PART-3

EMERGING TRENDS IN DIRECTIVE PRINCIPLES AND SOCIO-ECONOMIC JUSTICE
CHAPTER-V
AGRA RIAN REFORMS , PREVENTION OF CONCENTRATION 
OF WEALTH AND SOCIO-ECONOMIC JUSTICE

(A) Prelude

Although agrarian reform jurisprudence is only one facet of the socio-economic justice, it has a profound impact to make because the Indian economy is primarily land based. Law cannot remain oblivious to the fact that the principle of distributive justice requires the flow of economic and social justice to rural India. The underlying policy of the land reform is that the land must belong to the tiller and all sorts of exploitation must be eliminated. In the pre-independence era, Indian economy was suffering from many vices and it was in the grip of feudalism. The concentration of wealth was in the hands of a few persons. But our society is moving from a tribal, feudal, semi-feudal and an order based on intense exploitation and powerful vested interests towards establishing a socialist democracy. It has been universally accepted that mere production and rapid economic growth is not enough in itself; distributive justice is necessary for the eradication of poverty. The existence of poverty is incompatible with the vision of an advanced, prosperous, democratic, egalitarian and just society. This objective was very much there in the minds of the framers of the Constitution. Our Constitution was framed by an extraordinary body of men; a body of men whose combined virtues and talents have seldom if ever been equalled in this country. They visualised the society in which every citizen should be the owner of some property not only as a means of sustenance but also as a zone of security from tyranny and economic oppression. The idea of socio-economic justice and equality, which were nurtured by radicals in the pre-independence days also found their way into the Constitution of India.

2. See supra Chapter II.
Our Constitution, as it was adopted, specifically provided for a broad based programme of agrarian reform, but within the basic principles of rule of law. At the very outset, the preamble of the Constitution which was carved out of the Objectives Resolution, provides for the establishment of a 'democratic' and a 'socialist' state securing to all its citizens 'Justice, social, economic and political'. This objective of the preamble finds its reflection in Part IV of the Constitution dealing with directive principles of state policy. Article 38(1) puts an obligation on the State to secure a social order for the promotion of welfare of the people and provides:

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

Article 39 of the Constitution not only guarantees an adequate means of livelihood to every citizen, whether he lives in town or a village, but also requires the state to ensure that even in the tiny village of India, the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the economic system does not result in the concentration of wealth and means of production to the general detriment of the community.

Thus, article 39 read with article 38 is meant to eradicate those vices due to which the rural economy of the country was suffering before independence when the tiller of the soil worked not for his own or his community's good, but for the good of the owner and controller of the land resources. Although agrarian reform is not specifically mentioned in the Constitution, yet its introduction would quite clearly, be well within the scope of the directive principles.

7. The word 'socialist' was inserted in the Preamble by the Constitution (Forty-second Amendment) Act, 1976. The meaning of the term 'socialist' has been explained in supra Chapter III.
8. Article 38(2) which was instituted by Constitution (Forty-fourth Amendment) Act, 1978 provides: "The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individual s but also, amongst group of people residing in different areas or engaged in different vocations". (Emphasis supplied).
9. See article 39(a), (b) and (c) of the Constitution.
10. See supra note 1.
It is submitted that in the Constitution, a special emphasis has been laid down in articles 38 and 39 that the State shall, in particular, strive for minimising the inequalities in income and status and that the State shall, in particular, direct its policies towards securing the objectives mentioned in that article. Further, article 37 of the Constitution makes these provisions of Part IV as "fundamental in the governance of the country" and provides that it shall be the duty of the State to apply these principles in making laws. 'Judicial process' is 'state action' and the judiciary is bound to apply these directive principles in making its judgements.

In fact clauses (b) and (c) of article 39 are pivotal not only in the context of article 39 itself but in the context of whole of the Constitution. The heart and soul of the Constitution can be said to lie in article 39(b) and (c). Because excellence comes only after existence. Shri Judubana Sahaya, described article 39 as "the charter of economic democracy", and "the charter of the poor men". In his view, this article is "the pivot around which everything will revolve".

The significance of article 39 can be well understood by those who have studied the history of development of capitalism in the world and the evils which it brings with its development. The framers of the Constitution tried to save India from the feudalism, capitalism and landlordism and wanted to establish socialism and thus mentioned the goals of the Indian welfare state in the preamble and the directive principles. Article 39 is based on two assumptions. First, that the operation of the economic system may result in the concentration of wealth. Second, that such concentration may become detrimental to the common good.

Thus, all these articles 37, 38 and 39 together are fertile enough to provide all the necessary tools for the attainment of equalitarian order.

11. See supra note 9 and 10 (Emphasis supplied).
12. Article 36 says that the term 'State' in Part IV has been used in the same sense as in Part III under article 12.
13. See article 37.
16. VII C.A.D. at 517.
17. Ibid.
and prevention of concentration of wealth in a few hands and provides socio-economic justice to the people of the country.

On the other hand, the framers of the Constitution were also aware of the institution of the property which is born together with law, and would die together. The concept of property, has never remained static. But it has had always a social aspect. Emphasis on this aspect has however varied from age to age. The concept of property has been changing with the economic evolution and change in the social structure of the society. Because it is abundantly clear that the property is a creation of social recognition and economic growth. According to Bentham, property forms the basis of man's expectations. He advocated least interference of the State in this right for the attainment of social happiness. He, however realised that unrestricted freedom of right to property might lead to economic disparities and, therefore, wanted regulatory legislations for reducing inequalities in the distribution of wealth. Taking guidance from the evils of capitalism, Karl Marx condemned the system of unrestricted private property and favoured State control over it. He argued that the state should defend the propertyless and must ensure that 'power' in property is not abused.

Broadly speaking there are three distinct forms which the institution of property has assumed over the years. First, property as an object of private ownership simpliciter. Secondly, property as an object of private ownership subject to the proviso that it is not used as to interfere with the interest of others. Thirdly, property as an object of public ownership and, thus, exclusively being an institution of social welfare. Under the Indian Constitution there was scope for each one of these three forms.

20. R.V.Paranjape,"Right to Property in India",J.C.P.S.,389(1976).Reference of recognition to property rights of men are also to be found in Kautiliya's Arthashastra, wherein he observed that "wealth alone is important in as much as charity and desire depends upon wealth for their realisation". Kautiliya, Arthashastra, Ch.VII para 12,cited in ibid.
21. Id. at 390.
22. Ibid.
23. See Virendra Kumar,"The Institution of Property And The Proposed Forty-fourth Amendment of The Constitution",XXVII,P.U.L.R., 53 at 54(1976). The last form of the institution of property is marked when the pre-eminence of the social interest is recognised. That is, the right of the individual is not merely regulated so that it does not come in conflict with the larger interest, but it is dealt with in such a manner that the maximum social interest is effected. The extreme example of this approach is found, for example, in the Soviet Constitution(1936). See Ibid.
Article 19(1)(f) guaranteed to every citizen the enjoyment of right to acquire, hold and dispose of property. But this was subject to the reasonable restrictions to be imposed under article 19(5). Another provision dealing with the fundamental right of the persons regarding property was article 31 under which no person could be deprived of his property save by the authority of law and that no property could be compulsorily acquired or requisitioned save for the public purpose and save by the authority of law. But in such cases the law was required to fix the amount of compensation or specify the principles on which and the manner in which, the compensation was to be determined and given.

In all those countries where the fundamental right to property is accorded constitutional recognition, it is an accepted principle that the State has, under certain conditions, power to deprive the individual of his property. Even when the Constitution of India was debated in the Constituent Assembly, some provinces (as Indian states were known then) had passed laws abolishing Jagirdaris and Zamindaris. Some other states passed such laws immediately after the coming into force of the Constitution. Obviously, the fundamental right to property was first asserted in the Supreme Court by Jagirdars and Zamindars. When the state governments and the Union of India passed more laws regulating the right to property in the general public interest, others also went to the Supreme Court to assert their fundamental right to property. Thus, whenever the State passed the law to implement the directive principles of Part IV of the Constitution it was contested by the individuals before the court as violative of their fundamental right to property. Hence the conflict started between judiciary and legislature from the very commencement of the Constitution. Later on, the fundamental right to property was taken away from Part III and it was placed in article 300A.

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24. Article 19(1)(f) has been omitted from the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978.
25. Article 19(5) before the (Forty-fourth Amendment) Act, 1978, provided: "Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the right conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribe" (Emphasis supplied).
26. Article 31 has also been omitted from Part III of the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978 and now right to property exists under article 300A in Part XII of the Constitution. Article 300A provides: "No person shall be deprived of his property save by authority of law".
27. This was done under article 31(2) read with Entry 42 of list III.
29. See supra note 26.
With this backdrop in mind, in this chapter, an attempt would be made to study the following questions. How far the legislature has been able to implement the directive principles and to achieve the objectives of articles 38 and 39? What was the impact of various judicial pronouncements with regard to the right to property? How these judgments operated as stumbling blocks for the implementation of the directive principles? What is the impact of removing the right to property from Part III as fundamental right and putting it in article 300A? And finally have we been able to achieve the aim of agrarian reforms and prevention of concentration of wealth and, thus, providing socio-economic justice to the majority of Indians who live below the poverty line, These questions have been discussed in the following heads.

(B) Agrarian Reforms And Prevention of Concentration of Wealth: Some Developments till the Commencement of the Constitution

A world-wide revolution of the present era is mainly concerned with the problem of land and most of the social changes in different parts of the world centre round the land reforms programmes. Land to the landless is a slogan at least thirty centuries old. And the oppressive system of land tenures militates against the increase in agricultural out-put and improvement in the general standard of living. These are the few problems out of many which have attracted the attention of the legislatures of the world at different periods of history. In India, however, the problem of land tenure presents serious difficulties due to several invasions of foreigners. 30

Land to the tiller of the soil has been our cherished aim from pre-independence days. In our country, agriculture is a way of life for the predominant majority of its people. Ownership and management of land has several important social and economic dimensions. In the past few decades, we have taken a number of important decisions and attempted to implement land reforms and prevention of concentration of wealth in the hands of a few persons only. 31

the ryotwari system and third, the mahalwari system. Under the Zamindari system, the Zamindar played the role of revenue collector and acted as intermediaries between the Government and the cultivator. They were given the control over the vast areas. In the ryotwari system, which was developed later, the government collected the revenue through its own servants. This system was introduced by Thomas Munro in the first quarter of the 19th century. The ryot or the holder of the land was protected from ejectment as long as he paid the fixed revenue to the government. On the other hand, under the mahalwari system, the settlement was made with the entire village as a writ for the revenue collection. The main important feature of the Zamindari and ryotwari system was that it resulted in the concentration of land holdings at the upper level of the society. With the acquisition of Dewani of Bengal, Bihar and Orissa in 1765, the British East India Company introduced certain changes of far reaching implications in respect of property rights in India. The Company started letting land to the highest bidder.

In 1793, Lord Cornwallis arrived at a permanent settlement with the Zamindars of Bengal conferring on them the right of ownership over the land in utter disregard of the right to peasantry. The ostensible aims of the Permanent Settlement were the following: First, to create a class of big landowners who could be depended upon as pillars of British rule in the country, and secondly, to induce moneyed men to acquire landed property and invest capital in agriculture. Besides the right to property, the British also introduced the concept of 'eminent domain' as an attribute of State sovereignty. Out of the various regulations which were passed during the nineteenth century, the Land Acquisition Act, 1894, empowered the State to acquire land of private individuals for public purpose on payment of compensation.

It is submitted that the British land reforms were motivated not by

33. Id. at 4.
34. The term 'eminent domain' has been borrowed from the American Constitution meaning thereby the power of the sovereign to take property of persons for the public purpose without the owner's consent. In America there are three limitations on the power of 'eminent domain'—(1) there must be a law authorising the taking of property;(2) property must be taken for public purpose, and (3) just compensation should be paid. This rests upon the famous maxim — salus populi est suprema lex, which means that "the welfare of the people or the public is the paramount law" and also on the maxim — necessitas public major ist quam, which means "public necessity is greater than private."
35. The First Regulation was the Bengal Regulation 1 to 1924 which was followed by Act 1 of 1850, Act XX of 1852, Act 1 of 1854, XXII of 1863, Act X of 1870 and finally the land Acquisition Act, 1894.
consideration of improving production nor by a sense of social justice but by the need to safeguard British political influence in the rural areas and raising of land revenue became the potential source of draining out India's wealth to Great Britain.

Throughout the freedom struggle, the freedom fighters raised their voice against the British Rule and against the British exploitation in the name of private land ownership. As a result of this popular demand of the Indian leaders, the Joint Parliamentary Committee realised that the existing system of permanent settlement should be altered and recommended that the Governor be empowered to repeal or change the character of Zamindari system in case it was necessary. This recommendation found its reflection in section 299 of the Government of India Act, 1935 and thus, for the first time a clause relating to the protection of the property received constitutional recognition in India.

Elections to the Provincial Assemblies were held in January 1937 and the Congress in its Election Manifesto reaffirmed its faith to draw up a plan for agrarian reforms. After the Congress Ministers took office on 1st April, 1937, the abolition of Landlordism was settled in principle but there was considerable opposition which impeded the progress of land reforms. Unfortunately, the ministers had to resign within a short span of two years and the hopes cherished through the Election Manifesto were duped. Need to follow the path of socialism and emancipation of peasants and workers was once again reiterated by the Congress Party at the time of General Election of 1946. Eradication of poverty, raising the standard of masses and adequate measures to prevent concentration of wealth in the hands of few formed the genesis of the economic policy of the Indian National Congress at its Delhi session in 1947. A Committee, with Jawaharlal Nehru as its chairman, was appointed for making recommendations to make a headway towards socialism in the real sense. The first Industrial Policy Resolution of 1948 also laid down the respective roles of state and private enterprise. It was the first bold statement made by an independent Bharat to put an end to a state of economic stagnation which characterised the British

38. The Election Manifesto was adopted on 22 August, 1936. See Jawaharlal Nehru, The Unity of India, at 401,409(1946).
39. N.V. Paranjape, supra note 20 at 393.
40. The Committee was called the Economic Programme Committee See Id. at 394.
regime. It was felt that for some time to come the state could contribute more quickly to increase of national wealth by expanding its present activities wherever it was clearly operating and by concentrating on new units of production in other fields rather than on acquiring and running new existing units.\footnote{41}

The Constituent Assembly, while considering the final draft article 24 (which corresponded to article 31 guaranteeing right to property) was aware of the nature and urgency of the problem of agrarian reform.\footnote{42} It knew that the problem was a complex one and any programme in the area was likely to face numerous legal and constitutional difficulties and that the programme would have to be phased one. It was also aware of the fact that in some states, the bill for abolition of certain interests in land known as Zamindaars had been introduced and were pending for consideration even before the Constitution was adopted. For facilitating implementation of these bills specific provisions were made in the Constitution. Specific provisions exempted the agrarian reform legislations from complying with the requirements of payment of compensation for compulsory acquisition or requisition of private property as stipulated in article 31 clauses (2), (4) and (6).\footnote{43}

It is seen that in article 31(2) the property could be acquired for 'public purposes'. Although the phrase 'public purposes' is ambiguous and wide enough to take in its stride any purpose for which the State may seek to acquire the private property. But all the socio-economic measures pertaining to the property, like distribution of lands to the tillers of the soil, agrarian reforms etc., taken by the legislature in pursuance of the relevant directive principles to usher in a new social order wherein social and economic justice is assured to all must be construed to be for the 'public purpose'. Two distinct types of acquisitions were anticipated by the makers of our Constitution in which the compensation was to be paid under article 31.\footnote{44}

\footnote{42} For a lucid account of the deliberations in the Constituent Assembly, see Granville Austin, The Indian Constitution: Cornerstone of a Nation, 88-96 (1966). See also C.L. Merillat, Land And the Constitution in India, Chapter II (1970).
\footnote{43} See Clauses (2), (4) and (6) of article 31 of the Constitution.
For petty acquisition or acquisition of small bits of property for public purposes, usually the amount of compensation was to be fixed by the legislature, whereas in the case of substantial acquisition, which formed part of the larger schemes of social reform, the matter of compensation was not to be looked at from the point of view of the individual affected and, therefore, was of much consequence and it would not be possible to leave such a piece of legislation open to widespread and continuous litigation in the courts of law without damaging the future of millions of people and the foundation of the state itself.

It is submitted that a natural corollary to the above statement is that if a legislation intended to bring about socio-economic and agrarian reforms and puts a ceiling on the holding of property and wealth by an individual and takes away the surplus of property and wealth concentrated in a few hands for distribution among the members of the community, there is no obliteration of the property right as such but only a compulsion that property and wealth should be shared and right therein should be exercised by as great a number of people as possible to subserve the common good.

While speaking about the role of judiciary in relation to article 31 and justiciability of "compensation", Jawaharlal Nehru observed:

Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. But normally speaking, one presumes that any Parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community.

Further speaking on the role of judiciary he observed:

They should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against community in the larger sense of the term. So, it is important that with this limitation the judiciary should function.

44. IX, C.A.D. at 1192.
45. Ibid.
46. Id. at 1193.
47. Id. at 1995-96(Emphasis supplied). Alladi Krishnaswami Ayyar also expressed the similar opinion regarding the role of the courts in relation to article 31. He observed: "If the legislation is a colourable device, a contrivance to outstep the limits of the legislative power or, conted..."
It is submitted that the use of the words 'against the Constitution' instead of the words "right to property" is of great significance and the courts were not expected to view the right to property in the narrow perspectives or from the point of view of the interest of a few individuals but to view it in a broader perspective of the Constitution and of the good of the country and community as a whole. Thus, a legislative measure affecting right to property would not become unconstitutional if the measure implemented the socio-economic policies of the Constitution. It is also worth noting here that the term "compensation" was not qualified by the word 'just' so as to impart flexibility into it and that in cases of acquisition for 'social purposes' or 'public purposes' courts could respect the quantum of compensation which the legislature determines in conformity with the interest of the community, i.e., to fulfil the economic objectives of the Constitution.

The above discussion amply reveals that right to hold property was not recognised by the framers of the Constitution as an absolute or unrestricted right. Property is a social institution and like other institutions, it is subject to regulations and claims of common good. However, various agrarian reforms met rough weather of judicial scrutiny.

(C) Judicial Deflections And Legislative Corrections

With the commencement of the Constitution of India, there was a pressing need of agrarian reforms, social control and regulation of private enterprise for the socio-economic development of India. Zamindari abolition, land reform and ceiling laws, consolidation of land holding agricultural product support pricing, cooperative and industrial credit facilities were some of the notable laws and features of India's land reform policy. Accordingly, the programme of agrarian reform constituted the first step in the direction of breaking up concentration of wealth in a few hands and thus to provide socio-economic justice to the toiling masses of rural India. The laws were aimed at the redistribution of agricultural land equitably among those who actually tilled the land and to eliminate intermediaries who were to use the language of private law, is a fraudulent exercise of the power, the court may pronounce the legislation to be invalid or ultra vires". IX, C.A.D. at 1272.

49. The Constitution of India came into force w.e.f. 26th January, 1956.
absentees land lords altogether from the field.\footnote{51} Most of the legislations were passed with the objective of fulfilment of the goal of Part IV dealing with the directive principles. But those who had vested interest in the properties, challenged the land reform laws before the courts on the ground that they contravene their fundamental rights in Part III, which is an equally valuable prop of the Indian Constitution. Consequently, the courts persistently faced the hard task of striking a balance between the individual interests and social demands of the community welfare particularly in the areas involving property and ownership rights.\footnote{52} The concept of 'compensation' under article 31 became the subject matter of acute judicial controversy almost from its very inception into the Constitution. Since the fundamental rights are 'enforceable',\footnote{53} and the directive principles of state policy are not,\footnote{54} the impediment created by the exposition of article 31 was sought to be removed by the Parliament by amending the Constitution. The action and interaction of judicial decisions and legislative response on the point is of great academic interest and can be divided into various following phases:

(i) First Phase: From the Commencement of the Constitution upto the First Amendment

In the first phase, the courts considered sanctity of individual rights and numerical equality as touchstones of property rights. Commencement of the Constitution provided an impetus to several state legislatures to bring about socio-economic reforms. Because now it was a constitutionally proclaimed goal.\footnote{55} Number of agrarian reform legislations were enacted by the different states with the objective to take large part of land from the Zamindars and absentee landlords and vest the same in the hands of actual tiller of the soil but that did not prevent the affected Zamindars from challenging these legislations in the court of law. The first challenge to land reform Act came through a writ petition filed against the State of Bihar in the Patna High Court in the case of Kameshwar Singh v. State of Bihar.\footnote{56} In this case Bihar Land Reform Act, 1950 was challenged on the

\footnote{52} Supra note 50 at 153.
\footnote{53} See article 13(2) read with articles 32 and 226.
\footnote{54} See article 37.
\footnote{55} See articles 38 and 39(a), (b) and (c).
\footnote{56} A.I.R.1951 Pat. 91.
ground that it offended fundamental rights guaranteed by articles 14, 19(1)(f) and 31(2). Patna High Court declared the Act to be unconstitutional and void not on the ground of inadequacy of compensation (as it was felt that such a challenge was barred), but on the ground that it contravened article 14 and that it imposed restrictions of most far-reaching and drastic kind on the property right of proprietors and tenure holders guaranteed under article 19, and it could not be fairly said that those restrictions were reasonable. In this case compensation was to be on a sliding scale, the larger the property, the smaller the rate of compensation. The highest compensation payable under the Act was twenty times the net income calculated according to the provisions of the Act and the lowest was three times the net income. Curiously, this provision based on proportional concept of equality was held to be in violation of the principle of equality before the law guaranteed by Article 14. The Court said:

The Object of the legislation here impugned is the giving of the compensation, that is, something which will represent the value in money of the property that is being acquired. It cannot be said to be reasonable classification which assesses that value at twenty times the net income in the case of poor man and three times in the case of a rich man.56a

In Uttar Pradesh, the validity of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 was challenged in Surya Pal v. State of U.P.57 The Allahabad High Court declared the Act as constitutional.

It is submitted that two different views were expressed by the High Courts as regard to the validity of the agrarian reforms and thus, rendered the fate of every agrarian reform law uncertain and obstructed and delayed the move for the implementation of such agrarian reforms. The decision of the Patna High Court was also against the intention of the framers of the Constitution because they wanted the judiciary to come into picture only when fraud was committed on the Constitution.58

At the same time some other pronouncements were made by the courts which were not in tune with the intention of the framers of the Constitution. For Example, in Moti Lal v. State of U.P.59 the decision of the U.P.

56a. Id. at 111.
57. A.I.R.1951 All.674.
58. See supra note 46.
Government which sought to create a monopoly of transport in favour of the state operated bus services was struck down as unconstitutional since it totally deprived the citizens of their rights under Article 19(1)(g) and thus invalidated any scheme of nationalisation. In post-independence period one of the problems which engaged the serious attention of the government was related to agrarian reforms on a massive scale, and social upliftment of backward classes. In 1950 the work on the First Five Year Plan had begun and one of its objectives was to initiate measures of social and economic justice on a vide scale in the direction of the pattern of the society placed before the nation by the constitution in the directive principles. In 1950 itself the Planning Commission was set up which was to proceed with the planning in the country on the lines suggested by the directive principles with a view to accelerate the tempo of socio-economic development in India.

With a view to set at rest the uncertainty regarding agrarian reform laws, which was created by the High Courts in the above mentioned cases, and to fulfil the avowed aim of the socio-economic justice to the masses of the country, the Parliament moved the Constitution(First Amendment) Act, 1951, with retrospective effect. The object of passing this amendment is clear from the Statement of Objects and Reasons of the Constitution (First Amendment) Act, 1951. It provided:

During the first fifteen months of the working of the Constitution, certain difficulties have been brought to light by judicial decisions and pronouncements specially in regard to fundamental rights....Article 31 had also given rise to unanticipated difficulties for, notwithstanding the provisions of clause (4) and (6) of Article 31, the implementation of important measure of agrarian reform passed by the State Legislatures had been held up due to dilatory litigation.

60. Article 19(1)(g) provides: "All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business". See also Saghir Ahmed v. State of U.P., A.I.R.1954 S.C.728.
63. The First Five Year Plan provides: "The Directive Principles of State Policy enunciated in Articles 36 to 51 of the Constitution make it clear that for the attainment of these ends, ownership and control of the material resources of the country should be so distributed as best to subserve the common good, and that the operation of the economic system should not result in the concentration of wealth and economic power in the hands of few. It is in this larger perspective that the task of planning has to be envisaged" Id. at 8 (Para 4).
64. See the Statement of Objects and Reasons of the Constitution(First Amendment) Act, 1951.
Thus, the main object of the amendment was to insert provisions fully securing the constitutional validity of Zamindari abolition laws in general and certain specified State Acts in particular.

Jawaharlal Nehru while moving the Constitution(First Amendment)Bill, 1951 observed:

When I think of this article(article 31) the whole gamut of pictures comes up before my mind, because this article deals with the abolition of the Zamindari system, with land laws and agrarian reform...And every day of delay adds to the difficulties and dangers, apart from being an injustice in itself....We do not want anyone to suffer. But, inevitably, in big social changes some people have to think in terms of large schemes of social engineering not petty reforms but of big schemes like that....Even in the last three years or so some very important measures passed by State Assemblies and the rest have held up.No doubt, as I said, the interpretation of the courts must be accepted as right but you, I and the country has to wait with social and economic conditions - social and economic upheavals...and we are responsible for them. How are we to meet them, How we are to meet this challenge of the times,....Therefore, we have to think in terms of big changes, and the like and, therefore, we thought of amending article 31. Ultimately we thought it best to propose additional articles 31-A and 31-B and in addition to that there is a Schedule attached of a number of Acts passed by State Legislatures, some of which have been challenged or might be challenged. We thought it best to save them from long delays and these difficulties, so that this process of change which has been initiated by the States should go ahead.65

The First Amendment Act, 1951, inter-alia made the following changes. First, article 19(6) was amended so as to permit the State to carry on business, trade or industry to the exclusion complete, or partial of citizens or otherwise.66 Second, article 31-A was added for saving of certain laws providing for acquisition of estates etc.67 After the insertion of this article no law could be called in question on the ground that no compensation has been provided for, or that there is no public purpose or that it violates some other provisions in Part III of the Constitution. Third, article 31-B and Ninth Schedule were added.68 Article 31-B was added to save the specific

66. See article 19(6) of the Constitution of India.
67. See article 31-A of the Constitution of India.
68. See article 31-B of the Constitution of India.
Acts included in the Ninth Schedule of the Constitution from being declared unconstitutional and also to validate some of them which were declared unconstitutional by the Courts.\textsuperscript{69} Thus, the combined effect of all these changes made by the Constitution (First Amendment) Act, 1951 was to immunise the various agrarian reform laws from challenge under any of the fundamental rights and from judicial interference and to prevent the concentration of wealth in the hands of a few individuals. And this was also the intention of the framers of the Constitution.\textsuperscript{70} In other words, the First Amendment was aimed at achieving certain objectives mentioned in the directive principles. This was made clear by Jawaharlal Nehru while moving the Constitution (First Amendment) Bill, 1951. He observed:

The Constitution lays down certain Directive Principles of State Policy and after long discussion we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. Directive Principles of State Policy represent dynamic move towards a certain objective. The Fundamental Rights represent something static to preserve certain rights which exist. Both again are right.\textsuperscript{71}

(ii) Second Phase: From First Amendment to Fourth Amendment

The validity of the Constitution (First Amendment) Act, 1951, was challenged before the Supreme Court in Sankari Prasad Singh Deo v. Union of India,\textsuperscript{72} but the Supreme Court unanimously upheld Parliament's power to amend every part of the Constitution including fundamental rights. The court also observed that a Constitution amendment was not 'law' within the meaning of article 13(2) and was, therefore, beyond judicial review. After Sankari Prasad case, First Amendment had an echo in State of Bihar v. Kameshwar Singh.\textsuperscript{73} After the first amendment Bihar Land Reforms Act, 1950 could not be challenged but the issue of adequacy of compensation and its justiciability was the subject matter of judicial scrutiny. In this case it was argued that the Act was not enacted for a public purpose, and therefore, article 31(4) did not protect the Act. The requirement of a public

\textsuperscript{69} By the First Amendment, thirteen laws were validated by putting them in the Ninth Schedule under article 31-B. See Ninth Schedule, Serial Nos. 1 to 13.
\textsuperscript{70} See supra Chapter II.
\textsuperscript{72} (1952) S.C.R. 89; A.I.R. 1951 S.C. 458.
\textsuperscript{73} A.I.R. 1952 S.C. 252; (1952) S.C.R. 889.
purpose, it was said, was involved in the very concept of acquisition, and could also be spelt out by reading entry 36 of List II, with entry 42 of List III to Schedule 7. The majority held that article 31(2) prescribed two conditions for the acquisition of property: (i) a public purpose and (ii) payment of compensation, and that public purpose could not be spelt out from the concept of acquisition or from legislative entries. Mahajan, J., held that article 31(2) did not provide for a public purpose which according to him, was a part of the concept of acquisition; but he held that the impugned law acquired lands for a public purpose, namely, to bring about a reform in the land distribution system of Bihar for the general benefit of the community, a purpose which was in accord with the Directive Principles of State Policy embodied in article 39(b) and (c). Thus, the general challenge to the Act, therefore, failed. Sastri, C.J., observed:

"The Zamindars lost the battle in the last round when this court upheld the constitutionality of the Amendment Act which the Professional Parliament enacted with the object, among others, of putting an end to this litigation."  

However, majority of the judges declared section 4(b) (vesting the arrear of rent in the State) and section 23(f) (providing that fifty per cent of such arrears were to be added to the compensation) of the Bihar Land Reforms Act, 1950, void. The majority held that section 4(b) read with section 24 provided for the acquisition of money and money could not be acquired. Mukherjee, J., held that section 4(b) was a fraud on the Constitution, in the sense that it pretended to lay down principles of compensation, but in substance it provided that no compensation should be provided or paid for half the arrears. He observed:

"Taking the whole and returning a half means nothing more or less than taking half without any return, and this is naked classification...The impugned provision, therefore, in reality does not lay down any principle for determining the compensation to be paid for acquiring arrears of rent, nor does it say anything relating to the form of payment, though apparently it purports to determine both. This...is fraud on the Constitution and makes the Legislation, which is colourable one, void and inoperative."
Thus, after the First Amendment the problem centred round the expression "compensation" in article 31(2). It may be mentioned here that the framers of the Constitution were of the opinion that the field for judicial review of "compensation" would be extremely limited. It is also worth noting here that the qualifying word "just" was deliberately omitted to show that the language used in the article was not in pari materia with the language used in Australian and American Constitutions. But in spite of such clear intention of the framers of the Constitution, the judiciary interpreted the word "compensation" in different manner. This was so even after the First Amendment.

The problem precipitated further in the case of State of West Bengal v. Bela Banerjee,79 in which the Supreme Court struck down the West Bengal Land(Development and Planning) Act, 1948, which provided for the acquisition and development of land for public purposes, viz., for the settlement of immigrants who had migrated into West Bengal due to communal disturbances in East Bengal. The impugned Act had limited the compensation to the market value of the land on 31 December, 1946, no matter when the land was acquired. The controversy in this case before the Supreme Court centred round the constitutionality of the compensation stipulated in the Act. The Attorney General argued that the compensation could not mean full case equivalent, for, then the power conferred on legislature to lay down the principles on which the compensation is to be determined would be rendered nugatory. While rejecting this argument the Court observed:

We are unable to agree with this view. While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner of the property appropriated, such principle must ensure that what is determined as payable must be compensation, that, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property

77. According to Alladi Krishnaswami Ayyar the construction of the word 'compensation' in article 31 vary from the construction put by the American and Australian Constitutions on the expression "just compensation" found in their respective Constitutions. See IX C.A.D. at 1271-72.
78. See supra note 76.
appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the Court. This, indeed was not disputed.80

Thus, the Supreme Court in this case interpreted the term 'compensation' to mean "just equivalent" of what the owner has been deprived of and a full indemnification of the expropriated owner.81 The ratio of this case was soon followed by the Court in State of W.B. v. Subodh Gopal,82 Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd.83 and Saghir Ahmed v. State of U.P.84

The net result of the above judgments of the Supreme Court was that now the State was required to pay full compensation or in other words market value of the property acquired on the date of acquisition and the court considered that if the true value of the property is not paid then it is a justiciable issue.

It is submitted that the decision of the Supreme Court in Bela Banerjee, treating the expression 'compensation' as 'just equivalent' or equal to the market value at the time of acquisition was contrary to the intention of the framers of the Constitution. Justice Deshpande described this decision as "a perfect example of the complete alienation of court from the ethos of the Constitution and the aspirations of the people".85 This is clear from the following observations of K.M. Munshi in the Constituent Assembly:

The Court will not substitute their own sense of fairness for that of Parliament; they will not judge the adequacy of compensation from the standpoint of market value; they will not question the judgment of Parliament, unless the inadequacy is so gross as to be tantamount to a fraud on the fundamental right to property.86

80. Id. S.C.R. at 563-64.
81. Id. at 562.Cf Fifth Amendment to the United States Constitution.
82. A.I.R.1954 S.C.92. In this case W.B. Revenue Sales (W.B. Amendment) Act. 1950, was challenged. In fact Subodh Gopal involved no acquisition of property. The impugned law regulated the relation of landlord and tenant and was in line with the normal tenancy legislation in India.
84. (1955) S.C.R.707., A.I.R.1954 S.C.128. In this case the Supreme Court held that depriving a person of his interest in commercial undertaking attacked the provisions of article 31(2) which made the payment of compensation compulsory.
86. IX C.A.D. at 1301. Late Govind Ballabh Pant stated: "Courts can be approached only when the compensation is almost illusion or when there has been fraud on the Constitution", L.S.D.1955 Vol.2 Cols.4976.
Joseph Minattur has rightly remarked that market value as proper compensation is a shopkeeper’s concept and it is the concept gleaned from the English judicial decisions that has been adopted and applied by the Indian Courts. The payment is intended more for the restoration of harmony in the community that has been disturbed rather than for putting the injured party in the position he would have been if no offence had been committed. The disparity due to concentration of wealth and means of production in a few hands leads to poverty of the masses and creates disharmony in the community. It is these evils that are sought to be removed by acquisition of property. If rich man's property is acquired and in lieu of it he is paid an exorbitant sum which may be its market value, the disparity and disharmony in the community will continue.

Thus, unqualified proposition that compensation meant "a just equivalent of what the owner has been deprived of" had an adverse effect on the socio-economic progress of the community. It was difficult for the state, which was having meagre economic resources, to pay full value of the property which was to be acquired for the benefit of the community at large. Moreover, the introduction of the scope of compensation made the whole concept justiciable, and, thus, the centre of gravity of public policy for either determining the amount of compensation or laying down the principles on which, and the manner in which, the compensation is to be determined and given, in effect shifted from the legislature to the Court. This was never deemed desirable by our Constitution makers in a system of parliamentary democracy.

From the above analysis it is also clear that article 31 placed serious obstacles in giving effect to the directive principles of state policy enshrined in article 39 because neither the scanty resources permitted the State to pay the huge sum of money by way of "just" compensation, nor was it politic to equate the poor owner with the rich owner of the property to avoid the concentration of wealth and means of production to the common determinent and for the distribution of material resources of the community to subserve the common good. However, Upendra Baxi is of the view that article 31 has been an important arena of constitutional politics.

88. Id. at 609.
89. See supra note 23 at 57.
According to him, "by and large, the Court has done well and those who say that it has been a road block to socio-economic progress, especially in the area of land reforms, are making an adverse political or partisan assessment without a total analysis of the Court's work, styles or attitudes. It is submitted that the view of Upendra Baxi is erroneous because of the reasons mentioned above.

In order to overcome the hurdle created by Bela Banerjee, the Parliament amended article 31. This was done by Parliament in 1955 by enacting Constitution (Fourth Amendment) Act, 1955. This amendment made the following changes. First, it amended article 31(2) by substituting "requisition" for "taking possession" and by expressly providing that property could be compulsorily acquired or requisitioned only for a public purpose. But the most important part of the amendment consisted in adding the following words to article 31(2): "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". This change was obviously made to nullify Bela Banerjee case. The second change brought about by this Amendment was that a new sub-article (2A), which explained when deprivation of property amounted to acquisition or requisition, was added. Thirdly, article 31-A was amended by adding four new clauses (b) to (e) to article 31A(1), which protected laws other than those relating to "estates". However, the Fourth Amendment reduced

90. Upendra Baxi, Indian Supreme Court And Politics, 167(1980).
91. This amendment came into effect on 27 April, 1955.
92. Article 31(2) after the Fourth Amendment reads as: "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 the law is not adequate."
93. The new sub-article (2A) of article 31 provided: "Where a law does not provide for the transfer of 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 requisitioning of property, notwithstanding that it deprives any person of his property."
94. Following clauses were added to article 31A(1):
"(a)....
(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
the protection given to laws by article 31A under the First Amendment by limiting the protection to a challenge under articles 14, 19 and 31. Fourthly, Ninth Schedule was amended by adding to it seven more Acts or parts of Acts. The Fourth Amendment was introduced to tide over the difficulties coming in the way of socialistic reforms as anticipated by the directive principles. After this amendment it was hoped that the legal controversy about the meaning of the compensation clause would come to an end and it would facilitate the passing of legislations embodying socio-economic reforms.

As Professor Alexandrowicz has pointed out, the new category of laws which were made immune from judicial review extends from the field of land reform to the industrial and commercial fields. He further stated that "it is difficult for the reader of the Fourth Constitution Amendment Act to escape the conclusion that it simply aims at restoring to some extent what was laid down by the Constituent Assembly but changed by judicial interpretation". In view of this fact Professor Alexandrowicz rightly concludes that "in fact the Constitution has not been changed much but rather redrafted in order to reflect better the original intentions of the Constitution makers". But in spite of all this the Supreme Court still continued to sit in the "sound proof room" and the legislature had to amend the Constitution further.

(iii) Third Phase: From Fourth Amendment to Seventeenth Amendment

Seventeenth Amendment of the Constitution was passed in 1964. And before the passing of this amendment a number of developments took place

(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 share holders 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, on the premature termination or cancellation of any such agreement lease or licence".

95. See Serial Nos. 14 to 20 of Ninth Schedule.
97. Ibid.
98. Ibid.
in the country. First Five Year Plan was completed. The Second Five Year Plan was drafted and put into operation. It was also completed and the Third Five Year Plan was brought into operation.

In 1955 the Congress had declared its objective to create a socialist pattern of society. This was the basis of the Second Five Year Plan, where socialistic pattern of society gets a more concretized expression:

Essentially this (Socialist) pattern of society means that the basic criterion for determining lines of advance must not be profit motive, but social gain, and that the pattern of development and the structure of socio-economic relation should be so planned that they result not only in appreciable increase in national income and employment, but also greater equality in income and wealth....The Directive Principles of State Policy in the Constitution have indicated the approach in broad terms; the socialist pattern of society is a more concretised expression of this approach. Economic policy and industrial changes have to be planned in a manner that would ensure economic advance along democratic and egalitarian lines.

The Socialist pattern seemed to have acquired a definite foothold by this time and the public sector was also given a place of paramount importance. The second Industrial Policy Resolution was passed in 1956 which stated:

The adoption of the socialist pattern of society as the national objective as well as the need for planned and rapid development require that all industries of basic and strategic importance should be in the public sector. Other industries which are essential and require investment on a scale which only the State, in the present circumstances could provide, have also to be in the public sector.

In order to control the production, supply and distribution and trade and commerce in certain commodities, the Essential Commodities Act, 1956 was passed. In spite of all these progressive steps the concentration of wealth remained in the hands of a few only. The Committee on Distribution of Income and levels of living, popularly known as Mahalanobis Committee, was appointed by the Planning Commission in 1960, to make an enquiry into the extent to which the operation of economic system has resulted in the concentration of wealth and means of production in few hands and to the

100. Second Five Year Plan was from 1956-61.
101. Third Five Year Plan was from 1961-66.
102. Supra note 100 at 22-24.
103. See Government of India Resolution of Industrial Policy (dated 30 April 1956, para 6).
104. Section 3 of the Act empowers the Central Government to control the (conted)
detriment of common good. The Committee reported about the trends in the economy during the first and second plan period and stated:

In part at least the working of our planned economic growth has encouraged this process of concentration by facilitating the aiding and growth of big business in India...the concentration of economic power in the private sector was more than what could be justified on functional grounds....105

After taking into consideration the findings of the Mahalanobis Committee, the Government appointed in 1964 Monopolies Enquiry Commission to enquire into the extent and effect of concentration of economic power in private hands and prevalence of monopolistic and restrictive practices in important sectors of economic activity other than agriculture.

In the area of agrarian reforms also there had not been much of progress because the judiciary continued its literal restrictive interpretation. The Kerala Legislature, in 1961, enacted the Kerala Agrarian Relations Act. The objective of this Act was to impose a ceiling on the area of land a land-owner could hold and to vest proprietorship in the land in the cultivating tenants. The law covered all lands in the State including ryotwari lands. A ryotwari pattadars, who were affected by the law, challenged the Act before the Supreme Court in the case of Karimbil Kunhikoman v. State of Kerala. 106

It was contended that ryotwari land did not come within the purview of expression "estate" as defined in article 31A(2)(a). Therefore, the question before the Supreme Court was whether ryotwari system was covered by the term "estate" or not. The Supreme Court struck down the Agrarian Relations Act, 1961, on the ground that lands held by ryotwari pattadars were not an estate within the meaning of article 31A(2)(a) and, therefore, the Act is not protected under article 31A(1). The obvious result of this judgement was that while the Kerala Agrarian Relations Act applied throughout the State of Kerala, the ryotwari pattadars escaped from the clutches of law.


say, whereas all landowners in Kerala were obliged to obey and comply with the ceiling limit and surrender the surplus land in accordance with the Act, the rhotwari pattadars were left free to hold ryotwari lands even beyond the ceiling limit without any compensation. Thus, agrarian reform was made meaningless in Kerala by the above decision.

In order to remove the impediments created by Kunhikoman case, the Parliament enacted Constitution(Seventeenth Amendment) Act, 1964. This amendment brought following changes: First, it inserted a new proviso in article 31A(1). 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 ancilliary thereto", including waste land, forest land, land for pasture etc. Thirdly, Ninth Schedule was amended and forty-four land reform laws, including the Kerala Agrarian Relation Act, were added to it.

(iv) Fourth Phase: From Seventeenth Amendment to Twenty-ninth Amendment

This period witnessed some very important developments. Regarding the concentration of wealth and means of production, the report of Monopolies Inquiry Commission was submitted on 31 October, 1965. The Commission observed that industry-wise concentration existed in so far as a limited number of producers had a comparatively large share of market. The Commission also recommended a new legislation, the Monopoly and Restrictive Trade Practice Act, which was enacted on 27th December, 1969 and came into force on 1 June, 1970. The purpose of the Act has been stated in the preamble of the Act, i.e., to provide that the concentration of economic system does not result to the common detriment. It also provides for the control of monopolies and the prohibition of monopolies and restrictive trade practices and other incidental matters. In other words M.R.T.P. Act was passed to achieve the objectives mentioned in article 39(b) and (c). It is beyond the

107. See new proviso to article 31(A)(1) of the Constitution of India.
108. See clause 2(a) of article 31A after Seventeenth Amendment.
109. See Serial Nos.21 to 64 of the Ninth Schedule.
110. With regard to countrywide concentration, the Commission found that top 75 business houses had total assets of Rs.2605.9 crore which constituted as much as 46.9 per cent of the assets of non-governmental companies. See Report of Monopolies Enquiry Commission, at 30-32(1965). In 1967 the government appointed the Industrial Licensing Committee which is popularly known as the Datta Committee to examine the functioning of the industrial licensing system.
scope of this chapter to study in detail the various provisions of the said Act. However, a few things regarding the Act may be noted here. The function of M.R.T.P. was to advise the government in matters referred to in it and it was entirely up to the government to reject the advice tendered by the M.R.T.P. Commission. The Act did not attempt to define the expression "concentration of economic power". In the absence of a clear criterion for concentration of economic power, it was obvious that the Act bristled with so many difficulties in its administration. Keeping in view our failure to prevent the concentration of the material resources so as to subserve the common good it was a distant dream unrealisable with half hearted attempts.

On the planning side, the Third Five Year Plan generally stated the ideals of setting up socialist pattern of society and elimination of all forms of exploitation and social injustice within the agrarian system. It emphasised for the completion of the land reforms programme envisaged under the first two five year plans. It stated that a society developing on the basis of democracy and socialism is bound to place the greatest stress on social values and developing a sense of common interest and obligations among all sections of community. The Fourth Five Year Plan made a searching analysis of the problem of land reforms and it noted that there was a wide gap between the existing land reform legislations and their implementation.

In 1969, the Chief Ministers Conference was called in Delhi which laid emphasis for a Central Body for watching the progress of Land reforms. This demand was further reiterated in 1970. Accordingly, a Committee which is known as Central Land Reforms Committee was organised under the chairmanship of Union Agriculture Minister. The Committee was to advise the government from time to time upon the operation, progress and effects of measures on land reforms.

On the judicial side also number of important developments took place. The provisions of the Fourth Amendment as to the adequacy of compensation were considered by the Supreme Court in the following four cases.

111. Third Five Year Plan, 10(1961-66).
112. Fourth Five Year Plan was from 1969 to 1974. The impact of the two wars in 1962 and 1965, in which India was dragged into, destroyed our national economy and due to this reason we could not formulate the Fourth Five Year Plan and had to depend entirely on annual planning.
In *I.P. Vairavelu Mudaliar v. Dy. Collector for Land Acquisition, West Madras*, the petitioner impugned the Land Acquisition (Madras Amendment) Act, 1961 which amended the Land Acquisition Act, 1894, by providing that for acquisition of land for housing purposes the compensation to be paid was to be the market value at the date of acquisition or the amount equal to the average market value during the five years immediately preceding the date of acquisition, whichever is less. The amending Act also excluded the potential value of land. It must be noted here that the land was to be acquired for creating a new suburb for slum dwellers and for relieving the growing congestion and overcrowding in the city of Madras. But now the claimants were to get less compensation under the amending Act of 1961. Subba Rao, J. (as he then was) speaking for the court observed that since the Supreme Court in *Bela Banerjee* case had interpreted compensation to mean a full and fair money equivalent, and principles of compensation as principles which must secure a full and fair money equivalent, by using the words "compensation" and "principles of compensation" the Fourth Amendment must be taken to have accepted the meaning put upon them by the Supreme Court because "there is a well-known principle of construction that when the legislature used in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted unless a contrary intention appears." It follows that a legislature in making a law of acquisition or requisition shall provide for a just equivalent of what the owner has been deprived of.

It was also pointed out that if the law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated in article 31(2). This point was illustrated by the argument that if a law says that though the house site was acquired in 1950 its value in 1930 should be given then in such cases the validity of the principles can be scrutinized.

It is submitted that in this case the court took a very legalistic view and ignored the economic considerations underlying the fourth amendment.

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114. See the notification of the Government of Madras under section 4(1) read with section 17(4) of the Land Acquisition Act, 1894.
115. Supra note 113 S.C.R. at 626.
116. Ibid.
117. Id. at 627.
and also put undue emphasis on the retention of the words "compensation" and "principles" in the amended clause. In fact the fourth amendment was passed to nullify the Bella Banerjee case and it was hoped that in future the legal controversy regarding the interpretation of compensation would come to an end and would help the legislature to pass socio-economic reforms. But this judgment made the fourth amendment anaemic.

A much easier and logical consistent approach would have been to hold that compensation in article 31(2) means that which is considered to be just equivalent of the property acquired, by the legislature, but where the legislature lays down the principles for determination of compensation which are irrelevant to the property at or about the time of acquisition of the property, it cannot be said that the legislature has provided for the compensation for acquisition of that property, and so such an exercise of legislative power will be a fraud upon the Constitution. It will also enable the court to judge the question also in the light of the object of acquisition and consistent with fourth amendment. The framers made a distinction between taking bits of property and taking for social reconstruction. This approach will moreover, be consistent with the basic objective of the Constitution enshrined in the Preamble and directive principles. It will also facilitate the transition from an individualistic standpoint to a social one, towards the institution of property. Property denotes the economic relationship between men and society and the judicial attitude must realise the significance of the social question lest the winds of social change grow too strong and sweep them off their feet.

As noted above, Subba Rao, J., had thrown a strinker in Vajruvelu Mudaliar, the Supreme Court continued to dwell on its favourite theme of compensation and in Union of India v. Metal Corporation of India, threw a spinner by observing that a law to justify itself has to provide for the payment of "just equivalent" to the property acquired or lay down the principle which leads to that result. In Metal Corporation case, the petitioner impugned the validity of the Metal Corporation of India (Acquisition of Undertaking) Act, 1965, on the ground that its provisions violated article 31(2). The Act provided, inter alia, that compensation for unused machinery in good condition was to be the cost of the machinery, and compensation

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119. IX C.A. D. at 1192.
120. Supra note 118.
for used machinery was to be its depreciated value as determined for purpose of income tax. The Act was held to be void and the Court held both these criteria as irrelevant to the fixation of the value of the property and that the compensation provided for machinery and plant was grossly inadequate. Thus the Court was back to Bela Banerjee case which was sought to be nullified by the fourth amendment.

Two years later when State of Gujarat v. Shanti Lal Mangal Das was decided, Supreme Court was much retrieved. Seervai also considers this decision of cardinal importance. This decision is of great importance because this case was discussed by the five judges bench at great length and they also considered the earlier decisions of the Supreme Court as to the effect of the fourth amendment on "Compensation". Hidayatullah, C.J., who delivered a concurring judgment said: "I am in agreement that the remarks in (Vajravelu case) must be treated as obiter and not binding on us". Shah J., who delivered the judgment for himself and Ramaswami, Mitter and Grover JJ., observed:

In our judgment, the observations made by the Court (in Vajravelu case) that Article 31(2) as amended means that "neither the principles prescribing the just equivalent nor the just equivalent can be questioned by the Court on the ground of inadequacy of the compensation fixed or arrived at by the working of the principles" need to be clarified. If by that observation it is intended that the attack on the principles specified for determining compensation is excluded only when it is founded on a plea of inadequacy of compensation, a restricted meaning is given to Art. 31(2) which practically nullifies the amendment.

It was further clarified by the Supreme Court that whatever may have been the meaning of the expression 'compensation' under the unamended article 31(2) , when the Parliament has expressly enacted under the amended clause that "no such law shall be called in question in any court on the

122. Id. S.C.R.261.
124. H.M. Seervai, Constitutional Law of India Vol.II,1116(1984). He has discussed this case in detail and considers it of cardinal importance and is of the opinion that except for its uncritical reference to "irrelevant principles", it laid down the law which broadly speaking is correct. See Ibid.
125. Supra note 123 S.C.R. at 367. He delivered a separate but concurring judgment because he had been a party to the obiter observations in Vajravelu case and he wanted to explain the mistake he had committed.
126. Id. at 368.
ground that the compensation provided by that law is not adequate", it was intended clearly to exclude from the jurisdiction of the Court an enquiry that what is fixed or determined by the application of the principles specified as compensation does not award to the owner a just equivalent of what he is deprived. Any other view is contrary to the plain words of amendment. 127

The Court also overruled the Metal Corporation case and held that it was wrongly decided. 128 The Supreme Court laid down the law thus:

(i) Compensation fixed by the Statute cannot be challenged on the ground that in a given case it operates harshly.

(ii) Compensation fixed on the basis of market value of the property on the date anterior to the date of deprivation of property is fixed on a principle specified, and

(iii) If the quantum of compensation fixed by a law is not justifiable on the basis of its adequacy, the principles specified for the determination of compensation can also not be challenged on the ground that the compensation determined on that basis is not just equivalent. 129

From the above analysis it is clear that the court in Shanti Lal Mangal Das case went far enough to reach the right conclusion. It gave meaning and content to the fourth amendment, whilst pointing out that the earlier Supreme Court decisions had placed obstacles in the way of implementing the socio-economic reforms in article 39 and led to the fourth amendment. It was also rightly held that after the fourth amendment compensation could not mean a just equivalent, but meant what the legislature considered fair and just recompense provided that it was not illusory.

However, a year later the Supreme Court again struck in R.C.Cooper v. Union of India 130 and all the insights and wisdom of Shantilal Mangal Das vanished. The Supreme Court brought Bela Banerjee back and again nullified fourth amendment in its spirit. This attitude of the judiciary

127. Ibid.
128. Id. at 370.
129. However, Shah J., added:"It does not mean, however, that something fixed or determined by the application of specified principles which is illusory or in no sense be regarded as compensation must be upheld by the court, for, to do so would be to grant a charter of arbitrariness, and permit a device to defeat constitutional guarantee". See supra note 123, A.I.R. at 650.
seriously affected the whole gamut of the national policy of socialisation to avoid the concentration of wealth to the common detriment. In *R.C.Cooper*, which is popularly known as *Bank Nationalisation* case, the Supreme Court declared the Bank Nationalisation Act, 1969 void under article 31(2) on the ground that the provisions of the Act did not provide for compensation. Under the Act 14 banks were nationalised and the financial statement which accompanied the Act stated that though the amount to be paid as compensation for acquiring the 14 banks could not be precisely specified the principles laid down for compensation would result in the payment of about Rs. 75 crores as compensation. Therefore, the problem before the court was not whether this or that item did not give full compensation; though that itself would be irrelevant after the fourth amendment, but whether it could be said that the amount arrived as a result of the principles to be applied was not compensation as contemplated by article 31(2).

The Supreme Court in *R.C.Cooper* case has failed to note, and therefore has made no attempt to answer following four points rightly made in *Shanti Lal Mangaldas* case. First, that whatever compensation may mean before the fourth amendment, which has already been discussed, cannot mean the same thing after the fourth amendment. Secondly, that if compensation fixed by law itself cannot be questioned on the ground that it did not provide a just equivalent and was inadequate, neither could the principles of compensation be questioned if they produced the same result. Thirdly, that after the fourth amendment, compensation meant what the legislature considered fair and just, provided that compensation was not illusory. Finally, that the Supreme Court decisions which struck down laws because they did not provide a just equivalent, put serious obstacles in implementing directive principles of state policy embodied in article 39.

The situation further precipitated when there was repeat performance of the *R.C.Cooper* in *Madhav Rao Scindia v. Union of India*, popularly

131. The question whether *R.C.Cooper* has overruled *Shantilal Mangaldas* or not, has been discussed in detail in *Kesavananda Bharti v. State of Kerala*, A.I.R.1973 S.C.1461. It may be noted that the judges who dealt with the question and who were parties to the majority judgement in *R.C.Cooper* held that Shanti Lal Mangaldas was not overruled in substance by *R.C.Cooper*.Id. at 1609(Per Shelat and Grover JJ.); Hegde and Mukherjea JJ., not a party, joining in the judgment; Id. at 1635-7.Reddy J. agreed with Hegde J., Id. at 1756-7. On the other hand, judges who were not parties to the *R.C.Cooper* and who dealt with the question said that Shanti Lal Mangaldas had in substance been overruled. Id. at 2013 and 2048(Per Dwivedi and Chandrachud JJ.)

known as Privy Purses case, where by a majority of ten to one, when it was held by the court that Privy Purses were property and the Rulers could not be deprived of them without compensation and by a majority of nine to two, that the right to the Privy Purses and to recognition were justiciable rights.

On the other hand, the landowners made several attempts to fight to the last to prevent the implementation of land reforms. The seventeenth Amendment was challenged before the Supreme Court in Sajjan Singh v. State of Rajasthan. By this time it had become abundantly clear that while implementing agrarian reforms the government was reacting to the judicial resistance by restoring to the technique of entrenchment of legislation by enlisting any number of Acts in the Ninth Schedule, thus making them completely immune from court's jurisdiction. This in other words meant that the Parliament had the competence to amend Part III of the Constitution unrestrictedly.

In Sajjan Singh, the petitioners not only challenged the correctness of Shankri Prasad but also contended that Seventeenth Amendment was void as it enabled the Parliament to take away or abridge the fundamental rights in Part III of the Constitution by enlisting the impugned Acts in the Ninth Schedule. The petitioners argued that the Parliament had no competence to amend Part III of the Constitution at all. The Supreme Court not only upheld the decision in Shankri Prasad but also reaffirmed the views expressed therein. It was observed that:

[T]he genesis of the amendments made by Parliament in 1951 by adding Article 31A and 31B to the Constitution is clearly to assist the State Legislatures in this country to give effect to the economic policy in which the party in power persistently believes to bring about much needed agrarian reform. It is with the same object that the second amendment was made by the Parliament in 1955...Parliament desires that agrarian reform in a broad and comprehensive sense must be introduced in the interest of a very large section of Indian citizens who live in villages and whose financial prospects are integrally connected with the pursuit of progressive agrarian policy.

134. Supra note 72.
135. See article 13(2) of the Constitution.
136. Supra note 133, A.I.R., at 853.
From the above observations it is evident that the court was realising the need for agrarian reform. Though the petition was dismissed, the bench was sharply divided on the question as to the power of the Parliament to amend Part III of the Constitution. The majority led by Gajendragadkar, C.J., upheld the validity of the Seventeenth Amendment on the ground that the word 'law' as expressed in article 13 clause(2) does not include constitutional amendments passed by the Parliament by virtue of its constituent power. However, the minority led by Hidayatullah and Mudholkar, JJ. expressed a doubt as to whether the word 'law' in article 13(2) excluded constitutional amendments and whether article 368 empowered the Parliament to amend Part III of the Constitution.

Perhaps, encouraged by the doubts expressed above by the two judges on the question of the power of the Parliament to amend the Constitution and some other developments, the petitioners challenged the validity of the first, fourth and seventeenth amendments as also the competence of Parliament in the matter in certain pending appeals before the Supreme Court in Golak Nath v. State of Punjab. This case is indeed a classic decision in the realm of property legislation in India. The Supreme Court delivered its six to five judgment and overruled its earlier decisions in Shankri Prasad and Sajjan Singh and held (i) that the power of the Parliament to amend the Constitution was derived from articles 245, 246 and 248, which deal with the ordinary legislative powers of the Parliament, and not from article 368; and (ii) that the constitutional amendment was "law" within the meaning of article 13(2) of the Constitution and, therefore, if a constitutional amendment took away or abridged fundamental rights it was void. The Court, however, applied the 'doctrine of prospective overruling'.

137. The other two judges who expressed this opinion were Justices Wanchoo and Raghubar Dayal.
138. Supra note 133 A.I.R. at 959-60.
139. Chief Justice Gajendragadkar had retired by that time and Subba Rao, J. had taken over as the Chief Justice of the Supreme Court of India. His view about the inalienability of fundamental rights had already found expression in Vairavelu case. See supra note 113.
141. Subba Rao, C.J., on behalf of himself and four other judges (Shah, Sikri, Shelat and Vaidalingam J.J.) delivered the majority judgement. Hidayatullah, J., in a separate judgment concurred with the conclusion arrived at by the Chief Justice but on different grounds. The other five judges led by Wanchoo J. (as he was then) gave the dissenting judgment.
and said that its decision would have only "prospective operation". The net result of the judgment was that Seventeenth Amendment and earlier amendments to Part III of the Constitution would continue to be valid, but any future amendment to fundamental rights would be invalid. So the land owners succeeded the battle to this extent in this case. This decision created a constitutional stalemate with respect to socio-economic reforms which was lifted later on by the constitutional amendments. This ruling also assigned a key position to the judiciary in all socio-economic measures and halted the tempo of progress of agrarian reforms and other socio-economic legislations in India.

The significance of Golak Nath lies in the fact that it stressed on the inalienability of fundamental rights and desired the judiciary to play an important role of an umpire for the protection of individual rights against socio-economic regulations. Because of this judgment it was not possible for the Parliament to amend the Constitution for giving effect to the socio-economic policies contained in directive principles, if such amendments took away fundamental rights. The majority opinion in Golak Nath emanated from the argument of fear, viz., a possible erosion of fundamental rights if the process of amendment of these rights was not halted. In the actual interpretation of the various socio-economic provisions of the Constitution, however, the common man's hopes were belied. Too much emphasis on the fundamental rights, even at the cost of the directives of the Constitution, has simply led to the affirmation of the entrenched privileges of the few privileged, making poor man still poorer. Thus, the decision created hindrances in the way of enactment of socio-economic legislation needed to meet the needs of developing society.

In order to overcome the difficulties caused by pro-property approach of the judiciary, the Parliament had to pass many amendments to the Constitution, particularly to article 31 and other relevant articles from time to time. It may be recalled that the judgment in Privy Purses case

143. See Virendra Kumar, supra note 23 at 62.
was delivered on 15 December, 1970. On 27 December 1970, the Prime Minister
broadcast to the nation announcing the dissolution of Parliament, and
holding of fresh elections. The Power of the Parliament to amend every part
of the Constitution and the kinds of amendment envisaged became electoral
issues in the manifesto of the ruling party, thus raising a political debate
in which the opposition parties joined issue. The Election Manifesto (1971)
of the Indian National Congress clearly provided:

14. However, as a result of certain judicial pronouncements,
it has become impossible to effectively implement some of
the Directive Principles of our Constitution. 15. The Nations'
progress cannot be halted. The spirit of democracy
demands that the Constitution should enable the fulfilment
of the needs and urges of the people. Our Constitution has
earlier been amended in the interest of economic development.
It will be our economic development. It will be our endeav­
our to seek such further constitutional remedies and jus­
tice.....The Congress, therefore, appeals the people to
return its candidates to the Lok Sabha and thus give it a
clear mandate to:....(iv) and anachronistic privileges such
as privy purses etc. and reduce glaring disparities of
income and opportunity ...(xii) for these purposes, to effect
such amendments of the Constitution as may be necessary.145

The Congress Party secured landslide victory in the elections and
it proceeded to nullify the effect of the Supreme Court decisions, which
stood in the way of socialisation.

The Constitution (Twenty-fourth Amendment) Act, 1971 amended article
368 to nullify Golak Nath case by providing expressly that the Parliament
had power to amend every part of the Constitution, including the funda­
mental rights.146

146. The Statement of Objects and Reasons for the Constitution (Twenty-fourth
Amendment) Act, 1971 provided: "The Supreme Court in the well-known Golak
Nath case [(1962)2 S.C.R. 762] reversed, by a narrow majority, its own
earlier decisions upholding the power of the Parliament to amend all
parts of the Constitution including Part III relating to fundamental
rights. The result of the judgment is that Parliament is considered
to have no power to take away or curtail any of the fundamental rights
guaranteed by Part III of the Constitution even if it becomes necessary to do
so for giving effect to the Directive Principles of State Policy
and for the attainment of the objectives set out in the Preamble to
the Constitution". (Emphasis supplied). A new clause (4) to article
13 was also added so as to make it inapplicable to any amendment of
the Constitution under article 368.
The Constitution(Twenty-fifth Amendment) Act, 1971 was passed in nullify the R.C. Cooper case. It substituted a new-article (2) to article 31. This substituted the word "amount" for the word "compensation". This amendment also added a new proviso to article 31(2) making special provision for payment of compensation for the acquisition of property of minority educational institution referred to in article 30(1). It also added a new sub-article (2B). A new article 31C was also added by this amendment. This new article sought to protect the laws passed to give effect to the directive principles contained in clauses (b) and (c) of article 39, from the inhibition of article 13, and also protected them even if they were found to be violative of articles 14, 19 and 31.

147. The Statement of Objects and Reasons for The Constitution(Twenty-fifth Amendment) Act, 1971 clearly stated that the Bill was enacted to get over the decision in the Bank Nationalisation case. It sought to surmount the difficulties placed in the way of giving effect to the Principles of State Policy by the judicial interpretation (Emphasis supplied).

148. The new proviso read as, "Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) of article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause".

149. The new sub-article (2B) provides: "Nothing in sub-clause (f) of clause (1) of article 19 shall affect any such law as is referred to in clause (2)."

150. Article 31C provided: "Saving of Laws 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 abridges any of the rights conferred by article 14 or article 19 or article 31, and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of the State, the provisions of this Article shall not apply there-to unless such law, having been reserved for the consideration of the President, has received his assent."
Thus the basic objective of this amendment was the prevention of concentration of wealth in the hands of few and equitable distribution of the same so as to subserve the common good and not the destruction of property right itself. N.A. Palkivala strongly criticised the insertion of article 31C.\(^{151}\) According to him, "In the entire history of liberty never were so many hundreds of millions deprived of so many fundamental rights at one fell swoop as by the insertion of Article 31C".\(^{152}\) He further alleged that "Article 31C is a monstrous outrage on the Constitution".\(^{153}\) and it has "damaged the very heart of the Constitution".\(^{154}\)

It is submitted that the above criticism of Palkivala is wrong. The hopes and aspirations of the common man are embodied in the fulfilment of the directive principles. For the common man, as a matter of fact, the directive principles come first and the fundamental rights later, because he must first have a 'minimum of material well-being' so as to be able to exercise those rights.\(^{155}\) It is to this end that the much criticised twenty-fifth amendment should be appraised and not in the light of the received notions of property of the capitalist society. Our interpretation should not be confined to the jurisprudence of the eighteenth or early nineteenth century which was expounded to validate the then emerging capitalist industrialist economic order. Now the times have changed in the world and the conditions have altered in India and under the Constitution it is the duty of the State to strive to secure a social order in which 'justice - social, economic and political' shall inform all the institutions of the national life'.\(^{156}\)

\(^{152}\) Id. at 59.
\(^{153}\) Id. at 58.
\(^{154}\) Id. at 61.
\(^{155}\) Ebestein enunciates the three basic principles of the welfare state; "First, every human being is entitled to a minimum of material well-being, such as food, clothing and decent housing; second, expanding living standards are possible with the existing physical resources and scientific knowledge; and third, the State has the right and duty to act when private initiative fails", Modern Political Thought, 679(1970) cited in supra note 23 at 62.
\(^{156}\) See article 38 of the Indian Constitution. Even the Law Commission in its Forty-sixth report had supported article 31C.
The Constitution(Twenty-sixth Amendment)Act, 1971 was passed to nullify the Privy Purses case. This amendment deleted articles 291 and 362 and inserted a new article 363A, which provided that the recognition granted to the former rulers of Indian States was to cease and their privy purses abolished.

The Constitution(Twenty-ninth Amendment)Act, 1972, added two Kerala land laws to the Ninth Schedule.

From the above analysis it is evident that the Parliament introduced Constitutional amendments to obviate the adverse effect of some of the judicial decisions on some important socio-economic measures relating to agrarian reforms and property legislation. It was equally realised that Parliament cannot introduce economic democracy unless the Constitution was suitably amended.

(v) Fifth Phase: From Twenty-ninth Amendment to Forty-fourth Amendment

The Task Force on Agrarian Relations constituted by the Planning Commission in 1973 acting under the chairmanship of Appu remarked:

In no sphere of public activity in our country since independence has the hiatus between the precept and practice, between policy pronouncement and actual execution, been as great as in the domain of land reform.

It further noted:

Highly exploitative tenancy in the form of crop-sharing still prevailed in large parts of our country. Such tenancy agreements have not only resulted in the perpetuation of social and economic injustice but have also become insurmountable hurdles in the path of the spread of modern technology and improved agricultural practices.

157. The Statement of Objects and Reasons of the Constitution(Twenty-sixth Amendment)Act 1971 stated: "The concept of rulership with Privy Purses and special privileges is incompatible with egalitarian social order. Government have, therefore, decided to terminate the privy purses and privileges of Rulers of former Indian States...."

158. Article 291 provided Privy purse sums of Rulers.

159. Article 362 provided Rights and privileges of Indian States.

160. Article 363-A provided that Recognition granted to Rulers of Indian States to cease and Privy purses to be abolished.

161. See entry no.65 and 66 of the Ninth Schedule.


163.
The report also pinpointed the major causes for the poor performance of land reforms since independence. In a society in which the entire weight of civil and criminal laws, judicial pronouncements and precedents, administrative tradition and practice is on the side of the existing social order based on the inviolability of private property, an isolated law aiming at the restructuring of property relations in the rural areas has hardly any chance of success.\textsuperscript{164} The loopholes in the legislations, legal hurdles and the ignorance of the law are the reasons which prevented the would-be beneficiaries from the benefits of agrarian reform. Keeping in view these drawbacks in mind the Planning Commission in 1975 undertook a study, The Tenancy Reform in India, the report of which show hardly any progress. By this time the Fifth Five Year Plan was also ready for its implementation.\textsuperscript{165} This Plan gave a new dimensions to the concept of socio-economic justice. The Plan recommended for speedy and effective implementation of land reforms, the Plan emphasised the necessity of constituting Land Reform Tribunals instead of civil courts so that justice could be made speedy and brought closer to the poor people.\textsuperscript{166}

On the other hand, during this period judiciary responded well in full measure to the philosophy implicit in the directive principles \textit{vis-a-vis} scheme of agrarian reforms in India. Guided and inspired by the directive principles of state policy, the Court felt that the concept of agrarian reform was broader than the conventional notions of land reforms.\textsuperscript{167} In Kannan Devan Hill Private Co. v. State of Kerala,\textsuperscript{168} the Supreme Court upheld the validity of the Kannan Devan Hills(Resumption of Land)Act,1971 which empowered the State to take over uncultivated waste land and forest land without the payment of compensation to the owners or occupiers thereof. In another case,\textsuperscript{169} the Supreme Court upheld the validity of the Kerala Private Forests(Vesting and Assignment)Act,1971. Justice Krishna Iyer while giving new meaning and content to the directive principles dealing with agrarian reform observed:

\begin{itemize}
  \item \textsuperscript{164} Id. at 9-10.
  \item \textsuperscript{165} The Fifth Five Year Plan was from 1974-79.
  \item \textsuperscript{166} Id. Vol.II at 43.
  \item \textsuperscript{167} Balmadies Plantations v. State of Tamil Nadu,A.I.R.1972 S.C.2240.
  \item \textsuperscript{168} A.I.R.1972 S.C.2301.
\end{itemize}
The concept of agrarian reform is a complex and dynamic one promoting wider interests than conventional reorganisation of the land system or distribution of land. It is intended to realise the social function of the land. The village man - his welfare is the target. It is thus clear to those who understand developmental dialectic and rural planning that agrarian reform is more humanist than mere land reform and scientifically viewed, covers not merely abolition of intermediary tenures, Zamindaris and the like, but also restructuring of village life itself - taking in its broad embrace the socio-economic regeneration of the rural population. The Indian Constitution is a social instrument with an economic mission, and the sense and sweep of its provisions must be gathered by judicial statesmen on that seminal footing.

The most historic and important judgment of this period was delivered by the Supreme Court in the case of Kesavananda Bharti v. State of Kerala. The validity of Parliament’s power to amend article 368 and to take out the constitutional amendments outside the court’s jurisdiction for implementing socio-economic reforms contemplated by directive principles set out in Part IV was itself challenged. The Constitution twenty-fourth, twenty-fifth, twenty-sixth and twenty-ninth amendment Acts were challenged in this case on the ground that they were void being in contravention of clause (2) of Article 13 of the Constitution as per the law declared by the majority decision in Golak Nath case. This case, being of great constitutional importance, was heard by full court consisting of 14 judges. Nine out of thirteen judges overruled the Golak Nath case and held that both Shankri Prasad and Sajjan Singh were rightly decided. The validity of the Constitution (Twenty-fourth Amendment) Act, 1971 was upheld by the Supreme Court. The distinction between an 'ordinary law' and 'constitutional law' was clarified. As Hegde and Mukherjea, JJ. stated: "An examination of various provisions of our Constitution shows that it has made a distinction between 'the Constitution' and 'the laws'." In view of majority, the Parliament could amend any part of the Constitution including fundamental rights but subject to the limitation that it can not destroy the 'basic structure' of

170. Id. at 2747. In Latafat Ali Khan v. State of U.P., A.I.R. 1973 S.C. 2070, Sikri C.J. held that a statutory rule, well within the power conferred by a statute protected by article 31B, was not open to challenge under articles 14, 19 and 31. The impugned rule framed under the U.P. Imposition of Ceiling on Land Holding Act, 1960, was intra vires the Act.. As it dealt with land reforms, it was protected by article 31A.


172. Id. at 1616.
the Constitution.  

The Constitution (Twenty-fifth Amendment) Act, 1971 which substituted the word 'amount' for the word 'compensation' was held unconditionally valid by seven judges, the remaining six judges holding the amendment of article 31(2) conditionally valid, that is, valid only if their interpretation of sub-article (2) was accepted.  

Thus according to the majority, the amount fixed was made unjusticiable and the jurisdiction of the court was excluded.

The first part of the newly inserted article 31C, by the above amendment, providing for the saving of laws giving effect to the policy of the State towards securing the principles specified in article 39(b) and (c) was held valid. However, the second part of article 31C, namely, "and no law containing the declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" was declared invalid.

The Constitution (Twenty-ninth Amendment) Act, 1972 was also upheld by the Supreme Court in this case and with regard to the validity of the Constitution (Twenty-sixth Amendment) Act, 1971, it was held that the Constitution Bench will determine its validity in accordance with law.
It is submitted that the Supreme Court in Kesavananda Bharti restored to the Parliament the prestige and authority which it had lost due to Golak Nath. Not only this, but the Supreme Court also recognised the importance of the socio-economic directives in article 39(b) and (c) and held that any law giving effect to them would be valid even if it infringed articles 14, 19 and 31. In other words, for the first time the court recognised the supremacy of a few directive principles over fundamental rights. Thus, the Supreme Court played extremely creative and imaginative role and interpreted the concepts such as agrarian reform in their widest amplitude. This case set up a stage for future development in the area of agrarian reform and for the prevention of concentration of wealth in the hands of a few to the common detriment.

The Supreme Court in Kesavananda Bharti did not consider the fundamental rights as 'sacrosanct' and the court's desire to infuse meaning and life in the directive principles is clear from the following observation:

Enjoyment of one's right must be consistent with the enjoyment of rights by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests and there the directive principles of state policy, although not enforceable in courts, have a definite and positive role introducing an obligation upon the State under Article 37 in making laws to regulate the conduct of men and their affair.177

In Godavari Sugar Mills v. S.B.Kamble,178 while rejecting the plea of the appellant that distribution of the acquired land among the landless and the poor was the essence of agrarian reform, it was observed:

The substantive part of article 31C valid and the proviso void.

176. See the summary judgment signed by 9 out of 13 judges who heard the case. Supra note 171 at 1461-62. The challenge to twenty-sixth amendment was not heard because of lack of time as Chief Justice Sikri was retiring on 26th April, 1973.


The concept of agrarian reform...is not static and cannot always be put in a straight jacket. With the changes under the impact of fresh ideas in the context of fresh situations, the concept of agrarian reform is bound to acquire new dimensions.179

The court said that to decide whether article 31-A protected the Act, the general scheme of the Act, the object of the acquisition and the reasons for retaining the land with the government, corporation and not distributing it among the poor and the landless should be looked into. In the above case the challenged statute imposed ceiling on agricultural property with a view to preventing its concentration in a few hands. The surplus land was to be distributed largely among the landless and the poor, hence protected by article 31-A. But agrarian reform does not mean that a land owner should be deprived of his entire land and not be left with any part thereof. If the entire land is taken away from a land owner, it will amount to making land owners landless and distribute their land amongst others which cannot be the object of any agrarian reform or the policy of the State enshrined in clauses (b) and (c) of article 39 of the Constitution. While judging the validity of any agrarian reform the emphasis of the court is generally on the object of the legislation or the Act and it disregarded the procedural steps as mere formalities.180

In Hansmukh Lal v. State of Gujarat,182 the validity of Gujarat Agricultural Land Ceiling Act, 1961 was challenged notwithstanding its inclusion in the Ninth Schedule. The Court rejected the challenge by holding that article 31A and 31B provide complete protection to the Act. In this case the validity of a provision laying down an artificial definition of

179.Id. at 1207-8. In this case Khanna J., was also of the opinion that the blanket immunity from fundamental rights contained in article 31-B was available only to the Acts and regulations included in the Ninth Schedule and not to the amendments made in them after their inclusion in that schedule. See also M. Venkata Rao v. State of A.P., A.I.R.1975 A.P. 315, where the impugned Act sought to distribute the land among the agricultural labourers and other persons for the purpose of agriculture and other ancillary purposes., it was held that the Act was a measure of agrarian reform and protected by article 31-A and hence immune from articles 14, 19 and 31.


'family' as the unit for the purpose of ceiling on landholding was in question.

It is submitted that from the above cases it is clear that the judiciary also started appreciating the socio-economic policies enshrined in Part IV and upheld the various Acts and regulations giving meaning and content to the directive principles of state policy irrespective of the fact that they infringed certain fundamental rights under articles like 14, 19 and 31. So much so that in Mumbai Kamgar Sabha v. Abdulbai, the Supreme Court observed: "Where two judicial choices are available, the construction in conformity with the social philosophy has preference".

Inspired by the above observations of the court, it was thought by the Parliament that the time has come when the highest court of the land has started recognising the social philosophy of Part IV and hence the Constitution should be accordingly amended to give primacy to all the directive principles over the fundamental rights. With this objective in mind, article 31C was amended by the Constitution (Forty-second Amendment) Act, 1976. Under the amended article 31C if a law was passed to give effect "all or any of the principles laid down in Part IV", then that was not to be "deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by articles 14, 19 or 31".

The judiciary continued its progressive attitude. The Constitution of India inaugurated a new jurisprudence. It was guided by Part IV and reflected in Part III. There was determined break with traditional jurisprudence and big endeavour was made to overturn a feudal land system and substitute it with what may be called as transformation of agrarian relations.

184. Id. at 1465.
185. The relationship between directive principles and fundamental right has been discussed in detail in Chapter IV.
186. See Gurbachan Singh v. Kamla Singh, A.I.R.1977 S.C.5. In another case Assam Sillimanite Ltd. v. Union of India, A.I.R.1977 Del.193 at 197-198, it was held that where one fourth amount was paid as compared to the market value of the plant acquired, it may be inadequate or small to the alleged market value but it cannot be said to be 'illusory' and hence protected from attack under article 31(2) of the Constitution.
In D.G. Mahajan v. State of Maharashtra, the Court drew attention to the fact that article 31-B was introduced when agrarian reform legislation had run into rough weather and the policy of agrarian reform was frustrated. Justice Bhagwati who wrote the majority judgment placed the constitutional provisions in their proper perspective and observed:

With a dynamic programme of agrarian reform, it was not possible to change the face of rural India and to upgrade the standard of living of the large masses of people living in the villages. In fact the promise of agrarian reform is implicit in the Preamble and the Directive Principles of State Policy and it is one of the economic foundation of the Constitution. It was, therefore, felt that laws enacted for the purpose of bringing about agrarian reform in its widest sense...should be saved from invalidation.

It must be remembered that the aim and objective of article 31-B is to make the most comprehensive provision for saving agrarian reform legislation from invalidation on the ground of infraction of any provision in Part III and must, therefore, be so interpreted as to have the necessary sweep and coverage.

Justice Krishna Iyer delivered a separate but concurring judgment in D.G. Mahajan. Although he came to the Supreme Court after ossification of the property-conscious judicial process impending programmes of planned development and social change, he tried to attune the judicial process to resolution of the formidable socio-economic problems within the democratic process and observed:

The recurrence of attacks on the vires of land reform laws, even after being impregnably barricaded by the Ninth Schedule constrains me to set out at some length the broad perspectives which courts must possess in such confrontation situations. Our Constitution is a tryst with destiny, preambled with luscent solemnity in the words - 'Justice -, social, economic and political'. The three great branches of Government, as creatures of the Constitution, must remember this promise in their functional role and forget it at their peril.

188. Id. at 924.
189. Ibid.
190. Id. at 925.
for to do so will be a betrayal of those high values and goals which the nation has set for itself in its Objectives Resolution and whose elaborate summation is in Part IV of the paramount parchment....While the meaning of the Articles of the Organic law, the Supreme Court shall not disown social justice.191

Justice Krishna Iyer is of the view that the distance between the statute book and the landless tiller is tantalisingly long and for this implementation hiatus the executive, not the judicative wing will hold itself socially accountable hereafter. But this contention should not be taken to mean that even today the 'judicative wing' has shed its property consciousness on its status-quo-orientedness. Nor should it suggest that the 'judicative wing' has not, of late, been obstructing implementation of land reforms.192

It has already been seen that fundamental right to property was amended number of times. According to Professor Diwan, "If one would look at the fundamental rights to property as it stands at present (with all the amendments upto 42nd), it has already been denuded of its substance; a mere form has remained".193 But the Congress government could not pick up the courage to abolish it from the fundamental rights part. The Janata Party categorically mentioned in its Election Manifesto that it is for the deletion of the fundamental right of property.194 The Janata Party won the election in 1977 and after coming into power one of the aims to be realised by it was the deletion of fundamental right to property from Part III of the Constitution as promised in the Election Manifesto. This was subsequently done by the Constitution (Forty-fourth Amendment) Act, 1978.

(vi) Last Phase: Forty-fourth Amendment and Recent Approach

Janata Party, in order to prove that it was no less socialistic

191. Id. at 934.
193. Supra note 28 at 67.
194. The Manifesto proclaimed: "The Government has time and again resorted to the plea that fundamental rights and judicial processes have had to be curtailed in order to protect and further progressive social and economic measures and to prevent vested interests from thwarting them by resort to the Courts....In order to remove this...the Janata Party will move to delete property from the fundamental rights chapter of the Constitution, leaving it as an ordinary statutory right like any other which may be enforced in a court of law".
than the Congress Party, and in order to fulfil the promise made in the Election Manifesto, it passed the Constitution(Forty-fourth Amendment) Act, 1978. This amendment has repealed article 19(1)(f) which guaranteed to every citizen the "right to acquire, hold and dispose of property" subject to reasonable restrictions. This amendment also repealed entire article 31. The provision of clause(1) of 31, however, has been re-enacted as article 300-A which provides:

Persons not to be deprived of property save by authority of law - "No person shall be deprived of his property save by authority of law."

Clause(2) of article 31 which provided that "the State shall not acquire private property compulsorily save for public purpose and save by authority of law which may be fixed by law" has not been added in the newly inserted article 300-A. However, it added a new sub-article (1A) to article 30 which provides 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), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the proviso to article 31(2)" (as inserted by Twenty-fifth Amendment).The second proviso to article 31A(1)(e) which provided the right to a person cultivating land to receive full market value for acquisition of any part of that land if the land acquired be within the ceiling limit fixed by existing State law, was also retained. And finally, the reference to article 31 in articles 31A and 31C for the protection of laws passed under those articles has been omitted and now the laws passed in pursuance of article 31A and 31C enjoy protection only against the attack under articles 14 and 19.

The reason for these changes is best given by the then Law Minister, Mr. Shanti Bhushan, who signed the Statement of Objects and Reasons for Constitution(Forty-fourth Amendment)Act, 1978. The Statement provided:

3. In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one amendment of the Constitution, would cease to be fundamental right and become only a legal right. Necessary amendments

195. Article 300A has been instituted in Chapter IV entitled "Right to Property" of Part XII of the Constitution.
for this purpose are being made to Article 19 and Article 31 is being deleted. It would, however, be ensured that the removal of property from the list of fundamental rights would not affect the rights of minorities to establish and administer educational institutions of their choice.

4. Similarly, the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected.

5. Property, while ceasing to be a fundamental right, would, however be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law.

According to Seervai, the above explanation for the change is neither candid nor convincing. Not convincing, because the fact that the Constitution had to be amended a number of times to deal with the right to property is not sufficient reason for deleting that right from the Chapter on fundamental rights. Nor does the Forty-fourth amendment give any new position to fundamental rights, which those rights did not occupy before. The explanation is not candid, because a candid explanation would have said that the change was being made to fulfil a part of the pledge given in the Janata Party Election Manifesto for the 1977 Parliamentary elections.

Seervai further observes:

The rights conferred by Article 19(1)(f) and Article 31 read with the undernoted entries were so closely interwoven with the whole fabric of our Constitution that those rights cannot be torn out without leaving a

196. Supra note 124 at 1072-73.
197. Ibid.
198. Till the Seventh Amendment, the entries ran as follows:
   Entry 33, List I: Acquisition or requisitioning for the purposes of the Union; Entry 36, List-II: Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III; Entry 42, List III: Principles on which compensation for property acquired or requisitioned for the purposes 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.

   The above entries were deleted by the Seventh amendment which came into force from 1.11.56, and the following new entry 42 was substituted in List III: "Acquisition and Requisitioning of Property".
jagged hole and broken threads. The hole must be mended and the broken threads replaced so as to harmonise with the other parts of our Constitution. The task is not easy, and the Courts will be called upon to answer the problem more formidable than those raised by Article 31 after it was amended a number of times. 199

Professor Baxi has expressed his opinion on the Forty-fourth amendment in the following words:

[T]here now appears the feeling that with the passage of the Forty-fifth Amendment Bill, much of the controversy will be reduced to a chapter in the constitutional history of India. This to my way of thinking, is unlikely to happen, even when the right to property may be ceremonially demoted to a lowly, non-fundamental political and constitutional status. 200

However, Professor P.K. Tripathi, feels that the reality is that now the right to property is more firmly and comprehensively secured under the Constitution than even before. 201

Now let us examine the various effects of deletion of articles 19(1)(f) and 31 from Part III.

(1) One of the most significant consequences of the amendment will be that law providing for agrarian reform would now be challenged on the ground that it does not provide compensation because it is protected against articles 14 and 19, it is not protected against article 300-A. Article 31A will

199. Supra note 124 at 1076. According to Seervai, that all the fundamental freedoms mentioned in article 19(1)(a) to (e) are interconnected and the remaining six freedoms cannot be enjoyed unless there is right to acquire, hold and dispose of property. He further argues that articles 19(1)(g) and 31(2) are not mutually exclusive. Also that right under article 26(c) would become illusory if the religious denominations can be deprived of that property by passing a law. Id. at 1077-79. Dr.T.K. Tope is also of the opinion that the enjoyment of certain fundamental rights guaranteed by Part III would not be possible without the right to property. Even a law aiming at the implementation of the directive principles of state policy cannot override the provisions of articles 25 and 26, as article 31C makes no reference to them, and thus right to property in the context of these articles will continue to be fundamental right and superior to directive principles. See Dr.T.K. Tope,"Forty-fifth Amendment And the Right to Property", (1979) 4 S.C.C.(Journal)27 at 33.

200. Supra note 90 at 168.

no longer be shielded from the obligation to pay compensation. These laws enjoyed immunity against articles 14, 19 and 31. They will continue to enjoy immunity against articles 14 and 19. But since the obligation to pay compensation will no more arise from article 31, these will lose their immunity against that obligation, and will have to be examined in terms of that obligation. But since the forty-fourth amendment is not retrospective, so the validity of the laws passed before the amendment may not be questioned, but the validity of any action on their authority may have to be considered carefully. Thus, laws dealing with agrarian reform, the taking over of sick industries, the curtailment of the rights of company executives, and mining leases, in regard to all of which the question of compensation so far could not be agitated, now may be brought before the court for judicial scrutiny.

For this anomaly, it is suggested that articles 31A and 31B should be suitably amended to say that no law covered by them would be challenged on the ground of their inconsistency with article 300-A. Similarly a change in article 31C would also be necessary. These changes will also be in conformity with the social philosophy of Part IV of the Constitution.

(2) Two inherent or implied conditions for the acquisition or requisitioning the property, i.e., 'public purpose' and 'payment of compensation' will still exist. Now article 300A read with entry 42 of List III caution the power of eminent domain and, the requirement of the existence of 'public purpose' and 'payment of compensation to the expropriated owner' must be read into the words 'acquisition' or 'requisitioning' in entry 42 of List III. The power given in entry 42 of List III is the power to 'acquire'...

202. Id. at 51.
203. Ibid.
204. See S.P. Sathe, "Right to Property After the 44th Amendment: Reflections on Prof. P.K. Tripathi's Observations", A.I.R.1980(Journal) 97-100. He also supports this suggestion.
205. In State of Bihar v. Kameshwar Singh, supra note 73 at 273, it was observed by Mahajan J. (as he then was) that "the exercise of the power to acquire compulsorily is conditional on the existence of public purpose and that being so, this condition is not an express provision of, Article 31(2) which exists 'aliunde' in the content of the power itself and that is in fact the assumption upon which this clause of the article proceeds".
206. See supra note 201 at 49-50. The proposition that the grant of power to acquire private property compulsorily is subject to the implied condition for payment of compensation seems to be established beyond reasonable doubt in the case of Attorney-General v. De Kayser's Royal Hotel, 1920 A.C.508 at 542.
and not the power to 'confiscate'. If 'public purpose' and 'compensation' or 'amount' cannot be read into the word 'acquisition' then the result would be absurd. A law for the 'acquisition' of private property of persons for the benefit of private persons without compensation would be a law unknown to our jurisprudence. Whatever meaning the word 'acquisition' may have, it does not cover 'confiscation', for, to confiscate means 'appropriate to public treasury(by way of penalty). There is no indication in the forty-fourth amendment to exclude these inherent limitations on the acquisition power of the State. Even the requirement of public purpose was never disputed when it existed in article 31(2) and thus it is indisputed that public purpose was the requirement of compulsory acquisition.

(3) All the limitations and exceptions to which the rule of payment of compensation was subject to under 31 have disappeared. Since article 300-A and the remaining clauses are omitted altogether, the power of the State to pay less than market price of the property(by making adequacy of the 'compensation' 'non-justiciable' and using the expression 'amount' in place of 'compensation') and not to pay it at all in some cases(namely those specified in 31(5) and 31A and 31B), exist no longer.

(4) The newly inserted article 300-A says that "no person shall be deprived of his property save by authority of law" Whenever 'law' is referred to in our Constitution, it means a 'valid law' and the law which does not violate fundamental rights or other constitutional limitations. And no law can be a valid law unless the acquisition or requisition is for public purpose and for payment of compensation. And while considering the adequacy of the compensation, the meaning given to it in Bela Banerjee, namely, the 'market value' concept may come into existence once again. If full compensation is to be paid then large schemes of social engineering like the abolition of Zamindari and agrarian reform cannot be carried out.

207. Seervai, supra note 124 at 1089. In Basantbai v. State of Maharashtra, A.I.R.1984 Bom.366, it was held that obligation to pay adequate compensation still exist under article 300-A. However, this case has been reversed by State of Maharashtra v. Basantibai, A.I.R.1986 S.C.1466.

208. Id. at 1090.

209. Id. at 1089. Seervai says that a law for the acquisition for a private and not a public purpose would be automatically void under article 19(1)(f). Ibid.

210. Supra note 201 at 51.

211. Ibid.

212. Supra note 124 at 1090. Seervai also points out that inadequate compensation places a weapon of political blackmail in the hands of the ruling parties in the Union and the States. Id. at 1091.
However, S.P. Sathe disagree with the view that the position of full compensation as interpreted in Bela Banerjee shall come back.\textsuperscript{213} According to him Article 30(1A) provides that when the property of an educational institution established and administered by minority is acquired by the State then the compensation to be paid is such as would not restrict or abrogate the right guaranteed under that clause. In article 31A second proviso provides that when land under cultivation is acquired which is within the ceiling limit applicable to that person, compensation should be paid at the rate which shall not be less than the market value of the property. By rule of interpretation \textit{expressio unius est exclusio alterius}, it is not applicable to acquisitions other than those mentioned above. Seervai on the other hand says the payment at the rate 'which shall not be less than the market value' in article 31A means that in other acquisitions the payment may be more than the market value otherwise the words 'not less than' would become redundant.\textsuperscript{214} It is only hoped that the judiciary will give only that interpretation to the right to property which will not inhibit the development efforts of the State in pursuance of the goals of Part IV.

(5) Lastly, the right to property may be interpreted in article 21 and hence in the chapter of fundamental rights, which is against the Statement of Objects and Reasons of the Forty-fourth Amendment Act. Article 21 provides: "No person shall be deprived of his life or personal liberty except according to the procedure established by law". The expression "personal liberty" has been interpreted by the Supreme Court in its widest amplitude. In the revolutionary judgement of \textit{Maneka Gandhi v. Union of India},\textsuperscript{215} Justice Bhagwati observed:

\begin{quote}
[T]he expression 'personal liberty' in article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under article 19.\textsuperscript{216}
\end{quote}

\textsuperscript{213} Supra note 204 at 99-100.
\textsuperscript{214} Supra note 124 at 1093-94.
\textsuperscript{215} A.I.R.1978 S.C.597.
There is also a catena of cases in which it has been held by the Supreme Court that both articles 19 and 21 are not mutually exclusive to each other.\textsuperscript{217} In fact articles 19 and 21 sustain, strengthen and nourish each other.

Therefore, the proposition which would emerge from the above observations is that all the different fundamental rights guaranteed under article 19(1), like the right to freedom of speech and expression, the right to property etc. would have come within the meaning of 'personal liberty' in article 21, if they were not separately and expressly enumerated and dealt with in article 19(1) as distinct fundamental rights.\textsuperscript{218} It may, therefore, be contended that the right "to acquire, hold and dispose of property", guaranteed under article 19(1)(f) is very much a personal liberty and would have been comprised in the expression "personal liberty" in article 21, had it not been separately listed and specifically dealt with and guaranteed as distinct right under article 19(1)(f). And now that article 19(1)(f) has been deleted by the Constitution(Forty-fourth Amendment) Act,1978, it will be found in the expression 'personal liberty' under article 21.\textsuperscript{219}

It may be pointed out here that article 31(1) had a meaning in the background of article 19(1)(f), because the latter had conferred a fundamental right. No doubt article 31(1) has been deleted, but the new article 300A puts restrictions on the power of the government not to deprive the person of his right to property save by the authority of law. If there is no right to property mentioned in the Constitution then one may ask what is the need for article 300A?\textsuperscript{220} Obviously, the answer is that the right to acquire, hold or dispose of property is now to be found in article 21. This is also evident from the language of article 300A which says that "No person shall be deprived of his property save by authority of law". We find that this expression is similar to the expression used in article 21. Similarly article 265 provides that "No tax shall be levied or collected except by authority of law". These provisions made explicit the principle which underline our jurisprudence that the State can take no action prejudicial to


\textsuperscript{218}See Justice A.M. Bhattacharjee,"Right to Property After Forty-fourth Amendment", A.I.R.1982(Journal) 52-54 at 53.

\textsuperscript{219}Ibid. However, in State of Maharashtra v. Basantibai M.Khetan,(1986)
life, liberty and property of a person except under the authority of law. The term 'law' in these articles mean not an 'enacted piece of law' but a 'reasonable law' which is just, fair and reasonable. The court will have to accept the same principle in interpreting a 'law' under article 300A. Such an approach would give greater protection to the right to property. And once this approach is agreed to, then any law which deprive of his property, it must provide 'just compensation' and hence the amount of compensation to be paid would become the subject matter of judicial scrutiny once again. This will also lead to one more result, i.e., any law which is passed in furtherance of articles 31-A and 31C, can be challenged under article 21 since the laws passed under these articles enjoy protection only against articles 14 and 19.

According to Rajeev Dhavan, the effect of abolishing the right to property is much less than it appears. As the amendment will not affect the right of businessmen to carry on their trade or profession, and as already a lot of nationalisation of industries and agrarian reform had taken place, he is of the view that "abolishing the right to property at this stage will not affect big businessmen so much as it will affect the urban house-holders and small property owners".

However, what was meant by "abolition" of the property right naturally took some time in crystallizing. During this period the court had to decide certain cases involving property rights. Now let us examine the judicial attitude in the various following cases.

In State of Karnataka v. Ranganatha Reddy, the Supreme Court upheld...
the Karnataka Contract Carriage (Acquisition) Act (21 of 1976). In this case the Act provided for the acquisition of the vehicles, namely the contact carriage, their permits and other assets for running them for the purposes of the State Road Transport Corporation. Two separate but concurring judgments were delivered in this case. 225 Relying on the Preamble of the Act and the declaration made in section 2 of the Act that the Act was for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of article 39, it was held that the said legislation is for the public purpose. 226 It was also held that the amount payable for the acquired property is either fixed by the legislature or determined on the basis of the principles engrafted in the law of acquisition and unless this is wholly arbitrary or illusory, it is not justiciable. 227

The importance of this case lies in the fact that Justice Krishna Iyer applauded the judicial perspective vis-a-vis constitutionality of economic legislation. According to him:

When confronted by serious constitutional problems, judicial statesmanship drops the craft of a legal tinker or lexicographic borrower but transforms itself into that of social engineer who 'beholds the future in the present and his thoughts are the germs of the flower and fruit of the latest time'. 228

These observations makes a judge conscious of his role in the court. He further observed:

The social philosophy of the Constitution shapes creative judicial vision and orientation. Our nation has, as its dynamic doctrine, economic democracy sans which political democracy is chimerical. We say so because our Constitution, in Part III and IV and elsewhere, ensouls such value system and the debate in this case puts precisely this soul in peril.... Our thesis is that the

225. Leading judgment was delivered by Untwalia, J. for himself and on behalf of Beg C.J., Chandrachud and Kailasam JJ. The other judgment was delivered by Krishna Iyer J. for himself and on behalf of Bhagwati and Jaswant Singh JJ.

226. Supra note 224 and 222(Per Untwalia J.) at 237-242(Per Krishna Iyer J.). However there is fundamental difference on the issue of public purpose between these two judges. According to Untwalia J., the legislature is the best judge of the public purpose. On the other hand he asserts that the public purpose is a justiciable issue. While Krishna Iyer J. seems to endorse Kameshwar Singh on this issue.

227. Id. at 227-28.

228. Id. at 233.
dialectics of social justice should not be missed if synthesis of Part III and Part IV is to influence State action and court pronouncements....The credal essence of the Constitution consists in its Preamble. Arts.38,39(b) and (c), 31 and the bunch of Arts. 31A, 31B and 31C....The Directive Principles, being the spiritual essence of the constitution, must receive sweeping significance, being our socio-economic Magna Carta, quiddities apart.229

These observations of Justice Krishna Iyer have infused the law and its interpretation with a new socio-logical jurisprudence, which is the demand of the people of the present day. This formulation of the new judicial process is functional to the planned development within the democratic process.

Guided by the above thought and that the widening gap between the law and public needs, arising out of narrow notions must be bridged by broadening the constitutional concepts to suit the changing social awareness in the welfare state, he gave the proper content and meaning to article 39 of the Constitution. According to him, the key word in article 39 is 'distribute' and the genus of the article cannot but be given full play as it fulfils the basic purpose of restructuring the economic order. Each word in the article has a strategic role and the whole article a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to subserv the common good. It reorganizes by such distribution the ownership and control. Socially conscious economists will find little difficulty in treating nationalisation of transport as a distributive process for the good of the community. One cannot condemn the concept of nationalisation in our plan on the score that article 39(b) does not envelop it. It is a matter of public policy left to the legislative wisdom whether a particular scheme of take-over should be undertaken.229a

It is submitted that once the above interpretation is accepted, there will be no difficulty in passing various agrarian reforms and in the prevention of concentration of wealth in the hands of a few. In this way the socio-economic justice can become the reach of not only few but all.

229. Id. at 233-35.(Emphasis supplied).
229a.Id. at 249-51.
In *M.M.Pathak v. Union of India*, the petitioners challenged the validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976, which denied them the right to payment of bonus, recognised by settlements, approved by the central government and acted upon by actual payment to the employees. The petitioners argued that this Act acquired property, the right to payment of bonus in cash, in violation of article 19(1)(f) and 31(2). On the other hand respondent claimed that choses in action were not property and were incapable of acquisition. And even if they were property, the challenged law fell within the scope of article 31(1) and was beyond the reach of article 31(2) as there was deprivation and not acquisition of property. According to Bhagwati, J., who delivered the leading judgment:

> [P]roperty within the meaning of Art.19(1)(f) and Cl.(2) of Art.31 comprises every form of property, tangible or intangible, including debts and choses in action, such as unpaid accumulation of wages, pension, cash grant and constitutionally protected privy purse.231

It was held by the majority (M.H.Beg, C.J., Contra) that the direct effect of the impugned Act is to transfer the ownership of the debts due to the employees in respect by annual cash bonus to the Life Insurance Corporation and since Life Insurance Corporation is a corporation owned by the State, the Act is a law providing for compulsory acquisition of these debts by the State within the meaning of clause (2-A) of article 31. The Act is thus violative of article 31 clause(2A) since it does not provide for payment of any compensation at all for the compulsory acquisition of these debts.232

*Prag Ice and Oil Mills v. Union of India*, is a case where there was a sharp cleavage of opinion among the judges on the scope and sweep of article 31-B. In this case Mustard Oil (Price Control) Order 1977 issued under Essential Commodities Act, 1955 was challenged. The question before

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230. A.I.R.1978 S.C.802. This case was decided on 21 February 1978. This case is popularly known as L.I.C.Bonus case.
231. Id. at 821.
232. Id. at 827. It is interesting to note that in *M.M.Pathak*, supra note 230, neither Justice Bhagwati nor Justice Krishna Iyer made any reference to Ranganath Reddy. In *Pathumma v. State of Kerala*, A.I.R.1978 S.C.771, it was observed by the Supreme Court that Kerala Agriculturists Debt Relief Act, 1970, is having the objective to eradicate and remove agricultural indebtedness in the State by amelioration and improvement of the lot of debtors by bringing them to the subsistence level and reducing their borrowings. This is one of the social purposes sought to be achieved by our Constitution and it cannot be said that it violates article 31 and it is within the reasonable restrict— (conted.)
the court was that whether the order, issued under the Essential Commodities Act, 1955, which is clearly in the Ninth Schedule, enjoys the protection along with the Act or not. According to the majority, the Ninth Schedule provides protective umbrella only to those Acts and Regulations which are specified therein and not to any order issued under those Acts and Regulations. Their validity can be determined, vis-a-vis, fundamental rights. On the other hand, minority opinion is that if the order issued under the protected Acts and Regulation is intra vires to the Acts and Regulation included in the Ninth Schedule, it would get derivative protection.

Oriental Gas Co., v. State of W.B. centered round the basic issue that whether the principles adopted for fixing compensation for the acquisition of the undertaking of the company were relevant or not. It was held that for compensation payable for acquisition of undertaking of company, choice of period of 5 years immediately preceding the taking over of management and control of Company for calculating average income was not arbitrary and hence not violative of article 31(2). However, it is interesting to note that Reddy J., who spoke for the court admitted that 'this case concerned with article 31(2) as it stood after fourth amendment and before twenty-fifth amendment and that on the interpretation of this article during this period Cooper's case has the final word'. Reddy J., referred to the various principles of compensation discussed in Cooper and upheld the principles of payment in the present case. But in Cooper's case the Act was invalidated on the ground that the principles did not lead to a reasonable compensation, an equivalent in money of the property compulsorily acquired. All this would show, that the passages from Cooper relied on and followed by Chinnappa Reddy J., to upheld the acquisition of the Company had not been followed in Cooper's case. However, in our submission, the result under article 19(6).

233. A.I.R.1978 S.C.1296. In another case of State of Maharashtra v. Man Singh, A.I.R.1978 S.C.916, it was held that where the notification issued by the Governor of Maharashtra was struck down by High Court as being violative of article 19(1)(f), subsequent inclusion of Regulation in the Ninth Schedule preclude the court from considering its constitutional validity after the inclusion.

234. Id. at 1309-10. The majority of Bhagwati, Fazal Ali, Shingal and Jaswant Singh, JJ.

235. Id. at 1302-3. The minority opinion was given by Chief Justice Beg on behalf of himself and Desai J.


237. Id. at 261.

238. Supra note 130.

239. Supra note 236 at 256-57.

240. Supra note 236 at 257.

of this case is right as it is in consonance with the post Cooper era.

The Court has been very careful in validating the laws under article 31C. In Excel Wear v. Union of India\textsuperscript{242} the Supreme Court refused to give protection to the impugned law on the ground that it was not covered under article 31C.

It is true that the judges are constitutional invigilators and statutory interpreters; but they are also responsive and reasonable to Part IV of the Constitution, being one of the trinity of the nations' appointed instrumentalities in the transformation of the socio-economic order.\textsuperscript{243} The judiciary in its sphere share the revolutionary purpose of the constitutional order, and when called upon to decide social legislation it must be animated by a goal oriented approach.\textsuperscript{244}

During the year 1980, a number of developments took place. But the cases decided by the Court during this year still show that the Supreme Court was still grappling with the question of constitutional validity of the agrarian reforms.

In Minerva Mills Ltd. v. Union of India,\textsuperscript{245} the hopes of millions of Indians were belied when the majority struck down, inter-alia, section 4 of the Forty-second amendment Act,1976 which had enlarged the scope of article 31C by providing protection to the laws passed in furtherance of "all or any of the directive principles" against the attack under articles 14 and 19. It was held by the majority that the amended article 31C damages the basic structure of the Constitution as the primacy has been given to "all the directive principles" over fundamental rights contained in articles 14 and 19. However, Justice Bhagwati, who gave the dissenting judgment, held that amended article 31C does not damage the basic structure of the Constitution and hence it is constitutionally valid.\textsuperscript{247} It is submitted that the minority opinion is correct.\textsuperscript{248} Now the position of article 31C has been restored back to pre Forty-second amendment. But there is enough in the opinion of Justice Bhagwati in Minerva Mills, to cause concern to all those who believe in the social philosophy of Part IV of the Constitution and the duty of the court is to implement that.

\textsuperscript{242} A.I.R.1979 S.C.25.
\textsuperscript{244} Ibid.
\textsuperscript{245} A.I.R.1980 S.C.1789. This case was decided on 9 May,1980.
\textsuperscript{246} Id. at 1799, 1800, 1807 and 1811. The majority opinion was given by Chandrachud,C.J., on behalf of himself and Gupta, Untwalia, Kailssam,JJ.
\textsuperscript{247} Id. at 1857.
\textsuperscript{248} For detailed analysis of this case See Chapter IV infra. Seervai considers the majority opinion as right and minority opinion as wrong. See supra note 124 at 1651.
Along with Minerva Mills Ltd., another historic judgment was delivered by the Supreme Court in Waman Rao v. Union of India. In this case the Supreme Court upheld the validity of the Constitution(First Amendment)Act, 1951 which introduced articles 31A, 31B and Ninth Schedule and section 3 of the Constitution(Fourth Amendment)Act, 1955 which substituted a new clause (1), sub-clause (a) to (e) for the original (1) in article 31A. It was held that neither article 31A nor article 31B read with Ninth Schedule, in fact damage the basic structure of the Constitution and hence they are constitutionally valid.

However, the court observed that all amendments to the Constitution which were made before 24th April, 1973, the date on which the judgment in Kesavananda Bharti was rendered, and by which the Ninth Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are valid and constitutional. Amendments to the Constitution made on or after April 24, 1973 by which the Ninth Schedule to the Constitution was amended from time to time by the inclusion of various Acts and Regulations therein, are open to challenge on the ground that they, or any one or more of them, are beyond the Constituent power of the Parliament since they damage the basic structure of the Constitution. If any Act or Regulation included in the Ninth Schedule by a constitutional amendment made on or after April 24, 1973 is saved by article 31A or by article 31C as it stood prior to its amendment by Forty-second amendment, the challenge to the validity of the relevant constitutional amendment by which that Act or Regulation is put in the Ninth Schedule on the ground that the amendment damage or destroy a basic or essential feature of the Constitution as reflected in articles 14, 19 or 31 will become otiose.

This case also upheld the validity of article 31C, as it stood prior to Forty-second amendment.

The court also decided many other cases on the agrarian reform and upheld the various laws imposing ceiling on landholdings in several states and the court also examined the question of compensation under a article

250. Id. at 275, 285, 291, 294-95.
251. Supra note 171.
252. Supra note 249 at 275.
253. Id. at 275 and 294.
In Ambika Prasad v. State of U.P., while upholding the validity of Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1961, Krishna Iyer J. observed:

The march of the Indian national to the Promised Land of Social Justice is conditioned by the pace of the process of agrarian reform. This central fact of our country's progress has made land distribution and its inalienable ally, the ceiling on land holding, the cynosure of legislative attention.


From the above decisions of the court it is clear that except in Minerva Mills, where the majority refused to give primacy to all the directive principles over fundamental rights, in other cases the court has shown its concern on agrarian reforms and has upheld various legislations on ceiling of land holdings. This shows the progressive attitude of the judiciary towards agrarian reforms.

Bhim Singh v. Union of India, which is popularly known as Urban Land Ceiling case, is yet another major decision of the Supreme Court in the area of agrarian reform. In this case majority judgment upheld the validity of all the provisions except one of the Urban Land (Ceiling and Regulation) Act, 1976. The Urban Land Ceiling Act was passed to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limits, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of wealth of urban land in the hands of a few and speculation and profiteering therein and


255. Ibid.

256. Ibid.

257. Supra note 254.

258. Supra note 254.


260. The majority judgment was delivered by Chandrachud, C.J., on behalf conted...
with a view to bringing about equitable distribution of land, in furtherance of the directive principles of state policy contained in article 39(b) and (c). The enactment, thus, contained protection of article 31C. It also enjoyed the protection of article 31B since the Act was included in the Ninth Schedule. The Act was challenged on two grounds. First, the amendment by which the Act was included in the Ninth Schedule violated the basic structure of the Constitution. Secondly, the assumption that the said Act was in furtherance of the directive principles embodied in article 39(b) and (c), was wrong, therefore, the protection cannot be claimed under article 31C. Under section 23 of the Act, which dealt with the disposal of excess of land acquired by the government, Tulzapurkar J., pointed out that it could be given to any "industry" or to any businessman and hence it had an adverse effect on article 39(b) and (c). Therefore, the Act is not protected under article 31C. 261

Under section 11(6) of the Act the amount payable on acquisition of surplus land could not exceed Rs 2 lacs. Tulzapurkar J., was the only judge who considered this amount as illusory payment and hence violative of article 31(2). 262

On the other hand, majority held that the Act was in furtherance of directive principles contained in article 39(b) and (c) and protected under article 31C. It was held that the amount of Rs.2 lacs to be paid is not illusory. 263 Krishna Iyer, J., who gave separate but concurring judgment observed:

Having regard to the human conditions of a large percentage of pavement dwellers in our urban areas and proletarian miserables in our rural vastness, any one who gets Rs 2 lacs can well be regarded as having got something substantial to go by. In a society where half of humanity lives below the breadline, to regard Rs 2 lacs as a farthing is farewell to piquant facts and difficult to accept. 264

of himself and Bhagwati J. Krishna Iyer, J., wrote a concurring but a separate judgment. Tulzapurkar and A.P.Sen JJ. wrote dissenting judgments. Chandrachud, C.J. and Bhagwati J., gave reasons for their judgments later, which are reported in A.I.R.1985 S.C.1650.

261. Supra note 259 at 256.
262. Ibid.
263. Id. at 238.
264. Id. at 240.
The directive principles of state policy are paramount in character and fundamental in the country's governance. Distributive justice envisaged in article 39(b) and (c) has a key role to play in the developmental process of the socialistic Republic of India. The broad measure of ceiling and regulation of urban land ownership is thus an imperative of economic independence and is, therefore, on the national agenda of planned development. Krishna Iyer, J., rightly refuted the attack on the ground of basic structure by observing that "the question of basic structure being breached cannot arise when we examine the vires of an ordinary legislation as distinguished from a constitutional amendment. Therefore, what is a betrayal of the basic structure is not a mere violation of article 14 but a shocking unconscionable or unscrupulous travesty of the quintessence of equal justice". The attempt of the legislature to set up a new social order for abolition of basic poverty should not be set aside by the missile of basic structure.

Any social legislation with the avowed object of ensuring equitable distribution of the land by taking away land from large tenureholders and distributing the same among the landless tenants or using the same for public utility schemes must be deemed to implement one of the most important directive principle contained in Part IV, i.e., article 39(b). If this process results in hardships to few individuals, that cannot be helped, for, individual interest must yield to the larger interests of the community or of the country as indeed every noble cause claim its martyr.

Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd. infused life and blood into article 31C which was made anaemic by Minerva Mills Ltd. In

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265. Id. at 242-43(Para21)  
266. Ibid. However, Justice Tulzapurkar, considers that section 11(b), which puts the limits of 2 lacs, violates articles 14 and 31 which constitute the basic structure of our constitution and hence the protected umbrella of Art.31B is not available to the Act. Id. at 256.  
269. Supra note 245.
this case the Supreme Court was asked to decide whether the Coking Coal Mines (Nationalisation) Act, 1972 was protected under article 31C. It was held that the said Act is a legislation for giving effect to the policy of the State towards securing the principles specified in article 39(b) of the Constitution and is, therefore, immune from the attack on the ground that it offends the fundamental right guaranteed by article 14.270

While explaining the meaning of 'material resources' in article 39(b), it was observed that it does not refer only to resources owned by individual members of the community. Resources of the community do not mean public resources only but include private, resources as well. Nor the word 'distribute' in article 39(b) be used in the limited sense. It is used in a wider sense so as to take in all manner and method of distribution. It takes within its stride the transformation of wealth from private ownership into public ownership and is not confined to that which is already public owned.271 And any scheme of nationalisation is essentially a matter of State Policy. In such matters legislative wisdom must prevail and judicial review must abstain.272

Chinnappa Reddy J., speaking for the Bench observed: "We have some misgivings about the Minerva Mills decision despite its rare beauty and persuasive rhetoric."273 The judge pointed out that no question regarding the constitutional validity of section 4 of the Forty-second Amendment which amended article 31C arose for consideration in Minerva Mills. Therefore, the court went into this question which was unnecessary and hypothetical or academic question. The judge, therefore, suggested, though not so openly, that the decision in Minerva Mills on the validity of article 31C as amended by the Constitution (Forty-second Amendment) Act, 1976 was an obiter dictum.274 The judge said no more about the Minerva Mills specifically because the review petition in that case was pending before the court.

270. Supra note 268 at 253,256. In this case Justice Chinnappa Reddy J., delivered the judgment for himself and Bhagwati, Venkataramiah, and Baharul Islam J., Justice A.N.Sen J., delivered separate but concurring judgment.
272. Id. at 253.
273. Id. at 246.
274. Id. at 247-48. In Basantibhai v. State, A.I.R.1984 Bom.366, the contention that Minerva Mills was obiter and had been overruled by Sanjeev Coke, was rejected.
Further, the judge felt that in view of the decision of the court in Kesavananda Bharti, upholding the validity of article 31C as enacted by the Constitution(Twenty-fifth Amendment)Act, 1971, the subsequent amendment made by the Constitution(Forty-second Amendment)Act, 1976 also must be valid. He observed:

The dialectics, the logic and rationale involved in upholding the validity of article 31C when it confined its protection to laws enacted to further Article 39(b) or Article 39(c) should, uncompromisingly lead to the same conclusion that Article 31C with its extended protection is also constitutionally valid.275

No one suggests that the nature of the directive principles in the other articles of Part IV is so drastic or different from article 39(b) or (c), that the extension of constitutional immunity to laws made to further those principles would offend the basic structure of the Constitution.276 Thus, the correct view of the amended article 31C was that taken by Bhagwati J., in Minerva Mills.

However, H.M.Seervai, says that "judgments in Sanjeev Coke have a status inferior to that of obiter dicta and they cannot possibly overrule the majority decision in Minerva."277 He goes to the extent of saying that "those who value (judicial) process can only hope that a judgment of the kind delivered in Sanjeev Coke on Art.31C will never be delivered again".278 The only reason given by Seervai for his above mentioned statement is that no question arose, or could possibly arise, in the case, about the amended article 31C which was introduced in our Constitution by Forty-second amendment. 279

It is submitted that the views of Seervai are wrong. In fact it was in Minerva Mills that the question of invalidity of amended article 31C was considered despite objections from Attorney General. Because in Minerva Mills, the question was regarding the validity of Sick Textile Undertaking (Nationalisation)Act 1974, which had been enacted before the Forty-second amendment 1976. In our submission the Sanjeev Coke has rather healed the wounds inflicted by the Minerva Mills. 280

275. Id. at 248.
276. Ibid.
277. Supra note 124 at 1681.
278. Id. at 1682.
279. Id. at 1680.
280. These two cases have been discussed in Chapter IV, supra.
Judiciary continued its concern to various agrarian reform legislations in the subsequent cases also. In *Prem Nath v. State of J&K*, the Court upheld the validity of the J&K Agrarian Reforms Act, 1976 on the ground that the dominant object of the Act was to bring a just and equitable distribution of lands, which is achieved by making the tiller of the soil the owner of the land which he cultivates and by imposing a ceiling on the extent of the land which any person, whether landlord or tenant, could hold. Hence the Act was a measure of agrarian reform and saved by article 31A from the challenge under articles 14, 19 or 31. It may be noted that by 1984, the institution of Zamindari, talukdar; and other forms of intermediary tenures had been abolished, the institution of tenancy had been prohibited, a ceiling on the amount of land a tenure holder may hold had been prescribed and the requirement of personal cultivation had been made obligatory. Various laws on the Zamindari abolition and tenancy reform had been included in the Ninth Schedule and thus their validity could not be challenged. But the people adversely affected by the land reform measures indulge in dialatory litigation to stall or delay the implementation thereof. The court has shown its awareness by upholding the various land reform measures.

In *State of Tamil Nadu v. L.Abu Kavur Bai*, the Tamil Nadu State Carriage and Contact Carriages (Acquisition) Act, 1973 was upheld by the Supreme Court as it was protected by article 31C. The impugned Act had

nationalised the entire transport service. The court found that there was
 nexus between the statute and the twin objectives mentioned in clauses (b) and (c) of article 39.\textsuperscript{284} It was further held that it could also not be
 challenged on the ground that sufficient or adequate compensation had not
 been given.\textsuperscript{285} In this case the court reviewed the earlier decisions and
 observed that on careful consideration of the legal and historical aspects
 of the directive principles and the fundamental rights, there appears to be
 complete unanimity of judicial opinion on the point that "although the direc-
tive principles are not enforceable yet the court should make a real attempt
 to harmonising and reconciling the directive principles and the fundamental
 rights and the collusion between the two should be avoided as far as possi-
 ble".\textsuperscript{286}

In N.T. Corp. Ltd. v. Sitaram Mills Ltd.,\textsuperscript{287} Textile Undertakings
(Taking Over of Management) Act, 1983 was impugned. It was observed by the
 Supreme Court that in interpreting such a piece of legislation which was
 clearly in furtherance of the directive principles of state policy in article
 39(b) and (c) of the Constitution the courts cannot adopt a doctrinaire
 or pedantic approach. It is a well known rule of construction that in deal-
ing with such a beneficiary piece of legislation, the Courts ought to adopt
 a construction which would subserve and carry out the purpose and object of
 the Act rather than defeat it.\textsuperscript{288}

In H.S. Srinivasa Raghavachar v. State of Karnataka,\textsuperscript{289} the Karnataka
 Land Reforms (Amendment) Act 1974, which took away the landlord's right to
 resume land for personal cultivation, was considered a step towards agrarian
 reforms and aimed at securing directive principles under article 39(b) and
 (c) of the Constitution and hence it was held to be constitutional.

Thus, from this decision, as also from other decisions of the court,
 the concern of the judiciary to implement the directive principles is evident.

\textsuperscript{284} Id. at 333.
\textsuperscript{285} Id. at 338.
\textsuperscript{286} Id. at 331. See also Sheetgrah Sangh, Kanpur v. State, A.I.R.1988 All 79 at 92-93.
\textsuperscript{287} A.I.R.1986 S.C.1234.
It stands committed under the Constitution to meet the great challenge of economic justice and to give it to all the people of the country including the tiller of the soil by ending rural monopoly and by distributing the national resources to make it serve best the needs of the people, which is the prime voice of Part IV of the Constitution.

(D) An Appraisal

The directive principles form a vital core, the backbone of the Constitution. They are intended to guide the destiny of the nation for an all-round rejuvenation of the society and for providing socio-economic justice to all. Their non-justiciability cannot put them in a state of subordination to this part or that part of the Constitution. And it is the duty of the Court to construe a statute in such a way as to implement the directive principles instead of reducing them to the level of mere theoretical ideals and illusions.

In a developing country like India, private property should be assessed on the scale of socio-economic values prevailing in the society at a given time. The economic strength of a nation depends on the wealth of its resources and the way they are utilised. In a country governed by the rule of law, the concentration and distribution of wealth are influenced by law and the judiciary, by giving a particular interpretation to the law. The courts, by giving a proper interpretation to law, can promote or hamper the legislative will regarding the redistribution of national assets.

The Constitution ordains that the State is a 'socialistic' State and provides for a broad based programme of agrarian reform and for the prevention of concentration of wealth in the hands of a few so that even the weakest in the economic chains of citizens may obtain the socio-economic justice. In fact, land to the tiller of the soil has been our cherished goal from pre-independence days. But the British land reforms were not motivated by the consideration of providing economic justice to the people but by the need to safeguard British political influence in the rural areas. Various leaders of our freedom struggle fought hard to provide socialism in the real sense.

Our founding fathers provided right to property as fundamental right and wanted the future government to provide "compensation" for depriving any
person of his property. They purposely omitted the word 'just' before the 'compensation' and wanted the judiciary to intervene only when something was done against the Constitution or 'against the community' at large. But the land reform did give rise to an interesting controversy. The word 'compensation' became the subject matter of judicial scrutiny from the very inception of the constitution which interpreted it with numerical equality and held that the compensation should be 'just equivalent' of what the owner has been deprived of.

In order to undo the effects of various judicial pronouncements from Kameshwar Singh to R.C.Cooper, which had hampered the tempo of progress of agrarian reform and in the prevention of concentration of wealth, the Parliament enacted a number of constitutional amendments including 1st, 4th, 17th, 25th, 26th and 29th. The basic aim of all these amendments was to fulfill the mandate of the directive principles given in articles 38 and 39(b) and (c). Some new articles like 31A, 31B and 31C were also added in the constitution and a new schedule, i.e., Ninth Schedule, was also added to protect certain laws from the challenge before the court if they are in furtherance of directive principles mentioned therein. The most controversial word "compensation" was replaced by the word 'amount'. It was only in 1973 that the judiciary in Kesavananda Bharti recognised the primacy of two economic directives contained in article 39(b) and (c) over the fundamental rights contained in articles 14, 19 and 31. Perhaps realising that now the judiciary is not against the directive principles, the Constitution was again amended and the primacy was given to all the directive principles over fundamental rights in articles 14, 19 and 31(by amending article 31C). Later on in 1978 the Parliament took away the right to property [Article 31 and 19(1)(f)] from Part III and a new article 300A dealing with the right to property was added by the Constitution (Forty-fourth Amendment) Act, 1978. There is a feeling among the various jurists that the right to property is better protected now and so much so that it can be read into article 21.

Judiciary continued its positive trend till 1980 in upholding the various socio-economic legislations. But the majority in Minerva Mills, belied the hopes of millions of Indians by striking down the amended article 31C as violative of basic structure. However, the majority judgment was considered as obiter in Sanjeev Coke. In various other pronouncements like
Ranganatha Reddy, D.G. Mahajan, Bhim Singh, the Supreme Court gave meaning and content to articles 38 and 39(b) and (c). Thus, recently the judiciary has played a very important role and has shown that they are now alive to and aware of the purpose of the agrarian reforms and have shown their creative attitude to give meaning to the directive principles and create a social order based on socio-economic justice. But there is a great hiatus between policy and performance in land reform legislations. The reason for this is, influenced by western concepts of mechanism of social change, the ruling circles tended to believe that once a legislation has been enacted, the objectives behind the legislation would automatically be achieved. For the success of any programme, it is imperative that all the three limbs of the State - legislature, executive and judiciary work in harmony with a clear sense of direction provided by the directive principles of state policy.