bank under the pre-existing laws results could be achieved which it is the object of the Act to achieve, is in our judgment, not relevant in considering whether the Act amounts to abuse of legislative power. This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of the Parliament in enacting a law. The Court cannot find fault with the Act merely on the ground that it is inadvisable to take over the undertaking of banks which, it is said by the petitioner, by thrift and efficient management had set up an impressive and efficient business organization serving large sectors of industry.

73. By Section 15 (2) (e) of the Act the Banks are entitled to engage in business other than banking. But by the provisions of the Act they are rendered practically incapable of engaging in any business. By the provisions of the Act, a named bank cannot even use its name, and the compensation which is to be given will, in the absence of agreement, be determined by the Tribunal, and paid in securities which will mature not before ten years. A named bank may, if it agrees to distribute among the shareholders the compensation which it may receive, be paid in securities an amount equal to half the paid-up share capital, but obviously the fund will not be available to the Bank. It is true that under Section 15 (3) of the Act the Central Government may authorise the corresponding new banks to make advances to the named banks for any of the purposes mentioned in Section 15 (2). But that is a matter which rests only upon the will of the Central Government and no right can be founded upon it.

74. Where restrictions imposed upon the carrying on of a business are so stringent that the business cannot in practice be carried on, the Court will regard the imposition of the restrictions as unreasonable. In Mohannad Yasin v. Town Area Committee, Jalalabad, 1952 SCR 572= (AIR 1952 SC 115) this Court observed that under Article 19 (1) (g) of the Constitution a citizen has the right to carry on any occupation, trade or business and the only restriction on this right is the authority of the State to make a law relating to the carrying on of such occupation, trade or business as mentioned in Clause (6) of that Article as amended by the Constitution (First Amendment) Act, 1951. In Mohammad Yasin's case, 1952 SCR 572= (AIR 1952 SC 115) by the bye-laws of the Municipal Committee, it was provided that no person shall sell or purchase any vegetables or fruit within the limits of the municipal area of Jalalabad, wholesale or by auction, without paying the prescribed fee. It was urged on behalf of a wholesale dealer in vegetables that although there was no prohibition against carrying on business in vegetables by anybody, in effect the bye-laws brought about a total stoppage of the wholesaler's business in a commercial sense, for he had to pay prescribed fee to the contractor, and under the bye-laws the wholesale dealer could not charge a higher rate of commission than the contractor. The wholesale dealer, therefore, could charge the growers of vegetables and fruit only the commission permissible under the by-laws, and he had make over the entire commission to the contractor without retaining any part thereof. The wholesale dealer was thereby converted into mere tax-collector for the contractor or the Town Area Committee without any remuneration. The bye-laws in this situation were struck down as impairing the freedom to carry on business.

75. In Dwarkadas Shrinivas's case, 1954 SCR 674= (AIR 1954 SC 119) the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance II of 1950 and Act 28 of 1950 passed by the Parliament to replace the Ordinance were challenged. Under the Ordinance the managing agent and the elected directors were dismissed and new directors were appointed by the State. The Company was denuded of possession of its property and all that was left to the Company was bare legal title. In an appeal arising out of a suit challenging the validity of the Ordinance and the Act which replaced it this Court held that the Ordinance and the Act violated the fundamental right of the Company and of the plaintiff a preference shareholder upon whom demand was made for payment of unpaid calls. This Court held that the Ordinance and the Act in effect deprived the Company of its property within the meaning of Article 31 without compensation. It was observed by Mahajan, J., that practically all incidents of ownership were taken over by the State and nothing was left with the Company but the mere husk of title, and on that account the impugned statute had overstepped the limits of legitimate social control legislation.

76. If compensation paid is in such a form that it is not immediately available for restarting any business, declaration of the right to carry on business other than banking becomes an empty formality, when the entire undertaking of the named banks is transferred to and vests in the new banks together with the premises and the names of the banks are deprived of the services of its administrative and other staff.

77. The restriction imposed upon the right of the named banks to carry on "non-banking" business is, in our judgment, plainly unreasonable. No attempt is made to support the Act which while theoretically declaring the right of the named banks to carry on "non-banking" business makes it impossible in a commercial sense for the banks to carry on any business.

Protection of Article 14-

78. By Article 14 of the Constitution the State is enjoined not to deny any person equality before the law or the equal protection of the laws within the territory of India. The Article forbids class legislation, but not reasonable classification in making laws. The test of permissible classification under an Act lies in two cumulative conditions: (i) classification under the Act must be founded on an intelligible differentia distinguishing persons, transactions or things grouped together from others left out of the group; and (ii) the differentia has a rational relation to the object sought to be achieved by the Act: there must be a nexus between the basis of classification and the object of the Act: Chiranjit Lal Chowduri's case, 1950 SCR 869= (AIR 1951 SC 41); State of Bombay v. F. N. Balsara, (1951) SCR 682= (AIR 1951 SC 318);State of West Bengal v. Anwar Ali Sarkar, 1952 SCR 284= (AIR 1952 SC 75); Budhan Choudhry v. State of Bihar, (1955) 1 SCR 1045= (AIR 1955 SC 191); Ram Krishna Dalmia v. S. R. Tendolkar, 1959 SCR 279 at p. 300= (AIR 1958 SC 538 at p. 542); and State of Rajasthan v. Mukanchand, (1964) 6 SCR 903 at p. 910 = (AIR 1964 SC 1633 at p. 1635).

79. The Courts recognize in the Legislature some degree of elasticity in the matter of making a classification between persons, objects and transactions. Provided the classification is based on some intelligible ground, the Courts will not strike down that classification, because in the view of the Court it should have proceeded on some other ground or should have included the class selected for special treatment some other persons, objects or transactions which are not included by the Legislature. The Legislature is free to recognize the degree of harm and to restrict the operation of a law only to those cases where the need is the clearest. The Legislature need not extend the regulation of a law to all cases it may possibly reach, and may make a classification founded on practical grounds of convenience. Classification to be valid must, however, disclose a rational nexus with the object sought to be achieved by the law which makes the classification. Validity of a classification will be upheld only if that test is independently satisfied. The Court in examining the validity of a statute challenged as infringing the equality clause makes an assumption that there is a reasonable classification and that the classification has a rational relation to the object sought to be achieved by the statute.

80. By the definition of existing bank in Section 2 (d) of the Act, fourteen named banks in the First Schedule are, out of many commercial banks engaged in the business of banking, selected for special treatment, in that the undertaking of the named banks is taken over, they are prevented from carrying on in India and abroad banking business and the Act operates in practice to prevent those banks engaging in business other than banking.

81. By reason of the transfer of the undertaking of the named banks, the interests of the banks and the shareholders are vitally affected. Investment in bank-shares is regarded in India, especially in the shares of larger banks, as a safe investment on attractive terms with a steady return and fluidity of conversion. Mr. Palkhivala has handed in a statement setting out the percentage return of dividend on market rates in 1968. The rate works out at more than 10 per cent in the case of the shares of Bank of Baroda, Central Bank of India, Dena Bank, Indian Bank, United Bank and United Commercial Bank; and at more than 9 per cent in the case of shares of Bank of India, Bank of Maharashtra, Canara Bank, Indian Bank, Indian Overseas Bank and United Bank of India. In the case of Allahabad Bank it worked out at 5 per cent, and in the case of shares of Punjab National Bank and Syndicate Bank the rates are not available. This statement is not challenged. Since the taking over of the undertaking, there has resulted a steep fall in the ruling market quotations of the shares of a majority of the named banks. The market quotations have slumped to less than 50 per cent in the case of Bank of India, Central Bank, Bank of Baroda and even at the quoted rates probably there are no transactions. Dividend may no longer be distributed, for the banks have no liquid assets and they are not engaged in any commercial activity. It may take many years before the compensation payable to the banks may even be finalized, and be available to the named banks for utilising it in any commercial venture open to the banks under the Act. Under the scheme of determination of compensation, the total amount payable to the banks will be a fraction of the value of their net assets, and that compensation will not be available to the Banks immediately.

82. The ground for selection of the 14 banks is that those banks held deposits, as shown in the return as on the last Friday of June 1969, furnished to the Reserve Bank under Section 27 of the Banking Regulation Act, 1949, of not less than rupees fifty crores.

83. The object of Act 22 of 1969 is according to the long title to provide for the acquisition and transfer of the undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with the national policy and objectives and matters connected therewith or incidental thereto. The national policy may reasonably be taken to be policy contained in the directive principles of State policy, especially Articles 38 and 39 of the Constitution. For achieving the needs of a developing economy in conformity with the national policy and objectives, the resources of all the banks - foreign as well as Indian - are inadequate. Of the total deposits with commercial banks 27 per cent are with the State Bank of India and its subsidiaries: the named commercial banks of which the undertaking is taken over hold approximately 56 per cent of the deposits. The remaining 17 per cent of the deposits are shared by the foreign banks and the other scheduled and non-scheduled commercial banks. 83 per cent of the total resources may obviously not meet wholly or even substantially the needs of development of the economy.

84. In support of the plea that there is a reasonable relation between the differentia - ground for making the distinction between the named banks and the other banks - India and foreign - and the object of the Act it is urged that the policy of the Union is to control the concentration of private economic resources to ensure achievement of the directive principles of State policy, and for that purpose, selection has been made "with an eye, inter alia, to the magnitude and concentration of the

economic resources of such enterprises for inclusion in such law as would be essential or substantially conducive to the achievement of the national objectives and policy." It is apparently claimed that the object of the Government - not of the statute - is to acquire ultimately all banking institutions, but the 14 named banks are selected for acquisition because they have "larger business and wider coverage" in comparison with other banks not selected, and had also larger organization, better managerial resources and employees better trained and equipped. These are primarily grounds for classification and not for explaining the relation between the classification and the object of the Act. But in the absence of any reliable data, we do not think it necessary to express an opinion on the question whether selection of the undertaking of some out of many banking institutions, for compulsory acquisition, is liable to be struck down as hostile discrimination, on the ground that there is no reasonable relation between the differentia and the object of the Act which cannot be substantially served even by the acquisition of the undertakings of all the banks out of which the selection is made.

85. It is claimed that the depositors with the named banks have also a grievance. Those depositors who had made long-term deposits, taking into account the confidence they had in the management of the banks and the service they rendered, are now called upon to trust the management of a statutory corporation not selected by them, without an opportunity of being placed in the same position in which they would have been if they were permitted to transfer their deposits elsewhere. The argument is based on several imponderables and does not require any detailed consideration.

86. But two other grounds in support of the plea of impairment of the guarantee of equality clause require to be noticed. The fourteen named banks are prohibited from carrying on banking business - a disability for which there is no rational explanation. Banks other than the named banks may carry on banking business in India and abroad: new banks may be floated for carrying on banking business, but the named banks are prohibited from carrying on banking business. Each named bank had, even as claimed on behalf of the Union, by its superior management established an extensive business organization, and each bank had deposits exceeding Rs. 50 crores. The undertakings of the banks are taken over and they are prohibited from doing banking business. In the affidavit filed on behalf of the Union no serious attempt is made to explain why the named banks should be specially selected for being subjected to this disability.

87. The petitioner also contended that the classification is made on a wholly irrational ground, viz., penalizing efficiency and good management, for the major fourteen banks had made a sustained effort and had exceeded the Reserve Bank target and had fully complied with the directives under the social control legislation. This, it is said, is a reversal of the policy underlying Section 36 AE of the Banking Regulation Act under which inefficient and recalcitrant banks are contemplated to be taken over by the Government. We need express no opinion on this part of the argument. But the petitioner is on firm ground in contending that when after acquiring the assets, undertaking, organization, goodwill and the names of the named banks they are prohibited from carrying on banking business, whereas other banks Indian as well as foreign - are permitted to carry on banking business, a flagrantly hostile discrimination is practised. Section 15 (2) of the Act which by the clearest implication prohibits the named banks from carrying on banking business is, therefore,

liable to be struck down. It is immaterial whether the entire sub-section (2) is struck down or as suggested by the Attorney-General that only the words "other than the business of banking" in Section 15 (2) (e) be struck down. Again, in considering the validity of Section 15 (2) (e) in its relation to the guarantee of freedom to carry on business other than banking, we have already pointed out that the named banks are also, (though theoretically competent) in substance prohibited from carrying on non-banking business. For reasons set out by us for holding that the restriction is unreasonable, it must also be held that the guarantee of equality is impaired by preventing the named banks carrying on the non-banking business.

Protection of the guarantee under Article 31 (2)-

88. The guarantee under Article 31 (2) arises directly out of the restrictions imposed upon the power of the State to acquire private property, without the consent of the owner for a public purpose. Upon the exercise of the power to acquire or requisition property, by clause (2) two restrictions are placed: (a) power to acquire shall not be exercised save for a public purpose; and (b) that it shall not be exercised save by authority of a law which provides for compensation for the property acquired or requisitioned, and fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. Sub-clause (2A) in substance provides a definition of "compulsory acquisition or requisitioning of property". Existence of a public purpose and provision for giving compensation for compulsory acquisition of property of an individual are conditions of the exercise of the power. If either condition be absent, the guarantee under Article 31 (2) is impaired, and the law providing for acquisition will be invalid. But jurisdiction of the Court to question the law on the ground that compensation provided thereby is not adequate is, expressly excluded.

89. In the case before us we need not express any opinion on the question whether a composite undertaking of two or more distinct lines of business may be acquired where there is a public purpose for acquisition of the assets of one or more lines of business, but not in respect of all the lines of business. As we have already observed, there is no evidence that the named banks carried on non-banking business, distinct from banking business, and in respect of such non-banking business the banks owned distinct assets apart from the assets of the banking business.

90. The law providing for acquisition must again either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be determined and given. The owner whose property is compulsorily acquired is guaranteed the right to receive compensation and the amount of compensation must either be fixed by the law or be determined according to the principles and in the manner specified by the law. The law which does not ensure the guarantee will, except where the grievance only is that the compensation provided by the law is inadequate, be declared void.

91. The petitioner says that the expression "compensation" means a "just equivalent" in money of the property acquired and that the law providing for compulsory acquisition must "aim" at a just equivalent to the expropriated owner: if the law so aims at, it will not be deemed to impair the guarantee merely on the ground that the compensation paid to the owner is inadequate. The Attorney-General on the other hand says that "compensation" in Article 31 (2) does not mean a just equivalent, and it is not predicated of the validity of a law relating to compulsory acquisition that it must aim at awarding a just equivalent, for, if the law is not confiscatory, or the principles for determination of compensation are not irrelevant, "the Courts cannot go into the property of such principles or adequacy or reasonableness of the compensation".

92. Two questions immediately arise for determination. What is the true meaning of the expression "compensation" as used in Article 31 (2), and what is the extent of the jurisdiction of the Court when the validity of a law providing for compulsory acquisition of property for a public purpose is challenged?

92-A. In its dictionary meaning "compensation" means anything given to make things equal in value: anything given as an equivalent, to make amends for loss or damage. In all States where the rule of law prevails, the right to compensation is guaranteed by the Constitution or regarded as inextricably involved in the right to property.

93. By the 5th Amendment in the Constitution of the U. S. A. the right of eminent domain is expressly circumscribed by providing "Nor shall private property be taken for public use, without just compensation". Such a provision is to be found also in every State Constitution in the United States: Lewis' Eminent Domain, 3rd Edn., (pp. 28-50). The Japanese Constitution, 1946, by Article 25 provides a similar guarantee. Under the Commonwealth of Australia Constitution, 1900, the Commonwealth Parliament is invested with the power of acquisition of property on "just terms": Section (57 XXXI).

94. Under the Common Law of England, principles for payment of compensation for acquisition of property by the State are stated by Blackstone in his "Commentaries on the Laws of England", 4th Edn., Vol. 1, at p. 109:

"So great moreover is the regard of the law for private property, that it will not authorise the least violation of it; no, not even for the general good of the whole community. * * * Besides, the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modelled by the municipal law. In this and similar cases, the legislature alone can, and indeed frequently does interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but giving him a full indemnification and equivalent for the injury thereby sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the

legislature does, is to oblige the owner to alienate his possession for a reasonable price: * * *"

The British Parliament is supreme and its powers are not subject to any constitutional limitations. But the British parliament has rarely, if at all, exercised power to take property without payment of the cash value of the property taken. In Attorney-General v. De Keyser's Royal Hotel, 1920 AC 508, the House of Lords held that the Crown is not entitled as of right either by virtue of its prerogative or under any statute, to take possession of the land or building of a subject for administrative purposes in connection with the defence of the realm, without compensation for their use and occupation.

95. Under the Government of India Act, 1935, by Section 299 (2) it was enacted that:

"Neither the Federal or a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined." Article 31 (2) before it was amended by the Constitution (Fourth Amendment) Act, 1955, followed substantially the same pattern.

96. Prior to the amendment of Article 31 (2) this Court interpreted the expression "compensation" as meaning "full indemnification". Patanjali Sastri, C. J., in State of West Bengal v. Mrs. Bela Banerjee, (1954) SCR 558 = (AIR 1954 SC 170) in interpreting the guarantee under Article 31 (2), speaking on behalf of the Court observed:

"While it is true that the legislature is given the discretionary powers of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgment as to what principles, should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justifiable issue to be adjudicated by the Court."

In the view of the learned Chief Justice the expression "just equivalent" meant "full indemnification" and the expropriated owner was on that account entitled to the market value of the property on the date of deprivation of the property. This case was decided under a statute enacted

before the Constitution (Fourth Amendment) Act 1955. The principle of that case was approved in N. B. Jeejeebhoy v. Asst. Collector, Thana Prant, Thana, (1965) 1 SCR 636= (AIR 1965 SC 1096) - a case under the Land Acquisition (Bombay Amendment) Act, 1948, and invoking the guarantee under Section 299 (2) of the Government of India Act, 1935; in Union of India v. Kamlabai Harjiwandas, (1968) 1 SCR 463= (AIR 1968 SC 377) -a case under the Requisitioning and Acquisition of Immovable Property Act, 1952; and in State of Madras v. D. Namasivaya Mudaliar, (1964) 6 SCR 936= (AIR 1965 SC 190) - a case arising under the Madras Lignite Acquisition of Land Act, 1953.

97. Article 31 (2) was amended with effect from April 27, 1955, by the Constitution (Fourth Amendment) Act, 1955. By sub-clause (2A) a definition of acquisition or requisitioning of properties was supplied and certain other formal changes were also made, with the important reservation that "no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate". In cases arising under statutes enacted after April 27, 1955, this Court held that the expression "compensation" in Article 31 (2) as amended continued to mean "just equivalent" as under the unamended clause: P. Vajravelu Mudaliar v. Special Deputy Collector, Madras, (1965) 1 SCR 614= (AIR 1965 SC 1017) - under the Land Acquisition (Madras Amendment) Act 23 of 1961; Union of India v. Metal Corporation of India Ltd., (1967) 1 SCR 255= (AIR 1967 SC 637) under the Metal Corporation of India (Acquisition of Undertakings) Act 44 of 1955; Lachhman Dass v. Municipal Committee, Jalalabad, AIR 1969 SC 1125 under Sec. 20B of the Displaced Persons (Compensation and Rehabilitation) Act 1954, as amended by Act 2 of 1960. In Ranojirao Shinde's case, (1968) 3 SCR 489= (AIR 1968 SC 1053) dealing with a case under the Madhya Pradesh Abolition of Cash Grants Act 16 of 1963 it was observed that the compensation referred to in Article 31 (2) is a just equivalent of the value of the property taken. But this Court in State of Gujarat v. Shantilal Mangaldas, AIR 1969 SC 634 observed that compensation payable for compulsory acquisition of property is not, by the application of any principles, determinable as a precise sum, and by calling it a "just" or "fair" equivalent, no definiteness could be attached thereto; that valuation of lands, buildings and incorporeal rights has to be made on the application of different principles, e.g., capitalization of net income at appropriate rates, reinstatement, determination of original value reduced by depreciation, break-up value of properties which had outgrown their utility; that the rules relating to determination of value of lands, buildings, machinery and other classes of property differ, and the application of several methods or principles lead to widely divergent amounts, and since compensation is not capable of precise determination by the application of recognized rules, by qualifying the expression "compensation" by the adjective "just", the determination was made more controversial. It was observed that the Parliament amended the Constitution by the Fourth Amendment Act declaring that adequacy of compensation fixed by the Legislature as amended according to the principles specified by the Legislature for determination will not be justiciable. It was then observed that:

"The right declared by the Constitution guarantees that compensation shall be given before a person is compulsorily expropriated of his property for a public purpose. What is fixed as compensation by statute, or by the application of principles specified for determination of compensation is guaranteed, it does not mean, however, that something fixed or determined by the application of specified principle which is illusory or can in no sense be regarded as compensation must be upheld

by the Courts for, to do so, would be to grant charter of arbitrariness and permit a device to defeat the constitutional guarantee. But compensation fixed or determined on principles specified by the Legislature cannot be permitted to be challenged on the somewhat indefinite plea that it is not a just or fair equivalent. Principles may be challenged on the ground that they are irrelevant to the determination of compensation, but not on the plea that what is awarded as a result of the application of those principles is not just or fair compensation. A challenge to a statute that the principles specified by it do not award a just equivalent will be in clear violation of the constitutional declaration that inadequacy of compensation provided is not justiciable.

98. This Court held in Mrs. Bela Banerjee's case, 1954 SCR 558= (AIR 1954 SC 170) that by the guarantee of the right to compensation for compulsory acquisition under Article 31 (2), before it was amended by the Constitution (Fourth Amendment) Act, the owner was entitled to receive a "just equivalent" or "full indemnification". In P. Vajravelu Mudaliar's case, (1965) 1 SCR 614= (AIR 1965 SC 1017) this Court held that notwithstanding the amendment of Article 31 (2) by the Constitution (Fourth Amendment) Act, and even after the addition of the words "and no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate", the expression "compensation" occurring in Article 31 (2) after the Constitution (Fourth Amendment) Act continued to have the same meaning as it had in Section 299 (2) of the Government of India Act, 1935, and Article 31 (2) before it was amended, viz., "just equivalent" or "full indemnification".

99. There was apparently no dispute that Article 31 (2) before and after it was amended guaranteed a right to compensation for compulsory acquisition of property and that by giving to the owner, for compulsory acquisition of his property, compensation which was illusory, or determined by the application of principles which were irrelevant, the constitutional guarantee of compensation was not complied with. There was difference of opinion on one matter between the decisions in P. Vajravelu Mudaliar's case, (1965) 1 SCR 614= (AIR 1965 SC 1017) and Shantilal Mangaldas's case, AIR 1969 SC 634. In the former case it was observed that the constitutional guarantee was satisfied only if a just equivalent of the property was given to the owner: in the latter case it was held that "compensation" being itself incapable of any precise determination, no definite connotation could be attached thereto by calling it "just equivalent" or "full indemnification", and under Acts enacted after the amendment of Article 31 (2) it is not open to the Court to call in question the law providing for compensation on the ground that it is inadequate, whether the amount of compensation is fixed by the law or is be determined according to principles specified therein. It was observed in the judgment in Shantilal Mangaldas' case, AIR 1969 SC 634 at p. 651:

"Whatever may have been the meaning of the expression "compensation" under the unamended Article 31 (2), when the Parliament has expressly enacted under the amended clause that "no such law shall be called in question in any Court on the ground that the compensation provided by that law is not adequate", it was intended clearly to exclude from the jurisdiction of the Court an enquiry that what is fixed or determined by the application of the principles specified as compensation does not award to the owner a just equivalent of what he is deprived."

In P. Vajravelu Mudaliar's case, (1965) 1 SCR 614= (AIR 1965 SC 1017) again the Court in dealing with the effect of the amendment observed (at p. 627) (of SCR)= (At. p.1024 of AIR):

"Therefore, a more reasonable interpretation is that neither the principles prescribing the "just equivalent" nor the "just equivalent" can be questioned by the Court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. To illustrate a law is made to acquire a house; its value at the time of acquisition has to be fixed; there are many modes of valuation, namely, estimate by an engineer, value reflected by comparable sales, capitalisation of rent and similar others. The application of different principles may lead to different results. The adoption of one principle may give a higher value and the adoption of another principle may give a lesser value. But nonetheless they are principles on which and the manner in which compensation is determined. The Court cannot obviously say that the law should have adopted one principle and not the other for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired, or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Article 31 (2) of the Constitution."

The Court then applied that principle to the facts of the case and held that the Land Acquisition (Madras Amendment) Act, 1961, which provided that - (i) the owner of land acquired for housing shall get only the value of the land at the date of the notification under Section 4 (1) of the Land Acquisition Act, 1894, or an amount equivalent to the average market value of the land during the last five years immediately preceding such date, whichever was less; (ii) the owner shall get a solatium of only 5 per cent, and not 15 per cent, and (iii) in valuing the land acquired any increase in its suitability or adaptability for any use other than the use to which the land was put at the date of the notification under Section 4 (1) of the Land Acquisition Act, 1894, shall not be taken into consideration did not impair the right to receive compensation.The Court observed at p. 631 (of SCR) = (At p. 1026 of AIR):

"In awarding compensation if the potential value of the land is excluded, it cannot be said that the compensation awarded is the just equivalent of what the owner has been deprived of. But such an exclusion only pertains to the method of ascertaining the compensation. One of the elements that should properly be taken into account in fixing the compensation is omitted: it results in the adequacy of the compensation, * * *

We, therefore, hold that the Amending Act does not offend Article 31 (2) of the Constitution."

The compensation provided by the Madras Act, according to the principles specified, was not the full market value at the date of acquisition. It did not amount to "full indemnification" of the owner:

the Court still held that the law did not offend the guarantee under Article 31 (2) as amended, because the objection was only as to the adequacy of compensation. In Shantilal Mangaldas' case, AIR 1969 SC 634, the Court held that the Constitution (Fourth Amendment) Act, Article 31 (2) guarantees a right to receive compensation for loss of property compulsorily acquired, but compensation does not mean a just equivalent of the property. If compensation is provided by law to be paid and the compensation is not illusory or is not determinable by the application of irrelevant principles, the law is not open to challenge on the ground that compensation fixed or determined to be paid is inadequate.

100. Both the lines of thought which converge in the ultimate result, support the view that the principle specified by the law for determination of compensation is beyond the pale of challenge, if it is relevant to the determination of compensation and is a recognised principle applicable in the determination of compensation for property compulsorily acquired and the principle is appropriate in determining the value of the class of property sought to be acquired. On the application of the view expressed in P. Vajravelu Mudaliar's case, (1965) 1 SCR 614 = (AIR 1965 SC 1017) or in Shantilal Mangaldas's case, AIR 1969 SC 634, the Act, in our judgment, is liable to be struck down as it fails to provide to the expropriated banks compensation determined according to relevant principles. Section 4 of the Act transfers the undertaking of every named bank to and vests it in the corresponding new bank. Section 6(1) provides for payment of compensation for acquisition of the undertaking, and the compensation is to be determined in accordance with the principles specified in the Second Schedule. Section 6 (2) then provides that though separate valuations are made in respect of the several matters specified in Sch. II of the Act, the amount of compensation shall be deemed to be a single compensation. Compensation being the equivalent in terms of money of the property compulsorily acquired, the principle for determination of compensation is intended to award to the expropriated owner the value of the property acquired. The science of valuation of property recognizes several principles or methods for determining the value to be paid as compensation to the owner for loss of his property; there are different methods applicable to different classes of property in the determination of the value to be paid as recompense for loss of his property. A method appropriate to the determination of value of one class of property may be wholly inappropriate in determining the value of another class of property. If an appropriate method or principle for determination of compensation is applied, the fact that by the application of another principle which is also appropriate, a different value is reached, the Court will not be justified in entertaining the contention that out of the two appropriate methods, one more generous to the owner should have been applied by the Legislature.

101. We are unable to hold that a principle specified by the Parliament for determining compensation of the property to be acquired is conclusive. If that view be accepted, the Parliament will be invested with a charter of arbitrariness and by abuse of legislative process, the constitutional guarantee of the right to compensation may be severely impaired. The principle specified must be appropriate to the determination of compensation for the particular class of property sought to be acquired. If several principles are appropriate and one is selected for determination of the value of the property to be acquired, selection of that principle to the exclusion of other principles is not open to challenge, for the selection must be left to the wisdom of the Parliament.

102. The broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its potentialities. Where there is an established market for the property acquired the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with the property, and the benefit which the acquirer is likely to obtain by the acquisition. Under the Land Acquisition Acts compensation paid is the value to the owner together with all its potentialities and its special adaptability if the land is peculiarly suitable for a particular use, if it gives an enhanced value at the date of acquisition.

103. The important methods of determination of compensation are - (i) market value determined from sales of comparable properties, proximate in time to the date of acquisition, similarly situate, and possessing the same or similar advantages and subject to the same or similar disadvantages. Market value is the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase; (ii) capitalization of the net annual profit out of the property at a rate equal in normal cases to the return from giltedged securities. Ordinarily value of the property may be determined by capitalizing the net annual value obtainable in the market at the date of the notice of acquisition, (iii) where the property is a house, expenditure likely to be incurred for constructing a similar house, and reduced by the depreciation for the number of years since it was constructed; (iv) principle of reinstatement, where it is satisfactorily established that reinstatement in some other place is bona fide intended, there being no general market for the property for the purpose for which it is devoted (the purpose being a public purpose) and would have continued to be devoted, but for compulsory acquisition. Here compensation will be assessed on the basis of reasonable cost of reinstatement; (v) when the property has outgrown its utility and it is reasonably incapable of economic use, it may be valued as land plus the break-up value of the structure. But the fact that the acquirer does not intend to use the property for which it is used at the time of acquisition and desires to demolish it or use it for other purpose is irrelevant; and (vi) the property to be acquired has ordinarily to be valued as a unit. Normally an aggregate of the value of different components will not be the value of the unit.

104. These are, however, not the only methods. The method of determining the value of property by the application of an appropriate multiplier to the net annual income or profit is a satisfactory method of valuation of lands with buildings, only if the land is fully developed, i.e., it has been put to full use legally permissible and economically justifiable, and the income out of the property is the normal commercial and not a controlled return or a return depreciated on account of special circumstances. If the property is not fully developed, or the return is not commercial the method may yield a misleading result.

105. The expression "property" in Article 31 (2) as in Entry 42 of List III is wide enough to include an undertaking, and an undertaking subject to obligations may be compulsorily acquired under a law made in exercise of power under Entry 42, List III. The language of the amended clause (2) of Article 31 compared with the language of the clause before it was amended by the Constitution

(Fourth Amendment) Act leaves no room for doubt. Before it was amended, the guarantee covered the acquisition of "property movable or immovable including, any interest in, or in any company owing any commercial or industrial undertaking. In the amended clause only the word "property" is used, deleting the expressions which did not add to its connotation. But when an undertaking is acquired as a unit the principles for determination of compensation must be relevant and also appropriate to the acquisition of the entire undertaking. In determining the appropriate rate of the net profits the return from gilt-edged securities may, unless it is otherwise found unsuitable, be adopted.

106. Compensation to be determined under the Act is for acquisition of the undertaking, but the Act instead of providing for valuing the entire undertaking as a unit provides for determining the value of some only of the components, which constitute the undertaking, and reduced by the liabilities. It also provides different methods of determining compensation in respect of each such component. This method for determination of compensation is prima facie not a method relevant to the determination of compensation for acquisition of the undertaking. Aggregate of the value of components is not necessarily the value of the entirety of a unit of property acquired, especially when the property is a going concern, with an organized business. On that ground alone, acquisition of the undertaking is liable to be declared invalid, for it impairs the constitutional guarantee for payment of compensation for acquisition of property by law. Even if it be assumed that the aggregate value of the different components will be equal to the value of the undertaking of the named bank as a going concern the principles specified, in our judgment, do not give a true recompense to the banks for the loss of the undertaking. Schedule II by clause (1) provides:

"The compensation x x x in respect of the acquisition of the undertaking thereof shall be an amount equal to the sum total of the value of the assets of the existing bank as on the commencement of this Act, calculated in accordance with the provisions of Part I, less the sum total of the liabilities computed and obligations of the existing bank calculated in accordance with the provisions of Part II."

For the purpose of Part I "assets" mean the total of the heads (a) to (h) and the expression "liabilities" is defined as meaning the total amount of all outside liabilities existing at the commencement of the Act and contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources. Compensation payable to the named banks is accordingly the aggregate of some of the components of the undertaking, reduced by the aggregate of liabilities determined in the manner provided in the Schedule. It appears clear that in determining the compensation for undertaking - (i) certain important classes of assets are omitted from the heads (a) to (h); (ii) the method specified for valuation of lands and buildings is not relevant to determination of compensation, and the value determined thereby in certain circumstances is illusory as compensation; and (iii) the principle for determination of the aggregate value of liabilities is also irrelevant.

107. The undertaking of a banking company taken over as a going concern would ordinarily include the goodwill and the value of the unexpired period of long-term leases in the prevailing conditions in urban areas. But good-will of the banks is not one of the items in the assets in the Schedule, and in Cl. (f) though provision is made for including a part of the premium paid in respect of leasehold properties proportionate to the unexpired period, no value of the leasehold interest for the unexpired period is given.

108. Goodwill of a business is an intangible asset: it is the whole advantage of the reputation and connections formed with the customers together with the circumstances making the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years or in excess of normal amounts because of its reputation, location and other features: Trego v. Hunt, 1896 AC 7. Goodwill of an undertaking therefore is the value of the attraction to customers arising from the name, and reputation for skill, integrity, efficient business management, or efficient service.

109. Business of banking thrives on its reputation for probity of its dealings, efficiency of the service it provides, courtesy and promptness of the staff, and above all the confidence it inspires among the customers for the safety of the funds entrusted. The Reserve Bank, it is true, exercises stringent control over the transactions which banks carry on in India. Existence of these powers and exercise thereof may and do ensure to a certain extent the safety of the founds entrusted to the Banks, But the business which a bank attracts still depends upon the confidence which the depositor reposes in the management. A bank is not like a grocer's shop: a customer does not extend his patronage to a bank merely because it has a branch easily accessible to him. Outside the public sector, there are 50 Indian scheduled banks, 13 foreign banks, besides 16 non-scheduled banks. The deposits in the banks not taken over under the Act range between Rs. 400 crores and a few lakhs of rupees. Deposits attracted by the major private commercial banks are attributable largely to the personal goodwill of the management. The regulatory provisions of the Banking Companies Act and the control which the Reserve Bank exercises over the banks may to a certain extent reduce the chance of the resources of the bank being misused, but a banking company for its business still largely depends upon the reputation of its management. We are unable to agree with the contention raised in the Union's affidavit that a banking establishment has no goodwill, nor are we able to accept the plea raised by the Attorney General that the value of the goodwill of bank is insignificant and it may be ignored in valuing the undertaking as a going concern.

110. Under clause (f) of Schedule II provision is made for valuing a proportionate part of the premium paid in respect of all leasehold properties to the unexpired duration of the leases, but there is no provision made for payment of compensation for the unexpired period of the leases. Having regard to the present day conditions it is clear that with rent control on leases operating in various States the unexpired period of leases has also a substantial value.

111. The value determined by excluding important components of the undertaking, such as the

goodwill and value of the unexpired period of leases, will not, in our judgment, be compensation for the undertaking.

112. The other defects in the method of valuation, it was claimed by Mr. Palkhivala, are the inclusion of certain assets such as cash, choses in action and similar assets, which under the law are not regarded as capable of being acquired as property. This inclusion, it is contended, vitiates the scheme of acquisition. Under clause (a) of Part I-Assets - the amount of cash in hand and with the Reserve Bank and the State Bank of India (including foreign currency notes which shall be converted at the market rate of exchange) are liable to be included. Cash in hand is not an item which is capable of being compulsorily acquired, not because it is not property, but because taking over the cash and providing for acquisition thereof, compensation payable at some future date amounts to levying a "forced loan" in the guise of acquisition. This Court in State of Bihar v. Sir Kameshwar Singh of Darbhanga, 1952 SCR 889 = (AIR 1952 SC 252) held that cash and choses in action are not capable of compulsory acquisition. That view was repeated by this Court in Bombay Dyeing and Manufacturing Co., Ltd. v. State of Bombay, 1958 SCR 1122= (AIR 1958 SC 328) and Ranojirao Shinde's case, (1968) 3 SCR 489= (AIR 1968 SC 1053). We do not propose to express our opinion on the question whether in adopting the method of determination of compensation, by aggregating the value of assets which constitute the undertaking, the rule that cash and choses in action are incapable of compulsory acquisition may be applied.

113. Under Item (e) the value of any land or buildings is one of the assets. The first Explanation provides that for the purpose of this clause (clause (e)) "value" shall be deemed to be the market value of the land or buildings, but where such market value exceeds the "ascertained value" determined in the manner specified in Explanation 2, the value shall be deemed to mean such "ascertained value". The value of the land and buildings is therefore the market value or the "ascertained value" whichever is less. Under Explanation 2, clause (1) "ascertained value" in respect of buildings which are wholly occupied on the date of the commencement of the Act is twelve times the amount of the annual rent or the rent for which the building may reasonably be expected to be let from year to year reduced by certain specific items. This provision, in our judgment, does not lay down a relevant principle of valuation of buildings. In the first place, making a provision for payment of capitalised annual rental at twelve times the amount of rent cannot reasonably be regarded as payment of compensation having regard to the conditions prevailing in the money market. Capitalization of annual rental which is generally based on controlled rent under some State Acts at rates pegged down to the rates prevailing in 1940 and on the footing that investment in building yields 8 1/3 per cent. return furnishes a wholly misleading result which cannot be called compensation. Value of immovable property has spiralled during the last few years and the rental which is mostly controlled does not bear any reasonable relation to the economic return from property. If the building is partly occupied by the Bank itself and partly by a tenant, the ascertained value will be twelve times the annual rental received, and the rent for which the remaining part occupied by the Bank may reasonably be expected to be let out. By the Act the corresponding new banks take over vacant possession of the lands and buildings belonging to the named banks. There is in the present conditions considerable value attached to vacant business premises in urban areas. True compensation for vacant premises can be ascertained by finding out the market value of comparable premises at or about the time of the vesting of the undertaking and not by capitalising the rental - actual or estimated. Vacant premises have a considerably larger value than business

premises which are occupied by tenants. The Act instead of taking into account the value of the premises as vacant premises adopted a method which cannot be regarded as relevant. Prima facie, this would not give any reliable basis for determining the compensation for the land and buildings.

114. Again in determining the compensation under clause (e), the annual rent is reduced by several outgoings and the balance is capitalized. The first item of deduction is one-sixth of the amount thereof on account of maintenance and repairs. Whether the building is old or new, whether it requires or does not requires maintenance or repairs 16 2/3 per cent. of the total amount of rent is liable to be deducted towards maintenance and repairs. The vice of items (v) and (vi) of clause (1) of Explanation 2 is that they provide for deduction of a capital charge out of the annual rental which according to no rational system of valuing property by capitalization of the rental method is admissible. Under item (v) where the building is subject to a mortgage or other capital charge, the amount of interest on such mortgage or charge, and under item (vi) where the building has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital are liable to be deducted from the annual rental for determining the ascertained value. These encumbrances are also liable to be deducted under the head "liabilities". A simple illustration may suffice to pinpoint the inequity of the method. In respect of a building owned by a bank of the value of Rs. 10 lakhs and mortgaged for say Rs. 7,50,000 interest at the rate of 8 per cent (which may be regarded as the current commercial rate) would amount to Rs. 60,000. The estimated annual rental which would ordinarily not exceed Rs. 60,000 has under clause (e) to be reduced in the first instance by other outgoing. The assets would show a minus figure as value of the building, and on the liabilities side the entire amount of mortgage liability would be debited. The method provided by the Act permits the annual interest on the amount of the encumbrance to be deducted before capitalization, and the capitalized value is again reduced by the amount of the encumbrance. In effect, a single debt is, in determining the compensation debited twice, first in computing the value of assets, and again, in computing the liabilities.

115. We are unable to accept the argument raised by the Attorney-General that under the head "liabilities" in Part II only those mortgages or capital charges in respect of which the amount has fallen due are liable to be included on the liabilities side. Under the head "liabilities" the total amount of all outside liabilities existing at the commencement of the Act, and all contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources on or after the date of commencement of the Act will have to be included. When even contingent liabilities are included in the total amount of all outside liabilities, a mortgage debt or capital charge must be taken into account in determining the liabilities by which the aggregate of the value of the assets is to be reduced even if the period of the mortgage or capital charge has not expired. The liability under a mortgage or capital charge exists whether the period stipulated under the deed creating the encumbrance has expired of not.

116. Under Cl. (2) of Explain. 2, it is provided that in the case of building which are partly occupied, the valuation shall be made on the basis of the "plinth area" occupied and multiplying it by the proportion which that area bears to the total plinth area of the buildings. The use of the expression "plinth area" appears to be unfortunate. What was intended is "floor area". It the

expression "plinth area" is understood to mean "floor area no fault may be found with the principle underlying clause (2) of Explanation 2.

117. Under Clause (3) of Explanation 2, where there is open land which has no building erected thereon, or which is not appurtenant to any building, the value is to be determined "with reference to the prices at which sales or purchases of similar or comparable lands have been made during the period of three years immediately preceding the date of the commencement of" the Act. Whereas the value of the open land is to be the market value, the value of the land with building to be taken into account is the value determined by the method of capitalization of annual rent or market value whichever is less. The Explanation does not take into account whether the construction on the land fully develops the land, and the rental is economic.

118. We are, therefore, unable to hold that item (e) specifies a relevant principle for determination of compensation for lands and buildings. It is not disputed that the major Banks occupy their own buildings in important towns, and investments in buildings constitute a part of the assets of the Banks which cannot be treated as negligible. By providing a method of valuation of buildings which is not relevant the amount determined cannot be regarded as compensation.

119. We have already referred to item (f) under which a proportionate part of the premium paid is liable to be included in the assets but not the value for the unexpired period of the leases. Item (h) provides for the inclusion of the market or realizable value, as may be appropriate, of other assets appearing on the books of the bank, no value being allowed for capitalized expenses, such as share-selling commission, organizational expenses and brokerage, losses incurred and similar other items.

120. Mr. Palkhivala urged that certain assets which do not appear in the books of account still have substantial value and they are omitted from consideration in computing the aggregate of the value of assets. Counsel said that every bank is permitted to have secret reserve and those secret reserves may not appear in the books of account of the banks. We are unable to accept that contention. A banking company is entitled to withhold from the balance-sheet its secret reserve, but there must be some account in respect of these secret reserves. The expression "books of the Bank" may not be equated with balance-sheets or the books of account only.

121. The expression "liabilities" existing at the commencement of the Act includes all debts due or to become due. Under the head "liabilities" contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources on or after the date of commencement of the Act are to be debited. The clause is body drafted. The present value of the contingent liabilities at the date of the acquisition and not the total contingent liabilities may on any rational system of accounting be debited against the aggregate value of the assets. For instance, if a banking company is liable to pay to its employees gratuity, the present value of the liability to pay gratuity at the date of the acquisition made on actual calculation may alone be debited, and not the

total face value of the liability.

122. The Attorney-General contended that even if the goodwill of a banking company is of substantial value, and inclusion of the goodwill is not provided for, or the value of buildings and lands is not the market value or that there is a departure from recognized principles for determination of compensation, the deficiencies in the Act result merely in inadequate compensation within the meaning of Article 31 (2) of the Constitution and the Act cannot on that account be challenged as invalid. We are unable to agree with that contention. The constitution guarantees a right to compensation-an equivalent in money of the property compulsorily acquired. That is the basic guarantee. The law must therefore provide compensation, and for determining compensation relevant principles must be specified; if the principles are not relevant the ultimate value determined is not compensation.

123. The Attorney-General also contended that if in consequence of the adoption of the method of valuation, an amount determined as compensation is not illusory, the Courts have no jurisdiction to question the validity of the law, unless the law is expropriatory, for, in the ultimate analysis the grievance relates to the adequacy of compensation. He contended that the exclusion of one of the elements in fixing the compensation, or application of a principle which is not a recognized principle, results in inadequate price, and is not open to challenge, and relied in support upon the observations made in P. Vajravelu Mudaliar's case, (1965) 1 SCR = (AIR 1965 SC 1017) (at p. 631 of SCR) = (at p. 1026 of AIR) which we have already quoted in another context in relation to the challenge to the validity of the Land Acquisition (Madras Amendment) Act, 1961, which excluded in determining compensation the potential value of the land. The Court held that exclusion of potential value amounted to giving inadequate compensation and was not a fraud on power. The principle of that case has no application when valuation of an undertaking is sought to be made by breaking it up into several heads of assets and important heads are excluded and others valued by the application of irrelevant principles, or principles of which the only claim for acceptance is their novelty. The Constitution guarantees that the expropriated owner must be given the value of his property, i. e., what may be regarded reasonably as compensation for loss of the property and that such compensation should not be illusory and not reached by the application of irrelevant principles. In our view, determination of compensation to be paid for the acquisition of an undertaking as a unit after awarding compensation for some items which go to make up the undertaking and omitting important items amounts to adopting an irrelevant principle in the determination of the value of the undertaking, and does not furnish compensation to the expropriated owner.

124. The Attorney-General contended that the total value of the undertaking of the named banks even calculated according to the method provided in Schedule II exceeded the total market value of the shares, and on that account there is no ground for holding that the law providing for compensation denies to the share-holders the guarantee of the right to compensation under Article 31 (2). But there is no evidence on this part of the case.

125. Compensation may be provided under a statute, otherwise than in the form of money: it may be given as equivalent of money, e. g., a bond. But in judging whether the law provides for compensation, the money value at the date of expropriation of what is given as compensation, must be considered. If the rate of interest compared with the ruling commercial rate is low, it will reduce the present value of the bond. The Constitution guarantees a right to compensation-an equivalent of the property expropriated and the right to compensation cannot be converted into a loan on terms which do not fairly compare with the prevailing commercial terms. If the statute in providing for compensation devises a scheme for payment of compensation by giving it in the form of bonds, and the present value of what is determined to be given is thereby substantially reduced, the statute impairs the guarantee of compensation.

126. A scheme for payment of compensation may take many forms. If the present value of what is given reasonably approximates to what is determined as compensation according to the principles provided by the statute, no fault may be found. But if the law seeks to convert the compensation determined into a forced loan, or to give compensation in the form of a bond of which the market value at the date of expropriation does not approximate the amount determined as compensation, the Court must consider whether what is given is in truth compensation which is inadequate, or that it is not compensation at all. Since we are of the view that the scheme in Schedule II of the Act suffers from the vice that it does not award compensation according to any recognized principles, we need not dilate upon this matter further. We need only observe that by giving to the expropriated owner compensation in bonds of the face-value of the amount determined maturing after many years and carrying a certain rate of interest, the constitutional guarantee is not necessarily complied with. If the market value of the bond is not approximately equal to the face-value, the expropriated owner may raise a grievance that the guarantee under Article 31 (2) is impaired.

127. We are of the view that by the method adopted for valuation of the undertaking, important items of assets have been excluded, and principles some of which are irrelevant and some not recognised are adopted. What is determined by the adoption of the method adopted in Schedule II does not award to the named banks compensation for loss of their undertaking. The ultimate result substantially impairs the guarantee of compensation, and on that account the Act is liable to be struck down.

IV. Infringement of the guarantee of freedom of trade, commerce and intercourse under Article 301:-

128. In the view we have taken the provisions relating to determination and payment of compensation for compulsory acquisition of the undertaking of the named banks impair the guarantee under Article 31 (2) of the Constitution, we do not deem it necessary to decide whether Act 22 of 1969 violates the guarantee of freedom of trade, commerce and intercourse in respect of the (1) agency business; (2) business of guarantee and indemnity carried on by the named banks.

V. Validity of the retrospective operation given to Act 22 of 1969 by S. 1 (2) and Section 27:-

129. The argument raised by Mr. Palkhivala that, even if the Act is within the competence of the Parliament and does not impair the fundamental rights under Articles 14, 19(1)(f) and (g), and 31(2) in their prospective operation, Section 1(2) and S. 27(2), (3) and (4) which give retrospective operation as from July 19, 1969, are invalid, need not also be considered.

130. Nor does the argument about the validity of sub-section (1) and (2) of Section 11 and Section 26 of the Act survive for consideration.

131. Accordingly we hold that-

(a) the Act is within the legislative competence of the Parliament; but

(b) it makes hostile discrimination against the named banks in that it prohibits the named banks from carrying on banking business, whereas other Banks -Indian and Foreign-are permitted to carry on banking business, and even new Banks may be formed which may engage in banking business;

(c) it in reality restricts the named banks from carrying on business other than banking as defined in Section 5 (b) of the Banking Regulation Act, 1949; and

(d) that the Act violates the guarantee of compensation under Article 31 (2) in that it provides for giving certain amounts determined according to principles which are not relevant in the determination of compensation of the undertaking of the named banks and by the method prescribed the amounts so declared cannot be regarded as compensation.

132. Section 4 of the Act is a kingpin in the mechanism of the Act. Section 4, 5 and 6 read with Schedule II provide for the statutory transfer and vesting of the undertaking of the named banks in the corresponding new banks and prescribe the method of determining compensation for expropriation of the undertaking. Those provisions are, in our judgment, void as they impair the fundamental guarantee under Article 31 (2). Sections 4, 5 and 6 and Schedule II are not severable from the rest of the Act. The Act must, in its entirety, be declared void.

133. Petitions Nos. 300 and 298 of 1969 are therefore allowed, and it is declared that the Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969 is invalid and the action

taken or deemed to be taken in exercise of the powers under the Act is declared unathorised. Petition No. 222 of 1969 is dismissed. There will be no order as to costs in these three petitions.

134. **RAY, J.** (Dissenting judgement) There are 89 commercial banks operating in India. Of these 89 banks 73 are Scheduled and 16 are non-Scheduled banks. The 73 Scheduled banks comprise State Bank with 7 subsidiaries aggregating 8, 15 foreign banks, 14 banks which are the subject matter of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance No. 8 of 1969 (hereinafter referred to for the sake of brevity as the 1969 Ordinance) and the Banking Companies (Acquisition and Transfer of Undertakings) Act No. 22 of 1969 (hereinafter referred to for the sake of brevity as the 1969 Act) and 36 banks which are outside the scope of the 1969 Act. The State Banks have 27 per cent of the aggregate deposit of all commercial banks and 32 per cent of the credit of all commercial banks. The State Bank and its 7 subsidiaries have Rs. 1,239 crores including current account in the total deposit and the total credit of the State Bank and its subsidiaries is Rs. 1186 crores. The 14 Scheduled Banks each of which has over Rs. 500 crores of deposit which are the subject matter of the 1969 Ordinance and the 1969 Act (hereinafter referred to for the sake of brevity as the 14 banks) and have Rs. 2632 crores of deposit and the credit amounts to Rs. 1829 crores. In other words, these 14 banks have 56 per cent of the total deposit and little over 50 per cent of the total credit of the commercial banks. The 36 scheduled banks which are outside the 1969 Ordinance and the 1969 Act have Rs. 296 crores of deposit, viz. 6.3 per cent of the aggregate deposit and the credit is Rs. 197 crores, or in other words, 4.5 per cent of the total credit of the commercial banks. The 15 foreign banks have 10 per cent of the credit and 10 per cent of the deposit. These foreign banks have Rs. 478 crores of deposit and the credit is Rs. 385 crores. The 16 non-scheduled banks have Rs. 28 crores of deposit and the credit is about Rs. 16 crores. The non-scheduled banks have less than 1 per cent of the total credit and of the deposit. The aggregate deposits of the State Bank of India and its 7 subsidiaries and of the 14 banks is 82.8 per cent (26.5 per cent +56.3 per cent) of the total deposits of 89 commercial banks and the aggregate credit of the said banks is 83.4 per cent (32.8 per cent + 50.6 per cent) of the total credit of the 89 commercial banks.

135. Of the 89 commercial banks the State Banks have 2454 branches, namely, 30 per cent of the branch offices. The 15 foreign banks have 138 branch offices including branches. The 36 scheduled banks which are outside the 1969 Ordinance and the 1969 Act have 1,324 offices. The 16 non-scheduled banks have 216 offices. The 14 banks have 4,130 offices which represent about little over 50 per cent of the offices. The aggregate of the number of offices of the State Bank and its 7 subsidiaries and the 14 banks is 6,584 being 79.8 per cent of the total number of branch offices of the 89 commercial banks.

136. On 19 July, 1969 Ordinance No. 8 of 1969 called the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969 was promulgated by the Vice-President acting as President. It was an Ordinance to provide for the acquisition and transfer of the undertakings of certain banking companies in order to serve better the needs of development of the economy in conformity with national policy and objectives and for matters connected therewith or incidental thereto. The Ordinance came into force on 19th July, 1969. The Ordinance was repealed on 9th

August, 1969 by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 which came into force on 9th August, 1969. The object of the Act was similar to that of the Ordinance. There are some differences between the Ordinance and the Act but it is not necessary for the purpose of the present matter to refer to the same.

137. Broadly stated, as a result of the 1969 Act the undertaking of every existing bank was transferred to and vested in the corresponding new bank on the commencement of the Act. The existing banks mean the 14 banks. The corresponding new banks mean the banks mentioned in the First Schedule to the 1969 Act in which is vested the undertakings of the existing banks. Section 5 of the 1969 Act deals with the effect of vesting. First, the undertaking shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable or immovable, cash balances, reserve funds, investments and all other rights and interests arising out of such property as were immediately before the commencement of the Act in the ownership, possession, power or control of the existing banks in relation to the undertaking, whether within or without India, and all books of accounts, registers, records and all other documents of whatever nature relating thereto. Secondly, the undertaking shall also be deemed to include all borrowings, liabilities (including contingent liabilities) and obligations of whatever kind then subsisting of the existing bank in relation to the undertaking. Thirdly, if according to the laws of any country outside India, the provisions of the 1969 Act by themselves are not effective to transfer or vest any a asset or liability situated in that country which forms part of the undertaking of an existing bank to, or in, the corresponding new bank, the affairs of the existing bank in relation to such asset or liability shall on and from the commencement of this Act, stand entrusted to the chief executive officer for the time being of the corresponding new bank who will take all steps as required by the laws of the foreign country for the purpose of affecting such transfer or vesting. Fourthly, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature, subsisting or having effect immediately before the commencement of the 1969 Act and to which the existing bank is a party and which are in favour of the existing bank shall be of as full force and effect against or in favour of the corresponding new bank and may be enforced or acted upon as fully and effectually as if in the place of the existing bank the corresponding new bank had been a party thereto or as if they had been issued in favour of the corresponding new bank. Fifthly there are provisions that suits, appeals or other proceedings pending by or against the existing bank be continued, prosecuted and enforced by or against the corresponding new bank.

138. Section 6 of the 1969 Act provides for payment of compensation and the second Schedule to the Act sets out the principles of determination of compensation by excluding liabilities from assets. Section 11 of the Act enacts that the corresponding new bank shall be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give, and if any question arises whether a direction relates to a matter of policy involving public interest, it shall be referred to the Central Government and the decision of the Central Government thereon shall be final. Section 12 provides for appointment of an Advisory board to advise the custodian of the corresponding new bank. The custodian is the chief executive officer of the corresponding new bank. The Chairman of the existing bank holding office before the commencement of the Act becomes a custodian of the corresponding new bank. The custodian is to hold office during the pleasure of the Central Government. Section 13 of the Act provides for the power of the Central Government to make

scheme. Section 15 is an important provision in the Act. Under that section a Chairman, managing or whole-time director of an existing bank shall, on the commencement of the Act, be deemed to have vacated office and every other director of such bank shall until directors are duly elected by such existing bank, be deemed to continue to hold such office. The said Board may transact all or any of the various kinds of business mentioned in Section 15. The other provision in Section 15 is that the existing bank may carry on any business other than banking.

139. The Act of 1969 by reason of Section 1 (2) thereof is deemed to have come into force on 19th July, 1969. Section 27 of the Act contains four sub-section providing for the repeal of the Ordinance and enacting first, that notwithstanding the repeal of the Ordinance, anything done or any action taken including any order made, notification issued or direction given, under the said Ordinance shall be deemed to have been done, taken made, issued or given, as the case may be, under the corresponding provisions of this Act;, secondly that no action or thing done under the said Ordinance shall, if it is inconsistent with the provisions of this Act, be of any force or effect and thirdly notwithstanding anything contained in the Ordinance no right, privilege, obligation or liability shall be deemed to have been acquired, accrued or incurred thereunder.

140. The petitioner Rustom Cavasjee Cooper is a shareholder of the Central Bank of India Ltd., and of 3 other existing banks and has current and fixed deposit accounts with these banks and is also a director of the Central Bank of India. The petitioner has challenged the validity of the 1969 Ordinance and the 1969 Act and has contended that his fundamental rights under Article 14, 19 and 31 have been infringed by these measures.

141. Mr. Palkhivala, counsel for the petitioner, contended that the Act of 1969 was effective only from 9th August, 1969 and could not have any effect on or from 19th July, 1969 until 9th August, 1969 because there could not be any retrospective effect given to any piece of legislation which affected the fundamental right to property. It was said that the validation would be effective as from the date when the law was actually passed and any retrospective effect would offend Article 31 (2) of the Constitution. It was said that acquisition under Article 31 (2) could only be by authority of law and authority of law could only mean a law in force at the date of the taking. It was emphasised that the law must be in existence at the material time and there was no difference between a law under Article 20 (1) and law in relation to Article 31 (1) or Article 31 (2) of the Constitution.

142. The Attorney General on the other hand contended that the validity of any law either prospective or retrospective affecting all or any of the fundamental rights by the requirement laid down in Article 19 and the validity of a law either prospective or retrospective acquiring property has to be judged by the requirements laid down in Article 31 (2).

143. This Court dealt with retrospective legislations in the cases of West Ramnad Electric Distribution Co., Ltd. v. State of Madras, (1963) 2 SCR 747 = (AIR 1962 SC 1753) and State of

Mysore v. Achiah Chetty, AIR 1969 SC 477. In the case of M/s. West Ramnad Electric Distribution Co., Ltd., (1963) 2 SCR 747 = (AIR 1962 SC 1753) (supra) this Court held that there was difference between the provisions contained in Art. 20 (1) and Article 31 (2) of the Constitution. Article 20 (1) refers to law in force at the time of the commission of the act charged as an offence whereas Art. 31 (2) does not contain any such words of limitation as to law being in force at the time but speaks only of authority of a law. This vital distinction between Art. 20 (1) and Article 31 (2) is to be kept in the forefront in appreciating the soundness of the proposition that retrospective legislation as to acquisition of property does not violate Article 31 (2).

144. In the case of West Ramnad Electric Distribution Co. (1963) 2 SCR 747 = (AIR 1962 SC 1753) (supra) the 1954 Madras Act incorporated the main provisions of the earlier Madras Act of 1949 in validating actions taken under the earlier 1949 Act. The 1949 Act had been challenged in earlier proceedings when this Court held the 1949 Act to be ultra vires. Section 24 of the 1954 Madras Act was intended to validate a notification of acquisition of undertaking issued on 21st September, 1951 under the 1949 Act by providing that orders made, decisions, or directions given, notifications issued if they would have been validly made under the 1949 Act were declared to have been validly made except the extent to which the order was repugnant to the provisions of the later 1954 Act. In the Madras case it was contended that the notification under the 1949 Act in the year 1951 was not supported by any authority or any pre-existing law because there was no valid law. That contention was repelled by Gajendragadkar, J. who spoke for the Court "if the Act is retrospective in operation and Section 24 has been enacted for the purpose of retrospectively validating actions taken under the provisions of the earlier Act, it must follow by the very retrospective operation of the relevant provisions that at the time when the impugned notification was issued, these provisions were in existence. That is the plain and obvious effect of the retrospective operation of the statute. Therefore in considering whether Article 31 (1) has been complied with or not, we must assume that before the notification was issued, the relevant provisions of the Act were in existence and so, Article 31 (1) must be held to have been complied with in that sense."

145. Article 20 (1) cannot by its own terms have any retrospective operation whereas Article 31 (2) can and that is a vital distinction between the two Articles. That is why there cannot be a retrospective legislation with regard to creation of an offence. If people at the time of the commission of an act did not know that it was an offence, retrospective creation of a new offence in regard to such an act would put people to new peril which was not in existence at the time of the commission of the act. Counsel for the petitioner contended that retrospective validation of acquisition fell within the mischief of the decision of Punjab Province v. Daulat Singh, 73 Ind App 59 = (AIR 1946 PC 66) where the Judicial Committee dealing with Section 5 of the Punjab Alienation Act which provided for the avoidance of benami transactions as therein specified which were entered into either before or after the commencement of the Act of 1938 held that the same was ultra vires the Provincial Legislature because it would operate as a prohibition to affect the past transactions. The retrospective element however was severed in that case by the deletion of the words "either before or" in the section and the rest of the provisions were left to operate prospectively and validly. The ratio of the decision is that past transactions which had been closed and title which had been acquired were sought to be reopened or set aside and the same could not be within the legislative competence of Section 298 of the Government of India Act, 1935 which

conferred power to prohibit the sale or mortgage of transactions. The words 'prohibit sale or mortgage' in Section 298 of the Government of India Act 1935 were construed to mean prospective or future prohibition as the words used plainly refer to things or transactions in future.

146. The decision of this Court in West Ramnad Electric Distribution Co. (1963) 2 SCR 747 = (AIR 1962 SC 1753) and AIR 1969 SC 477 are ample authorities for the proposition that there can be retrospective legislation affecting acquisition of property and such retrospective operation and validation of actions with regard to acquisition does not offend Art. 31(2) of the Constitution. In AIR 1969 SC 477 (supra) Hidayatullah, C. J., considered the Bangalore Acquisition of Lands Act, 1962 which consisted of two sections whereof the second was in relation to validation of certain acquisition of lands and orders connected therewith. In short that section provided that all acquisitions, proceedings, notifications or orders were validly made, held or issued with the result that the Act validated all past actions notwithstanding any breach of City of Bangalore Improvement Act, 1945. Hidayatullah, C. J. said "What the legislation has done is to make retrospectively a single law for the acquisition of these properties. The legislature could always have repealed retrospectively the Improvement Act rendering all acquisitions to be governed by the Mysore Land Acquisition Act alone. This power of the legislature is not denied. The resulting position after the Validating Act is not different. By the non obstante clause the Improvement Act is put out of the way and by the operative part the proceedings for acquisition are wholly brought under the Mysore Land Acquisition Act to be continued only under that Act. The Validating Act removes altogether from consideration any implication arising from Chapter III or Section 52 of the Improvement Act in much the same way as if that Act had been passed." The correct legal position on the authority of these decisions of this Court is that a legislation which has retrospective effect affecting acquisition or requisition of property is not unconstitutional and is valid. The Act of 1969 which is retrospective in operation does not violate Article 31 (2) because it speaks of authority of a law without any words of limitation or restriction as to law being in force at the time.

147. Counsel for the petitioner next contended that the expression "authority of a law" in Article 31 (2) would have the same meaning as the expression "authority of law" in Article 31 (1) and therefore a law acquiring property would have to satisfy the tests required in Article 19 (1) (f) of the Constitution. Both Articles 31 (2) and 19 (1) (f) relate to property. Both appear in Part III of the Constitution under fundamental rights. The Attorney General contended that Arts. 31 (2) and 31 (2A) constituted a self-contained code relating to acquisition and requisition of property, and once a property had been acquired by a law in compliance with the requirements of Article 31 (2) there would not be any right left under Article 19 (1) (f) and the validity of such a law of acquisition of property for public purpose could not be examined again by the requirements of Article 19 (5) which is a relaxation of Article 19 (1) (f).

148. The two requirements of a law relating to acquisition or requisition of property under Article 31 (2) are: first, that the acquisition or requisition of property can be made only for a public purpose, and secondly, it can only be by authority of a law which provides for compensation. Article 31 (2A) further enacts that where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned, controlled by the State it

shall not be deemed to provide for the compulsory acquisition or requisitioning of property.

149. The question for interpretation of Article 22 of the Constitution in the light of Article 19 came up for consideration in the case of 1950 SCR 88 = (AIR 1950 SC 27). Kania, C. J., Patanjali Sastri, Mahajan, Mukherjea and Das, JJ, expressed the opinion that Article 19 of the Constitution had no application to a law which related directly to preventive detention even though as a result of an order of detention, the rights referred to in sub-clauses (a) to (e) and (g) in general and sub-clause (d) in particular of clause (1) of Article 19 might be restricted or abridged. Fazl Ali, J. however expressed a contrary opinion. The consensus of opinion in Gopalan's case 1950 SCR 88 =(AIR 1950 SC 27) (supra) was that so far as substantive law was concerned, Article 22 of the Constitution gave a clear authority to the legislature to take away fundamental rights relating to arrest and detention which were secured by the first two clauses of that Article. Mukherjea, J. said about preventive detention in relation to right of freedom under Article 19, "Any legislation on the subject would only have to conform to the requirements of clauses (4) to (7) and provided that is done, there is nothing in the language employed nor in the context in which it appears which affords any ground for suggestion that such law must be reasonable in its character and that it would be reviewable by the Court on that ground. Both Articles 19 and 22 occur in the same Part of the constitution and both of them purport to lay down the fundamental rights which the Constitution guarantees. It is well settled that the Constitution must be interpreted in a broad and liberal manner giving effect to all its parts and the presumption would be that no conflict or repugnance was intended by its framers."

150. I shall now deal with some decisions of this Court as to whether a law acquiring property under Article 31 (2) will have to comply with Article 19 (1) (f) or in other words whether such law of acquisition of property for public purpose must also according to Article 19 (5) be a reasonable restriction on the right to hold property in the interests of the general public. There are decisions of this Court to the effect that acquisition of property under Art. 31. (2) as it stood prior to amendment in 1955 is an instance of deprivation of property mentioned in Article 31 (1) and the two clauses of Article 31 are to be read together with the result that Article 19 (1) (f) has no application where a law amounts to acquisition or requisition of property for a public purpose under Article 31 (2). When Article 31 (2) was amended by the Constitution Fourth Amendment Act, 1955, the decisions of this Court on that Article held that Article 19 (1) (f) applies only to a deprivation of property under Article 31 (1) but not to a law of acquisition of property for public purpose under Article 31 (2). I shall now refer to these decisions.

151. In the case of 1954 SCR 587 = (AIR 1954 SC 92) the majority view of this Court was that clauses (1) and (2) of Article 31 as these stood before the Constitution Fourth Amendment Act, 1955 are not mutually exclusive in scope and content but are to be read together and understood as dealing with the same subject, namely, the protection of the right to property by means of limitations on the power of the State and the deprivation contemplated in Clause (1) was held to be no other than the acquisition or taking possession of the property referred to in Clause (2).

152. The view in Gopalan's case 1950 SCR 88 = (AIR 1950 SC 27) (supra) was again applied by this Court in 1955-1 SCR 777 = (AIR 1955 SC 41) - also a pre Amendment case - where it was contended that Article 31 (2) did not exclude the operation of Article 19 (1) (f) in relation to Bombay and Acquisition Act, 1940. In dealing with the contention as to whether the Bombay Act was hit by Article 19 (1) (f) on the ground of unreasonable restriction having been imposed on the right of the respondent to acquire, hold and dispose of property Bose, J. said at page 780 of the Report (1955-1 SCR) = (at pp. 43-44 of AIR SC): "It is enough to say that Article 19 (1) (f)read with Clause (5) postulates the existence of property which can be enjoyed and over which rights can be exercised because otherwise the reasonable restrictions contemplated by Clause (5) could not be brought into play. If there is no property which can be acquired, held or disposed of, no restriction can be placed on the exercise of the right to acquire, hold or dispose of it, and as Clause (5) contemplates the placing of reasonable restrictions on the exercise of those rights it must follow that the Article postulates the existence of property over which these rights can be exercised." Bose, J. thereafter said that when every form of enjoyment of and interest in property is taken away leaving the mere husk of title Article 19 (1) (f) is not attracted.

153. The principle laid down in Bhanji Munji's case, 1955-1 SCR 777 = (AIR 1955 SC 41) (supra) was considered in the case 1960-3 SCR 887 = (AIR 1960 SC 1080). In that case a question arose whether the Madras Marumakkathayam (Removal of Doubts) Act, 1955 infringed the provisions of the Constitution. The Act was passed after the Privy Council had declared the properties in possession of the Sthanee to be Sthanam properties in which the members of the tarwad had no interest. The Madras Act, 1955 declared that "notwithstanding any decision of Court, any sthanam under certain conditions mentioned in the section shall be deemed to be and shall be deemed always to have been a Marumakkathayam tarwad and the properties appertaining to such a Sthanam shall be deemed to be and shall be deemed always to have been properties belonging to the tarwad". Subba Rao, J. speaking for the majority view on the question as to whether Article 31 (1) had to be read along with Article 19 (1) (f) said "that legislation in a welfare State could be achieved only within the framework of the Constitution and that is why reasonable restrictions in the interest of the general public on the fundamental rights were recognised in Article 19." In that context this Court held that a law made depriving a citizen of his property shall be void, unless the law so made complied with the provisions of Clause (5) of Article 19 of the Constitution. At pare 916 of the Report (1960-3 SCR) = (At p. 1094 of AIR SC) Subba Rao, J. said that the observations in Gopalan's case, 1950 SCR 88 = (AIR 1950 SC 27) (supra) would have no bearing on Article 31 (1) of the Constitution after Clause (F) of Article 31 had been inserted in that Article by the Constitution Fourth Amendment Act, 1955. Before the Constitution Fourth Amendment Act this Court held that Clauses (1) and (2) of Article 31 were not mutually exclusive in scope and content but were to be read together, namely, that the words "acquisition or taking possession" referred to in Clause (2) of Article 31 prior to the Amendment in 1955 were to be read as an instance of deprivation of property within the meaning of Article 31 (1) and therefore the same was not subject to Article 19. This is how the decision in Bhanji Munji's case, 1955-1 SCR 777 = (AIR 1955 SC 41) (supra) was explained by Subba Rao, J. in Kochuni's case, 1960 3 SCR 887 = (AIR 1960 SC 1080) (supra) with the observation that "the decision in Bhanji Munji's case, 1955-1 SCR 777 = (AIR 1955 SC 41) (supra) no longer holds the field after the Constitution Fourth Amendment Act, 1955". It may be stated here that Kochuni's case 1960-3 SCR 887 = (AIR 1960 SC 1080) was decided after the amendment of Article 31 and that was emphasised by Subba Rao, J. to establish that Article 31 (1) which dealt with deprivation of property other than by way of acquisition by the State was to be a valid law or in compliance with limitations imposed in Article 19 (1) (f) and (5).

154. The question whether Article 19 (1) (f) so to be read along with Article 31 (1) again raised its head in the case of (1967) 2 SCR 949. Kochuni's case 1960-3 SCR 887 = (AIR 1960 SC 1080) (supra) was decided on 4 May, 1960 and Smt. Sitabati's case, (1967) 2 SCR 949 (supra) was decided on 1 December, 1961 though it was reported much later in the Supreme Court Reports. In Smt. Sitabati's case, (1967) 2 SCR 949 (supra) the question for consideration was the validity of the West Bengal Land (Requisition and Acquisition) Act, 1948. The Act provided for requisition and also for acquisition of land by the State Government for maintaining supplies and services essential to the life of the community and for other purposes mentioned therein. The Act also provided for payment of compensation in respect of requisition and acquisition. In Smt. Sitabati's case, (1967) 2 SCR 949 (supra) it was contended that the Act offended Article 19 (1) (f) of the Constitution as it put unreasonable restrictions on the right to hold property. The High Court held that the Act providing for acquisition of property by the State could not be attacked for the reason that it offended Article 19 (1) (f) on the authority of the decision in 1955-1 SCR 777 = (AIR 1955 SC 41) (supra). The High Court further held that the decision in Kochuni's case, (1960) 3 SCR 887 = (AIR 1960 SC 1080) (supra) did not hold that Article 31 (2) of the Constitution did not exclude the applicability of Article 19 (1) (f). Sarkar, J. speaking for the Court said that the High Court was right on both these points. Sarkar, J. pointed out that Kochuni's case, (1960) 3 SCR 887 = (AIR 1960 SC 1080) (supra) dealt with Article 31 (1) and it was not a case of acquisition or requisition of property by the State but was concerned with the law by which deprivation of property was brought about in other ways and there Article 19 of the Constitution had to be complied with. In Smt. Sitabati's case 1967-2 SCR 949 (supra) it was said that the observation in Kochuni's case, (1960) 3 SCR 887 = (AIR 1960 SC 1080) (supra) that Bhanjui Munji's case. 1955-1 SCR 777 = (AIR 1955 SC 41) (supra) " no longer holds the field" was to be understood as meaning that it no longer governed the case of deprivation of property by means other than requisition and acquisition by the State. To my mind it appears that the view of this Court in Kochuni's case. (1960) 3 SCR 887 = (AIR 1960 SC 1080) (supra) and Smt. Sitabati's case, 1967-2 SCR 949 (supra) is that Article 31 (2) after the Constitution Fourth Amendment Act, 1955 relates entirely to acquisition or requisition of property by the State and is totally distinct from the scope and content of Article 31 (1) with the result that Article 19 (1) (f) will not enter the area of acquisition or requisition of property by the State.

155. This Court in the recent decision of AIR 1969 SC 634 again considered the applicability of Article 19 (1) (f) in relation to acquisition or requisition of property under the authority of a law mentioned in Article 31 (2). The Bombay Town Planning Act of 1955 was challenged as unreasonable and a violation of Article 19 (1) (f) and (5). Shah, J., speaking for the Court considered Article 31 (2) as it stood after the Constitution Fourth Amendment Act, 1955 and said "clause (1) operates as a protection against deprivation of property save by authority of law which it is beyond question, must be a valid law, i.e., it must be within the legislative competence of the State legislature and must not infringe any other fundamental right. Clause (2) guarantees that property shall not be acquired or requisitioned (except in cases provided by clause(5) save by authority of law providing for compulsory acquisition or requisition and further providing for compensation for the property so acquired or requisitioned and either fixes the amount of compensation or specifies the principle on which, and the manner in which the compensation is to be determined or given". Thereafter Shah, J., speaking for the Court said in repelling the contention advanced that the impugned statute was unreasonable. "This Court however held in 1969-2 SCR 949 (supra) that a law made under clause (2) of Article 31 is not liable go be challenged on the ground

that it imposes unreasonable restrictions upon the right to hold or dispose of property within the meaning of Article 19 (f) of the Constitution. In Smt. Sitabati Devi's case, 1969-2 SCR 949 (supra) an owner of land whose property was requisitioned under the West Bengal Land (Requisitioned and Acquisition) Act, 1948 questioned the validity of the Act by a writ petition filed in the High Court of Calcutta on the plea that it offended Art. 19 (1) (f) of the Constitution. This Court unanimously held that the validity of the Act relating to acquisition and requisition cannot be questioned on the ground that it offended Article 19 (1) (f) and cannot be decided by the criterion under Article 19 (5)".

156. In my opinion Article 19 (1) (f) does not have any application to acquisition or requisition of property for a public purpose under authority of a law which provides for compensation as mentioned in Article 31 (2) for these reasons First, the provisions of the Constitution are to be interpreted in a harmonious manner. No provision of the Constitution is superfluous or redundant. (See Gopalan's case, 1950 SCR 88 = (AIR 1950 SC 27) (Supra) at page 252 (of SCR) = (At p. 93 of AIR) per Mukherjea, .). It cannot be suggested that acquisition of property for public purpose is not of the same content as acquisition for public interest or in the interest of the public. It will be pedantry to say that acquisition for public purpose is not in the interest of the public. Secondly, the contention on behalf of the petitioner that Article 31 (2) will have to be read along with Article 19 (1) (f) for the purpose of deciding the piece of legislation on the anvil of reasonableness of restrictions in the interest of the general public will mean that acquisition or requisition for a public purpose under Article 31 (2) is embraced within Article 19 (5). That would be not only depriving the provisions of the Constitution of harmony but also making Article 31 (2) otiose and a dead letter. By harmonising is meant that each provision is rendered free to operate, with full vigour in its own legitimate field. If acquisition or requisition of property for a public purpose has to satisfy again the test of reasonable restriction in the interest of the general public then harmony is repelled and Article 31 (2) becomes a mere repetition and meaningless. It could not be said that when Article 31 (2) was specifically enacted to deal with a case of acquisition or requisition of property for a public purpose the framers of the Constitution were not aware that it was a form of public deprivation of property. That is why it is important to notice the distinction between deprivation of property under Article 31 (1) which will relate to all kinds of deprivation of property other than acquisition or requisition by the State and Article 31 (2) which deals only with such acquisition or requisition of property. Thirdly, Articles 31 (2) and 31 (2A) is a self-contained code because (a) it provides for acquisition or requisition with authority of a law, (b) the acquisition or requisition is to be for a public purpose, (c) the law should provide for compensation by fixing the amount of compensation or specifying the principles on which, and the manner in which, the compensation is to be determined and given and (d) finally, it enacts that adequacy of compensation is not to be questioned. In the case of acquisition or requisition of property for public purpose with the authority of a law providing for compensation there is nothing more to guide and govern the law for acquisition or requisition than those crucial words occurring in Clause (2). Finally, the amendment of Article 31 indicates in bold relief the separate and distinctive field of law for acquisition and requisition by the State of property for public purpose.

157. Mahajan, J. in the case of 1952 SCR 889 = (AIR 1952 SC 252) spoke of public purpose in the background of Article 39 which speaks of the Directive Principles. Article 39 enacts that the State shall in particular direct its policy towards securing that the ownership and control of the material

resources of the community are so distributed as best to subserve common good and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. In the Darbhanga case, 1952 SCR 889 = (AIR 1952 SC 252) (supra) land which was in the hands of few individuals was to be made available to the public. The purpose behind the Bihar Land Reforms Act was to bring general benefit to the community. Mahajan, J. said that "legislature is best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute is in accordance with the letter of the Constitution of India. It is fallacious to contend that the object of the Act is to ruin 51/2 million people in Bihar ..... It is difficult to hold in the present day conditions of the world that the measures adopted for the welfare of the community and sought to be achieved by process of legislation so far as to carry on the policy of nationalization of land can fall on the ground of public purpose. The phrase 'public purpose' has to be construed according to the spirit of times in which particular legislation is enacted and so construed, the acquisition of the estates has to be held to have been made for the public purpose". The meaning of the phrase public purpose'. is predominantly a purpose for the welfare of the general public. These 14 banks are acquired for the purpose of developing the national economy. It is intended to confer benefit on weaker sections and sectors. It is not that the legislation will have the effect of denuding the depositors in the 14 banks of their deposits. The deposits will all be there. The object of the Act according to the legislation is to use the deposits in wider public interest. What was true of public purpose when the Constitution was ushered in the midcentury is a greater truth after two decades. One cannot be guided either by passion for property on the one hand or prejudice against deprivation on the other. Public purpose steers clear of both passion and prejudice.

158. In regard to property rights the State generally has power to take away property and justify such deprivation on the ground of reasonable restriction in the interest of the general public, but in case of deprivation of property by acquisition or requisition the Constitution has conferred power when the law passed provides compensation for the property acquired by the State. Therefore, the acquisition or requisition for public purpose is a restriction recognised by the Constitution in regard to property rights. In Kochuni's case, (1960) 3 SCR 887 = (AIR 1960 SC 1080) (supra) this Court approved the observation of Harries, C. J. in the case of Iswari Prosad v. N. R. Sen, AIR 1952 Cal 273 that the phrase 'in the interest of the general public' means nothing more than 'in the public interest.' A public purpose is a purpose affecting the interest of the general public and therefore the Welfare State is given powers of acquisition or requisition of property for public purpose.

159-160. Counsel for the petitioner contended that the word 'banking' would have the same meaning as the definition of 'banking' occurring in Section 5 (b) of the Banking Regulation Act of 1949 hereinafter referred to for the sake of brevity as the 1949 Act. This contention was amplified to exclude four types of business from the banking business and therefore the Act of 1969 was said to be not within the legislative competence of Banking under Entry 45 in List I. These four types of business are: (1) the receiving of scrips or other valuables on deposit or for safe custody and providing of safe deposit vaults, (2) agency business, (3) business of guarantee, giving of indemnity and underwriting and (4) business of acting as executors and trustees. 'Banking' was defined for the first time in the 1949 Act as meaning the acceptance for the purpose of lending or investments of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque,

draft or otherwise. In England there is no statutory definition of banking but the Courts have evolved a meaning and principle as to what the legitimate business of a bank is.

161. In the case of Tennant v. Union Bank of Canada 1894 AC 31 a question arose as to whether warehouse receipts taken in security by a bank in the course of business of banking, are matters coming within the class of subjects described in Section 91, sub-section (15) of the British North America Act, namely,' banking, incorporation of Banks, and the issue of paper money'. Lord Watson said that the word 'banking' comprehends an expression which is wide enough to embrace every transaction coming within the legitimate business of a banker. In Palmer's Company Precedents, 17th Ed. Page 317 form No. 98 will be found the usual memorandum of objects of a bank. These objects comprise business of banking in all branches including the receiving of money and valuables on deposit or for safe custody, or otherwise, the collecting and transmitting money and securities and transacting all kinds of agency business commonly transacted by bankers. The other objects in the form are to undertake and execute any trusts the undertaking whereof may seem desirable, and also to undertake the office of executor, administrator, receiver, treasurer, registrar or auditor. In Banbury v. Bank of Montreal 1918. AC 626 the House of Lords considered the authority of the bank to give advice as to investments and Lord Finlay, L. C. said that "the limits of banker's business cannot be laid down as a matter of law. The nature of business is a question of fact, on which the jury are entitled to have regard to their own knowledge of business and it is in this context that the present case must be considered. It cannot be treated as if it was a matter of pure law."

162. In India, the Negotiable Instruments Act, 1881, Stamp Act, 1899 and Bankers' Books Evidence Act, 1891 refer to the expression banking without a definition. In the Indian Companies Act, 1913 for the first time in 1936 provisions were introduced to govern banking companies. Entry 38 in List I of the Government of India Act, 1935 used the words "banking that is to say the conduct of banking business of a Corporation carried on only in that State." It must be observed that Entry 45 in List I of the 7th Schedule to the Constitution is only a 'banking' and it does not contain any qualifying words like the conduct of business occurring in Entry 38 of the Government of India Act, 1935. The Indian Companies Act, 1913 in Section 277-F however defined 'banking company' but not 'banking' by reference to the principle business and other businesses usually undertaken by reputable bankers. Section 277-G of the Indian Companies Act prescribes that the memorandum must be limited to the activities mentioned in Section 277-F. Section 277-M of the Indian Companies Act, 1913 contained provisions similar to Section 19 of the Act of 1949, namely, that a banking company could not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely, the undertaking, and executing of trusts, the undertaking of the administration of estates as executors, trustee or other wise, the providing of safe deposit vaults or, with the previous permission in writing of the Reserve Bank carrying on such other purposes as are incidental to the business of banking. It will appear from the Select Committee Report which was prepared for the introduction of the Indian Companies Amendment Act in 1936 that the list of business mentioned in Section 277-F which included the principal business and other business undertaken by reputable bankers was inserted to escape the danger of hampering a company in the performance of any form of business undertaken by reputable bankers.

163. It is in this background that the 1949 Banking Regulation Act was enacted. 'Banking' is defined in Section 5 (b) of the 1949 Act as meaning the acceptance for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft order or otherwise. Section 6 of the 1949 Act contains two sub-sections. In sub-section (1) it is enacted that in addition to the business of banking, a banking company may engage in one or more of the forms of businesses mentioned therein. In sub-section (1) there are clauses marked (a) to (o). In sub-section (2) of Section 6 of the 1949 Act it is enacted that no banking company shall engage in any business other than those referred to in sub-section (1). Clause (a) of Section 6 (1) enumerates the various forms of business, inter alia, the borrowing, raising, or taking up of money, the lending or advancing of money either upon or without security, the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates scrips and other instruments and securities whether transferable or negotiable or not, the granting and issuing of letters of credit, traveller's cheques and circular notes, the buying, selling and dealing in bullion and specie, the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise, the providing of safe deposit vaults, the collecting and transmitting of money and securities. Clause (b) speaks of acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of the customers, but excluding the business of a company. Clause (h) speaks of undertaking and executing trusts. Clause (i) speaks of undertaking the administration of estates as executor, trustee or otherwise. It will, therefore, appear that under Section 6 (1) of the 1949 Act the four types of business disputed by counsel for the petitioner not to be within the businesses of a bank are recognised by the statute as legitimate forms of business of a banking company.

164. Keeping valuables for safe custody, the providing of safe deposit vaults occur in clause (a) of Section 6 (1) along with various types of business like borrowing, raising or taking up of money, or lending or advancing of money. It will appear from clause (n) of Section 6 (1) of the 1949 Act that in addition to the forms of business mentioned in clauses (a) to (m) a banking company may engage in "doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company." The words 'other things' appearing in clause (n) after enumeration of the various types of business in clauses (a) to (m) point to one inescapable conclusion that the businesses mentioned in clauses (a) to (m) are all incidental or conductive to the promotion or advancement of the business of the company. Therefore these businesses are not only legitimate businesses of the banks but these also come within the normal business activities of commercial banks of repute. Entry 45 in List I of the 7th Schedule of the Constitution, namely, 'banking' will therefore have the wide meaning to include all legitimate businesses of a banking company referred to in Sec. 5 (b) as well as in Section 6 (1) of the 1949 Act. The contention on behalf of the petitioner that the four disputed businesses are not banking businesses is not supportable either on logic or on principle when businesses mentioned in the sub-clauses of Section 6 (1) of the 1949 Act are recognised to be legitimate business activities of a banking company by statute and practice and usage fully supports that view.

165. Clause (o) of Section 6 (1) of the 1949 Act contemplates that the Central Government might by notification specify any other form of business and therefore the Government could ask a banking

company to engage in a form of business which is not a usual type of business done by a banking company. In the first place, it would not be reasonable to think that the Government would ask a bank to do business of that type. Secondly, even if a bank were asked to do so that would not rob the other permissible and legitimate forms of business mentioned in Section 6 (1) of the Act of their true character. Section 6 (2) of the 1949 Act provides that no banking company shall engage in any form of business other than those referred to in sub-section (1). The restriction contained in sub-section (2) establishes that the various types of business mentioned in sub-s. (1) are normal, recognised legitimate businesses and a banking company is therefore not entitled to participate in any other from of business.

166. In the case of Commonwealth of Australia v. Bank of New South Wales, 1950 AC 235 the Judicial Committee in hearing the appeal from the High Court of Australia considered the meaning and content of banking. The question for consideration was the effect of the Australian Banking Act, 1947 and Section 46 thereof. At page 303 of the Report the Judicial Committee said "the business of banking, consisting of the creation and transfer of credit, the making of loans, the purchase and disposal of investments and other kindred activities is a part of the trade, commerce and intercourse of a modern society and, in so far as it is carried on by means of inter-State transactions, is within the ambit of Section 92." The business of a bank will therefore consist not only of the hard core of banking business defined in the 1949 Act but also of the divers kinds of lawful business which have grown to be inextricably bound up in the form of chain or string transactions. The words 'banker'. 'banking' have different shades of meaning at different periods of history and their meaning may not be uniform today in countries of different habits of life and different degrees of civilisation. See Bank of Chettinad v. Income Tax Commr. of Colombo. 1948 AC 378 and United Dominions Trust Ltd. v. Kirkwood, 1966-1 QB 783.

167. At this stage reference may be made to various statutes starting from Act 6 of 1839 Bank of Bengal's Third Charter and ending with the State Bank of India Act, 1955 to show the meaning and content of the word 'banking'. The Bank of Bengal's Third Charter of 1839 empowered the Bank of Bengal in Cls. 25 to 33 to do business as mentioned therein which included receiving deposits of goods and safe keeping of the same. Thereafter the Bank of Bengal Charter was repealed by Act 4 of 1862 which by clause 27 empowered the bank to transact pecuniary business of agency on commission. The Presidency Banks Act, 1876 by Section 36 thereof empowered the Presidency Banks, inter alia, to do business of receiving of deposits, agency business, acceptance of valuables, jewels, Section 37 of the Act of 1876 forbade the bank to do any business or loan or advance on mortgage or in other manner upon the security of any immovable property or the documents of title relating thereto. The Imperial Bank of India Act, 1920 in Schedule 1 as mentioned in Section 8of the Act authorised the bank to carry on several kinds of business including receiving of deposits, keeping cash accounts, the acceptance of the charge and management of plate, jewels, title deeds or other valuable goods on terms, transacting of pecuniary agency business on commission and the entering into of contracts of indemnity, suretyship or guarantee with specific security or otherwise, the administration of estates for any purpose whether as an executor, trustee or otherwise and the acting as agent on commission in the transaction of various kinds of business mentioned therein.

168. The Indian Companies Act, 1913 did not define banking company or banking business though various sections namely, 4, 133, 136, 138 and 145 and Schedule Form G referred to banking companies. The Indian Companies Amendment Act in 1936 for the first time defined a banking company in S. 277F as a company which carried on the principal business of accepting of deposits on current account or otherwise, notwith-standing that it engaged in any one or more of the businesses as mentioned in clauses (1) to (17) thereof. It may be stated here that Clause (1) to (17) in section 277F of the Indian Companies Act, 1913 are similar to the various forms of business mentioned in Section 6 (1) of the 1949 Banking Regulation Act. In 1942, the Indian Companies Act, 1913 was amended by Act 21 of 1942 and it will appear from the statement of objects and reasons there that the definition of banking companies in Section 277 of the Indian Companies Act created difficulties in deciding whether a company was a banking company or not. The chief difficulty arose out of the use of the term 'principal business' in Section 277F. With the object of removing these difficulties a proposal was made that any company which used as part of its name the word 'bank', 'banker' or 'banking' shall be deemed to be a banking company irrespective of whether the business of accepting deposits of money on current account or otherwise subject to withdrawal by cheque, draft or order was its principal business or not. In that context Ordinance No. 4 of 1946 was promulgated under Section 72 of the Government of Indian Act, 1935 empowering the Reserve Bank to cause inspection of any banking company and to do various other things by way of prohibiting a banking company from receiving deposits. Thereafter came the Banking Companies Restriction of Branches Act, 1946. There a banking company was defined as a banking company defined in Section 277 F of the Indian Companies Act, 1913. There was restriction on opening and removal of branches and the Reserve Bank was permitted to cause inspection of banks. It is in this context that Ordinance No. 25 of 1948 was promulgated conferring power on the Reserve Bank to control advances given by the banking companies. In 1948 a confidential note of the banking companies Bill was prepared. The necessity of legislation was felt because there were insufficient paid up capital and reserve and insufficient liquidity of funds, unrestricted loans to directors. In that confidential note it was said that it was difficult to evolve any satisfactory definition of banking and difficulties arose because of the incorporation of the words 'principal business' in relation to banks in Section 277F of the Indian Companies Act, 1913.

168-A. In this background the Banking Regulation Act, 1949 was enacted. I have already referred to the provisions of Sections 5 and 6 of the 1949 Act and the businesses mentioned in Sec. 6 (1) and the definition of banking business in Section 5 (b). A most noticeable feature with regard to all these types of business of a banking company is that a banking company engages not only in the banking business but other businesses mentioned in Section 6 of the 1949 Act with depositors' money. The entire business is one integrated whole. The provisions contained in Section 6 (1) of the 1949 Act are the statutory restatement of the gradual evolution over a century of the various kinds of business of banking companies which are similar to those to be found in the State Bank of India Act, 1955 hereinafter called the State Bank Act. The business with regard to deposit of valuables and safe deposit vaults it to be found in Section 3 (viii) of the State Bank Act, the agency business is mentioned in Section 33 (xii) of the State Bank Act. The business of guarantee, underwriting and indemnity is found in Section 33 (xi) (a) of the State Bank Act and the business of trusteeship and executorship is specifically found in the Banking Regulation Act 1949 and in the previous Acts referred to here in before.

169. It was suggested by counsel for the petitioner that by banking business is meant only the hard core of banking, as defined in Section 5 (b) of the 1949 Act. It is unthinkable that the business of banks is only confined to that aspect and not to the various forms of business mentioned in Section 6 (1) of the 1949 Act. Receiving valuables on deposit or for safe custody and providing for safe deposit vaults which are contemplated in Clause (a) of Section 6 (1) of the 1949 Act cannot be dissociated from other forms of unchallenged business of a bank mentioned in that clause because any such severance would be illogical particularly when deposits for safe custody and safe deposit vaults are mentioned in the long catalogue of businesses in Cl. (a). the agency business which is mentioned in Clause (b) of Section 6 (1) is one of the recognised forms of business of commercial banks with regard to mercantile transactions and payment or collection of price. Agency is after all a comprehensive word to describe the relationship of appointment of the bank as the constituent's representative. The forms of agency transactions may be varied. It may be acting as collecting agent or disbursing agent or as depository of parties. The categories of agency can be multiplied in terms of transactions. That is why the business of agency mentioned in Clause (b) is first in the general form of acting as an agent for any Government or local authority, secondly carrying on of agency business of any description including the clearing and forwarding of goods and thirdly acting as attorney on behalf of the customers. The business of guarantee in the modern commercial world practically indissoluble connected with a bank and forms a part of the business of the bank. It is almost common place for Courts to insist on bank guarantee in regard to furnishing of security. There may be so many instances of guarantee. As to the business of trusteeship and executorship it may be said that this is the wish of the seller who happens to be a constituent of the bank appointing the bank as executor or trustee because of the utmost faith and confidence that the constituent has in the solvency and stability of the bank and also to preserve the continuity of the trustee or the executor irrespective of any change by reason of death or any other incapacity. It is needless to state that these four disputed forms is business all spring out of the relation between the bank on the one hand and the customer on the other and the bank earns commission on these transactions or charges fees for the services rendered. Although trust accounts may be kept in a separate account all moneys arising out of the trust money go to the general pool of the bank and the moneys may be kept in fixed deposit with the trustee bank and expenses on account of the trust are met out of the general funds of the trustee bank. Payments to beneficiaries are made by crediting the beneficiaries' accounts in the trustee bank and if they are not constituents other modes of payment through other banks are adopted. The position of the banks as executor is similar to that of a trustee. Whatever moneys the bank may spend are recouped by the bank out of the accounts of the trust estate.

170. After the definition of banking company had been introduced for the first time in 1936 in the Indian Companies Act, 1913 it appeared that the banks were not being managed properly and the definition of a banking company gave rise to administrative difficulties in determining whether a company was a banking company or not. A number of banking and loan companies particularly in Bengal claimed that they were not banking companies within the scope of the definition given in Section 277F of the Companies Act and in some cases their contention was upheld by the Court. The failure of the Travancore National and Quilon Bank Ltd., in 1938 and the subsequent banking crisis in South India posted a big question as to the desirability of better legislation. An attempt was made to prescribe certain minimum capital, the amount of capital depending upon the area of the operation of the bank. The banks were also asked to maintain a percentage of their assets in cash or approved securities. Thereafter the Indian Companies (Amendment) Act was passed in 1942 by which a proviso was added to Section 227F to the effect that any company which used as part of its name the word "bank", 'banker' or 'banking' shall be deemed to be a banking company

notwithstanding the fact that the acceptance of deposits on current account subject to withdrawal by cheque is not the principal business of the company. In the mid-forties it became desirable that steps should be taken to safeguard the banking structure against possible repercussion in the post-war period and it was considered necessary that comprehensive banking legislation should be introduced.

171. There are various provisions in the 1949 Act to indicate that a banking company cannot carry on business of a managing agent or Secretary and treasurer of a company and that it cannot acquire, construct, maintain, alter any building or works other than those necessary or convenient for the purpose of the company. A banking company cannot acquire or undertake the whole or any portion of any business unless such business is of one of these enumerated in S. 6 (1) of the 1949 Act. A bank cannot deal in buying or selling or bartering of goods except in connection with certain purposes related to some of the businesses enumerated in the aforesaid Section 6 (1). These provisions also establish that businesses mentioned in Section 6 of the 1949 Act are incidental and conducive to banking business. A bank cannot employ any person whose remuneration is in the form of a commission or a share in the profits of the banking company or whose remuneration is in the opinion of the Reserve Bank excessive. One of the most important provisions is Section 35 of the 1949 Act, which states that the Reserve Bank at any time may and on being directed so to do by the Central Government cause an inspection to be made by one or more of its officers of the books of account and to report to the Central Government on any inspection and the Central Government thereafter if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may prohibit the banking company from receiving fresh deposits or direct the Reserve Bank to apply under Section 38 for the winding up of the banking company. Another important provision in the 1949 Act is found in section 27 which provides for monthly returns in the prescribed form and manner showing assets and liabilities. The power of the Reserve Bank under Sections 27 and 35 of the 1949 Act relates to the affairs of the banking company which comprehend the various forms of business of the bank mentioned in Section 6 of the 1949 Act. Then again Section 29 of the 1949 Act contemplates accounts relating to accounts of all business transacted by the bank. Section 35-A of the 1949 Act confers power on the Reserve Bank to give directions with regard to the affairs of a bank. These provisions indicate beyond any measure of doubt that all forms of business mentioned in Sec. 6 (1) of the 1949 Act are lawful, legitimate businesses of a bank as these have grown along with increase of trade and commerce. The word 'banking' has never had any static meaning and the only meaning will be the common understanding of men and the established practice in relation to banking. That is why all these disputed forms of business come within the legitimate business of a bank.

172. The next question is the legislative competence in regard to the Act of 1969. Counsel for the petitioner contended that the Act was for nationalisation of banks and there was no legislative entry regarding nationalisation and therefore that was incompetent. There is no merit in that contention. The Act is for acquisition of property; the undertaking of a banking company is acquired. The legislative competence is under Entry 42 in List III of the 7th Schedule and also under Entry 45 in List I of the 7th Schedule. Entry 42 in List III is acquisition and requisitioning of property. Entry 45 in List I is 'banking'. The Act of 1969 is valid under these entries. A question arose whether the Act of 1969 pertains to Entry 43 in List I which deals with incorporation, regulation and winding up of trading corporation including banks. It is not necessary to deal with that entry because of my

conclusion as to Entries No. 42 in List III and No. 45 in List I. Counsel for the petitioner contended that the Act of 1969 trenched upon Entry 26 in List II, namely, trade and commerce within the State. I am unable to accept that contention for the obvious reason that the legislation is for acquisition of undertakings of banking companies. The pith and substance of the legislation is to be found out and meaning is to be given to the entries 'banking' and acquisition of property. In the case of United Provinces v. Mst. Atiqa Begum, 1940 FCR 110 = (AIR 1941 FC 16) Gwyer C. J. said that it would be practically impossible to define each item in the provincial legislation as to make it exclusive of every other item in that list and Parliament seems to have been content to take a number of comprehensive categories and to describe each of them by a word of board and general import. The doctrine of pith and substance used in Union Colliery Co. of British Columbia v. Bryden, 1899 AC 580 is nothing but an illustration of the principle that when the legislation is referable to one or more entries the Courts try to find out what the pith and substance of the legislation is. In the present case the Act is beyond any doubt one for acquisition of property and is also in relation to banking. The legislation is valid with reference to the entries, namely Entry 42 (Requisition) in List III, Entry 45 (Banking) in List I.

173. Counsel for the petitioner contended the undertaking of banking companies could not be the subject matter of acquisition and acquisition of all properties in the undertaking must satisfy public purpose as contemplated in Article 31 (2). This contention was amplified to mean that undertaking was not property capable of being acquired and some assets like cash money could not be the subject matter of acquisition. The Attorney General on the other hand contended first that undertaking is property within the meaning of Article 31 (2), secondly, undertaking in its normal meaning refers to a going concern and thirdly it is a complete unit as distinct from the ingredients composing it and therefore it could not be said that acquisition of the undertaking was an infraction of any constitutional provision. The term 'undertaking' is explained in Halsbury's Laws of England, 3rd Ed. Vol. 6 paragraph 75 at page 43 to mean not the various ingredients which go to make up an undertaking but the completed work from which the earnings arise. As an illustration reference is made to mortgage of the undertaking of a company.

174. In Gardner v. London Chatham and Dover Rly. Co., (1867) 2 Ch A 201 the undertaking of a railway company which was pledged was held to be a railway which was to be made and maintained by which tolls and profits were to be earned, which was to be worked and managed by a company, according to certain rules of management, and undertaking there will be money for the working of the undertaking and money will be earned thereby. Again in Re: Panama, New Zealand and Australian Royal Mail Co., (1870) 5 Ch A 318 the undertaking of a steamship company was explained to have reference not only to all the property of the company which existed at the date of the debenture but which might become the property of the company and further that the word 'undertaking' referred to the application of funds which came into the hands of the company in the usual course of business. Undertaking will therefore relate to the entire business although there may be separate ingredients or items of work or assets in the undertaking. The under taking is a going concern and it cannot be broken up into pieces to create a security over the undertaking (See Re: Portsmouth (Kingston, Fratton and South-sea) Tramway Co., (1892) 2 Ch 362 and H. H. Vivian and Co. Ltd., (1900) 2 Ch 654).

175. The word 'undertaking is used in various statutes of our country, viz., the Indian Electricity Act, 1910 (Sections 6, 7, 7A), Indian Companies Act (Sections 125 (4) (f), 293 and 394), Banking Regulation Act, 1949 (Section 14A), Cotton Textiles Companies (Management of Undertaking, Liquidation and Reconstruction) Act, 1967 (Sections 4 (1), 5 (1) (2)). By the word undertaking is meant the entire organisation. These provisions indicate that the company whether it has a plant or whether it has an organisation is considered as one whole unit and the entire business of the going concern is embraced within the word undertaking'. In the case of sale of an undertaking as happened in Doughty v. Lomagunda Reefs, Ltd., (1962) 2 Ch 837 the purchaser was required to pay all debts due by and to perform outstanding contracts comprised in the entire undertaking. The word 'undertaking' is used in the Indian Electricity Act, the Air Corporation Act, 1953, the Imperial Bank of India Act, 1920 (Sections 3, 4 6 and 7), the State Bank of India Act, 1955 (Section 6 (1) (g)), the State Bank Subsidiaries Banks Act, 1959 (Section 10 (1)), the Banking Regulation Act, 1949 (Section 36AE (1)) and there have been legislative provisions for acquisition of some of these undertaking.

176. Under Section 5 of the Act of 1969 the undertaking of each existing bank shall be deemed to include all assets, rights, powers, authorities and privileges and all property, movable and immovable, cash balances, reserve funds, investments and all other rights and interests arising out of such property as were immediately before the commencement of this Act in the ownership, possession, power or control of the existing bank in relation to the undertaking. This Court accepted the meaning of property given by Rich, J. in the Minister for State for the Army v. Dalziel, 68 CLR 261 to be a bundle of rights which the owner has over or in respect of a thing, tangible or intangible or the word 'property' may mean the thing itself over or in respect of which the owner may exercise those rights. In the case of Commr. Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005 = (AIR 1954 SC 282) this Court again gave wide meaning to the word 'property' and Mukherjea J. said that there is no reason why the word 'property' as used in Article 19 (1) (f) of the Constitution should not be given a liberal and wide connotation and would not be extended to those well-recognised types of interest which have the insignia or characteristics of proprietary right. In the case of J. K. trust, Bombay v. Commr. of Income-tax, Excess Profits Tax, Bombay, 1958 SCR 65 = (AIR 1957 SC 846) this Court held the managing agency business to be a property. The undertaking of a bank will therefore be the entire integrated organisation consisting of all property, movable or immovable and the totality of undertaking is one concept which is not divisible into components or ingredients. That is why in relation to company the word 'undertaking' is used in various statutes in order to reach every corner of property, right, title and interest therein. The decision in (1968) 3 SCR 489 = (AIR 1968 SC 1053) is an authority for the proposition that money cannot be acquired under Article 31 (2). The impugned Act in Ranojirao Shinde's case, (1968) 3 SCR 489 = (AIR 1968 SC 1053) (supra) abolished cash grants which the respondents were entitled to receive from the Government of Madhya Pradesh, but provided for the payment of certain compensation to the grantees. Ranojirao Shinde's case, (1968) 3 SCR 489 = (AIR 1968 SC 1053) (supra) did not deal with the case of an undertaking and has therefore no application to the present case. The undertaking is an amalgam of all ingredients of property and is not capable of being dismembered. That would destroy the essence and innate character of the undertaking. In reality the undertaking is a complete and complex weft and the various types of business and assets are threads which cannot be taken apart from the weft. I am, therefore, of opinion that undertaking of a banking company is property which can be validly acquired under Article 31 (2) of the Constitution.

177. The next question for consideration is whether Article 19 (6) of the Constitution is attracted. Counsel for the petitioner contended that as a result of the Constitution. First Amendment Act, 1951 Article 19 (6) was clarified to the effect that the word restrictions' would include prohibition or exclusion which was dealt with in the second limb of Article 19 (6). It may be stated here that prior to the amendment of Art. 19 (6) the second limb spoke only of law prescribing qualifications for practising any profession or carrying on any occupation, trade or business. As a result of the amendment of the second limb of Article 19 (6) consisted of two sub-articles the first sub-article relating to qualifications for practising profession or carrying on any occupation, trade or business and the second sub-article relating to carrying on by the State of trade, business industry to the exclusion complete or partial of citizens or otherwise. The second sub-article was really an enlargement of Clause (6) of Article 19 as a result of the amendment. The main contention of counsel for the petitioner was that the second limb of Article 19 (6) after the expression 'in particular' must also satisfy the test of reasonable restriction contained in the first limb of Article 19 (6) and emphasis was placed on the word 'in particular' to show that it indicated that the second limb was only an instance of the first limb of the Article. The Constitution First Amendment Act of 1951 was enacted really to enable the State to carry on business to the exclusion, complete or partial of citizens or otherwise as will appear from the amendment of Article 19 (6).

178. In the case of (1963) Supp. 2 SCR 691 = (AIR 1963 SC 1047) this Court considered the Orissa Tendu Leaves (Control of Trade). Act, 1961 by which the State acquired monopoly in the trade of Kendu leaves and put restrictions on the fundamental rights of the petitioner. In that case, Gajendragadkar, J. speaking for the Court referred to the decision of the Allahabad High Court in Motilal v. Government of the State of Uttar Pradesh, ILR (1951) 1 All 269 = (AIR 1951 All 257) where a monopoly of transport sought to be created by the U. P. Government in favour of the State operated Bus Service known as the Government Roadway's was struck down as unconstitutional because such a monopoly totally deprived the citizens of their rights and that is why Article 19 (6) came to be amended. The necessity of the amendment of Article 19 (6) was explained in the case of Akadasi Pradhan, (1963) Supp 2 SCR 691 = (AIR 1963 SC 1047) (supra), The view expressed by this Court in that case is that the two sub-articles of the second limb deal with two different forms of legislation. The first sub-article deals with restrictions on the exercise of the right to practise any profession or to carry on any trade, occupation or business. The second sub-articles deals with carrying on by the State of any trade, business or industry to the exclusion, complete or partial of citizens or otherwise. The effect of the amendment was stated by Gajendragadkar, J. to be that a State Monopoly in respect of any trade or business must be presumed to be reasonable and in the interest of the general public so far Article 19 (1) (g) is concerned. The words in particular in that case in Article 19 (6) were held to indicate that restrictions imposed on the fundamental rights guaranteed by Article 19 (1) (g) which are reasonable and which are in the interest of the general public are saved by Article 19 (6) as it originally stood and the validity of the laws covered by the amendment would no longer be left to be tried in Courts.

179. Counsel for the petitioner relied on the decision of the House of Lords in the case of 1952 AC 362 in support of the proposition that the words in particular in Article 19 (6) were used to place the accent on reasonable restrictions in that clause as the saving feature of a law affecting Article 19 (1)

(g). Section 43 (1) of the town and Country Planning Act, 1947 which was considered was as follows:

"(1) The Central Land Board may, with the approval of the Minister, by agreement acquire land for any purpose connected with the performance of their functions under the following provision of this Act, and in particular may so acquire any land for the purpose of disposing of it for development for which permission has been granted under Part III of this Act on terms inclusive of any development charge payable under those provisions in respect of that development."

It was held that sub-section conferred a single power on the Central Land Board and not two powers, viz., that the boards have power to acquire land for the purpose connected with the performance of their functions and the words in the second limb of the section were no more than a particular instance of that which the legislature regarded as part of the Board's functions. The purpose referred to in the second part of the subsection there introduced by the words in particular' was held to be a purpose connected with the performance of the function within the meaning of the first part of the sub-section. The language of the sub-section in the case before the House of Lords is entirely different from the language in Article 19 (6). Article 19 (6) in the two limbs and in the two sub-articles of the second limb deals with separate matters and in any event State monopoly in respect of trade or business is not open to be reviewed in Courts on the ground of reasonableness. This Court in the case of Writ Petn. No. 295 of 1965, D/- 30-1-1969 = (reported in AIR 1969 SC 1100) held that so far as monopoly business by the State was concerned under Article 19 (6) it was not open to challenge.

180. The four businesses which were disputed by counsel for the petitioner to be within the business of banking were contended to be not only acquisition of property in violation of Article 19 (1) (f) but also not to be reasonable restrictions in the interest of the general public under Article 19 (5) or under Article 19 (6). Emphasis was placed on Section 15 (2) of the Act of 1969 to contend that after the acquisition of the undertaking of the bank the provision permitting the banks to carry on business other than banking would be empty and really amount to prohibition of carrying on of the business because the assets pertaining to the four disputed businesses with which the business could be carried on had been taken away. I have already expressed my opinion that the four disputed businesses are the legitimate businesses of a banking company as mentioned in Section 6 (1) of the 1949 Act and are comprised in the undertaking of the bank and Article 19 (1) (f) is not attracted in case of acquisition or requisition of property dealt with by Article 31 (2). I have also held that Article 19 (6) confers power on the State to have a valid monopoly business. Section 15 (2) of the 1969 Act allows the existing banks to carry on business other than banking. If as a result of acquisition, the bank will complain of lack of immediate resources to carry on these businesses the Act provides compensation and the existing bank will devise ways and means for carrying on the businesses. Constitutionality of the Act cannot be impeached on the ground of lack of immediate resources to carry on business. In the present case, the acquisition is not unconstitutional and the bank is free to carry on all business other than banking. It cannot be suggested that after compensation has been provided for the State will have to provide moneys to enable the existing bank to carry on these businesses. That would be asking for something beyond the limits of the

Constitution. If the entire undertaking of a banking company is taken by way of acquisition the assets cannot be separated to distinguish those belonging to banking business from other belonging to "non banking business" because assets are not in fact divided on any such basis. Furthermore that would be striking at the root of acquisition of the entire undertaking. It would be strange to hold in the teeth of express provisions in the Act of 1969 permitting the banks to carry on business other than banking that the same will amount to a prohibition on the bank to carry on those businesses. I find it difficult to comprehend the contention of the petitioner that a permissive provisions allowing the banks to carry on these businesses other than banking becomes unreasonable. If that provision was not there the businesses could be carried on and the argument would not be available at all. The express making of the provision obviously for greater safety cannot change the position. The petitioner's contention on Article 19 (6) therefore fails.

181. Counsel for the petitioner contended that Section 11 of the 1969 Act suffered from the vice of excessive delegation and there were no guidelines for reaching the objectives set out in the Preamble of the Act and the decision of Government regarding policy involving public interest was made final and therefore it was unconstitutional. Section 11 of the Act of 1969 is in two sub-sections. The first sub-section enacts that corresponding new bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may after consultation with the Governor of the Reserve Bank, give. The second sub-section enacts that if any question arises whether a direction relates to a matter of policy involving public interest, it shall be referred to the Central Government and the decision of the Central Government thereon shall be final. Section 25 (1) (c) of the Act of 1969 provides that the words 'corresponding new bank' constituted under Sec. 3 of the 1969 Act "on any other banking institution notified by the Central Government" shall be substituted for the words "or any other banking institution notified by the Central Government in this behalf", in Section 51 of the 1949 Act. Sections 7, 17 (15A) of the Reserve Bank Act of 1934 contain similar powers on the part of the Central Government to give directions to the Reserve Bank in regard to management and exercise of power and functions in performance of duties entrusted to the bank under the Reserve Bank Act. A statute of this nature whereby the controlling interest of the business of banks is acquired renders it not only necessary but also desirable that policy involving public interest should be left to the Government.

182. The Act of 1969 contains enough guidance. First the Government may give directions only in regard to policy involving public interest; secondly directions can only be given by the Central Government and no one else; thirdly, these directions can only be given by the Central Government after consultation with the Governor of the Reserve bank; fourthly, directions given by the Government are in regard to matters involving public interest which means that this is objective and subject to judicial scrutiny and both the Central Government and the Governor of Reserve Bank are high authorities.

183. As a result of Section 25 (1) (c) of the act of 1969, 14 banks will be subject to the provisions of the 1949 Act enumerated in Sections 15, 17, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 31, 34, 35, 35A, 36 and 48. These sections principally deal with restrictions as to payment of dividend, prohibition of floating charge on assets, creation of reserve fund, restrictions on subsidiary company, restrictions

on loans and advances, power of the Reserve Bank to control advances by banking companies, restrictions on the opening of new places of business, maintenance of percentage of assets, return of unclaimed deposits, furnishing of returns to the Reserve Bank, publication of information by the Reserve Bank, submission, of accounts and balance sheet to the Reserve Bank, inspection by the Reserve Bank, power of the Reserve Bank to give directions with regard to management, and imposition of penalties for contravention of the provisions of the Act.

184. There are other statutes which provide powers of the Central Government to give directions. I have already referred to the Reserve Bank of India Act, 1934. There are similar statutes conferring powers on the Government to give directions, namely, State Bank of India Act, 1955, State Financial Corporation Act, 1951, University Grants Commission Act, 1956, Life Insurance Act, 1956, Deposit Insurance Act, 1961, National Co-operative Development Corporation Act, 1962, Agricultural Refinance Corporation Act, 1963 and State Agricultural Credit Corporations Act, 1968. There are English statutes which contain similar provisions of exercise of power on directions by the Government in regard to the affairs of the undertakings covered by the statutes. These are the Bank of England Act, 1946, Cotton (Centralised Buying) Act, 1947, Coal Industry Nationalisation Act, 1946, Civil Aviation Act, 1946, Electricity Act 1947, Gas Act, 1948, Iron and Steel Act, 1949 and Air Corporations Act, 1949. It is explicable that where the Government acquires undertakings of industries, the matters of policy involving public interest or national interest should be left to be decided by the Government. There is nothing unconstitutional in such provisions.

185. The Preamble to the Act of 1969 states that the object of the Act is "to serve better the needs of the development of the economy in conformity with notional policy and objectives". National policy and objectives are in accordance with the Directive Principles in Part IV of the Constitution. It is stated by the respondents in their affidavits that there are needs of the development of the economy in conformity with the Directive Principle and these are to be achieved by a mobilisation of the savings of the community and employing the large resources of the 14 banks to develop national economy in several spheres of activity by a more equitable distribution of economic resources, particularly, where there are large credit gaps. In the case of Harishankar Bagla v. State of Madhya Pradesh, 1955-1 SCR 380 = (AIR 1954 SC 465) Mahajan, C. J. at pages 388-89 of the report said "The Preamble and the body of the sections sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the frame-work of that policy". It is manifest that in working the Act of 1969 directions from the Central Government are necessary to deal with policy and other matters to serve the needs of national economy.

186. Counsel on behalf of the petitioner next contended that acquisition of the 14 banks and the prohibition of banking business by the existing banks violated Article 301 and was not saved by Article 302 because it is not required in the public interest. As to the four disputed businesses which the exiting banks can under the Act carry on, it was said that the same was an infraction of Article 301. Article 305 to my mind directly applies to a law relating to banking and all businesses necessarily incidental to it carried on by the State to the complete or partial exclusion of 14 banks. Article 302 can have no application in such a case. An individual cannot complain of violation of

Article 301.

187. Article 305 applies in the present case and therefore neither Article 301 nor Article 302 will apply. Article 302 is an enabling provisions and it has to be read in relation to Article 301. Acquisition of property by itself cannot violate Article 301 which relates to free trade, commerce throughout India. The object of acquisition is that the State shall carry on business to the exclusion, complete or partial, of the 14 banks.

188. Counsel for the petitioner contended that the 1969 Act violated the provisions of Article 14 on these grounds: First, the Act discriminated against 14 banks as against other Indian scheduled banks, secondly, the selection of 14 banks has no reasonable connection to the objects of the Act; thirdly, banks which may be described to be inefficient and which are liable to the acquire under Section 36AE of the 1949 Act are not acquired whereas 14 banks who have carried on their affairs with efficiency are acquired; fourthly under Section 15 (2) (d) (e) of the 1969 Act the 14 banks cannot do any banking business whereas other Indian scheduled banks or any other new banking company can do banking business.

189. In order to appreciate these contentions it is necessary to remember the background of growth of Indian banks. At the beginning I referred to the position that State Bank of India and its several subsidiaries and the 14 banks occupy today in contrast with foreign banks and other scheduled or non-scheduled Indian banks. These 14 banks are not in the same class as other scheduled banks. The classification is one the basis of the 14 banks having deposit of Rs. 50 crores and over. The object of the Act is to control the deposit resources for developing national economy and as such the selection of 14 banks having regard to their larger resources, their greater coverage, their managerial and personnel resources and the administrative and organisational factors involved in the expansion is both intelligible and related to the object of the Act. There is no evidence to show that the 14 banks are more efficient than the others as counsel for the petitioner contended. Section 15 (2) (d) (e) of the 1969 Act states that these 14 banks after acquisition, are not to carry on any banking business for the obvious reason that these 14 banks are not in the same class as the other Indian banks. Besides, it is also reasonable that the 14 banks should not be permitted to carry on banking business as the corresponding new banks. Therefore the classification of the 14 banks is also a rational and intelligible classification for the purposes of the Act. The object of the 1969 Act was to meet credit gaps and to have a wider distribution of economic resources among the weaker sections of the economy, namely, agriculture, small scale industry and retail trade.

190. The Act of 1969 is for development of national economy with the aid of banks. There are needs of various sectors. The legislature is the best judge of what should subserve public interest. The relative need is a matter of legislative judgment. The legislature found 14 banks to have special features namely, large resources and credit structure and good administration. The categorisation of Rs. 50 crores and over vis-?is other banks with less than Rs. 50 crores is not only intelligible but is also a sound classification. From the point of view of resources these 14 banks are better suited than

others and therefore speed and efficiency which are necessary for implementing the objectives of the Act can be ensured by such classification.

191. In the case of 1959 SCR 279 = (AIR 1958 SC 538) it was said that the Court would taken into consideration the history of the times and could also assume the state of facts existing at the time of legislation. A presumption also arises in regard to constitutionality of a piece of legislation. In the case of P. V. Sivarajan v. Union of India, (1959) Supp (1) SCR 779= (AIR 1959 SC 556) the Coir Industry Act was considered in relation to registration of dealers for export. The Act provided minimum quantity of export preceding12 months the commencement of the Act as one of the qualifying terms of registration. This quantitative test was held good. The legislative policy as to the necessity is a matter of legislative judgment and the Court will not examine the propriety of it. The legislation need not be all embracing and it is for the legislature to determine what categories will be embraced. In Dalmia's case (1959) SCR 279 = (AIR 1958 SC 538) (supra) it was said that the two tests of classification were first that there should be an intelligible differentia which distinguished persons or things grouped from others left out and secondly the differentia must have a rational relation to the object sought to be achieved by the statute. There has to be a line of demarcation somewhere and it is reasonable that these 14 banks which are in a class by themselves because of their special features in regard to deposit, credit, administration, organisation should be prohibited from carrying on banking business. These special circumstances are the reasons for classification. This distinction between the 14 banks and others reasonably justified different treatment. An absolute symmetry or an accurate classification is not possible to be achieved in the task of acquisition of under takings of banking companies. It cannot, therefore, be said that companies whose deposits were in the range of Rs. 45 of Rs. 50 crores should have been taken.

192. In Kathi Raning Rawat v. State of Saurashtra, (1952) 3 SCR 435 = (AIR 1952 SC 123) this Court said that the necessity for judicial enquiries would arise when there was an abuse of power and the differences would have no relation to the object. In the case of Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. State of Delhi, (1962) Supp (1) SCR 156 = (AIR 1962 SC 458) the Court supported legislation on a reasonable ground that the case of Tibia College, 1962 Supp (1) SCR 156 = (AIR 1962 SC 458) (supra) had exceptional features which were not found in others. In Dalmia's case, 1959 SCR 279 = (AIR 1958 SC 538) (supra) the legislature was said to be free to recognise the degrees of harm and to confine its restriction to those cases where the need was deemed to be the greatest. It is in this sense that usefulness to society was found to form a basis of classification in the case of Mohd. Hanif Quareshi v. State of Bihar, 1959 SCR 629 = (AIR 1958 SC 731). In the case of Harnam Singh v. Regional Transport Authority, Calcutta, 1954 SCR 371 = (AIR 1954 SC 190) Mahajan, J. said that in considering Article 14 the Court should not adopt an attitude which might well choke all beneficial legislation and legislation which was based on a rational classification was permissible. It will not be sound to suggest that there are other banks which can be acquired and these 14 banks should be spared. There is always possibility of discerning some kind of inequality and therefore grouping has to be made. Where the legislature finds that public need is great and these 14 banks will be able to supply that need for the development of national economy classification is reasonable and not arbitrary and is based on practical grounds and consideration supported by the large resources of over Rs. 50 crores of each of these 14 banks and their administration and management, I am, therefore, of opinion that the acquisition of the undertakings does not offend Art. 14 because of intelligible differentia and their rational relation to

the object to be achieved by the Act of 1969 and it follows that these banks cannot therefore be allowed to carry on banking business to nullify the very object of the Act.

193. Counsel for the petitioner contended that the Act of 1969 infringed Article 31 (2) because there was no just compensation. It was said that compensation in Article 31 (2) meant just compensation and if the 1969 Act did not aim at just compensation, it would be unconstitutional. It was contended that cash could not be taken and further that the four disputed businesses could not be acquired. I have already expressed my view that the Act acquired the entire undertaking of the banks, and, therefore, there is no question of taking of cash. I have also expressed my view that the four disputed businesses are all within the business of bank, and, therefore, the Act is valid.

194. It was said by counsel for the petitioner that the word 'compensation' in Article 31 (2) was given the meaning of just equivalent in earlier decisions of this Court and since the word 'compensation' was retained in Article 31 (2) after the Constitution Fourth Amendment Act, 1955 there was no change in the meaning of the expression 'compensation' and it would have the same meaning of just equivalent. In view of the fact that after the Constitution Fourth Amendment Act the question of adequacy of compensation is not justiciable it was said by counsel for the petitioner that the only question for Courts is whether the law aimed at just equivalent. Counsel for the petitioner relied on the decision of this Court in (1965) 1 SCR 614 = (AIR 1965 SC 1017) and submitted that the decision in AIR 1969 SC 634 was a wrong interpretation of Article 31 (2).

195. The Attorney General on the other hand contended first that after the Constitution Fourth Amendment Act Article 31 (2) enacted that no law shall be called in question on the ground that the compensation provided by that law is not adequate and therefore compensation in that Article could not mean just equivalent. It was also said that Article 31 (2) refers to a law which provides for compensation and not to a law which aims at just equivalent. Secondly, it was said that the whole of Article 31 (2) had to be read and the meaning of the word 'compensation' in the first limb was to be understood by reference to the second limb and if the petitioner's arguments were accepted the Constitution would read that unless law provided for a just equivalent it shall be called in question. It was, therefore, said by the Attorney General that if just equivalent was to be aimed at the second limb of Article 31 (2), namely, that inadequacy would not be questioned would become redundant and meaningless. If the law enjoined that there was to be compensation and either principle for determination of compensation or amount of compensation was fixed the Court could not go into the question of adequacy or reasonableness of compensation and the Court could not also go into the question of result of application, propriety of principle or reasonableness of compensation.

196. In Vajravelu Mudaliar's case, (1965) 1 SCR 614 = (AIR 1965 SC 1017) (supra) this Court referred to the decision of Bela Banerjee's case, 1954 SCR 558 = (AIR 1954 SC 170) where it was held that compensation in Article 31 (2) meant just equivalent or full indemnification. In Vajravelu Mudaliar's case, (1965) 1 SCR 614 = (AIR 1965 SC 1017) (supra) it was contended that the Land Acquisition Madras Amendment Act, 1961 had provided for acquisition of land for housing

schemes and laid down principles for compensation different from those prescribed in the Land Acquisition Act 1894 and thereby Art. 31 (2) was infringed because the Act did not provide for payment of compensation within the meaning of Art. 31 (2), Subba Rao, J. speaking for the Court said that if the term 'compensation' had received judicial interpretation it must be assumed that the term was used in the sense in which it had been judicially interpreted unless a contrary intention appeared. That is how reference was made to the decision of this Court in Bela Banerjee's case, 1954 SCR 558 = (AIR 1954 SC 170) to emphasise that a law for requisition or acquisition should provide for a just equivalent of what the owner has been deprived of. Subbea Rao, J. then dealt with the clause excluding the jurisdiction of the Court where the word compensation' was used and said at page 627 of the Report 1965-1 SCR = (at page 1024 of AIR). 'The argument that the word 'compensation' means 'just equivalent' for the property acquired, and, therefore the Court can ascertain whether it is just equivalent or not makes the amendment of the Constitution nugatory. It will be arguing in a circle. Therefore, a more reasonable interpretation is that neither the principles prescribing the 'just equivalent' nor the 'just equivalent' can be questioned by the Court on the ground of inadequacy of compensation fixed or arrived at by the working of the principles".

197. This Court then said that when value of a house at the time of acquisition had to be fixed there could be several methods of valuation, namely, estimate by engineer or value reflected by comparable sales or capitalisation of rent and similar others with the result that the adoption of one principle might give a higher value but they would nevertheless be principles of the manner in which the compensation has to be determined and the Court could not say that the Act should have adopted one principle and not the other because it would relate to the question of adequacy. In that case it was said that if a law lays down principles for determining compensation which are not relevant to the property acquired or to the value of the property at or about the time it is acquired it might be said that these are not principles contemplated by Article 31 (2). This was illustrated by saying that if a law says that though a house is acquired it would be valued as an agricultural land or though it is acquired in 1950 its value in 1930 should be given and though 100 acres are acquired only 50 acres will be paid for, these would not enter the question of area or adequacy of compensation. Another rule which was laid down in Vajravelu Mudaliar's case, 1965-1 SCR 614 = (AIR 1965 SC 1017) (supra) is that the law may prescribe compensation which is illusory. To illustrate a property worth a lakh of rupees might be paid for at the sum of Rs. 100 and the question in that context would not relate to the adequacy of compensation because there was no compensation at all.

198. Two broad propositions which were laid down in Vajravelu Mudaliar's case, 1965-1 SCR 614 = (AIR 1965 SC 1017) (supra) are these. First if principles are not relevant to the property acquired or not relevant to the value of the property at or about the time it is acquired, these are not relevant principles. The second proposition is that if a law prescribes a compensation which is illusory the Court could question it on the ground that it is not compensation at all.

199. In the case of Shantilal Mangaldas, AIR 1969 SC 634 (supra) the Bombay Town Planning Act of 1950 which was repealed by the Bombay Town Planning Act of 1955 came up for consideration. There was a challenge to the Bombay Act of 1955 on the ground of infringement of Article 31 (2)

of the Constitution. Section 53 of the Bombay Act contemplated transfer of ownership by law from private owners, to the local authority. It was argued that under Section 53 of the Bombay Act when a plot was reconstituted and out of that plot a smaller area was given to the owner and the remaining area was utilised for public purpose the area so utilised for vested in the local authority for a public purpose, but the Act did not provide for giving compensation which was a just equivalent of the land expropriated at the date of extinction of interest and therefore Article 31 (2) was infringed. It was also argued that when the final scheme was framed in lieu of the ownership of the original plot and compensation in money was determined in respect of the land appropriated to public purpose such a scheme for compensation violated Article 31 (2) because compensation for the entire land was not provided and secondly payment of compensation in money was not provided in respect of the land appropriated to public use.

200. Shah, J., speaking for the Court in the case of Shantilal Mangaldas, AIR 1969 SC 634 (supra) said that the decision of this Court in the cases of Bela Banerjee, 1954 SCR 558 = (AIR 1954 SC 170) and Subodh Gopal Bose, 1954 SCR 587 = (AIR 1954 SC 92) (supra) "raised more problems than they solved", because the Court did not indicate the meaning of just equivalent and "it was easier to state what was not just equivalent than to define what a just equivalent was'. In this state of law Article 31 was amended by Constitution Fourth Amendment Act, 1955. Shah, J., said first that adequacy of compensation fixed by the legislature or awarded according to principles specified by the legislature is not justifiable and secondly if the amount of compensation is fixed it cannot be challenged apart from a plea of abuse of legislative power because otherwise it would be a challenge to the adequacy of compensation. In Shantilal Mangaldas's case, AIR 1969 SC 634 (supra) Shah, J., also said that the compensation fixed or determined on principles specified by the legislature cannot be challenged on the indefinite plea that it is not a just or fair equivalent. Shah, J., further said that principles of compensation could not be challenged on the plea that what was awarded as a result of the application of those principles was not just or fair compensation.

201. If the quantum of compensation fixed by the legislature is not liable to be challenged before the Court on the ground that it is not a just equivalent the principles specified for determination of compensation will also not be open to challenge on the plea that the compensation determined by the application of these principles is not a just equivalent. The right declared by the Constitution guarantees compensation before a person is compulsorily expropriated of the property for public purpose. Principles may be challenged on the ground that they are not relevant to the property acquired or the time of acquisition of the property but not on the plea that the principles are not relevant to the determination of a fair or just equivalent of the property acquired. A challenge to the statute that a principle specified by it does not provide or award a just equivalent will be a clear violation of the constitutional declaration that inadequacy of compensation provided for is not justifiable.

202. Shah, J., referred to the decision of this Court in (1967) 1 SCR 255 = (AIR 1967 SC 637) and expressed disagreement with the following view expressed in the Metal Corporation case, 1967-1 SCR 255 = (AIR 1967 SC 637) "the law to justify itself has to provide a payment of just equivalent to the land acquired or lay down principles which will lead to that result. If the principles laid down

are relevant to the fixation of compensation and are not arbitrary the adequacy of the resultant product cannot be questioned in the Court of law. The validity of the principles judged by the above tests falls within judicial scrutiny and if they stand 'he test the adequacy of the product falls outside justification". In Metal Corporation case, 1967-1 SCR 255 = (AIR 19678 SC 637) (supra), compensation was to be equated to the cost price in the case of unused machinery in good condition and written down value as understood in income-tax law was to be the value of the used machinery and both were said to be irrelevant to the fixation of the value of machinery as on the date of acquisition. Shah, J., speaking for the Court expressed inability to agree with that part of the judgment and then said "the Parliament has specified the principles for determining compensation of undertaking of the company. The principles expressly related to the determination of compensation payable in respect of unused machinery in good condition and used machinery. The principles were not irrelevant to the determination of compensation and the compensation was not illusory". If what is specified is a principle for determination of compensation the challenge to that principle on the ground that a just equivalent is not reached is barred by the plain words of Article 31 (2) of the Constitution.

203. These two decisions have one feature in common, namely, that if compensation is illusory the Court will be able to go into it. By the word "illusory" is meant something which is obvious, patent and shocking. If for a property worth Rs. 1 lakh compensation is fixed at Rs. 100 that would be illusory. One need not be astute to find out as to what would be at sight illusory. Furthermore, illusoriness must be in respect of the whole property and there cannot be illusoriness as to part in regard to the amount fixed or the result of application of principles laid down.

204. When principles are laid down in a statute for determination of compensation all that the Court will see is whether those principles are relevant for determination of compensation. The relevancy is to compensation and not to adequacy. I am unable to hold that when the relevant principle set out is ascertained value the petitioner could yet contend that market value should be the principle. It would really be going into adequacy of compensation by preferring the merits of the principle to those of the other for the oblique purpose of arriving at what is suggested to be just equivalent. To my mind it is unthinkable that the legislature after the Constitution Fourth Amendment Act intended that the word 'compensation' would mean just equivalent when the legislature put a bar on challenge to the adequacy of compensation. Just compensation cannot be inadequate any anything which is impeached as unjust or unfair is impinging on adequacy. Therefore, just equivalent cannot be the criterion in finding out whether the principles are relevant to compensation or whether compensation is illusory. In Vajravelu Mudaliar's case, 1965-2 SCR 614 = (AIR 1965 SC 1017) (supra) the Court noticed continuous rise in land price but accepted an average price of 5 years a principle. An average price over 5 years in the teeth of a continued rise in price would not aim at just equivalent according to the petitioner's contention there. Again potential value of land which was excluded in the Act in Vajravelu Mudaliar's case, (1965) 1 SCR 614 = (AIR 1965 SC 1017) (supra) was said there to pertain to the method of ascertaining comensation and its exclusion resulting in inadequacy of compensation. I am, therefore, of opinion that if the amount fixed is not obviously and shockingly illusory or the principles are relevant to determination of compensation, namely, they are principles in relation to property acquire or are principles relevant to the time of acquisition of property there is no infraction of Article 31 (2) and the owner cannot impeach it on the ground of 'just equivalent' of the property acquired.

205. Counsel on behalf of the petitioner contended that Section 6 of the 1969 Act was an infraction of Article 31 (2) on these grounds. First, no time limit was mentioned with regard to payment of compensation in Section 6 (1); secondly, Section 6 (6) was an unreasonable restriction; thirdly, the four disputed businesses are not subject-matter of acquisition for public purpose; fourthly, debentures cannot be subject-matter of acquisition; fifthly, currency notes, cash, coins cannot be subject matter of acquisition. It was said that securities and cash which are maintained under Section 42 of the Reserve Bank Act, 1934 and Section 24 of the 1949 Act can be taken but reserves and investments and shareholders' accumulated past profits cannot be subject-matter of acquisition and finally undertaking is not property and each asset is to be paid for.

206. Section 6 (1) of the Act provides for payment of compensation if it can be fixed by agreement and if agreement cannot be reached there shall be reference to a tribunal. There is no question of time within which agreement is to be reached or determination is to be made by a tribunal.

207. Section 6 (6) relates to interim payment of 'one half of the amount of paid-up share capital" and any existing bank may apply to the Central Government for such payment before the expiry of 3 months or within such further time not exceeding 3 months as the Central Government may by notification specify. If the bank will apply the Government will pay the money only if the bank agrees to pay to shareholders. Section 6 (6) is a provision for the benefit of the bank and the shareholders. There is no unreasonableness in it.

208. I have already held that the four disputed businesses come within the legitimate business of banks and therefore they are valid subject-matter of acquisition. No acquisition or requisition of the undertaking of the banking company is complete or comprehensive without all businesses which are incidental and conducive to the entire business of the bank.

209. The entire undertaking is the subject-matter of acquisition and compensation is to be paid for the undertaking and not for each of the assets of the undertaking. There is no uniform established principle for valuing an undertaking as a going concern but the usual principle is assets minus liabilities. If it be suggested that no compensation has been provided for any particular asset that will be questioning adequacy of compensation because compensation has been provided for the entire undertaking. The compensation provided for the undertaking cannot be called illusory because in the present case principles have been laid down. The Second Schedule of the Act of 1969 deals with the principles of compensation for the undertaking. The second Schedule is in two parts. Part I relates to assets and Part II relates to liabilities. The compensation to be paid shall be equal to the sum total of the value of assets calculated in accordance with the provisions of Part I less the sum total of liabilities computed and obligations of existing banks calculated in accordance with the provisions of Part II. In Part I assets are enumerated.

210. Counsel for the petitioner contended that with regard to assets either there was no principle or the principle was irrelevant or the compensation was illusory or it was not just equivalent. As to securities, shares, debentures Part 1 (c) explanation (iv) was criticised on the ground that there was no principle because period was not fixed and was left to be determined by some other authority. Explanations (iv) and (v) to Part I (c) will be operative only when market value of shares, debentures is not considered reasonable by reason of its having been affected by abnormal factors or when market value of shares, debentures is not ascertainable. In the former case the basis of average market value over any reasonable period and in the latter case the dividend paid during 5 years and other relevant factors will be considered. In both cases principles have been laid down, namely, how valuation will be made taking into account various factors and these principles are relevant to determination of compensation for the property.

211. Part I (c) Explanation I was criticised by counsel for the petitioner to be an instance of value being brought down from 'just equivalent'. Part I (c) Explanation I states that value shall be deemed to be market value of land or buildings, but where such market value exceeds the ascertained values determined in the manner specified in Explanation 2, it shall be deemed to mean such ascertained value. This criticism suggests that compensation should be just equivalent meaning thereby that what is given is not just and therefore, indirectly it is challenging the adequacy. In Vajravelu Mudaliar's case, 1965-1 SCR 614 = (AIR 1965 SC 1017) (supra) there was a provision for compensation on the basis of the market value on the date of the notification or on the basis of average market value during past 5 years whichever was less. That principle was not held to be bad. The owner of the property is not entitled to just equivalent. Explanation I lays down the principle. Market value is not the only principle. That is why the Constitution has left the laying down of the principles to the legislature. Ascertained value is a relevant and sound principle based on capitalisation method which is accepted for valuation of land and properties.

212. It was next said by counsel for the petitioner that Explanation 2 (1) in Part I was an irrelevant principle because it was a concept borrowed from Income-tax Act for calculating income and not capital value. It was said that 12 times the annual rent was not a relevant principle and was not an absolute rule and compensation might be illusory. It was also said that Explanation 2 (1) would be irrelevant where 2 plots were side by side, one with building and the other vacant land because the latter would get more than the former and in the former standard rent was applied and the value of land was ignored and therefore it was an irrelevant principle. That, will not be illusoriness. Standard rent necessarily takes into account value of land on which the building is situated because no rent can be thought of without a building situated on a plot of land. Article 31 (2) does not enjoin the payment of full or just equivalent or the payment of market value of land and buildings. There should be a relevant principle for determining compensation for the property acquired. Capitalisation method is not available for land because land is not generally let out. If rental method be applied to land the value may be little. In any event, it is a principle relevant to determination of compensation. Furthermore, there was no case in the petition that there was land with building side by side with vacant land.

213. Another criticism with regard to Explanation 2 (1) (i) was that amount required for repairs

which was to be deducted in finding out ascertained value should not be deducted against capital value. I am unable to accept the contention because this deduction on account of maintenance and repairs is essential in the capitalisation method. It was next said by counsel for the petitioner that Explanation 2 (1) (ii) which speaks of deduction of insurance premium would reduce the value. Insurance would also be an essential deduction in the capitalisation method and it could not be assumed that the bank would insure for a value higher than what was necessary. Annul rent would also vary in different buildings. Amounts mentioned in Explanations 2 (1) (iii) and (iv) were said on behalf of the petitioner not to be deductible against capital value because annual charge or ground rent would be paid from income. These relate to Municipal tax and ground rent which are also taken into consideration in capitalisation method. Payment of tax or ground have to be provided for in ascertaining value of the building under the capitalisation method.

214. Explanation 2 (1) (vi) which speaks of deduction of interest on borrowed capital with which any building was constructed was said to be included twice, namely under Explanation 2 (1) (vi) and also under liabilities in Part II. Explanation 2 in Part I which relates to finding our ascertained value of building enacts that where building is wholly occupied 12 times the annual rent or the rent at which the building may be expected to let out less deductions mentioned therein would be the ascertained value. These deductions are made to arrive at the value of the building under the capitalisation method to find out how much will be paid in the shape of interest on mortgage or borrowed capital. Interest on mortgage or borrowed capital will be one of the deductions in calculating outgoing under capitalisation method. In Part II, the liabilities are those existing at the commencement of the Act and contingent liabilities which the corresponding new bank may reasonably be expected to be required to meet out of its own resources on or after the commencement of the Act. Interest payable on mortgage or borrowed capital at or after the commencement of the Act will not be taken into account was outgoings deducted under capitalisation method.

215. Explanation 2 (2) was criticised by counsel for the petitioner on the ground that plinth area related to the floor area and if a floor was not occupied the plinth area thereof was not taken into account. Explanation 2 (1) relates to determination of compensation by finding out ascertained value in the case of building which is wholly occupied. Explanation 2 (2) relates to the case of a building which is partially occupied. Explanation 2 (3) refers to land on which no building is erected or which is not appurtenant to any building. In the case of partial occupation Explanation 2 (2) sets out the principle of compensation of partially occupied building. Again in Explanation 2 (3) the criticism on behalf of the petitioner that if there is a garage or one storeyed structure the principle will not apply is explained on the ground that the expression 'appurtenant' means land belonging to the premises. If there is a small garage or a one storeyed building the land will not be appurtenant to the garage or building.

216. Counsel for the petitioner contended that Part 1 (h) which spoke of market or realisable value of other assets did not include goodwill, benefit of contract, agencies, claims in litigation, and, therefore, there was no compensation for these. Part 1 (h) is a residuary provision. Whatever appears on books would be included. Goodwill does not appear in the books. Goodwill may arise

when an undertaking is sold as a going concern. The contention as to exclusion of goodwill go does to the question of adequacy and will not vitiate the principle of valuation which has been laid down. Reference may be made to Schedule VI of the Companies Act which refers to goodwill under Fixed Assets but the Banking Regulation Act 1949 does not contain goodwill under property and assets.

217. Goodwill in the words of Lord Elden in Cruttwell v. Lye, (1810) 17 Ves 335 means "the probability that the old customers will resort to the old place". The term 'goodwill' is generally used to denote the benefit arising from connection and reputation. Whether or not the goodwill has a saleable value the question of fact is to be determined in each case. Upon sale of a business there may be restriction as to user of the name of the business sold. That is another aspect of sale of goodwill of a business. The 14 banks carried on business under licence by reason of Section 22 of the Act of 1949. The concept of sale in such a situation is unreal. Furthermore, the possibility of nationalisation of undertakings like banks cannot be ruled out. Possibility of nationalisation will affect the value of goodwill. In the case of compulsory acquisition it is of grave doubt whether goodwill passes to the acquiring authority. No facts have been pleaded in the petition to show as to what goodwill the bank has. Goodwill is not shown in assets. In the present case the names of the 14 banks and the corresponding new banks are not the same and is cannot therefore be said that any goodwill has been transferred. The 14 banks will be able to carry on business other than banking in their names. Again under the Act compensation is being paid for the assets and secret reserves which are provided for by depreciating the value of assets will also be taken into account. Any challenge as to compensation for goodwill falls within the area of adequacy.,

218. As to Part II of the Schedule counsel for the petitioner said that liabilities not appearing in the books would be deducted but in the case of assets only those appearing in the books will be taken into account. Nothing has been shown in the petition that there are assets apart from those appearing in the books. It would not be appropriate to speak of liabilities like current income-tax liability, gratuity, bonus claims as liabilities appearing in the books.

219. It was said on behalf of the petitioner that interest from the date of acquisition was not provided for. That would again appertain to the adequacy of compensation. Furthermore, interest has been provided for under Section 6 (3) (a) (b) of the 1969 Act. It was also said that if there was a large scale sale of promissory notes or stock certificates the value would depreciate. Possibility of depreciation does not vitiate the principle or constitutionality of a measure.

220. The principles which have been set out in 1969 Act are relevant to the determination of compensation. When it is said that principles will have to be relevant to the compensation, the relevancy will not be as to adequacy of compensation but to the property acquired and the time of acquisition. It may be that adoption of one principle may confer lesser sum of money than another but that will not be a ground for saying that the principle is not relevant. The criticism on behalf of the petitioner that compensation was illusory is utterly unmeritorious.

221. The Attorney-General contended that even if Article 19 (1) (f) or 19 (1) (g) applied the 1969 Act would be upheld as a reasonable restriction in the interest of the general public. It is said that social control scheme is a constitutional way of fulfilling the Directive Principles of State Policy. The 14 banks paid a total of 4.35 crores of rupees as dividend in 1968. This amount is said in the affidavit of the respondent not to be of great significance and that the bank should expand and attract more deposits. The comparative position of India along with other countries is focussed in the study group Report referred to in the affidavit in opposition. Commercial bank deposits and credit as proportion of national income form hardly 14 per cent and 10 per cent respectively in India as against 84 per cent and 19 per cent in Japan, 56 per cent and 36 per cent in U. S. A., 49 per cent and 29 per cent in Canada whereas the average population served in India by banks is as high as 73000 as against 4000 in U. S. A. and Canada and 15,000 in Japan. Then it is said that more than 4/5th of the credit goes to industry and commerce, retail has about 2 per cent and agriculture less than 1 per cent. Small borrowers it is said have no facilities. It is said that institutional credit is virtually non-existent in relation to small borrowers. The suggestion is that there is flow of resources from smaller to larger population and from rural to urban centres. There are many places which have no banks. In different States there is uneven spread of banking offices. There is greater expansion in urban banking. 5 major cities are said to have 46 per cent deposit but 65 per cent credit. Banks are more developed in States which are economically and socially advanced but even in such developed States banks are sparsely located.

222. India is a predominantly agricultural country and one half of national income, viz., 53.2 per cent is from agriculture. Out of 5,64,000 villages only 5,000 are served by banks. Not even 1 per cent have bank facilities. Credit requirements for agriculture are of great importance. Agriculturists have 34 per cent credit from Co-operatives, 5 per cent from banks and the rest from money lenders. The requirements are said to be Rs. 2,000 crores for agriculturists. The small scale industries are said to employ one-third of the total industrial population and 40 per cent of the industrial workers are in small scale industries. Banks will have to meet their needs. Small artisans and retail trade have all need for credit. It is said that barely 1.8 per cent of the 'total bank advances goes to small scale industries. It is said in the affidavit that the policy of the Government is to take up direct management of credit resources for massive expansion of branches, vigorous principles for mobilisation of deposits and wide range programme to fill the credit gaps of agriculture, small scale industries, small artisans, retail trade and consumer credit. This policy can be achieved only by direct management by State and not merely by social control. Almost all the banks are in favour of large scale industry. This direct control and expansion of bank credit is intended to make available deposit resources and expand the same to serve the country in the light to Directive Principles. These are the various reasons which are rightly said by the Attorney-General to be reasonable restrictions in the interest of the general public. I wish to make it clear that in my opinion Articles 19 (1) (f) and (g) do not at all enter the domain of Article 31 (2) because a legislation for acquisition and requisition of property for public purpose is not required to be tested again on the touchstone of reasonableness of restriction. Such reasonable restriction is inherent and implicit in public purpose. That is why public purpose is dealt with separately in Article 31 (2).

223. The validity of the Ordinance of 1969 was challenged by contending that the satisfaction of the President under Article 123 was open to challenge in a court of law. It was said that the satisfaction of the President was objective and not subjective. The power of the President under Article 123 of

the Constitution to promulgate Ordinances is when both the Houses of Parliament are not in session and this power is co-extensive with that of the legislature and the President exercises this power when he is satisfied that circumstances exist which render it necessary for him to take immediate action. The power of promulgating Ordinance is of historical antiquity and it has undergone change from time to time. In the East India Company Act, 1773 under Section 36 the Governor-General could promulgate Ordinance. The Indian Councils Act, 1861 by Section 23 thereof provided that the Governor-General in case of emergency may promulgate an Ordinance for the peace and good government of the territories. The Government of India Act, 1915 provided in Section 72 that the Governor-General could promulgate Ordinances for the peace and good government. The Government of India Act 1935 by Sections 42, 43 and 45 conferred power on the Governor-General to promulagate Ordinances and Sections 88 and 89 conferred a similar power on the Governor. Article 123 of the Constitution is really based on Section 42 of the Government of India Act, 1935 and Article 213 which relates to the power of the Governor in the States is based on Section 88 of the Government of India Act, 1935.

224. It has been held in several decisions like Bhagat Singh's case, 58 Ind App 169 = (AIR 1931 PC 111) and Sibnath Banerjee's case, 72 Ind App 241 = (AIR 1945 PC 156) that the Governor-General is the sole judge as to whether an emergency exists or not. The Federal Court in Lakhi Narain Singh's case, 1949 FCR 693 = (AIR 1949 FC 59) took a similar view that the Governor-General was the sole judge of the state of emergency for promulgating Ordinances.

225. The sole question is whether the power of the President in Article 123 is open to judicial scrutiny. It was said by counsel for the petitioner that the Court would go into the question as to whether the President was satisfied that circumstances existed which rendered it necessary for the President to promulgate an Ordinance. Liversidge's case, 1942 AC 206 was relied upon by counsel for the petitioner. That case interpreted the words "reasonable cause to believe." It is obvious that when the words used are "reasonable cause to believe" it is to be found out whether the cause itself has reason to support it and the Court goes into the question of ascertaining reasons. In Liversidge's case 1942 AC 206 it was said that the words "has reasons to believe" meant an objective belief whereas the words "if it appears" or "if satisfied" would be a subjective satisfaction.

226. The words 'if it appears' came up for consideration in two English cases of Ayr Collieries, 1948-2 All ER 546 and the Carltona 1943-2 All ER 560 and the decision was that it was not within the province of the Court to enquire into the reasonableness of the policy.

227. The interpretation of Article 123 is to be made first on the language of the Article and secondly the context in which that power is reposed in the President. When power is conferred on the President to promulgate Ordinances the satisfaction of the President is subjective for these reasons. The power in Article 123 is vested in the President who is the executive head and the circumstances contemplated in Article 123 are a guide to the President for exercise of such power. Parliament is not in session throughout the year and during the gaps between sessions the legislative power of

promulgating Ordinance is reposed in the President in cases of urgency and emergency. The President is the sole judge whether he will make the Ordinance. The President under Article 75 (1) of the Constitution acts on the advice of Ministers. Under Article 74 (2) the advice of the Ministers is not to be enquired into by any Court. The Ministers under Article 75 (3) are responsible to Parliament. Under Article 123 the Ordinance are limited in life and the Ordinance must be laid before Parliament and the life of the Ordinance may be further shortened. The President under Article 361 (1) is not answerable to any Court for acts done in the performance of his duties. The Ministers are under oath of secrecy under Article 74 (4). Under Article 75 (3) the Ministers are collectively responsible to the House of the People. Under Article 78 it shall be the duty of the Prime Minister to furnish information to the President. The Power under Article 123 relates to policy and to an emergency when immediate action is considered necessary and if an objective test is applied the satisfaction of the President contemplated in Article 123 will be shorn of the power of the President himself and as the President will be acting on the advice of Ministers it may lead to disclosure of facts which under Article 75 (4) are not to be disclosed. For these reasons it must be held that the satisfaction of the President is subjective.

228. Counsel for the petitioner relied on the decisions of this Court in the cases of Barium Chemicals, (1966) Supp SCR 311 = (AIR 1967 SC 295) and Rohtas Industries, AIR 1969 SC 707. In both the cases the words used in the Companies Act, 1956 Section 237 (b) which came up for consideration before this Court are to the effect that the Central Government may, if in the opinion of the Central Government there are circumstances suggesting, that the business of the company is not properly conducted, appoint competent persons to investigate the affairs of the company. The opinion which is to be formed by the Central Government under the Companies Act in that section is in relation to various facts and circumstances about the business of a company and that is why this Court same to the conclusion that the existence of circumstances but not the opinion was open to judicial scrutiny. This was the view of this Court in the cases of Barium Chemicals, (1966) Supp SCR 311 = (AIR 1967 SC 295) and Rohtas Industries, AIR 1969 SC 707 (supra).

229. The decisions in Barium Chemicals, (1966) Supp SCR 311 = (AIR 1967 SC 295) and Rohtas Industries, AIR 1969 SC 707 (supra) turned on the interpretation of Section 237 of the Companies Act and executive acts thereunder. The language used in that section is 'in the opinion of'. The Judicial Committee in the Hubli Electricity case, 76 Ind App 57 = (AIR 1949 PC 136) interpreted the words "the Provincial Government may, if in its opinion the public interest so requires, revoke a licence in any of the following cases" to mean that the relevant matter was the opinion and not the ground on which the opinion was based. This Court in the Barium Chemicals case, (1966) Supp SCR 311 = (AIR 1967 SC 295) (supra) however found that there were no materials upon which the authority could form the requisite opinion. That is the ratio of the decision in Barium Chemicals' case, (1966) Supp SCR 311 = (AIR 1967 SC 295) (supra).

230. In order to entitle the Central Government to take action under Section 237 of the Companies Act, 1956 there is to the requisite opinion of the Central Government and the circumstances should exist to suggest that the company's business was being conducted as laid down in sub-clause (1) or that the persons mentioned, in sub-clause (2) were guilty of fraud, misfeasance or misconduct. The

opinion of the Central Government was subjective but it was said that the condition precedent to the formation of such opinion was that there should be circumstances in existence and the recitals of the existence of those circumstances did not preclude the Court from going behind those recitals and determining whether in fact the circumstances existed and whether the Central Government in making the order had taken into consideration any extraneous consideration.

231. In the case of Rohtas Industries AIR 1969 SC 707 (supra) reference was made to English Canadian and New Zealand decisions. The Canadian decision related to power of the Liquor Commission to cancel the liquor licence and it was held to be an exercise of discretion. The New Zealand decision related to the power of the Governor General under the Education Act to make Regulations as "he thinks necessary to secure the due administration". It was held that the opinion of the Governor General as to the necessity for such regulation was not reasonably tenable. These decisions do not deal with question as to whether the satisfaction is subjective or objective. Of the two England decisions one related to the power of the Commissioner to make regulations providing for any matter for which provisions appear to them to be necessary for the purpose of giving effect to the provisions of the Act. The nature of legislation was taxation of subjects. It was held that the authority was not the sole judge of what it powers, were nor of the way in which that power was exercised. The words "reasonable cause to believe", "reasonable cause to believe" occurring in the case of Liversidge 1942 AC 206 (supra) were relied on to illustrate the power of the Court to find out as to whether the regulation was intra vires in the England case.

232. The decision of the House of Lords in Padfield v. Minister of Agriculture Fisheries and Food, 1968-1 All ER 694 on which counsel for the petitioner relied turned on interpretation of Section 19 (3) of the Agricultural Marketing Act which contemplated a committee of investigation if the Minister so directed, to consider and report to the Minister on any report made by the consumer committee and any complaint made to the Minister as to the operation of any scheme which in the opinion of the Minister could not be considered by a consumer's committee under one of the sub-sections in that section. The House of Lords held that the Minister had full or unfettered discretion but he was bound to exercise it lawfully that is to say not to misdirect himself in law, nor to take into account irrelevant matters nor to omit relevant matters from consideration. That was an instance of a writ of mandamus directing exercising of discretion to act on the ground that it was a power coupled with duty.

233. The only way in which the exercise of power by the President can be challenged is by establishing bad faith or mala fide and corrupt motive. Bad faith will destroy any action. Such bad faith will be a matter to be established by a party propounding bad faith. He should affirm the state of facts. He is not only to allege the same but also to prove it. In the present case there is no allegation of mala fide.

234. It was said on behalf of the petitioner that the fact that Parliament would be in session on 21st July 1969 and that the Ordinance was promulgated on Saturday, 19th July, 1969 was indicative of

the fact that the Ordinance was not promulgated legitimately but in a hasty manner and the President should have waited. If the President has power when the House is not in session he can exercise that power when he is satisfied that there is an emergency to take immediate action. That emergency may take place even a short time before Parliament goes into session. It will depend upon the circumstances which were before the President. The fact that the Ordinance was passed shortly before the Parliament session began does not show any mala fide. It was said that circumstances were not set out in the affidavit and therefore the Court was deprived of examining the same. The Attorney General rightly contended that it was not for the Union to furnish facts and information which were before President because first such information might be a State Secret, secondly, it was for the party who alleged non-existence of circumstances to prove the same and thirdly the respondent was not called upon to meet any case of mala fide.

235. It was said that no reason was shown as to what mischief could have happened if the Ordinance would not have been promulgated on the date in question but no reason was required to be shown. The Statement of Objects and Reasons shows that there was considerable speculation in the country regarding Government's intention with regard to 'nationalisation' of banks during few days immediately before the Ordinance. In the case of Barium Chemicals, (1966) Supp SCR 311 = (AIR 1967 SC 295) (supra) it was said by this Court that if circumstances lead to tentative conclusion, that the Court would not have drawn a similar inference would be irrelevant. The reason is obvious that in matter of policy just as Parliament is the master of its province similarly the President is the supreme and sole judge of his satisfaction on such policy matters on the advice of the Government.

236. The locus standi of the petitioners was challenged by the Attorney-General. The petitions were heard on merits. I have dealt with all the arguments advanced. It is, therefore, not at all necessary to deal with this objection.

237. For the reasons mentioned above, the petitions fail and are dismissed. There will be no order as to costs.

ORDER

238. In accordance with the opinion of the majority Petitions Nos. 300 and 298 are allowed, and it is declared that the Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969 is invalid and the action taken or deemed to be taken in exercise of the powers under the Act is declared unauthorised. Petition no. 222 is dismissed. There will be no order as to costs in these three petitions.

Petitions allowed.