CHAPTER V
ACQUISITION OF PROPERTY UNDER INDIAN CONSTITUTION

State’s sovereign power to appropriate private land for public purpose rests upon famous maxims: *salus populi est suprema lex* (the welfare of the people is supreme)\(^1\) and *necessitas publica major est quam private* (public necessity is greater than private). The law imposes a duty on every subject to give preference to the urgent service of his government and country to the safety of his life\(^2\). Thus, property may be acquired for Government offices, libraries, slum clearance projects, public schools, colleges and universities, public highways, public parks, railways, telephone lines, dams, drainages, sewer and water systems and many other projects of public interest, convenience and welfare\(^3\). This sovereign power to acquire private property for public purpose is referred to as *eminent domain*\(^4\) in the United States of America.

In U.S, the 5th amendment to the Constitution empowers the State to acquire private property for public use upon making just compensation. Under the common law also, as in the jurisprudence of all civilized countries, the concept of eminent domain is recognized.

In India, land was considered as the symbol of status. The dignity of a person in society was measured on the basis of the area occupied by him\(^5\). The framers of our Constitution were very much aware of the land system in India. Massive acquisition of private property by the British government for accumulation of wealth was detrimental to the people of India. Consequently, the architects of the Indian Constitution incorporated the right to property as one of the fundamental rights in the text of our Constitution. Prior to the framing of the Indian Constitution, the right to property was protected under the provisions of the Government of India Act, 1935.

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\(^1\) Om Prakash Aggarwala, *Commentary on the Land Acquisition Act*, (8th edn.), p.28.
\(^4\) For a detailed discussion, See Supra Chapter IV, pp.57-76.
5.1 Government of India Act, 1935

The Government of India Act, 1935 provided that, no person shall be deprived of his property save by authority of law. Neither the Dominion Legislature nor a Provincial Legislature had the power to make any law authorizing the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in or in any company owning, any commercial or industrial undertaking, unless the law provided for the payment of compensation for the property acquired. Therefore, any law which enables acquisition of property must fix the amount of the compensation, or specify the principles on which, and the manner in which, it is to be determined.

The implications of the above said provisions were:

(1) In India, persons had the right to property.
(2) The right to property could be taken away by the authority of law.
(3) The legislature had the power to make law for compulsory acquisition of property.
(4) Property included land, commercial or industrial undertaking, or any interest in or in any company owning, any commercial or industrial undertaking.
(5) The law for compulsory acquisition of property should provide for the payment of compensation for the property acquired.
(6) Such a law had to fix the amount of the compensation, or should specify the principles on which, and the manner in which, it is to be determined.

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6 See Section 299 (1): No person shall be deprived of his property in British India save by authority of law. The genesis of such a provision can be traced back the Government of India Act, 1919.
7 See Section 299 (2): Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.
The aforesaid provisions have been reproduced as such in Article 31 of the Constitution of India which was later repealed by the 44th amendment\(^8\). The Land Acquisition Act, 1894 is in compliance with the requirements of compensation for acquisition of land and it continues in force even after the Constitution of India came into effect.

5.2 **Indian Constitution on ‘Right to Property’**

The Constituent Assembly discussed and debated at length on the recognition of property rights of the people of India\(^9\). The aim of the makers of the Constitution was to safeguard the individual right to property from the excessive acquisition of property by the Government. So they recognized the right to property as a fundamental right guaranteed under the Constitution\(^10\).

5.2.1 **Right to Property as a Fundamental Right**

Prior to Forty Fourth Constitutional (Amendment) Act, 1978, the Constitution guaranteed a fundamental right to all citizens to acquire, hold and dispose of property. In *State of West Bengal v. Subodh Gopal*\(^11\), the apex Court held that the said fundamental right dealt only with the natural rights inherent in a citizen to acquire, hold, and dispose of property and had no relation to concrete property rights like interest in a particular piece of property or business. However, in *Commissioner, Hindu Religious Endowments v. Lakshmindra*\(^12\), Supreme Court enquired why the word ‘property’ as used in Article19 (1) (f) should not be extended to those well recognized types of interests which have the characteristics of proprietary rights; and further held that Article19 (1) (f) applies equally to concrete as well as abstract rights of property; and that the administration of property by a religious denomination is a fundamental right which no legislature can take away. In *M.M.Pathak v. Union of India*\(^8\),

\(^8\) For details, see *infra* pp.85-90.  
\(^10\) Article 19 (1) (f), prior to 44th Amendment to Constitution of India.  
\(^11\) AIR 1954 SC 92.  
\(^12\) [1954] SCR (1) 1005.
India\textsuperscript{13}, Supreme Court held that, property within the meaning of Article 19 (1) (f) comprised every form of property tangible or intangible, including debts and \textit{chose in action}.

Though the Constitution and judicial interpretations upheld the individual right to hold property as fundamental right, the Parliament changed the entire situation by amending the Constitution of India. The recognition of the right to property as a fundamental right led to serious problems regarding use of land by Government for various purposes. Every case involving the infringement of property rights led to litigation leading to issue of writs by the High Courts and the Supreme Court.

In \textit{Kesavananda Bharati v. State of Kerala}\textsuperscript{14}, the apex Court upheld the power of the government to acquire land for implementing the directive principles of Constitution. In \textit{Gwalior Rayons Silk Mfg. v. Government of Kerala}\textsuperscript{15}, it was held that acquisition shall be made only in accordance with the principles laid down in Article 31-A of the Constitution. Proviso to the said article prescribes that the consent of President of India is a pre-requisite for the validity of any law which provides for acquisition of land.

\section*{5.2.2 Compulsory Acquisition of Property}

The founders of the Constitution gave ample protection to the people of India against unauthorized interference of the executive authority to the right to property. Art.31 of the Constitution provided for compulsory acquisition of property subject to the following safeguards:

(1) No person shall be deprived of his property save by the authority of law.

\textsuperscript{13} AIR 1978 SC 803.
\textsuperscript{14} AIR 1973 SC 1461.
\textsuperscript{15} AIR 1979 Ker.56.
(2) No property movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be acquired or possessed for public purpose unless the law provides for compensation.

Article 31 provided for acquisition and requisition of property for the benefit of society provided that the authority shall act only according to the provisions of a valid law and also pay sufficient amount as compensation. During Constituent Assembly debates, Jawaharlal Nehru laid emphasis on the laws of acquisition and payment of compensation to the displaced people. In his view, acquisition of land is quite essential for the progress and safety of the State. The principle of equity is applicable through the payment of just and equitable compensation to the people. No individual can ultimately override the rights of the community at large. No community should injure and invade the rights of the individual unless it be, for the most urgent and important reasons.

No article in the Constitution had been attacked repeatedly, other than Art. 31. We can presume a hidden agenda behind all these encroachments. According to H.M Seervai, no person can enjoy the right to freedom of speech and expression, association, assembly and trade and profession without protecting the right to property. For every such activity we need land, building and premises. The main reason behind all these amendments is to protect land reform legislations in India. But the apex court in our country upheld all state legislations. Our Parliament members, who were present at the time of 44th Amendment, were unable to understand the meaning of words and sentences used by the makers of the Constitution, while they included the right to property under the Part III of the Constitution.

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16 Constituent Assembly Debates (Book no.4; Vol.ix, Lok Sabha Secretariat), p.1194.
18 Ibid.
5.2.3 Power to Acquire, Hold and Dispose of Property

By Article 298 of the Constitution\(^{19}\), the executive power of the Union is extended to carrying on any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The expression "acquisition, holding and disposal of property" would include compulsory acquisition of property. By item 42 of List III, the subject of acquisition of property falls within the Concurrent List. Both the Union Parliament and State legislatures have power to legislate in respect of acquisition of property for the purpose of the Union Government and State. The effect of Article 258(1)\(^{20}\) was explained by the Court in *Lataben S. Shah v. State Of Gujarat*\(^{21}\) thus: it is a blanket provision enabling the President by notification to exercise the power which the Legislature could exercise by legislation, to entrust functions to the officers to be specified on that behalf by the President and subject to the conditions prescribed thereby.

5.2.4 Acquisition of Property of Minority Institutions

Article 30 (1A) of the Constitution protects the minority institution’s rights\(^{22}\). Under Article 30 (1A), if the State seeks to acquire property belonging to a minority educational institution, the relevant law must provide for such compensation as would enable the minority community to replace the acquired institution by a new one. It is evident that, by reason of the present provision, the State is apprehensive about acquiring any property belonging to a minority educational institution\(^{23}\).

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\(^{19}\) Article 298 says: “The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose…”

\(^{20}\) Article 258 (1) of Constitution reads: “Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers function in relation to any matter to which the executive power of the Union extends”.

\(^{21}\) (1998) 1 GLR 678.

\(^{22}\) Article 30 (1A) declares: “in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the state shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause”.

5.2.5 Saving of Laws Providing for Acquisition of Estates

Article 31A was inserted by the Constitution (First Amendment) Act, 1951 to protect the Zamindari abolition laws. The right to challenge laws enacted in respect of subject matter enumerated under Article 31A (1) (a) to (g) of the Constitution on the ground of violation of Article 14 was also constitutionally excluded. The First Amendment Act inserted, Art.31 (A) and 31 (B) to Article 31. Both articles protected the power to acquire estates and the management of property by State and also gave protection to various land reform legislations of State Governments. Art.31A does not provide any compensation except for the acquisition of land coming within the ceiling area till 17th Amendment in 1964.

Article 31 (A) prior to the 17th Amendment provided: (1) Notwithstanding anything contained in Art.13, no law providing for (a) the acquisition by the state of any estate or of any rights therein or the extinguishments or modification of any such rights, or (b) the taking over of the management of any property by the state for a limited period either in the public interest or in order to secure the proper management of the property or (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or (d) the extinguishment or modification of any right of managing agents, secretaries and treasuries, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof or (e) the extinguishment or modification of any rights accruing by virtue of any agreements, lease or licence, shall 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, and Art.1924.

Article 31A was introduced into the Constitution, through the First Amendment Act 1951, with retrospective effect from the date of commencement of the Constitution i.e. 26 January 1950. In Waman Rao v. Union Of India25, Section 3 of

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24 The italicized words were substituted by the Constitution (4th Amendment) Act, 1955.
the Constitution (Fourth Amendment) Act, 1955 which substituted new Sub-clauses (a) to (e), for the original Clause (1), was challenged on the ground that it violates the basic structure of the Constitution. The Supreme Court observed that the above provision does not damage any of the basic or essential features of the Constitution or its basic structure and hence it is valid and constitutional, being within the constituent power of the Parliament. The power of amendment is plenary and would include within itself the power to add, alter or repeal the various articles including those relating to fundamental rights. The law on the subject of the Parliament's power to amend the Constitution must now be taken as well-settled, the true position being that though the Parliament has the power to amend each and every article of the Constitution including the provisions of Part III, the amending power cannot be exercised so as to damage or destroy the basic structure of the Constitution.

The Fourth Amendment to the Constitution made a cardinal change in the concept of payment of compensation to the owner of the land. It was introduced with a view to make the question of adequacy of compensation as ‘non-judicial’\(^26\). So the object of the amendment was twofold, i.e. to restrict the liability to pay compensation in the cases of acquisition of property by the State and to make the legislature, an arbitrator in fixing the quantum of compensation.

Later in 1964, The Seventeenth Amendment added the word ‘payment of compensation’ to Constitution. According to the second proviso to Article 31A (1):

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\text{any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the state to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of}
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\(^26\) See, Article 31 (2), Constitution of India.
such land, building or provides for payment of compensation at a rate which shall not be less than the market value thereof.

Here the legislature is compelled to pay compensation to the owners of the estate and at the time of the extinguishment of rights of the managers of the corporations, if it acquires under land ceiling laws.

Similarly, the Twenty Fourth and the Twenty Fifth amendments to the Constitution were also passed in order to change the meaning of the word ‘compensation’. The Twenty Fourth Amendment\textsuperscript{27} clarified that the amount may be given wholly or partly other than in cash. Again Twenty Fifth Amendment\textsuperscript{28} was for substituting the word “amount” in the place of “compensation” in Article 31 (2). It also added a new provision i.e. Article31- C to the Constitution. Forty Second Amendment inserted the title “Savings of Certain Laws” to Art.31- A, B and C.

Finally, Constitution Forty Fourth amendment Act, 1978 removed the right to property from the chapter of fundamental rights by omitting Article 19(1) (f) and Article 31 and by recognizing the property right as an ordinary civil right by inserting article 300 - A in the Constitution of India.

5.2.6 Ninth Schedule and Land Reform Legislations

The Ninth Schedule and Article 31- B were introduced under First Amendment Act 1951 to the Constitution. It was added to the Constitution in 1951 only to protect land reform legislations from the interpretations of the Supreme Court and High Courts in India. The aim of the Parliament was to prevent land reform laws from being struck down on the ground that compensation was inadequate or on any

\textsuperscript{27} See, 24th Amendment Act, 1971.
\textsuperscript{28} 25th Amendment Act, 1971 reads: “Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) of Article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause”
other ground. Article 31-B\textsuperscript{29} of the Constitution states that no law in the Ninth Schedule could be challenged in the courts. But in \textit{Keshavananda Bharti}\textsuperscript{30}, the Supreme Court has held that it can strike down any law which is included in the Ninth Schedule, if, in its view, the law violates the basic structure of the Constitution.

5.2.7 Protection under Article 300-A

The right to property has remained as a fundamental right guaranteed by the Constitution of India for 28 years since 1950. However in 1978, the Constitution Forty Fourth Amendment Act made a sweeping change regarding property rights by omitting Articles 19(1) (f) and Art. 31 from the chapter of fundamental rights; and inserting article 300-A and making the right to property an ordinary civil right under the Constitution. Art. 300-A was inserted in Part XII, Chapter IV of the Constitution under the heading of ‘Right to Property’. The effect of these changes is that (a) the right to hold property has ceased to be a fundamental right and (b) it has been left to the legislature to deprive a person by the authority of law. The validity of such laws cannot be challenged before the Supreme Court as unconstitutional because no compensation has been sanctioned by such laws. If, however, one's property is taken away by the action of the State without the authority of law, one would be entitled to legal relief on the ground that such State action is in contravention of Article 300A; but as the provision in the present Article has been brought outside the purview of Part III of the Constitution, the aggrieved individual would not be competent to move the Supreme Court under Article 32 for any violation of Article 300A. His remedy would be under Article 226 or by a regular suit.

Article 300A provides:

\textsuperscript{29} Article 31-B says: 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 or 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.

\textsuperscript{30} Supra n.14.
No person shall be deprived of his property save by authority of law.

It ensures that a person cannot be deprived of his property merely by an executive fiat. The right to property can be curtailed, abridged or modified by the state only by exercising its legislative power; since it is an essential legislative function that cannot be delegated. Deprivation of property can only be done according to law and an executive order depriving a person of his property, without being backed by law is unconstitutional.

Though the Forty Fourth amendment was intended to implement Janata Party Manifesto, it has been partly implemented by the Forty Fourth Amendment ignoring: (1) the close relation of property to other fundamental rights – which the Janata Party was pledged to restore (2) the effect of the change on the legislative power to acquire and requisition property; and (3) the correlation of fundamental rights to directive principles.

Another reason for the deletion of Article 19 (1) (f) and Article 31; and the insertion of Article 300A was to reduce the right to property from the status of fundamental right to that of a legal right i.e., the right will be available against the executive interference.

At the time of the said amendment, the then Law Minister, Mr. Shanti Bhushan stated that property, while ceasing to be a fundamental right, would, however, be given express recognition as a legal right. Further, the removal of property from the list of fundamental right would not affect the right of the minorities to establish and administer educational institutions of their choice and the rights of persons holding land for personal cultivation and within the ceiling limit. Their right to receive compensation at the market value would not be affected.

31 Supra n. 17 at p.1355.
In *Maneka Gandhi*[^34], the Supreme Court held that ‘equality is antithetic to arbitrariness’. Where an Act is arbitrary, it is implicit that it is unequal. The validity of a law, passed under the new Article 300A to deprive a citizen of his private property, can be challenged on the ground that it does not provide for payment of compensation; and that the acquisition is not for ‘public purpose’. Moreover, the law enacted and the procedure prescribed for the deprivation of right must be *just, fair* and *reasonable*.

### 5.2.8 Meaning of ‘Person’ under Article 300-A

‘Person’ under Article 300A means, a ‘person who has been deprived of his property right’. It is to be noted that the word used in the Article is ‘person’; and not ‘citizen’. Hence, all natural as well as legal persons have legal protection under the said provision. However, the term does not include ‘State’[^35]. So the provision can be invoked by ‘person’ only; provided he could successfully establish his right to property.

### 5.2.9 Meaning of the Term ‘Deprived’

The term ‘deprived’ means destruction[^36], confiscation[^37], revocation of a proprietary right[^38], seizure of goods or immovable property from the possession of an individual[^39], or assumption of control of business[^40]. So the term ‘deprived’ means ‘depriving from the use of the property in any manner’. However, deprivation has to be distinguished from restriction: there is no *deprivation* where the recognition of a contract is refused[^41] or the management of a property is restricted due to non-

[^34]: *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
[^36]: *Chiranjit Lal Chowdhuri v. Union of India*, AIR 1951 SC 41.
[^41]: Supra n.37
compliance of procedure, or the right is not an absolute one, or the action is in exercise of police power\textsuperscript{42}.

### 5.2.10 Property as a Civil Right

The word property connotes everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible, real or personal and everything that has an exchangeable value or which goes to make up wealth or estate or status\textsuperscript{43}.

The term ‘property’ as used in Land Acquisition Act implies property that may be needed and acquired under for Government offices, libraries slum clearance projects, public schools, colleges and universities, public high ways public parks, railways, telephone lines, dams, drainages, sewer and water systems and any other projects of public interest, convenience and welfare\textsuperscript{44}.

### 5.2.11 Meaning of ‘Save by Authority of Law’

According to Article 300A, any law under which any kind of acquisition of property is imposed, shall be enacted by the Parliament, State Legislature or by statutory rules, regulations or orders having force of law and not by executive fiat or order\textsuperscript{45}. The term ‘by authority of law’ means by or under a law made by the competent legislature. The executive power of the Government under Article 72\textsuperscript{46} or 162\textsuperscript{47} is subject to the limitation imposed by Article 300A of the Constitution. In the


\textsuperscript{43} For a detailed discussion on “property”, See \textit{Supra} Chapter II, pp.20-39.

\textsuperscript{44} \textit{Supra} n. 3.

\textsuperscript{45} \textit{Supra} n.42.

\textsuperscript{46} Article 73 of the Constitution of India reads: “(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend (a) to the matters with respect to which Parliament has power to make laws and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement”.

\textsuperscript{47} Article 162 of the Constitution of India reads: “Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject
case of disposssession except under the authority of law, the owner may obtain restoration of possession by a proceeding under the Constitution or civil law of the country.

5.2.12 Compensation for Deprivation of Property

Under the Indian Constitution, the field of legislation covering claim for compensation on deprivation of one's property can be traced to Entry 42 List III of the Seventh Schedule of the Constitution. The Constitution (7th Amendment) Act, 1956 deleted Entry 33 List I, Entry 36 List II and reworded Entry 42 List III relating to acquisition and requisitioning of property.

5.2.13 Acquisition of Property: Judicial Trend

Time and again, the apex Court foregrounds that the limitations expressly provided under the principle of eminent domain are to be safeguarded and any law which takes away or abridges these safeguards; shall be void48. The words "acquisition of property" must be understood as “the act of acquiring property”. Without importing into the phrase, an obligation to pay compensation or a condition as to the existence of a public purpose, the purpose will be defeated49. Therefore, according to the provisions contained in Article 300A, the State in exercise of its power of 'eminent domain' may interfere with the right of property of a person by acquiring the same but the same, subject to two conditions: (i) it must be for a public purpose and (ii) reasonable compensation must be paid50.

48 For instance, in Darsan Lal Nagpal (Dead) by L.Rs v. Govt. of NCT of Delhi, AIR 2012 SC 412, the apex court reminded that the power of eminent domain shall be used with great care and caution.
In *Jilubhai Nanbhai Khachar v. State Of Gujarat*\(^5^1\), the Supreme Court observed that, the right of eminent domain is the right of the sovereign State, through its regular agencies, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the State including private property without its owner's consent on account of public exigency and for the public good. Eminent domain is the highest and the most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives the right to resume possession of the property in the manner directed by the Constitution and the laws of the State, whenever the public interest requires it. The term 'expropriation'\(^5^2\) is practically synonymous with the term “eminent domain”.

In *Sooraram Pratap Reddy v. Dist. Collector, Ranga Reddy*\(^5^3\), the appellant contended that there was no ‘public purpose’ if the land has been acquired for a private foreign company. It was urged that in the era of globalization, if a foreign company wanted to establish its business, it was required to follow the prescribed procedure and parties must be left to settle their deal by entering into mutual agreement for sale and purchase of properties. In other words, according to the appellants, the power of ‘eminent domain’ has no application in such cases. The Supreme Court held that the project has to be taken as a whole and must be judged whether it is in the larger public interest. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose\(^5^4\).

The meaning of the term ‘public purpose’ is not static. It changes with the passage of time, needs and requirements of the community. Broadly speaking, ‘public purpose’ means, the general interest of the community as opposed to the interest of an

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\(^5^1\) *Supra* n. 42.

\(^5^2\) “Expropriation” denotes “compulsory seizure or surrender of private property for the State’s purpose, with little or no compensation to the property’s owner”. Governments or their agencies can effect an expropriation by making changes in legal code, tax code or regulations such as zoning. [http://www.businessdictionary.com/definition/expropriation.html](http://www.businessdictionary.com/definition/expropriation.html) (visited on May,10, 2012).

\(^5^3\) 2008 (9) SCC 552.

individual’. Sinha J., in *Babu Barkya Thakur v. The State of Bombay*\(^{55}\), observed that “it will thus be noticed that the expression "public purpose " has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited”. The power of compulsory acquisition as described by the term "eminent domain" can be exercised only in the interest and for the welfare of the people. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual.

However, the compensation payable must be an equivalent of what the owner is deprived of. The principle that guides the determination of the amount payable falls within the legislative province. But the same has to meet the basic requirement of full indemnification of the expropriated owner. The true valuation of the land involves both computation and judgment\(^{56}\).

In *Jilubhai*\(^{57}\), the Supreme Court reiterated that the entries in the Seventh Schedule do not provide power to amend the law but explains only fields of legislation. The legislature derives its power from Article 246 and other related Articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of meaning; fairly capable, by the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the wildest amplitude.

\(^{55}\) AIR 1960 SC 1203.


\(^{57}\) *Supra* n. 42.
If we are looking into the reasons behind the various amendments to the property rights, we can easily understand that, many of the amendments were introduced to prohibit judicial intervention in the field of right to property of an individual. The main reason behind the First Amendment was to overcome the judicial interpretations given in *Kameshwar Singh v. State of Bihar*\(^{58}\). Again in 1954, the apex Court observed that compensation means the just equivalent of the property acquired and that it was justifiable matter which the courts could adjudicate upon\(^ {59}\). The same principle was adopted in subsequent cases also\(^ {60}\). To overcome the above crisis the Central Government again passed Fourth Amendment in 1955 and added Art. 31(2), which provides that “…no such law shall be questioned in any court on the ground that the compensation provided by that law is not adequate”.

In *Vajravelu Mudaliar v. Special Deputy Collector*\(^ {61}\), the apex court observed that the amended Art. 31(2) still retained the word ‘compensation’ which meant that the meaning of the ‘expression’ as ‘compensation’ as given in *Bella Banerjee*\(^ {62}\) had been accepted. Therefore a law for acquisition or requisitioning should still provide for a ‘just compensation’ for what the owner was being deprived of, although, under the amended Art. 31 (2) the principles prescribing the ‘just equivalent’ could not be questioned on the ground of ‘inadequacy’ yet, if the principles were not relevant to the value of the property acquired at the time of acquisition, then the courts could intervene and scrutinize the validity of the principles\(^ {63}\).

In the famous *Bank Nationalization* case\(^ {64}\), the nationalization of eleven commercial banks in 1969 was struck down on the ground that it failed to provide compensation to the expropriated banks determined according to relevant principles.

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\(^{58}\) AIR 1951 Pat.91, (Patna High Court struck down the Bihar Land Reforms Act, 1950 as unconstitutional and violative of fundamental rights guaranteed under Art. 14 and 19(1)(f) of the Constitution).


\(^{61}\) AIR 1965 SC 1017.

\(^{62}\) *Supra* n. 59.


\(^{64}\) *R.C. Cooper v. Union of India* AIR 1970 SC 564.
In the instant case, no compensation had been paid for certain items of property, e.g. the good will of the banks and the unexpired lease of properties held by the banks. The methods specified to value lands and buildings were not relevant to the determination of compensation for them. Thus the expropriated banks had not been given a “true recompense” of the loss of their undertaking. Again the Central Government intervened in the form of the Twenty Fourth and the Twenty Fifth Amendments and substituted the term ‘compensation’ with the term ‘amount’.

In *Kesavanda Bharati*[^15], the Supreme Court held that the word ‘amount’ used in the amendment could be ‘illusory’ or ‘arbitrary’ or ‘grossly’ in nature. The provisions of the Act could shock not only the judicial conscience but the conscience of every reasonable human being.

So to overcome all the objections raised by the courts in India, Forty Fourth Amendment Act was passed in 1984 which removed Art.19 (1) (f), Art.31(1) and (2) from the Constitution of India.

In *Smt. Indira Nehru v. Shri Raj Narain*[^16], Mathew J. held that after the deletion of the right to property by omitting of Articles 19(1) (f) and 31 of the Constitution by the said amendment, the right to property, which was hitherto a fundamental right was dethroned from Part III and became a constitutional right under Article 300A resuscitating only Article 31(1) of the Constitution as originally made”.

Even a casual perusal of the judicial trend and legislative initiatives vis-a-vis acquisition of property reveals that on the one hand the courts have leaned towards protecting the property rights by ensuring the payment of adequate compensation for property rights acquired by the State; and on the other hand, the legislature has progressively, by amending the Constitution, reduced the occasions when compensation is payable for disturbance of property rights and has sought to minimize

[^15]: *Supra* n. 14.
[^16]: *AIR* 1975 SC 2299.
judicial scrutiny over land acquisition especially with regard to the payment of compensation to the displaced persons.

The facts being so, one has to analyse the existing statutory frame work in India in order to ascertain the areas of conflict between Constitutional and Statutory provisions. In addition to the theoretical analysis, the researcher conducted an empirical study within the urban and suburban areas of Thiruvananthapuram Corporation. In the main, 5 projects were selected and a random survey was conducted. The following chart shows the areas which were covered under the survey:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Projects</th>
<th>No. of Representatives chosen (Displaced / Interested)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Technopark Phase I &amp; II</td>
<td>140</td>
</tr>
<tr>
<td>2.</td>
<td>MC Road widening at Nalanchira</td>
<td>75</td>
</tr>
<tr>
<td>3.</td>
<td>Railway Over bridge at Pettah</td>
<td>50</td>
</tr>
<tr>
<td>4.</td>
<td>International Air Port Phase I</td>
<td>110</td>
</tr>
<tr>
<td>5.</td>
<td>Vizhinjam Project (Undergoing)</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td><strong>Total No:</strong></td>
<td><strong>425</strong></td>
</tr>
</tbody>
</table>
The researcher interviewed as many as 610 people covering various categories of people connected either as interested persons or as officials who dealt with Land Acquisition Act. The following chart shows various sections of people interviewed by the researcher:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Category</th>
<th>Total Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Displaced / Interested Persons</td>
<td>425</td>
</tr>
<tr>
<td>2.</td>
<td>Advocates</td>
<td>110</td>
</tr>
<tr>
<td>3.</td>
<td>Land Acquisition Officers</td>
<td>15</td>
</tr>
<tr>
<td>4.</td>
<td>NGOs</td>
<td>25</td>
</tr>
<tr>
<td>5.</td>
<td>Judicial Officers</td>
<td>10</td>
</tr>
<tr>
<td>6.</td>
<td>Govt. Pleaders</td>
<td>10</td>
</tr>
<tr>
<td>7.</td>
<td>Jurists</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>610</strong></td>
</tr>
</tbody>
</table>
The succeeding chapter is allotted exclusively for a discussion on the statutory regime in India and also to examine how far the provisions of the Act are positively imposed upon the affected persons.