BOMBAY HIGH COURT

Vithalrao Udhaorao Uttarwar

Vs

The State of Maharashtra

(Masodkar, C.J. Dighe, J.)

13.08.1976

JUDGMENT

Masodkar, J.

1. These 2661 cases have clogged the Court's corridors for considerable time, challenging the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Act No. 27 of 1961) as amended by the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972 (Act No. 21 of 1975) Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) (Amendment) Amendment Act, 1975 (Act No. 47 of 1975) and the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 1975 (Act No. 2 of 1976).

2. The petitioners raised almost Common questions and the petitions can be decided by an order indicating separate points urged in support of different petitioners' claims. It is assumed and not disputed that the petitioner in each petition is aggrieved by the provisions of the Maharashtra Agricultural Lands (Ceiling On Holdings) Act, 1961 (Act No. 27 of 1961) as amended and in issue.

3. At the outset it must be stated that in Special Civil Application No. 49 of 1976, decided by this Court on 22nd and 24th of June 1976 Madanlal Rup-chand Jethalia v. State of Maharashtra, the same said enactments were found to be valid. However, the contention, as we will indicate hereinafter, advanced on behalf of the petitioners at considerable length, is that that decision has not been rendered correctly and there is an obvious possibility of the contrary view on the matter and therefore the matter requires reconsideration. It has also been urged that some of the grounds raised by these petitioners were not raised nor are decided by that decision.

4. We thought it just and reasonable to give full hearing to the petitioners looking to the fact that from the eight districts of Vidarbha more than two thousand land-holders feel themselves

aggrieved by the legislative enactment regarding the lowering of ceiling on holdings of agricultural land, prima facie under the new process contemplated by law they are aggrieved. Indeed in the economic structure of the agrarian society in this country love for land haunts the life of men and sometimes tends to become oppressive means of aggrandisement. Though objectival premises of the present Act are meant to secure egalitarian economics in the field of agriculture by pre-empting regulatory limits on holdings and further providing for equitable distribution of surplus land to landless, here before us is a mass of men complaining that its terms are unjust, unfair, unreasonable end above all unauthorised by the constitutional contemplation. Judicial scrutiny of such measures is the part of social engineering in a democratic setup that adds vitality to the rule of law and acts as a balm to the rancouring and brooding sense of injustice

5. We must observe at the threshold that once the co-ordinate Bench of this Court finds on a point and upholds the validity of the enactment, the issue as for as this Court is concerned clearly stands adjudicated. Unless the petitioners succeed in making out a case that the said judgment requires reconsideration and persuade us to take contrary view, the matter is not open as we are bound by the same.

6. The impugned Acts Nos. 21 and 47 of 1975 and Act No. 2 of 1976 are the Amending Acts to the original Maharashtra Agricultural Lands (Ceiling on Holdings) Act (Act No. 27 of 1961). All these enactments have been put in the Ninth Schedule to the Constitution of India by the Constitution (Fortieth Amendment) Act, 1976. The original Act as amended from time to time was also put under the protection of the said Schedule by Constitution (Seventeenth Amendment) Act, 1964, followed by Constitution (Thirty-Ninth Amendment) Act, so as to cover the entire body of the Acts along with the Amending Acts. The purpose of these enactments is the agrarian reforms by providing for ceiling on the holdings of agricultural lands and further providing for finding surplus agricultural land and its acquisition for equitable distribution thereof. By Maharashtra Act No. 27 of 1970, in the preamble of the original Act further declaration as to its purpose was provided by the statement that the Act is a measure to provide that the lands taken over from undertakings and the integrity of which is maintained in compact blocks for ensuring the full and efficient use of the land for agriculture and its efficient management through Corporations, including a Company owned or controlled by the State, be granted to such Corporations or Company; and for matters connected with those purposes were also stated to be the part of objectival statement in the preamble.

7. Under the Constitution the supportive Legislative entries for all these are in List II of Seventh Schedule at Item 14 regarding agriculture, Item 18 regarding land and in List III at Item 42 regarding acquisition and requisitioning of property. Those entries read with Article 245 of the

Constitution permit the State Legislature to enact laws regarding land and rights in or over land as well transfer and alienation of agricultural land. Further ft enables the State to make laws regarding the acquisition and requisitioning of immovable property like land. In pith and substance, these laws emanate from the powerspring of these entries.

8. *In State of Maharashtra v. Madhavrao Damodar Patil,* , original Act as amended by Maharashtra Act No. 13 of 1962 was found to be protected after its insertion in Ninth schedule because of Article 31-B of the Constitution. The question of amending Acts Nos. 16 and 33, 37 of 1969 and 27 of 1970, amending the original Act was eventually decided by the Supreme Court in*Godavari Sugar Mills v. S. B. Kamble, ,* the same being protected by reason of Article 31-A of the Constitution. Similarly this Court in Wasudeo v. State, negatived the challenge to some of the provisions of the original Act on the basis of Articles 14, 19(1)(f) and 25 of the Constitution because the same had the protection of the Constitutional umbrella erected by Article 31-B of the Constitution.

9. Act No. 21 of 1975 by Section 2 makes a Constitutional statement to the effect that the Act was enacted "for giving effect to the policy of the State towards securing the principles specified in clause (b) and clause (c) of Article 39 of the Constitution of India, and in particular, but without prejudice to the generality of the foregoing declaration, for providing that the ownership and control of the agricultural resources of the community, are so distributed as best to subserve the common good, and also that the operation of the agricultural economic system does not result in the concentration of wealth and means of agricultural production to the common detriment". Thus by its terms it erects a statutory shield under Article 31-C of the Constitution.

10. We may now proceed to indicate the spread of the petitions at this stage and now we propose to deal with the same.

11. There are petitions which question the validity of the whole enactment as well certain specific provisions of the 'Act itself. Mainly the validity of the enactment is questioned on the ground that these enactments infringe the constitutional injunction with regard to the property and the rights declared and guaranteed in favour of the landholders. Constitutional challenge is a four-fold one. Firstly, it seeks to assert incompetency of the Legislature arising either because law is not made in accordance with the terms of Article 31-A and/ or Article 31-C or because it is made contrary to the declared guarantee of Article 301 of the Constitution. Secondly, it is the rampart raised on the base of basic structure of the Constitution. It is said that Article 359 (1-A), Article 31-B or Ninth Schedule cannot protect State Legislation if it affects basic structure doctrine and robs the constitutional premise of this vitality. Thirdly, constitutional incompetency of the Legislature is put in issue because it is submitted that certain provisions run riot beyond the geographical

jurisdiction, power and limit of the State Legislature and the doctrine in-herent in Seventh Schedule that the writ of laws can run effectively within the boundaries of the State, has been infringed. The challenge proceeds to assert that some of the provisions of this law infringe the federal principles of the State autonomy and in fact is a legislation that is made against the doctrine of territorial limits. Fourthly, certain provisions to which reference would be made in the Judgment are said to be artificial, unreasonable, unworkable and alien to the object of agrarian reforms contemplated by the law and as such are in fact and in substance made in colourable exercise of legislative power. It is submitted that these provisions be struck down as in-validly enacted.

12. The second group of petitions which have been filed and admitted or are put before us upon the orders of the Single Bench further question the validity of the orders made under the Act by the Maharashtra Revenue Tribunal confirming the orders of the Surplus Land Determination Tribunals as those petitions have been filed after the petitioners were subjected to the process of the prer sent law.

13. The third group of petitions are at the stage of admissions and they have also been put along with these petitions, for, they substantially are covered by either of the group noted above. We have heard the counsel even appearing in those petitions.

14. The fourth group of petitions cover the same said ground but have been filed after the Surplus Land Determination Tribunals made the orders and without filing the appeal as provided for by the Act.

15. We propose to deal with all these cases in the manner hereinbelow indicated and these groups will stand decided by the eventual directions given at the conclusion of the judgment.

16. We would begin by alluding to the well-settled rules of interpretation relevant for the purpose of these petitions upon the debate addressed by the learned Advocates before us on both sides.

17. First and foremost principle is that once a law is made by the competent Legislature, it has to be approached with the presumption that it is constitutionally valid and every doubt has to be resolved so as to uphold its validity. (See Madhubhai v. Union of India, and V. M. Syed Mahammad and Company v. State of Andhra,). The second equally available principle Is that by interpretation the law cannot be rendered invalid and if there are two interpretations equally possible, one that tends to uphold its validity has to be preferred: [See: In re Hindu Women's Right to Property Act, (AIR 1941 FC 72), State of Bombay v. R. M D. Chamarbaugwala, ; Jagdish pandey v. Chancellor, Bihar, ; Jothi Timber Mart v. Calicut Municipality, and State of M. P, V. D. N. C. P. Hill Colliery Co.,].

18. The third vital principle is that we will not be asked to embark upon the task of considering the constitutionality of a law unless the person before us is affected by the same; nor it will be right for this Court to decide the larger questions than deemed necessary by the issue raised in any given petition. (See: Hans Muller v. Superintendent, Presidency Jail, Culcutta, and Suraj Mallv. A. V. Vishwanatha Shastri,]. We must with this make it clear that Court cannot be asked to sit in judgment over the wisdom of the Legislature merely upon the premises of justice or injustice flowing from the law questioned. There cannot possibly be any appeal to us on such count once we find law is made with competence and is valid.

19. Keeping in view these basic principles, we propose to deal with the matters raised severally by the learned counsel in support of the petitions. Here we heard several learned submissions advanced by the counsel appearing in support of the petitions and we propose hereinafter to summarise the submissions of all the learned counsel. It may be stated that Mr. R. M. Hajarnavis and Mr. Dharmadhikari, Y. S. learned counsel appearing for the petitioners, mainly argued the matter in various aspects thereof. The other learned counsel M/s. S. N. Kherdekar, J. N. Chandurkar, B. R. Mandlekar, R. N. Deshpande, V. Mohta and L. Mohta, Pendiiarkar, V. R. Padhye, V. S. Sohoni, R. M. Johrapurkar, B. P. Jaiswal, M. S. Choudhari, C. P. Kalele, S. V. Naik, M. Q. Qazi, S. G. Deshpande, D. K. Khamborkar, V. D. Deshmukh, C. G. Madfcholkar and Y. S. Athale either supported the submissions so raised or raised their independent points which will be indicated in the summary of the submissions which we propose to make. At this stage it may be mentioned that Mr, Mandlekar has also moved an application for sending the case to the Full Bench. That aspect of the matter will also be considered at the appropriate stage. The learned counsel addressed us at considerable length and in their respective petitions with considerable industry tried to demonstrate the effect of the present law on the rights of the petitioners.

20. As the case involved the question of challenge to constitutional amendments, notice was issued to Attorney-General of India in some of the petitions and the learned Advocate-General of the State of Maharashtra Mr. R W. Adik appeared and addressed us on these matters. In his terse, pithy and profound submissions, the learned Advocate-General countered the several contentions raised In this petition, to which we will make a reference as we proceed to deal with the respective issues involved.

21. The substance of these submissions is that the Maharashtra Act No. 21 and Act No. 47 of 1975 under challenge do not firstly satisfy the requirements of agrarian reforms, Even if these enactments may be treated to be the statutes regarding the agrarian reform, they do not satisfy the test of the second proviso to Article 31-A of the Constitution, Article 31-A of the Constitution protects the laws relating to agrarian reforms from challenges based on Articles 14, 19 and 31 of

the Constitution and It is urged is a fetter on the legislative power as contemplated by Article 245 of the Constitution, It is submitted with considerable conviction that legislative power with regard to laws regarding agrarian reforms in this country not only flows from Article 245 of the Constitution, but it is expressly subjected to the stipulations of Article 31-A and the law in its present shape and reach cannot be saved even if protected by Article 31-B unless it is consistent with the second prdviso appended to Article 31-A. Only because the law is placed in Ninth Schedule and offered the constitutional protection, the requirements of Article 31-A which are legislative in scope and operate upon the Legislature's competence do not cease to be the part of the Constitution. About the earlier decision of this Court in Madan-lal Rupchand's case (S. C. A. No 49 of 1976, D/- 24-6-1976) (Bom) (supra) it is submitted that the ratio of that judgment treating that the proviso created a negative fundamental right is against the plain reading of Article 31-A which Is a fetter on legislative power. Reliance is placed on the decisions of the Supreme Court in Sudararamier and Co. v. State of A. p., . Jeejeebhoy v. Assistant Collector, ,State of Bihar v. Kameshwar Singh, and Kesavananda Bharati v. State of Kerala, .

22. In this aspect of the matter it is further urged that the provisions of Section 4 of the Act, now amended enacting the concept of 'family unit' and its premises are contrary to the second proviso to Article 31-A. The term 'person' in that proviso is referable to natural or juristic person and it was impermissible for the legislature to first constitute a unit of such person and then to prescribe ceiling. Family unit not being a person and being an artificial concept, it is urged, does not satisfy the test of the second proviso. Reliance is placed on the Full Bench decision of Punjab and Haryana High Court in Sucha Singh Bajwa v. The State of Punjab, followed in Saroj Kumari v. State of Haryana, . Section 4 is further attacked on the ground that it is arbitrary, colourable legislation providing for clubbbing of persons together and is really a colourable device, confiscatory in character. Reliance is placed on Kshetra Mohan v. E. P. T. Commissioner, ; K. Kunhikoman v. State of Kerala, ; A. P. Krishnaswami v. State of Madras, and Gowli Buddanna v. Commissioner of Income-tax, Mysore, and the decision of this Court in Baburao v. State of Maharashtra, (1974 Man LJ 385) to submit that 'family unit' as contemplated by this law is entirely artificial and is fraught with discriminatory results as indicated in the scheme of the impuged Acts.

23. The ratio of Venkatrao v. State of A. P., (FB) and Bhaskar v. State of Karnataka, is being distinguished on the basis that the case in Inder Singh v. State of Punjab, has not been correctly applied by those Courts. 'Family unit' according to the submissions cannot be treated as a legal entity nor is a natural person. It is merely a device to club the property of the minors and unmarried daughters and eventually deprives them of the same, The results are invidious, discriminatory.

24. Section 4 read with the provisions of Sections 8, 9, 10, 11, 12, 13, 16, 17, 23 and 43-A of the Act works out unjust, discriminatory vague and hard results. Pertinent attention was drawn to the provisions of Section 4 (2) which operate upon the declarations of dissolutions of marriages made by the Court after September 26, 1970, which are directed to be ignored for the purposes of determination of the ceiling area to be held by the family unit. It is, indeed, submitted that the unreasonableness and irrelevant character of the concept of family unit is writ large and the counsel complains that the device is apparently to club the strangers though they had ceased to be bound by the marriage or family tie and thus is incompetently resorted to. It is urged that the grouping of minors and women in this unkonwn and unreasonable unit offends the known family group as well as in its working under the Act results are reached quite contrary to the contemplation of Article 15(3), Article 14 as well Article 31-A of the Constitution. The natural event of a person being major or person being married is sought to be operative in favour of constituting discriminatory approach with regard to the rights of minor and unmarried females. It fa also urged that the concept cannot be sustained even by declaration upon the Act No. 21' of 1975 that this is a measure answering the requirements of Article 31-C of the Constitution.

25. Mr. Kherdekar, one of the learned counsel argued that Article 31-B inserted by the Constitution (First Amendment) Act, 1951, itself is invalid. He similarly questions the validity of the Constitution (Fortieth Amendment) Act, 1976, by which the Acts in issue have been placed in the Ninth Schedule of the Constitution. Both these attacks on the constitutional amendments are based on the principles available on the BASIC STRUCTURE i.e., Kesavananda Bharati's case (supra). The submission is that Article 31-B itself is a device which can rob off the total basic structure of the Constitution. It is fraught with disastrous consequences. Some of the learned counsel submitted that Article 31-B is totally limited in scope and reach and it does not cure the defect of the Legislative incompetency. That matter arose because of the provisions contained in Part III of the Constitution. At the most the constitutional umbrella of Article 31-B would protect the laws from the challenges based on fundamental rights as contained in Part III. If each and every provision of Part III is intended, the argument pro-

ceeds, the vice in making of Article 31-B is implicit and on the face of it cannot be said to be a provision made competently by resort to the power under Article 368 of the Constitution. It is urged that in the basic structure, equality of status has now been recognised to be the part of the basic constitutional principles. Equality, therefore, is referable to the premises of Article 14. The citizen or the person cannot effectively enjoy the premises of equality or premises of equal status without the adjunct of property. It is submitted therefore on the strength of the decision available in the election case i. e., Smt. Indira Nehru Gandhi v. Rajnarayan, , that though the law purports to affect the right in property, in effect it is open to question on the ground that it affects the

equality principle under the Constitution. Invocation to Article 31-B would not validate the defect on that count. Judicial review is yet available to test the premises of the law on the basis as to whether it satisfies the equal protection as well equality of status contemplated by the basic principles of constitutional theory.

26. Thus in the first part of the submission of the learned counsel there is challenge to the Constitution (First Amendment) Act, 1951 inserting Article 31-B. There is further challenge to the Constitution (Fortieth Amendment) Act putting the present statutes in the Ninth Schedule. Similarly Mr. Dharmadhikari questions the validity of the Constitution (Thirty-eighth Amendment) Act, inserting clause (1-A) to Article 359 of the Constitution, on the same said ground that it affects the basic structure of the Constitution. The point regarding Art 359 (1-A) of the Constitution is raised because of facts available on record, which may be briefly stated at this stage so as to avoid further repetition.

27. As we stated the original Act, till the stage of several amendments (has affected) by Acts Nos. 16/68, 33/68, 37/69 and 27/70 were found to be protected by Article 31-A as well because of its inclusion by Article 31-B in Ninth Schedule: (See Godavari Sugar Mills v S. B. Kamble, and State of Maharashtra v. Madhavrao Damodar Patil,). Under the original Act, there is no challenge available under Articles 14, 19 and 31 of the Constitution and on the basis of any other fundamental right. The challenge on the ground of Article 25 i.e., the original Act affected the religious freedom has been negatived by this Court because of the constitutional umbrella erected by Article 31-B; (See Wasudeo v. State,).

28. The present Amendment Acts i. e., 21/75 which has substituted amended Chapters II and III for the original Chapters in the principal Act is followed by further amendment to the Amending Act by Act No. 47 of 1975 and there is further Amendment Act being Mh. A. No. 2 of 1976. When these Acts were made, the Presidential order of June 25, 1975 made a proclamation of emergency under Article 352(1) of the Constitution. On June 27, 1975, the President of India further made order with reference to clause (1) of Article 359 declaring the right of any person to move any Court under Articles 14, 21 and 22 of the Constitution and all proceedings to remain suspended for the period of emergency declared under Article 352(1) of the Constitution. That order was in addition to the earlier orders made under Article 359(1) of the Constitution. Constitution (Thirty-Eighth) Amendment Act, 1975, amended Article 352 as well as Article 359 by adding to the former, clauses (4) and (5) and to the latter clause (1-A). That was published in the Gazette on August 1, 1975. The present enactments were put into effect on September 19, 1975 as far as Act No. 21 of 1975 is concerned, on September 20, 1975 as far as Act No. 47 of 1975 is concerned and on January 3, 1976 as far as Act No. 2 of 1976 is concerned, i. e., after the Presidential Order of June 27, 1975.

29. Faced with these facts, It is submitted that the insertion of Cl. (1-A) in Article 31-C, by Section 7 of the Constitution (Thirty-Eighth Amendment) Act, 1975, cannot have the effect of suspending the basic structure and basic principles of the Constitution. Challenge to laws that affect the basic structure of the Constitution should be treated to be alive. The concept of basic principle cannot be controlled by the state of emergency or by any other declaration made by the President who himself is the creation of the Constitution and the orders made by such office under the Constitution cannot eclipse the challenges based on the basic features of the constitutional statute. If the effect of Insertion of clause (1-A) Is to affect that basic principle or structure, it is urged that the Constitution (Thirty-Eighth Amendment) Act, 1975, which in-

serted the said clause by Section 7 has been incompetently made.

30. The newly added Article according to the submission operates upon the enforcement of the remedy and affects the basic rights as contained in Part III of the Constitution. That is not a measure to give immunity. Therefore, it is urged that declaratory reliefs that certain laws have been incompetently made because of the fetters operative upon the legislative powers as contemplated by Part III of the Constitution can still be made by the Courts possessing original jurisdiction. To the extent of such a declaration the scrutiny of the law is effectively permissible in spite of the Presidential Order and in spite of Article 359 (1). In fact, Clause (1-A) is a colourable device and the argument proceeds, therefore, to assert that the basic rights including the one of judicial review as contemplated by Art. 32 and Article 226 of the Constitution are affected and, therefore, such a provision cannot stand in the way of the petitioners in seeking the redress against the law that affects obviously his right to hold property and maintain equality of status. After all, the ratio of the Election Case is that equality is the basic principle fundamental to the Constitutional Law, the Presidential Order putting enforcement of Article 14 in eclipse because of the power conferred by Article 359(1-A) is itself bad. Mr. Dharmadhikari proceeds to classify the laws as being Ordinary Law and the Constitutional Law, the latter being the Constitutional Amendment laws. According to the learned counsel, the principle of constitutional law permits that the constitutional law must satisfy the test of the principles of the basic structure or framework of the Constitution. The law placed in the Ninth Schedule partakes in the nature of the Constitutional Law, because that requires exercise of power for effecting amendment to the Constitution. Therefore, on the principles of basic structure or basic framework of the Constitution, the law will have to be tested. The argument proceeds, such laws though put in the Constitutional umbrella of Article 31-B must be examined and should satisfy the requirements of basic structure or basic framework or basic principle of the Constitution. If, on the scrutiny the laws affect those principles, the Courts are not incompetent to declare them to be void. According to the learned counsel, thus the scrutiny on the basis of Articles 14, 15, 19(d)(e) and

(f) and Article 39(a) and (f) to test the validity of the laws in issue is & scrutiny to find the basic con-stitutional structure and not a scrutiny shut out by the Presidential Order. The argument is that under the constitutional premise, there is an injunction to protect the weaker sections of the society, particularly women and minors. That obligation must be treated as fundamental and basic to the constitutional framework and cannot be violative and the challenge cannot be defeated by merely placing the Act in Ninth Schedule. So is the argument based on equality of status and equal protection of laws though with regard to property. It is indeed contended that if democratic set-up is basic concept, then equality before law is equally basic being the part of democratic set up. That principle is affected clearjy by the provisions in issue. Article 31-B is a frail device to protect such laws.

31. As to the directive principles under Article 39(b) and (c) and Article 31-C, the learned counsel submits that upon the closer scrutiny it will appear that the requirements of Article 39(b) and (c) are not satisfied. Similar is the position with regard to the Article 31-A of the Constitution.

32. One of the learned counsel appearing in group of petitions raised the question at the foot of Article 301' of the Constitution. It is urged that this law affects the freedom of trade and commerce being the agriculture. According to Mr. Mohota, in various manners this freedom has been barricaded and in fact the law is so unreasonable that after it was so enforced, the matters of equality, price, local conditions of the land etc., all have been swept away and the rights to property have been shrunk to such a low that in a given case It amounts to total confiscation and snatch of any further agriculture. The law being extra-territorial it is urged, the movement of trade on agriculture and/or of commerce, agricultural produce Is patently affected. Reliance is placed on Atiabari Tea Co. v. State of Assam, , Automobile Transport Co. v. State of Rajas-than, and the District Collector Hyderabad v. Ibrahim and Co., .

33. Coming to the law once again the submissions are that the premises of the present laws do not in fact relate to agrarian reforms. The classification of land is fraught with inequality and is totally colourable if it is compared with the earlier scheme of the laws on the same said principle. It is urged that the provisions of Sections 12, 13 (3), 16, 17, 21-A and 27 are bad being vague, indefinite and unworkable as well having no rational basis. It is submitted that in Indian Society family is not merely a social unit but a religious concept governed by serveral laws and differing religions. There are laws regarding succession, inheritance and the principles with regard to the appropriation of property which have religious sanction. All that concept is shaken up by the premises of the present law and the religious freedom is seriously affected by the unreasonable and artificial units and grouping of their rights together. The provisions of Sections 2 (a) and 44-A regarding the constitution of Tribunals have been put in issue on the ground that essential

legislative funcion has been abdicated and the vice is of excessive delegation. The very concept of constituting such Tribunal affects the principles of basic adjudication of the property rights. There being no qualifications laid down for the appointment of the members of the Tribunals the Legislature has left it to the sweet fiat of the executive to constitute the Tribunals who have been given immense powers over the property and working of the rights under the Act. This is more so because of the enactment of Section 44-B which prohibits Pleaders from being engaged in proceedings. The provisions of Section 44-B are challenged because it is said that they violate the basic concept of natural justice and there is no reasonable ground to exclude the pleaders who can effectively represent the interest of the person who may face the penalty before the Tribunal and who may not be able to guard his own interest The requirements of Section 12, Sections 13, 17 and other penal provisions were pressed in aid to point out the obligations of the proceeding. It is urged that the provision on the face of it is colourable in nature and deprives the party from being given any hearing whatsoever, though the consequences of the proceedings are serious in that he loses the property or faces the penalty. It is however urged that certain provisions of the Act which permit retrospective operation are arbitrary and have no reasonable nexus whatsoever. It was stated for the State that 26th September. 1970, was the date when the Chief Ministers' Conference met in Delhi to review the provisions regarding ceiling to evolve a national policy in that regard and that date is given for the purposes of prospec-

tive operation. An affidavit is put in in some of the petitions to say that they were not aware of any such conference nor had any knowledge from any source about the said conference.

34. One more point which according to the petitioners goes to the root of the matter is raised because of the two Acts. Act No. 21 of 1975, which is an amending Act and which was made operative on 19th of September, 1975, is said to have become the part of the original Act on 19th September, 1975, because it was put into effect on that date. The other Act No. 47 of 1975, which is styled as the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Amendment Act, 1975, was brought into force on 20th of September, 1975. The argument is that because the earlier Act was put into effect on 19th it became the part of the original Act and nothing survived as Amendment Act, 1975. Therefore, Act No 47 of 1975 would not operate upon any other Act. Reliance is placed on Shyamrao Parule-kar v. D. M. Thana, to point out the effect of the amendment. Mr. Hajarnavia who raised this point with considerable conviction argues that Act No. 47 of 1975 is a stillborn law. In effect it brought about the results which drastically change even the ceiling areaa He relied upon the changes made by Act No. 47 of 1975 with regard to the area of land to be retained by the person or family unit and the class of land to submit that this law cannot operate because there is no Act No. 21/75 available for the purposes of further amendment It is, therefore, said that at any rate Act No. 47

of 1975 should be adjudged to be a bad piece of legislation.

35. Two questions were raised, one by Mr. Kherdekar with regard- to Section 4 (2) of the Act regarding the dissolution of marriage and their statutory effacement from an anterior date 26-9-1'970 and another by Mr. Athaley regard-Ing whether the Hindu idol is a person within the meaning of the Act so as to be able to hold property till the ceiling limit. We make it clear at the very outset that we are not called upon to enquire into the validity of the provisions of Section 4 (2), for, before us there is no case where the marriage is being ignored at the foot of Section 4 (2). The question for all purposes is left open. As far as the question raised by Mr. Athaley is concerned, we had already made cleat when he argued the matter that it merely raises a question of interpretation and application of the law which can be appropriately considered by the authorities under the Act first or any other remedy available to the petitioners in that regard. That question is also being left open.

36. Then is the question regarding the extra-territorial operation of the provisions of Sections 3 (1), 3 (2) and Section 4 along with Sections 8, 9 10, 11, 12, 16, 17, 18, 21, 23, 43-A as well 47. Some of these sections create penalties, while some direct ignoring transfers and other devices and operate retrospectively for that purpose. The submission is that on the face of the scheme of these sections, there is clear extra-territorial operation both with regard to the subject as well with regard to the liability. It is urged that for making such laws the Maha-rashtra Legislature is Incompetent It can only enact laws which will be operative in its own territorial iurisdictlon. It is further submitted that there is no territorial nexus sufficient or real which will permit such ,a legislation. According to the submission, the nexus has to be arrived at by the legislative relations with regard to the object, thing or activity about which the law is made. Reliance is placed on the Full Bench decision of this Court reported in State v. Narayandas, , Wallace Bros, and Co Ltd. v. Commissioner of Income-tax, , State of Bombay v. R. M. D. Chamarbaugwala, , Tata Iron and Steel Co. Ltd. v. State of Bihar, 1958 SCR 1355 : AIR 1959 SC 452. State of Bihar v. Sm. Charusila Dasi, , Kochuni v. States of Madras and Kerala, . It is urged that the view taken in Madanlal Rupchand's case Of the Division Bench is clearly unsustainable with regard to the extraterritorial operation as well as with regard to the nexus on which the law operates.

37. As the questions are raised regarding the constitutional amendments questioning the validity of the Constitution (First Amendment) Act, 1051 enacting Article 31-B questioning validity of the Constitution (Thirty-Eighth Amendment) Act inserting Clause (1-A) to Article 359 and questioning the validity of the Constitution (Fortieth Amendment) Act, 1975, and as is the duty of the Court when such questions are raised to decide the same, we begin by observing what we feel to be the correct position according to us about the constitutional amendments.

38. The situs and the conspectus of the power to amend the Constitution is in Part XX, Article 368 thereof. By Constitution (Twenty-Fourth Amendment) Act, 1971, clause (1) was substituted and in terms Constitution now declares that "Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article", The width and scope of this clause is declaratory as well operational. It is made clear that Indian Parliament possesses the supreme constituent power, Except the procedure required to be followed by terms of Article 368, the operational field of that power is potentially available with regard to addition, variation or repeal of any of the provisions of the Constitution. In Constitutional theory, it must be assumed that the omnipotent sovereign power as far as Indian Constitution is concerned now vests in the Parliament which represents for all constitutional purposes the people of the Country. The omnipotent sovereignty is derivative to the extent that the Indian Parliament in law and by its creative force represents the people of India. In any developed polity it is recognized principle that the ultimate sovereignty is in the people of the country from whom springs all legitimate authority of other organs. Constitution being the fundamental law for governance by its terms as available in Article 368 indicates the seat of constituent power for effecting changes in that fundamental law and further lays down the procedure therefor. By sheer logic of language and the underlying principles of the omnipotence of such sovereign constituent power, indeed it is difficult to imply limitations on the power in its operational sphere. Language of the Charter of the Constitution in this regard per force should receive broad and natural construction and narrow pedantic views based on apprehensions of the abuse, misuse of undue arrogation of such power so as to construct anomaly or unclarity has to be avoided. It would be salutary to refer to what was stated by the Privy Council in The Queen v. Burah, ((1878) 5 Ind App 178) (PC):

"..... The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

The high principles so stated by the Privy Council have been applied to the interpretation and even in finding the basic structure or the basic principles in this constitutional doctrine

inKesavananda Bharati v. State of Kerala, .

39. Two correct propositions emerge with regard to the exercise of the judicial scrutiny by interpretation with regard to the exercise of the constituent power from the observation which is a high law as far as the constitutional theory is concerned. Firstly, the Courts should scrutinise instrument to find out the positive terms thereof. Secondly, the Court should seek to restrict the power if there are express limitations put on the exercise of that power by the terms of the statute. The doctrine of express limitation on the power, if applied on first principles, it would be obvious that in constitutional theory upon the contents of Article 368 which is the Charter conferring constituent power, except the procedure required to be followed, no other express conditions or restrictions or limitations have been imposed or made operative. It would be legitimate to infer in the context that the width and the amplitude of Article 368 and its scope does not permit any inhibition on the exercise of the power provided it is exercised for the purposes mentioned therein.

40. In constitutional theory exercise of constituent power cannot be mixed with the procedure prescribed for that exercise of power. By laying down the procedure, the fundamental instrument does not lay down limitations on the content of such power. It 19 always prudent that power and procedure for its exercise should be separately understood and latter need not be confused with the former.

41. To this it must be added what is germane in the doctrine of separation of powers in a democratic State. The submissions, as were advanced before us, are always pressed in aid as if this too is operative limitation upon the concept of constituent power. In theory the separation of legislative, executive and judicial wings of Government is the product of some seminal principles of political governance which may draw upon the Charter of the Constitution. These departments or agents of State Power are the creative organs for the total governance of the country. In law it is the Government that itself functions by these three departments, each of whom have inbuilt sphere of activity. They owe their origin and source as well its existence and operation to the Constitution of the State itself. By the felt dictates of historical necessities, the charter of governance of the fundamental law makes choice of full and complete separation of powers by resort to enumerative and exhaustive declarations and devices work out lines of limitation. There is no contradiction contemplated if the Charter of the Constitution tends to permit overlapping of authority. The source of limitation therefore, of such derivative power has to be searched for and found in the express terms of the fundamental law itself and not elsewhere. By very nature of things and by the wisdom of the experience the given people may evolve a system which will not answer the theory of isolation in authority or tight separation of power. What particular polity would have for themselves as a fundamental law and what premises and what character and

content would it possess are clearly the matters that form part of the political power which makes the part of the constituent power itself. The Courts erected by the constitutional premises after all are the State functionaries. They cannot, nor do possess any constitutional or political power in the sense stated here. The doctrine of scrutiny or review by Courts is limited by the express purpose of the creation of Courts. Judicial power so properly called should be understood as distinct and unconnected with the political power, the latter having contents of effectuating political measures and policy. Distinctively the constituent-power is original political authority and is best subserved by its omnipotence in any sovereign country. Any limitation by scrutiny or review by any other organ which owes its origin to the fundamental instrument emanating from that power would lead to antilogical as well practical areas of confrontations,

42. Ag the High Court of the State under the Indian Constitution and having the function if question is raised to find the constituent power and its possessor in the constitutional document, we would have, left to ourselves, leaned to take the view that after the Constitution (Twenty-Fourth Amendment) Act, 1971 which in terms declared what was implicit in Article 368. the challenge raised before us was unentertainable. From the very beginning it would be impermissible exercise to admit any debate with regard to the Constitution Amendment Acts, on the basis of the wisdom or on the basis of public policy, except to the extent that the procedure for exercise of the constituent power expressly stated has not been followed or the purpose for which the power is necessarily to be exercised has not been reached. As we stated above, Article 368 by itself has laid no inbuilt express limitation and clause (2) thereof indicates procedure end by proviso requires that the law should also be ratified in the specified matters governed by sub-clauses (a) to (e) by the Legislatures of not less than one-half of the States. Further the doubt that was debated at the foot of Article 13 stands expressly resolved by clause (3) of Art. 368 in that nothing in Article 13 would apply to any amendatory law made under Article 368. Thus on plain and grammatical first reading, the exercise of the constituent power is not limited in any manner. It should be legitimate to infer from the terms of Article 368 itself that the judicial organ represented by Courts would only be entitled to see whether the constituent power has been exercised in the manner prescribed and for the purposes of the constituent power. It follows that we cannot be asked to sit in appeal over the wisdom, over the policy or over the matters of exigencies of the amendatory laws affecting changes in the Constitution.

43. All this we observe with full awareness that much debate in respect of Article 368 and in respect of the Constitution (Twenty-Fourth Amendment) Act has been raised and now holds the authority of law as far as we are concerned because of Article 141 of the Constitution. It has been accepted by the highest Court of the country that the words of Article 368(1) still possess ambiguity and the constituent power referred to in Article 368 cannot be equated to the

constituent power which is exercised while framing the original Constitution and further that the words 'any provision' indicate an inbuilt inhibition against the exercise of the constituent power itself. Having found areas of ambiguity the limitations on the exercise of the constituent power have been judicially recognised. Though we feel that the situs and conspectus of power is totally omnipotent by the plain reading thereof, it appears to us to be a mere exercise by rendering obiter which has little value.

44. Truly the field is not virgin. Powerful criss-cross columns of powerful beams of light of thoughts have explored and searched the inter-crevices of all that this Article 368 holds out as the constituent power in favour of the Indian Parliament. We are bound to apply the law as declared by the highest court in this country because of the dictates of Article- 141 of the Constitution, whatever may be our views on law in this regard. Therefore, the exercise before us eventually would be an exercise of finding ratio of the decisions of the Suprema Court and its application and not any original exercise.

45. We begin by referring to few stages of the constitutional history. In this regard what is eventually to be found out are the principles that would be effectively applied to the controversy before us. The Constitution (First Amendment) Act, which came into force on 18th June, 1951 within almost 2 years of the Constitution becoming effective inter alia enacted Article 31-A as well Article 31-B of the Constitution and was questioned before the Supreme Court in Sankari Prasad's case (AIR 1951 SC 458J and the constitutional amendment was upheld. The law on this aspect of the matter has been consistently applied on the footing that Article 13(2) of the Constitution did not put fetters on the constituent power, till decision in Sajjan Singh's case was rendered. In Sajjan Singh's case the Constitution (Seventeenth Amendment) Act was found to be validly enacted as the subject-matter of the Act fell within Article 368 and in Golak Nath v. State the ratio of Sajjan Singh's case as also of Sankari Prasad's case was put in issue and the majority of the learned Judges found that Article 13 operated as a fetter on the amendatory power with" regard to the Constitution vested in Parliament, the power being the part of duary item of the legislative list given in Schedule VII with regard to the Union subjects. Thus in Golak Nath's case for the purposes of the constitutional theory, Article 368, as it then stood was found to be not the situs of the constituent power and it was treated to be the power referable to the Union List and the residuary Article. Consequently it being a power to make laws it was treated to be always subject to Article 13 of the Constitution. Thus Golak Nath's case overruled the principles on which Sankari prasad and Sajjan Singh's cases upheld the constitutional amendment to the Indian Constitution.

46. The Parliament, therefore, passed Constitution (Twenty-Fourth) Amendment Act, 1971 which came into force on 5th November 1971. The Article to which we have made a reference

was amended by that Act Because of the direct pronouncement of the Supreme Court, that amendment was necessitated and there was eventually challenge to the Constitution (Twenty-Fourth Amendment) Act in Kesavananda Bharati's case which we propose to call as the BASIC STRUCTURE CASE . There the Constitution (Twenty-Fourth Amendment) Act was put in issue, so also the power of the Parliament to amend the Constitution and its conspectus as operative upon the provisions of the Indian Constitution.

47. Before we understand the holdings of the BASIC STRUCTURE CASE as far as relevant for our purpose, because much reliance is placed on that case, we may indicate that in Kunjukutty Sahib v. State of Kerala, , Kerala Land Reforms Act, 1964, i.e. as amended by Act No. 35 of 1969, was found to be invalid because it did not satisfy the requirements of Article 31-A of the Constitution. By Constitution (Twenty-Ninth Amendment) Act, which came into force on 19th of June 1972, the said Act was placed in the Ninth Schedule and put under the protection of Article 31-B. In the BASIC STRUCTURE CASE the validity of that Act was also questioned. Similarly the Constitution (Twenty-Fifth Amendment) Act enacting the original Artice 31-C was also questioned in that case. As a matter of historical holding we may state that right to property on the strength of Article 31 and Article 19(1)(f) was the subject-matter of different pronouncements leading upto the Bank Nationalisation case, R. C. Cooper v. Union of India which had eventually led the Parliament to enact the Constitution (Twenty-Fifth Amendment) Act, 1971.

48. In this judgment for the sake of brevity and for the sake of indicating the topics we have already proposed to call Kesvananda Bharati's case as BASIC STRUCTURE CASE, which was eventually considered in Smt. Indira Nehru Gandhi v. Raj-narayan which we would call as ELECTION CASE. The third important case and the decision of the Supreme Court so often cited before us is that of A. D. M. Jabalpur v. Shiv-kant Shukla and we propose to refer to it in this judgment as LIBERTY'S CASE.

49. It must be at once observed that the BASIC STRUCTURE CASE overruled Golak Nath's case (supra), It accepted the Constitution (Twenty-Fourth Amendment) Act, 1971 as validly made and it further ruled that what was implicit in Article 368 from the very beginning had been made explicit by the amendment to Article 368 itself by the Parliament. This is the highest recognition of the finding of the constituent power in Article 368 itself. With regard to the Constitution (Twenty-Fifth Amendment) Act inserting the Article 31-C the BASIC STRUCTURE CASE found by majority that the later declaration appended to Article 31-C was not competently made by the Constitution Amendment Act by the Parliament. It struck down that declaration but upheld the validity of the main Article 31-C. The Constitution (Twenty-Ninth Amendment) Act, 1972 which protected the Kerala Land Reforms Act which was found to be invalid because not being in conformity with Article 31-A was entirely upheld by the majority

though numerical minority Judges indicated that the question could be left open to be decided by the appropriate Constitution Bench, The learned Chief Justice Sikri in terms made a reference to that effect in the judgment rendered by him in the BASIC STRUCTURE CASE, but the majority of the learned Judges upheld the Constitution (Twenty-Ninth Amendment) Act, which afforded protection because of Art. 31-B to the two Kerala Land Reforms Amendment Acts.

50. The BASIC STRUCTURE CASE further ruled by majority that though Article 368 is the situs of the constituent power in favour of the Indian Parliament it was not entirely omnipotent like the power that initially and primarily vests in the body like Constituent Assembly. Its exercise in terms found to be open to judicial scrutiny and judicial review available in the Indian Constitution, because the words of Article 368 indicated certain ambiguous results and because the Indian Parliament was merely conferred with the amendatory power which by its very nature is limited, the Court found that there was inbuilt limitation which operates upon the content of the law regarding the amendment to the Constitution. These limitations were spelt out by the learned Majority Judges of the Supreme Court which is now styled by the phrase as Basic structure or Basic framework of the Constitution. Each learned Judge enumerated illustrations of the basic structure or basic framework of the Constitution. Accordingly if the amendatory law made by recourse to Article 368 affected the basic-structure or framework of the Constitution, it would be impermissible piece of constitutional legislation.

51. The learned Majority Judges in favour of this proposition did not lay down definitively what the structure means though as stated above, illustrative lines and items are to be found in the differing judgments. As far as we are concerned, the moot question is whether Part III of the Constitution as originally enacted and which deals with the fundamental rights and lays down certain other matters is basic structure or basic framework of the Constitution not amenable to the power that vests in Parliament because of Article 368. On closer scrutiny it appears that the majority of the Judges in BASIC STRUCTURE CASE have not treated the entire part III of the Constitution as basic structure so as to be a limitation on the constituent power emanating from Article 368 of the Constitution. It is needless to refer to the judgments in detail. Suffice it to say that the learned Judges including the learned Justice Ray, as he then was, Justice Pale-kar, Justice Mathew, Justice Beg, Justice Dwivedi and Justice Chandrachud did not render any judgment in favour of basic structure or framework of the Constitutional doctrine. Learned Judge Khanna who constituted the majority of the Judges in favour of the limited power of amendment upon basic structure or basic features doctrine has rendered a sum-

mary of his findings. In paragraph 1550 of the judgment at page 1903 of the AIR report this summary is available at points (vii) and (viii) and the learned Judge observes :

"(vii) The power of amendment under Article 368 does not include the power to abrogate the Constitution nor does it include the power to alter the basic structure or framework of the Constitution. Subject to the retention of the basic structure or framework of the Constitution the power of amendment is plenary and includes within itself the power to amend the various articles of the Constitution, including those relating to fundamental rights as well as those which may be said to relate to essential features. No part of a fundamental right can claim immunity from amendatory process by being described as the essence or core of that right. The power of amendment would also include within itself the power to add, alter or repeal the various articles.

(viii) Right to property does not pertain to basic structure or framework of the Constitution."

Thus in the holding of the learned Judge Khanna, the power of amendment is plenary and includes within itself the power to amend the various articles of the Constitution including those relating to fundamental rights as well as those which may be said to relate to essential features. No part of a fundamental right can claim immunity from amendment by being described as essence or core of that right. This is subjected, however, to the basic structure or framework of the Constitution. The right to property according to the summary of the judgment by the learned Judge does not pertain to basic structure or framework of the Constitution.

52. Thus following the judgments delivered though we are bound by each and every judgment coming from the Highest Court, the finding of the ratio depends on the numerical strength behind the principle eventually decided by that Court. The numerical strength in our view clearly indicates that in BASIC STRUCTURE CASE the Supreme Court did not by majority treat the entire Part III of the Constitution as basic-structure or basic framework of the Constitution of India. As far as the right to property is concerned, there is a clear statement available from the Seventh Judge, to which we have already made a reference and it appears to be the ratio upon the holding of the learned Seventh Judge that the right to property cannot at all be treated to be the basic structure or framework of the Constitution and that right as enacted in the Constitution original or otherwise cannot be treated to be a fetter or a limitation upon the constitutional amendatory power reposited in the Indian Parliament under Article 368 of the Constitution.

53. We now proceed to make reference to ELECTION CASE (supra). There the problem before the Supreme Court was raised because of the Constitution (Thirty-Ninth Amendment) Act, 1975 and the challenge was to Article 329(A4) and (A5) inserted by that amendment. Along with those amendments it is useful at this stage to state that the Representation of the People (Amendment) Act (Act No 58 of 1974) and Election Laws Amendment Act (Act No. 40 of 1975) which was placed under the constitutional umbrella by Art. 31-B were also questioned both on the ground of basic structure or framework of the Constitution and on other grounds

including the equality at the foot of Art. 14.

54. The case undoubtedly was decided on the footing that BASIC STRUCTURE CASE rendered by the Supreme Court laid down the correct constitutional and binding principles to be made applicable to the controversies before the Supreme Court. However, ELECTION CASE itself raised some original and basic problems and sought solution from the Supreme Court including the problem which is being raised as to the finding that was rendered in the BASIC STRUCTURE CASE. In the judgment of the learned Chandrachud J. the ratio of the BASIC STRUCTURE CASE is tried to be summarised and the following observations in para. 664 may be quoted with advantage;

".....The ratio of the majority decision is not that some named features of the Constitution are a part of its basic structure but that the power of amendment cannot he exercised so as to damage or destroy the essential elements or the basic structure of the Constitution, whatever these expressions may comprehend. Sikri, C. J. mentions supremacy of the Constitution, Republican and Democratic form of the Government, secular character of the Constitution, separation of powers, federalism and dignity and free-

dom of the individual as essential features of the Constitution. Shelat and Grover, JJ. have added to the list two other features; the mandate to build a welfare State, unity and integrity of the Nation. Hegde and Muk'herjee, JJ., added sovereign democratic republic, Parliamentary democracy and the three organs of the State form the basic structure of the Constitution. Khanna, J., held that fundamental rights are not a part of the basic structure and therefore, they can be abrogated like any other provisions. He observed that basic structure indicates the broad outlines of the Constitution and since the right to property is a matter of details, it is not a part of that structure. The democratic form of Government, the secular character of the State and possibly judicial review are according to the brother Khanna a part of the basic structure of the Constitution. It is obvious that these are merely illustrations of what constitute the basic structure and are not intended to be exhaustive. Shelat and Grover, JJ., Hegde and Mukher-jee JJ., and Reddy J., say in their judgments that their list of essential features which form the basic structure of the Constitution is illustrative or incomplete. For determining whether a particular feature of the Constitution is a part of its basic structure, one has perforce to examine in each individual case the place of the particular feature in the scheme of our Constitution, its object and purpose, and the consequences of its denial on the integrity of the Constitution as a fundamental instrument of country's governance. But it is needless for the purpose of these appeals to ransack every nook and cranny of the Constitution to discover the bricks of the basic structure. Those that are enumerated in the majority judgments are massive enough to cover the requirements of Shri Shanti Bhushan's challenge ....."

It is clear that about learned Khanna, J.'s holding in the BASIC STRUCTURE CASE learned Chandrachud J. has made a reference to the effect that Khanna J. found that the fundamental rights were not the part of the basic structure and therefore, they can be abrogated like any other provisions. Khanna J., who was also a party to the ELECTION CASE examined his own judgment rendered in the BASIC STRUCTURE CASE. In the context of the point raised regarding the fundamental rights being basic or not, the learned Judge explained his own earlier judgment and negatived any inference that he did not treat fundamental right as being basic in this regard Khanna J. In paragraph 198, page 2349 made reference to BASIC STRUCTURE CASE and observed that in that case the majority ruled that the power of amendment of the Constitution contained in Article 368 did not permit altering the BASIC STRUCTURE of the Constitution and the Seven Judges who constituted a majority were correct that the democratic set up was part of the Constitution. In further paragraph 210 on page 2354 the learned Judge observed;

"If there is amendment of some provisions of the Constitution and the amendment deals with matters which constitute constitutional law in the normally accepted sense, the Court while deciding the question of the validity of amendment would have to find out in view of the majority opinion in Keshavananda Bharati's case , as to whether the amendment affects the basic structure of the Constitution."

As to the holding in the BASIC STRUCTURE CASE, the learned Judge discussed the matter in paragraph 251, page 2369 and after quoting from the judgment observed:

"It would appear from the above that no distinction was made by me so far as the ambit and scope of the power of amendment is concerned between a provision relating to fundamental rights and provisions dealing with matters other than fundamental rights. The limitation inherent in the word 'amendment' according to which It is not permissible by amendment of the Constitution to change the basic structure of the Constitution was to operate equally on articles pertaining to fundamental rights as on other articles not pertaining to those rights."

After referring to the summary extracted above at point No. (vii), the learned Judge in paragraph 252 observes thus;

"It has been stated by me on page 685 of the judgment (already reproduced above) that the secular character of the State, according to which the State shall not discriminate against any citizen on the ground of religion only cannot likewise be done away with. The above observations show that the secular character of the Constitution and the rights guaranteed by Article 15 pertain to the basic structure of the Constitution. The above observations clearly

militate against the contention that according to my judgment fundamental rights are not a part of the basic structure of the Constitution, I also dealt with the matter at length to show that the right to property was not a part of the basic structure of the Constitution, This would have been wholly unnecessary if none of the fundamental rights was a part of the basic structure of the Constitution."

55. Thus in ELECTION CASE the learned Judge Khanna explained his earlier holding in the BASIC STRUCTURE CASE by saying that the fundamental right under Article 15 and the concept of secularism formed the basic structure of the Constitution but at the same time clarified that the right to property wag not in his view the basic structure or framework of the Constitution.

56. What was stated in ELECTION CASE by Chandra-chud J. further may be summarised here so as to clearly understand what these two cases indicate as ratio relevant for the present premises and debated before us. The learned Chandrachud J. in paragraph 665 of the judgment after quoting the ratio of the BASIC STRUCTURE CASE (cit. sup.) observed;

"..... I consider it beyond the pale of reasonable controversy that if there be any unamendable features of the Constitution on the score that they form a part of the basic structure of the Constitution, they are that: (i) India is a Sovereign Democratic Republic; (ii) Equality of status and opportunity shall be secured to all its citizens, (iii) The State shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion and that (iv) the Nation shall be governed by a Government of laws, not of men, These, in my opinion, are the pillars of our con-stitutional philosophy, the pillars there-fore of the basic structure of the Constitution ....." (underlining ours.) Thus in the holding of learned Chandrachud J, the pillars of the Constitution have been enumerated being Sovereign Democratic Republic, equality of status and opportunity, secularism citizen's freedom to religious worship and rule of law.

57. Taking both these cases i. e. BASIC STRUCTURE CASE and ELECTION CASE and AIR 1975 SC 2259) together, it could be observed safely that each and every article or the right guaranteed by Part III of the Constitution is not treated as basic nor is there a limitation on the amendatory power that vests in the Indian Parliament under Article 368 of the Constitution. If only the BASIC STRUCTURE CASE is taken into account for the purposes of determining the ratio, It is obvious to us as was also found by Chandra-chud J. in ELECTION CASE, that Part III of the Constitution was not treated to be the part of basic structure or framework of the Constitution including right to property at forging any limitation on the sovereign constituent power contained in Article 368 of the Constitution. Even taking the judgment of learned Khanna J. in ELECTION CASE only secularism and Article 15 have been added to the basic structure or

basic principle. The right to property is not found to be the basic structure either in the BASIC STRUCTURE CASE or in the ELECTION CASE.

58. In paragraph 668, learned Chandrachud J. further enunciated the guideline when the theory of basic structure was pressed in aid in matters seeking judicial review of the constitutional amendments by Indian Courts. The learned Judge observes:

"..... Since the Constitution, as originally enacted, did not consider that judicial power must intervene in the interests of purity of elections, judicial review cannot be considered to be a part of the basic structure in so far as legislative elections are concerned. The theory of basic structure has to be considered in each individual case, not in the abstract, but in the context of the concrete problem."

It is thus obvious that while asking judicial review of the constitutional amendments the whole theory of basic structure or basic framework of the Constitution cannot be invoked. In the context of the problem posed, relevant principles alone will have to be examined and applied for finding out whether treating it as the basic structure or basic framework of the Constitution the amending Act could be said to be incompetently made.

59. It is enough to observe at this stage that this high holding of the Supreme Court shows that right to property is not a basic structure or basic framework, nor is it a basic principle of the Indian Constitutionalism. The very ratio of upholding the Constitution (Twenty-Ninth Amendment) Act in the BASIC STRUCTURE CASE by the Supreme Court clearly shows that this doctrine of basic structure cannot be usefully pressed in aid when the rights affected are rights in property and further when the laws affecting those rights are put under the Constitutional umbrella erected by Art. 31-B of the Constitution by amending Schedule IX. For the present purposes, therefore, it would suffice to observe that whatever is being questioned before us as a challenge to the Constitution (Fortieth Amendment) Act which amended the Ninth Schedule and put the amended statute dealing with rights in property, under the protection of Art 31-B stands sufficiently negatived by the ratio in BASIC STRUCTURE CASE itself, and further as explained by the learned Judges in the ELECTION CASE . Reference to the laws in issue which have been put in the Ninth Schedule of the Constitution by Constitution (Fortieth Amendment) Act is to the laws relating to land as an object of property and rights in or over the same. These nave been put under the constitutional umbrella The right to property being not basic structure of the Constitution, nor being the basic principle of the Indian Constitutionalism, the challenge to the Constitution (Fortieth Amendment) Act on the basis of the basic structure theory cannot but be rejected,

60. A collateral issue which can be disposed of at this stage is challenge to the present amending Acts on the basis that the basic structure doctrine is violated by these laws. The four constitutional pillars quoted above from the judgment of Chandrachud J. are said to have been shaken by the premises of the provisions of these Acts. It may be mentioned that the same said challenge is made to the Presidential Order directing suspension of enforcement of Article 14 during the period of emergency because of Atricle 359 (1-A), as amended. We will deal with the question of validity oi the Article 359(1-A) later. Upon the ratio of the judgments in BASIC STRUCTURE CASE as well ELECTION CASE it appears to us that challenge to laws or order is not permissible on the ground that these contravene any basic principle or framework.

61. We have made reference to the controversy in the ELECTION CASE before the Supreme Court which included the challenge to amendments effected to the Representation of the People Act and Election Laws (Amendment) Acts. One of the attacks to these amendments expressly negatived by the Supreme Court rested on the basic structure or framework of the Constitution relying on the earlier decision rendered in the BASIC STRUCTURE CASE . In the judgment of the learned Chief Justice reference is made to this aspect of the matter in paragraph 137, page 2332 and para. 153, page 2335. The learned Chief Justice observed:

"The constitutional validity of a statute depends entirely on the existence of the legislative power and the express provision in Article 13. Apart from the limitation the Legislature is not subject to any other prohibition."

The learned Chief Justice further observed:

"The contention of the respondent that the Amendment Acts of 1974 and 1975 are subject to basic features or basic structure or basic framework fails on two grounds. First, legislative measures are not subject to the theory of basic features, or basic structure or basic framework. Second, the majority view in Kesava-nanda Bharati's case (supra) is that the 29th Amendment which put the two statutes in the Ninth Schedule and Article 31-B is not open to challenge on the ground of either damage to or destruction of basic features, basic structure or basic framework or on the ground' of violation of fundamental rights."

62. Mathew J., referred to this part of the controversy in paragraph 346 onwards. In paragraph 347, the learned Judge observed after making reference to the BASIC STRUCTURE CASE :

"But I do not find any such inhibition so far as the power of Parliament or State Legislatures to pass laws is concerned."

The learned Judge referred to the inhibition, meaning inhibition that is operative upon the

amendatory process of the Constitution and made a clear statement that that inhibition was not operative on the power of the Parliament or State Legislatures to pass laws under Articles 245 and 246 of the Constitution. In paragraph 357 the learned Judge further observed:

"It is rather strange that an Act which is put in the Ninth Schedule with a view to obtain immunity from attack on the ground that the provisions thereof violate the fundamental rights should suddenly become vulnerable on the scope that they damage or destroy a basic structure of the Constitution resulting not from the taking away or abridgment of the fundamental rights, but for some other reason .....

63. There is no support from the majority in Bharati's case for the proposition advanced by counsel that an ordinary law if it damages or destroys basic structure should be held bad or for the proposition that a constitutional amendment putting an Act in the Ninth Schedule would make the provisions of the Act vulnerable for the reason that they damage or destroy a basic structure constituted not by the fundamental rights taken away or abridged but some other basic structure."

64. Learned Beg J., answered the problem referring to the submissions of the counsel as follows; (Para 477) "The learned counsel for the election petitioner contended that, as a candidate at an election, the Prime Minister and the ordinary candidate should enjoy equal protection of the laws and should be afforded equal facilities irrespective of the office occupied by one of two or more candidates. Such an attack upon the validity of this amendment seems to me to be possible only under the provisions of Article 14 of' the Constitution. But as Act 40 of 1975, has been placed by Section 5 of the 39th Amendment in the protected 9th Schedule of the Constitution, it becomes immune from such an attack. After the practically unanimous opinion of this Court in Kesavananda Bharati's case (supra) that such an immunisation of an enactment from an attack based upon an alleged violation of the chapter on fundamental rights is constitutionally valid. I do not think that a similar attack can be brought in through the back door of a 'basic structure' of the Constitution."

The learned Chandrachud J. in paragraph 692 observed :

"... ... ... The argument regarding the invalidity of the Representation of the People (Amendment) Act, 58 of 1974 and of the Election Laws (Amendment) Act, 1975, has however, no substance. The constitutional amendments may, on the ratio of the fundamental rights case, be tested on the anvil of basic structure. But apart from the principle that a case is only an authority for what it decides, it does not logically follow from the majority judgment in the Fundamental Rights case that ordinary legislation must also answer the same test as a constitutional

amendment. Ordinary laws have to answer two tests for their validity: (1) The law must be within the legislative competence of the Legislature as defined and specified in Chapter I, Part XI of the Constitution and (2) it must not offend against the provisions of Article 13(1) and (2) of the Constitution. 'Basic structure' bv the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. 'The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features' -- this, in brief, is the arch of the theory of basic structure, it is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution."

65. Before we summarise the effect of these holdings for the purposes of the present controversy, we may indicate that even the result reached in these two cases te. BASIC STRUCTURE CASE and the ELECTION CASE upon the constitutional Amendment Acts does not at all help submissions addressed before us for the petitioners. By the result of these cases if the ratio were to be worked out, in the BASIC STRUCTURE CASE eventually only the declaration which foreclosed the judicial review about the matters in Article 31-C was held to be offending the basic structure. That declaration which was the part of Article 31-C enacted by the Constitution (Twenty-Fifth Amendment) Act, 1971 stated;

"..... and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy."

This declaration was eventually found to be offending the basic structure or basic framework of the Constitution. In other words, the judicial review that was simply foreclosed by a declaration made by the Legislature enacting the Act and as under the Constitution judicial review was fundamental such a declaration was found to be inhibited by the basic structure doctrine enunciated therein. Somewhat similar result is indicated by the eventual holding in ELECTION CASE, There the provisions of Article 329(A-4) inserted by Constitution (Thirty-Ninth Amendment) Act, 1975 were struck down, though different reasons have been given by the learned Judges for reaching to that conclusion and it appears to us to be more or less unanimous verdict that Clause (4) operated upon the field of judicial review and in fact rendered a legislative judgment upon the case which was either decided or was alive before the competent Court to be adjudicated according to the constitutional premises.

66. The ratio indicated by the result, if that be the guide for finding the ratio of the cases, goes to the extent that the constitutional amendments that affect the basic concept of judicial review and pre-empt in the garb of constitutional amendment a legislative judgment upon the cause would

not partake in the constitutional amendment and would be bad as affecting basic principle. Such provision introduced by amendment would not partake in the nature of amendment of the provision of the Constitution, for, as the learned Chief Justice put in the ELECTION CASE that will be rendering a legislative judgment. In our view, therefore, about the result obtained in both the cases upon which reliance is being placed, the fundamental principle that weighed with the Court to strike down the constitutional amendment and as explained supra was that because of those provisions of the constitutional amendments there was foreclosure of the judicial review extant in the Constitution or for that rendered a legislative judgment upon the cause. This resulting position too from these judgments does not help the petitioners in the present cases for raising challenges to the Constitution (Fortieth Amendment) Act which is validly and competently made.

67. It is now useful to take a summary of the findings in both the BASIC STRUCTURE CASE and ELECTION CASE and together about the principles which are relevant and applicable in the present controversy. These principles can be stated together and appear to us to be as follows:

FIRST: Upon the constituent power having situs in Article 368 of the Constitution, there are inherent limitations of the basic structure or framework of the Constitution or constitutional principles which are not indicated in the Constitution itself. The power under Article 368 is not akin to the original, plenary un-

limited constituent power and is not therefore omnipotent.

SECOND: These basic structure principles include the fundamental constitutional contemplation of the permissive judicial review of the Constitutional Am-andment Act so as to find out firstly whether in exercise of the constituent powers what is enacted is a law permissible by the premises of Article 368 of the Constitution; and secondly whether the amendment in substance does or does not accord with basic structure doctrine or basic framework or basic principles of the Constitution. In the exercise of making an amendatory law by exercise of constituent power, it would be impermissible to render legislative judgments on cases which under the Constitution form part of the jurisdiction of the judiciary and is preeminently a judicial function.

THIRD: The law amending the Constitution would be bad if it affects or abrogates the basic structure as enumerated and summarised in ELECTION CASE which includes fundamental principles of equality of status and opportunity. The right to property is not part of basic structure nor constitutional amendment laws can be affected by that principle.

FOURTH: The ordinary law either made by the Parliament or by the State Legislature cannot be subjected to challenge on the ground of basic structure or constitutional framework or principle

and that there exists no paradox in constitutional theory in arriving at such a position.

FIFTH: Only by reason of the fact that such ordinary legislation is placed in Schedule Nine by the Constitutional Amendment Act, the challenge to that law on the ground of the basic structure or framework of the Constitution is not available. For the purposes of the law it retains the character of a law made by the Legislature with reference to its powers under Articles 245 and 246 of the Constitution.

68. Applying these summarised principles as are relevant for the purposes of submissions made before us, it is obvious that the Constitution (Fortieth Amendment) Act placing the amended statutes in issue in the Ninth Schedule cannot be questioned nor those Acts can be questioned on the ground of basic structure doctrine which is only applicable to the Constitutional Amendment Laws as such. The same would be position with regard to Presidential Order made under Article 359(1-A) of the Constitution.

69. Now what survives for consideration on the constitutional aspect of the challenge is referable to the submissions advanced against the Constitution (Thirty-Eighth Amendment) Act, 1975, which amended Article 359 by inserting Clause (1-A) and other submissions made to challenge Article 31-B itself which was amended by the Constitution (First Amendment) Act, 1951.

70. The validity of Article 31-B as enacted by the Constitution (First Amendment) Act, 1951 appears to us to be fully reinforced by the BASIC STRUC-. TURE CASE itself. There, as we stated above, inter alia Constitution (Twenty-Ninth Amendment) Act was questioned which had put the Kerala Land Reforms (Amendment) Act No. 35 of 1969 and Kerala Land Reforms (Amendment) Act, 1971' (Kerala Act No. 25 of 1971) in the Ninth Schedule. The efficacy and validity o'f the provisions of Article 31-B was not at all doubted. On the other hand it was observed that the provision of Article 31-B was an independent provision affording immunity to the laws placed in the Ninth Schedule independently of Article 31-A of the Con-etitution. Once that immunity is available, the provisions of Part III in regard to laws providing for acquisition of any, estate or any right therein would be rendered wholly immune from challenge. Upon the ratio of the BASIC STRUCTURE CASE where the first doctrine of basic structure was formulated and where the Constitution (Twenty-Ninth Amendment) Act was in terms upheld, it is difficult to understand the submission that because of the basic structure doctrine now Article 31-B should be held to be vulnerable or is assailable. Article 31-B itself is on the Statute Book along with Article 31-A since the first amendment of the Constitution. It is too late and too futile to question the validity of that provision on the assumption that the constitutional device of Article 31-B is likely to be abused or likely to create Para-Constitution always running counter to the fundamental or basic structure of the Constitution itself.

71. To us It appears. Article 31-B has primarily constitutional purpose and is equally basic as any other Article in Part III of the Constitution,

72. If we begin to question the validity of any of the provisions of an Article like Article 31-B on the supposed or likely result or apprehension of misuse of that power, we are merely beating the rope for the snake. Where the constituent power vests the judgment to select the laws for affording the constitutional umbrella to the wisdom of the sovereign body like Parliament responsible to the people of this Country, such considerations are wholly irrelevant and spring from distrust In the very principle of popular sovereignty which is the corner stone of the Indian Constitution.

73. Article 31-B does not affect in our view any of the enumerated basic structure principles evolved by the BASIC STRUCTURE CASE , On the other hand, it subserves the constitutional purpose. After all, Parts III and IV of the Constitution appear to evolve a composite scheme for the governance of the country. There is underlying assurance given to the people regarding dispensation of political, social and economic justice. The Constitution assures that in the state of just conditions, liberty of thought, expression, belief, faith and worship along with equality of status and equality of opportunity will be rendered available to the people at large. The directive injunctions in Part IV are the matters for the governance of the country and in terms it dictates that these principles shall be applied as the duty by the State in making laws. The rule of law that is eventually to be ushered by these guiding principles will have to subserve the needs of the tenets of provisions contained in Part IV so as to achieve a state where social, economic and political justice shall prevail. These principles and these constitutional premisses have to operate to restructure the social, economic and political life of the society as much as to confer upon the members thereof the fruits of liberty and equality. In the making of these constitutional premises, the life of the people, their economic, social and cultural conditions involving levels operating and resulting inequality as well conditions oppressive between man and man are all part of the constitutional experience that can hardly be glossed over. Rights are not mere exhortations. Possessor of right has to be conscious, able, activist. Conditions that tend to bind masses in processes of mute economic and social subjections undo the capacity of the political person to enjoy, to realise or to stand by the right so guaranteed. On closer analysis the rights conferred by Part III are active principles to be upheld by applying the principles of governance enunciated as basic to the State particularly by Part IV of the Constitution. It follows such constitutional conferment of right cannot affect the eventual objective the Constitution has placed before itself the objective to offer justice to the people as the collective entity in social, economic and political field and to achieve just conditions for all where exploitation and oppression in human or material relations shall for ever be banished,

74. Indeed there has to be a yielding away by a few of the interests for the benefit of many as well by individual in favour of the community of material resources if such just state of national existence has to be eventually restructured. The process of constitutional engineering has pragmatics of people's interest and that cannot be imprisoned by reference to individual claim for right to material means of production and exploitation. The wide gap of economic existence between man and man as well the social, political arid cultural effects emanating therefrom and legislative restructuring of the same enjoined upon the State are all primary and necessary considerations inbuilt in the premises for enacting provisions of Article 31-B of the Constitution, Laws under its protection are meant to be of vital matters requiring yielding away the other provisions of Part III of the Constitution.

75. The selection of enactments for the purpose of affording statutory shield or constitutional umbrella is matter of serious consequences and that itself offers the guiding principles to uphold the article. There is hardly any doubt that by Article 31-B the matters are left to the high constituent power to be exercised by Indian Parliament in accord with the procedure indicated by Article 368 There being thus a constituent procedure, there being an indication of principles by its very placement in Part III and there being an obvious purpose for which Article 31-B was enacted, we do not find any reason to doubt the validity of Article 31-B, only because it puts under eclipse the challenges based on Part III to the laws otherwise competently made by the Legislatures. As stated above, the fountain spring underlying the enactment of Article 31-B itself appears to us to be fundamental in view of the dictates of directive principles. Further the basic contemplation of the Constitution that the legislature which makes an Act or the authority which makes Regulation is the best Judge of the social and economic facts and circumstances available to it so as to make a law in the interest of the community or the people is sufficient guarantee that the provisions are not likely to be abused. But for the umbrella of Article 31-B it is easy to conceive and it has been the experience that several community laws were struck down as running counter to the rights conferred upon the individual as enshrined in Part III. Moreover process of amendment of Ninth Schedule indicates a circumspect and selective modality. Before the law gets the protection, it is required to be made by the competent Legislature itself. Secondly there is full or complete permissive scrutiny available because unless the Parliament in exercise of Article 368 decides to afford the constitutional protection to such a law, Article 31-B and its protection does not hold the law in the state of immunity from Part III of the Constitution. This inbuilt legislative and constitutional process is enough safeguard against complaints of abuse or erection of para constitution in Ninth Schedule. There being thus underlying principles to harmonize several competing fields of constitutional rights and objectives and further there being quite a possible legislative and constitutional review in the matter of selection and choice before the laws are placed in the Ninth Schedule, we have no hesitation in holding that merely

upon apprehensions of abuse the provisions cannot be questioned as being violative of any basic structure or framework of the Constitution. On the other hand it is apparent that Article 31-B by its very contemplation has been super-imposed to further and to fortify the basic structure of the Constitution. The Constitution (First Amendment) Act, 1951 enacting Article 31-B therefore, is not open to challenge. To the interpretation of Article 31-B itself, we will turn a little later on.

76. One of the the learned counsel Mr. V. R. Padhye referred to Chandrachud J-'s observation in ELECTION CASE and drew our attention to the national struggle for independence and what was at stake in that struggle. He fervently urged that it is the duty of the Court to consider the history of the constitutional document in the light of the aspirations of the people as eventually reflected in the original Constitution. He submitted that the constituent power is being abused by such enactments of amendments. In fact there are historical limitations on that power flowing from the struggle for independence and, therefore, we should lean towards the holding against the validity of Article 31-B which operates to the detriment of the large class of property holders and which could never have been conceived by the original makers of the Constitution.

77. Firstly, in the Court of law, there cannot be any appeal on the ground of sentimentality. Fervour of the national struggle which represents the movement of the people of this country had then the limited objective i. e. to achieve freedom from foreign subjugation. Having attained the freedom it is for the people of the country as free sovereign polity to restructure the life of the nation and for that to find out appropriate legal and constitutional modality so as to have equitable and just governance of their own, It is in exercise of those seminal powers that the Constituent Assembly framed the original Constitution and by the very original Charter reposited the constituent power by enacting Article 368 in the Parliament responsible to the People. The Indian Parliament thus being repository of constituent power, the matters of enacting appropriate constitutional laws must be left to its wisdom and to its constitutional judgment. Judicial review, of necessity, is a limited exercise of known limitations. We have already stated that the provision of Article 31-B cannot be questioned on the basis that the amendment of Ninth Schedule is likely to be abused by the Parliament while exercising the power under Article 368 of the Constitution. If such logic were to prevail in a Court of law, we fail to see why Arts. 245 and 246 along with lists in Seventh Schedule be not treated as vulnerable. Approach of such a kind is totally fallacious and is the offspring of fictitious fears.

78. Now we turn to the Constitution (Thirty Eighth Amendment) Act, 1975 which inserted Clause (1-A) in Article 359 of the Constitution. The vice that is being complained of is that this newly added article purports on the face of it to be the part of emergency provision. It is urged that under its premises a wide mischief of suspending the very basic principles underlying the Constitution Is permitted. Reliance was placed on the observations of Chandrachud J. in

ELECTION CASE that equality before law was the basic structure and the same cannot be taken away even by the Constitutional amendment It was urged, such effect can be attempted by putting in jeopardy and complete eclipse the equality so basic by simply making of the order under the newly added Clause (1-A) to Article 359(1) of the Constitution. It is submitted that the width of the power as conferred by Clause (1-A) would take in equality conferred by Part III of the Constitution including life, liberty, religious freedom and even secularism flowing therefrom. Strong emphasis was laid on the decision of the Supreme Court in LIBERTY'S CASE (A. D. M. Jabalpur v. S. Shukla,) to show what happened because of the Presidential order to the right to life and liberty enshrined in Part III of the Constitution. It was submitted in LIBERTY'S CASE that the basic right under Article 21 was put Under eclipse and ultimately the Courts were rendered powerless, the remedy being not available to the detenus. Again reliance was placed on the BASIC STRUCTURE CASE to build up the submission that some of the rights in Part III would conform to the basic-structure, particularly, Article 14 thereof. If by the device of amending Article 359(1-A) Article 14 can be put in the state of suspension it is submitted that the power conferred on the President of India is inchoate, untrammelled, uncontrolled and therefore, conspicuously bad and running counter to the basic structure of the Constitution.

79. As stated while considering some of the aspects of the matter, these submissions too raise contentions emanating from considerations of apprehension and abuse of the power that is eventually conferred by the incorporation of Clause (1-A) in Article 359. Constitutional amendments competently enacted cannot be attacked on any such ground. That is an elusive approach. The power or jurisdiction created and its purpose are always reflected by the objectival motivations of the statute. What is use and what is abuse are all matters of exercise of power. Theoretical apprehensions in this regard cannot render the provision invalid. As we have said earlier, the Presidential Order which put in eclipse Article 14, is subjected to the challenge to the limited extent, that it affects the basic structure. Upon the summarised holding of the cases, that is, the BASIC STRUCTURE CASE and the ELECTION CASE , we have found ample (sic) to observe that the Order is unassailable on any such ground, for the same reason as the ordinary law cannot be challenged on the basis of the basic-structure doctrine.

80. It would be trite in this context to observe that in a democratic setup strong public opinion is the only guarantee and the limitation upon all exercise or the supposed abuse of the power by the authorities or agents of the State. It is equally trite to say that merely because power is conferred it tends to corrupt and absolute power corrupts absolutely. All this furnished no ground to find a legal vice that would render enactment of Article 359(1-A) unconstitutional. That provision has been competently enacted by recourse to the procedure as indicated by Article 368 of the Constitution. Even in LIBERTY'S CASE the same was not challenged and on closer scrutiny and

applying the principles to which we have made reference Article 359(1-A) inserted by the Constitution (Thirty-Eighth Amendment) Act. in our view would reveal that it does not affect any basic-structure or any basic framework of the Constitution.

81. Part XVIII of the Constitution has always been the part of our Fundamental Law. That enacted the scheme of emergency provisions and permitted the President of the country to proclaim state of emergency upon satisfaction of the matters stated in Article 352(1). Reference to that provision would indicate that the President has to be satisfied about the existence of grave emergency wherein security of India or any part of the territory thereof is threatened either by war or external aggression or internal disturbances. By adding Clause (4) by the very Constitution (Thirty-Eighth Amendment) Act, which is not in issue before us, it is made clear that the President may exercise the power to issue different proclamations on different grounds being war or external aggression or internal disturbances or imminent danger of war or external aggression or internal disturbance, and such satisfaction is made conclusive and not open to the judicial review. The effect is indicated by Article 353, firstly, lifting the fetters on the executive power of the Union and making it operative to give directions to any State with regard to executive powers. The power of the Union Parliament to make laws during the period of proclamation of emergency is further fortified and augmented. By Article 354 the President is permitted to suspend the operation of Articles 268 to 279 relating to distribution of revenues subject to the eventual order being laid before the Parliament An obligation is cast by Article 355 upon the Union to protect every State from aggression and internal disturbance. Article 356 deals with the matters when there is failure of constitutional machinery in a State and enables the President to make order in that regard and Article 357 is the part of the same scheme. Article 358 by itself suspended the provisions of Article 19 during the emergency and made it possible to make law or to take executive action unfettered by the terms of Article 19 to the extent Indicated in that article.

82. Clause (1) of Article 359, as it was available before the Constitution (Thirty Eighth Amendment) Act, permitted the President to make order declaring that the right to move any Court for the enforcement of such of the rights conferred by Part III as will be mentioned in the order and proceedings pending in any Court for such enforcement of the right would remain suspended during the period of the proclamation or for a shorter period as may be specified. Article 360 related to making of proclamations when the financial stability of credit of India or in any part of the territory was threatened.

83. This scheme, it would be seen is the part of the constitutional contemplation underlying Part XVIII in that the President in whom the executive power of the Union vests--(Article 53 (1))--and in whom the supreme command of all the forces of the Union vests because of Article 53(2),

is further enabled to deal with the matters in the state of grave emergency. The proclamations contemplated by Article 352 are made to subserve the security of India which may be threatened either by war or external aggression or internal disturbances. The founding fathers of the Constitution were aware that the hard-won freedom of the country is subject to threats of war and external aggression and is not immune from internal disturbances. In such state, the threat is to the life and existence of the polity of the country as such. To deal with those matters effectively, the emergency provisions are the necessary part and parcel of the constitutional premises. In face of war or aggression or disturbances, it is indeed clear that there can hardly be any appeal to finer sense of values. The voice of reason stands silenced by the boom of arms and the basal elements explode to surface. Concepts of life, liberty, expression, all stand negatived by the march of organized or unorganized acts of violence. Social and political security stands gravely perverted. To keep the body-polity strong, unified and on the march to meet these forces, is the obligation cast on the President by resort to the provisions of Part XVIII of the Constitution. The President is enabled to take effective steps to meet these challenges and aggressions. That he should be so armed with emergency powers is the original contemplation and appears to be equally basic to the framework of the Constitutional premises. Indeed in the BASIC STRUCTURE CASE (sovereignty and integrity of India are treated to be the part of basic framework of the Constitution. To protect and reinforce that structure the emergency provisions are clearly enacted.

84. What Clause (1-A) of Article 359 does is to permit the President to make an order and remove the fetters that may be operative because of Part III of the Constitution, upon the power to make law or to take executive action during the period of emergency. By the very nature, such a power is merely ancillary to the purpose of emergency rule. When security of the country is threatened by war or external aggression or internal disturbances, it is but proper and reasonable to find the power which will be operative irrespective of the constitutional fetters imposed by Part III of the Constitution, Clause (1-A) to Article 359 thus furthers the cause of the integrity and security contemplated by the basic-structure of the Constitution. Enforcing of the rights through the remedy of Courts could be suspended during the period of emergency by virtue of earlier Clause (1) of Article 359. Now it is made clear that that right itself can be subjected to the process of suspension. What was implicit in the scheme of Clause (1) of Article 245 has really been made explicit. Without remedy there can hardly be any right. En-forceability is the part and parcel nay the juristic soul of the concept of right. It is not mere moral exhortation. If it is so, it would not partake in the nature of right. Right is not only an injunction against the State action but has a positive content, the fruits of which can be realised by the constitutional remedy.

85. Original Article 359(1) permitted suspension of the remedy itself with regard to certain rights to be mentioned in the Presidential Order, the section being left to the discretion of the President

himself. That would have in-direct result of rendering possessor of the right disabled to enforce the same by remedy in Court of Law. Now what would have been the indirect effect is clarified by permitting the President to make an order expressly suspending the rights conferred by Part III by specification. That would permit laws and executive actions to be taken which other-wise would have been void, only during the period of emergency. The provision on the face of it being part of the original scheme with regard to emergency matters is merely enabling and it appears is necessary for the exigencies that eventually have to be met by the authority of the President. Only because such a power is given, we cannot be asked to strike Clause (1-A) of Article 245 down by stamping it to be running counter to the basic principles of the Indian Constitution, The provisions of Article 245, Clause (1-A), in our view are really meant and intended to further fortify the conditions so as to maintain security of India during the period of grave emergency. On the face of it it is reasonable to think that the President who is charged to take steps while the country is engulfed by conditions threatening its integrity would apply his mind and make appropriate selection as may be necessary to meet the challenges emanating from the conditions available about the choice of rights reasonably selected for the purpose of suspension. Only because those rights may include certain fundamental rights like life and liberty or right of equality, the provision cannot be rendered unconstitutional Or as running counter to the basic structure of the Constitution. If all those rights were to yield as they must to the security of the country, its reasonableness cannot at all be questioned,

86. We feel fortified by the judgment delivered by the Supreme Court on this aspect of the matter in LIBERTY'S CASE -- (A. D. M. Jabalpur v. S. Shukla,). Though the Constitution (Thirty-Eighth Amendment) Act, 1975 was not challenged expressly before the Supreme Court, the Court, however, examined the nature of the amended provision contained in Part XVIII of the Constitution and its impact on the right to life and liberty as contained in Article 21 of the Constitution. Amongst others the majority judgment read with LIBERTY'S CASE decided as a ratio that once Presidential Order competently issued under Article 359(1-A) suspends the fundamental right to life and liberty as envisaged by Article 21, the possessor of the right cannot have any locus standi to move the writ petition questioning the validity of the detention orders made under Maintenance of Internal Security Act, 1971, during the period the Presidential Order is in force.

87. Close reading of the judgments in LIBERTY'S CASE indicate that this ratio was arrived at because of the very nature of the emergency powers contained in Part XVIII of the Constitution, The learned Chief Justice observed:

"The suspension of right to enforce fundamental right has the effect that the emergency provisions in Part XVIII are by themselves the rule of law during times of emergency. There

cannot be any rule of law other than the constitutional rule of law. There cannot be any pre-Constitution or post-Constitution Rule of Law which can run counter to the rule of law embodied in the Constitution, nor can there be any invocation to any rule of law to nullify the constitutional provisions during the tunes of emergency,"

88. Chandrachud J., ruled that Article 359(1) is as much a basic feature of the Constitution as any other and it would be inappropriate to hold that because in normal times the Constitution requires the Executive to obey the laws made by the Legislature, therefore, Article 359(1) which is an emergency measure, must be construed consistently with that position. The learned Judge further ruled that the argument of basic feature is wrong for yet another reason that Article 359(1) does not provide that Executive is free to disobey the laws made by the Legislature and further that the 'Rule of Law' argument like the 'Basic Feature' argument is intractable; the emergency provisions contained in Part XVIII of the Constitution which are designed to protect the security of the State are as important as any other provisions of the Constitution and that the true construction and effect of Article 359(1) does not violate the rule of law,

89. Bhagwati J., on this aspect observed that whilst a Presidential Order Issued under Article 245, Clause (1) is in operation, the rule of law is not obliterated and it continues to operate in all its vigour that the executive is bound to observe and obey the law and it cannot ignore or disregard; and that if the executive commits a breach of the law, its action would be unlawful, but merely the remedy would be temporarily barred where it involves enforcement of any of the fundamental rights specified in the Presidential Order.

90. It follows from these statements contained in the Judgment in LIBERTY'S CASE that the emergency provisions contained in the Constitution are to be treated basic to the Indian Constitutional Law and the amendment made to Article 245 by inserting Clause (1-A) is clearly explanatory and enabling to make appropriate declaration with regard to the suspension of rights contained in Part XVIII of the Constitution so that the emergency situation can be effectively and without any detriment are met by the legislative organs of the State as well as by the Executive. For all purposes, it appears to subserve the basic emergency provisions as contained in the integral scheme of the Constitution itself. It is neither unguided nor untrammelled. The exigencies of situations in emergency periods by themselves and in the very nature of things would evoke the necessity to make appropriate orders. Like any other enabling provision in the Constitution, Clause (1-A) confers the power on the President, who is the authority to make the emergency declarations, to appropriately make the order suspending the given fundamental rights so as to effectively meet the challenge in the interest of the security of the country that may arise because of such emergent conditions. We do not find any substance in the complaint that the constitutional provision leaves the matter at large and can be subjected to abuse by lifting the

fetters of Part III from the legislative and executive operations. After all in such matters the choice and selection thereof must be left to the conscious exercise of power by the highest office in the country.

91. In the sum we do not feel that on the doctrine of basic structure or basic principles, Clause (1-A) added to Article 359(1) by the Constitution (Thirty-Eighth Amendment) Act, 1975 can be treated as incompetently enacted. On the other hand, it appears to us to have been added to fortify the concept of the constitutional basic provisions regarding the Emergency Rule of Law, We accordingly reject the submissions raised before us that Section 7 of the Constitution (Thirty-Eighth Amendment) Act, 1975 which enacted Clause (1-A) of Article 245 should be declared ultra vires.

92. As to the challenge to the, Presidential Order of June 27, 1975, because the President hag included in his order Article 14 to be suspended during the period of emergency, we have already stated that such challenge cannot be raised on the ground that there is breach of basic structure or basic framework of the Constitution. It was submitted that Article 14 has been chosen by the President in colourable exercise of the power so as to abrogate the basic equality available in the Country.

93. Firstly, there is no material before us to hold that the emergency conditions which necessitated the proclamation by the President did not require the suspension of the fundamental right guaranteed by Article 14 of the Constitution. We cannot be asked to adjudge the validity of the express emergency powers by mere reference to the high quality of the principles of equality and its basic nature by reference to certain cases. Mere invocation of principles is not a substitute for facts on the basis of which the Presidential Order purports to have been made. Moreover, it must be assumed that the President of this country makes his choice with full consciousness of the circumstances and the facts available in the situation while making the emergency orders contemplated by Article 359 (1-A) of the Constitution. The President being the highest functionary charged with an obligation to maintain security and integrity of the country always must be presumed to act in the interest of the security of the country. For all purposes the President is the constitutional Judge of the facts and circumstances that emerge and upon which his powers are required to be exercised. The ground on the basis of which such selection is made must always be presumed to be present in the circumstances upon which the emergency powers operate. The effect of such order by its very nature is temporary suspension of certain rights and is not a permanent eclipse thereof. Such a temporary emergent measure taken in the interest of the security of India being basic in itself need not further, in our view, satisfy the test of other basic constitutional principles nor is it open to challenge on any such ground. To infer otherwise would be to arrogate to ourselves the high, complicated and difficult task of examining the facts

and circumstances which the Constitution has placed in the realm of the consideration of the President of the country. On the basic framework or basic-feature-theory we do not think any challenge is possible to the legality of the Order made by the President of India under Article 359(1-A) of the Constitution suspending the fundamental right guaranteed by Article 14 along with other rights.

94. This discussion will indicate that the points raised against the validity of Constitution (First Amendment) Act, 1951, Constitution (Thirty-Eighth Amendment) Act, 1975 and Constitution (Fortieth Amendment) Act, 1975 have to be rejected. Similarly the point raised that ordinary laws that is like the present Amending Acts can still be tested on the doctrine of the basic structure equally fails.

95. Now we turn to other aspects of the matter which are already enumerated above. Before we go ahead to examine the challenge to the laws that the provisions of Article 31-B and Article 31-C are not satisfied, it appears proper that we may deal with the argument that has been advanced on the basis that Article 301 of the Constitution has been violated by the present enactments. As stated above, it was said that the entire Acts in issue, violate the freedom of trade and commerce guaranteed to every citizen of this country; under Article 301 of the Constitution. We have indicated the cases on which reliance was placed by the learned Counsel who argued that matter.

96. This aspect of the matter, in our view, does not really call for any serious debate, for it appears to us that the submissions overlook the very object of the Act and the Constitutional guarantee under Article 301 of the Constitution. The law has been made to provide for more equitable distribution of land and to ensure a ceiling of land to persons who are related to land and owning or cultivating the same for the purpose of agriculture. By providing ceiling on holding of land clearly a regulatory measure about the holding of immovable property, like land is enacted. That the Legislature hag the required competence to so regulate is not doubted before us. Even, therefore, assuming that holding of land for agricultural production is a trade or commerce, the laws in pith and substance are regulatory in nature. The guarantee of Article 301 of the Constitution does not affect the regulatory measures even in the field of trade and commerce.

97. Decisions mentioned supra do not really help to resolve the problem raised by the learned counsel nor are appropriate for the present controversy. In fact the decisions in Atiabari Tea Company v. State of Assam, Automobile Transport Co. v. State of Rajasthan, and the District Collector, Hyderabad v. Ibrahim and Co., were rendered in the context of the restrictions imposed upon the movement of trade, commerce and intercourse. The substance of the freedom in this regard that fell for consideration was whether the statutes created any barricade in the free

exchange of trade and commerce and intercourse guaranteed by Article 301. By very nature the land is immobile and the term 'trade' even if inclusive of agriculture would mean productive activity over and with reference to that land. By providing for ceiling of such immobile property within the limits of the State, it cannot be said that any barricade that will affect the movement of trade or freedom of commerce itself are being created. As we have said it is mainly a regulatory measure and perfectly within the competence of the State Legislature. How much land a person or family unit shall hold within the State and its enacting cannot in any manner be said creating barricades upon the movement of trade or commerce of agriculture.

98. Heart-matter and the central piece of this Article 301 is the term 'free' used in the context of trade, commerce and intercourse so as to maintain economic concourse in the country. The term 'free' indicates the movement of trade, of commerce and its intercourse. Freedom from restraints in the matters of commercial activities is constitutionally declared and guaranteed at the foot of the article. The freedom of movement extends to intra-State as well inter-State trade or commerce. Legal erections of unreasonable inhibition which will impede the economic concord in this country have been constitutionally stamped out except to the extent of its regulation and necessities therefor. The aim and object of this guarantee is clearly to achieve homogeneous national economy of the people.

99. The grievance at the foot of this Article can possibly be that flow of movement of trade or commerce or economic intercourse by any means of law is impeded or inhibited. Regulation or laying down lawful limits to hold property for all purposes goes to support the freedom of trade rather than impede the same. 'Freedom' according to law and according to this guarantee is the touchstone. Regulatory measures taken by the Statute to control immovable property cannot be termed as having effect on the inflow or outflow of economic concourse n the country. Only because the entitlement to hold land above the ceiling limits is curtailed, it does not follow that the resultant economic venture itself is put n any type of barricade. The concept of freedom' in the context of land necessarily means the freedom to possess, freedom to enjoy and freedom to deal with it. Providing for the ceiling of such property is only to chisel or limit the extent of these rights in the property. In spite of ceiling, the agriculture which can be said to be trade and commerce and its intercourse is fully left free. To what extent the land should be available to citizen for the purpose of exploitation by agricultural and allied pursuits can always be defined by law. Once the pith and substance of the law is of such kind, it follows that the trade or the commerce and its flow as far as agriculture is concerned, is neither impeded nor in any manner affected, for, within the limits it is free and the limits are permissible. No person or citizen possessing property can have claim to freedom to hold limitless land on the footing that his holding should know no bounds. In the days when the flow of life is being tailored by several

social and cultural scissors, such an approach would be a pure antithesis and unrealistic seeking to possess the land that touches the horizons. The lure of land and its reasonable control cannot be equated as impeding the economic movement guaranteed by Article 301 of the Constitution.

100. We may mention that even before the present Amending Acts were so questioned, it appears that such an argument advanced before this Court has been ruled out: The Godavari Sugar Mills v. S. B. Kamble, (1975) 77 Bom LR 2611. The present submission challenging the enactment fixing the ceiling and acquiring surplus land based on Article 301 of the Constitution, therefore, must fail.

101. Let us now turn to the provisions of Article 31-B itself. So as to understand its impact on the present controversy, we have already upheld the validity of Article 31-B, and ruled that it is immune from challenge on the ground that it violates any basic structure of the Constitution.

102. Before we extract and examine the provisions of Article 31-B, we may indicate that the provisions of Article 31-B have been usefully applied and several times held to be affording total protection to laws from challenges based on Part III of the Constitution.

103. Though Dhirobha Devisingh Gohil v. State of Bombay, was not eventually approved in the later judgments by the Supreme Court in Golak Nath's case it is useful as providing a point of reference. In view of Golak Nath's case being overruled by the BASIC STRUCTURE CASE, it is possible to look back to what was found by the Supreme Court in Gohil's case. The provisions of the Bombay Taluqdari Tenure Abolition Act were questioned in Gohil's case. The challenge was on the ground that the provisions violated Section 299 of the Government of India Act. The provisions of the Bombay Taluqdari Tenure Abolition Act were protected because they were included in the Ninth Schedule and were under the constitutional umbrella of Article 31-B. The Court rejected the challenge by observing that the protection under Article 31-B is not merely against the contravention of certain provisions but an attack on the ground of unconstitutional abridgement of certain rights. It will be illogical to construe Article 31-B as affording protection only so far as these rights are taken away by an Act in violation of the provisions of the new Constitution but not when they are taken away by an Act in violation of Section 299 of the Government of India Act, which has been repealed. The intention of the Constitution to protect each and every one of the Acts specified in the Ninth Schedule of the Constitution from any challenge on the ground of violation of any of the fundamental rights secured under Part III of the Constitution irrespective of whether they are pre-existing or new rights is placed beyond any doubt or question by the very emphatic language of Article 31-B. Hence the Court found that the validity of the Bombay Taluqdari Tenure Abolition Act which was included in the Ninth Schedule was not questionable on the ground of violation of the provisions of Section 299 of the

Government of India Act. It is indeed clear that in Gohil's case one of the challenges was based on the legislative incompetence. While considering the challenge the Court observed 5 "The challenge now made to the validity of the impugned Act is based on the alleged violation of that right. Nor does this challenge cease to be in substance anything other than a challenge in respect of the violation of the said right notwithstanding that under Section 299 of the Government of India Act the right is secured in terms which restricts the power of the Legislature and operates as a restraint on its competency. What under the Government of India Act was a provision relating to the competency of the Legislature, was also clearly in the nature of a fundamental right of the person affected." (underlining ours). The Court applying the ratio of the case In State of Bihar v. Kameshwar Singh, observed:

"A careful perusal of the judgment however shows that the challenge allowed was as to the competency of the Legislature to enact certain provisions of the impugned Act which in the opinion of the majority of the Court, were in the nature of fraud on the exercise of the legislative power."

104. In Ram Kissen v. Divisional Forest Officer, the provisions of West Bengal Estate Acquisition Act (Act No. 1 of 1954, as amended by Act No. 25 of 1957) having been placed in the Ninth Schedule and having the protection of Article 31-B because of Constitution (Seventeenth Amendment) Act, were questioned inter alia on the ground that there was absence of a provision for compensation for the acquisition of the rights by the enactment itself. Coming to the protective effect of Article 31-B, the Court observed :

"Learned counsel drew our attention to the provisions quoted and submitted that the learned Judges erred In their constitution of these provisions and that In fact no compensation was provided, but this question about the Constitutional validity of the amending Act does not really fall for consideration because learned counsel for the appellant did not contest the position that after the enactment of the 17th Amendment to the Constitution, and the Inclusion of West Bengal Act I of 1954 among those specified in Schedule IX, the absence of a provision for compensation for the acquisition of the appellant's rights would not render the West Bengal Act or the acquisition thereunder unconstitutional,' The observation of the Supreme Court in Ram Kissen Sinha's case indicate that even a law regarding the acquisition providing for no compensation like the one before it could be protected from challenges under Part III, if it had been placed in Ninth Schedule.

105. In N. B. Jeejeebhoy v Assistant Collector, provisions of Article 31-B were noticed by the Supreme Court in the contest of the argument that Articles 31-A and 31-B should be read together, and Article 31-B would only illustrate cases which would otherwise fall under Article

31-A. The Court indicated the effect of Article 31-B by pointing out that the said Article was not governed by Article 31-A. The Court observed :

"We, therefore, hold that Article 31-B is not governed by Article 31-A and that Article 31-B is a constitutional device to place the specified statutes beyond any attack on the ground that they infringe Part III of the Constitution."

(Underlining is ours), Thus Jeejeebhoy's case is an authority also that any attack on the basis of any provision of Part III is not available once the statute is protected by Article 31-B.

106. In Latafat All Khan v State of U. P., the Supreme Court had the occasion to observe with regard to the rule framed under an Act placed under the protective umbrella of Article 31-B. The challenge to the rule was on the basis that it violated Articles 14, 19(1)(f) and (g) and 31(1) of the Constitution. Negativing the challenge, the Court observed:

"It seems to us that if a statutory rule is within the powers conferred by a Section of a statute protected by Article 31-B, it is difficult to say that the rule must further be scrutinised under Articles 14, 19 etc. ...."

Eventually as we have stated above, the Constitution (Twenty-Ninth Amendment) Act which was put in issue in the BASIC STRUCTURE CASE -- Kesavananda's case, was an enactment putting the Kerala Land Reforms Act, which in Kunjikutty v. State of Kerala, was not found to be violative of Article 31-A and the Supreme Court in the BASIC STRUCTURE CASE upheld the Constitution (Twenty-Ninth Amendment) Act,

107. From these cases and particularly the BASIC STRUCTURE CASE, it is apparent that Article 31-A and Article 31-B are independent provisions; that the law that may not satisfy Article 31-A can still be protected by Article 31-B of the Constitution and once such protection is afforded it cannot be questioned on the ground that it violates any of the rights guaranteed by Part III of the Constitution. Thus about rights there can hardly be any debate or dispute and Constitutional shield erected is strong enough to repel any attack based on rights conferred by any provision including Article 31-A of the Constitution.

108. Before us, however, an argument is made in spite of these decisions, that Article 31-A which is an independent provision than Article 31-B, as stated above, carves out a fetter on the legislative power and is in the nature of a proviso with regard to the specified laws to be read with Article 245 of the Constitution or Article 246 as the case may be. In our view, such type of submission overlooks the plain width in which Article 31-B has been couched and has been pre-eminently enacted.

109. We proceed now to extract the said Article so as to find its plain reading and its protective effect on the laws against the challenges arising out of the provisions of Part III.

"31-B. Without prejudice to the generality of the provisions contained in Article 31-A, none of the Acts and Regulations, specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such_ Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force." (Underlining ours).

110. We have underlined the provisions out of the body of Article 31-B to emphasise what appears to us to be the primary connotation as operating upon each and every provision contained in Part III. Article 31-B itself is a protective statutory shield and its grammatical construction should be approached and understood in plain terms and given effect to by what it states in express terms. Act or Regulations or provisions of the laws may be rendered void because those are enacted inconsistently with any provisions as contained in Part III which is fundamental part of the Constitution. Similarly the Act, Regulation or provision may be rendered void because the same takes away or abridges any of the rights conferred by Part III of the Constitution. Both types of contingent invalidation affecting the legality of the laws appears to us intended to be covered by the express wide terms employed herein. It would not be proper to read Article 31-B as a mere proviso to Article 13 of the Constitution. On the other hand it is self-contained and self-operative and explicit in effect and purpose. It cures the defect of rendering the Act or Regulation void, which may arise even without reference to Article 13 itself. Like any other provision of the Constitution, the language of the article must receive its own independent interpretation uncontrolled by the considerations of the other Articles unless context or necessity of interpretation requires otherwise. Undoubtedly aid of other articles may throw light upon the intent expressed by the Constitutional terms, but the rule primordial is that each Article in Constitutional document should be read plainly should receive first construction on the basis of the language used therein.

111. It was suggested as one of the constructions that when Article 31-B refers to "inconsistencies with, any provision in this Part", it has in its contemplation the term 'provision' as used by Article 394 and further it only 'covers cases Contemplated by the first clause of Article 13 and when this article uses the phrase "takes away or abridges any of the rights conferred by any of the provisions_ of this Part" it is suggested that it refers back only to Article 13(2) of the Constitution. It is further urged that the "comma" after the preposition 'by' indicates that inconsistency with any of the rights conferred by the provisions of the Act is only

contemplated. In other words, if the laws are inconsistent with provisions which do not confer rights but are mere provisions indicating matters other than rights Article 31-B would not be operative.

112. We find it difficult to follow any such approach which constricts the scope of Article 31-B itself. Article 31-B in all its prints appears to us carefully punctuated and we cannot lose the significance of the use of "comma" placed after the preposition 'by' followed by the words 'any provision in this part'. Though undoubtedly punctuation is a minor element in the construction of the statute, sometimes if the statute is carefully punctuated its considerations assume importance and throw light on the intention of the makers of the statute.

113. Comma here, after the preposition 'by' appears to have been used with purpose to give meaning to the earlier phrase 'is inconsistent with any provisions of this Part'. Before comma there are two operational clauses, both ending by two prepositions, one ending with 'with' and another by 'by'. These 'inconsistent with 'or' conferred by, any provisions of this Part, have to be commonly read. So read, both the prepositions 'with' and 'by' make ample and clear reading the provisions of Article 31-B. Thus read, the protection or immunity offered by the Article 31-B would be operative when any Act, regulation or provision is inconsistent with any provision of Part III or secondly when it takes away or abridges any of the rights conferred by Part III.

114. So read the provision does not in any manner require to be read as only subject to Article 13 of the Constitution. Article 13 is declaratory and is in two parts. It declares void pre-constitutional laws if they happen to be inconsistent with the provisions of Part III. It enacts also constitutional injunction against the State for not making any law which would take away or abridge the rights conferred by Part III and if such law is made, it declares such law to be void to the extent of the contravention. Sub-clause (2) of Article 13 would render the Acts void if the law takes away or abridges the right conferred by Part III. The term 'conferred by' is of wide import. It means 'give' or 'bestow'. The provisions regarding the conferral of the right are contained in several provisions and other articles and some of the articles themselves indicate how the rights so bestowed can be subjected to the process of law. Scheme of Legislation to be enacted as operative upon the field of rights constitutionally conceived can be termed as enacted by the "provisions of the Part III" and is apart from "the rights conferred" by that part.

115. Rights are declared as in Article 14--equality before law or Article 29 (1)--Protection of interests of minorities or Article 31 -- right of minorities to establish and administer educational institutions. There are rights conferred by negative declarations as contained in Article 15 -- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, permitting, however, the State for making any substantial provision for women and children --Article 15 (3).

Similar is the position with regard to the right of opportunity in the matters of public employment. Article 16 and provisions to make appropriate law in favour of certain class of persons Clauses 3, 4, 5 of Article 16. There is provision like Article 17 which contains a declaration in the matter of abolition of untouchability and Article 18 in the matter of abolition of titles. Right to freedoms is enacted in Article 19 which is subject to exceptions contained in the provisions of sub-articles (2) to (6) in favour of certain laws and making of laws in that regard. Similarly 'life' and 'personal liberty' is subject to the procedure established by law (Article 21). Article 22 offers protection against arrest and detention and lays down the mandatory procedure when a person is arrested and detained in custody. Right against exploitation in Article 23 is similarly couched first declaring the right and then making a provision permitting the State as indicated by Sub-article (2) to impose compulsory service for public purposes. Article 24 prohibits employment of children in hazardous employment. Right to freedom of religion is subject to public order, morality and health and the other provisions of the Part as stated in Article 25(1). The right to property is stated in a negative manner and injunctive in its content for stating that "no person shall be deprived of his property save by authority of Law". Then follow Sub-articles (2), (2-A), (2-B), (3), (4), (5) and (6). Sub-article (2) being again an injunction from compulsory acquisition or requisitioning of the property for public purpose. Articles (2-A) and (2-B) take into account the law and sub-article (3) requires the law made in terms of Clause (2) to be reserved for consideration of the President and necessity of obtaining the Presidential assent. Article 32 is a constitutional remedy to move the Supreme Court and is a fundamental right, not liable to be suspended except as otherwise provided for by the Constitution.

Article 33 is a power of Parliament to modify the rights conferred by the Part in their application to the Armed forces. Article 34 deals with restriction on rights in the state of martial law. Article 35 is declaratory provision in favour of the Parliament to make laws with regard to matters as stated in Clauses (a) and (b) thereof.

116. The review of several articles for tile present purpose indicates that the rights conferred by Part III are on citizen, person, body or denomination and further are subject to restrictions to be imposed in accordance with different provisions of the part Restrictive provisions available in Part III are clearly intended to be operative upon the rights and are none-the-less "the provisions as contained in Part III" and by resort to those provisions, the rights may be abridged or be eclipsed.

117. The words "right conferred by this Part" could be properly understood therefore as against the context of the rights bestowed by Part III. The matters of permissible legislative provisions are matters of provisions. Articles 31-A and 31-C, for example, are the provisions regarding the savings of laws on the ground that such laws are inconsistent or take away or abridge any of the

rights conferred by Articles 14, 19 or 31 of the Constitution of India and not matters of right as such. It is obvious that inconsistency may arise if laws do not appropriately answer requirements of such provisions.

118. Inconsistency with such of the provisions on this Part that would arise and that would affect the rights either by abridgement or by taking away the rights bestowed by the Part would lead to a result of invalidity. Such inconsistency' in any law would thus be the contravention contemplated by Article 13(2) of the Constitution and to the extent of such inconsistency in that law, which eventually takes away or abridges the right, the law would be void. It would thus appear that the terms of Article 13(2) are broad enough to affect the laws which are inconsistently made with the provisions of Part III itself that deal with the conferral of rights. Speaking illustratively a law which is inconsistently made and operating upon the rights bestowed under Articles 14, 19 and 31 and not fully satisfying the requirements of Article 31-A of the Constitution either because it did not comply with the specific provisos appended to that article or the law which is not appropriately made in keeping with the second proviso may be rendered void because of Article 13(2) read with the rights conferred by Articles 14, 19 and 31. But such a law that would be an instance of inconsistent legislation as far as Article 31-A is concerned would not be rendered void once it is placed under the constitutional umbrella of Article 31-B.

119 As we. read it, the phrase 'inconsistent with any provisions of this Part' is wide enough and need not be specifically controlled by the phrase 'takes away or abridges any of the rights conferred by any provisions of this Part'. When the inconsistency Is spoken of, it is obvious that it is inconsistent with any of the provisions and not only with the rights conferred by Part III. Similar phrase is used in Article 31-A in Clause (1) before the two provisos indicating the effect upon the law consistently made in terms of Article 31-A and the, declaration is that such law shall not be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31. Similar identical phrases are used while, indicating the immunity effects upon laws covered by Article 31-C of the Constitution. It is undoubtedly therefore clear that the inconsistency with any provisions of this Part is not merely inconsistency with regard to the positive rights declared. That may arise because the law may not satisfy the requirements of some other provisions contained in Part III which by itself may not be the positive provision conferring rights under Part III.

120. All this construction became necessary because one of the submissions is that Article 31-A is an enabling legislative provision permitting making of laws in the matters of agrarian reform like the acquisition of property by State of any estate or of any rights therein or the extinguishment or modification of any such rights and unless all the provisions of Article. 31-A

are fully satisfied, the law made by legislature by recourse to its power under Article 245 for agrarian reforms would be still void and would not be protected by Article. 31-B of the Constitution. Article 31-A appears to us to be a provision of the Constitution by which laws Inconsistent with the rights conferred by Articles 14, 19 and 31 can be effectively made for the purposes stated in Sub-clauses (a) to (e) of Clause (1) of Article 31-A. Such law has to satisfy the provisos in that the law so made has to be reserved for the consideration of the President so as to have Presidential assent and if the law provides for acquisition of estates held by a person for personal cultivation within the ceiling limit under any law for the time being in force then such law of acquisition of property has to provide payment of compensation at e rate which would not be less than the market value thereof. Law so made would be immune from challenge flowing from the rights conferred by Articles 14, 19 and 31 and though inconsistent with those rights, would be valid and enforceable. Second proviso to Article 31-A, even if treated as a right to receive compensation conferred by this part is nonetheless a provision contained in Part III.

121. What is contained In Article 31-A need not be imported for application and understanding of provision of Article 31-B. These are all independent provisions and the law that may not satisfy the requirements of Article 31-A may yet be well protected because of statutory shield if put in Ninth Schedule and conferred by Article 31-B in spite of the fact that it is inconsistently enacted with the provisions of Article 31-A. The clear ratio of the BASIC STRUCTURE CASE which we have discussed in the earlier part of this judgment appears to us an authority for such a position, for, in Kunjukutty's case (AIR 1972 SC 723) the laws which were eventually placed under the statutory shield of Article 31-B were found to be inconsistently made with Article 31-A and yet the Supreme Court by majority upheld the Constitution (Twenty-Ninth Amendment) Act placing those laws under the protection of Article 31-B and laws immune from such challenge.

122. As found above the same legal and constitutional effect is evidently achieved by the Constitution (Fortieth Amendment) Act placing the amendment Acts in issue in the Ninth-Schedule though the Acts themselves may not be on any ground satisfying the requirements of Article 31-A of the Constitution or even Article 31-C of the Constitution. The effect of the placement of the Acts in the Ninth Schedule is that the Acts are immune from challenge on any ground based on inconsistency with the provisions of Part III for taking away or abridging any of the rights conferred by part III of the Constitution,

123. Here, there now is a challenge that the Amending Acts in issue, affect the right guaranteed by Article 25 of the Constitution regarding the freedom of religion. We propose to dispose of this issue at this stage itself.

124. The freedom guaranteed by Article 25 is not a freedom to hold unrestricted property nor can

it be so conceived. The -moral Codes of Religion mainly concern with the way of life of the man and lay down principles of interests in given society without any gurantee to hold or possess the property. By its very nature rights of property are secular and extra religious. The content of religious freedom is personal so as to permit holding of belief and to practice freely according to one's individual judgment, conscience any religious faith. No doubt, conduct in the matters of preaching religious faith as a measure of awakening consciousness in or acceptance by fellow being is the part of the purpose of propagation. Dissemination of ideas about mundane as well super mundane matters to the community at large is all that this freedom connotes. (See:Commissioner, Hindu Religious Endowments v. Lakshmindra Tirth Swamiar of Shirur Mutt, and Ratilal v. State of Bombay,). However, this freedom is clearly declared subject expressly to other provisions of Part III of the Constitution. It is obvious that freedom of religion and the freedom of conscience extends not only to the citizens but to persons and to denominations. Religious convictions and matters of conscience can be articulated by its preaching and practising subject to public order and morality and health as well other provisions of the Part in of the Constitution by which this right has been guaranteed. It is difficult to accept that right to hold property either because it is possessed by individuals or group of persons or denominations propagating a given religion and further there exists religious tenets laying down the principles of succession or inheritance or its application should be treated as the part of the right conferred by Article 25 of the Constitution. The character of the right is limited by the express declaration contained in clause (1) of Article 25 entitling any person to freedom of conscience and the right to freely profess, practise and propagate religion. Sub-article (2) expressly permits the State to make laws regarding the activities which are economical, commercial in character though associated with religious practices (See: Commissioner, Hindu Religious Endowments v. Lakshmindra Tirtha Swamiar of Shimr Mutt,).

125. It being clear that Article 25 does not confer by itself the right to property, nor the right to property can be treated as part of the religious right recognised thereunder such argument has little force. The complaint that personal laws of succession or inheritance or maintenance of minors and widows and dependants as well laws regulating the extent of interest in property would run counter to the provisions of the impugned enactments and, therefore, Article 25 is violated appears to us as fallacious and not warranted at all. The impugned Acts do not in any manner affect the right conferred by Article 25, nor abridge the extent of that right. Even assuming that there is some cloud cast as is being canvassed upon that right by the Act in that property which could have been utilised or is meant to be utilised for religious purposes even then the exercise of right to freedom as covered by Article 25 which is subject to other provisions of Part III would not be affected. Article 31-B being the provision contained in Part III of the Constitution and if read with Article 25 of the Constitution would afford protection to such laws

placed in Ninth Schedule even if property used for religious purposes is affected. Therefore, challenge on any such ground on the basis of Article 25 is not well merited. (See: also Wasudeo Mahadeo v. State,).

126. Having disposed of the question regarding Article 31-B and its effect we would now turn before we consider the challenge on the basis of Article 31-A and Article 31-C to one small point raised by the petitioners. That point has something to do with the effect and the application of the two Acts i. e. Acts Nos. 21 and 47 of 1975. The argument is that Act No. 47 of 1975 is a dead letter because the earlier Act which was amended by that Act already put in force and as such had become the part and parcel of the original Act on 19th of September 1975. So the Act No. 47 of 1975 which was put into effect on 20th September 1975 had no Act upon which it would have an operational field.

127. All these submissions and the reference to the Supreme Court judgment in Shamrao v. D. M., Thana, proceeds over a central concept and i. e. as soon as Act No. 21 of 1975 was brought into effect by the Notification of the State Government it ceased to have existence as an enactment or a piece of legislation upon which Act No. 47 of 1975 could operate. A little probing into the terms of these two enactments would reveal that by construction of this kind no such logical consequences at all ensue.

128. The Legislature in its wisdom made both these Acts and left the date of their application to be notified by the State Government, Act No. 21 of 1975 which was gazetted on 7th of August 1975 required the State Government by Subsection (2) of Section 1 to make the notification regarding the enforcement date. Accordingly the State Government notified the date as 19th September 1975 on which date the Act became effective in the sense it subjected the original Act to amendments made by Act No. 47 of 1975. As stated in Shyamrao V. Parulekar v. District Magistrate, Thana, the amendments inserted by this Act in the original Act would be treated to have been made by pen and ink in the original body statute.

129. Act No. 47 of 1975 was passed and gazetted on 19th September, 1975 i. e. the day when Act No. 21 of 1975 was put into effect. That Act obviously was passed with reference to the provisions of Act No. 21 of 1975 and purported to amend the provisions of that Act. Instead of the Legislature itself declaring that this Act upon its passing would become a part of the Act No. 21 of 1975, it provided that it shall come into force on such date as the State Government may by notification appoint. In other words the latter Act which was an amending Act of earlier' amending Act would not be effective unless so notified and enforced by the State Government. For the purpose of putting into effect the provisions of this Act, the legislative intent is always to keep the terms of Act No. 21 of 1975 available so as to effectively amend the same from the date

to be notified by the State Government Only because that date happens to be notified later on, the amendments enacted by the Legislature cannot be said to have been rendered nullity or nugatory. Simple effect of the second enforcement would be to incorporate by pen and ink the terms of the provisions in original Act as amended by Act No. 21 of 1975 to the extent enacted by Act No. 47 of 1975.

130. The salutary doctrine of reference operates for the purpose of interpretation and construction of statutes. That emanates by the very exigencies to keep the statutes available for the legislative purposes. By reference to earlier amending Act, the second amending Act can effectively introduce further changes in the body of the original Act though the former has become part and parcel thereof. The power to make such amendment in this manner always exists and the matter is purely one of interpretation. Once this is granted, wherever there occurs a reference to the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) and (Amendment) Act, 1972 in Act No. 47 of 1975 it would mean the provisions as contained in that Act and to that extent that would have to be read out and corrected by pen and ink in the structure of the original Act. Act No. 47 of 1975 refers for the purpose of amendment to the Act No. 21 of 1975 as 'the Amending Act' and provides by different sections ranging from 2 to 8 how the Amending Act shall stand amended upon the enforcement of Act No. 47 of 1975. That term is intended to mean clearly the provisions of Act No. 21 of 1975 and by reference would operate with all force wherever Act No. 21 of 1975 is operative. No anomaly is introduced nor any antilogy is raised. For, it is perfectly permissible for the State Government to notify earlier or on simultaneous dates for effectuating the provisions of Act No. 47 of 1975 which would have made this Act that part of Act 21 of 1975 and thereafter notify the date of Act No. 21 of 1975 for the purpose of enforcement. For reasons obvious it was left to the power of the State Government so to give effect to Act No. 21 of 1975 and then to make effective Act No. 47 of 1975- The Legislature did not injunct otherwise. It is common experience that the Legislature in its wisdom always follows such device of leaving the matters of notifying enforcement dates to the State Government. That is clearly because of several good reasons including administrative and executive exigencies and knowledge thereof which Executive Government better possesses. This power undoubtedly partakes in minor legislative function. The effect however of such a device merely is that from that date of enforcement the statute becomes operative and enforceable. As far as Legislature is concerned, the law stands enacted reflecting the will of the Legislature once the same is gazetted as an Act duly made. Thereafter there is no such stage as 'non-existence of an Act'. Enforceability of an Act of the Legislature and the existence of the Act are two independent matters. Even before enforcement and after such enforcement, it is available as an Act for the purposes of amendatory legislative process.

131. Once all this is clearly conceived the submission must fail. On the date Legislature made Act No. 47 of 1975, for its purposes Act No. 21 of 1975 was available and once the same was put into effect it would operate upon the terms of Act No. 21 of 1975 as have become part, of the original Act. The argument that. both these enactments besides being vague have made some drastic changes in their premises cannot advance the submission as to the nature, existence and effect of Act No. 47 of 1975.

132. Having thus found that both the Acts 21 and 47 of 1975 further amended by Act No. 2 of 1976 are operative in the field, we now turn to considerations relevant to the terms of Articles 31-C and 31-A along with the directive principles contained in the Constitution with reference to Article 39(b) and (c) of Chapter IV of the Constitution. We may note at the outset that some of the learned counsel submitted before us that while examining the validity of such enactment because of the protection available under Article 31-C it should be permissible course for this Court to find whether the enactment runs counter to some other directive principles. One of the learned counsel made a reference to Article 39(a) for pointing out that the rights of minors as well women in the matters of means of livelihood are being subjected to treatment which will render them destitute in spite of the directive principles contained in clause 39 (a). Another learned counsel questioning the validity of one of the provisions namely, Section 2-A along with Section 44-A of the Amendment Act with regard to the constitution of Surplus Land Determination Tribunals made a complaint at the foot of the directive principles as contained in Article 50 that the principle of separation of Executive and Judiciary though fundamental principle of governance as enunciated by that article is being violated because the land is being taken for the purposes of State and the State itself has been given the power to appoint its officer to be the Tribunals so that there is complete go-by given to the directive principles and its contemplation in Article 50. At the time of considering the submissions based on Sections 2-A and 44-A, we will have further occasion to refer to this aspect of the matter. Suffice it to say at this stage that the directive principles of State policy as Article 37 itself lays down are not enforceable principles though the Constitution recognises them as fundamental principles for the governance of the country and requires the State to apply the same while making the law, Because of Article 37 we cannot be asked to enforce clearly any of the principles or the contemplations underlying such provisions of directive principles. It is indeed a principle guiding the State policy and it is for the State eventually to choose given principle while making an enactment. The inference that follows from Article 37 itself appears to have utility firstly while approaching the laws these should receive construction in consonance with the directive principles of the State policy. As Courts we would lean towards that interpretation which will subserve the directive principles and if the laws are susceptible to two interpretations the one upholding the directive principles and subserving its ends and the other running counter to the

principle enacted, the one that subserves the directive principle would be eminently followed. (See : Balwantrai v. Union of India and F. N. Balsara v. State of Bombay (FB)). However, the provisions of Part IV and its purposes in the constitutional processes are clearly enabling and there is no compulsive course indicated by any of the provisions. Suffice it to observe that the submission that the Court should strike down the laws because some of the directive principles do not appear to have been kept in view by the Legislature cannot be upheld. (See: B. B. Ramecha v. Mandsur M. C.. and Jaisingh Pyara v. Gram Panchayat, Singhanwala,).

133. The Supreme Court in State of Bombay v. Balsara, 1951 SCR 682 : AIR 1951 SC 318, Hanif Qureshi v. State of Bihar and in Bijay Cotton Mills Ltd. v. State of Ajmer consistently looked to the relevant directive principles while understanding and considering the validity of the Acts which were questioned on the basis of fundamental rights referable to Article 18 of theConstitution. In State of Bihar v. Kameshwar Singh, the requisition of land for subserving the purpose of clauses (b) and (c) of Article 39 was treated to be for the public purpose within the meaning of Article 31(2). This is ample authority to indicate that the use of directive principles in the matters of challenge before us to the laws like the present one is limited by the very nature of the principles declared to be fundamental in the governance of the country. While upholding the legislative policy of the law upon interpretation it would subserve the given principle available in Part IV of the Constitution and that would be found as underlying constitutional requirement met by the law. The law, however, cannot be compelled to make the premises of directive principles by judicial interpretation which would mean its enforcement. Nor it would be proper to treat the directive principles in the constitutional scheme as limitations or fetters on the legislative powers.

134. Once we observe like this, it follows that we cannot be asked to colour our judgment by reference to directive principle of Article 39(a) or Article 50 of the Constitution as the arguments were advanced before us.

135. The root matter is what is the purpose of the law and whether if those purposes accord well with the principles specified in clause (b) or (c) of Article 39 so that the statute gets protection of Article 31-C. Principles of Article 39(b) and (c) are to the effect that the State is enjoined to evolve a policy in the making of its laws to secure that the material resources of the community are distributed to subserve the common good. In other words, clause (b) of Article 39 refers to the distributive justice in the matters of material resources available to the community. The principle underlying clause (c) of Article 39 is clearly to restructure the economic system of the society so as to avoid the concentration of wealth and means of production to the community detriment, It is a principle inhibiting monopoly of means as well as of wealth.

136. Turning to the present enactments in our view apart from the declaration contained in

Section 2 of Act No. 21 of 1975 to which we have already made a reference, there is ample evidence in the terms and contemplation as well as in the working of the statutes that both these principles are in fact furthered by the provisions of these laws. Act No. 21 of 1975 is meant to lower down the ceiling of holding of land that was initially imposed by the original Act. The purpose of the original Act was to put maximum limit on agricultural holdings of the persons and further to acquire land for the distribution to the class of persons who were otherwise not possessing land. Lowering down the ceiling limit cannot have any other purpose and the law in terms states to what purpose the surplus land would be utilised. It provides that after the ceiling is so declared, the surplus land shall be taken possession of in the prescribed manner and it shall be deemed to be acquired by the State for the purposes of the Act (Section 21' (4)). Chapter VI deals with distribution of surplus land and indicates how the same shall be distributed. The landless person appears to be the first priority who may have become landless by certain reasons as indicated by Sub-section (2) or Sub-section (3). Thereafter the weaker sections of the community who are landless are indicated by Sub-section (4) of Section 27. They include scheduled castes, scheduled tribes, nomadic tribes and other backward classes. Sub-section (5) of Section 27 thereafter indicates the order of priority in whom are included the persons who are landless. It is not necessary to delineate the whole scheme in this regard. Suffice it to observe that the emphasis is to lower down the ceiling area of the holding of a person as contemplated by law so that the surplus is acquired and distributed to the classes of persons in accordance with Chapter VI.

137. The amendments of the Act are therefore replete with the principles underpinned by Article 39(b) and (c) of the Constitution. In the agrarian society land is a valuable means of the economic system itself. We will refer to it later on when we consider the Article 31-A of the Constitution and in that context the concept of agrarian reforms. However suffice it to say at this stage that roots of monopoly landlordism and its social and economic effects which lie in the recent past are all matters of common knowledge and legislative strategy to free the society therefrom. The feudal system of holding lands because of the conferment of titles and jagirs or watans and the concentration of economic power with it are all parts of historical experience of Indian society,

138. The Legislature is presumed to know all these facts and their far-reaching effects on the material resources of the community or economic system which subserves the common good so as to enact limits of viable unit of land and permit the persons to till the same and to acquire surplus land for public purposes and to permit landless persons to take the same which in turn would better effectuate the agricultural production and do away concentration of economic resources like the land. In our view, nothing can be more clear. If that be the primary scheme of the law, requirements of Article 39(b) and (c) of the Constitution would be answered. Eventually

laws would be protected from the challenges under Articles 14, 19 or 31 of the Constitution because of statutory shield of Article 31-C of the Constitution. Only because the law for the purpose of making available the surplus land seeks method of clubbing of properties like land, the principle underlying is not affected.

139. Now we turn to the challenge that these laws are not protected under Article 31-A. Under this aspect of the matter two main submissions, as we indicated above, are discernible, one based on second proviso appended to Article 31-A and second on the aspect of the family unit as contemplated by Section 4 of the Act along with certain other provisions set out as said to be not satisfying the concept of agrarian reform. It is apparent that Article 31-A, particularly permits acquisition by the State of any estate or of any rights therein or any extinguishment or modification of any such rights and the law has to satisfy the conditions of two provisos. That raises the question as to the concept and reach of laws regarding agrarian reforms and its enactments.

140. The original Act till the stage of several amendments as we stated earlier has been found to be the piece of legislation subserving the agrarian reforms. The present amendment Acts substitute the amended Chapters II and III for the original Chapters in the principal Act followed by further amendments. They have one integral scheme and it is difficult on the face of it to see how the scheme cannot but be termed as a scheme furthering the agrarian reforms in the State.

141. The case relating to lowering down of the ceiling area of land is not a haphazard device found by the State Legislature. It has clear national history and is a part of the national policy.

Lowering down of ceiling as a measure of national land policy so as to better subserve the agrarian economy has been undertaken by several States and almost simultaneously as is evident from the statement filed before us on behalf of the State showing how revised ceiling laws in different States have been put into effect between the period ranging from 1970 to 1975.

142. It would be appropriate here to take a purview of the movement of agrarian reforms in the country and significant hall-marks thereof. Such reference to economic movements available in the national policy is quite necessary and permissible though juridically there has always been attempts to keep plan and policy out of the ken of consideration.

143. As back as in 1949 Agrarian Reforms Committee of the leading political party, Indian National Congress, made a report and national policy on land reforms eventually found place in the shape of First Five-year Plan. The objective of the First-Five Year Plan was to increase the agricultural production and to diversify the agricultural economy so as to achieve the higher level of efficiency. The First Five-Year Plan further outlined the broad principles of its strategy that

there should be absolute limit upon the extent of land which any individual may hold to be fixed by the State, having regard to the agrarian history of the State and its problems and further, that cultivation and management of the land by an individual owner should conform to standards of efficiency to be determined by law. Land Reforms Panel was formulated in 1955 and it made a report of 'Size of Holdings'. Amongst other, recommendations, it initiated a policy of imposition of ceiling on land for the purposes inter alia of reducing glaring inequalities in ownerships and use of land. The Reforms Panel indicated that a farm which yielded a gross average income of Rs. 1,600 or a net income including remuneration for family labour of Rs. 1,200 and is not less than a plough unit or its multiple in area, may be considered as a 'family holding'. It recommended three family holdings for an average family of five members. It was further advised that family being the real operative unit in land ownership as in land management, the members of the family should be taken into account and husband, wife and dependant sons and daughters and grand children may be reasonably included in the concept of family.

144. The Second Five-Year Plan after review of the Committee's recommendations emphasized measures of agrarian economy with high level efficiency and productivity. It, in fact, emphasised the need to build up progressive rural economy removing disparities in the ownership of land. Imposition of ceiling during Second Five-Year Plan as a measure of social justice was recommended, Further the family holding was advisedly stated to be an operational unit and an area of land which can yield a certain average income. The Second Plan in terms rejected the concept of family holding and recommended the scheme as an operational unit. The Third Five-Year Plan reiterated the objectives of the Second Five-Year Plan with emphasis on elimination of elements of exploitation from agrarian system in the country.

145. The Fourth Five-Year Plan noted these developments and observed that the State laws on the subject were far from being perfect and there is every need for effective legislation.

146. Under these planned objectives the original Ceiling Law was made effective in the State. The All India Chief Minister's Conference held on 28th and 29th of November 1969 noted the progress and the difficulties in the country to achieve these objectives by means of law. As a result of deliberations certain States began revising the ceiling laws having objectives of reducing the ceiling limits and providing for standard holdings. Again the Conference of the Chief Ministers was held on 26th September, 1970 and on its agenda Ceiling on Land was the high topic. The deliberations of the Conference further resulted in examination of the issue of the ceiling on agricultural holding by the Central Land Reforms Committee. The Office of the Land Reforms Commissioner under the Ministry of Agriculture was created in October 1970 and all this history is presently available in the paper published by the Ministry of Agriculture on 'Ceiling on Agricultural Holdings". (Government of India 1972 Publication by P. S. Apu.)

147. The case for 'Low Ceiling' as a national objective was advocated as flowing from the considerations of social justice. Pertinent reference was made to Articles 39 and 40 regarding the State policy to promote the welfare of the people by securing and protecting as effectively as may be a social order in which justice, social, economic and political, shall inform all the institutions of national life. It was suggested that the fixing of ceiling on agricultural holdings at a low level will subserve all these objectives. The Government Publication observes:

"In this country a simple and effective means for ensuring a measure of social and economic justice will be a radical redistribution of land. Agriculture has had and, will continue to have for years to come, a dominant position in the Indian economy. It contributes nearly 50 per cent of the national income and over 70 per cent of the population depends upon agriculture and allied occupations for subsistence. (P. 19)."

The publication further observes:

"..... In such a situation social and economic justice call for a more equitable distribution of the available agricultural land. (P. 19)."

"In Indian conditions It is only the ownership of land which can provide a minimum of social security and raise the social status of the under-priviledged. (P. 20)."

"These measures will lift those at the bottom of the social ladder, namely, the share-croppers and the landless labourers, to a higher status. (P. 21)."

148. Specifically the drawbacks of big holdings were pointed out and the case of smaller holdings operated by family labour was essentially recommended. For, such smaller holdings will be cultivated more intensively leading to enhanced overall production. Simultaneously there would also be fuller utilisation of the available manpower. The report observes:

"..... Thus there is considerable force in the argument that a radical redistribution of land leading to a substantial increase in the area under owner-cultivation will have beneficial results on the utilisation of labour in agriculture. (P. 25)" and again "... ... ... Thus there is enough social and economic justification for fixing ceiling on agricultural holdings at a low but viable level in this country. (P. 25)."

149. After these recommendations. it is now legislative history that laws were enacted drawing upon the inspirational pattern of decisions emanating from the Chief Ministers' Conference of 26th September 1970 on national level and the work of Commission on Land Reforms, The conclusions of the Chief Ministers' deliberations eventually were formulated by July 23, 1972

and the same have been placed on the record of the present petitions. Those conclusions related to the level of ceiling in all States and recommended inter alia that the maximum area of ceiling should not exceed 54 acres. The conclusions do indicate also that in the case of land having assured irrigation, the ceiling should not exceed 27 acres. The matters below 54 acres were left to the discretion of the State Government. Unit of application of ceiling was indicated by the standard family being husband, wife and minor children and the methodology of the clubbing was recommended, followed by a recommendation that the major child should be treated as a separate unit for the purpose of application of ceiling. Retrospective operation to such Laws was recommended to be given by not later than January 24, 1971'. With regard to compensation certain guiding principles were also enunciated along with the distribution of land and the measures therefor. This historical background eventually resulted in Drawing Bill No. 56 of 1972, published in the Maharashtra Government Gazette, Part V, dated 10-8-1972, pages 385-413 and the Maharashtra Legislature deliberated on the Bill in August 1972 as is evident from the Assembly Debates available: (See: Assembly Debates--Vidhan Sabha Karyawahi, Vol. 35 and the Council Debates in Vol. 35). Actually the Bills were introduced on l'4-8-1972 and passed on 18-8-1972 in the Assembly while it was introduced in the Council on 21-8-1972 and passed on 26th August 1972. As stated above the Bill had the guidelines in the national policy to which we have made a reference, firstly in the planning objectives and secondly, in the special recommendations with regard to the land reforms. Though the Act was passed in 1972, as we have already stated, it was made effective law on 19th of September 1975.

150. The basis of this Act and its operational area in the State has a clear objectival premise and has to be understood and can be best demonstrated if a few statistics are stated at this stage. We directed the State to file affidavits with regard to statistical data, relevant for our purpose. There is also available data in 1971 census publications.

151. On the basis of 1971 census the State of Maharashtra has a total geographical area of 3,07,762 sq. kms., having a coastal line of 720 kilometres had a population of 5.04 crores of people. The State is geographically divided in Bombay, Poona, Aurangabad and Nagpur Divisions, having 26 districts for the local and revenue administration. It has several types of cultivations ranging from the Sea-coasts areas to the hilly tracks and to the fertile beds of the rivers. The State's population, according to 1971 Census, 68.8 per cent habitated rural areas in 35778 villages. The figure of total number of towns is only 289, 17 of which are above 1,00,000 population and 25 between 50,000 and 1,00,000 population. It is thus clear that the majority of the State resides and habitates in rural sector. Turning to agriculture, that shows that the number of cultivators in the State as per 1971 Census was 65.37 lakhs and the land sown was 1,84,62,000 hectares. The labour involved included the labour of the agricultural labourers as per the figure of

1971 numbering 53.93 lakhs. Out of the population in the rural areas of 3,47,01,000 as per the Census Report, 54,29,631 were the landless labourers. In 1971-72 the State had total irrigated land to the extent of 16,51,000 hectares, roughly 9 per cent of land available under cultivation, The figures indicate that in 1972-73, 52 per cent of the geographical area was sown and it was in the range of 173 lakhs hectares. Out of this, 71 per cent, was under food crop, while the range of non-food was 29 per cent. The approximate provisional figures for the year 1974-75 foodgrains show a turnout of about 78 lakhs tonnes as food production. 1972 figures of the livestock is 264 lakhs, while the poultry 122 lakhs. These figures by themselves indicate that the State has an agricultural economy having its large base in rural areas mainly depending on the use and product of the land and its allied use. The figure of landless labourers in the agricultural sector does not include other landless classes, Along with this two more figures need be taken into account which are stated in the affidavit. Under the original Ceiling Act, the State could acquire surplus land to the extent of 1,34,152 hectares, while under the present measures the expected target is to net further surplus land to the extent of 1,50,000 hectares as surplus. It will appear that the first days of ceiling in the State had achieved a limited objective indicated by the figures stated above and still the State wag habitatedt toy several lakhs of landless persons. The expected' objective under the lowering down the ceiling has been, therefore, properly indicated to be 1,50,000 Hectares, which will be available for distribution as enacted toy Chapter VI of the Act

152. tO us the amending Acts appear to be prosilient products firstly of the historical national policy regarding the lowering down of the ceiling limits of agricultural holdings in the State for achieving twin objectives of higher agrticultural efficiency and providing a strategy for dispensation of economic and social justice in the rural sector of the State, particularly to the landless poor and petty peasants. The deliberations on the national level indicates the principles of finding economically viable and coefficient units of persons that can reasonably exploit limited area of land for the purposes of best use of agricultural production and to take over excess areas for the purposes of distributive justice to be made available to the landless and poor sections of the community,

153. Chapter II, as substituted by Amendment Act is titled as 'Lowering of Ceiling on Holdings', while Chapter III as 'Restrictions on Transfers and acquisitions and consequences of contraventions'. Sections 3, 4 and 5 provide a composite scheme by laying down the ceiling limit of the holding of a person or a family unit. Chapter IV deals with surplus land and how the same has to be worked out and achieved. Chapter V makes provision with regard to quantum of compensation and payment for the land so acquired from the surplus-holder. Chapter VI deals with the distribution of land to which we have made a reference, above. The First Schedule has

to be read with Section 5. That shows a uniform ceiling area indicated with reference to the districts In the State. The provisions of Section along with the class of land described in columns 2, 3, 4, 5 and 6 of the First Schedule is indicative that the class of land is to be understood as defined and contemplated by Section 2 (5) of the Act Thus providing for uniform unit of land which in the legislative premise is a viable unit for the purpose of exploitation by a person or family unit contemplated by law is the principal measure made effective by these provisions. That objective, as we have stated above, is to avoid landlordism or concentration of wealth and further to effectuate intensive agriculture. Such uniform scheme cannot but be the reform contemplated in the agricultural field.

154. The concept of agrarian reforms is not a static formula. It is, in

fact, dynamic in operation and reach. Its scope has been noted to be wide enough so as to subserve the agrarian community interest. See; State of Kerala v. G. R. Silk Mfg. . Kh, Fida Ali v. State of J. & K. and State of Haryana v Sampuran Singh, and

155. Agriculture in India has always been the chief support of the people. Ninetenth of the population habitated under different conditions is distinctly rural and three-fourth of the population since long is dependent upon agriculture and allied pursuits like dairy farming, stock raising, forestry etc. Having variety of climates and variety of soils, there is divergence even in the cultivation and the yields available in different parts of the country as well different parts of the State. Coupled together, there is a constant pressure on land because of steep rise in population. Agriculture, in essence, is not only the way of life of large majority of the people but is the backbone of Indian economy. The dimensions of the agrarian reforms are per force wide and unfolding because of the social and economic structure available. None can doubt that with the change brought about by technological advances in the State, even the traditional resource-use pattern in agriculture has considerably transformed and there has been intensification as well diversification of land uses.

156. The concept of reforms by Itself is a modality which touches both cultural pattern of life of the people and their economics. For reforms, it is not only a way of life that has to be subjected to object oriented change but also the entwined interplay of relations between man and man and man and land require rearrangement. Appropriated modality that will do away with the conditions of exploitation of labour, oppression of poor landless peasantry which result from

monopoly concentration of means of wealth and prowess of land, are justifiable and as such justiciable matters of the agrarian reforms when landlords and their premises are subjected to regulation.

157. It is experience recognised by theory as well by reformists' movements in the field of agriculture all-world-over that presently 'agriculture' encompasses and includes proper 'agri-business'. The problems arising out of widening gap in wealth, income and power between the land monopoly and the landless labour along with the conditions operative in under-developed agriculture and unplanned rural conditions lead to states of poverty, want, unemployment and even man-made famines. These too make up matters of serious concern for legislation. Reforms, therefore, insist on intensification and diversification of land-uses which will result in increase in production and achieve upshot in productivity of the land and of labour. That has to begin with neat set of the land as a unit available for distribution in rural structure where it is the material means of production. Along with the resource-use pattern, the considerations of the non-use or under-utilisation of the land and labour, coupled paradoxically with the over-exploitation and waste of resources actually in use either because of erosion, loss of fertility, salinisations, deforestation are all being treated species of issues of policy and planning. The reforms moreover act as the balancing levers between agrarian and other economic sectors.

158. We emphasise here that with the term 'agrarian reforms' and under its seminal contents go variety of economic matters and issues. The 'agri-business', that is, its part stands for modernisation of agriculture covering agricultural activities along with the agricultural related industries or services, which would by itself be an enormous aggregate of actual and potential business. Taken widely, the reforms involve individuals or organizations concerned with production as well distribution including marketing of food and other agricultural produce. Thus movement of reforms stretches right from tiller to consumers and affect series of closely related activities beginning with possession of land, its exploitation or eventual use and marketing of the produce. For, action and decision taken at one point of the system may impinge or affect on the other point of the economic chain involved in the system.

159. To this must be all added the historical experiences available in the extant system of land possession, ownership and exploitation, that had roots in the colonial feudalism instilled in this country by the English rulers. Large estates of landi belonging to a single landlord or to the village community were settled initially by the East India Company for the purpose of collection of taxes conferring several types of tenures or rights in different parts of the country. The feudal landlords were the net product under whom teaming tenants and labouring landless tilled the soil without any proportional or no return. That resulted in formation of class structures and economic sections differently situate around land and its uses.

160. Variety of tenancies, including rights flowing from year to year against fixed payments transferable, heritable arose around and on the land. A large class of landless labouring poor by the very operation of economic cycles of this feudal system of landholding steadily increased in number and now habitate the rural India. With independence the feudal proprietary and Zamindari rights in several forms were first done away with by legislative measures and in the second stage principle of 'land-to-the tiller' was too made effective by several tenancy legislations. All these laws that regulated the structure of agrarian rights and clearly the milestones of agricultural reforms.

161. By Constitution (Seventeenth Amendment) Act which provided the protection to such laws that was eventually upheld as valid. (See : L. Jagannath v. Authorised Officer, Land Reforms, Madurai,]. Close on the heels of the regulatory reforms finding viable parcels of land for exploitation for tillers were enacted by ceiling legislations. We have seen that all the emanate principally in the national policy evolved and applied in the shape of the original Act i. e. Act No. 27 of 1961.

162. The reality available in the rural sector and economic compulsions under which the mass of landless poor are engaged in this productive venture essential to the community at large and necessity of growth of productions are clear fountain springs of the present system of law providing for specified units of land called "ceiling areas". That would ensure and intensify the uses of land in best of the manner. Further it would permit distribution of surplus land to the needy and landless or economically depressed which would add to their total joy of economic and cultural existence.

163. A reference to Section 28-1AA of the Act which permits granting of surplus land taken over under Section 28 in favour of cultivating corporations owned and controlled by the State is indicative of the State Policy that in a given case the State may step into the field of agriculture by creating public Corporations which will tend to have compact and integrated blocks of land for better exploitation and diversification of uses of land. The enabling provisions in Section 28-1AA go a long way to indicate further reach of legislative concept of agrarian reform. Thus all the primary and operation scheme of these laws in our view clearly promotes the measures of agrarian reforms.

164. Some submission has been advanced as noted above at the foot of second proviso of Article 31-A and that requires to be noticed at this stage. Article 31-A, Second proviso, lays down certain conditions with regard to the laws to be made for the acquisition by the State of any estate. It is well settled that the word "estate" in Article 31-A takes in the acquisition by the State of the rights in agricultural lands. The other conditions of the proviso are that such agricultural

estate must be held by a person. The said estate must be under his personal cultivation. The estate must be within the ceiling limit applicable to the person concerned fixed by any law for the time being in force and the acquisition must operate upon such land and the law must provide the payment of compensation at a rate not less than the market value of such estate. All these conditions must co-exist before the injunction of the proviso can be effectively answered. For the purposes of the proviso the lands above the ceiling limit fixed by a law are not part of the right to claim compensation at the market rate as contemplated. If the land or the estate that is being acquired is below the ceiling limit, then and then the proviso injuncts that the law must make a provision regarding the compensation at the market rate. The submission, therefore, that even upon acquisition of the surplus land there must be such a compensation and there is any vice in Section 23 or the scheme regarding compensation for surplus land prescribed by the present law is not available on the basis of this proviso.

165. The second complaint is with regard to the concept of the 'person' and the contemplations of this proviso of Article 31-A. It is said that in view of the provisions of Article 367 of the Constitution, the terms and phrases available in other parts of the Constitution are to possess the meaning as is contemplated by the provisions of the General Clauses Act, 1897. So applied, it is only the individual natural person and the acquisition of his estate below the ceiling limit could be contemplated by the second proviso. According to the submission the 'family unit' could not be- treated as 'person' within the meaning of the proviso because it 19 an artificial collocation or group of persons constituted by Section 4 (1) and Explanation appended thereto in this Act. It is not "a person" proper and, therefore, if the lands are to be acquired they will have to be provided for compensation as indicated by the second proviso to Article 31-A separately to each person. Certain decisions referred to supra are relied on this aspect. We propose to consider here this aspect of the matter.

166. General Clauses Act, 1897 defines 'person' as follows :

" 'person' shall include any company Or association or body of individuals, whether incorporated or not."

The definition is illustrative and is not exhaustive. The rule of interpretation regarding such inclusive definitions has always been to treat the other entities who would not have strictly within the definition to be the part thereof, because of illustrative enactment of such definition. The inclusive part of the definition in terms indicates that it would take in any incorporated or unincorporated body of individuals or other associations. As far as considerations closer to social and religious groups of persons are concern^ ed, it appears that it is well recognised that a joint

Hindu family has been treated to be a juristic person. [See Gangaram v. Dharamsi, (AIR 1935 Nag 250), A G. Pandurao v. Collector of Madras, and Apaji Kulkarni v. Ramchandra, ((1892) ILR 16 Bom 29 at p. 39) (FB)]. It is undoubtedly true that in the decided cases the mode of living and enjoyment of property of the group of persons living under the name and style of joint family subserved that findings to hold that such entity answered the concept of juristic person.

167. The definition however clearly permits to look for the group of individuals to be brought or placed in the bracket of entity called 'person' for the purposes of a given law. Incorporation which results in juridical creation of personality is not essential. Groups of individuals known and recognised by law as an entity, for all purposes of General Clauses Act would be "the person" and nothing less. It is possible for law to constitute persons or treat specified and related group of individuals to be the 'person'. It has been noted by this Court in Baburao v. State, (1974 Mah LJ 385 at p. 392) that "the person" must be recognised by the State as a person and should be capable of rights and liable to duties. These two elements i. e. capacity to possess rights and subjection to obligations and dutias are matters of legislative results. Tested from this basic juristic approach, a group of persons which are primarily bound by certain relations can be classed for the purposes of land law to be the 'person'. There is in fact, no inhibition in that regard on the legislative power and we do not see why "a family unit" which comprises of the husband and wife or wives and their minor children either being sons or being unmarried daughters for the purposes of the law cannot be treated as a group of individuals and subjected to rights and obligations under the provisions of given statute. Once the body of individuals and we have no doubt that what explanation to Section 4 (1) does is to create a body of individuals obviously known to be related to each other, are treated by a law as One entity, that would always answer for the purposes of Section 3 (42) of the General Clauses Act the requirement of a person. By so grouping and finding law "a person" for the purpose: of law, it cannot be said to be defeating the second proviso of Article 31-A of the Constitution.

168. Moreover, it is fallacious to attack the premises of Section 4 (1) along with the Explanation of the Act that it is an artificial, unknown unit of strangers put together arbitrarily by the Legislature so as to commit legislative fraud to take away the property. That is not very sound approach nor sustainable challenge. The very purpose of law is to subject the estates of the person or group of persons who enjoy such estate together to lower limit of ceiling and out of excess to create a pool of surplus land for community distribution. Recognised groups related to land would always be primary objects of permissive legislative activity and criticism on this count is entirely unrealistic. We may here indicate what was noted by this Court in Baburao's case (1974 Mah LJ 385) about the social facts in this regard. That case arose under the scheme of the Original Ceiling Act i.e. Act No. 27 of 1961 and the question posed before the Court was,

whether an individual residing with his family could claim the benefit of Section 6 so as to retain the property to the extent of two ceiling areas available because the family had members more than five for computation under Section 6. This Court accepted the contention of the land-holder that an individual residing with the known relations who are dependent upon him either because of natural, or social or blood affinity would all constitute the 'family', and that such individual though he may be personally holding the property would be entitled to the benefit of Section 6, as it then existed to retain the property by computing against each of the member the area permitted by that provision to the extent of two ceiling areas. The argument for the State that family as such must hold the land or must have title and interest in the land was not accepted by this Court. Soon after the decision was so rendered, the present legislative scheme has been enforced and it is indeed salutary to read in the present scheme the results which are more clear and avoids all sorts of ambiguities.

169. Firstly the concept of 'family unit' is now defined by Explanation to Section 4 (1) and entitlement in Section 6 as amended at present, is made restricted to the members so included in the family unit. Though the definition of the term 'family' is retained in the present Act as was in the old Act and "Family" is included in the definition of the word 'person' in the present enactment, Section 6 has been entirely substituted and is made only applicable to the unit called the 'family unit' where there are specified persons who alone can be the members of the family unit. The intention is to clarify what was otherwise ambiguous and open to interpretation. Now instances like Baburao's case are not now likely to occur in the present scheme and the substituted Section 6.

170. Another thing which can be noted with advantage is that in Baburao's case, this Court after considering the concept of the 'family' looked to the sociological growth of the social group called 'family' under the Indian context and upheld the contention that individual living in family answers 'the family' for the purposes of then existing Section 6. Suffice it would be to refer to the concept of family as enunciated in that case. After noting the deliberations of the All India Seminar on the "Indian Family In the Seventies" it is noted that the result of the Seminar has been pointed out to be that the traditional typology of 'joint', 'nuclear' and 'matrifocal' families was- a useful one for the exploration of the situation of the families In India, The second statement available from the deliberations of that Seminar is to be that there was a general consensus in the sociological observations that in India there is a gradual break-down of the joint family and the movement is towards individual family units and that this variation in familial structure is accompanied by emotional as well as economic strains on the family. In the sociological field, therefore, it is recognised passage that the Indian family has come out of the stage known as 'Joint Family' and is marching in transition towards 'nuclear family' that grows

around an individual or two of them as the earning unit for self and for those who depend upon them either living together or earning together. Baburao's case noted that this fission from unit to unit is the part of modern social experience. It was therefore observed that if an individual having a family answered to the term of 'family' as distinguished from Joint Hindu Family, he would be within the term 'family'. That case notes:

"Several social principles, therefore, may have their interplay while determining whether a particular group answers the term "family". A "family" may be determined by applying the principle of dependence or residence or relationship and laws applicable, to such groups."

(Underlining ours).

While considering the argument of concept of 'family' as such against the contest of holding of 'land' in the original Ceiling Act it was observed :

"If a restrictive meaning is given, as contended for by the State, that it must be the family, who as a group must own the land and then it is only those groups or units which own the property as a unit that would get the benefit of Section 6 and no other. Such a view would render the provisions completely restrictive In scope and ambit. No doubt, upon surface reading of that provision, it does Indicate a collocation or a group of persons either living under one roof or one domain and related with each other must as such hold land. However, in the social context and the background available in the State it is a matter of common experience that a family consisting of one head and having children and a spouse, owns the land by the head and depends for livelihood on such land by cultivating it. For such family agriculture is the way of life, for it depends for maintenance on such land. Any member of such a family can cultivate land and for the purpose of the Act it is personal cultivation."

171. Thus in Baburao's case (1974 Man LJ 385) this Court applied the principles of relation and dependence as subserving the need to form a group and treated it as a common group under the social and existing pattern in which social life in agrarian society is obtained. If approached in this manner, explanation appended to Sub-section (1) of Section 4 brings forth and operates on known social phenomenon, That reads :

"A "family unit" means,--

(a) a person and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters if any; or

(b) where any spouse is dead the surviving spouse or spouses, and the minor eons and minor

unmarried daughters; or

(c) where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses." It firstly defines the term "family unit" including therein a person and hig spouse or more than one spouse and their minor sons and minor unmarried daughters and if any of the spouses is dead the surviving spouse and the minor sons and minor unmarried daughters or where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses.

172. The groups indicated by Clauses (a), (b) and (c) severally, it cannot be denied, are known groups wedded together firstly by marriage and being the offspring are entwined by blood relation. The inclusion of minor sons and unmarried daughters and putting them together with their mother or father clearly indicates the principle of dependence which is known to the state of law; the minor being disabled and dependent and looking for the care to others. By very nature such person either survives by maintenance provided for by others and even if owning land looks to others for its management and exploitation. The social group often resides under one roof and shelter having commensuality in each other's interest.

173. There is clear rationale and reasonableness in finding and carving out such social group of persons as a unit. Particularly when such a unit is related to land it would normally be one economic unit. Socio-economic realism operative in the field of land cultivation is under-pinned by these premises.

174. We have already referred to the recommendation in this regard that evolved a national policy regarding the agrarian reform and there too for obvious reasons "the family unit" of such type was eventually conceived as a viable unit to be made unit for the entitlement of ceiling area. Thus such enacting is not by any standard an irrational grouping of persons, Legislature here is clearly aware of the social facts available in enjoyment of land and drawn on expertise of the reports on national reforms. Moreover, if there are more members than five, Section 6 indicates how the additional area will be allowed to be retained by such unit. Mapping out such parcels of land and making them available to the stated group of persons who are inter-linked because of relations and because of social and natural dependency and mode and manner of life, cannot at all be said to be artificial, unworkable or unjust. On the other hand, read with Section 6, it shows legislative circumspection and care to allow further land if there are more than five members in the family unit.

175. It is said that this grouping of persons is exposed to results which are discriminatory, unnatural and unjust. It was suggested that the major person has been treated with a benefit so are

also the widows, while it is complained that married daughters are unnecessarily left out in the scheme of the Act no such unjust or discriminatory results are contemplated. If there be a major person, the premise of the law is clearly that he can hold land possessed by him as owner or tenant to the extent of ceiling area. Every major individual thus stands first and principal beneficiary and as such separate class for legislative consideration. In other words a major individual is treated an economic viable unit and as such related to land ever capable to exploit and to cultivate the ceiling area, That is, for such person is no more dependant on his father or mother and himself is working and toiling agent to put land to the best of its uses. Natural state of majority and its concomitant indicia are sufficient to treat him as a separate class than that of minor.

176. Married daughter, it is social and common experience walks out of the family of her father. She severs, in many societies under law, the relations with her matrifocal family and becomes part of the family of her husband or progenates a new family. She cannot be any more the member of the family because of the social complexion arising out of marriage-institution. Law may allow her to carry her property to another family where she becomes the wife of her husband. Her property will be taken care of in that family unit which will be counted with her husband. Thus for proving for major persons separately as individual unit and not permitting married daughter to be counted as member of family unit, the law operates on reasonable social premises and no exception is available.

177. Our attention was invited to certain provisions of the Act to show that the minor's property is being affected and there is no safeguard worked out by the law itself. Particular emphasis was in this regard, along with other provisions, laid On provisions of Sub-section (3) of Section 16. We may indicate that that provision does not control the collocation as the group of the family unit. What would be the effects and results of law if the property of the minor is frittered away is not the subject-matter of the Ceiling Act, nor we can colour our judgment by any such considerations, once we find that there are good and sufficient reasons to bracket the minor with his/her mother and/or father. In the matters of interpretation, there cannot be answers on hypothetical premises that the father and mother who are in charge of the minors interest -- nay the trustees, would betray the same by surrendering minor's property at the stage of selection of land for retention by the family unit. Option is given because under Section 4 (1) the property is clubbed together. The selection is clearly for and in favour of the interest of the whole unit and matters of respective interests and rights in property retained will legally attach and inhere in the proportion of the interest by the members of the unit. Ceiling law being clearly a law regarding entitlement of the unit to hold land, principles of proportional interests being preserved would still remain operative in the land retained ay the unit. By itself selection does not operate

therefore to the detriment of the minor because initially his/her property being grouped with others to the extent of share pooled into unit that would remain always available. Further these provisions are merely enabling the spouses and have to be read subject to other obligations including the obligation of a guardian or a trustee operating upon such property and its care.

178. Provisions of Sections 12 and 13, it was said, expose minors to penal consequences without there being any guidelines in the scheme of Section 12 with regard to filing of returns on his behalf. Here the criticism is not well founded. In the first proviso appended to Section 12 (2) it is clearly indicated that in the case of minor and lunatic return will be furnished by the guardian. Thus for this guardian is obligated and legislative premises are neither vague nor confusing. We cannot countenance the argument that minor will be subjected to penalty because of the fault of the guardian, nor can we be asked to hold that there is any injustice likely to be meted out to the minors because of the bracketting him with his father and mother. We are further not impressed by the argument that Section 40-A which provides for penalty would be invoked against the minor, he or she, having been included in the unit called the family unit. There too it is obvious that the matter is not of course, but the prosecution has to be after the previous sanction is accorded by the Collector who is responsible Revenue Officer of the State in the district. Only because such penal provisions are made which are of general application and which have their independent purpose in the scheme of the Act it does not lose its validity or vitality. It is perfectly possible for the legislation of such kind to find out reasonable mode of enjoyment of property of the group of people and club them together as a unit so as to achieve the declared objectives of agrarian reforms to which we have made reference above.

179. Before we part with the definition and concept of "the family unit", we propose to make few observations with regard to some obvious matters. In the social context "unmarried major daughter" is a social reality available in an agrarian society. In some societies daughters do not possess any interest in the land and in some they do. In the property clubbed for family unit though there may exist a married major daughter very much working and dependant member of the family, Section 6 does not permit for the purposes of computing her to be the member nor can she be included in the definition of the member of the family unit. We do not find any good reason why this type of person, i. e. major unmarried daughter in a family has not been treated to be the member of the family. Economic laws are eventually to meet the social facts and reach justice evenly. However this is all for the Legislature to decide whether such a person appropriately can be included as a member for permitting better benefit of Section 6 in favour of the Family Unit.

180. Secondly here we observe, the anomalous results expressly leaving the question open about the validity of Sub-section (2) of Section 4 as its operation is retrospective by almost five years

i.e. from 26th September 1970. In the State as well outside dissolution of marriages by custom is a common mode and way of life in several communities of the people. There are several social groups, tribes, castes as well several different religious entities that operate their marriage system differently and dissolutions are permitted by respective customary law. The effect of dissolution of marriage is to snap the civil as well familial and religious tie between husband and wife and upon valid dissolution in law rendering them strangers fully free to marry free to procreate, free to be a family all anew. It is not unknown that the wife of one may marry another may further get the dissolution and again enter remarriage with other. By giving retrospective operation for about 5 years to collocate such strangers in "Family Unit" only because they happened once to be tied in the bond of marriage which is differently treated in different castes and communities appears to us ex facie unreasonable. Moreover the provision of Sub-section (2) does not operate with a presumption as is the scheme of Sections 8, 9 and 10 of the Act. That shuts clearly the proof to establish that the dissolution of marriage was not meant to avoid the effects of the law. Section 4 (1) is a provision of clubbing of land together of diverse or joint interests. Results of Section 4 (2) in a given case would be to put quite "the strangers in one bracket and subject them to liability only by reason of past relation. However, question of validity of Section 4 (2) does not arise in any of the petitions before us and we have made these observations after hearing the learned Advocate-General on this aspect so that the legislative machinery may take note of the same to make provisions more reasonable and fair keeping in view the social and customary rights of the people.

181. Now complaint at the foot of alleged confiscatory results of certain provisions upon the interests of the members of the family unit.

182. Section 8 prohibits transfers, Section 9 acquisitions, Section 10 lays down the consequences and Section 11 disregards certain partitions. By explanation as far as to the first part regarding the scheme evinced by Sections 8, 9 and 10, Explanations (1) and (2), is criticised as confiscatory. We do not think so. These are enacted clearly to give effect to the purposes and objects of the Act and Explanation (1) below clause (b) of Sub-section (1) of Section 10 merely enacts a rule of evidence and casts the burden to prove otherwise on the party who wishes to stand by transactions and its validity. Under law, transfer or conveyance of immoveable property is normally effected by duly registered documents. Plea based on second explanation, therefore, does not call for further construction in this context. Suffice it to observe that both the Explanations appended below Clause (b) of Sub-section (1) of Section 10 contemplate that all bona fide transactions if properly proved upon equitable consideration will always be respected by law. Such enactments indicating results regarding burden of proof and statutory presumptions are efficacious measures of known legislative activity. The parties who are within the

prohibitions of law regard being had to its purposes should begin within statute's presumption and rebut it by proving it to be otherwise. The particular type of proof and its standard are matters involving facts and circumstances in each case. The very fact that adjudication is possible is a sufficient safeguard to any member of the unit including minor.

183. So too would be the case with regard to the partitions within the meaning of Section 11. Reference was made to the provisions of Section 53-A of the Transfer of Property Act and other equitable doctrines operating and judicially applied in the matters of transactions and transfers of property and it is said entire equity is eclipsed by the drastic scheme to ignore partitions. All this overlooks constant premise that "equity" is not a concept that flourishes apart from given law. Law pre-empts conditions which are equitable in its view. When premises of law rule, equity cannot be invoked to control it. Legislature in this field is the sole Judge and its enactments have to receive interpretation that will further its object which must be approached as equitable and not otherwise. Known experience of men to grab land and fight for it by devious means of colourable devices so as to avoid material acquisition of surplus land for public purpose, all further the enactment of the provisions of Sections 8, 9, 10 and 11 of the Act. Moreover presumptions enact rule of evidence untouched by the eventual adjudication whereunder the party can prove bona fides so as to rebut statutory presumption. Adjudication and its possible result are themselves matters of clear equity that respects transactions of the parties. It is tall claim that considerations of equity should help those who stand to defeat the law. Claimant at equity should have stainless transactions and clearer conduct before invoking its principles. Further modern Legislature that acts in socio-economic-political areas possesses omnipotence to structure conditions and restructure rights. Transactions by parties with regard to property, it is primary, must accord with law concerning it and there is nothing supervening sacrosanct about it. Thus law's objective being candid and clear positing permissive modality of raising presumption and providing for adjudication, the grievances against these provisions are entirely unmerited, We reject the same.

184. Turning to some of the decisions relied upon by the several learned counsel in this regard firstly of the Supreme Court, we do not find any support for the propositions advanced that the Legislature disabled either in its wisdom or in its policy to collocate such natural group of persons in "a family unit" and that clubbing could not be done as to achieve the objects of agrarian reforms by providing ceiling and for acquiring lands for the distributive justice. In Gowli Buddanna v. Commissioner of Income-tax, Mysore, , the Supreme Court interpreting the provisions of the Income-tax Act in Section 3 observed that a Hindu coparcenary is a much narrower body than the joint family; it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grandsons and great-grandsons of the holder of the joint property for the time being. Therefore there may be a joint Hindu family

consisting of a single male member and widows of deceased coparceners. The Supreme Court further ruled that the plea that there must be at least two male members to form a Hindu undivided family as "a taxable entity" had no force, Thus the case on the other hand helps to uphold the validity rather than negative it.

185. The case in A. P. Krishna-swami Naidu v. State of Madras, arose under the Madras Land Reforms (Fixation of Ceiling on Land) Act, Section 5 and Chapters II and III and there following the decision in K. Kunhikoman v. State of Kerala, , the Court observed that the 'family' has been given an artificial 'definition. The 'family' itself was quoted by Section 3 (14) to mean the person, the wife or husband as the case may be of such person and his or her minor sons and unmarried daughters, minor grand-song and unmarried grand-daughters in the male line, whose father and mother are dead. The provision was attacked as violative of Article 14 of the Constitution. The Court observed that-

"We are of opinion that this contention is correct and the ratio of that case (K. Kunhikoman v. State of Kerala,) applies with full force to the present case. It was observed in that case that "where the ceiling is fixed ... ...

by a double standard and over and above that the family has been given an artificial definition which dogs not correspond with the natural family as known to personal law, there is bound to be discrimination resulting from such a provision." In the present case also 'family' has been given an artificial definition as will immediately be clear on reading Section 3 (14) which we have set out above. It is true that the definition of 'family' in Section 3 (14) is not exactly the same as in the Kerala Act Even so there can be no doubt that the definition of the word 'family' in the present case is equally artificial."

And it was further observed :

"The provision of Section 5 (1) results in discrimination between persons equally circumstanced and is thug violative of Article 14 of the Constitution. This will be clear from a simple example of an un-divided Hindu family, which we may give. Take the case of a joint Hindu family consisting of a father, two major sons and two minor sons, and assume that the mother is dead. Assume further that this natural family has 300 standard acres of land. Clearly according to the personal law, if there is a division in the family, the father and each of the four sons will get 60 standard acres per head. Now apply Section 5 (1) to this family. The two major sons being not members of the family because of the artificial definition given to 'family' in Section 3 (14) of the Act will be entitled to 30 standard acres in the case of each will be surplus land. But the father and the two minor sons being an artificial family as defined in Section 3 (14) will be entitled to

30 standard acres between them and will thus lose 150 standard acres, which will become surplus land. This shows clearly how this double standard in the matter of ceiling read with the artificial definition of 'family' will result in complete discrimination between these five members of a natural family."

(Underlining added as emphasis in the submission).

186. The case for several reasons would be distinguishable because there 'family' itself was defined which was artificial and contrary to the concept of the 'family' known to Hindu law. Here the law as found on the other hand creates a unit of persons naturally related and residing together. 'Family' is independently defined by this law which includes Hindu undivided family and group of persons who by custom or usage live together and can be "a person". For the purposes of Section 4 which provides for clubbing of property each member who is included in the definition of 'family unit' by Explanation may not possess land and yet be may be part of the family unit worked out for the purposes of permitting maximum two ceiling areas read with Section 6. Moreover, if family unit can be treated as a person created by this law, that would be entitled to hold like any other person land to the extent provided. Major person being treated as a separate class for the purpose of legislation having obvious indicia as related to land and such person being entitled to hold land denominated by ceiling area, question of personal law does not affect the provision of Article 14 of the Constitution. Land law is secular in character and operates on economic plane fixing limit the material wealth of production, Reasonable, viable, working, productive unit is the differentia and thus validly enacted. Principles emphasised in this case do not affect these criteria.

187. Moreover in further passage of pronouncement and coming rather closer we have the decision of the Supreme Court in L. Jagannath v. Authorised Officers Land Reforms, Madurai, . There the 'family' of the type which was being considered in the earlier case of Krishnaswami Naidu (supra) as defined by Section 3 (14) of the Madras Act was treated to be immune from attack under Article 14 of the Constitution because of the placement of the Act under the statutory shield of Article 31-B of the Constitution. It is ample, therefore, to observe that even assuming strictly that this is an artificial collocation of persons put together under the concept 'family unit' and such a group is subjected to obligation to surrender surplus land after clubbing the properties together and there results any disparity or discrimination in law as the Act itself has been placed in the Ninth Schedule such considerations of equality of Article 14 of the Constitution would not be available.

188. For this we must emphasise the operational difference between the protection afforded by Article 31-A. Article 31-C on one hand and Article 31-B of the Constitution on the other to the

legislation. Each of the articles has independent protective potential. Articles 31-A and 31-C operate by their own force upon legislation of the type mentioned in those articles and satisfying the conditions of those articles render attacks emanating from inroads upon Articles 14, 19 and 31 as unavailable. By law either of the State or Union satisfying the conditions of Articles 31-A and 31-C immunity is made implicit in these regards without there being any need or necessity and evoke the constituent power under Article 368 of the Constitution, However, when that power is exercised by Parliament amending Ninth Schedule and the law made is placed there, Article 31-B springs into action to offer total protection and immunity to such law from any challenge whatsoever under Part III of the Constitution. Effects of these independent provisions have to be independently observed and applied. Applying the principles in L. Jagannath's case (supra) we reject the plea regarding violation of Article 14 of the Constitution.

189. Reference was made to the Full Bench decision of the Punjab and Haryana High Court in Sucha Singh Bajwa v. State of Punjab, and Saroj Kumari v. State of Haryana, . The Full Bench of the Punjab and Haryana High Court in Such a Singh Bajwa's case considered the definition of the term 'family' as available in Section 3 (4) of the Punjab Land Reforms Act, 1973 and did not accept the contention that it was competently made. However, noticing the terms 'family' from the Maharashtra Act, the Full Bench in paragraph 20 observed :

"From the definition of the word 'family' in that Act it is quite clear that an entity known to the law was particularised as a family which owned land as such and no artificial family was created for the purposes of that Act, as has been done by the Punjab Legislature in the Act under challenge."

The argument put forth before the Full Bench was that the term 'family' could not receive artificial definition and the definition did not answer the requirements of the person as contemplated by Section 3(42) of the General Clauses Act and, therefore, did not satisfy the proviso to Article 31-A(1) of the Constitution. We have stated above, how we look at the problem and we respectfully disagree from what has been stated by the Full Bench. On the other hand, learned Advocate-General drew our attention to the Full Bench decision of the Andhra Pradesh High Court reported in Maddukuri Venkatarao v. State of M. P. , where the Full Bench decision of the Punjab and Haryana High Court (supra) has been in terms referred and dissented from. The definition of the term 'family unit' in Section 3 (f) in Andhra Pradesh Land Reforms (Ceiling On Agricultural Holdings) Act, 1973 was upheld by relying upon the legislative competence for the purposes of imposing ceiling which was an agrarian reform. [See : discussion in paragraphs 136, 143 and 144 of the report. We are in respectful agreement with what is found by the Full Bench of the Andhra Pradesh High Court in this case.

190. Some argument is based on the footing of the reasonableness of the earlier scheme of the Act, i. e. the original Act and results indicated by the Amending Acts. It is said that there the natural social unit family could hold land and the ceiling treated it as a unit by itself, for, in the definition of the word "person" family is included. By the concept of holding land, family could remain in lawful and actual possession as owner or tenant. Further it could cultivate land by labour of any member of the family to answer personal cultivation and further there was a scheme to indicate who would be the member of such family having reasonable nexus or relation inter se as well as with land. This social economic unit, it is argued, is disrupted by the present scheme of the Act and in place of 'family' now 'person' who is individual major holder of the property is entitled to hold one ceiling area and further "the family unit" is made entitled to hold to the maximum two ceiling areas, the ceiling area itself having been lowered down to a static formula to the optimum of 54 acres. Substitution of Section 6, definition introduced by Section 4, scheme of finding out individual interests laid down by Section 3 (1) (a) from the interests of family are dictated statutory inroads having no rationale upon the structure of the family which according to the learned submissions is either 3 social or religious organ close to land and to the people in the State.

191. We are not unmindful of the social conditions and how people live in social-state. But that is no reason to substitute our judgment in place of the legislative judgment in the matters of rights in property. The function of the Court and that of judicial review is limited by its very purpose. We have already shown that there appears to be supervening salient principles operative upon legislative premises which have rational nexus with the relations of the group of the people and possible necessity to regulate the way of their life related to land. Once we find so, it is difficult to countenance all these arguments. Rationally the scheme is not to confer any new rights but to restrict and regulate the rights pre-existing with reference to extent and area. That is the concept of ceiling on land. If the right existed in the group of persons it is common legal experience that it would still be worked out to the extent of individual interests involved in such right. Existence of "Family" as a social group is not further guarantee of its existence as economic unit. If laws are to usher socio-economic relations by permissive measures nothing in the present scheme is irrational. In this regard the legislative judgment clearly furthers basic underlying policy of reforms and does not appear to us to be open to charge of any unreasonableness.

192. In the present scheme, it is obvious that under Section 3 (1) any individual by himself holding property as contemplated by this law is entitled to retain the property to the extent of one ceiling area. If such individual happens to be a member of "the family unit" and there are other members not exceeding five his entitlement is the entitlement of the Unit and along with others, is limited to one ceiling area. If however in the unit there are more members than five, such unit

can claim to retain land to the extent of two ceiling area. Each economic major member and unmarried may hold land to the extent of one ceiling area, though he may be originally the member of the family. Each married person equally may hold land to the same extent. If there be two brothers both major and representing units those will be treated upon their entitlement separately provided they are holders of property. Section 3 (1) (a) permits computation of interest out of joint interests and works out a beneficial scheme and carves out separate ceiling areas. There is no disparity introduced in this the obvious principle being that the economic unit of the land should be correlated to the reasonable working hands available for the purposes of exploitation and the cultivation of agriculture. Only because family as such is not made the unit and such computation is to be worked out we do not think that there are any unworkable harsh or unjust results reached by the statute.

193. We may in fact indicate here the fallacy of all these arguments. In the present Act too 'family' is defined and includes a Hindu undivided family and in the case of other persons a group or unit the other members of which by custom or usage are joint in estate or possession or residence. By term, 'person' this family is included in the concept of 'person'. 'To cultivate personally' has been defined in Section 2 (9) and includes cultivation by his own labour or by the labour of any member of his family or even by hired labour or by servants. 'Owner' has been similarly identically defined as in old Act in Section 2 (21), as also the word 'tenant' in Section 2 (30). All these definitions are to operate unless the context otherwise requires.

194. Coming to the declaration of Section 3 (1) which prescribes prohibition on holding of land in excess of ceiling area, the words used are to the following effect : "Subject to the provisions of this Chapter and Chapter III, no person or family unit shall, after the commencement date, hold land in excess of the ceiling area, as determined in the manner provided". Explanation is : "A person or a family unit may hold exempted land to any extent." Under Sub-section (2) of Section 3, declaration regarding the surplus land is required to be made and it is stated that in determining surplus land from the holding of a person or as the case may be, of a family unit, the fact that the person or any member of the family unit has died shall be ignored. In Sub-section (3) of Section 3 it is indicated how for the purposes of calculating the ceiling and surplus land the interests of a person who is a member of the family have to be worked out Similarly it is stated how his joint interest in Co-operative Society or joint estates or firms has to be worked out. Sub-section (4) of Section 3 directs that no land shall be taken into consideration for more than once.

195. It appears to us that reading the composite scheme of Section 3 together, the word 'person' refers to individual person and not to 'the family' as a person. There may however be other juristic persons contemplated by the Act. This is clear because of the provisions of Sub-section (2) of Section 3. There the Legislature in terms directs the death of "the person" be ignored for

the purposes of determining the surplus having reference to the relevant date. A natural person alone would answer this contemplation. Similarly in Sub-section (3) legislative scheme directs finding out of the separate interest of 'the person' from the family property or from other joint estates. Along with Sub-section (4) enacting that the same shall not be counted twice over, this integrated scheme unmistakably indicates that for the purposes of entitlement of the ceiling limit the first and primary unit is the person or the natural individual and the second cognate unit contemplated is 'the family unit' as defined and explained in the Explanation appended to Sub-section (1) of Section 4. We are expressly leaving out the case of any other juristic entity and restricting these statements to an individual and the group of individuals living as 'family'.

196. Therefore even though there may be Hindu undivided family or other joint family, holding landed property, the individual interests of each major member will have to be found out separately and worked out in the manner indicated by Sub-section (3) of Section 3. It follows that if there be a Hindu joint family taking a case for example having three major individuals, their interests notionally would be worked out to find out their individual entitlement to retain one ceiling area as 'a unit' for themselves irrespective of how they would carry on the enjoyment of the property. Similarly such a family may have more than one 'family unit' and its entitlement will have to be found out. This salutary scheme understood in this manner permits property to be held in viable units and does not lead to any unjust or hard results. May be by such computation Legislature in fact retained basic concept of any Joint Family or Hindu Joint family in fact for there is no compulsion to partition property here but only finding out and working out entitlement of areas of land. There exists thus a clear rationale underlining the scheme of both Sections 3 and 4 and no exception can be taken that there is any unfairness introduced affecting concepts of any personal law. Having determined entitlement as far as extent of land is concerned, personal law is free to operate and determine rights of persons under it.

197. Now we turn to some other complaints raised during the arguments. Firstly, it is said that the classification of land and fixation of the uniform ceiling in the schedule along with the definitions of Section 2 (5) and Section 5 shows patent and invidious discrimination and a preference to certain persons who may happen to hold land in better located and fertile areas of the State. It was stated that old scheme in the original Act was based on the several considerations which included the local rain-fall, assessment and several such other factors and the ceiling areas were fixed having reasonable nexus with the local conditions of different areas of the State and therefore, in some areas the ceiling was 64 as in Kolhapur, while it was 124 or 126 in other parts like Ramtek in Nagpur district. Now as it is both at Kolhapur and Ramtek, area of 54 acres has been preempted and on the face of it it is discriminatory.

198. The scheme of the present Act undoubtedly is somewhat rigid and uniform with regard to

the fixation of the ceiling areas. Section 2(5) which defines "Class of land" along with Schedule lays down the ceiling areas having correlation with the class of land. In our view the debate raised on this count is important only as a legislative policy upon which the validity of the law cannot be tested. Once the power to legislate a law to fix the ceiling bestowed to the State Legislature is accepted, it is indeed difficult for the Court to review such legislative judgments in this regard. By the very nature of things the Legislature is possessed of better means of knowledge of its people and their resources as well as conditions available in the entire State and is the best Judge of the legislative modality operative in a particular field. Only because the original Ceiling Act provided for fixing a ceiling taking into account the climatic and local conditions including assessment and the present enactment departs from those criteria and instead prefers uniform standard ceiling areas, the inference does not follow that there has been any inbuilt or demonstrable inequality perpetrated by the Statute. It must be noted that the present Act became operative in 1975, while the first Ceiling Act was enacted and put into force in 1962. The development in the agricultural field between this period of about 13 years is a relevant factor till within the knowledge of Legislature, Judicial notice can be taken of the strides overall in that the State has bettered irrigational schemes providing for facilities to cultivate land and it has effects on the yield of agriculture, There is progressive evidence available all around of intensification of the uses of the land for agricultural and allied purposes and upshot in value of land evidences it There have been established in the State specialised agricultural Universities so as to disseminate knowledge of all agricultural and allied subjects and to train personnel who wilt assist better cultivation of the land and promote scientific outlook. Facilities of providing insecticides, pesticides, better seeds, manures are matters of strategy planned by the State to increase the agricultural yield by appropriate economic inputs. The nationalisation of Banks and availability of agricultural loans in rural sectors on better scales further is a boost to agrarian economy. Thus all these steps appear to have set the stage to enact a law regarding uniform ceiling areas of lands to be made, available for agricultural exploitations.

199. What Section 2 (5) defines is the 'class of land' with reference to the irrigation facilities and capacity of yielding of crops of the soil. Classes (a) to (c) indicate an intelligent differentia with regard to the lands having facilities of irrigation from different sources while classes (d) and (e) refer to dry crop lands with reference to a location thereof in the districts mentioned in class (d) particularly. This classification is in terms related and correlated to ceiling area fixed under Section 5 read with First Schedule, the main principle being the possible capacity of land regarding agricultural yield by means or irrigation. The ratio between lands irrigated and lands non-irrigated clearly shows the legislative indicia chosen for this purpose, If land be the economic unit subjected to proper exploitation for the purpose of yielding crops and subjected to other allied uses, then such matters of classification of lands have reasonable, rational nexus.

200. We have already made reference to the national policy in this regard end the principles evolved therein. Though it is no doubt true that the climatic conditions vary broadly in the regions of the State, that alone cannot be the criterion for permitting the larger areas to be retained by the landholders. With modern know-how and direct personal cultivations the Legislature expects that smaller, better-managed intensified agriculture should be the aim to tone up the rural economy and to achieve objective of growing more food and having yield of other allied agricultural products in the larger interests of the community.

201. Mere possibility of better yield in a given area than the other areas in our view cannot be emphasized as leading to unjust result or of inequality between holder and holder. In agronomics such a static approach cannot be sustained. For, much depends on the expertise, capital, availability of better seed, market, appropriate sowing and tending of crops along with availability of manure and irrigational facilities, Moreover, the legislative plan clearly is to settle the agricultural economy keeping in view several long-term objectives. Such a pattern of uniform holding is available in other States too and has been expressly upheld also by the Supreme Court: (See Indarsingh's case) and L. Jagannath v. Authorised Officers Land Reforms, Madurai,). We therefore do not see any vice in such a uniform fixation of the ceiling areas.

202. It was contended upon this aspect of the matter that the State has chosen the agricultural sector for effectuating the policy of the State leaving other sectors like Industrial and Urban Sectors untouched. It is indeed the complaint that by so providing a smaller ceiling upon the agricultural holdings the State is practising Inequality and inequity for those engaged in agriculture while others engaged in the industrial field would not be governed by any ceiling as such and that would result in widening of economic gap.

203. Such an argument even under Article 14 would not be tenable. The ceiling on land by itself is a reasonable classification and there cannot be any appeal that there must be uniform ceiling with regard to every type of economic venture. Even if any such argument is available, we think these are the matters of State Policy. What should be done with the Industrial economy or with the urban economy cannot be the determinative factor while testing the legality or validity of the ceiling imposed in the field of agriculture. The appeal should lie somewhere else and not to the Court.

204. In the sum thus we answer that as far as the person is concerned as contemplated by second proviso to Article 31-A "family unit" is a person within the meaning of the General Clauses Act Section 3 (42) and there is no antilogy enacted by the scheme of the Act and further there is equitable, reasonable and workable scheme enacted by laws premises. In our view, therefore, the terms of the second proviso of Article 31-A fully answered and by reason that Act clearly being a

measure of agrarian reform it having received the Presidential assent it is immune on its own terms being challenged on the basis that there is any violation of the fundamental rights guaranteed under Articles 14, 19 and 31 of the Constitution.

205. We now turn to the provisions of Section 2-A and Section 44-A along with Section 44-B of the Act. Section 2-A directs the State Government to constitute Tribunals necessary for each area for the purposes of the Act. The said Tribunal is called the Surplus Land Determination Tribunal, Sub-section (3) states that each Tribunal shall consist of not less than 3 members of whom one shall be a person who holds or has held a civil post under the State not below the rank of a Tahsildar and such person shall be the Chairman. Power is conferred upon the State Government to constitute and dissolve such Tribunals from time to time, 'Quorum is to be prescribed by the rules to be framed under the Act. The Tribunal has to act by majority opinion and when it is equally divided Chairman's opinion has to be the decision. The arguments on this aspect of the matter were mainly advanced by few learned counsel, Mr. Pendharkar and Mr. Mohota. Similarly other learned advocates Mr. Deshpande, Mr. Chandurkar too attacked the provisions of Section 44-B.

206. It is said in these submissions that there is abdication of essential legislative function in favour of the State Legislature in constituting the tribunals and no guiding principles with regard to qualification of members have been laid down by the Legislature. Reliance has been placed on this aspect of the matter on the two judgments in Pevi Das v. State of Punjab, and State of Punjab v. Khan Chand, .

207. We really fail to see how such an argument can assist if a closer look is taken of the scheme of Section 2-A and Section 44-A of the Act. We have referred broadly to the scheme of Section 2-A. It indeed lays down by its own terms and object of the Act the most significant guideline. Sub-section (3) of Section 2-A requires that the Tribunal shall consist of not less than 3 members of whom one shall be a person who holds or has held a civil post under the State not below the rank of a Tahsildar. Sub-section (6) to which we have made a reference indicates that the decision of the Chairman has primacy. In the Revenue Administration of the State, Tahsildar is an officer upon whom several revenue duties have been vested by the provisions of the Land Revenue Code and other laws. His qualifications are laid down and the office is known to the Legislature to be conversant with the matters connected with land and revenue. Thus naming the Chairman by office itself subserves the need of laying qualification and as well the qualification. It is implicit in the scheme of such constitution of Tribunals that some matters must be left to the executive discretion. The other members upon the Tribunal advisedly will have to be appointed by the State Government by notification looking to the purpose and object of the Act and adjudication contemplated. It is expected by the scheme that the persons will be drawn from the

locality over which the Tribunal has jurisdication and further that they would be conversant with the matters which are required to be dealt with by or before the Tribunal, It indeed appears to us to be a wholesome provision. To permit such constitution of Tribunals, which will be closer to the community and closer to the area and which will possess by necessary implications expected expertise end experience about the conditions of the land and people are clear matters of legislative indications in this regard. Moreover, the purpose and the object of the Act itself are sufficient guidelines for such constitution after specifying the Chairman who would be of rank not below that of Tahsildar. There is thus no excessive nor abdication of legislative powers in such a scheme. There can hardly be heard any complaint if such a Tribunal eventually closer to people for whose benefit and for whose interest distributive justices have to be administered. Moreover, there is further system of appeal to Maharashtra Revenue Tribunal as well Revisions to Commissioner and to State. Further aggrieved party can seek constitutional remedy available under Article 227 of the Constitution. The entire scheme therefore taken into account is not open to challenge on these grounds. The decisions relied upon do not help to further the submission.

208. The scheme of Section 2-A read with Section 44-A having nominated the Chairman by rank and authority as indicated above and having sufficient guidelines has yet another eloquent facet. There existed an age-old system of adjudicating bodies dealing with justice or causes which had roots in the social experience of the people, based on associative principles of justice. That evoked support, popularity as well the community sanctions. There is clear evidence of such Courts like those of Kula, Sreni, Puga, (See Mayne's Hindu Law PP. 12-13). That system did work with impartial and yet vigorous approach. It also added to the speed and expeditious dispensation of justice in the causes brought before it. The system was close and akin to the life of the people and its experience as recorded proved to be robust being free from technicalities and responding popular faith and community response.

209. Even in the modem World, community Courts or People's Court or Elective Courts are not matters of any alien experience to juridical thought. The system adopted in the developed nations have applied adequate chosen principles to suit best to the conditions and circumstances available in a given polity and for the purpose of given adjudication. Elective Courts backed by popular propaganda for election in the United States of America and the People's Courts and lay Judges of USSR are all successful experiment actions of value. System of such Courts does dynamically operate in the field of justice. (See: Eassay by Prof. Harold J. Laski on Law and Justice in Soviet Russia; The Ends of Justice by V. R. Krishna Iyer in 'Social Mission of Law.').

210. It appears to us that Land Courts or Land Tribunals now contemplated by the present scheme is healthy experiment indicative of return to our roots of associative and community justice principles and hence we cannot be apprehensive of its modality and effectiveness. The

members would be essentially drawn from the community or locale likely to be affected by the decision. The Chairman has to be well-versed responsible Revenue Officer. Courts cannot be asked to condemn such salutary scheme on the ground of possible executive favouritism in appointments of illiterate or interested persons on such Tribunals once the legislative competence in this regard is granted. It all depends how eventually the administration of land-justice is carried on and how fairly these tribunals discharge their high function, for honesty and conscience are not the fruits that only flower with education. Health of system of Court depends on several factors, one being constant vigil of inner and outer conscience of the Judge and its constant rapport with community conscience and mind. Indeed modern World Juridical thinking accepts that in such community system of Courts there are clear advantages as the function and role of Court is much wider and can well be educative as well as paternal in socio-political developments. (See : "Justice in the USSR" Chapter XII by Harold J. Herman). We have premise to hope that land Courts would function in the spirit of detachment, impartiality and by dispensation of just premises dispel doubts about the objectives of land justice in the State. These Tribunals thus would have community backing and by its rule educate the public opinion as it acts as parental organ in rural life.

211. Turning to the provisions of Section 44-B in essence the attack is that there is a cloud cast upon the effective right of representation in favour of the land-holder who is exposed to serious consequences of taking away of the property, forfeiture, confiscation and even subjected to penalty. It is said that the principles of natural justice have been violated. It is further urged that the legislature in this field has been unrealistic in not taking into account the magnitude of the ignorance of the body peasantry, who will be subjected to the process of law at large and possibility of their being exploited in the situation if they are not effectively represented by expert professionalises.

212. The provisions of Section 44-B, firstly call for interpretation and secondly we will be indicating our reasons as to why we do not think that there is any inroad upon any vested right with regard to the matters of legal representation. That provision reads as follows;

"Section 44-B: Notwithstanding anything contained in this Act or any law for the time being in force no pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Authorised Officer, the Tribunal, the Collector, the Commissioner, the State Government or the Maharashtra Revenue Tribunal."

Provided that, where a party is a minor or lunatic his guardian may appear and in the case of any other person under disability, his authorised agent may appear.

Explanation: For the purposes of this section, the expression 'pleader' includes an advocate, attorney, Vakil or any other legal practitioner." (Underlining added).

213. By the main part of the section "pleaders" as such are excluded from appearance in the proceedings under the Act and prohibition operates upon that class. Explanation added to this section shows that "Pleader" includes an advocate, attorney, Vakil or any other legal practitioner. The Explanation throws light on the term "Pleader" used in the main part of the section. It was not even countered by the learned Advocate-General that by "Pleader" the main provision indicates that the professional class of Advocates, attorneys, Vakils or other legal practitioner is only excluded. The proviso as is well-settled does not merely carve out an exception, but sometimes explains that but for the proviso would not have been effectively understood as the part of the legislation: (See Ishvarlal v. Motibhai, . Pleaders by themselves are the class of authorised agents and that particular professional is subjected to prohibition. Proviso, however, makes it clear that in a case of disabled persons the authorised agent who may include even a professional would be able to represent the interest of the minor or lunatic or any other person under disability. This interpretation clearly accords well with the scheme inherent here.

214. Having placed such construction on Section 44-B, we feel little hesitation in holding that no exception can be made to law here enacted. It is not apposite function of the Court to test the validity of the provision by reference to the arguments based on the possibility of exploitation, possibility of oppression or possibility of misrule. In spite of the best of the provisions permitting experts and professionals the life of man and society is replete and riddled with these thickets. On the other hand it is proper and safe always to assume that the Legislature is aware of the total social effects of all relevant factors and with purpose departs from normal rules of representation.

215. There appears to be a clear scheme underlying the composite structure of the Tribunal as indicated by Section 2-A read with Sections 44-A and 44-B as amended. Having directed the constitution of the Tribunal wherein the members or at least the Chairman have better knowledge of the locality and are armed with experience about the matters touching land, it was natural to provide a direct system of adjudication so as to further its justices by placing the person concerned face to face with the Tribunal. The provision brings the land-holder again close to the process of land justice also as to ensure just and fair considerations of all the relevant matters and the concerned claims. This face to face and spot to spot modality by such composite scheme cannot go well with the professional class. Nor it can play important role in such type of modality in the matters of dispensation of justice. This professional exclusion in relevant perspective is clearly meant to accelerate the speed of agrarian reforms and is not in any sense condemnation of any professional class much less that of pleaders in the State. There may be several reasons present to Legislative mind including the necessity to speed the land justice and

by the modality create direct and new awareness amongst the peasantry itself by asking them to participate directly in its process. "Pleader" as an expert no doubt has a responsive role to play in the dispensation of justice and that institution by and large has proved its vital necessity in the field of law. But only because prohibition is enacted it does not follow that any legislative judgment is rendered against that class for there are clear premises of direct participatory educative modality of justice herein enacted. We do not feel that the scheme is in any manner unjust, unworkable or defective, nor can we persuade ourselves to hold that it affects the principles of natural justice.

216. After all principles of natural justice are not matters of any static formula. The right of hearing or right of representation depends on the express contemplation of given statute or of law and type of adjudication. The premises of land justice which has to operate upon land as a means of economic sustenance and to make pool or surplus for the community interests cannot be scissored by such strait-jacket submissions. There is full opportunity provided to everyone concerned at several stages right from the stage of notice (Section 17), return (Section 12), enquiry and statutory issues to he answered (Sections 14 to 18) and eventual declaration (Section 21). Merely for lawyer is not permitted, scheme cannot be stamped as violating natural' justice. 217. Further it appears that there is settled authority as far as this Court is concerned in that such questions are the matters of legislative power and do not impinge upon the validity of the enacting provisions. In Mulchand v. Mukund, the Division Bench of this Court was asked to consider validity of the Rule 36 framed under the Bombay Co-operative Societies Act which did not permit lawyers to appear. What the Bench then said can be usefully stated with regard to the complaint before us:

".....But whether before a particular tribunal a lawyer should be allowed to appear or not is a matter of policy with which this Court cannot primarily be concerned. All that we may point out is that It may lead to considerable hardship if in important matters where complicated questions of fact or law arise a litigant is denied the right and privilege of being represented by a lawyer of his choice. It may be that the arbitrators themselves or those presiding over judicial or quasi-judicial tribunals themselves may feel the necessity of having the help and guidance of lawyers. Rule 36 is so absolute and so drastic in its terms that even if the arbitrators wanted the assistance of lawyers they are precluded from allowing practitioners to appear before them. The arbitrators may also feel that in a particular cause a litigant's rights would be affected or jeopardised by his not being permitted to fight his cause through a lawyer. But Rule 36 as framed gives no discretion whatever to the arbitrators. We would suggest to Government to consider whether it is not advisable to reframe Rule 36 so as to give a discretion to the arbitrators whether to permit lawyers or not and not to permit Rule 36 to remain in its absolute, unqualified form."

218. Whatever was observed by the Division Bench in Mulchand's case we make the part of our observations as far as the scheme of Section 44-B is concerned (and) leave the matter for considerations of the Legislature, in view of the decision of this Court as well reasons indicated by us above. Reliance placed on this aspect of the matter on Ramoo Bapoo v. State of Maharashtra, (1974) I Serv LR 568 = (1973 Lab IC IB38) (Bom) and Pett v. Greyhound Racing Association Limited. (1968) 2 All ER 545 at 549 is not at all apposite.

219. One small matter herein remains to be mentioned in Special Civil Application No, 1494 of 1976. Mr. Sohni complained that even to the pending proceedings under unamended law the bar of Section is being applied and that "the pleaders" are being prohibited. He made a complaint with regard to the petitioner In that petition and that necessitates the making of a few observations.

220. As already stated, Section 44-B has been added by amended Acts. The first Amending Act itself to which the second Amending Act added further amendments followed by Act No. 2 of 1976, a saving section being Section 5 of the Act No. 21 of 1975 has been enacted. Section 5 of Act No. 21 of 1975 in terms saves all the proceedings which were taken under the provisions of the original un-amended Act as if that Act had not been amended. Even without such a provision the principles of Section 7 of the Bombay General Clauses Act would operate when there is repeal. Express provision in Section 5 indicates that the proceedings under the original Act have to be continued as if that Act had not been amended. Right of representation by a pleader necessarily is a vested right and cannot be treated as merely formal, for it has consequences Including the one that the appeal can be filed by the professional duly authorised in that behalf. These rights involving the proceedings pending and already initiated would obviously be affected leading to unjust results if Section 44-B is also made applicable to original Act, Therefore, in view of the provisions of Section 5 of the Act No. 21 of 1975 and also the provisions of Section 7 of the Bombay General Clauses Act, it appears to us reasonable- to hold that the proceedings initiated under un-amended Act or the original Act will have to be continued as if Section 44-B had not been placed on the statute book. In other words, the operation of Section 44-B is, prospective and restricted to the Act which is amended by Amending Acts Nos. 21 of 1975. 47 of 1975 and 2 of 1976. To the proceedings pending when those Acts came into force obviously Section 44-B would not be applicable and prohibition against "Pleader" would not be available therein.

221. Now we turn to the specific attacks on certain sections of the Amending Acts. Sub-section (3) of Section 13, Section 17 and Section 21-A (1) are questioned stating that there is an element of confiscation of the property and these provisions have no reasonable nexus to the object of agrarian reforms. Mr. Chandurkar, Mr. Kalele and Mr. Mohota all submitted that these provisions

have been incompetently enacted.

222. The provision of Sub-section (3) is the part of the scheme which enjoins upon a person or a member of the family unit to submit returns under Chapter IV by reason of Section 12, It is upon filing of returns the proceedings in ceiling adjudication are initiated. Section 12 obliges a person or the family unit governed by clauses (a) and (b) of Sub-section (1) or by the provisions of Sub-section (2) to furnish to the Collector within whose jurisdiction any land in the holding is situate a return in the prescribed form. The return has to give the details as mentioned in Section 12 and prescribed by the rules. The Act being the law as applicable even in future after the commencement date, the obligation to file returns within stated time has to be specified. Section 12 (A) confers power on the State Government to extend time for filing returns by an order to be published in official gazette. What would be the consequences of failure to submit the return is the subject of Section 13 itself.

223. On the plain reading of Section 13, its scheme in Sub-section (1) indicates that it is possible for the person to explain the delay in submitting return within the time specified in Section 12. It follows that if the explanation is reasonable, no penalty of the kind indicated by Clause (a) of Sub-section (1) can be imposed. There is other ground for the purposes of penalty indicated by clause (b) of Sub-section (1) where knowingly a false return is furnished. Subsection (2) of Section 13 is a power of the Collector to issue, notice if in the view of the Collector, there is a failure by a person or a member of a family unit to follow the injunction of Section 12. If after such proceedings are initiated upon notice, the Collector comes to the conclusion that without reasonable cause the notices had failed to submit the return within time or had submitted knowingly the false return, the Collector is enabled firstly to impose a penalty provided by Sub-section (1) and further is enabled to require such a person to submit a true and correct return within a period of fifteen days from the date of the order. After such an order is made under Subsection (2) and in spite of that if a person or a member of a family unit so directed fails to comply with the order within the time granted by the Collector, then the penal consequences indicated by Sub-section (3) ensue. These consequences are operative upon the surplus land held by such a defaulting holder of property. Free from encumbrance the right, title and interest in such surplus land would stand forfeited to the State Government subject to Chapter IV.

224. Thus it is penal consequence enacted that operates only on the surplus land and not on the land which is within the ceiling limit. With regard to such surplus land the provision declares that right, title and interest of the person shall stand forfeited and vest in the State without further assurance. The very use of the words 'surplus land' and subjecting it to forfeiture shows that all other enquiry as contemplated by other provisions of the Act will be gone into including the stage indicated by Section 16 permitting choice with regard to selection of land for retention.

Upon declaration made under Section 21, the surplus delimited would stand forfeited, the legal effect being the entitlement to receive the compensation under chapter V of the Act for the surplus land will stand extinguished.

225. This type of forfeiture as penalty after full hearing in the very nature of things cannot be questioned as unjust. To lay down the penalties and its scheme by themselves are the matters within the legislative competence. If in spite of law persons choose to act with impunity they render themselves liable to be dealt with by the penal laws. The scheme indicated above is one integrated scheme and the provision for penalty of forfeiture operates only on eventual compensation that could have been claimed Under Chapter V and nothing else. It cannot be treated as harsh or unfair, After all, by the premises of the law the entitlement to hold land is co-extensive only to the ceiling area. After the coming into force of the Act the surplus held by a person or the family unit is available to the State to be acquired in the manner provided by this law. The provision regarding the payment of compensation and the entitlement thereto arises not under any other law but by the terms of this law i. e., Chapter V thereof. Instead of providing a further imposition of fines or other types of penalty, the Legislature devised to cover the field of penalty as co-extensive with the right, interest and title in the surplus land. No exception can be taken to such a scheme only because as was faintly submitted, that in a given case the penalty would be too meagre if the surplus is very small fragment of land and in others it will be too harsh if the surplus found is large holding of persons. There does not appear to be any sound principle to subject each and every person to the same quantum of punishment. The principle is whatever entitlement would have arisen to receive the compensation because of the quantum of surplus land is being deprived, to that person. That principle would uniformly affect every one to the extent he holds the surplus land. The scheme of both Sections 12 and 13 is indicative that there is adjudication provided before the consequences can ensue. That is by itself a salutary safeguard. The provisions of Section 13 (3), therefore, in our view are validly made and cannot be struck down on any principle on which reliance was placed.

226. With regard to the other section, the challenge is to the last part of Sub-section (1) of Section 17 added by the Amending Act. That deals with the effect of public notice issued under Sub-section (1) of Section 17 and when issue is about the knowledge of the contents of such notice. It statutorily states that issuance of the notice shall be the conclusive proof thereof as against the person who may raise any objection. It was urged that this would work untold hardship and open floodgates for frauds and even innocent persons would lose the right and remedy provided for by the Act The submission is that in agrarian society there are several transactions which are benami and which are not reflected in revenue papers and the opportunity to show that really the contents of the notice issued under Sub-section (1) of Section 17 were not

known to the persons concerned likely to be affected by the proceedings should not be robbed of and the contrary indicated by the statute is replete with unreasonableness and as such the provision is enacted in colourable exercise of the legislative power.

227. In our view the argument is devoid of any merit and is based on hypothetical situation. Firstly, Sub-section (1) of Section 17 is merely a rule of evidence and though the words used are conclusive proof with regard to the contents of the notice, it raises a presumption in that regard. Like any other presumption, if a person is subject to real fraud, the challenge on the ground of fraud, mistake or jurisdiction is not at all ruled out. These are legal defences available wherever juridical presumptions arise and operate. Moreover the scheme of Sub-section (1) and Sub-section (2) has to be viewed together so as to work out a reasonable result. Subsection (2) enjoins issuance of the individual notices to the holders and to the persons known to be interested. It must be presumed that the legislature obliges the authority to issue these individual notices. Thus the immediate requirement of giving notice and calling upon the persons who are known to be interested is fully satisfied. Apart from these notices contemplated in Sub-section (2), the amended section with regard to the public notice issued, in tine manner prescribed in the villages creates a rule of evidence with regard to the knowledge of the contents of such notices once the public notice is properly issued. Having provided for in Sub-section (2) the notices to the holders and to the persons known to be interested in the property, such a provision has been made only to avoid undue delays and cannot in any manner be said to be unreasonable. To test the reasonableness in the matters of such procedural provision, it is ample if there is assurance that the person known and likely to be affected is informed about the proceedings contemplated under the Act and nothing more. All that is evident herein.

228. Section 21-A (1) which has been added by the Amending Act is subjected to the criticism that its provisions are confiscatory, unjust and may put premium on the omission of the authorities under the Act to take possession of the land and subject the innocent holders to the pecuniary liability to pay compensation or damages. It is said that because of this the same should be declared as invalid.

229. This provision cannot in any manner be treated as unconnected or un- concerned with agrarian reforms or the main object of the statute. The scheme particularly of Section 21 reflects that after the declaration is made of the surplus land under Sub-section (4) such surplus land has to be surrendered in possession of the State immediately. Upon delimiting the ceiling and finding the surplus, two legal effects ensue. As far as the surplus land is concerned, entitlement of State to possession of the said land arises followed by an obligation on the surplus holder to hand over the possession thereof. Indeed, in agrarian society love of land is notorious fact and nobody wishes to part with the property which is a powerful means of production. To counter-balance

this tendency after lawful declaration of the surplus, reasonably, the present provision appears to provide a mere consequence. The day the surplus is declared the entitlement of the surplus holder to be in possession of such surplus land under law stands extinguished and he has to be ready to part with it. In spite of such lawful extinction of entitlement if he continues to hold the possession of land he can be subjected even on general principles to pecuniary liability for the fruits of wrongful enjoyment, to be assessed in the manner prescribed.

230. Like any other proceedings therefore these are enabling provisions giving rise to the pecuniary liability and Its ascertainment- That essentially calls for an appropriate adjudication by the authority concerned. The concept of "damages" introduced and the legislative intent by use of the term 'compensation' are all sound guidelines to infer its intent in that regard and the apprehensions expressed cannot be appreciated. In a given case if really it was the State or its agency which defaulted the taking of the possession in spite of the landholder's willingness to hand over the possession of the surplus land so determined, there would be neither any award of damages nor any entitlement of the State to claim the same. The concept of damages abhors unjust enrichment; and compensation has to be only commensurate with the wrongful loss caused by others. That by itself assures us that the provision is a well-merited one and is designed to achieve the speedy acquisition of surplus land for the eventual purpose of its distribution according to the provisions of law. We reject all the arguments that the provisions are invalidly enacted.

231. A submission was further advanced that certain provisions have been made retrospective to effect as from 26-9-1970. and that it is arbitrary fixation of the time and open to be struck down because it is arbitrary, affects vested rights and has no nexus to any particular purpose.

232. The affidavit filed on behalf of the State indicates that that was the date when the Chief Ministers' Conference was called at the national level and first move to lower down ceiling including other eventual decisions in that regard were taken on agenda. That turned the leaf in the history of ceiling so as to open public debate not only in this State but all over the country. The Chief Ministers' Conference Itself directed that the dates anterior to January 1971', should be fixed for the retrospective operation of lowering the ceiling limits. It has been said on affidavit that the deliberations of the Chief Ministers' Conference were got known and people were knowing that the ceiling limit is likely to be lowered. To avoid the effect of lowering down of the ceiling, the Legislature intended, it is stated, to put the date 26-9-1970 and give retrospective operation to certain provisions for the purposes of effectuating the agrarian reforms.

233. As against this, affidavits were filed in some of the petitions to say that they were not knowing about the so-called Chief Ministers' Conference or the decisions taken thereat nor

according to the affidavits the same were publicised. Certain decisions pressed in aid on the question that when the validity of such fixation of dates is in issue, there must be evidence to indicate that the same was widely published or widely known so that by fixation of any such date, the purpose of the Act would have been defeated.

234. As we have over-emphasised in the present judgment that like any other matter it is within the legislative competence to give retrospective operation to any law. The purpose of such legislative policy may become clear if the history to which we have made a reference is taken into account. In fact from the publications issued by the Government of India to which we have made a reference under the authority of the Lands Reforms Commissioner, the case of lowering down of ceiling areas in whole country appears to have been an hot issue and was being debated through several media and on several levels. First concrete orientation step towards such policy was that the Chief Ministers were called on the national level to meet in the capital on 26-9-1970. Thus there is some rationale indicated by the historical events which began with that conference and prior to which there was already a case debated in the country by the competent authorities including the economics and agronomists regarding the lowering down of the ceiling areas. Thus in our view there is clear available evidence to find reasonable relation of the date 26-9-1970. Once we find this relation the other arguments that certain petitioners were not knowing about the policy decisions is of no avail. Making of the law and its competency does not depend on the individual knowledge of a particular person. We reject the argument on this aspect also.

235. At this stage we direct that the group of 36 cases being Special Civil Applications Nos. 1527, 1931, 2199, 2197, 2115, 2131, 2200, 1726, 1725, 1894, 1494, all of 1975 and Nos. 2476, 2477, 2478, 1072, 1073, 2990, 5, 266, 267, 3438, 2533, 637, 606, 1033, 1103, 1104, 1106, 3410 and 2172 of 1976 should be separated for in those only the live question with regard to extra-territorial operation of the law is raised. In these petitions too the common points with the group of these cases obviously stand concluded by the judgment now delivered by us.

236. As a result of these conclusions, excepting the Civil Application filed in Special Civil Application No. 1840 of 1976 being Civil Application No. 1378 of 1976 which we propose to dispose of by separate judgment we hold that there is no merit in any of these petitions and accordingly all these petitions raising the questions noted above and numbering 2661 would stand dismissed on the points raised in those petitions. In our view, as far as these points are concerned, the judgment rendered by the Bombay Bench in Special Civil Application No. 49 of 1976 does not require any reconsideration, There are groups of cases as we have indicated in the beginning of the judgment which challenge the validity of the enactments on several grounds and all these cases therefore stand dismissed. Petitions wherein applications for amendment are filed would stand dismissed as amended. There are groups of cases numbering 145, which have been

filed after the Maharashtra Revenue Tribunal's Order. The points about the validity of the law raised in those petitions stand concluded by this judgment and to that extent the petitions are dismissed. Those petitions will now be placed before the Single Judge to be dealt with on the merits. There are petitions filed directly after the order made by the Surplus Land Determination Tribunal without filing appeal numbering about 31. That group of petitions is also dismissed. The petitioners in those petitions would be at liberty to follow the remedy if any according to law to question the validity of the order made by the S. L. D T. on merits. Though we dismiss all these petitions together, we make no order as to costs.

237. Prayer was made in Special Civil Applications Nos. 1918/75, 1949/75, 1694/75, 1970/75, 1948/75, 408/76, 2076/76, 1904/75, 1955/75, 1394/75, 154/76, 161/76, 763/76, 722/76, 331/76, 1394/76 and 340/76 by the learned counsel M/s. S. R. and R. N. Deshpande and Special Civil Application Nos. 1533, 1553, 1574, 1654, 1655, 1656, 1658, 1659, 1660, 1714, 1719, 1721', 1744, 1745, 1746, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1847, 1851, 1852, 1856, 1857, 1990, 1991 and 2017 all of 1975 and Nos. 66, 86, 88, 89. 90, 113, 114, 115, 413, 414, 427, 429, 431, 432, 433, 434, 728, 733, 735, 853, 850, 881, 886, 1028. 1038, 1132, 1133, 1382, 1435, 1757, 1974, 2433, 2830 and 2702 of 1976 by Shri L. Mohota for grant of leave to appeal to Supreme Court under Articles 132 and 1'33 of the Constitution. We do not think that any question arises for grant of such leave. The judgment we have delivered applies the law laid down by the Supreme Court. We reject this prayer.

238. Orders accordingly.