CHAPTER I
INTRODUCTION

Land is always considered as the symbol of the social status of an individual. In the feudal system of land tenure, feudal lords owned the lion’s share of the land in their locality. Tenants and labourers, who paid rents and levy to them, were degraded as slaves. This system of tenancy existed in almost all the countries of the world. However, consequent to the development of democratic principles and the socialist pattern of society, this system has disintegrated. During the period of industrialization, the sovereign power of the State, which was traditionally vested in the king, was delegated to public bodies and corporations, which form part and parcel of the complex organization of the State machinery. The evolution of the idea of progressive industrialization of the country facilitated the need for irrigation projects, town planning and improvement schemes and various other public utilitarian schemes. Consequently, the subject of land acquisition assumed significance and has taken centre stage.

1.1 Land System in Ancient India

In India, the concept of ‘proprietary right’ in land emerged on the basis of Manu’s Occupation Theory, which maintains that things which are not already the subject of property become the property of the first occupant. This theory is the Indian counter part of the Roman doctrine of “occupation” which holds that “wild beasts, birds, fishes and all animals which live in the sea, the air, or on the earth, as soon as they are taken by anyone immediately become, by the law of nations, the

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2 The land used to be held in feudal tenure was a system of land holding in return for service. This holding was known as ‘seisin’, which originally meant no more than possession and denoted the state of affairs that made enjoyment possible. See Holdsworth, History of English Law, VII, Sections 2, 30, 62, and 79.
3 http://library.thinkquest.org/10949/fief/lofeudal.html (visited on January 05, 2012): Feudalism was the basis by which the upper nobility class maintained control over the lower classes. This rigid structure of government consisted of kings, lords, and the peasants. The structure first came about, and remained for so long, because of the great size of the land the kings had under their control.
property of the captor, that which had no previous owner”\textsuperscript{5}. In Manu’s view, “a field is his who clears it of jungle; game is his who has first pierced it”\textsuperscript{6}. Similarly, Muslim scholars like Abu Mohammed and Abu Yusuf observed that “waste lands are a sort of common goods and become the property of the cultivator by virtue of his being the first possessor, in the same manner as in the case of seizing game or gathering firewood”\textsuperscript{7}; and that the permission of the State is not a pre-requisite.

According to the Hindu law which recognises ownership in movables and immovables, property can be classified into four categories \textit{viz}, personal, real, ancestral and self acquired\textsuperscript{8}. \textit{Mitakshara} School distinguishes movables and immovables in this manner: “The father is the master of gems, pearls, corals and of all other movable property but neither the father nor the grandfather is the master of the whole immovable estate”\textsuperscript{9}.

Hindu sages and jurists were of the view that the sovereign was not the owner of the soil. A share of the benefits of the land occupied by the subject has to be given to the sovereign as a price for the protection afforded to the life, property and liberty of the subject. Narada specified this share as one sixth of the produce\textsuperscript{10}.

Apropos the right of the King to alienate the property, the position was that “the King cannot make gift of his kingdom as it was not his”\textsuperscript{11}. Moreover, his sovereignty lies only in punishing the wicked and protecting the good; and even in the

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\textsuperscript{5} Sandar’s Justinian, (2\textsuperscript{nd} edn.), p.172. For a discussion on the classification, modes of acquisition of property etc. during Roman period, See, M. Krishnan Nair, \textit{A Manual of Roman Law}, (Viswanath Pub., Cochin, 1960), pp. 71 – 103.


\textsuperscript{7} Grady (ed.), \textit{Hamilton’s Hedaya}, (Book XLV, Para 3), p. 610.


\textsuperscript{9} Mayne, \textit{Hindu Law}, (11\textsuperscript{th} edn.), p.318.

\textsuperscript{10} Naradasmriti, XVIII, p.48, \textit{Sacred Book of the East}, Vol.XXXII, p.22.

case of conquest, the property of the conquered does not pass on to the conqueror save
the taxes due from such property.12

During the Hindu period, waste land was considered to be the common land of
the village. The right of the first person who makes beneficial use of the soil received
judicial recognition too.13 During this period, cultivation of the land was made
compulsory and a penalty was imposed for not cultivating the land.

In his Mitakshara, Vijnaneswara expounded the idea that ancestral land
occupied by the members of a joint family should not be alienated. However,
Jimutavahana, in his Dayabhaga discarded this theory of non-alienability and held
that every owner of land, if it is a male had the full right to alienate the same either by
way of gift or sale.

Thus, from time immemorial, the right to property was looked upon as an
essential right of the citizens. Man who acquired any res through his toil was regarded
as the owner of that property.14 Several texts of considerable antiquity like the
‘Vedas’15 and ‘Arthasasthra’ foreground property and the rights of different persons
upon it.16 In these texts, ‘property’ is described in terms of many epithets: the word
‘adhikara’ which means ‘right’ applies equally to a right to do something, such as the
right to perform worship, offer sacrifice and the like; and to a right to receive
something, to manipulate something, or to supervise something. The word ‘agama’
means ‘title’; ‘dravyagama’ means ‘title in an asset’; ‘dhanadhikara’ means right

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12 See, Sections 20 and 21, the Arthashastra, quoted in L.N Rangarajan, Kautilya: The Arthashastra,
13 See for instance, Thakurani v. Bisweswar Mukherji, (1865) 3 W.R 29 B.L.R. Sup. Vol.202,
Secretary of State v. Vira Rajan, (1886) I.L.R. 9 Mad. 175, Secretary of State v. Ashtamurthi,
(1890) I.L.R. 13 Mad. 89
14 G.W Paton and David P. Derham (ed.), George Whiter and Cross Paton, A Text Book of
539. For a critical review of the origin and history of property, See, Morgan. O. Evens, Theories
15 The concept of ‘Svata’ which approximately translates as “ownership” is roughly equivalent to the
over an asset (proprietary right)\textsuperscript{17}; words like ‘Bandha’ or ‘Bandhaka’ signify a charge\textsuperscript{18} and the word ‘\textit{dhana}’ is often used to cover all types of property, including income and incorporeal rights.

Emperor Chandra Gupta Maurya effectively maintained the security of life and property, which was regarded as essential for prosperity\textsuperscript{19}. Kautilya’s ‘\textit{Arthasastra}’ discusses the use of house as security to the life and liberty of a person. Section 19 reads: “And he should cause that part above the verandah which requires protection to be covered by matting, or a wall touching (the roof) for fear of damage by rain”\textsuperscript{20}.

Moreover, ‘\textit{Arthasasthra}’ prescribe punishments to persons who cause obstruction of any kind to others or to public paths\textsuperscript{21}. In the case of transgression or obstruction by doors or windows contrary to natural arrangements, except on royal high ways and roads, the lowest fine for violence shall be imposed. The same fine is to be imposed in the case of obstruction outside the houses by parts of ditch, staircase, water channel, ladder or dung hill, and in the case of prevention of the use of their rights by others\textsuperscript{22}.

1.2 Land System during the Medieval Period

Land was regarded as the yardstick of an individual’s dignity: Those who had more land gained wider reputation and acceptance in society. Land and cultivation had much importance from the Neolithic Age or New Stone Age\textsuperscript{23}. In India, especially in Kerala, most of the land was under the control of Brahmins. Whenever

\begin{footnotes}
\footnotetext[18]{\textit{Ibid.} at p.19.}
\footnotetext[19]{Supra n. 12.}
\footnotetext[22]{\textit{Ibid.}}
\footnotetext[23]{B.N Luniya, \textit{Evolution of Indian Culture (From the Earliest Times to the Present day)}, (Lekshmi Narain Agarwal, Agra), p. 20.}
\end{footnotes}
people from other castes ran into difficulties and when they were seriously ill, they
gave their land as offering to God in order to tide over their difficulties and also to get
well. During that period, temple administrators were Brahmans, and they were not
interested in agriculture. Hence, for the purpose of cultivation, they transferred the
entire land to intermediate persons, who in turn, transferred the land to actual
cultivators called “tenants”. The tenants cultivated the land either by themselves or
with the help of persons belonging to the ‘Sudra’ community. Thus the land system
in India comprised a hierarchy of different persons with different interests: owners,
intermediate persons, tenants and actual labourers.

According to the Islamic concept, the sovereign is the original proprietor of
the land so long as he receives a share of the produce. As soon as his share gets
converted into fixed money, he ceases to be the proprietor. It is in the case of land
revenue that the main difference between the Hindu and Muslim systems of land
tenure is discernible. In the former, the King’s share was 1/6th of the produce, whereas
in the latter, it was 1/3rd. Aurangazeb increased this share “Khiraj” to 1/2 of the gross
produce.

The decline of the Mughal Empire paved the way for the growth of semi-
feudal interests. The villages came to be controlled by the more powerful officials and
chieftains as the authority of the State weakened during this period. When India came
under English sway, these headmen, chiefs, talukdars etc. were given protection. Thus
they became the virtual owners of their villages even though the proprietary rights
were vested in the Collectors.

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24 Dr. B.S. Sinha, Law and Social Change in India, (Deep and Deep Publications, New Delhi, 1999),
p. 234.
25 Ibid.
26 For a discussion on the legal and political system in ancient and medieval India, see generally, H.S
Pub., New Delhi, 1999).
1.3 Ownership of Property under British Period

A notable development in the period of British rule was the creation of the institution of intermediary (i.e., *zamindars*) between the State and peasants. The *zamindars* became the proprietors of the soil and were truly ‘rent grabbers’ who extorted rent from the tenants. The system was modelled more or less on the English pattern but with two major differences: the English landlord was concerned with the total production of the land and therefore forced his tenants to produce as much as he could, while in India, the landlord was not virtually interested in the produce. His interest was primarily in the collection of rent. Secondly, the English landlord was the absolute owner of the soil, while in India, the landlord’s rights were, to a certain extent, restricted. But the *Ryotwari* system in India was on the lines of the French peasant’s proprietorship. It was introduced because *Zamindari* system was less profitable to the government: the entire agriculture surplus under the *Ryotwari* system was appropriated by the government; on the other hand, under the *Zamindari* system, the *Zamindar* paid only a fixed amount of income as land revenue.

The *Manusmrithi* recommends land grants in order to give remuneration to the officials who are placed in charge of one, ten, twenty, a hundred or a thousand villages to collect royal dues *raja-pradeyani* and maintain law and order. The same rule was included in Brhaspati’s right to property also; and it continued in the Gupta period, as well.

Under feudalism, the feudal lord was at the top and he owned the entire land. At the bottom were the actual tenants who paid rent. In between these two classes, there existed a hierarchy of intermediary lords. This kind of landlord-tenant

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27 Supra n. 24.
28 Ibid.
29 Ibid.
32 http://books.google.co.in/books (visited on June 12, 2012).
relationship existed in almost all the countries. However, as a result of the industrial revolution, this system began to disintegrate.

The relationship of men and land in Kerala is based on several myths and legends. The myth of Lord Parasurama is the most popular of them. It is believed that Lord Parasurama recovered the portion of land, comprising Kerala, from the sea and later gave it as gifts to the 64 Namboothiri families who faithfully adhered to the invaluable precepts of the Rig Vedas. Eventually these landlords became the virtual owners of the land. But many historians refute this and maintain that the economic structure and social conditions of the period created land lords in Kerala. The various temple inscriptions from the 9th to 13th centuries A.D, testify that it was the non-Brahmins who had gifted property to temples; and that it was from them that the ownership passed on to the upper caste Brahmins. This transfer was not a direct process; and the temples in Kerala played a significant role in this transformation.

During the British regime, the situation changed: English education and the inception of a new Civil Service system ushered in the new salaried group mainly the ‘Sarkar’ employees. Many of them belonged to the high castes and they invested their savings on land. This practice of land investment created non-Brahmin ‘jenmis’ too in the 19th century. The ‘jenmis’ began to exploit their tenants and gradually they became very wealthy. At the same time their tenants were reduced to the status of penurious peasants.

By the 18th century, conditions became increasingly favourable for the proliferation of small land holders who asserted individual interest in land. When land revenue was instituted, officers known as ‘Adikaris’ (village headmen) were appointed to collect the revenue from the owners of the land. The British policy served to strengthen the ‘jenmi’ system. A proclamation issued by the Maharaja of

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34 In Kerala, there were two kinds of property holdings: (1) Jenmom and (2) Pandaravaka. See, The Travancore Land Revenue Manual, Vol. III, Part I, (Corrected up to 1935), p. 23.

35 The reasons for this can be traced to the willingness of the intelligent to serve the feudal lords and the failure to guide the common people to a correct appreciation of the events and things. There was also mental slavery that resulted from the economic servitude.
Travancore in 1005 K.E (1830 A D) recognised the right of ‘jenmis’ to increase rents at the time of the 12 year renewal of tenure. The British government was in favour of granting all powers to ‘jenmis’. The art and literary movements, which are Kerala’s special contribution to the main stream of national culture gained strength from the ‘jenmi system’.

1.4 Post Constitutional Developments

The word ‘property’ has been discussed in great detail right from the inception of the Constitution of India. The genesis of the term ‘land acquisition’ is from the Government of India Act 1935\textsuperscript{36}. The object of the Constitution as revealed by the preambular pledge is to promote justice: social, political and economic; and to preserve the liberty, equality and freedom of individuals. The modus operandi to achieve these objectives is set out in Part III\textsuperscript{37} and Part IV\textsuperscript{38} of the Constitution dealing with fundamental rights and directive principles of State policy respectively. Both of them contain certain aspirations whose fulfillment was regarded as essential to the kind of society which the makers of the Constitution wanted to build. The task of protecting and realizing them is imposed upon all the organs of the State, namely, legislature, executive and judiciary.

Various provisions of the Constitution upheld the rights of the individuals to protect their right over land in India. The ‘right to property’ remained a fundamental right till the 44\textsuperscript{th} Amendment to the Constitution in 1978. However, the status of right to property was sidelined by the legislature by adding a new provision i.e. Article 300A to the Constitution, which converted the fundamental right to property as a

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\textsuperscript{36} Section 299 (2) says: 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.

\textsuperscript{37} Articles 12 to 35.

\textsuperscript{38} Articles 36 to 51.
\end{footnotes}
Constitutional right\textsuperscript{39}. Moreover, Articles 31-A, B and C were incorporated so as to “save certain laws” which provide for the acquisition of land\textsuperscript{40}.

Nevertheless, Indian judiciary has protected the individual right to property and observed that it cannot be deprived by mere executive orders. 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. Thus, the courts declared in unequivocal terms that deprivation of property can only be done according to law and sufficient compensation has to be given to the evicted persons\textsuperscript{41}.

1.5 Research Problem

Any type of acquisition, whether for social, industrial or economic development, would affect the living standards of the socially challenged groups.

\textsuperscript{39} For details, see \textit{Infra} Chapter V, pp. 77-99.

\textsuperscript{40} Article 31-A (1) reads: notwithstanding anything contained in Article 13, no law providing for (a) the acquisition by the State of any estate or of any rights therein or the extinguishment 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 rights of managing agents, secretaries and treasurers, 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 agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or license; 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 or Article 19.

Article 31- B reads: Without prejudice to the generality of the provisions contained in Article 31A, 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 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.

Art. 31- C reads: Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the grounds that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 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. See also, Schedule IX of the Constitution. The object of the Ninth Schedule was to save land reform laws enacted by various States from being challenged in the Court.

Lack of a proper economic policy and a comprehensive legislative framework is usually raised as a ground of protest against forceful acquisitions. The present land acquisition law in India permits the State to acquire land for ‘public purpose’. However, the term ‘public purpose’ is not susceptible to any precise definition. This leaves room for administrative arbitrariness. Hence, a detailed study on these aspects has become the need of the hour.

1.6 Scope of the Study

The concept of private ownership has been shattered with the emergence of the concept of eminent domain resulting in constant conflict between two interests: the community interest and the individual interest. Against the backdrop of Constitutional philosophy and the changed economic scenario, the land acquisition laws are found to be obsolete. Moreover, despite a common objective - public purpose - a spate of statutes with different provisions and different procedures govern land acquisitions in India. Hence, there is a need for a comprehensive and self contained legislation which can strike a proper balance between the competing interests.

1.7 Review of the Existing Literature

Issues regarding land acquisitions have been constantly raised in India. However, very little efforts have been made by research scholars and jurists to explore, analyse and evaluate human right issues relating to land acquisitions. Hence, only a limited literature is available in this regard.

For the purpose of review, the available literature has been conveniently categorised as follows: (i) Literature on historical perspective (ii) Literature on philosophical and jurisprudential conceptions (iii) Literature on international norms (iv) Literature on the position in other legal systems (v) Literature on Indian Constitutional provisions; and (vi) Literature on the statutory regime in India.
1.7.1 Literature on Historical Perspective

Henry Maine, the famous scholar who contributed a lot for comparative jurisprudence, provides an insight into the ancient land system and the evolution of law in his celebrated work, *Ancient Law*\(^{42}\). Other authoritative treatises include: L.N Rangarajan’s, *Kautilya, the Arthasastra*\(^{43}\); Mayne’s *Hindu Law*\(^{44}\); N.C Sen Gupta’s *Evolution of Ancient Hindu Law*\(^{45}\); *Manusmriti*\(^{46}\) and *Naradasmriti*\(^{47}\). The *Travancore Land Revenue Manual*\(^{48}\) is also a treasure trove in this regard.

Dr. B.N Sinha in his *Law and Social Change in India*\(^{49}\) portrays the land system during the medieval period. R.C Majumdar, through his *The History and Culture of the Indian People: The Age of Imperial Unity*\(^{50}\) offers a detailed account of the land system during the British period. However, the aforesaid treatises can only be regarded as mere narrations.

1.7.2 Literature on Philosophical and Jurisprudential Conceptions

The philosophical conception of property can be easily identified from Aristotle’s *Politics*\(^{51}\), John Locke’s *Of Civil Government*\(^{52}\), Norman Kemp Smith’s *The Philosophy of David Hume*\(^{53}\), Thomas Hobbes’ *Leviathan*\(^{54}\), C.E Vaughan’s

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\(^{44}\) Mayne, *Hindu Law*, (11th edn.).


\(^{47}\) *Naradasmriti*, XVIII; *Sacred Book of the East*, Vol.XXXII.


\(^{49}\) Dr. B.N Sinha, *Law and Social Change in India*, (Deep and Deep Publications, New Delhi, 1999).


\(^{52}\) John Locke, *Of Civil Government* (Book II).


Political Writings of Jean Jacques Rousseau\textsuperscript{55}, Adam Smith’s The Wealth of Nations\textsuperscript{56}, Harold J Laski’s Grammar of Politics\textsuperscript{57}, Karl Marx’s Das Capital\textsuperscript{58} and John Neville Figgis’ Studies of Political Thought from Gersen to Grotius\textsuperscript{59}. However, these works reflect the personal views of the philosophers.

The jurisprudential conception of property has been lucidly spelt out by John Austin\textsuperscript{60}, Salmond\textsuperscript{61}, Roscoe Pound\textsuperscript{62} and Hohfeld\textsuperscript{63}.

1.7.3 Literature on International Norms

Apropos the international norms related to proprietary rights, research literature with special reference to India, is virtually nil. Hence, the researcher relied heavily on the international instruments available in the web sites of the United Nations and other International Organisations\textsuperscript{64}.

1.7.4 Literature on the Position in Other Legal Systems

In their work, An Introduction to Comparative Law\textsuperscript{65}, Konrad Zweigert & Hein Kotz highlight the significance of comparative study. The classification of the legal systems of the world into Romanistic, German, Anglo-American, Nordic, Socialist etc. on the basis of distinctive features or ‘styles’, is really fascinating; and it provided a strong basis for the comparative study of different legal systems.

\textsuperscript{55} C.E Vaughan, Political Writings of Jean Jacques Rousseau, (Cambridge, 1915).
\textsuperscript{56} Adam Smith, The Wealth of Nations, (Bantam Dell, NewYork, 2003).
\textsuperscript{57} Harold J. Laski, Grammar of Politics, (Surjeet Publications, 2003).
\textsuperscript{58} Shlomo Avineri, The Social and Political Thought of Karl Marx, (Cambridge University Press, 1968).
\textsuperscript{59} John Neville Figgis, Studies of Political Thought from Gersen to Grotius, 1414-1625, (2\textsuperscript{nd} edn., Cambridge, 1923).
\textsuperscript{60} Austin, Jurisprudence, (Vol.I).
\textsuperscript{61} Salmond, Jurisprudence, (7\textsuperscript{th} edn., Sweet & Maxwell, 1924).
\textsuperscript{62} Roscoe Pound, An Introduction to the Philosophy of Law, (Yale University Press Universal Book Traders).
\textsuperscript{63} Hohfeld, Fundamental Legal Conceptions, (1923).
M.V Pylee’s *Constitutions of the World*[^66] is a unique publication consisting of thirty nine Constitutions of the world. From Albania to the United States of America, it covers a wide spectrum. This work is an invaluable help in getting a bird’s eye view of the Constitutional law relating to property rights and land acquisitions in different legal systems.

Mahendra P. Singh’s *Comparative Constitutional Law*[^67] is a collection of essays; of which “Right to Property: Problems of Interpretations” in G.S Sharma’s *Property Relations in Independent India: Constitutional and Legal Implications*[^68], is highly useful for the study on land acquisition.

### 1.7.5 Literature on Indian Constitutional Provisions

On the basis of a critical evaluation of the case law relating to land acquisitions, H.M Seervai, through his *Constitutional Law of India*[^69], initiates a discussion on the right to property in India; along with a vehement criticism of the Constitutional amendment in this regard.

B.N Rau’s *Indias’ Constitution in the Making*[^70] contains the relevant discussion and debates that took place on the floor of the Constituent Assembly which paved the way for the inclusion of the right to property as a fundamental right in the Indian Constitution. The rationale for such a right is discernible in this work.

Granville Austin in his painstaking study entitled ‘The Indian Constitution: Cornerstone of a Nation’[^71] has lucidly explained the sequence of events during the freedom struggle and how an agreement on the need for having fundamental rights

[^68]: G.S Sharma (ed.), *Property Relations in Independent India: Constitutional and Legal Implications*, (Indian Law Institute, New Delhi, 1967).
was arrived at. It also brings to the limelight how a consensus was arrived at by the founding fathers of the Indian Constitution to have a set of fundamental rights after taking into consideration various viewpoints echoed by distinguished members of the Constituent Assembly. This work proved to be very useful in portraying the Constitutional framework for land acquisition in India.

P.M Bakshi’s *The Constitution of India*\(^72\) provides a critical appraisal of the Indian Constitutional provisions and judicial interpretations.

M.P Jain in his book, *Indian Constitutional Law*\(^73\), has taken great pains in exploring the legal interpretation of various Constitutional provisions. This treatise gives guidelines for systematising the judicial decisions on land acquisitions.

M.V Pylee in his *Constitutional Government in India*\(^74\) discusses the main factors responsible for the incorporation of fundamental rights in the Indian Constitution. However, the work mechanically enumerates the fundamental rights, paying no particular attention to the social, legal and economical implications of land acquisitions.

### 1.7.6 Literature on the Statutory Provisions in India

As far as the Indian statutory regime is concerned, the available literature remains in the form of running commentaries on existing statutes; along with mere references to case law. P.K Sarkar’s *Law of Acquisition of Land in India*\(^75\) and George Johnson & Dominic Johnson’s *Laws on Land in Kerala*\(^76\) contain lengthy commentaries on statutory provisions in India.


Although the treatises and works mentioned above and cited in the bibliography covered relevant issues relating to land acquisitions, the theme and the approach adopted in the present study has not been attempted so far.

1.8 Objectives of the Study

The present study primarily aims to ascertain:

- How far ‘right to property’ is guaranteed and protected under Indian law when compared to other legal systems?
- Whether the present land acquisition law is in tune with the Constitutional and international norms?
- What are the principles governing the amount of compensation payable to the displaced persons; and whether the principles are logical and rational?
- Does the social interest in land acquisition, conservation of natural resources etc. prevail over the individual interest in full exploitation of private property; especially in the case of tribal land?
- What is the impact of the allocation of more land for special economic zones and the conversion of agricultural land into industrial lands as part of the New Economic Policy?
- Whether the Land Acquisition Act, 1894 is a comprehensive piece of legislation that properly addresses the issues relating to land acquisition? If not, what are the necessary changes/amendments in this regard; and how far the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which is intended to repeal the Land Acquisition Act, 1894 has been successful in incorporating such amendments?

1.9 Hypothesis

- The Land Acquisition Act, 1984 is a weak, inefficient and draconian legislation; and a ‘fertile land’ for lawyers. The recent legislative attempt in
the form of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is also futile.

- Courts have leant towards protecting the property rights of individuals; but the legislature amended Constitution and minimised judicial scrutiny over land acquisitions.

- ‘Urgency’ is a matter of subjective satisfaction of the appropriate government; and the government is the best judge as to whether a requisition is for a ‘public purpose’ or not. These issues being a matter of policy; Courts have a very limited role to play.

- The present law has failed to solve the issues related to land acquisition; at the same time, the New Economic Policy and the entry of foreign multinational corporations has added fuel to the fire.

1.10 Research Methodology

The study is primarily doctrinal. Analytical, comparative, critical, historical and statistical methods are also employed. An empirical study was conducted by the researcher to find out the real problems faced by the displaced/interested persons in connection with the application of the provisions of the Land Acquisition Act at the time of acquisition of land. Thiruvananthapuram, the capital of Kerala is a fast developing urban area and a good specimen for all kinds of major developments. Acquisition of even a small area in such a city has an unpredictable impact upon the interest of the displaced persons. The facts being so, for the collection of data, only the areas within the district of Thiruvananthapuram were taken into account. The study covers the acquisition of land for various public purposes like road widening, railway over bridge construction, industrial acquisition, air port development and Vizhinjam port construction.
1.11 Sources

The primary and secondary sources include the Constitutions of various States, statutes, case law, international instruments, authoritative treatises on jurisprudence, articles published in national and international journals and web sites.

1.12 Chapterisation

The content of the present thesis is divided into ten Chapters. The Introductory Chapter traces the evolution of the right and ownership over property. In this chapter, the evolution of property rights has been traced out separately for different periods: Ancient, Medieval, British and post Constitutional. It outlines the thematic sketch of the study summarising the research problem, scope of the study, review of literature, objectives of the study, hypotheses, research methodology and sources of data.

Chapter II is a discussion on the philosophical and jurisprudential conceptions of property. Various theories on property rights propounded by eminent jurists, sociologists, political thinkers and economists are included. It also contains an enquiry into various dimensions of property rights which enables a man to enjoy his life in a political society.


A comparative evaluation of the land acquisition laws under various legal systems forms the subject matter of Chapter IV. In this chapter, acquisition of property under European, Continental and Socialist laws is analysed. The concept of
Chapter V deals with Indian Constitutional provisions relating to land acquisitions. Protection of property rights before the 44th amendment and its aftermath and how far the inclusion of Article 300-A tackle the individuals’ ‘right to property’, which was a fundamental right prior to the amendment, are the thrust areas of this chapter. Instances of judicial interventions to protect the property rights of the individuals are critically evaluated in this chapter.

Indian statutory regime in this regard forms the subject matter of Chapter VI. Since the present law relating to land acquisition in India remains scattered, the study focuses on critical evaluation of various statutes namely; the Land Acquisition Act, 1894 – the kingpin legislation; and other statutes including the Requisition and Acquisition of Immovable Property, Act 1952; the National Highways Act, 1956 and the Railways Act, 1989.

Chapter VII looks into the conflict between community interest and private interest. How far the new legislation, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 compromises the interest of the community and individuals are explored in this chapter. A comparative study of the Land Acquisition Act, 1894 and the new legislation has also been undertaken.

Chapter VIII deals with the various aspects relating to ‘compensation’ and ‘award’. Statutory and non-statutory principles for calculation of compensation to the persons who are displaced or affected due to acquisition by government are the main focus of this chapter.

The New Economic Policy and its impact upon the weaker sections including indigenous people in India, is the focal point of Chapter IX. Issues raised by the
Foreign Investment Policy, New Industrial Policy (NIP) of 1991, and declaration of Special Economic Zones are unearthed in this chapter.

In the ‘Concluding Chapter’, an analysis of the foregoing chapters, summary of the discussion and deliberations on the subject are included. The conclusion of the findings with recommendations and suggestions for revamping the existing legal frame work are presented in this chapter.