Chapter III

Social Justice and Right to Property

Social justice tries to establish an egalitarian society where justice and independence are made available to the deprived sections of the people. Social justice wants to wipe out economic and social inequalities from the lives of the common masses in a country like India. Clement Atlee has said, “If a free society cannot help the many poor, it can not save the few who are rich.”

Through social justice an effort has been made to uplift the lives and conditions of the backward classes (caste-wise), the downtrodden agriculturists, the bonded labourers, the deprived women and children etc. India is a country saddled with numerous problems so gigantic in proportion and nature that it was felt by the framers of our constitution that only by social justice some of the problems could be mitigated.

Justice to Agriculturists:

To provide social justice to the tillers of the land i.e., agriculturists, land should be made available to them. So, in India the urgent need was to bring about land reforms in order to make social justice and land available to the actual tillers.

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of land. Justice Holmes' observation that "The life of the law has not been logic, it has been experience"\(^2\) is nowhere more clearly illustrated than in the history of the constitutional provisions relating to land reforms in India. The abolition of the feudal structure which means the abolition of the zamindari system was necessary in India to make the landless agriculturists the true owners of the land. This is also necessitated by the socialistic pattern of society which has been formulated by the Constitution of India. Land reforms pertain to immovable property i.e., associated with land. So the notion of property existed and its importance has been realised.

**Property from Different Perspectives:**

As G. Hegel points out: "If emphasis is placed upon my needs, then the possession of property appears as a means to their satisfaction, but the true position is that, from the stand point of freedom, property is the first embodiment of freedom and so is in itself a substantive end."\(^3\) So property has been considered to be a means of freedom besides fulfilling the needs and demands which are to be found associated with property. The idea of property has evolved through centuries. In primitive societies there was no place for law or property and the only law that prevailed or existed was that 'might is right', and the same idea prevailed with regard to property. Those who yielded more political power possessed more property. So it can be submitted that the right to property was

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understood in different senses. Firstly, it comprises those primary things, without which human dignity or life cannot prevail, i.e. food, shelter and clothing. Secondly, for existence of life, i.e. to have primary things a person needs to have a vocation, profession or livelihood, i.e. the farmers' plough, lawyers' books etc. and Thirdly, property relates to acquiring and retaining objects without which the enjoyment of life and hard work gets diminished. In this regard it is pertinent to refer to Pandit Jawaharlal Lal Nehru’s address in a Constituent Assembly relating to property. He observed, “( I ) draw the attention of the House to the very conception of property which may seem to us an unchanging conception but which has changed throughout the times, and changed very greatly, and which is today undergoing a very rapid change. There was a period when there was property in human beings. The king owned every thing – the land, the cattle, human beings. Property used to be measured in terms of the cows and bullocks you possessed in old days. Property in land then became more important. Gradually the property in human beings ceased to exist. If you go back to the period where there are debates on slavery you will see how very much the same arguments were advanced in regard to the property in human beings as are some times advanced now with regard to the other property. Well slavery ceased to exist.”

The notion of property not only occurred during ancient ages but its existence and importance was deciphered during the medieval and post medieval

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4 C.A.D. Vol. 9 at 1194.
ages. It is also found that the socialist and capitalist countries of the world give due importance to the concept of property.

**Property in the Socialist and Capitalist Countries:**

The 1954 Constitution of the Peoples Republic of China extensively dealt with private property. *Article 10* gives the capitalist the right to own the means of production and other capital according to law. But it is qualified by the second paragraph of the same Article which states that the state policy is to use, restrict and transform capitalism for its own use. *Article 11* says: “The state protects the rights of citizens to own lawfully earned income, savings, houses and other means of subsistence.” *Article 12* states: “The state protects the right of citizens to inherit the private property.” *Article 13 and 14* constitute riders. *Article 13* states: The state may, in the public interest, requisition by purchase, take over for use or nationalise both urban and rural land as well as other means of production on the conditions provided by law. *Article 14* states: The State prohibits the use of private property by any person to the detriment of the public interest. But a new Constitution was enacted in 1982 and *Article 13* of this Constitution states that Citizens’ lawful private property is inviolable.

The State, in accordance with law, protects the rights of citizens to private property and to its inheritance

The State may, in the public interest and in accordance with law expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned.
The third paragraph might undermine the importance of private property because the state can acquire private property for its use. Again compensation to be paid is to be decided by the state machinery only because 'due' or 'just' are not qualified by the word 'compensation'. Though adjectives 'just' or 'due' are not there, the state will definitely follow the principles of fair-play. Whether it be a communist or capitalist country, no matter what political ideology it pursues, every country has the inherent right to take private property for public use and accordingly to pay compensation which the State thinks to be the adequate amount. So in China the State is the ultimate authority to decide what amount of compensation is to be paid to the private owners.

The capitalist country of America has been particular and definite in protecting the right of property. The fifth U.S. amendment states that no person ‘... be deprived of life, liberty or property without due process of law ... ’ Similarly, the Irish Constitution of 1937 addresses the right to property in article 43 (2) which states that “The state accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath and inherit property.”

So, we find that the 'due process' clause as given in the fifth and fourteenth amendment in the American Constitution and article 43(2) of the Irish Constitution are qualifiers to the right to private property. So it can be submitted that here lies the difference between the capitalist and socialist countries' conception of property. The capitalist countries are far more specific and definite
about the manner and circumstances under which private property might be
circumscribed than the socialist countries. The ‘due process’ clause of U.S
constitution provides that if controversy arises regarding the deprivation of
private property then it would be subject to judicial review. So also article 43(2)
of the Irish Constitution provides that delimitation must be done through law and
not by any executive fiat and if situation so demands private interest must be
reconciled with social justice and for the exigencies of the common good.

In China it does not clearly speak about what role the government should
play when controversy arises about taking of private property and subsequently
with regard to payment of compensation.

In America the framers of Bill of Rights did not consider that property,
which is an offspring of freedom of action, would in any way be opposed to
freedom in general.5

J. Madison has observed "That is not just a government, nor is property
safe under it, where the property which a man has in his personal safety and
personal liberty is violated by arbitrary seizures ..." 6

The founders of American constitutionalism believe that the property is
an important aspiration in the private sphere of individuals. After the New Deal
of President Roosevelt the judiciary began to at last interfere with the economic
policies of the state and to also follow the judicial restraint in exercising

6 James Madison, “Property,” *Writings of James Madison*, Vol. 6 pp. 102-3(1906); quoted in P.
Ishwar Bhat, “Tracing Right to Property in the Bosom of Right to Live and Personal Liberty,”
legislative limitation on property rights. President Kennedy in his message said: “Both human rights and property right are foundations of our society.”

In India the right to property has given rise to much controversy, more than perhaps any other country in the world. India is neither a truly capitalist nor a socialist country but it takes the attributes and ideology of both capitalism and socialism. So we have a mixed socialism where both the private and public sector thrive and co-exist and it can be submitted that as a consequence of it the right to property has led to so much controversy.

**Property during the British Rule in India:**

The right to property did not exist in recent times, i.e. after the independence of our country. But as early as in 1895, the famous Home Rule Bill specified certain constitutional rights and one of these was inviolability of one's house (i.e. property). The government of India of 1935 conferred certain rights to the British subject under section 275 and 297 to 300 and it included the protection against discrimination in respect of employment, right to property etc. The Joint Committee on Indian Constitutional Reforms for the first time stated that expropriation of private property would be lawful if it is for public purposes and compensation is determined either in the first instance or after an appeal by some independent authorities. But the determination of compensation by independent competent authority was omitted by an amendment. The amendment

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7 Ibid., p. 19.
proposes that the law should either fix the amount of compensation or fix the principal upon which it is to be assessed by some arbitrator or tribunal.

Finally section 299 of the Government of India Act 1935 provided certain safeguards against compulsory acquisition of property and payment of 'compensation' in the case of property acquired for public purpose. In 1946 the British Cabinet Mission proposed for a Constituent Assembly and for setting up of an advisory committee and with this committee, a sub-committee on fundamental rights was to be framed.

**Right to Property and the Constituent Assembly:**

The Constituent Assembly met for the first time on 9th of December, 1946 and tried to spell out the powers, functions and duties of the various organs of the government which was so far under British Rule. The Assembly wanted a viable and feasible bill on fundamental rights of which the right to property constituted the prime concern among the members of the assembly.

K.M. Munshi in his draft had proposed the following provision: "No person shall be deprived of his life, liberty or property without due process of law. "9 K.T. Shah’s draft said that “The state can take private property and compensation can be paid when private property was taken for religious institution”10

Finally, on 26 March 1947, the Sub-committee on fundamental rights came out with the following draft clause: “No property, movable or immovable

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9 K.M. Munshi’s draft, FIC, Vol. II p. 75.
of any person or corporation, including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of just compensation for the property taken or acquired and specifies the principles on which and the manner in which the compensation is to be determined." 11

B.N.Rau was of the opinion that the ‘due process’ clause might prove to have serious impediment to social justice and instead he suggested that the following clauses should be inserted: ...” The State may limit by law the rights guaranteed by sections 11, 16 and 27 whenever the exigencies of the common good so required."12 G.B. Pant also opined that the “due process clause would prove serious problem to the abolition of zamindari i.e. the feudal structure which still prevails in India13 but his suggestion of taking over property only for governmental purposes was dropped.14 But Alladi Krishnaswami Ayyar said that section 299 of the Act of 1935 did not prevent the government from acquiring property.

The Fundamental Right to Property. So the final form of the right to property was incorporated in Part III of our Constitution that is the fundamental rights. Article 19 lists some of the rights and among them article 19(1)(f) declared that all citizens shall have the right ‘to acquire, hold and dispose of property’. This article not only provided the right but Article 31 also provided

12 B.N.Rau’s note, FIC, Vol.2, pp. 151-52
certain safeguards against the compulsory acquisition of individual properties. It was based on the English model of private property that is sub-section 1 and 2 of section 299 of the act of 1935. But article 31(1) adopted the language of section 299(1) while clause (2) of article 31 departed from section 299(2). It comprehensively dealt with all private properties movable or immovable, whereas movable properties were outside the purview of section 299(2). Article 31 (2) not only dealt with acquisition of properties but also taking possession of properties to include requisition within its purview. Section 299(2) dealt only with acquisition.

There are two brilliant studies on property and payment of compensation, one by Professor C.H. Alexandrowicz in his *Constitutional Developments in India* and the other by Mr. H.C.L. Merillat in an article “A Historical Footnote to Bela Banerjee’s Case.”15 Professor Alexandrowicz referred specially to the speeches made by Pandit Nehru and Sir Alladi Krishnaswami Ayyar and both of them were of the opinion that the guarantee in article 31(2) with regard to the payment of compensation and the omission of words ‘just’ or ‘adequate’ before ‘compensation’ made the legislature the final authority in the determination of compensation. It excluded judicial review except where there was fraud on the Constitution or, in the words of Sr. Alladi where the legislation was merely of ‘colourable device’. So it can be submitted that the compensation acquired a very significant role or position with regard to the abolition of zamindari system which

was necessary for agrarian reforms in keeping with the tune of socialistic pattern of society conceived for India. Damodar Swarup Seth described provision for compensation in article 31 as “Magna Carta” in the hands of capitalist India. He said that it was important for “the state to pay the owner of property in all cases and at market value and in fact, even partial compensation would have no justification when a general transformation of the economic structure on socialist lines took place. The State, therefore, must be left free to determine compensation according to social will and prevailing social conditions.”

Socialism and the Right to Property:

The notion of compensation under the fundamental right to property resulted in much convergence and divergence of opinion. But the process of eminent domain (right to acquire private property) was given a great deal of importance mainly because India had adhered to the socialist society which was thought to be the only way to usher in social justice.

The original Constitution of India did not have the word ‘socialist’ and it was inserted only after 27 years of its existence through the 42nd amendment. Nehru said regarding socialism: “I am convinced that the only key to the solution of the world’s problems and India’s problems lies in socialism and when I use this word I do so not in a vague humanitarian way but in the scientific economic sense. Socialism, is however, some thing even more than an economic doctrine; it is a philosophy of life and as such also appeals to me, I see no way of ending

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16 B. Shiva Rao, The Framing of India’s Constitution Vol. 5, p. 293. quoted in Bakshish Singh, p. 82.
the poverty, the vast unemployment, the degradation and subjection of Indian people except through socialism. This involves vast and revolutionary changes in our political and social structure, the ending of vested interest in land and industry as well as the feudal and autocratic Indian states system. That means ending of private property except in a restricted sense and the replacement of the present profit system by a higher ideal of cooperative service. It means ultimately a change in our instincts, habits and desires. In short it means a new civilization radically different from the present capitalist order.” 17 Hence Nehru favoured socialism as he thought it would usher in social justice and thereby remove social inequalities and disparities. The importance of socialism was reflected when the right to property was included as a fundamental right under article 31 and 19(1) (f). India being an agricultural country, socialism could be introduced here only when the different land reforms were carried out. The malice of land reforms can be removed only by the abolition of zamindari system, fixation of ceilings on land holdings, distribution of surplus land etc. This was thought to bring about a fair distribution of wealth, i.e. land, which was considered to be an important component of social justice and this would enforce rapid economic development together with land reforms. Legislature has no doubt laid importance on bringing about socialism and the judiciary also endorsed it. In Samatha vs. State of Andhra Pradesh, the Supreme Court has stated while defining socialism: “Establishment

of the egalitarian social order through Rule of law is the basic structure of the constitution."\(^{18}\)

Nani A. Palkhivala has said that "State ownership is to social justice what ritual is to religion and dogma to truth. State ownership and state control are the shells of the socialism which are really intended to protect and promote the growth of the kernel."\(^{19}\) To bring about socialism Nehru organised basic institutes and infrastructure like Planning Commission, public sector enterprises, strategic state-managed industries etc. Indira Gandhi also initiated socialism by nationalising the key industries, abolishing privy purses and bringing about urban land ceiling legislation. The Constitution makers were aware that mere adherence to an abstract democratic ideal was not enough and that it was necessary to secure to the people economic and social freedoms in addition to political ones. According to Justice O. Chinappa Reddy, "The importance of securing economic and social freedom was realised, curiously enough, though designedly, neither the right to work nor the right to adequate means of livelihood, just and human conditions of work, living wage and decent standard of living, nor the right to education or right to public assistance in case of unemployment were made fundamental rights. Every thing that smelt of socialism was relegated to the

\(^{18}\) AIR 1997 SC 3297, 3330,

\(^{19}\) Nani A. Palkhivala, \textit{We, The People} (1999) p. 61.
It is also feared that the word socialism would not make it a truly welfare socialist state unless the basis tenets of socialism like the right to work, complete elimination of private property, decent wages etc. are made practicable. Though they have been placed under the directive principles, by the process of harmonious interpretation by the judiciary these principles have made directive principles having socialist flavour practicable and workable. The directive principles have given importance to social justice. The Courts have taken the view in Champakam Dorai Rajan vs. State of Madras\textsuperscript{21} that the fundamental rights are pre-eminent vis-à-vis the directive principles. But this notion of the judiciary created problems because then the socialist concept given in the directive principles cannot be implemented because they were non-justiciable.

However, this judicial attitude was changed in 1958 when in Re- Kerala Education Bill Chief Justice S.R. Das while affirming the primacy of fundamental rights, qualified the same by pleading for a harmonious interpretation of the two. He observed: “Nevertheless, in determining the scope and ambit of the fundamental right relied on by or on behalf of any person or body, the Court may not entirely ignore this Directive Principles of the state policy laid down in part IV of the Constitution but should adopt the principle of

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\item \textsuperscript{21} AIR 1951 SC 226
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harmonious construction and should attempt to give effect to both as much as possible. In *Keshabananda Bharati vs. the State of Kerala* Justice K.S. Hegde and A.K. Mukherjea said: “the fundamental rights and directive principles constitute the ‘conscience of the Constitution’... There is no anti thesis between the fundamental rights and Directive Principles ... and one supplements the other.”

Again in *Unnikrishnan vs. State of Andhra Pradesh* Justice Jivan Reddy said that ‘the provisions of Part III and IV are supplementary and complementary to each other’, and not exclusionary of each other and that the ‘Fundamental Rights are but a means to achieve the goal indicated in part-IV’. So it can be submitted that the fear that the fundamental rights will not give effect to the social justice concept of the socialism as given in the directive principles is without any basis. It is so because through the different legislations and also by judicial intervention the socialist concepts have been effectuated. The first step in this regard was the downgrading of the fundamental right to property to an ordinary constitutional right which began immediately after the Constitution came into existence in 1950. The Central and the state governments passed many legislations to regulate the right to property which was found to be eminent to bring social justice to the Indian masses. Hence the government firstly tried to

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22 AIR 1958 SC 956, at 966-67
23 AIR 1973 SC 1461 at 1461.
24 AIR 1993 at 2213.
reorient the agrarian structure of the economy by trying to confer property rights on the actual tiller of the land, abolishing zamindari and redistributing surplus land, and giving security of tenure to the tenants etc. Secondly, the government with regard to the urban property adopted measures to provide housing to the people, to ensure clearance of the slums and town planning, acquire property and impose a ceiling on urban land ownership etc. In the third page, the government undertook the regulation of private enterprises and nationalisation of some commercial undertakings. So these measures brought about a socialist philosophy on the part of the Central and the state governments. This was so because it was found that socialism was the answer to mitigate the macro problems of the Indians and thereby to disburse social justice. Karl Marx has said that "The full and free development of every individual is one of the basis principles of socialist society."25 It can hardly be denied and contradicted that under true socialism the inequalities in every aspect of life can be wiped out, thus leading to the establishment of a welfare state where all the citizens of the nation can have two square meals a day, a roof over a head and basic necessities of life. For example, when the feudal forces fought legal battles for the survival of the capitalist goals than Parliament passed the first and seventeenth amendments to give effect to the socialist notion inscribed in our Constitution. If the Constitution makers had avoided these basic principles then they would have committed a fraud on the Constitution and this would have made the prevalence of socialism redundant.

Swami Vivekananda declared: “I am a socialist because half a loaf (for the hungry Indian humanity) was better than none.”26 V.R. Krishna Iyer also said: “Socialism was the answer to the hungry and impoverished population of India and it was duly and effectively realized by the founding fathers of our Constitution.”27 Socialism can be realised only when there is no discrimination in our social, economic and political plans and the distributive justice is realised by the just and fair use of our resources. So it has been held that the word socialist implies in our Constitution the following:

a) *Excel Wear vs. Union of India*28 has stated that Article 39(d) would enable the court to uphold the constitutionality of the laws of nationalisation of private property.

b) *Randhir Singh vs. Union of India*29 observed that article 14, 16 would enable the court to deduce the fundamental right to “Equal pay for equal work.”

c) *Nakara D.S. vs. Union of India* and others30 has interpreted that Article 14 enables to strike down the statute which fails to achieve the socialist goal to the fullest extent or which adopts a classification which is not in tune with the establishment of a welfare society.

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27 Ibid.
29 AIR 1982 SC 879 para 8.
d) *Dharwad Employees vs. State of Karnataka*\(^{31}\) has observed that Article 39(d), 14 would enjoin the state to regularise 'casual workers', with parity in pay with regular workers.

e) *Samatha vs. State of Andhra Pradesh*\(^{32}\) observed that Article 14, 15, 16, 17, 21, 23, 38, 39, 46 and all other cognate Articles seeks to reduce inequalities in income and status and provides equality of opportunity and facilities.

*Randhir Singh vs. Union of India*\(^{33}\) describes the word 'socialism' as vague. The Supreme Court in *Nakara D.S. vs. Union of India*\(^{34}\) has observed that its principal aim is to eliminate inequality of income and status and standards of life, and to provide the decent standard of life to the working people. In *G.B. Pant University of Agriculture an Technology vs. State of U.P* \(^{35}\) the court has said that Socialist concept of society as laid down in part III and IV of the Constitution ought to be implemented in the true spirit of the Constitution as stated.

**Defining Right to Property:**

So we find that both the judiciary and the legislature have taken steps to uphold socialism. The term 'justice' given in the Preamble aims to achieve socialism and negate the formation of a capitalist state. The first step to uphold socialism was followed in the fundamental right of property as Article 31

\(^{31}\) AIR 1990 SC 883.

\(^{32}\) AIR 1997 SC 3297.

\(^{33}\) AIR 1982 SC 879 para 8.

\(^{34}\) AIR 1983 SC 130 para 33-34.

\(^{35}\) AIR 2000 SC 2695 para 3.
guarantees the right to private property. It is necessary to study in detail how the right to property has been taken away from chapter III of fundamental rights and placed in ordinary constitutional law. The clause 1 of article 31 assures protection of private property. In order to uphold the socialist concept different amendments have been carried out. Before the amendments let us go through the article 31 as given in part-III which is considered to be one of the most controversial provisions of our Constitution.

**Definition of Article 31 (as originally stood in the Constitution)**

Article 31(1): No person shall be deprived of his property save by authority of law.

Article 31(2): No property, movable or immovable including any interest in, or in any company, owning any commercial or industrial undertaking, shall be taken possession of, or acquired for public purposes under any law authorising taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which and in the manner in which, the compensation is to be determined and given.

Article 31(3): No such law as is referred to in clause 2 made by the legislature of the state shall have effect unless such law has been reserved for the consideration of the President, has received his ascent.

Article 31(4): If any Bill pending at the commencement of this Constitution in the legislature of the state has, after it has been passed by such
legislature, been reserved for the consideration of the President and has received his ascent then, not withstanding any thing in the Constitution, the law so assented to shall not be called in question in any Court on the ground that it contravenes the provisions of clause 2.

Article 31(5): Nothing in clause 2 shall effect

(a) The provisions of any existing law other than a law to which the provisions of clause (b) applies or (b) the provisions of any law which the state may here after -

(i) For the purpose of imposing or laving any tax or property,

(ii) For the promotion of public health or the prevention of danger to life and property or

(iii) In pursuance of any agreement entered into between the government of the Dominion of India or the government of India and government of any other country or otherwise, with respect to property declared by law to evacuee property.

(b) Any law of the state enacted not more than 18 (eighteen) months before the commencement of this Constitution may within three months from such commencements be submitted to the President for his certification, and thereupon, if the President by public Notification also certifies, it shall not be questioned in any court on the ground that it contravenes the provisions of clause 2.

The owning of private property was recognised in India but at the same time the principle of eminent domain that existed in America was also found in
India and it was mainly because India had adopted mixed socialism. The two essential ingredients of the *eminent domain* are: (i) Property is taken for public use and (ii) Compensation is paid for property taken. The Indian version of *eminent domain* is to be found in entry 42, List III which says 'acquisition and requisition of property'. The terms acquisition and requisition have been defined by the leading Indian authorities M.P. Jain and Mr. Durga Das Basu which are as follows. According to Mr. Basu in *Babubhai Jashbhai Patel vs. Union of India* acquisition implies the extinguishment of the rights of the party whose properties is acquired and would not include regulation of the manner of its use. Requisition in *Jevani Devi Paraki vs. L.A Collector* implies that the title remains with the owner and only the possession goes to the requisitioning authority. According to M.P. Jain the words compulsory acquisition and requisition did not occur in the original article. In its place the words in the article were 'taken possession of or acquired'. But the Supreme Court giving a liberal interpretation to these words held that they meant the same things as 'deprivation' in Article 31(1). The result of the judicial approach was that abridgement of the incidence of property might amount to 'deprivation' for

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36 M.P. Jain, p. 1255.
37 Ibid.
38 AIR 1983 Guj 1 para 5.
39 AIR 1984 SC 1707 Para 16-17, page 1825.
40 M.P. Jain, p. 1265.
which compensation became payable even though the state might not have acquired the same.

Nehru and Social Justice:

The concept of *eminent domain* was adopted to carry out land reforms in order to follow the path of socialism. It was emphasised by the Constitution makers so as to attain social justice by the abolition of zamindari system through the different legislations. The exceptional importance given to Article 31 is demonstrated by the fact that its adoption in the original form in the Constituent Assembly was moved in the Parliament by Prime Minister Pandit Jawaharlal Lal Nehru himself. While moving for the adoption of this article the Prime Minister expressly referred to the revolutionary nature of the land reforms which were then contemplated and added that the Congress Party has pledged itself to the abolition of the feudal zamindari system and that it was necessary to ensure its abolition rather than risk a reform which would come into existence not by law but by other means.\(^{41}\) Moreover, there were long standing pledges of those who had worked for Independence to bring about a fairer distribution of wealth. The need was to use the machinery of the state to bring about rapid economic development and land reforms which intended the socialist concept and for this, Article 31 is relevant for the purpose of the above pledges. So the recognition of private property does not disable it from being taken by the government lawfully and on payment of compensation. The ruling party, i.e. the Indian National

Congress was divided on the subject of compensation with regard to the compulsory acquisition and presented three points of view. 'One favoured the full compensation for acquisition of property, the second view preferred some thing less than full payment, specially in major scheme of social reforms. The third group wanted the zamindars to be dealt with special basis, favouring payment of amounts less than the market value of the property acquired'.

While eminent jurists Alladi Krishna Swami Ayyar and K.M. Munshi were of the view that as the word 'compensation' was not preceded by the word 'just', it will mean that the compensation fixed by the Parliament or fixed in accordance with the principles laid down by the Parliament will be final. Pandit Jawaharlal Lal Nehru speaking in the Constituent Assembly on 10 September 1949 on the question of compensation vis-à-vis the avowed policy of the Congress pledging for the abolition of the zamindari, had this to say: "Eminent lawyers have told us that on proper construction of this clause, normally speaking, the judiciary should not and does not come in if Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of law, where in fact there has been a fraud on the Constitution or not? But normally speaking, one presumes that any Parliament representing the entire community of the Nation will certainly not commit a fraud.

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42 Ibid., p. 317
43 B.Shiva Rao, *The Framing of India's Constitution* Vol.5 pp. 296-97, quoted in Bakshish Singh, p. 82.
on its own Constitution and will be very much concerned with doing justice to the individual as well as the community.\textsuperscript{44}

Referring to the role of the judiciary in interpreting the payment of compensation, Pandit Govind Ballabh Pant observed: "The court is not to regard itself as super legislature and sit in judgement over the act of the Legislature as a Court of appeal or review. The Legislature may act wisely or unwisely. The principles formulated by the legislature may comment to a Court or they may not, the province of court is normally to administer the law as enacted by the Legislature within the limits of its power. Of course, if the Legislation is a colourable device, a contrivance to outstep the limits of the legislative power, or to use the language of private law, is a fraudulent exercise of the power, the Court may pronounce the legislation to be invalid or ultra vires. The Court will have to proceed on the footing that the legislation is intra vires. A constitutional statute cannot be considered as if it were a municipal enactment and the Legislature is not entitled to enact any legislation in the plentitude of the power confided in it."\textsuperscript{45} So it can be submitted that since the Constitution began, the framers, specially Nehru, were not in favour of too much judicial interference with regard to the payment of compensation and emphasised that the legislature should be given a free hand in this aspect.

\textsuperscript{44} C.A.D. Vol-IX, page-1193
\textsuperscript{45} B. Shiva Rao, \textit{The Framing of India's Constitution} Vol. 5, p. 293. quoted in Bakshish Singh, p. 83.
Limits on Compulsory Acquisition of Property:

Originally Article 31(2) imposes limitations on the Parliament and the state legislatures with regard to the compulsory acquisition of property. It said that compulsory acquisition of the property must be for public purpose and should be according to law and the law should provide for the payment of compensation for the property acquired. The law must either fix the amount of compensation or lay down the principles according to which the compensation is to be determined. Further, Article 31(3) says that the state legislations with regard to the compulsory acquisition of property would be reserved for the consideration of the President which indirectly implies that it can be vetoed by the Central government. So it has been seen that while drafting Article 31(2) special care has been taken to see that the various zamindari abolition acts, which was passed by the state legislature or pending before the legislature at the time of the commencement of the Constitution, were not struck down by the courts on the ground of inadequacy of the compensation. Thus the makers of the Constitution made special provisions in clauses 4 and 6 to protect the legislation in agrarian reforms and they did not want this legislation to become a play thing in the hands of the judiciary.

Land Reforms Legislation and Judicial Responsibility:

When the Constitution came into force different state Governments carried out agrarian or land reforms by enacting legislation collectively called the ‘Zamindari Abolition Act’ but the validity of this act was challenged despite
clauses 4 and 6 of article 31. The Patna High Court held in *Kameshwar Singh vs. State of Bihar*\(^{46}\) that *The Bihar Land Reforms Act*, 1950 was unconstitutional, not on the ground of the inadequacy of compensation but on the ground that it contravened the provisions of Article 14 of the Constitution. On the other hand, the Allahabad and Nagpur High Courts upheld the validity of the corresponding laws in Uttar Pradesh and Madhya Pradesh respectively. With a view to putting an end to all these litigations and thereby to safeguard the various land reform laws against any attack on the violation of the fundamental rights, and also true to his promise, Pandit Jawaharlal Lal Nehru commented in the Constituent Assembly on 10 September, 1949 that “No Supreme Court or no judiciary can stand in Judgment over the sovereign will of the entire community.”\(^{47}\)

**First Constitutional Amendment and the Right to Property:**

Moving the Bill for the First Amendment Pandit Nehru said: “This Bill is not a very complicated one; nor is it a big one. Nevertheless, I need hardly point out that it is of intrinsic and great importance.” He further said that the real important provision which he was putting before the House related to Article 31. Emphasising on the need of article 31-B and Ninth Schedule he said that “if they did not make proper arrangement for the land all their schemes would fail.” He opined: “When I think of this article the whole gamut of pictures comes up before my mind. I am not a zamindar nor am I tenant, I am an outsider. But the whole length of public life has ultimately connected, or was intimately connected with

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\(^{46}\) AIR 1951 Patna 91.

\(^{47}\) C.A.D. Vol. 9, p. 1193.
agrarian agitations in my province.”\textsuperscript{48} So the first Constitutional Amendment Act added 31(A), 31(B) and Ninth Schedule to the Constitution. Article 31(A) added by the first amendment laid down that no law providing for the acquisition by the state of any estate or of any right therein, or for the extinguishing or modifying any such rights, would be void on the ground of any inconsistency with any of the fundamental rights contained in Article 14, 19, and 31.\textsuperscript{49} The original Article 31 smothered the process of zamindari abolition, but it did not prevent legislation from dealing with other aspects of agrarian economy, e.g. fixation of ceiling on agricultural holdings in the hands of one person so as to prevent large holdings, the consolidation of fragmented holdings etc. Article 31B provides that Acts and Regulations mentioned in the Ninth Schedule shall not be deemed to be void, or ever to become void, in spite of any adverse judicial pronouncement, on the ground that they are inconsistent with, or that they take away or abridge any of the fundamental rights. The Acts and Regulations enumerated in the Ninth Schedule are protected and includes both pre and post constitutional law. So 31B and Ninth Schedule are protective umbrellas which provide the Acts and Regulations actually placed in the Schedule. Dr. B. R. Ambedkar, the then Union Law Minister stated the Statement of Objects and Reasons as follows: “The validity of the agrarian reform measures passed by the State legislatures in the last three years has, in spite of the provisions of the clauses (4) and (6) of Article


\textsuperscript{49} M.P.Jain, p. 1282.
31, formed the subject matter of dilatory litigation, as a result of which the implementation of these important measures, affecting large numbers of people has been held up. The main object of this bill are ... to insert provisions fully securing the constitutional validity of zamindari abolition laws in general and certain specified Acts in particular.\textsuperscript{50}

But the first amendment was challenged in \textit{Shankari Prasad Singh Deo vs. Union of India}.\textsuperscript{51} The Constitution bench by a unanimous decision upheld the validity of the impugned Act. The court held that amendment in Constitution under Article 368 is not law within the meaning of Article 13 and as such the prohibition in Article 13 (2) does not apply to an amendment which takes away or abridges fundamental rights. The word “Law” under Article 13 refers only to rules and regulations made in exercise of ordinary legislative power and not to constitutional amendments under Article 368 with the result that Article 13(2) does not apply to amendments made in this article. So the abridgement of Article 31 by newly inserted Articles 31 A and 31B was upheld as valid. The court also said that 31A and 31B did not directly affect the jurisdiction of the High Court and the Supreme Court and as such ratification of impugned amendment by not less than one half of the state legislature was not required.\textsuperscript{52}

This mainly reflects the court’s anxiety to protect the agrarian reforms against any technical hurdle. Chief Justice H.J. Kania wrote the leading judgment.

\textsuperscript{51} AIR 1951 SC 458.
\textsuperscript{52} M.L. Upadhaya “Agrarian Reforms,” in S.K. Verma and Kusum. p. 573
in the first ever agrarian reform case decided by the Supreme Court that is *Shankari Prasad Singh Deo vs. Union of India.* The court in this case upheld the Act and stated the reasons which led to the passing of the Act: "What led to the enactment is a matter of common knowledge ... certain measures of agrarian reform in Bihar, Uttar Pradesh and Madhya Pradesh by enacting legislation which may compendiously be referred to as Zamindari Abolition Acts. Certain zamindars, feeling aggrieved, attacked the validity of those Acts in courts of law on the ground that they contravene the Fundamental Rights ... The High Court at Patna held that the Act passed in Bihar was unconstitutional while the High Courts at Allahabad and Nagpur upheld the validity of the corresponding legislation in Uttar Pradesh and Madhya Pradesh respectively. Appeals from those decisions are pending in these courts. Petitions filed by some other zamindars seeking the determination of the same question are pending. At this stage, the Union Government, with a view to putting an end to all these litigations and to remedy what they consider to be certain defects brought to light in the working of the Constitution, brought onward a Bill to amend the Constitution, which, after undergoing amendments in various particulars, was passed by the requisite majority as the Constitution (First Amendment Act, 1951)."

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53 AIR 1951 SC 458.
Judiciary and Agrarian Reforms:

An appeal against the judgment was made in the Bihar High Court in *Kameshwar Singh vs. State of Bihar*\(^5^4\) where the agrarian reform legislation was questioned. The appeal was heard along with the Uttar Pradesh and Madhya Pradesh Act, and they were declared valid in their entirety but the Bihar Act was declared to be valid except sections 4(b) and 23 (f) which were considered void. Section 23(f) said that the *arrears* due from zamindars might be adjusted against compensation payable to them, which was unconstitutional. The court felt that the provision was not related to agrarian reforms and hence not protected by Article 31(a). While rejecting the contention in *State of Bihar vs. Kameshwar Singh* that the Bihar Act was a fraud on the Constitution the court made the following observation: “It is by no means easy to impute a dishonest motive to the Legislature of a State and hold that it acted ‘malafide’ and maliciously in passing the Bihar land reform Act or that it perpetrated a fraud on the Constitution by enacting this law. It may be that some of the provisions of the Act may operate harshly on certain persons or a few of the zamindars and may be bad if they are in excess of the legislative power of the Bihar legislature but from that circumstance it does not follow that the whole enactment is a fraud on the Constitution.”\(^5^5\) So it can be submitted that it cannot be said in clear terms that the Bihar Land Reforms Act was a fraud on the Constitution with regard to the payment of compensation to the zamindars.

\(^5^4\) AIR 1951 Patna 91.
\(^5^5\) AIR 1952, 276
The Constitution bench in *Dhirubha Devi Singh vs. State of Bombay* in October 1954 upheld the validity of the *Bombay Talukdari Tenure Abolition Act, 1949* against graver objection. The petitioner said that the act was open to challenge against section 299(2) of the Government of India Act, 1935 even after it had been repealed by Article 395 of the Constitution. The court rejected this contention and held that section 299(2) stood merged with Article 31(2) from the date of the commencement of the Constitution. So, the impugned act could not be challenged on any such ground. The court upheld the validity of many legislations in the cases that followed:


2. *The Vindhya Pradesh Abolition of Zagir and Land Reforms Act, 1952 (State of Vindhya Pradesh vs. Mordhivaj Singh)*


5. *The Kerala Agrarian Relations Act, 1961 (Purushothaman vs. State of Kerala)*

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56 AIR 1955 SC 47
57 AIR 1960 SC 1008
58 AIR 1970 SC 796.
59 AIR 1959 SC 475.
60 AIR 1961 SC 288.
61 AIR 1962 SC 694.
Quantum of Compensation Sub-Divided:

The quantum of compensation which is paid by the government for the private property as given in Article 31(2) in the original Constitution acquired a controversial dimension. The word compensation did not mention any adjective like 'just' or 'adequate' unlike the U.S Constitution. The Supreme Court displaying a creative stand ruled that the omission of words 'just' or 'adequate' before compensation was immaterial because the meaning of compensation in itself was just equivalent for the property acquired. Thus it can be submitted that it has refuted K.M. Munshi's view in the Constituent Assembly regarding compensation. The main case advocating this judicial principle was the State of Bengal vs. Bela Banerjee. Here the West Bengal government had an Act known as "Development and Planning Act 1948" which provided for acquisition of land for public purpose but fixed the compensation to not exceed the market value of the land as estimated on 31 December 1946. The state tried to justify the imposition of ceiling on compensation stating that the legislature under Article 31(2) of the Constitution has a discretionary power to either fix compensation or to lay down the principles according to which compensation will be determined. But it was not accepted by the court and Chief Justice Patanjali Shastri thus observed in the above case: "Within the limits of basic requirements of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgement as to what principles should guide the determination of

63 AIR 1954 SC 170.
the amount payable. Whether such principles take into account all the elements which make true value of the property appropriated and excludes matters which are to be neglected is a justiciable issue ... the fixing of anterior date for the ascertainment of the value may not, in certain circumstances, for instance when, the proposed scheme becomes known but before it is launched and prices rise sharply in anticipation of benefits to be derived under it, but the fixing of an anterior date, which might have no relation to the value of land when it is acquired, may be many years later cannot but be regarded as arbitrary ... Any principle for determining compensation which denies to the owner this increment in value cannot result in the ascertainment of the true equivalent of the land appropriated." 64

A few days after the Bela Banerjee case, the judgment of the Supreme Court was delivered in the State of West Bengal Vs Subodh Gopal Bose65 wherein also it was held that 'compensation' means 'full indemnification' or market 'value' of the property appropriated. The Supreme Court stressed that Article 31(1) and 31(2) were not mutually exclusive in scope and content; that they should be read together and understood as dealing with the same subject matter viz., protection of private property and that 'deprivation' contemplated in Article 31(1) was nothing but 'acquisition or taking possession' of property referred to in Article 31(2). Thus, curtailment of an incident of estate was held to

64 AIR 1954 SC 170
65 AIR 1954 SC 92.
fall within Article 31(1) and (2). So it throws new light regarding the extent of protection accorded to ownership of private property under our Constitution. In this case it was further debated whether Article 19(1) (b) and Article 31 are correlated. The court was of the opinion that Article 19(1) (b) and Article 31 were not correlated. Chief Justice Patanjali Shastri said that “I am of the opinion that under the scheme of the Constitution, the freedoms ... as freedoms are embodied and protected ... under Clause (1) of Article 19, the powers of State regulation of those freedoms in public interest being defined in relation to each of those freedoms by clause (2) to (b) of that Article, while rights of private property are separately dealt with and their protection provided for in Article 31, the cases where social control and regulation could extend to the deprivation of such rights being indicated in para (ii) of Sub-clause (b) of clause (5) of Article 31 and are exempted from liability to pay compensation under Clause (2)(1).” 66 Justice S.K Das was of the same view when he said that it is a settled law “that the freedom referred in Article 19(1) ... are guaranteed to a citizen of India while he is a free man ... But as soon as he loses his capacity to exercise his rights ... he cannot complain of infraction”. 67

The Article 31 Clause 1 says that deprivation of property should be under the authority of law. The legislative expropriation of property is not touched though such an expropriatory law must otherwise be valid in law and within the competence of the legislature. In Chiranjeet Lal vs. Union of India Justice B.K.

66 AIR 1954 SC 96.
67 AIR 1954 SC 106.
Mukherjee put it thus, "it is the right inherent in every Sovereign to take and appropriate the private property belonging to individual citizen for public use. The right which is described as 'eminent domain' in American law, is like the power of taxation an offspring of political necessity and it is supposed to be based upon an implied reservation by Government that property acquired by citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owners." 68

In State of Bihar vs. Kameshwar Singh, Justice Mahajan adverting to the power of the State in respect of compulsory acquisition of property observed: "This power is a sovereign of the state power to take property for police use has been exercised since olden times. Kent speaks of it as an inherent sovereign power. An incident of this power of the state is the requirement that property shall not be taken for public use without just compensation ... On the continent the power of compulsory acquisition is described by the eminent domain." 69

Justice B.K. Mukherjee added in the instant case, "it cannot be disputed that in every Government there is inherent authority to appropriate the property of the citizens for the necessities of the state and constitutional provisions do not confer this power though they generally surround it with safeguards." 70

Chief Justice Patanjali Shastri also said: "The exercise of such power (compulsory acquisition by state) has been recognized in the jurisprudence of all civilized countries as

68 AIR 1950 SCR 869.
69 AIR 1952 SC 252.
70 Ibid.
conditions by public necessity and payment of compensation. All legislation in this country authorizing such acquisition of property from regulation 1 of 1824 of the Bengal Code down to the Land Acquisition Act, 1984, proceeded on that footing.\(^71\) Chief Justice Patanjali Shastri further held that the terms ‘taking possession’ of or ‘requisitioning’ used in Article 31(2) are not in contradiction to the term ‘acquisition’ but are to explain and amplify the term ‘so as to make it clear’ that the words taken together cover even those kinds of deprivation which do not involve the continued existence of the property after it is acquired … for instance, include destruction which implies the reducing into possession of the thing sought to be destroyed as a necessary step to that end.\(^72\) Again in Chiranjeet Lal vs. Union of India\(^73\) Justice S.K. Das held his own view (In the minority judgment) that if deprivation of property is brought about by means other than acquisition or taking possession of, no compensation is required, if it has occurred by the authority of law.

Before 1955, the Supreme Court has taken the position that the statute infringing the Article 31(2) was liable to be struck down on the ground that, ‘compensation’ provided was inadequate and that ‘compensation’ ought to be just equivalent of the property acquired and the ‘compensation’ regarding its adequacy was a justiciable matter. Justice Fazal Ali in State of Jammu & Kashmir

\(^71\) Ibid.
\(^72\) AIR 1954 SC 99.
\(^73\) AIR 1950 SCR 869.
vs. Sanaullah\textsuperscript{74} expressed the same opinion of Justice B.K. Mukherjee in the Chiranjeet Lal vs. Union of India\textsuperscript{75} case that the idea of compensation is inherent in acquisition of land. So it can be submitted that once property is acquired compensation is to be paid.

**Judiciary and Social Interest:**

The courts were also concerned to bring welfare to the common masses by the distribution of surplus land. In fact it was toying with the idea to implement the socialist view and said that social interest stands out to be above the individual interest. It can be submitted that though the Constitution did not speak any thing about the judicial role with regard to the payment of compensation, the judiciary was still concerned with the complex proposition of the compensation. Therefore it has given its verdict trying to balance the individual and social interests which is thought to be the only reliable barometer of the distribution of social justice. In *State of West Bengal vs. Subodh Gopal* the court observed that “we cannot overlook that the avowed purpose of our Constitution is to set up that the welfare state by subordinating the social interest in individual liberty or property to the larger social interest in the rights of community ... The police power of the State is ‘the most essential of powers, at times most inconsistent, and always one of the least limitable powers of the Government.’ Social interests are ever expanding and are too numerous to enumerate or even to anticipate and, therefore, it is not possible to circumscribe the limits of social control ... It must

\textsuperscript{74} AIR 1966 JK 45 at 51.

\textsuperscript{75} AIR 1950 SCR 869.
be left to the State to decide how and to what extent it should exercise the social control."  

Another important view of compensation was laid down by the Supreme Court in *Dwarka Das Srinivvaasan vs. Sholapur Spinning and Weaving Company*. An ordinance was passed by the Central Government vesting the assets and management of the Sholapur Mills in government-appointed Directors. The court declared the ordinance as bad because vesting of companies' property on government nominees who function under the orders meant that the companies' property in fact has been taken possession of by the State, thus depriving the company of the compensation. The party said that as there was no change in ownership and only management has been taken over, Article 31 is not applicable. The court rejected the argument and held that 'taking possession of', in Article 31(2) meant that Article 31(2) would not apply unless the property was vested in the state for state purpose. The court ruled that compensation was payable no matter by what process a person was deprived of his property, or what use the state made of it. So it can be submitted that that compensation is to be paid when the state takes over the ownership of company by nominating its own directors. Once the State takes the property of the company it would be deemed to be taken for the public purpose. Again in *Saghir Ahmed vs. State of Uttar Pradesh*, the court held that depriving a person of his interest in a commercial

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76 AIR 1954 SC 192.
77 AIR 1954 SC 119.
78 AIR 1954 SC 728
undertaking attracted Article 31(2) although the State did not acquire or take possession of. Taking possession of kans infested land temporarily by the State for purposes of reclaiming was held in State of Madhya Pradesh vs. Champalal to be taking possession of land within Article 31(2) for which compensation was payable. These cases establish the fact that the word ‘acquisition or taking possession’ in Article 31(2) was synonymous with ‘deprivation’ in Article 31(1).

According to M.P. Jain, one of the leading jurists of constitutional law of India, "If the right to enjoy property was impaired or if any incidents of property was abridged or diluted, or if the value of the property was affected by any law, compensation became payable irrespective of the fact whether the state was acquiring the property for public use or just seeking to regulate it." The crucial question was put forth in Gullapalli Nageswar Rao vs. Andhra P.S.R.T. Corporation whether the ‘deprivation’ resulting from government regulation was ‘substantial’ or not. The question was left to be decided by the courts and thus, the courts had to draw a balance between state ‘regulation’ and ‘private property.’

When the judicial verdict of the cases belied the expectations of Pandit Jawaharlal Nehru and Pandit Govind Ballav Pant and the fear expressed by

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79 AIR 1965 SC 124.
80 M.P. Jain, *Constitutional law of India*. p. 1265.

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Damodar Swarup Seth in the Constituent Assembly proved true when the Supreme Court interpreted the word 'compensation' to mean 'full equivalent' at the market value of the property, when the court rejected the plea that full payment of 'full equivalent' will make the urgent social reforms well nigh impossible. “However, the age long motions of the sanctity of private property, British practice in Indian Legislation and American Doctrine prevailed. The court was unable to discard the view that the word 'compensation' comprises in itself the connotation of full equivalent.” So it can be submitted that the court adopted this view because there was colonial influence over their jurisdiction.

Fourth Amendment and the Right to Property:

To tide over the judicial hurdle regarding the payment of compensation the fourth amendment act was passed in 1955, which came into force from 27 April 1955, and the then Home Minister Mr. M.C. Setalvad gave the following reasons for the Amendment Bill. According to him, “Parliament alone would have all the necessary material and data for determining the compensation … Large projects meant for the uplift of the community in general in fulfillment of the objective which form part of the process of reconstruction of the new order cannot come within the limited purview of Courts and tribunal. That was the intension (of the Constitution makers) but the language did not fully convey the intensions that were behind it …”

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85 Rajya Sabha debates, 19th April 1925, Bakshish Singh., pp.132-33

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In the fourth amendment the words *acquisition* and *taking possession of* were replaced by the expression *to compulsorily acquire or requisition.* In order that societal needs do not suffer due to interpretation of the word *‘compensation’* by the court as meaning *‘full equivalent’,* the fourth amendment of 1955 provided the following as under:

(i) that no law providing for acquisition or requisition “shall be called in question in any court on the ground that the compensation provided by the law is not adequate.”

(ii) that where ownership is not transferred, “it shall not be deemed to provide for the compulsory acquisition or requisitioning of property notwithstanding that it deprives any person of his property.”

(iii) To get over this difficulty, Article 31(2) was amended and a new provision i.e. Article 31 A (2) was added by the fourth amendment.

So, after this amendment the Parliament wanted to make the legislator the only arbiter regarding compensation, the courts having no jurisdiction to scrutinise anything related to the compensation. It can be submitted that this was the view of the Constitution makers including Pandit Nehru and others because they did not want judicial interference with regard to the payment of compensation. B.N. Rao’s views that the Indian Constitution is not concerned with what is ‘legally permissible’ but what is politically wise proved wrong after the fourth amendment.\(^86\) When the Supreme Court held that compensation was

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payable in case of 'substantial dispossessing' or 'serious impairment' of the property right, the Central government was not satisfied with this judicial approach and wanted to restrict the payment of compensation. Compensation was payable only when there was acquisition involving transfer of right of possession to the State and not for mere deprivation of the property right. So the fourth amendment made the deprivation of properties in two categories: (1) Compulsory acquisitions or requisition of property by the State for a public purpose and (2) Deprivation of property without the ownership or right of possession being transferred to the State.

Here compensation was payable by the State in category (1) and not in category (2) in which case, only a valid law was needed. In fact the fourth amendment wanted to tailor the Constitution in this regard according to the wishes of the framers of the Constitution, i.e. compensation would be decided by legislation only. Pandit Nehru said in Lok Sabha: "It was obvious that those who framed failed to give expression to their wishes accurately and precisely and thereby the Supreme Court and some other Courts have interpreted it in a different way." Though the fourth amendment intended to make compensation non-justiciable, it could not totally exclude the interference of the court. It can be submitted that since in a democracy the system of checks and balances exist, to totally terminate the scrutinising of the compensation by the judiciary would not be in the true spirit of the Constitution.

87 Speech was made on 11 April 1955 in Lok Sabha.
In 1961, in *Burrakur Co. vs. Union of India*, the law acquiring the coal bearing land provided compensation only for the land and not for the minerals. The Supreme Court refused to hold the land bad stating that the question regarding non-payment of compensation for minerals related to the adequacy of the compensation and so the courts could not go into it. This was in tune with the fourth amendment. But after this the judiciary's view again underwent a change and they decided that compensation should be paid according to market value. In *Vajravelu vs. Special Deputy Collector*, the Supreme Court held the view that the amended Article 31(2) still retain the word 'compensation' and so a law for acquisition or requisitioning should provide for 'just compensation' for the owner deprived of the property. Under the amended Article 31(2) 'just equivalent' could not be questioned on the ground of inadequacy, but if the principles were not determined or not relevant to the value of the property acquired at the time of acquisition, then the courts could intervene and scrutinise the validity of the principles. Here it can be submitted that the courts did not follow the philosophy of the Constitution makers. Nevertheless, the judiciary cannot be termed to have become a super legislature or over-interfering body.

**Change of Judicial Approach:**

It can be submitted that the judicial approach underwent changes from time to time. A particular view of the judiciary or even of the legislature cannot

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88 AIR, 1961 SC 954.
89 AIR, 1965 SC 1017.
hold good for all times to come since the society changes, people change and adjustment to the changes is also needed and expected from the judiciary, legislature etc. It can be submitted that the government should not pay compensation merely in order to save the letter of the law. The owner of the property should get his due. The legislature took the view that there should be total exclusion of judicial review. But it was not in tune with the spirit of the Constitution because to achieve social justice and establish a socialistic society total exclusion of judicial intervention is not possible. So in *Union of India vs. Metal Corporation of India* the Court reverted back practically to the view taken before the Fourth Amendment of the Constitution 1955. As stated by Chief Justice Subba Rao, “the law to justify itself has to provide for payment of ‘just equivalents’ to the land acquired or lay down principles laid down are relevant to the fixation of compensation and are not arbitrary.” The court held that the provision, which provided for compensation will include the cost of the machinery – if it is unused – and written down prices as understood in Income Tax Law. In case of used machinery no compensation would be provided as the principles laid down are irrelevant and provide for no compensation. In *State of Gujarat vs. Shantila* the judicial attitude underwent change. The Supreme Court upheld the Town Planning Act (in 1942 the Act expressed its intention to acquire land though actual acquisition took place in 1957) and compensation was

91 AIR 1967 SC 643.
92 AIR 1969 SC 634.
to be paid according to the date of notification and not the actual date of acquisition. The principle for determining compensation was not held to be ‘irrelevant’ nor was it deemed ‘illusory’ by the court. The court said that the principle of compensation could be challenged only when they are irrelevant and not on ‘just or fair compensation’. The difference between Union of India vs. Metal Corporation and State of Gujarat vs. Shantilal was that in the former case the court laid emphasis on compensation to be ‘just equivalent’ of the property acquired. But in the Shantilal case the court repudiated the idea of ‘just equivalent’ and would intervene only when the compensation is ‘illusory’ or the principle ‘irrelevant.’ So, we find that Shantilal’s case gave greater freedom to the legislature to order compensation the way it wanted for any property acquired and judiciary tried to follow the same principle keeping in mind the society’s need to establish a welfare state. It can be submitted that ‘just equivalent’ relates to the market value and it would not be proper to compensate each and every case according to the market value.

Hence a plea was made to enact a statute laying down that when a property of small people was taken over, they should be paid full compensation. The Prime Minister Pandit Jawaharlal Nehru said regarding small owners that “it will be completely wrong not to give them full compensation.” But he could not conceive of any legislature trying to harm them. Both Prime Minister and Home Minister (Mr. Pant) reiterated the applicability of the Alladi Krishna Swami Ayyar formula when the latter said that under the amendment courts can be
approached only when the compensation is almost illusory or when there has been a fraud on the Constitution.\textsuperscript{93}

Again in 1961, the \textit{Kerala Agrarian Relations Act},\textsuperscript{94} was struck down by the Supreme Court in its application to ryotwary lands in the erstwhile state. In \textit{Karimbil, Kunhikoman vs. State of Kerala}\textsuperscript{95} it was held that the lands held by ryotwary tenants were not ‘estates’ within the meaning of Article 31A (2) (a) and hence the said Act was not protected from attack under articles 14, 19 and 31 of the Constitution. In \textit{Krishna Swami Naidu vs. State of Madras}\textsuperscript{96} The court also struck down \textit{the Madras Land Reforms (Fixation of Ceiling on Land) Act 1961}. The grounds were that (a) the provisions of section 5(1) of the Act laying down the ceiling area resulted in discrimination between persons in the same circumstances and thus violated Article 14 , (b) that the provisions of section 50, read with Schedule III with respect to compensation, were also discriminatory and thus violated the said Article and (c) that as these two were basic principles of the Act the whole Act must be struck down as unconstitutional. This and other acts were declared unconstitutional which led to the passing of the seventeenth amendment Act of the 1964.

\textsuperscript{94} Kerala Act 4 of 196 \\
\textsuperscript{95} 1962 sup 1 SCR 829. \\
\textsuperscript{96} 1964 7 SCR 82 and 87 and 88}
Seventeenth Amendment and the Right to Property:

The seventeenth amendment expanded the concept of 'estate' so as to include any land held under ryotwari settlement as well as other lands in respect of which provisions are normally made in land reform enactments. It held that special provisions, i.e. the land held by the person under his personal cultivation up to the ceiling fixed by law, or any building or structure standing thereon or as appurtenant thereto would not be acquired by the state unless the law provides for compensation 'not less than its market value'. It means that the land of the cultivator within the ceiling fixed by law cannot be acquired without at least paying compensation at the market value. The Parliament sought to save the small proprietors of owner-cultivators holding land (forming part of an estate) within the ceiling by guaranteeing them the market value of their holding. The Amendment Act inserted 44 more Acts relating to land reform in the Ninth Schedule of the Constitution with a view to removing uncertainty or doubt that might arise with regard to their validity. The effect of such inclusion is to bring this Act within the protection of article 31B. Hence none of the Act nor any of its provisions can be challenged as violating the provisions of Part-III including Article 14, 19 and 31 of the Constitution.

Judicial Intervention on Seventeenth Amendment:

It has been well accepted that the protection of Article 31A (1) (a) regarding acquisition of an estate includes only those legislations concerned with agrarian reform i.e., reform pertaining to agriculture. The implication of the
expression ‘agrarian reform’ is not necessarily precise, but it has been largely construed by the Supreme Court so as to include provisions made for the development of the rural economy. Thus it can be submitted that the judiciary was not averse to bringing about land reforms for the rural economy. So the seventeenth amendment wanted to include all kinds of agricultural land called by any vernacular name in the local law of the land tenure. Apart from this, any land held or let for agricultural purposes or for purposes ancillary thereto including wasteland, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural laborers and village artisans was added to the definition. This was done perhaps because the legislature wanted to bring welfare to the actual tillers of the soil and by this amendment it wanted to speak out in clear terms who were the true agriculturists. This was because unless the real agriculturists were benefited the rural economy could not survive and the establishment of socialistic pattern of society aiming for social justice would be a misnomer. The validity of the seventeenth amendment 1964 was challenged in Sajjan Singh vs. State of Rajasthan. Shankari Prasad vs. Union of India interpretation was also challenged under the seventeenth amendment Act. Chief Justice Gajendragadkar held in Sajjan Singh vs. State of Rajasthan “that the Supreme Court can no doubt review its earlier decisions in the interest of public goods when there exists consideration of substantial and compelling nature,” and said that “if one view has been taken by this court after mature deliberation, the

97 AIR 1965 SC 845.
98 AIR 1951 SC 458.
fact that another Bench is inclined to take a different view may not justify the Court in reconsidering the earlier decision or in departing from it ... The Constitution is an organic document and ... In a progressive and dynamic society the shape and appearances of these problems are bound to change and with inevitable consequence that the relevant words used in the Constitution may also change their meaning and significance. Even so, the Court should be reluctant to accede to the suggestion that its earlier decisions should be light heartedly reviewed and departed from."99 The court by applying the rule of harmonious construction wanted to give protection to certain Acts by including them in the Ninth Schedule of the Constitution. The amendment does not fall under the proviso to Article 368 of the Constitution and does not need ratification by the State. Chief Justice Gajendragadkar opined, "... Article 368 confers on Parliament the right to amend the Constitution; the power in question can be exercised over all the provisions of the Constitution ... Having regard to the fact that a specific, unqualified and unambiguous power to amend the Constitution is conferred on the Parliament, it would be unreasonable to hold that the word 'law' in Article 13(2) takes in Constitutional amendment Acts passed under Article 368."100 The validity of the first, fourth and seventeenth amendments relating to right to property was challenged in the Supreme Court in *Golok Nath vs. State of Punjab*.101 The matter was considered by the full Court and the majority held that

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99 1965 SC 855.
100 AIR 1965 SC 857.
101 AIR 1967 SC 1643.
the expression 'law' as defined by Article 13 (3) includes not only the law made by Parliament in exercise of its ordinary legislative power but also amendments of the Constitution made in exercise of its constituent power. Accordingly an amendment would be void under Article 13(2) if it takes away or abridges the rights conferred by part-III of the Constitution. The majority took the view that the fundamental rights occupy a 'transcendental' position in the Constitution so that no authority in the Constitution including the Parliament under Article 368 could amend the fundamental rights. The court accordingly held that the first, fourth and seventeenth amendments abridging the fundamental rights are void under Article 13(2). The court took the American doctrine of 'prospective overruling' because of two reasons, firstly that the three amendments would continue to be valid, secondly a number of legislations were passed to bring an agrarian revolution which were based on the principle that the Parliament had the right to amend the fundamental rights. In Great Northern Railway vs. Sunburst Oil102 this doctrine was formulated by Justice B. Cordoza. According to this theory the case is to be determined by the court under the old principle of law but caution is given that future cases will be decided according to the rule newly created. If the Supreme Court was to give retrospective effect to the non­amenability of fundamental rights then the legislation constituting the validity would create chaos. So the decision was not to invalidate the amendments to the

102 287 U.S. 358 1932.
fundamental rights but in future the Parliament would have no right to take away or abridge any of the fundamental rights.

According to Chief Justice P.B. Gajendragadkar, "The majority decision of *Golok Nath's case* would tend to stall all future socio economic progress of the country because the power of Parliament to amend in future the Constitution so as to abridge fundamental rights was, in terms denied by the said majority decisions."\(^{103}\) Granville Austin indirectly supports the position of the judiciary when he comments on the fourth Constitutional amendment: "thus in nine years from 1947 to 1956 had the demands of social revolution taken the right to property out of Courts and placed it in the hands of legislatures. Good sense, fairness and the common weal might still be served, but so far as property was concerned, due process was dead."\(^{104}\) *Golok Nath vs. State of Punjab*\(^{105}\) wanted the fundamental right not to be made a plaything in the legislature and the judiciary even suggested that a Constituent Assembly needs to be convened by the Parliament to amend the fundamental rights. The view expressed by Ashok Mehta over the right to property more or less tallied with *Golok Nath's case* when he wrote that, "If we seek 'socialism with human face', we cannot tear down the fence deliberately raised round Fundamental Rights by the Supreme Court. The basic texture of our democracy, the character of our policy and of our pluralist society should be kept beyond the reach of legislative encroachment."


\(^{104}\) Granville Austin, p. 101.

\(^{105}\) AIR 1967 SC 1643.
There may be dispute about what constitutes 'the conscience of the Constitution'- Fundamental Rights or Directive Principles. However, this will be robbed of their substance the moment Fundamental Rights are made vulnerable. It is not clear whether the Government’s main intention is to restore the supremacy of Parliament over Fundamental Rights or whether it is to erode the right to property. The move should cause serious concern if the intention is to tear down the hedge deliberately raised by the Constitution makers and consecrated by the Supreme Court round Fundamental Rights. It can be submitted that to build a barricade around the fundamental rights and not being able to amend by the legislature would stall many social economic legislations which is also not in the true spirit of the Constitution.

The taking of private property for public purpose was found to be necessary to bring about economic prosperity and equality in the country but the task was not easy going because if the legislature tries to bring about certain changes then judicial intervention enforces some new principles that may counter the changes. In *R.C. Cooper vs. Union of India*, the principle laid down for payment of compensation for the nationalisation of eleven commercial banks was challenged because it was said that it did not provide for *just* compensation. The line of attack was on the basis of *Union of India vs. Metal Corporation of India*.

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107 AIR 1970 SC 564.
but the government argued on the basis of *State of Gujarat vs. Shantilal* \(^{109}\) and said that for the law to be valid it is not directed that the compensation should be equivalent for the property acquired and unless the law was confiscatory or the principle to determine compensation was not irrelevant than the court cannot challenge the adequacy of the compensation. The Supreme Court declared the relevant law to be unconstitutional and the court explained that the principles adopted should be those which are appropriate and recognised for determining the value of the class of property which is intended to be acquired. It can be submitted that an appropriate method to determine the value of one class of property might be wholly inappropriate to determine the value of another class of property. The court would not entertain the plea that out of the two appropriate methods, the legislators should have adopted the one more generous to the owner which should be at the same time fair and just. In the instant case, no compensation was paid for certain items of property, e.g., goodwill of the banks, unexpired leases of the properties held by the banks etc. and hence it failed to provide to the expropriated banks, compensation determined according to relevant principles.’ The court claimed in *R.C. Cooper vs. Union of India* \(^{110}\) that is the *Bank Nationalisation case* that it had wider powers to intervene in matters of compensation than it had asserted in *State of Gujarat vs. Shantilal*. \(^{111}\) So the Supreme Court in the *Bank Nationalisation case* again held the view that

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\(^{109}\) AIR 1969 SC 634.  
\(^{110}\) AIR 1970 SC 564.  
\(^{111}\) AIR 1969 SC 634.
compensation means 'just equivalent'. So it can be submitted that the judiciary had considered the welfare of the individual and not society. Mr. R.S. Gae referred to the change in interpretation when he said, "Change in interpretations of important provisions of Constitution have upset the stability of law regarding compensation payable for the acquisition of property under Article 31(2) of the Constitution."\(^{112}\) The editor, commenting on the majority judgment said: "The judiciary should see that the essential attributes of law is its 'certainty'."\(^{113}\) It is most unhealthy to have frequent changes in the interpretative jurisdiction of the highest court of the land. Mr. H.M. Seervai, Advocate General of Maharashtra said: "The words 'principle of compensation' must be read along with the concept that which is not adequate i.e. ... The compensation fixed in the Act itself cannot be challenged, it would be absurd to say that the same amount of compensation or a larger amount of compensation can be challenged on the ground that principles were not relevant. With great respect to the judgement of the Supreme Court, the emphasis of the 'relevant principle' leads to absurd results because the Supreme Court has never asked itself the question 'Relevant to what'? In Article 31(2), the principles must be relevant to determining 'compensation.' But this relevance is to be judged by the fact that a fixed compensation which is not adequate cannot be questioned in a Court ... If principles of compensation leave out an element of value or do not give full weight to each element of value they cannot be struck down as irrelevant because

\(^{112}\) Bakshish Singh, p. 98.
\(^{113}\) 1 SCC 1970 p. 226.
their irrelevance only goes to adequacy. The question to ask is: What is the real value of the property acquired? What is the amount of compensation when determined on principles, relevant or irrelevant? Is that amount inadequate or illusory? If inadequate, the law cannot be challenged; if illusory it can be struck down ... On the question of ‘compensation’ I will only say that majority judgment in the Bank case in substance ... goes back to Bela Banerjee’s case. ’"14"

It is to be submitted that this thesis should not be misunderstood as delving into the matter of compensation for too many pages because the judicial opinion of the meaning of the word ‘compensation’ has posed hindrances about socialism and social justice through land reforms. Another reason is that the framers of the Constitution did not speak out clearly about the non-intervention of the courts with regard to compensation. It was so because they did not foresee that as they did not speak out in clear terms it would lead to so much controversy.

Twenty-fifth Amendment and the Right to Property:

The judicial pronouncement on the principles laid down in R.C. Cooper vs. Union of India15 that is the Bank Nationalisation case was not palatable for the legislature, and so it enacted the 25th Amendment of the Constitution in 1971. The major change brought about in Article 31(2) was to substitute the word ‘amount’ for the word ‘compensation’ because the word ‘compensation’ had developed certain connotations because of judicial interpretations. Compensation


15 AIR 1970 SC 564.
means just equivalent of the property acquired but the word 'amount' had no such connotations. Therefore the court will not scrutinise the quantum of compensation paid by the government. So the amendment said that the court shall not inquire into the validity of any Act which declared that it is for the promotion of the principles contained in Articles 39(b) and (c) of the Constitution. The 25th Amendment added a new clause that is 31(c) and it ran as follows: “Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 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 Articles 14, 19 or 31.” The 25th Amendment wanted to lessen the scope of the courts in relation to the fundamental right to property. Article 31 (c) wanted urgently to establish a socialistic pattern of society in India. Up to 1971, the fundamental rights prevailed over the directive principles of state policy and a law enacted to give effect to the directives would be invalid if it conflicted with fundamental rights. But Article 31(c) changed the relationship and conferred some primacy to Article 39(b) and 39(c) over the Article 14, 19 and 31. So it can be submitted that now the court has established the relation between fundamental rights and the directive principles as both of them are important for the governance of the country. Thus if the directive principles like Articles 39 (b) and (c) are for the welfare of the people then they should prevail over the fundamental
rights. But all this should have a rational basis and should be related to the achievement of social justice.

The Difference between Article 31A and Article 31C:

Another aspect of Article 31C was that it was broader than Article 31A. While Article 31A was limited to specified topics, Article 31C gave a general power to the state legislature to adopt any measure which might have nexus with the objective stated in Articles 39(b) and 39(c). Article 31C consisted of two parts. The first part posited that the law giving effect to the principles in Article 39(b) and (c) cannot be challenged if it infringed the fundamental rights under Article 14, 19 and 31. The second part said that when the law in question made a declaration that it was to give effect to the policy contained in Articles 39b and 39c, the courts would be debarred from reviewing the same even if the law might not in reality, be concerned with Articles 39b and 39c. P.B. Gajendragadkar critically commented as follows: “I am inclined to think that such a blanket ban on the jurisdiction of the Courts need not have been imposed by Article 31C … in adoption of this Clause, it seems that Parliament has attempted to take the first step to claim complete sovereignty, almost similar to the sovereignty to the British Parliament. It is, however, clear that the Indian parliament, though sovereign in many ways, is not as completely sovereign as the British Parliament …that is why it has been a matter of deep regret to many constitutional lawyers in
this country that Article 31C has included the clause excluding the jurisdiction of the Courts in the matter indicated by it.\textsuperscript{116}

\textit{Criticism of Twenty-fifth Amendment:}

So Gajendragadkar did not support the total exclusion of the courts with regard to Articles 39(b) and 39(c). It can be submitted that it is right because if the legislature commits any wrong in this respect then no remedy would be possible and the legislature could not be checked, and at the same time the existence of the courts would also seem to be null and void. It is so because if the courts are totally debarred from scrutinising and correcting the follies of the legislatures within their constitutional provisions, then the balance of power between these two wings of the government, that is legislature and judiciary, will help in the establishment of a social justice leading welfare state. Similar views were also expressed by I.P Massey in his articles “Constitutions 25th Amendment Bill Vis a Vis the Power of judicial Review.” Massey says that “No one denies that in India the process of change must be smoothened so that the pace of progress may be accelerated and for this purpose obstacles shall have to be removed. But an attempt to bar the jurisdiction of the Courts by Constitutional amendments in order to quicken the pace of progress is not the right solution of the problem.\textsuperscript{117}” The Twenty-fifth Amendment according to V.G. Ramachandran ... makes the Courts to be merely “the Okaying of public purpose for any


\textsuperscript{117} 25SCC 16 40 1971.
acquisition and law. Regarding these amendments, V.K. Narasimhan expressed the view that “After the passing of Twenty Fourth and Twenty Fifth Amendments to the Constitution of India, the Fundamental Right to property, originally guaranteed under the Constitution before the first and the subsequent amendments, has become almost entirely a national right subject to the legislative prerogative of Parliament … This situation need not be viewed tragically if an actual operation of Parliament is fully responsive to public opinion and does not use its unlimited power arbitrarily and unjustly.”

The Twenty-fifth Amendment was a great step as it provided protection from being challenged in the courts of law on the ground that it violates Articles 14, 19 and 31. Part I of Article 31C was upheld as valid by a majority comprising Judges A.N. Ray, Palekar, H.R. Khanna, K. Mathew, Beg, Dwivedi and Y.V. Chandrachud, whereas Justice Reddy upheld it as valid only after deletion of Article 14. Chief Justice S.M. Sikri, Judges Shelat, A.N. Grover, K.S. Hegde and A.K. Mukerjea declared it to be void. Regarding Part II of Article 31C which ousts the jurisdiction of the courts if the law gives effect to the principles of Articles 39(b) and 39(c). Part II of Article 31C was considered void by majority of the court consisting of Chief Justice S.M. Sikri, Justice Shelat and Justice A.N. Grover. Justice K.S. Hegde and Justice A.K. Mukerjea regarded the whole of Article 31C as void. But Justice A.N. Ray, Palekar, Mathew, Beg, Dwivedi and

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Y.V. Chandrachud regarded it as valid in view of the concessions made by the respondents that the court has jurisdiction to see whether the impugned Act has any nexus with the objects of Articles 39(b) and 39(c) and if the nexus is absent, the court can declare the Act as invalid.

The controversy over right to property did not subside even after more than two decades of its existence and Golok Nath vs. State of Punjab\textsuperscript{120} created the biggest hurdle when the court laid down that Parliament can not amend the fundamental rights. If this view had been adopted by the Supreme Court in 1951, then all the zamindari Acts would have been declared void as it infringes on the fundamental rights i.e. the right to property. Then such a situation would have to stall or put a stopgap on the land reform or agrarian legislation which was so necessary to bring about social justice in country with socialist ideals such as India. Hence it created an insurmountable obstacle in the attempt to achieve social welfare by the acquisition of property.

**Keshavananda and Basic Structure Doctrine**

To remove this impasse Article 31C was challenged in Keshavananda Bharati vs. State of Kerela.\textsuperscript{121} The petitioner challenged the provisions of the *Kerala Land Reforms Act of 1963* which was amended in 1969 as violative of the fundamental rights under Articles 14,19(1) 6 , 25,26 and 31 of the Constitution of India and prayed for a writ. During the pendency of the petition Kerala Land Reforms (Amendment )Act of 1971 received the ascent of the President on 1971

\textsuperscript{120} (1967) 2 SCR 762.
\textsuperscript{121} (1973 ) SC1461.
and the petitioner challenged this amended act of 1971. The Supreme Court held the first part of Article 31(C) as valid and second part as invalid. Thus a law enacted to implement the Article 39(b) and 39(c) cannot be challenged for the violation of Article 19 and 14 but it also said that courts have the right to assess and to see if the desired law has been established to achieve the objectives. If the legislature has abused its power and makes a declaration that it does not give effect to Article 39(b) and Article 39(c) and if the declaration is a mere pretence to achieve some other object than just Articles 39(b) and 39(c), then the court can review it. So Article 39(C) cannot give protection to a law which has some remote or indirect connection with Articles 39(b) and 39(c). Justice K. Mathew observed in this case: "... if a law passed ostensibly to give effect to the policy of State is, in truth and substance, one for accomplishing and unauthorized object, Court would be entitled to tear the veil created by the declaration and decide according to the real nature of the law." 122

So this case has laid to rest the 'basic structure theory' and said that the Parliament can amend the constitutional provisions but not its basic features under Article 368. The amending power is thus not absolute or unlimited and the court will go into amendment if it destroys its basic or fundamental feature and such an amendment would become invalid. The adoption of this principle was necessary because the 'amendment' under Article 368 implies a restricted or limited meaning as it would definitely not mean a fundamental change in the

Constitution. So Article 368 cannot destroy the basic features of our Constitution which says that fundamental rights in toto are not amendable. This is because some of the rights are basic features of our Constitution and so not amendable. The right to property has not been regarded as the basic feature and so it was subject to amendment. But the right to personal liberty (Article 21) and the right to equality (Article 14 to 18) are basic features and so are not amendable. In this case Chief Justice S.M. Sikri mentioned the following as the basic foundation and structure of the Constitution:

1. Supremacy of the Constitution
2. Separation of powers between the Legislature, Executive and the Judiciary
3. Republic and Democratic form of Government
4. Secular character of the Constitution
5. Federal Character of the Constitution

Chief Justice Sikri said that the above features are discernible not only from the Preamble but the whole scheme of the Constitution. Three more basic features were mentioned.

6. The dignity of the individual secured by the various fundamental rights and mandate to build a welfare state containing the directive principles.
7. The Unity and Integrity of the Nation (*Raghunath Rao vs. Union of India*)
8. Parliamentary system

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123 AIR 1993 SC 1267.
Regarding the non amenability of the basic features given by the majority in *Keshavananda vs. State of Kerala*, the majority decision given by Justice K.S. Hedge and Justice J. Mukherjee is as follows: “Our Constitution is not a mere political document. It is essentially a social document. It is based on a social philosophy and every social philosophy like every religion has two main features, namely basic and circumstantial. The former remains constant but the latter is subject to change. The core of a religion always remains constant but the practice associated with it may change. Like wise, a constitution like ours contains certain features which are so essential that they cannot be changed and destroyed.”\footnote{AIR 1973 SC 1624.} So *Keshavananda vs. Union of India* follows the middle path because a total bar or prevention of the Parliament from amending the fundamental right will reduce the importance of the Parliament and create further problems. The *Keshvananda* case had made the fundamental rights in a cluster form and it can be changed from time to time when necessary. This case helps to achieve social justice by taking the right to property out of non amenability. So the right to property originally included in the fundamental rights ceased to exist and it is now only a constitutional right.

**Forty-second Amendment and the Right to Property:**

As a result of this controversy the *forty-second amendment* was enacted in 1976 with relation to Article 31C which was further expanded and more drastic in character. It laid down that all the directive principles will have precedence.
over Articles 14 and 19. In 1971 only directive principles containing Article 39(b) and Article 39(c) had precedence over Articles 14 and 19 but after 1976 all the directive principles had precedence over Articles 14 and 19. This is perfectly justified because the right of the community must prevail over the right of the individual. This directly reflects the subordination of individual interest to social interest and so it inherently gives importance to social justice by helping in the equal distribution of the material resources of the community. The 42nd amendment wanted to establish the principles of human right and social justice in a more precise and subtle manner in accordance with our Constitution. It also clarified the relationship between the fundamental rights and directive principles. So it can be submitted that the 42nd amendment gives precedence to the community’s interest (i.e. not prioritising the individual interest) as it is feared that it might lead to the establishment of a totalitarian regime.

**Forty-fourth Amendment and the Right to Property:**

The 42nd amendment did not imply that the importance of fundamental right has been nullified. That is because the right to equality, right to liberty etc have been basis structure doctrines. The right to property was converted into an ordinary constitutional right by the 44th Amendment Act of 1978. So it can be submitted that though the courts and the Parliament were at constant tussle with regard to the right to property, both these wings were concerned for the achievement of social justice to the landless agriculturalist. So the right to property was not totally deleted from the Constitution.
Article 300A:

The fundamental right to property under Article 31 (as originally stood) was repealed and enacted as Article 300A. Article 300A says that "No person shall be deprived of his property save by authority of law." The Constitution was explained in the following language in the statement of Objects and Reasons as justification of the change in Article 300A: "In view of the special provisions to be given to Fundamental Rights, the Right to property which has been the occasion for more than one amendment of the Constitution would cease to be a Fundamental Right and become only a legal right. Necessary amendments for this purpose are being made to Articles 19 and 31 being deleted. It would, however, be insured that the removal of property from the list of Fundamental rights would not affect the right of minority to establish and administer educational institutions of their choice. Similarly, the right of person holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected. Property while ceasing to be a Fundamental right, would, however, be given express recognition as a legal right." So all the people will have the right to enjoy property and anyone who is deprived of such enjoyment should be according to the procedure or the ways recognised by the law. Just because the right to property is not a fundamental right will not mean that any one can interfere with this individual right. The difference between Article 31(1) and Article 300A is that under Article 300A a

writ petition is not maintainable in the Supreme Court under Article 32, and a person who wants to challenge Article 300A must go to the High Court under Article 226 with the writ. The right to property held a unique position and perhaps this fundamental right had attracted a lot of controversy since the beginning of the Constitution. It is because we have wanted to adhere to socialism where the distribution of the material resources of the country should bring about common good, thereby ensuring socio economic justice. Another important point of Article 300A is that a person can be deprived of his property only by a legislative act and not by executive order of the State. The Supreme Court has observed in Bishamvra Dayal Chandra Mohan vs. State of Uttar Pradesh\textsuperscript{126} that the “State can not deprive a person of his property by taking recourse to execute its power. A person can be deprived of his property only by authority of law and not by mere executive fiat or order.” In Jilubhai Nanbhai Khachar vs. State of Gujarat\textsuperscript{127} the Supreme Court stated that the word ‘law’ in Article 300A must be an act of Parliament or state legislature, a rule or statutory order having the course of law. The material resources have been given wide connotation by the Supreme Court and it includes not only the physical resources but also includes movable and immovable property.\textsuperscript{128} Property is necessary for prosperous economic development which is realised by every government and so the legislature and judiciary supplement each other in order to not to put the

\textsuperscript{126} AIR 1982 SC 3348.
\textsuperscript{127} AIR 1995 SC 142.
\textsuperscript{128} Tamil Nadu vs. L. Abu Kavur bai, AIR 1984 SC 326.
person in a hapless condition. In *Basanti Bai vs. State of Maharashtra* \(^{129}\) it was
held that public purpose and compensation are the inherent requirements for the
taking of property and this was clearly stated. Despite the convergence or
divergence of legislative or judicial opinion the importance of property cannot be
denied. In 2000, the National Commission to Review the Working of the
Constitution was constituted to ascertain the 50 years of the working of the
Constitution which submitted its report in 2002. The Commission said that under
the right to property the displaced persons are to be provided with lands of
similar quality and need to be adequately rehabilitated. The Commission wanted
Article 300A to be reframed in the following manner:

1. Deprivation or acquisition of property shall be by authority of law and only for
   a public purpose.

2. No deprivation or arbitrary acquisition of property

   So, we find that property holds a unique position in Indian constitutional
development and this cannot be denied. Initially the judiciary followed the Anglo
Saxon method of jurisdiction by safeguarding the zamindars which was mainly
because they were still under colonial influence. But later they realised like
Justice Gajendragadkar that in order to establish a truly socialist state in India, the
right to property should be taken away from the list of fundamental rights and
placed as a constituent right. This will help to safeguard the interest of the actual
agriculturists and the landlords which will ultimately lead to the establishment of

\(^{129}\) AIR 1984 Bombay 366.
egalitarian society. This equal society will be the ultimate factor in disbursing social justice.