CHAPTER VI
RIGHT TO PROPERTY

The right to property is considered as a means of survival. It is closely related to realization of the right to life and liberty. The right to property comes after the realization of right to life and liberty in that order. The concept of property is the most ancient, most vital institution and mainly concerned with human beings. Its original function was to secure physical assistance. G.S. Pathak, the then Law Minister of the Union asserted that functions of property in view of Jhering, “its original function has been promoted to an all embracing mission of civilization and ethical significance. ‘Property’ is a social concept and being a social concept is creation of Law”. Further he asserted that in view of Bentham, “property and law are born together and die together. Before the laws were made there was no property; take away laws, and property ceases”. The main objects of the ownership of property are security and stability. It is responsible for attainment of basic needs in life i.e. food, shelter and clothing. The right to property firstly enumerated under the French Declaration of Man and of the Citizen, 1789. It states that ‘since the right to property is irritable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid’. The V Amendment of the United States of Bill of Rights has proclaimed that “no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just

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2 Id, at 8. Delivered by the Union Law Minister to the Seminar on Property Relations in Independent India:Constitutional and Legal Implications organized under the auspices of the Indian Law Institute, New Delhi which is held on 25th to 31st of December, 1966 at Ootacamund in Tamil Nadu.
3 Id, at 14.
4 Art.17 of the French Declaration of Man and of the Citizen, 1789.
The Right to property has excluded others from claiming possession, title or ownership except its true possessor coupled with title and ownership. It constitutes material benefits and other incorporeal rights attached to material things. Property in legal sense means that the sum of bundles of rights and in the case of tangible property it includes the right of possession, the right to enjoy, the right to destroy, the right to retain, the right to alienate.

In its common connotation ‘property’ means that highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another, courtesy; it includes ownership, estates and interest in corporeal things and also rights such as trade-marks, copy rights, patents and even rights in person capable of transfer or transmission, such as debts, and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession and to their capacity of being injured. The property is a term of the widest important and subject to any limitation or qualification which the context might require, it signifies every possible interest which a person can acquire, hold and enjoy, unless there is something to the contrary. The Economic Order is to regulate the social order and controls the State. It is entirely dependent on property whether private or public or State-owned. Property is a symbol of power and energy which a man holds for his use and service. It is also responsible for inequalities of status in man on the basis of differentiation in society and performance of work in the State. Property as power and prestige is liable to be concentrated in a few hands by various ways. At this juncture it ceases to perform its

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5 Vth Amendment of the U.S. Bill of Rights.
7 R.C. Cooper v. Union of India, AIR 1970 SC 564.
creative and constructive role in society and endangers unjust conditions like poverty, malnutrition, frustration, slavery, bonded labor etc.\textsuperscript{10}

The Democratic set up of State embodies the concept of man as “a doer, an exerter and developer and enjoyer of his human capacities, rather than merely a consumer of utilities”.\textsuperscript{11} These are responsible for, human capacity requires access to the material resources and also continuous and sufficient intake of material. It means to maintain human energy. If failure of access to the material resources, it is an impediment in the development of human personality. “This impediment must be described as lack of access to the means of labor if we take labor in its broadest sense of human energy”, therefore Justice Mathew, “this is where the theory of property assumes importance in a democratic society”.\textsuperscript{12} Therefore every community has property that the systems of property must be based on certain principles allocating rights of control over its physical resources such as land and goods to all its members as a pre-requisite of a social order. According to Ely, “Property is not a thing, but the rights which extend over a thing. The essence of property is in the relations among men arising out of their relations to things”.\textsuperscript{13}

The view of Plato about the property is that the property should be divided and distributed among people in the society. But the Aristotle defended the institution of private property and asserted that the equalization of property exercises a strong influence on the political society. The equality of property was necessary to preserve the community and to prevent resolutions which destroyed the State. These contents, Justice K.K. Mathew has observed “Equality, then, is for both Plato and Aristotle, fundamental principles of justice governing the distribution of property. If we think

\textsuperscript{10} Supra Note 6 at 27.
\textsuperscript{12} Id, at 49.
\textsuperscript{13} Id, at 50.
only of the ruling class in their ideal States, we may say that Plato and Aristotle were absolute egalitarians in the manner of property distribution. Whatever new ideas about property might be developed in future men could never escape from the basic concepts which the Greek thinkers have formulated”.\textsuperscript{14} The private property has always required special justifications and qualifications to survive the Society with the public interest. St. Thomas Aquinas has carefully balanced public needs against private rights. He further observed that the right to property is derived from human law. According to him:

“The common possession of things is to be attributed to natural law, not in the sense that natural law decrees that all things are to be held in common and that there is to be no private possession; but in the sense that there is no distinction of property on the grounds of natural law, but only by human agreement; and this pertains to positive law, as we have already shown. Thus, private property is not opposed to natural Law, but is an addition to it, devised by human reason ..... If, however, there is such urgent and evident necessity that there is clearly an immediate need of necessary substance, if, for example, a person is in immediate danger of physical privation, and there is no other way of satisfying his need, then he may take what is necessary from another person’s goods, either openly or by stealth. Nor is this strictly speaking, fraud or robbery.”\textsuperscript{15}

In a modern democratic society, the right to property is not free from social responsibilities and obligations. These responsibilities are states power to impose taxation on private property and if it necessary for public purpose, the State has power to acquire such property after providing compensation that acquired property. These principles are universally recognized and applied. Another kind of obligation is touches the freedom of use of property. It’s growing number of social obligations and attached by the law to the use of industrial property or contracts of employment and service.\textsuperscript{16} In essence of the property is an essential and necessary condition for the development of individual. But it is an evil after certain stage i.e. accumulation of

\textsuperscript{14} Id, at 58.
\textsuperscript{16} Id, at 150.
property rights in hands of some persons. Therefore the wisdom of the Legislators and Judges ties in striking a balance between its constructive and destructive use for individual vis-a-vis society.\textsuperscript{17}

Acharya Durga Das Basu has observed that “the property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to posses to use it and to exclude everyone else from interfering with it. The domination or indefinite right of use or disposition which one may lawfully exercise ever particular things or subjects is called “property”. The exclusive right of possessing, enjoying and disposing of a thing is property in legal parameters. Therefore, the word “property” connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status.”\textsuperscript{18} He also stated in constitutional protection of property denotes that “group of rights inhering citizen’s relation to physical thing, a right to possess, use and dispose of it is accordance with law. The property is the most comprehensive of all terms which can be used, is as much as it is indicative and descriptive of every possible interest which the party can have”.\textsuperscript{19}

The term “property” has a most extensive signification and according to legal definition, consists of free use, enjoyment and disposition by a person of all his acquisitions without any control or diminution, save only by the laws of the land.\textsuperscript{20}

Koka Subba Rao, one of the former Chief Justices of India has explained that the concept of property as “property is a general terms of extensive application. It is indicative of every possible interest which a man can have. It may mean a thing or a right which a person has in relation to that thing. It is extended to all recognized types of interest which has the characteristic of property”.\textsuperscript{21} The right to property has considered as controversial because that protects “haves” against “have-nots”. It clearly has characteristic of social rights with significant implications for the

\textsuperscript{17} Supra note 6 at 26.
\textsuperscript{19} Id.
\textsuperscript{21} Justice K. Subha Rao, Man and Society 21 (Department of Publications, Bangalore University, Bangalore, 1971).
distribution of social goods and wealth. The right to property has major implications for several important social and economic rights such as right to work, the right to enjoy the benefits of scientific progress, the right to education and the right to adequate housing. English Philosopher John Locke (1632–1704) has described about property in his second Treaties on Civil Government that right to property as natural rights such as right to life and liberty, which human beings could not be deprived of.22 Now-a-days property is considered as key concepts to the legal order. Every States economy in the World depends on the property. During 1950s and 1960s Western World has converted private property into public property through nationalization process. Hence, the right to property is not mentioned in both binding Covenants.

6.1 International Level

The International Human Rights Law has recognized that right to property is considered as human rights in various instruments. Historically human rights have been considered in the realm of individual rights such as right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining multifaceted dimension.23 Therefore, even claim of adverse possession has been considered as human rights. The English Courts has adopted the activists approach regarding right to property in its various judgments.24 The Court has played vital role for right to property which is recognized international human rights instruments. The Universal Declaration of Human Rights (UDHR), 1948 has proclaimed that “everyone has the right to own property alone as well as in association with others”

22 Manish Mishra, Property Rights and Human Development in India 10 (Prateeksha Publications, Jaipur, 2014).
and “no one shall be arbitrarily deprived of his property”.  

Article 27(2) of the Universal Declaration of Human Rights (UDHR), 1948 recognised intellectual property as a human right. Similarly Article 15(3) of International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 has recognized that any creative intellectual of individual’s moral right is protected as a human right. It is noted that the right to property applies to both individual and collective forms of ownership. In draft articles of the Universal Declaration of Human Rights (UDHR), 1948 has not imposed any limitation on right to property. Now, the right to property is not an absolute right and it may be deprived if such action is not arbitrary.

The Convention relating to the Status of Refugees, 1951 has mentioned right to property implicitly in various provisions. It recognizes the acquisition of movable and immovable property and others rights relating to lease and contracts relating to such properties, right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies, desirous of practicing a liberal profession, and transfer of their properties and assets to others. These similar provisions were mirrored in the Convention on Status of Stateless Persons, 1954. The International Convention on the Elimination of All forms of Racial Discrimination, 1965 has stipulated the State parties to eliminate racial discrimination and guarantee “the right to own property alone as well as in association with others”. The Convention on Elimination of All Discrimination against Women, 1979 has proclaimed that “to have access to agriculture credits and

25 Article 17(1) & (2) of Universal Declaration of Human Rights, 1948.  
28 Id, art.18.  
29 Id, art.19.  
30 Id, art.30.  
31 Articles 18, 19 and 30 of Convention on Status of Stateless Persons, 1954.  
loans, marketing facilities, appropriate technology and equal treatment in land property and agrarian reform as well as in land resettlement schemes".  

The Convention also urged state parties to provide equal rights to conclude contracts and to administer property; and the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether ‘free of charge or for a valuable consideration’.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their families, 1990 recognize the right of Migrant workers or their families holding property and also prevent the arbitrary deprivation of their property whether owned individually or in association with others. If such properties are required for acquisition, the State should provide to fair and adequate compensation.

The Convention on the Rights of Persons with Disabilities, 2006 provides right to property. It provides that the State parties shall take all appropriate steps in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

International Labor Organizations Convention No.169 concerning the Indigenous and Tribal People, 1989 has recognized that the rights of ownership and possession of the people concerned over the land they traditionally having such rights and the State’s obligation to identify this land and guarantee effective protection of their rights of ownership and possession. Relocation of the Indigenous and Tribal People is required, the State shall take place

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33 Art. 14(2)(g) of Convention on Elimination of Discrimination against Women, 1979
34 Id., art.15(2).
35 Id., art.16(1)(h).
38 Id., art.16.
with their free and informed consent, and they shall be provided with lands of equal
equality and legal status or be fully compensated.\(^{39}\)

In this context, it is surprising that the right to property is silent in both binding covenants on Civil and Political Rights (ICCPR), 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). Elbe Riedel suggested in his study of the Travaux Preparatories explains that this silence. It originated in the antagonistic ideological views of the Western and Eastern blocs as well as those of the North and South.\(^{40}\) It also clarified that the non-inclusion of right to property in both finding covenant means not denial of right to property. After 1966, the various international human rights instruments have been adopted by United Nation’s General Assembly that categorically recognized the right to property. The Right to Property has been inducted by the regional human rights instruments and Constitution of States in the World. The review of the International Human Rights Law has revealed that the universal recognition of the human right to property. It reflects the generalized and consistent State practice and \textit{opino juris} of the customary nature of the international law. It has recognized the universal acceptance of general interest as a lawful limitation on right to property. The private property may be acquired by the State for public interest i.e. \textit{eminent domain} – it places the social function of property under the realm of customary norms.\(^{41}\)

6.2 National Level

a) Legislative incorporation

The Parliament of India is a deliberate and legislative body. It has ample power to enact Laws for whole of India or any part thereof. India had imperial rule

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\(^{39}\) Art.15 of International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.


under the British regime for more than 200 years when right to property and land rights were under British domain. It was a bad experience of a capitalist economy compelled the freedom fighters in India to evolve a mechanism which would provide socio-economic justice to its masses after Independence. On the objective of the Constituent Assembly, Constitution and Parliament enactments have recognized that right to property in India.

Constituent Drafting Committee: The Constituent Assembly was first convened on 9 December 1946. It adopted Jawaharlal Nehru’s Objective Resolution on 22 January 1947 which formed the basis not only of various provisions of the Constitution but in preamble also. The Objective Resolution pledged to guarantee and secure to the people inter alia social and economic justice, equality and freedom. The institution of property was destined to play a vital role in the realization of these objectives. The Assembly has constituted several committees for deliberation of Constitutional protection against State’s acquisition of private property and related matters. The Constitutional Assembly has elected an Advisory Committee on 24 January 1947 for reporting inter alia on fundamental rights. Subsequently the committee elected Sardar Vallabhai Patel its Chairman. On the eve of the election of the committee Govind Ballabh Pant emphasized that fundamental rights were meant for the individual citizens who are really the backbone of the State and the cardinal centre of social activity and whose happiness should be the object of social mechanism. Pant has laid emphasis on both individual liberty and social mechanism. He realized that the ultimate object of social control was the happiness of the individual.

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42 Supra note 6 at 24.  
44 Id, at 59.  
45 The Advisory Committee, the Sub-Committee on the Fundamental Rights and the Drafting Committee.  
47 Id, at 332.
Subsequently he changed view and tried to strike a balance between individual liberty and social control. The Advisory Committee appointed a Sub-Committee on the Fundamental Rights with Acharya J.B. Kripalani as its Chairman. Both the committees have formulated certain formulae with regard to fundamental rights including right to property.\footnote{Naveen Sharma, \textit{Right to Property in India} 47 (Deep & Deep Publications, New Delhi, 1990).}

The Sub-Committee had disposed preliminary notes on fundamental rights as it was prepared by B.N. Ray, the Constitutional Advisor to the Constituent Assembly and K.T. Shah. In his notes Rau dealt with nature of problem of incorporation of fundamental rights in the Constitution and analyzed various rights guaranteed in some important Constitutions. He divided the rights into two classes. The first class dealt with the rights of the State policy which were in the nature of precepts for the Governments and not suitable for enforcement by the Courts. The second class dealt with the fundamental rights strictly enforceable before the Courts in event of illegal action of the Government. Subsequently, the Sub-Committee on Fundamental Rights accepted this division of rights into justifiable and non-justifiable rights.\footnote{\textit{Id.}} K.T. Shah also submitted a comprehensive note on fundamental rights. He grouped fundamental rights into social and economic rights forming the corresponding obligations of the State and fundamental rights of citizens and others. The substance of his draft clauses regarding property as:

\begin{quote}
“\textit{every citizen would be guaranteed the right to acquire, own, hold and dispose of property subject to Law in force; the right would be subject to the sovereign power of the State to acquire private property under the law; no proprietary rights would be allowed to, or recognized for, persons in industries concerning defense production; the soil of the Country; mines, forests and other forms of natural wealth; industries declared by Law as key, vital or parent industries; and public utilities, social services and so on; existing rights of ownership of any degree in agricultural land and properties under the preceding item would be acquired by the State subject to compensation, if any, as might be deemed proper and reasonable; Existing rights in}
\end{quote}
property of religious institutions would continue but there would be no acquisition by them in future. The State could acquire their properties and decide whether compensation should be given, and if so, then how much.\(^{50}\)

K.T. Shah conceded individual right to property which could be acquired by the State with or without compensation. In certain cases, it gave compensation, it would be reasonableness. He favored State’s ownership of key properties in the larger interest of the Society. Hence, he foresaw the assurance of human dignity and development of individual personality.\(^{51}\) The Munshi’s draft on Fundamental Rights included the following provisions related to right to property as:

“All citizens would have right-to acquire property subject to the restrictions improved by Laws; no person would be deprived of his property without due process of Law; the right to property would be guaranteed inter alia to religious bodies; Expropriation for public reasons only would be permitted on conditions determined by Law and in return of just and adequate compensation determined according to the principles laid down by law.”\(^{52}\)

The Munshi’s draft was different from K.T. Shah’s view of right to property. Munshi assigned a wider scope to the individual’s right to property and recognized its sanctity while K.T. Shah was more in the favour State’s ownership at least key properties and he emphasized on the community’s interest in property even though both of them have favored in State’s acquisition for larger interest of public. Shah thought that acquisition can even take place without providing compensation while Munshi felt that just and adequate compensation should be given. Shah has specifically stated that no proprietary rights should be allowed in certain forms of property.\(^{53}\) The draft prepared by Dr. B.R. Ambedkar did not include any specific provision regarding acquisition holding and disposition of property by an individual.

\(^{50}\) Id, p.48.


\(^{52}\) Id at 74-75 & 78.

State acquisition of private property. He suggested that the basic and key industries should be owned and run by the State. The Insurance Company should be State Monopoly and agriculture should be the State industry; and that the State should acquire the subsisting rights and such industries, insurance and agricultural land held by private individuals, the State should provide compensation to them in the form of debenture equal to the value of their rights in land. In reckoning the value of land and other property, no rise in their value due to emergency should be taken into account. The State should divide how and when the bonds would be cashed.

Dr. B.R. Ambedkar has explained that the main purpose of the above provision to put the State under an obligation to plan the economic life of the people so as to have maximum production without closing every revenue to private enterprise and also it provides for equitable distribution of wealth. He said that State ownership in agriculture with a collectivized method of cultivation and a modified version of State Socialism in the area of industry were necessary is the interest of larger interest of the Country. Nationalized insurance would provide individuals greater security and give the State resources essential for financing the economic plan.\textsuperscript{54} Dr. B.R. Ambedkar views on right to property were evidently similar to that of K.T. Shah but in sharp contrast to Munshi’s in certain aspects. There was main distinction between Dr. Ambedkar and K.T. Shah that Ambedkar favored compensation while Shah left it to the discretion of the State to pay it or not. It is specifically not worthy that Dr. B.R. Ambedkar did not speak about cash payment but the payment in bonds. Finally, the notes, memoranda and drafts prepared by its various members were discussed by the Sub-Committee. The draft report of the Sub-Committee dated 3 April, 1942 was submitted to the Chairman of the Advisory Committee. The report explained in the

\textsuperscript{54}Supra note 51 at 99.
covering letters that the rights were divided into justifiable rights which could be enforceable by the legal action and non-justifiable rights which by their nature could not be enforced by the legal action but were intended to be directives for the general guidance of the State.\(^{55}\) The draft provision regarding right to property contained in the report were as:

“no person would be deprived of his property without due process of Law; every citizen would be free to acquire property subject to reasonable restrictions imposed by Law; no property, movable or immovable, of any person or Corporation including any interest in any commercial or industrial undertaking would be taken or acquired for public use unless the provided for the payment of just compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation was to be determined.”\(^{56}\)

Other relevant provisions regarding right to property were as: every religious denomination would have the right inter alia to own, acquire and administer property; the property of any religious body would not be diverted except for necessary works of public utility and on payment of compensation\(^{57}\).

The above provisions were inducted under the part dealing with justifiable rights. Some of the provisions related to right to property have been included by the Sub-Committee on Fundamental Rights in the non-justifiable rights. These were as follows:\(^{58}\)

1. The State would strive to promote the welfare of the people by securing and protecting as effectively as it might a social order in which social, economic and political justice would inform all the institutions of national life

2. The State would in particular direct its policy towards securing:

\(^{55}\) Id., at 137.
\(^{56}\) Id., at 139 & 141.
\(^{57}\) Id., at 140.
\(^{58}\) Id., at 142.
a. That the ownership and control of the material resources of the community would be so distributed as best to sub serve the common good; and

b. That the operation of free competition would not be allowed so to develop as to result in the concentration of ownership and control of essential commodities in a few individuals to the common detriment.

It seems that some of the provisions from the drafts of K.T. Shah and Dr. B.R. Ambedkar have a glimpse in the above provisions and their ideology regarding the use of various properties for social good is reflected in those provisions.

B.N. Rau has prepared that explanatory note on the draft and has circulated it to the members for discussion and finally submitted its final report to the Chairman of the Advisory Committee on 16th April 1947. In its covering letter of the Sub-Committee explained that in respect of justifiable rights and fundamental principles of social policy were followed in the Irish model and adopted a middle course between the one contained in the constitution of the United States and the one accepted in some recent European Constitutions which mixed up the two sets of rights. It also explained that while some rights were guaranteed to every person, others were confined to citizens only.  

The new provision regarding right to property which recast the earlier provision of every citizen would have the right to acquire property. This provision imposed such reasonable restrictions may be necessary. The following were the relevant articles of the draft constitution which were presented to the Constituent Assembly for its consideration.

59 Id, at 169.
13(1) Subject to the other provisions of these articles all citizens shall have the right .... (f) To acquire, hold and dispose of property.... (5) Nothing in sub-clause ..... (f) shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of the right conferred by the said sub-clause either in the interests of the general public or for the protection of the interests of any aboriginal tribe.  

The Drafting Committee agreed to replace the words “aboriginal tribe” by the words “scheduled tribe”.  

“24(1) No persons shall be deprived of his property save by authority of law. (2) No property, movable or immovable, including any interest in or in any company owning, any commercial of industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined. (3) Nothing in clause 2 of this article shall affect: (a) the provisions of any existing law, or (b) the provisions of any law which the state may hereafter make for the purpose of improving or levying any tax or for the promotion of public health or the prevention of danger to life or property”.  

The article was not considered by the Assembly in this form. In fact, a new provision was moved for its consideration by way of amendment. The relevant entries in the legislative lists were the following:

“Entry 43 of the Union List: Acquisition or requisitioning of property for the purposes of the Union subject to the provisions of List III (Concurrent List) with respect to regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purpose of the Union”.  

“Entry 9 of the State List: Compulsory acquisition of land except for the purposes of the Union subject to the provisions of List III (Concurrent List) with respect to the regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of a State”.  

The Drafting Committee recommended the revision of these entries by suggesting that the principle on which compensation was to be paid for the

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60 Id., at 164.  
61 Supra note 51 at 522.  
62 Id., at 526.  
63 Id.  
64 Id., at 664.  
65 Id., at 666 – 667.
acquisition or the requisitioning of property should be the subject-matter of the Concurrent List. Accordingly, it included entry 35 in this list. It also recommended replacing the words “Compulsory acquisition of land” by the words “Acquisition and requisitioning of property”.

Entry 35 of the Concurrent List: The principles on which compensation is to be determined for property acquired or requisitioned for the purpose of the Union of a State.\textsuperscript{66} Other draft articles worth mentioning here were as follows:

“20. Every religious denomination or any section thereof shall have the right ….: (c) to own and acquire movable and immovable property; (d) and to administer such property in accordance with law”.\textsuperscript{67}

“30. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life”.\textsuperscript{68}

“31. (1) The State shall, in particular, direct its policy towards securing …., (ii) that the ownership and control of the material resources of the community are so distributed as best of sub serve the common good, (iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment…”.\textsuperscript{69}

The third reading of the draft constitution was adopted by the Constituent Assembly on 26\textsuperscript{th} Nov. 1949. The relevant constitutional provisions as finally settled and enforced were as follows:

Right to Freedom:

“19(1) All citizens shall have the right ….... (f) to acquire, hold and dispose of property.”\textsuperscript{70}

“(5) Nothing in sub-clause….. (f) of the said clause shall affect the operation of any existing law insofar it imposes, or prevents the State from making any law imposing reasonable restrictions on the exercise of……. the right …… conferred by the said

\textsuperscript{66} Id., at 307 in Vol. IV.
\textsuperscript{67} Id., at in 670 Vol. III.
\textsuperscript{68} Id., at 524-25.
\textsuperscript{69} Id., at 527-28.
\textsuperscript{70} Art. 19(1) (f) of the Indian Constitution, 1950.
sub-clause…… either in the interests of the general public or for the protections of the interests of any schedule tribe…”71.

**Right to Freedom of Religion:**

“26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right….. (c) to own and acquire movable and immovable property; (d) to administer such property in accordance with law.”72

**Right to Property:**

“31(1) No person shall be deprived of his property save by authority of law.
(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 purpose under any law authorizing the 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 or the compensation, or specifies the principle on which, and the manner in which, the compensation is to be determined and given.
(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.
(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this 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).
(5) Nothing in clause (2) shall effect –
(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or
(b) the provisions of any law which the State may hereafter make –
(i) for the purpose of imposing or levying any tax or penalty, or
(ii) for the promotion of public health or the prevention of danger to life or property, or
(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.
(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provision of sub-section (2) of section 299 of the Government of India Act. 1935.”73

71 Id, art.19(5).
72 Id, art. 26.
73 Id, art.31.
Directive Principles of State Policy:

“38. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social, order in which justice, social, economic and political, shall inform all the institutions of the national life.

39. The State shall, in particular, direct its policy towards securing --(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;…”

Seventh Schedule:

“List I - Union List: 33. Acquisition of requisitioning of property for the purpose of the Union.
List II - Union List: 36. Acquisition of requisitioning of property, except for the purpose of the Union, subject to the provisions of entry 42 of List III.
List III - Concurrent List: 42. Principle on which compensation for property acquired or requisitioned for the purpose of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given.”

Constitutional Provisions: The founding fathers of Indian Constitution had included right to property as a fundamental right under Part-III of the constitution. However, Parliament of India in the year 1979, by its 44th Constitutional Amendment Act has been deleted the provisions relating to right to property from the Part-III of the constitution. The Seventh Schedule has contained provision in item 33 in List-I

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74 Id, art. 38&39(b&c).
75 Id, seventh schedule.
76 Article 19(1) (f) and Article 31 were deleted by the Forty-Fourth Amendment Act, 1978. The Articles read as follows: Article 19(1) (f).-All citizens shall have the right to acquire, hold and dispose of property. Article 31.-(1) No person shall be deprived of his property save by authority of law. (2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate. (2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisition of property, notwithstanding that it deprives any person of his property. (3) No such law, as is referred to in clause (2) made by the legislature of a State shall have effect unless such law having been reserved for the consideration of the President, has received his assent. (4) If any bill pending at the commencement of this Constitution in the legislature of a State has, after it has been passed by such legislature,
related to acquisition or requisition of property for Union Purposes, item No.36 of List-II to acquisition or requisition for purposes of the State subject to entry 42 in List-III. Item No.42 of List-III has contained that the principles on which compensations for property acquired or requisition is to be determined and the form and manner in which such compensation is to be given.\textsuperscript{77} Entry 49 of List-I has been totally and exclusively devoted to intellectual laws.\textsuperscript{78} The right to property is now included in the constitution under Art. 300A. Therefore right to property is now considered as a constitutional right and not a fundamental right. The adoption of Forty-Fourth Amendment Act rectified the conflict between the Parliament and the judiciary and also indicated the changed nature of the right to property under the Indian Constitution.\textsuperscript{79} The provisions in the constitution regarding the right to property have been adopted by Constitutional Assembly after detailed deliberations of various aspects of the questions. These questions were if the right to property included under fundamental right, the State must huge power to acquire or requisition private property for public purposes. This was accepted. The next question was regarding compensation of acquire property. In this question the Advisory Committee

\textsuperscript{77} G.S. Sharma (ed.), \textit{Property Relations in Independent India : Constitutional and Legal Implications}, 95 (The Indian Law Institute, New Delhi, 1967).

\textsuperscript{78} Entry 49 of list – I states that patterns inventions and designs, copy rights, trademarks and merchandise marks.

\textsuperscript{79} T.K. Tope’s, \textit{Constitutional Law of India} 322 (Eastern Book Company, Lucknow, 2010).
of the Constituent Assembly recommended that the compensation to be paid for property acquired etc. need not be just and that “the due process of law” of the USA concept should not be applicable in India relating to right to property. The determination of compensation was to rest in the Legislature. The Legislature was to fix the compensation for acquired property. After detailed discussions these were accepted by the Constituent Assembly and same was included under Article 31(2) of the Constitution.

Sir Alladi Krishnaswami Ayyar had expressed his view that judicial review of right to property is limited. He observed:

“Law according to me, if it is to fulfill its larger purpose, must serve as an instrument of social progress. It must reflect the progressive and social tendencies of the age. Our ancestors never regarded the institution of property as an end in itself. Property exists for dharma. Dharma and the duty which the individual owes to the Society from the whole basis of our social frame work. Dharma is the Law of social well-being and varies from yuga to yuga. The sole end of property is yagna and to serve a social purpose, an idea which forms the essential note of Mahatma Gandhi’s Life and teachings”.

Subsequently, Supreme Court’s interpretation on right to property in constitution and various Laws enacted by Legislatures relating to this right indicates that judiciary exercised very wide powers and expanded the scope of judicial review. These judgments gave rise to public opinion on the powers of judiciary and of Parliament. In this connection, the Supreme Court of India has accepted that Parliament power to abridge right to property. This position was maintained from 1950 to 1967. But in 1967, the Supreme Court held that the Parliament has no power to abridge fundamental rights even by amending the constitution. This placed the right to property beyond the Parliament’s amending power of the Constitution under Article 368.

80 Id, at 322 – 323.
The various judgments of the Supreme Court has discussed that the State’s power to acquisition or requisition of private property for public purpose and State’s obligation to pay compensation has underwent various changes. A detailed discussion need not necessary in view Forty-Fourth Amendment. However the following cases may be referred to for understanding Supreme Court’s attitudes. (1) State of W.B. v. Bela Bannerjee,83 (2) P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition,84 (3) R.C. Cooper v. Union of India.85 The approach of the Supreme Court in providing compensation to acquired lands was that the compensation to be paid by the State for acquisition or requisition of private property must be “just equivalent”. This is an enlarged scope of judicial review. As a result of this view, the Parliament of India has passed many Laws for implementing some of the Directive Principles of State Policy (DPSP’s) but without providing for payment of a just equivalent compensation when private property was acquired. These Laws were struck down by the Supreme Court. These problems were highlighted by Shah, J. in State of Gujarat v. Shantilal86 as follows:

“The decisions of this Court in the two cases – Bala Bannerjee case87 and Subodh Gopal Bose case88 – were very ..... likely to give rise to formidable problems, when the principles specified by the Legislature as well as the amounts determined by the application of these principles, were declared justifiable. By qualifying ‘equivalent’ by the adjective ‘just’, the inquiry was made more controversial; and apart from the practical difficulties, the Law declared by this Court also placed serious obstacles in giving effect to the Directive Principles of State Policy incorporated in Article 39”.

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83 AIR 1954 SC 170.
84 AIR 1965 SC 1017.
86 (1969) 1 SCC 509.
87 (1970) 1 SCC 248.
88 AIR 1954 SC 170.
Justice Shah has explained that the parameters of determining compensation are just equivalent compensation. He observed in *R.C. Cooper v. Union of India*\(^{89}\) that

“the broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its potentialities. Where there is an established market for the property acquired, the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with the property, and the benefit which the acquirer is likely to obtain by the acquisition.”

The Constitution First Amendment Act, 1951 had passed for acquiring zamindari lands or bringing agrarian land reforms and it added Article 31-A retrospectively providing that no Law affecting rights of any proprietor or immediate holder shall be void on the ground that it is inconsistent with any fundamental rights under Part-III.\(^{90}\) These Laws could not be challenged on the grounds that no compensation or illusory compensation was provided. The First Amendment Act also added Article 31-B.\(^{91}\) The Constitution Fourth Amendment Act, 1955 amended Article 31-A retrospectively to cover other agrarian and Social Welfare Legislation. Art.31-A was further amended by the Constitution Seventh Amendment Act, 1964 which provided for payment of market value for acquiring lands under personal cultivation. The Supreme Court in *Golak Nath v. State of Punjab* has laid down that constitution cannot be amended to abridge fundamental rights. The Court further observed that the Constitutions First Amendment Act exceeded the Constituent Power of Parliament, and it applied the doctrine of prospective overruling, on basis of which the First Constitution Amendment and subsequent amendments were not disturbed and held to be valid.

\(^{89}\) (1970) 1 SCC 248.

\(^{90}\) *Supra* note 79 at 324.

\(^{91}\) Art.31B states validity of certain laws and regulations.
The Constitution Twenty-Fifth Amendment Act has added Article 31-C. It is providing that a Law giving effect to Articles 39(b) and (c) cannot be challenged on the grounds of Violation of Articles 14, 19 or 31. Kesharananda Bharati v. State of Kerala\textsuperscript{92} upholds the validity to first part of Article 31-C. The Constitutional Forty-Second Amendment Act, 1976 has further expanded. It provided that any Law giving effect to any directive principle under Part-IV cannot be challenged under Articles 14, 19 and 31. This amendment of Article 31-C was struck down as violation of basic structure of the constitution in Minerva Mills v. Union of India.\textsuperscript{93} The Constitution Forty-Fourth Amendment Act came into force on 20\textsuperscript{th} June 1979. It has deleted the right to property as mentioned in Articles 19(1) (f) and 31 and added new Article 300A. The Judicial Pronouncements on the right to property in the context of land reform legislation made it difficult for Parliament to implement certain Directive Principles of State Policy (DPSP’s) and ensuring the ideal of socio-economic justice. These difficulties were sought to be removed by amendments to the Constitution from time to time particularly Articles 31 and other relevant Articles.\textsuperscript{94}

The deletion of Article 19(1) (f) and Article 31 does not mean that the right to property is prohibited in India. It finds its place in newly added Article 300-A under Chapter-IV in Part-XII of the constitution. It was inserted by Forty-Fourth Constitution Amendment Act, 1978. This Article reads as follows:

300-A. Persons not be deprived by property save by authority of Law – No person shall be deprived of his property save by authority of law.\textsuperscript{95}

Article 300-A confers a substantial constitutional right to property on every person and the full implication of it will have to be understood in the light of Articles

\textsuperscript{92} (1973) 4 SCC 225.
\textsuperscript{93} (1980) 3 SCC 625.
\textsuperscript{94} Supra note 79 at 325.
\textsuperscript{95} P.M. Bakshi, Commentary on the Constitution of India 718 (Universal Law Publishing Co., New Delhi, 2014).
The right conferred under this Article is that the State wants to deprive a person of his property; it can do only under the authority of a valid Law and not by merely executive action. A Law passed under this Article will have to satisfy the requirements laid down by other relevant Articles of the Constitution. If the Law violates any provisions of the Constitution, the Law may be struck down by the Court. The only difference of right to property under Part-III is that provides if violation or abridge the right to property, aggrieved person can approach the Supreme Court under Article 32 but in Part-XII aggrieved person can exercise his right under Art.226 of the constitution. Under this Article aggrieved person can enforce fundamental right and any other legal rights.

According to Prof. Tripathi P.K. stated that “after the Forty-Fourth amendment, the right to property has become more fundamental than before because the repeal of many exceptions to the right to property, contained in repealed Article 31, all Laws relating to acquisition and requisition of property will have to satisfy the common Law requirement of Eminent Domain of public purpose and adequate compensation”.

After the judgment in Menaka Gandhi v. Union of India, the concept of “personal liberty” has been enlarged considerably. Therefore it would be possible to argue that the right to property is also an essential part of personal liberty. Hence, the right to property still continues to be fundamental right.

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96 Supra note 79 at 326.
97 Prof. P.K. Tripathi, “Right to Property and Forty-fourth Amendment – Better Protected than before” AIR 1980 (Journal) 49.
98 (1978) 1 SCC 248.
Parliamentary Laws: The Parliament of India had secured people from fault policies of the Britishers and guaranteed its people that distributive justice which requires the flow of economic and social justice to rural India. The land reforms in the context of our Country have primarily meant creation of relationship between men and land. It does not discourage incentives to work and invest one’s own labor. This would evolve greater equality in the ownership of land and will help in mitigating the problem of exploitation of rural landless poor. Agrarian reforms have brought peaceful means of social change. It has two objects to achieve; firstly to increase agricultural production and to promote rural economic development, and secondly, to enhance the social status of those who work on land. The first decade of Parliament was dedicated to reform agrarian system. Hence, many Laws were enacted for regulating land reforms. These reforms were related to curb internal social conflicts, exploitation and injustice in Society. It has caused misdistribution of wealth and unjust accumulation and, concentration of property in the hands of a few persons. It also created the gap between the haves and have not’s. It has deprived the people of the basic human rights of self-preservation and honorable social existence. Agriculture has been the way of life of rural India. The unjust accumulation of land in few hands sanctioned by Zamindari systems and landlordism has created poverty and destitution among rural masses. In pursuance of Directive Principles of State Policy, the Nehru Government directed the State Governments to enact agrarian reforms laws. The State Government of Bihar, Uttar Pradesh and Madhya Bharat had enacted Laws relating abolition of zamindari system. These Laws are aimed at the redistribution of agricultural land among those who actually tilled the land and also to

100 Supra note 6 at 42.  
101 Upadhagaya, Law on Agrarian Reforms, Annual Survey of Indian Law 182 (Indian Law Institute, New Delhi, 1986).  
eliminate intermediaries.\textsuperscript{103} These enactments were challenged by Zamindars on the
grounds that their right to property guaranteed under Articles 14, 19 and 31 were
violated. The Patna High Court held that the impugned Act was passed by Bihar
Government\textsuperscript{104} is unconstitutional being violative of Article 14 of the Constitution,
as it imposed unreasonable restrictions on the property right of proprietors and tenure – holders guaranteed under Article 19.\textsuperscript{105}

In Uttar Pradesh, the Uttar Pradesh Zamindari Abolition of Land Reforms Act, 1951 was declared constitutional.\textsuperscript{106} The Allahabad High Court observed that:

“Chapter-IV contains what are described as Directive Principles, which are not
enforceable by any Court. But Article 37 specifically lays down that they are
nevertheless fundamental in the governance of the Country and that it shall be the
duty of the State to apply these principles in making Law”.\textsuperscript{107} These different views expressed by the Courts put a big questions on the policies of Government and rendered the question mark on the agrarian reform Laws. Therefore, the Government in power at the centre had forced to amend the constitution that related to right to property must guarantee to all people by way of distributive justice as envisaged under the constitution.

The object of the First Constitutional Amendment Act, 1951 regarded that
right to property is protecting the validity of agrarian reform laws which was passed
by the state legislatures. This amendment is inserted in Art.31-A.\textsuperscript{108} It deals with

\textsuperscript{103} Supra note 6 at 44.
\textsuperscript{104} Bihar Land Reform Act, 1950.
\textsuperscript{105} Kameshwar Singh v. State of Bihar, AIR 1951 Pat.91.
\textsuperscript{107} Id.
\textsuperscript{108} Sec.4 of the First Constitution Amendment Act, 1951 provides: Insertion of new article 31A.-
After article 31 of the Constitution, the following article shall be inserted, and shall be deemed
always to have been inserted, namely:-“31A. Saving of laws providing for acquisition of estates, etc.-
(1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the
acquisition by the State of any estate or of any rights therein or for the extinguishment or
modification of any such rights shall be deemed to be void on the ground that it is inconsistent with,
saving of laws provided for acquisition of estates. Another Article 31-B was also inserted by this Amendment which deals about validation of certain laws and regulation\textsuperscript{109}. The Ninth schedule to the constitution had inserted. Therefore the First Constitutional Amendment Act, 1951 to secure Constitutional validity of zamiadari abolition laws. The Supreme Court had also upheld the validity of the First Constitutional Amendment Act in Shankari Prasad Singh Deo v. Union of India\textsuperscript{110} wherein, the Court unanimously upheld parliament’s power to amend the Constitutional including fundamental rights. The object of the Constitutional (Fourth Amendment) Act, 1955 was to re-state more precisely the State’s power to acquire or requisite of private property and it distinguishes it from cases where the operation of regulatory or prohibitory laws of the State results in “deprivation of property”. The State should also provide compensation for acquired land to aggrieved persons for their land value.\textsuperscript{111} It also provides certain types of laws were protected from

\textsuperscript{109} Sec.5 of the First Constitution Amendment Act, 1951 provides: Insertion of new article 31B.-After article 31A of the Constitution as inserted by section 4, the following article shall be inserted, namely:- "31B. Validation of certain Acts and Regulations.-Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.”.

\textsuperscript{110} AIR 1951 SC 458

\textsuperscript{111} Sec.2 of the Fourth Constitution Amendment Act, 1955 provides: Amendment of article 31.-In article 31 of the Constitution, for clause (2), the following clauses shall be substituted, namely: (2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate. (2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the
challenge on the ground of infringement of fundamental rights under articles 14, 19 and 31⁠¹¹². Some more Acts were placed under the Ninth schedule of the constitution.⁠¹¹³ This amendment had effected to recognition of directive principles contained in Articles 38 and 39. This amendment was never challenged before the Court but it was upheld by the Supreme Court in Waman Rao v. Union of India⁠¹¹⁴.

The background of the enactment of the Constitution (Seventh Amendment) Act, 1964 was to strike down the decision passed by Supreme Court in Karimbil Kunlnikoman v. State of Kerala⁠¹¹⁵. In this case, the State of Kerala had enacted a law relating to the Kerala Agrarian Relations Act, 1961. The Act was to impose a ceiling compulsary acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.

Sec.3 of the Fourth Constitutional Amendment Act provides: Amendment of article 31A.-In article 31A of the Constitution (a) for clause (1), the following clause shall be, and shall be deemed always to have been, substituted, namely: (1) Notwithstanding anything contained in article 13, no law providing for- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”; and (b) in clause (2),- (i) in sub-clause (a), after the word "grant", the words "and in the States of Madras and Travancore-Cochin, any janman right" shall be, and shall be deemed always to have been, inserted; and (ii) in sub-clause (b), after the word "tenure-holder", the words "raiyat, under-raiyat" shall be, and shall be deemed always to have been, inserted.


¹¹² Sec.3 of the Fourth Constitutional Amendment Act provides: Amendment of article 31A.-In article 31A of the Constitution (a) for clause (1), the following clause shall be, and shall be deemed always to have been, substituted, namely: (1) Notwithstanding anything contained in article 13, no law providing for- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or (c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”; and (b) in clause (2),- (i) in sub-clause (a), after the word "grant", the words "and in the States of Madras and Travancore-Cochin, any janman right" shall be, and shall be deemed always to have been, inserted; and (ii) in sub-clause (b), after the word "tenure-holder", the words "raiyat, under-raiyat" shall be, and shall be deemed always to have been, inserted.


¹¹⁴ AIR 1981 SC 271

¹¹⁵ AIR 1962 SC 723.
on the area of land that a landowner could hold and vest proprietorship in the land and also to the cultivating tenants. The law covered all kinds of land in the state including ryotwari lands situated in those parts of the Kerala which were parts of the Madras state till the reorganizations of the states in 1956. The Act was questioned before the Supreme Court that whether ryotwari land comes within the definition of ‘estate’ as defined in Article 31A (2) (a). The word ‘estate’ as defined in Madras Estate Land Act of 1908 did not include ryotwari land tenures as it was contented before the Supreme Court. The Supreme Court without any destitution struck down once again. Therefore it was necessitated by parliament to enact the Constitutional (Seventh Amendment) Act, 1964 to rectify decision of the Supreme Court and it gave agrarian reform laws meaningful. The Seventh Amendment Act\textsuperscript{116} had introduced three

\textsuperscript{116} The new proviso added to Art. 31A(1) by the Seventeenth Amendment 1964 reads thus: “Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof”. Clause (2) (a) of Art. 31A as amended by the Seventeenth Amendment reads as follows:(a) the expression ‘estate’ shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include: Changes. First, it inserted a new proviso in Article 31 A(1) by which it made clear that if a state seeks to acquire by law any estate held by a person within the ceiling limit applicable to him under any law for the time being in force and is held by him under his personal cultivation, the law shall not be valid unless it provides for payment of compensation at the market value. Secondly, clause (2)(a) of Article 31A was recast and the definition of the word ‘estate’ was expanded to include ‘any land held under ryotwari settlement’ and “any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture, etc. Thirdly, forty-four land reform laws, including Kerala Agrarian Relations Act, were validated by placing them in the Ninth Schedule to the Constitution. In the meantime, the Fourth Amendment was considered by the Supreme Court in I.P. Vajravelu Mudaliar v. Sp. Dy. Collector for Land Acquisition, West Madras. In this case the constitutional validity of the Land Acquisition (Madras Amendment) Act (23 of 1961) was challenged as discriminatory with regard to the issue of compensation. The Government of Madras issued a notification under section 4(1), read with section 17(4) of the Land Acquisition Act, 1894, to the effect that the lands belonging to the Petitioners were needed in order to create a new suburb for slum-dwellers and for relieving the growing congestion and overcrowding in Madras City. The Government of Madras then amended the Land Acquisition Act, 1894 and passed Land Acquisition (Madras Amendment) Act (23 of 1961) to implement the scheme. The Amending Act, 1961 provided for acquisition of land for housing scheme and laid down principles for fixing compensation. These principles were different from those prescribed under the Land Acquisition Act of 1894, i.e., a claimant gets less compensation under the Amending Act, 1961 than he would get under the Land (i) any Jagir, inam or muafi or other similar grant and in the States of Madras and Kerala, any Janman right; (ii) any land held under ryotwari settlement; (iii) any land held or let for
important changes. First, it inserted a new provision in Article 31A (1) by which it made clear that if state seeks to acquire by law any estate held by a person within the ceiling limit applicable to him under any law for the time being in force and is held by him under his personal cultivations, the law shall not be valid unless it provides for payment of compensation at the market value. Secondly clause (2) (a) of Article 31A was recast and the definition of the word ‘estate’ was expanded to include ‘any land held under ryotwari settlement’ and “any land held or let for purpose of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture”, etc., Thirdly, forty-four land reform laws, including Kerala Agrarian Relations Act were validated by placing them in the Ninth schedule to the constitution. This purposes of agriculture or purposes ancillary thereto, including waste land. Forest land, land for pasture or sites of buildings and other structures occupied by cultivator of land, agricultural labourers and village artisans.”

amendment was challenged the Constitutional validity in Sajjan Singh v. State of Rajasthan\textsuperscript{118}. The Supreme Court has held that in the context of Article 13, ‘Law’ must be taken to mean rules or regulations made in the exercise of ordinary legislative power and not amendment to the Constitution made in the exercise of constituent power with the result that Article 13 (2) does not affect amendment made under Article 368. The Supreme Court in this case not only rejected the plea for review of the decision in Shankari Prasad case, the Court also reaffirmed the views expressed in that case. The seventh amendment was again challenged in Golak Nath v. State of Punjab\textsuperscript{119}. The Court had applied the ‘doctrine of prospective overruling’ and its decision would have only ‘prospective operation’. The net result of the judgment is that seventh amendment and the earlier amendments to Part – III of the constitution would continue to be valid, but in future amendment to fundamental rights would be invalid. Thus landowner finally had succeeded that right to property. The decision had adversely affected the socio – economic reforms and became judiciary, adverted to it, the final say and the parliament was debarred from amending the fundamental rights or to remove any impediments to being socio-economic reforms and render distributive justice.

The Constitution (Twenty - Fifth Amendment) Act, 1971 was enacted for providing the right to property in its proper prospective because it renders distributive

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\textsuperscript{118} AIR 1965 SC 845.
\textsuperscript{119} AIR 1967 SC 1643.
justice to millions of people involved. It came into force on April 20, 1972\textsuperscript{120}. The salient features of the Twenty-Fifth Amendment are as the expression ‘compensation’ in Article 31 (2) was substituted by the expression ‘amount’; and Article 31C was introduced. It sought to protect any law passed to give effect to directive principles contained in clause (b) and (c) of Article 39, from the inhibitions of Article 13, and also protected them even if they were found to be violative of Article 14, 19 and 31. This amendment was intended for equitable distribution of wealth and the removal of the concentration of economic power and prevention of exploitation as encapsulated in Article 39 (b) and (c) but not the destruction of the

\textsuperscript{120} The Constitution (Twenty-fifth Amendment) Act, 1971 introduced several changes in Art. 31. For clause (2), the following clause was substituted, namely: “No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash: Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) of Article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not (i) The expression ‘compensation’ in Article 31(2) was substituted by the expression ‘amount’, and (ii) Article 31C was introduced. It sought to protect any law passed to give effect to directive principles contained in clauses (b) and (c) of Article 39, from the inhibitions of Article 13, and also protected them even if they were found to be violative of Articles 14, 19 and 31. Unlike ‘compensation’ the word ‘amount’ is not a term of Art. It has no specific legal meaning. The amount fixed by law or determined in accordance with principles specified by law may be paid partly in cash and partly in kind. In such a case law may often provide for payment of the amount over a long period of years. Obviously, where the law fixes the amount, it cannot be questioned in any court on the ground that it is not adequate, that is not equal to the value of property acquired or requisitioned. The legislative choice is conclusive and it is unquestionable in courts. One has to clearly understand the circumstances which led to the Twenty-fifth Amendment and its objects and reasons. The basic question involved was the correlation of fundamental rights and directive principles. By this Amendment, what was intended was not the destruction of the property right, but equitable distribution of wealth and the removal of the concentration of economic power and prevention of exploitation as encapsulated in restrict or abrogate the right guaranteed under that clause; (b) After clause (2A), the following clause was inserted namely: “(2B) Nothing in sub-clause (f) of clause (1) of Article 19 shall affect any such law as is referred to in clause (2)”. Insertion of new Article 31C: After Article 31 B of the Constitution, the following article was inserted: 31C. Savings of law giving effect to certain directive principles: 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 bridges any of the rights conferred by Article 14, Article 19 or Article 31, and no law containing a declaration that it is forgiving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.
property right. The amendment’s validity was upheld in *Kesharanda Bharathi v. State of Kerala*121. The State was enabled to acquire any property by paying any amount of compensation either in cash or otherwise and the amount so paid was not justifiable. The Court further held that the directive principles contained in Part – IV should be read into the individual fundamental rights of Part– III while interpreting the provisions in the later part and that neither part is superior to the other. *The Constitution (Forty- Second Amendment) Act, 1976* was substituting the words in Article 31C to the constitution as “all or any of the principles laid down in Part-IV”. It asserted that directive principles of state policy can override the fundamental rights contained in Article 14, 19 or 31. This amendment had effected to that no law passed for giving effect to any directive principles could be called into question or declared void on the ground that it violated fundamental rights contained in Article 14, 19 or 31. The Supreme Court had struck down the amended Article 31C on the ground that it affected the basic structure or frame work of the constitution.122 Chief Justice Chandrachud had observed as:

“The Indian constitution is found in the bed-rock of the balance between Part – III and IV, to give absolute supremacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution..... The goals set out in Part IV have, therefore, to be achieved without the abrogation of the means provided for by Part – III. It is this sense that Parts III and IV together constitute the core of our constitutions and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our constitution.”123

*The Constitution (Forty – Fourth Amendment) Act, 1978* repealed the right to property from fundamental rights in Articles 19 (1) (f) & 3 and it inserted in Article 300 A which is a verbatim reproduction of the Article 31C. By this Amendment, the only right lost was that clause (2) of Article 31 enumerated right. Clause (2) provided that

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121 AIR 1973 SC 1461.
123 *Id.*, p.1806.
“no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law.”\textsuperscript{124}

According to Professor Tripathi observed that clause (2) of Article 31 imposed on the power of the State to acquire private property for fulfilling two conditions. That was property acquired for public purpose and giving of \textit{quid pro quo} for the property acquired\textsuperscript{125}.

Professor Tripathi further stated that

“The net result, therefore, is that the right of the individual to receive compensation when his property is acquired or requisitioned by the state continues to be available in the form of an implied condition of the power of the State to legislate on “acquisition or requisitioning of property”, while all the exceptions and limitations set up against and around it is Articles 31, 31A and 31B have disappeared. The new Article 300A, which says that “no person shall be deprived of his property share by the authority of law “will require obviously, that the “Law” must be a valid law, and no law of acquisition or requisitioning is for public purpose, and unless there is provision in the law for paying compensation”. “Compensation will continue to have the meaning given to it in the case of State of West Bengal v. Smt. Bala Banerjee..... Namely the market value of the property concerned at a time not too remote from the date of period of acquisition or requisitioning.”\textsuperscript{126}

Though the right to property has been deleted from fundamental rights under Part – III but it still continues as a fundamental right in Article 21 of the Constitution. In \textit{Manaka Gandhi v. Union of India},\textsuperscript{127} the Supreme Court while considering scope of Article 21 held that the procedure denoted under that provision depriving individuals of their personal liberty must be “just, fair and reasonable”. Justice Bhagawathi observed that “the expression personal liberty” in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty

\textsuperscript{124} It was repealed by the Constitution (Forty-fourth Amendment) Act, 1978 under section 6.
\textsuperscript{125} Supra note 6 at 51.
\textsuperscript{126} Id.
\textsuperscript{127} AIR 1978 SC 597.
of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19”.

Therefore all the constitutional amendments Acts were deals about property rights of individuals. These were provided distributive justice to all persons by guaranteed right to property. After and result of the repeal of Articles 19 (1) (f) and 31 were considered within the meaning of Article 21 then the effect would be that the right not to be deprived of property except according to procedure established by law shall be considered as a fundamental right under Article 21 of the Constitution.

The Constitution of India has provided that right to property is unenumerated fundamental right which flow from article 21. Right to property is considered as constitutional right under Article 300A. Now intellectual property rights are considered as property rights. These rights are acquired for innovations and creations or some other forms of knowledge or in formations. The following enactments were recognized the right to property.

*The Copy Right Act, 1951* was enacted for the protection of a person’s literary, dramatic, musical and artistic works to maintain originality in it. Copy Right Act requires satisfying the test of originality when only the Act protects author’s right. It seeks to protect the moral rights of the author i.e. the right of parentage and integrity. The object of *the Designs Act, 2000* is to protect new or original

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128 Id, at 622, and Francis Coralie Mullin AIR 1981 SC 746 at 753- 54.
130 In Keshavanda Bharathi v. State of Kerala AIR 1973 SC 1461, the fundamental rights have been considered as the part of the basic structure of the constitution. In Smt. Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299, Justice Chandrachud said that fundamental rights being a part of the essentials of the Constitution could not be abrogated or emasculated though a reasonable restriction may be imposed on them in public interest.
132 An Act to amend and consolidate the law relating to copy right. Be it enacted by Parliament in the Eight year of the Republic of India.
133 Sec.57 of the Indian Copy Right Act, 1957.
designs so created to be applied or applicable to particular article to be manufactured by industrial process or means. The purchase of articles for use is influenced not only by their practical efficiency but also by their appearance. The important purpose of design registration is to see that the artisan, creator, Originator of a design having aesthetic look is not deprived of his bonafide reward by others applying it to their goods.

The **Indian Patents Act, 1970**\(^\text{135}\) came into force on 1972 after amending and incorporating the existing laws relating to Patents and Designs Act, 1911. The main purpose of the Pendent Act is to encourage innovation and eventually results in technological development. The objective of the Act is to encourage inventions of new and useful manufacture, to secure the knowledge of the invention from being lost, and to enable any person to avail himself of the invention on expiry of the exclusive privilege. Patent right is a government issued right granted to individuals or groups that protect their original inventions from being made, used or sold by others without their permission for during a period of time. Patent rights is considered as a property right because it ensures commercial returns to the inventor for the time and money signed in generating a new product. The Act also provided what all can be patented and cannot be patented. The object of the **Trade Marks Act, 1999**\(^\text{136}\) is to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the use of fraudulent marks. This Act replaces the Trademark and Merchandise Marks Act, 1958 which is repealed by this Act. This Act provides for registration of service marks, filling of multiclass applications, increasing the term of registration of a trademark to ten years.

\(^{134}\) Act No.16 of 2000. An Act to consolidate and amend the law relating to protection of designs. Be it enacted by Parliament in the Fifty First year of the Republic of India.


as well as recognition of concepts of well-known marks, etc., The Indian judiciary has been proactive in the protection of trademarks.\textsuperscript{137} India is a common law country and if follows not only codified laws but also common law principles such as it provides for infringement as well as passing off actions against violation of trademarks.\textsuperscript{138} The Government of India has recognized that the “\textit{well-known Trademark}” and the “\textit{Principle of Trans Border Reputation}”. A well-known Trademark in relation to any goods or service means a mark that has become so to the substantial segment of the public which uses such goods or receives such services that the use of such a mark in relation to other goods and services is likely to be taken as indicating a connection between the two marks.

The Trans-border Reputation concept has been recognized by the Hon’ble Apex Court in the landmark case of \textit{N.R. Dongre v. Whirlpool}.\textsuperscript{139} The Court held that the trademark “\textit{WHIRLPOOL}” was held to have acquired reputation and goodwill in India. The mark “\textit{WHIRLPOOL}” was held to have become associated in the kinds of the public with Whirlpool Corporation on account of circulation of the advertisements in the magazines despite an evidence of actual sale. Therefore, the trademark WHIRLPOOL was held to have acquired trans-border reputation which enjoys protection in India irrespective of its actual user or registration in India. The Act also granted for legal remedies against infringement and passing off. The objective of the \textit{Protection of the Plant Varieties and the Formers Act, 2001}\textsuperscript{140} is to recognize and protect the rights of farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. It is necessary to protect plant breeder’s right to

\textsuperscript{137} Tata Sons Ltd., v. Manu Kousuri & others 90 (2001) DLT 659 and Yahoo Inc. v. Akash Arora 1999 PTC 201.
\textsuperscript{138} Sec.135 of the Trade Mark Act recognises both infringement as well as passing off actions.
\textsuperscript{139} (1996) 5 SCC 714.
\textsuperscript{140} Act No.53 of 2001. Be it enacted by Parliament in the Fifty Second year of the Republic of India.
stimulate investment for research and development for accelerated agriculture development in Country. Further objective of the Act is to facilitate the growth of seed industry in the country which will ensure the availability of high quality seeds and plant materials to the farmers. The Act was enacted for giving effect to Agreement on Trade Related Aspects of Intellectual Property Rights in India. India has rectified the TRIPS. The Act recognizes nine rights for farmers\textsuperscript{141} of which the most important is right to seed and the right to compensation for crop failure. The provisions of the Act provides that formers are entitled to save, use, sow, re-sow, exchange, share and sell from produce, including reeds of varieties protected by plant breeder's rights. But they are not allowed to sell seeds of protected verities as branded packages. This Act is allowing farmers all customary rights they previously enjoyed. The Act seeks to protect farmers from exaggerated claims by seed companies regarding the performance of their registered varieties. The breeder is obliged to disclose to farmers the performance of the variety under given conditions.

If the material fails to perform according to this information, farmers may claim compensation from breeding company through the authority setup under the Act. The

\textsuperscript{141} Id, Sec.39 provides: (1) Notwithstanding anything contained in this Act, - (i) a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act; (ii) the farmers' variety shall be entitled for registration if the application contains declaration as specified in clause (h) of sub-section (1) of section 18; (ii i ) a farmer who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund. Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act; (iv) a farmer shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act; Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act. Explanation: For the purposes of clause (iv), "branded seed" means any seed put in a package or any other container and labeled in a manner indicating that such seed is of a variety protected under this Act. (2) Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers of any organization of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organization of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to provide such performance under such given conditions, the farmer or the group of farmers or the organization of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority, after giving notice to the breeder of the variety.
Act not only protect the rights of farmers to save, use, exchange and sell farm saved seed, it also seeks to ensure that these seeds are of good quality, or at least that farmers are adequately informed about the quality of seed they buy. In addition to that the safeguards are provided against innocent infringement by farmers.\footnote{Id, Sec.42.}

The object of the \textit{Geographical Indication of Goods (Registration and Protection) Act, 1999}\footnote{Act No.48 of 1999. Be it enacted by Parliament in the Fiftieth year of Republic of India.} is to provide for the registration and better protection of geographical indications relating to goods. India is a party to TRIPS Agreement and it is required to protect GI and is order to fulfill that obligation the Act was enacted. The enactment provides legal protection to GI to goods; prevents unauthorized use of a registered geographical indication by others; and it enables seeking legal protection in other WTO member countries. The Act is protecting the rights of persons who are residing and engaging in particular geographical area in their activities relating to goods. The act gives wide definition of Geographical Indication (GI), whereby agricultural, natural and manufactured goods all come under the ambit of GI. This is important in Indian context considering the variety of goods that is deserving of protection ranging from agricultural products like Basmathi Rice, Darjeeling Tea, Coorg Orange, Kangra Tea, Femi, Alphonse Mango, Alleppey Green Cardamom, Coorg Cardamom to manufactured goods such as Kanchipuram Silk Saree, Kohlapuri Chappal, Banarasi Sari, Chanderi Silk, etc., For establishment of their rights, the Act provides that any associations of persons, producers, organization or authority established by or under the law can apply for registration of a Geographical Indications (GI)\footnote{Id, Sec.11.}. The act also protects the GI indefinitely by renewing the registration when it expires after a period of ten years.\footnote{Id, Sec.18.} The act empowers the
Central Government with the authority to give additional protection the certain goods or classes of goods. These rights are reserved in wires and spirits for goods of national interest. The Act provides that a GI is a public property belonging to the goods concerned and it cannot be subject matter of assignment, transmission, licensing, pledge, mortgage or any conduct for transferring the ownership or possession.

The parliament of India has enacted there laws for giving effect to TRIPS agreement is which India is party. The Act are envisaged and guaranteed intellectual property as a property. It is guaranteed right to property in India. The intellectual property right seeks to balance between the moral and economic rights of creators and inventors and under interest and need of the Society. These issues are addressed by the International Covenant on Economic, Social and Cultural Rights, 1966. Article 15 provides that the State parties to both Covenants “recognize the right of every one to enjoy the benefits of scientific progress and its application” and “to benefit from the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is an author.” For the fulfilling above international obligations, the Parliament of India has enacted the above stated laws for giving effect that obligation.

The objective of the Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 is to recognize and vest the forest rights and occupation is forest land in forest dwelling Scheduled Tribes and other forest dwelling. These rights conferred on tribal people who are living for generations but
whose rights could not be recorded. The act provide for a framework for recording the forest right so vested by them. The Act also prohibits the historical injustice done to tribals and forest dwellers living there for last three generation before 13th December 2005, by providing rights under Section 3 of Chapter - II.\textsuperscript{151} The Act further recognizes the right to land ownership, access to collect use and dispose of minor forest produce which has been traditionally collected within or outside Village boundaries.\textsuperscript{152} The objectives of the \textit{the Right to Fair Compensation and}

\textsuperscript{151} \textit{Id.}, sec.3 guarantees following rights: For the purposes of this Act, the following rights which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely: (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers; (b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes; (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries; Forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers. (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities; (e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre- agricultural communities; (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed; (g) rights for conversion of Paltas or leases or grants issued by any local authority or any State Government on forest lands to titles; (h) rights of settlement and conversion of all forest villages, old habitation unsurveyed villages and other villages in forest, whether recorded, notified, or not, into revenue villages; (i) right to protect, regenerate, or conserve or manage any community forest resource, which they have been traditionally protecting and conserving for sustainable use; (j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of concerned tribes of any State; (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; (l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal; (m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement or rehabilitation prior to the 13th of December 2005. (2 ) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the government which involve felling of trees not exceeding seventy- five trees per hectare, namely: (a) schools; (b) dispensary or hospital; (c) anganwadis; (d) fair price shops; (e) electric and telecommunication lines; (f) tanks and other minor water bodies; (g) drinking water supply and water pipelines; (h) water or rain water harvesting structures; (i) minor irrigation canals; (j) non-conventional source of energy; (k) skill upgradation or vocational training centers; (l) roads; and (m) community centers: Provided such diversion of forest land shall be allowed only if, - (i) the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and (ii) the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

\textsuperscript{152} \textit{Id.}
Transparency in Land Acquisition, Rehabilitations and Resettlement Act, 2013 is to ensure that in consultation with local Self-Government and Panchayats established under the constitution and a human, participative, informed and transparent when land is subject to acquisition for the purpose of industrialization, development projects and urbanization process. The Act provides least disturbance to the land owners and other affected families whose land lord has been acquired or proposed to be acquired. The Act also laid down necessary adequate provisions for such affected persons for their rehabilitation and resettlement. It provides cumulative outcome of compulsory acquisition what it invoked by state, it should be a partner of affected persons and it will lead to an improvement in their post acquisition social and economic states. The act also sought consent of 80% people who are effected such acquisition. The multi crop irrigated land will not be acquired except as a demonstrably, last resort measure. In such case, an equivalent area of cultivatable Westland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture for enhancing food security. There may be set a limit by state for acquisition in any district. The Act provides a comprehensive compensation package in first schedule. It provident the market value so calculated for rural areas shall be multiplied by a multiplier factor of up to two. The Act provides the right to fair compensation when person’s lands were acquired in equivalent value of market rate.

b) Executive Incorporation

India is a predominantly depend on agriculture. It has a strong linkage between land and social status of an individual. The fact that close to 70% of the population is dependent on land either as farmers or farm laborers. It means that it is

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154 Id, sec.27.
imperative to address the issue of land in such manner that it provides livelihood dignity and food security to millions of Indians. India has the largest number of rural poor as well as landless population in the world. Land is the most valuable and impressive that it determines social status of a person.\textsuperscript{155} Land assures to an individual identity and dignity and creates conditions and opportunities for realizing social equality. Assured possession and equitable distribution of land is a lasting source for peace and prosperity and will pave way for economic and social justice in India.\textsuperscript{156} Therefore land reform is required in India. Land reforms were a major policy interactive in the country in the 1950s and early 1960s. The Government of States in India had enacted land relating to abolition of zamidari system and guarantees rights of land to the filler.\textsuperscript{157} The Government of India has formulated two Centrally Sponsored Schemes for reforms in land records. These are \textit{Computerization of Land Records (CLR)} and \textit{Strengthening of Revenue Administration and Updating of Land Records (SRA & ULR)}. The Schemes are administered by Land Reforms Division, Department of Land Resources under the Ministry of Rural Development in Government of India.

The Centrally Sponsored Scheme on \textit{Computerization of Land Records (CLR)}\textsuperscript{158} was started in 1988 - 89. It is 100% financial assistance on a pilot project basis to remove the problems inherent in the manual systems of maintenance and updating of land records, in eight Districts viz. Rangareddy (A.P.) Senipur (Assam), Singhbhum (Jharkant), Gandhi Nagar (Gujarat), Morena (M.P.), Wardha (Maharashtra), Mayurbhanj (Orissa) and Dungarpur (Rajasthan). The Scheme was approved as a Centrally Sponsored Scheme during the 8\textsuperscript{th} five year plan on

\textsuperscript{155} \textit{Draft National Land Reform Policy}, 24\textsuperscript{th} July 2013, Department of Land Resources, Ministry of Rural Development, Government of India.
\textsuperscript{156} \textit{Supra} note 6 at 42.
\textsuperscript{157} \textit{Id.}, at 43.
\textsuperscript{158} \textit{India Year Book 2009}, 793 (Publication Division, MoIB, GoI, New Delhi, 2009).
Computerisation of land records. During 9th FYP period the Ministry of Rural Development released more funds where is districts were not properly maintain land records. During 1997 - 1998, Govt. of India has implemented in all Taluks, Sub-Divisional level for facilitating delivery of computerised land records to users and public at large. *Strengthening of Revenue Administration and Updating of Land Records. (SRA & ULR)*\(^{159}\) Scheme was introduced in 1987 with a view to assisting stets and UTs for updating of land records. Initially the scheme was introduced in the State of Bihar and Orissa in 1987 - 88 and it was extended to other States and UTs during 1989 - 1990. The scheme is being implemented by State Governments through their revenue or land reforms departments. It is financed by Central and State Governments on 50:50 funds sharing basis. But Union Territories are provided full central assistance. Under two scheme, the financial assistance in given for purchase of modern survey equipments like Global Positioning System (GPS), EDM, Total Stations, Theodolites, Work Stations, Aerial Survey, Office Equipment like Photocopiers, Laminating Machines, Binding Machines and basic facilities to improve work efficiency of subordinate staff of Revenue Departments. The Government of India has divided to integrate the two Centrally Sponsored Schemes namely *Computerization of Land Records (CLR)*, and *Strengthening of Revenue Administrative and Updating of Land Records (SRA & ULR)* into one scheme in the shape of the *National Land Records Modernization Programme (NLRMP)*.

The *National Land Records Modernization Programme (NLRMP)*\(^{160}\) is concerned not merely with computerization, updating and maintenance of land records and validation of titles but it also provides value added comprehensive tool for development planning. It provides location specific information. It has three layers of

\(^{159}\) Id. at 794.

\(^{160}\) Id.
date. These are spatial data from satellite imagery and aerial photography; topographic maps and other data from the Survey of India and Forest Survey of India, and Land Record Data - both Records of Rights (RoRs) and maps will be integrated and harmonized in a Geographic Information System (GIS) platform.

The prime object of the programme is to provide citizen services, such as providing Records of Rights (RoRs) with maps to scale; other land based certificates such as caste certificates; information for eligibility for development programmes; Land Pass Books, etc., and developing a Comprehensive tool for supporting and planning developmental, regulating and disasters management activities.

c) Judicial Incorporation

The Supreme Court of India has recognized that right to property as a constitutional and human rights while deciding cases relating to right to property. After the Menaka Gandhi v. Union of India, the Supreme Court of India had taken liberal interoperation to Article 21 of the constitution. Now, the Hon’ble Supreme Court has held that right to property is basic human rights and it includes intellectual property rights also. The Supreme Court in Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd. & others while deciding validity of the development schemes in town and Country Planning held that the right to property is now considered to be not only a constitutional right but also a human right. The Court has also mentioned right to property mentioned in Article 17 of the Declaration of Human and Civil Rights of 1789 and Article 17 of the Universal Declaration of Human Rights 1948 and further held that earlier human rights existed to the claim of individuals right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property

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161 AIR 1978 SC 597.
162 (2007) 8 SCC 705.
rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights. As President John Adams (1797 – 1807) puts it:

“Property is surely a right of mankind as real as liberty”. Adding, “the moment the idea is admitted into Society that property is not as sacred as the Laws of God, and that there is not a force of Law and public justice to protect it, anarchy and tyranny commence”.

In *Lachhman Dass v. Jagat Ram & others* the Court has while deciding that claiming of right of pre-emption in terms of the Punjab pre-emption Act, 1913 Justice S.B. Sinha held that “to hold property is a constitutional right in terms of Article 300-A of the constitution of India. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold a property is claimed, the procedures therefore must be complied with. The conditions precedent therefore must be satisfied. Even otherwise, the right of pre-emption is a very weak right, although it is a statutory right. The Court, while granting a relief in favour of a pre-emptor must bear it in mind about the character of the right vis-à-vis the constitutional and human right of the owner thereof”.

The Court in *Chandigarh Housing Board v. Major-General Devindar Singh (Retd.) and another* while interpreting the condition of eligibility for allotment of a Housing Plot in the Modern Housing Complex, Manimajra under the Manimajra Housing Scheme, Period-III of 1993 observed that

“right to acquire a property although is not a fundamental right, but is a constitutional and human right. Before a person can be deprived of his right to acquire property, the Law and/or a contract must expressly and explicitly state so”.

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163 *Id.*, at 731-732 in paras 53 -55.
165 *Id.*, at 454 in para 16.
167 *Id.*, at 70 in para 11.
In Bhadrappa (Dead) By Lrs. v. Tolacha Naik case, validity of the Government granted land to Scheduled Caste and Scheduled Tribes which was transferred by them to third parties without following condition imposed under grants. The land was granted by the Government to landless SC/ST people for Social Welfare measures. The Court held that such grants were not acquisition or holding of property within the meaning of Article 19(1) (f). The Court further held that the imposition of the condition of prohibition on transfer for particular period could not be considered to constitute any unreasonable restriction on the right of the grantees to dispose of the granted lands. In this case Court has considered that granted land to the SC/ST people constitutes right to property to them with condition that not to alienate the property.

In Vimalben Ajitbhai Patel v. Vatslaben Ashokbhai Patel the Court while considering Sections 17 and 20 of Protection of Women from Domestic Violence Act, 2005 held that the Act provides higher rights in favour of the wife not only maintenance but also acquires a right of residence. The Court held that 'right to property is no longer a fundamental right but still it is a constitutional right. Apart from constitutional right it is also a human right. The procedures laid down for deprivation thereof must be scrupulously complied with". The Court in Karnataka State Financial Corporation v. N. Narasimahaiah &others while interpreting Sections 29 vis-a-vis of the State Financial Corporations Act, 1951 held that “Right to property, although no longer a fundamental right, is still a constitutional right. It is also human right. In absence of any provision either expressly or by necessary implication, depriving a person there from, the Court shall not construe a provision

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170 Id, at 666 in para 42.  
leaning in favour of such deprivation.”\textsuperscript{172} The Court has reiterated that judgment passed in \textit{P.T.Munichikkanna Reddy v. Revamma}.\textsuperscript{173}

The Supreme Court in \textit{Entertainment Network (India) Limited v. Super Cassette Industries Limited}\textsuperscript{174} while interpreting Section 31 of the Copy Right Act, 1957 held that right to property includes intellectual property right. The court observed:

“it is also a human right. Now, human rights have started gaining a multifaceted approach. Property rights vis-à-vis individuals are also incorporated within the “multiversity” of human rights. As, for example, any claim of adverse possession has to be read in consonance with human rights. The activist approach of the European Court of Human Rights is quite visible from the judgment of Beaulane Properties Ltd. v. Palmer\textsuperscript{175} and JA Pye (Oxford) Ltd. v. Graham.\textsuperscript{176,177}

The Court has further relied that the right to property is no longer a fundamental right. It is not an absolute right but it is subject to reasonable restriction imposed by statute. By virtue of Article 300-A of the constitution, it may be subject to the conditions laid down therein such as it may be wholly or in part acquired in public interest and on payment of reasonable compensations.\textsuperscript{178} In \textit{Aslam Mohammed Merchant v. Competent Authority & others}\textsuperscript{179} case, Justice S.B. Sinha while interpreting and application of Chapter V-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 relating to forfeiture of property derived from or used in illicit traffic has held that “dealing in narcotics is a Social evil that must be curtailed or prohibited at any cost. Chapter V-A seeks to achieve a salutary purpose.

\begin{footnotes}
\footnotetext[172]{\textit{Id}, at 192 in para 40.}
\footnotetext[173]{(2007) 6 SCC 59.}
\footnotetext[174]{(2008) 13 SCC 30.}
\footnotetext[175]{2005 EW HC 817 (ch).}
\footnotetext[176]{(2003) 1 AC 419 : (2002) 3 WLR 221 : (2002) 3 All ER 865 (HL).}
\footnotetext[177]{(2008) 13 SCC 30, pp 71 - 72, para 118.}
\footnotetext[178]{\textit{Id}, at 72 in para 121.}
\footnotetext[179]{(2008) 14 SCC 186.}
\end{footnotes}
But, it must also be borne in mind that right to hold property, although no longer a fundamental right is still a constitutional right. It is a human right.”

The Court in *N. Padmamma and others v. S. Ramakrishna Reddy and others* while deciding the question involved in this case is whether the Civil Court had jurisdiction to entertain a suit for partition for division of respective shares amongst the members of joint family in respect of some of the lands which were occupancy right have been granted in favour of one of them by Andra Pradesh (Telungana Area) Abolition of Inams Act, 1955. The Court held that

“if a right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with Law. Article 300-A of the constitution protects such right.”

In *State of Kerala v. Peoples Union for Civil Liberties* case, the Court while interpreting the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 held that

“the 1975 Act contemplated revising of loan from the Government by the members of the Scheduled Tribes, subject to the conditions laid down in the Rules. The procedure for grant of loan and consequent payment of compensation to the owners of land was a pre condition for actual restoration thereof. When, thus, loans are raised and amount of compensation is paid to the transferences, in our opinion, only then the vested right for getting back possession of the lands gets accrued and not prior thereto. We say so because the 1975 Act itself provides for a statute depriving the land holders from a right of property, which is otherwise protected by reason of Article 300-A of the Constitution of India. It is also a human right.”

The court in this case categorically recognized that right of property to scheduled caste and tribal people. The court directed to pay equal compensation for property worth as human rights. In *Union of India v. Martin Lottery Agencies Ltd.* the Court held that “lottery tickets” would not come within preview of definition of

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180 *Id*, at 207 – 208 in para 60.
182 *Id*, at 526 in para 21.
183 (2009) 8 SCC 46.
184 *Id*, at 85 in para 77.
“goods” under section 65(50) of Finance Act, 1964. Further holding that lottery being gambling is *res extra commercium*. It is used by State for raising revenue. It cannot amount to rendition of any service. The Court held that

“*business may be carried out in respect of a property which is capable of being owned as contrasted to those which cannot be. Having regard to the changing concept of the right to property, which includes all types of properties capable of being owned including intellectual property, it is possible to hold that the restrictions which can be imposed in carrying in relation thereto must only be a reasonable one within the meaning of clause (6) of Article 19 of the Constitution of India. Right of property although no longer a fundamental right, but, indisputably is a human right*”.  

The Supreme Court in *State of Madhya Pradesh v. Narmada Bachao Andolan & another* while directing the State to provide Rehabilitation and Resettlement for construction of Omkareshwar Dam held that acquisition of land does not violate any constitutional / fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the ousters of the project. Further held that “in case of land”, “*the plea of deprivation of right to livelihood under article 21 is unsustainable*”. This Court has consistently held that Article 300 is not only a constitutional right but also a human right”.  

In *K.T. Plantation (P) Ltd. v. State of Karnataka* case, the state acquired private property against which the aggrieved person approached the Court for judicial review of State action. The Court has held that

“*right to life, liberty and property were once considered to be inalienable rights under the Indian Constitution, each one of these rights was considered to be inextricably bound to the other and none would exists without the other. Of late, right to property parted company with the other two rights under the Indian Constitution and took the position of a statutory right. Since ancient times, debates are going on as to whether the right to property is a “natural” right or merely a creation of “social convention” and “positive law” which reflects the centrality and uniqueness of this right. Property rights at times are compared to right to life which determines access*”

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186 *Id*, at 222 in para 24.  
187 (2011) 7 SCC 639.  
188 *Id*, at 666.  
to the basic means of sustenance and considered as prerequisite to the meaningful exercise of other rights guaranteed Under article 21”.  

In State of Haryana v. Mukesh Kumar & others case, the State of Haryana through the Superintendent of Police claimed title of certain land by way of adverse possession for 55 years. The State could not produce documentary evidence to prove its possession and documents were in the name of Defendants. The Suit was dismissed by Trial Court and also confirmed by High Court. Against which the State preferred appeal against that High Court Judgment. The Supreme Court while considering the adverse possession held that

“the right to property is now considered to be not only a Constitutional or statutory right but also a human right. Human rights have already been considered in the realm of individual rights such as the right to health, right to livelihood, right to shelter and employment, etc. But now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even the claim of adverse possession has to be read in that context”.

The Court recognized right to property includes right claiming through others title through adverse possession.

In P.T. Munichikkanna Reddy v. Revamma, the fact of the case is that the Respondent had already purchased 1 Acre 21 guntas out of the 5 Acres 25 guntas under a duly Registered Deed dated 01.09.1933. Appellant brought the entire chunk of 5 Acres 23 guntas subsequent to the Respondent’s transaction. The question arisen in this case is not validity of Sale Deed but transaction relating to 1 Acre 21 guntas remains an important surrounding circumstance to assess the nature of appellant’s possession. The Court while deciding this case has held that “…..the right to property is now considered to be not only a constitutional or statutory right but also a human right”. The Court has also mentioned that Article 17 of the Declaration of the Rights

190 Id, at 43 in para 131.
192 Id, at 415 in para 32.
193 AIR 2007 SC 1753.
of Man and of the Citizen, 1789 which enunciates right to property and Article 17 of
the Universal Declaration of Human Rights. These articles are guaranteed right to
property as a human right.

The Court has further held that

“human rights have been historically considered in the realm of individual rights
such as, right to health, right to livelihood, right to shelter and employment, etc. but
now human rights are gaining multifaceted dimension. Right to property is also
considered very much a part of the new dimension. Therefore, even claim of adverse
possession has to be read in that context. The activist approach of the English Courts
is quite visible from various judgments. The Court herein tried to read the human
rights position in the context of adverse possession. But, what is commendable is that
the dimensions of human rights have widened so much that now property dispute
issues are also being raised within the contours of human rights”.\textsuperscript{194}

These judgments have proved that international human rights instruments
recognized right to property that have been incorporated by Judiciary. The most vital
contributed by Justice S.B. Sinha, in his various judgments expressly recognized right
to property is not fundamental but constitutional and basic human rights. His views
have been reiterated by most of the cases.

6.3. Incorporative Process

With reference to Table- I and graph 1, the incorporative processes of right to
property have been critically analysed into four periods as given below.

a) Period-I (1950-1966)

After Independence, there has been land legislation guaranteed to give land to
the tillers of the soil. These laws were abolished to intermediaries like zamindaries,
jagirs, inams etc. During this period, Socio-economic justice was implemented
through enactment of land reforms Act. The Act guaranteed redistribution of land to
landless poor and transferable and inheritable rights to tenants. Therefore, the
parliament has active in this period to enact Constitutional (Amendment) Acts, which

\textsuperscript{194} Id, at 1759.
guaranteed right to property through validating abolition of intermediaries on the land. These laws also guaranteed to rural masses sealing down their debts. The parliament has recognized these rights through Constitutional (1st Amendment) Act, 1951 and inserted Art 31-B into the Constitution which categorically protect the land reforms Acts. During this period, Constitutional Act only guaranteed to right to property since ‘land’ is fell on State list. The State has enacted intermediaries abolition Acts which was inserted into Art.31-B for protect it from constitutional validity. Therefore, the parliament has enacted four Acts and one of the Act is guaranteed to moral right of author i.e. parentage and integrity through the Copy Right Act, 1951. The executive has not formulated any policy programmes. But it had sanctioned fund of Rs.450 Crores through five year plans during this period. This fund was utilized for providing compensation to intermediaries. During this period, the Constitutional Amendments validity has been questioned before the Hon’ble Supreme Court. The Court expressly recognized the socio-economic pattern of the society. In this period Court did not recognize right to property expressly but it upheld the abolition of intermediaries Act through which tillers of the soil obtained the right to property. In toto, this period was responded to the creation of the Socio-economic pattern of the Society. This period may be considered as rudimentary stage of incorporation of the right to property.

b) Period-II (1966-1970)

The right to property guaranteed under the Constitution, created problem in relation to socio-economic justice i.e. rendering of distributive justice to millions of people which guaranteed under Article 39 (b) and (c). For this purpose, the State has power to acquire private property for public purpose. These activities of the State was challenged before the Court, held that the State can acquire property by paying
compensation. During this period, Parliament has shifted the right to property from status of fundamental right to merely Constitutional right by Constituent Act. The Parliament has enacted four Acts in which one of the Act specifically provides that right to patent is a property right of the inventor. The executive authorities not all framed any property right related programmes and no fund was sanctioned during this period of five year plan periods. The judiciary has decided validity of laws enacted under Article 39(b) & (c) recognized principle. But judiciary has not recognized the right to property as human rights in this period. The Courts view from these decided cases, recognized to landless persons having right to property as human rights.

c) Period-III (1979-1993)

During this period, Parliament did not enact any laws dealing with right to property. During this period, the executive authorities have allocated fund Rs.395.83 through 5 YPs for ceiling of surplus land and updating land records. The executive authorities, for purpose of up gradation of land records have formulated two programmes. The judiciary did not decide any case regarding right to property as human right through incorporating international human rights relating to right to property.

d) Period-IV (1993-2013)

During this period, due to scientific technology development, various intellectual properties related rights have been recognized to right to property. These rights were considered as human rights in this period. Due to this India obtained membership in WTO, required to make laws to fulfill the obligation imposed under it. The Parliament had enacted six Acts. These are expressly guaranteed to right to property includes intellectual property related rights. The executive authorities formulated a policy to computerization of records namely National Modernization
Programme (NLRMP). For this purpose, Rs.24657.86 has been allocated through 5YPs for land reforms, computerization of land records, issuing Patta Pass Book and development of land resources. During this period, the Judiciary has recognized that right to property is fundamental human rights. The Court has an activist approach through Justice Sinha, categorically recognized that right to property is a basic human right and it includes right to adverse possession. The Court also recognized that right to property is a basic human rights and it includes intellectual property right also. Judiciary has decided nineteen cases in which it directly incorporated right to property related human rights instruments into India through incorporative process.
Table – I

Trends in Incorporative Processes of Right to Property

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Graph – 1

Trends in Incorporative Processes of Right to Property