CHAPTER II
MEANING, CONFLICTING IDEAS AND THEORIES OF PROPERTY.

A. GENERAL:

In order to appreciate and critically evaluate the role played by the Supreme Court of India in the interpretation of the provisions of the Constitution relating to the right to property a brief outline of the meaning, content and conceptual frames provided by great thinkers is necessary and highly rewarding.

There are many theories of property propounded by great political, economic and juristic thinkers and philosophers from ancient times. The study of the conceptions of property is very useful in comprehending the basis of the institution of property and its actual function in society in time frame continuum. Though, some times practice appears to be divorced from theories, every practice is undoubtedly based on some theory or other underlying it. Whether one is conscious or not and articulates or not the solution and decisions given to practical problems on close observation and scrutiny reveal the underlying philosophy on which they are based.

The meaning, content and concept of property is neither uniform nor constant in different lands at different times. They depend upon the social, economic, political and even religious and cultural conditions. In the 19th and 20th centuries various conflicting political and economic theories are propounded and propagated giving rise to revolutions.

1. Julius Stone says "The theories by which it has been sought to justify exclusive private control of property are legion", Social Dimensions of Law and Justice, p. 245.

2. G.W. Paton says "There are two types of theories of property, one attempts to explain how property came to be, to describe the facts; the other passes an ethical judgment on those facts and attempts to justify (or condemn) the institution of private property". A Text Book of Jurisprudence, E.L.B.S., 4th Edition, 1972, p. 538.
B. MEANING OF PROPERTY:

1. A MULTIDIMENSIONAL NOTION:

There is no generally acceptable definition or meaning of property. As Paton says "The terms 'property' has a few enduring variety of uses". Perhaps the most serious obstacle to clear thinking on the subject of property is the accumulation of high emotives overtones that cluster ground the word itself. It has a narrow and also a broad meaning. In its oldest and narrowest sense property includes nothing more than corporeal property i.e. the ownership of material objects. Now it is completely obsolete. In its widest sense, property includes all legal rights of whatever description. "A man's property is all that is his in law". In this sense, life, liberty and even conjugal relations are properties. In jurisprudence, the term property is used to refer only to proprie­tory rights in rem i.e. such proprietary rights as are available against the whole world at large. Proprietary rights which are rights in personam are distinguished as obligations. Property may be corporeal or incorporeal. Corporeal property is the right of ownership in material things. Incorporeal property is any other proprietor right in rem. "Property as a right entitled to constitutional protection embraces one's faculties to engage in any kind of work, calling of profession, and whatever may be acquired as a result thereof". For purposes of social theory property is to be conceived in terms of control of man over things. His possessions in the first place be recognised by others i.e. it must be of the nature of a right. In the second place, with regard to things of a permanent nature his right must also have a certain permanence. He must be able to count on the use of the thing. His right over it must be

respected even in his absence. Thirdly, his control must be exclusive. Property may be private, joint, or common but must vest in some person or persons and it must be exclusive of other persons. Exclusive control however does not necessarily mean complete control. Property is a principle which admits variation in several distinct directions. It may be concentrated in one hand or common to many. The control may be partial or absolute. The right is held to include the right to the unhampered use of one's gains, whether land or goods, the right of exclusive use, the right to destroy and the right to alienate by gift or exchange during life, and the right to bequeath. But the law of property does not include all rights in rem. Paton suggests the term 'patrimony' to cover the whole of person's assets instead of extending the term property.

2. MEANING OF PROPERTY, THE INDIAN STATUTES AND THE CONSTITUTION AND THE SUPREME COURT:

The statutes of India defined property partially and the Constitution of India is silent on that. But Art. 31(2) originally included: (i) movable and immovable property; (ii) interest in any commercial or industrial undertaking, and (iii) interest in any company owning any commercial or industrial undertaking. The Supreme Court preferred to give a wider meaning to the word property. It held "There is no reason why the word property should not be given a liberal and wide connotation and should not be extended to those well recognised types of interest which have the insignia or characteristics of

1. G.W.Paton, op.cit p. 505 "Patrimony would include (a) dominion (b) proprietor interests less than ownership; (c) claims upon others, e.g. obligations".

2. The words "immovable" and "movable" property are defined in S.3(26) and S.3(36) of the General Clauses Act 1897 read with S.3 of the Transfer of Property Act 1882.

3. See Art. 19(1)(f) and Art. 31 of the Constitution, dealing with right to property do not define property.

4. The Fourth (Amendment) Act 1955 dropped this description of property.
proprietary right\(^1\). In Chiranjit Lal's\(^2\) case it was held that the term 'Property' refers to the subject matter of ownership, i.e. the corpus and not to the entire bundle of rights which constitute the right of property. Patanjali Sastri, C.J., observed: "the word 'Property' in the context of Article 31... must be understood both in a corporeal sense as having reference to all those specific things that are susceptible of private appropriation and enjoyment as well as in its juridical or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the use and enjoyment of those things to the exclusion of others"\(^3\). Ghulam Hassan, J. expressed the same view in another case that the word 'property' must connote a bundle of rights exercisable by the owner in that respect and embrace within its purview both corporeal and incorporeal rights. He held that as the word property was not defined in the Constitution there was no reason to restrict its meaning\(^4\). Different aspects of property are dealt in Art.19(1)(f) and Art. 31. It was held that Art. 19(1)(f) deals with abstract claims and capacity of a citizen to acquire, hold and dispose of property. In Art.31 the concrete right to own property is guaranteed\(^5\). But 19(1)(f) is given a wider meaning than Art.31 by including money in the term of property\(^6\). Subsequently there is a slow departure from this rigid approach of differentiation of the meaning in

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Finally, Subba Rao, J. broke the walls of separation between 19(1)(f) and 31 and held the term 'property' means the same in both the articles and encompasses concrete as well as abstract rights and every law of acquisition made under Art. 31 must satisfy the reasonableness postulated in Art. 19(1)(f). Shah, J. amplified the meaning in Bank Nationalisation Case. "In its normal connotation 'property means the highest right a man can have to anything, bring that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy. It includes ownership, estates and interests corporeal things, and also rights such as trade marks, copy rights patents and even rights in personam, capable of transfer or transmission, such as debts; and signifies a beneficial right to do a thing considered as having a money value, especially with reference to transfer or succession, to their capacity of being injured. Hidaytulla, C.J. regarded debt as a claim to "an equivalent in value to a floating charge against the generality of things which are the properties of the debtor". He thus gave dynamic content to obligation. The jural connotation of property and its recognition is purely the creation of law. Following some American decisions it was held that intoxicating liquors is a noxious object and ceases to be a legitimate object of property because what has been rendered contraband cannot be the object of property. This was made very clear in another


case. ".......nothing can be the subject of property which is not recognised by law to be such and similarly when the law withdraws such recognition it ceases to be property\(^1\).

A leading constitutional lawyer commented that these words are too wide as under our Constitution well recognised and innocuous kinds of property cannot be divested of their character. He observed: "It is one thing to divest infected food or delterious drinks of their character as property. It is an altogether different thing to divest ordinary food and drink of such character. The first is permissible, the second is not\(^2\).

Pandit Pant echoed the view that 'Property' has no independent existence from state and law. He observed that private property was a creature of law and whatever rights there were they were the creatures of the state\(^3\).

A bewildering variety of interests are now recognised as property both in Anglo Saxon jurisprudence as well as by the Indian Courts:-

(a) The interest of a mortgagee or a lessee\(^4\).
(b) Choses in action\(^5\).
(c) A tenant's rights\(^6\).
(d) Arrears of rent\(^7\).
(e) The right to possession\(^8\).

(f) Any interest interest in a commercial or industrial undertaking.

(g) Any interest in a business such as a managing agency.

(h) The beneficial interest of a Dharma Kartha in the income of a temple.

(i) The hereditary cash grants.

(j) The contractual right of a share holder of a company.

(k) The Mohantship.

(l) Right to hold a fair annually on one's land.

(m) The hereditary office of a Patel or Patwari under Berar Patels and Patwars Law, 1900.

(n) A right of pre-emption.

(o) The salary earned by a Government servant.

(p) Title acquired by adverse possession.

(q) Money.

(r) The hereditary cash grants.

(s) The Khatedari rights.

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(t) Outstanding privy purse.
(u) Right to receive cash grant annually from the state.
(v) Right to receive annual cash bonus from L.I.C.

Some of the interests which are mere rights recognised or granted or enjoyed under law are not recognised as 'Property':-

(a) The life membership of the senate of a University.
(b) The bare right of management of an educational institution.
(c) The right to vote in an election.
(d) The right to use a public high way.
(e) The right to manage property belonging to a temple such as exercised by the tilkayatt of the Nathdwara temple in Rajasthan or by the Raja of Puri in respect of the Jagannath Temple.
(f) The allotment of an evacuee property to refugees under the East Punjab Evacues (Administration of Property) Act, 1947.
(g) The right of the ejaman of an Aliyasanthana Kutumba to manage the family property.
(h) The right to hold a revenue free land.
(i) The office of the managing agent of a company.

(j) The right to manufacture liquor
(k) A bare contractual right unaccompanied by any interest in property
(l) The right of a bare licensee without a grant of any proprietary interest
(m) A bare chance of having particular customers
(n) The right to get recognition from the President as the ruler of an erstwhile State
(o) The right to renewal of permits of State Carriers
(p) The right to an import license to carry on trade
(q) The right to an office which subsists only during the pleasure of another person
(r) The right to the salary of an M.L.A.
(s) A right to pluck tendu leaves
(t) Actionable claims that can be the subject matter of eminent domain.

However, a wider interpretation is given by the Courts to the term property.

C. CONFLICTING IDEAS ON THE INSTITUTION OF PROPERTY:

There are extreme views and theories on property as there are on any other subject. Philosophers, jurists and Political Scientists and economic theorists and social reformers expressed different views and sometimes took diametrically opposite positions with respect to the scope, content, extent, role, goal and limitations on the exercise of the right to property. Both in theory and practice the nexus between an individual’s right to property and the power of the society to regulate and acquire property in the interest of common weal is still an unsolved problem and will remain indissoluble as no permanent solution can be found in an ever changing society. Many tried and failed.

The ancient Indian concept of property based on the function and responsibility to other members of the family and obligations to society is almost forgotten. It was almost similar to that of a trust and the power of the king over the individual’s right to property was never questioned. Further, the right to property was associated with duties. The right to property was never considered as an absolute right: "Indian Jurists did not attribute to property a definite incidental context. There might be several owners of a thing, owning not merely shares, but extensive rights of different characters......(They seem to ask): what point is there in defining the owner of some rights over a thing as something other than owner: particularly when the word for ‘owner’ implies nothing more than ‘belonging’, ‘mastery’ and the like? It is relevant to note here that the fluid, syncretic, nondisjunctive approach to ideas and phenomena is notoriously characteristic

of Indian thought, gradually merging and broad identities being
far more congenial even to their category-minded attitudes
than staccato separation of things which share a characteristic".
The Indian concept of property is different from the western
concept. The Indian concept admits no absolute ownership and
strikes a balance between the right to property of an owner
and other rights and legitimate demands of members of the
family, society and paramountcy of the state. It is not
individualistic like the western concept.

Plato in his 'Republic' outlined a form of communism
in which the elite of the society constitute the ruling class
as guardians of the society. According to him they should not
have any private property including a house. Aristotle a dis­
ciple of Plato, was the first to make the familiar appeal on
behalf of private property that it is necessary for the free
development of the higher life in the individual and is the
most effective, stimulus to character and personal exertion.
Sir Thomas More on the other hand in his Utopia pleaded for the
total abolition of private property. According to him, the
preversity of modern society, was mainly due to the institu­
tion of property, because property creates in man an inordinate

1. Mitakshara (Colebrookes translation 1, 2-3).
2. Gholsh, A History of Indian Political Ideas, 210-12 (1959):
   Peasbe, II Constitutions of Nations (Second edn.)
   Derett, The Concept of property in Ancient India, Theory
   and Practice, AIR Journal 1968, p. 4.
3. See for a discussion of this view of the Indian Concept of
   1977 Vol.15 1973 p-47, Rajeev Dhawan: The Supreme Court of
   India, 1977 pp. 136-40. By and Large the Indian Lawyers a
   the courts followed the western concept of absolute owner
   ship and full compensation, in the interpretation of the
   Constitution ignoring the ancient concept of property.
4. Rashdall, 'Philosophical Theories', Rational Basis of Legal
   Institutions, p.393. Modern Legal Philosophy Series (1969) by
   various authors. (hereinafter referred to as Rational basis
   of Legal Institutions).
sense of self interest resulting in the corruption of human motives. Proudhon said "Property is robbery". The main thesis of Karl Marx was that right to private property was the root cause of division of society into classes of haves and have-nots. Gandhi wanted the rich to be the trustees of wealth for the welfare of the society. In general many great men abhorred the existence of the misery in the midst of plenty which is usually attributed to unlimited right to property.

In contrast to the ideas mentioned above, there are eminent political philosophers and jurists, who adore the institution of property. Blackstone, observed, that the regard of Law for Private Property was so great that it would not authorize the least violation of it, not even for the general good of the whole community. According to Locke, property is natural and an inherent right of the individual, it is derived from nature, not from man and the state has by no means the right to abolish. At best it has only right to control. Herbert Spencer attempted to extract from the teachings of Darwinism that as a means to increase of pleasure, it was essential that the struggle for existence with respect and to accumulation of wealth, should go on unchecked by excessive state interference. This assumes, as all other theories which try for a minimum interference of state, that the system of private property involves a less measure of state interference than a system of socialism of communism. But property is made possible and secured by community which becomes in developed society, the state. Lord Hugh Cecil "upheld private property as an institution sacred in itself and vital to the well being and the society".

1. Rational basis of legal institutions, p. 273.
2. Peter H. Odegard, Political Power and Social Change, p. 98.
The European and American political philosophy is founded on the sacrosanctity of individual's right to private property. The French declaration of 1791 explicitly recognized the inviolability and sacredness of the right to property. The American War of Independence included property, in the trinity of principles along with life and liberty. The 5th Amendment and the 14th Amendment of American Constitution gave protection to the property against the action of federal and state governments. Even in the West, property was not given absolute protection. T.H. Green, by supporting the institution, said that it should not be allowed to interfere with the good of the society.

Herald J. Laski in his grammar of Politics observed "For all property depends upon the sustenance of society, and its rights are therefore socially created. But rights socially created are relative to social needs".

Much earlier Hugo Grotious postulated the necessity for the conditions of the exercise of state power over the individual's right to property both to destroy—subsequently known as police power—and to acquire known as eminent domain. He observed in his magnum opus, Dejurebelliac Pacis, in 1625, "The property of subjects is under the eminent domain of the State so that the state or he who acts for it may use and even destroy such property not only in the case of extreme necessity in which even private persons have a right over the property of others but ends of public utility to which ends those who founded civil society must be supposed to have intended that private ends should give way. But it is to be added that when this is done the state is bound to make good the loss to those who lose their property".

Hugo Grotius, Blackstone, Herbert Spencer and Adam Smith, have thus become the founders of the western theory of right to private property. It is astonishing that, fairly even today, these theories continue to remain the cornerstone of the western politico-economic philosophy which in turn held sway on post independent Indian Judicial jurisprudence. But in practice, under the weight of societal realities of awakening masses and the altered relationship between the modes of production and productive forces and egalitarian conceptions of society and consequent transformation in the nature of the function of a state, the practice in the west with respect to the interference of the state with the right to property is continuously taking a divergent angle from the puritanical ideas of sanctity of right to property.

If property is so important it must not be under the exclusive control of a group of individuals.

(D) THEORIES OF PROPERTY:

There is considerable literature on the theories of property. The theories of property are several depending upon the political, economic and social ideologies. Roscoe

1. Blackstone mentions the right of property as one of the three absolute rights 'inherent in every Englishman' but subject to the laws of the land. In U.S.A. 5th and 14th Amendments consider property as an essential condition of liberty. Ritchie v People, 155 I.LL. 98.


According to L.T. Hobhouse propounders of theories of property can be categorised as follows:— (1) Those who attacked the institution of private property altogether in the interests of communism. (2) Those who have found a general justification for the institution of private property either in its economic or in its ethical value (3) Those who have held that the discrimination of kinds of property and function which each severally performs.

Benjamin Cardozo observed that the economic, social and political background of judges influences the subconscious minds of the judges which in turn determine to a great extent the trend of the judicial pronouncements. The ideas, doctrines and theories that hold sway on the kinds of the judges determine the judicial process. Hence different theories are surveyed briefly to throw light on the foundations of the preferences and prejudices towards the institution of property.

(1) THE OCCUPATION THEORY.

The occupation theory flippantly referred to as 'the divine right of grab' is one of the oldest theories. It was also the most effective advocate of private property till the end of the 19th century. The theory assumes that right to property is based on the original discovery and occupation. Conversely, illogically, it argues that every owner of the property is the original discoverer and occupant. Hence the

H.J.S. Maine thinks that the doctrine that occupation gives title was probably the result of later thought. H.J.S. Maine, Ancient Law (ed. Pollock) 269.
property belongs to him. This theory was favoured by the Roman Jurists as well as the modern philosophers from Grotius to Kant. This theory was also used to defend the right of the labourer to the produce of his work, because the labourer occupies the material that he fashioned into his finished products.

On a close examination the theory reveals that it is not based on the reality. Firstly, great wealth is not the result of discovery. Secondly, it was not acquired by labour. Thirdly, it could be shown that great wealth is acquired by conquest, by business monopolies and by many other immoral and objectionable means. In modern times acquisition by discovery and first occupancy, is a rare phenomena. Further, the dictum 'finding is keeping' may not be accurate. The Treasure which is found may legally belong to the State or society. Even in the case of the right to possession by occupier or finder it cannot be said to confer absolute and arbitrary right to use as he likes, which will continue even after the death. Acquisition of property from the original finder by contract, succession or testamentary disposition is not based upon the doctrine of occupancy. G.W. Paton observes; "The theory of occupation hardly provides a reasonable account of the origin of property, and it is even less satisfactory as a justification of property'.

In spite of the defects in the theory it has some merits based on practical convenience, protection of the right to possession of the occupied based on economy, certainty and security of transaction. It maintains public peace. If the possession is wrong the law may set aside afterwards. Continuous possession gives right to expectations which is undesirable to disturb. But at the same time it does not mean that there

l. G.W. Paton: op. cit. P. 539.
should be no fundamental changes in the defective distribution of wealth in society. As the political power is made depending upon the public opinion so also the distribution of wealth in society should be subjected to periodic changes depending on the needs of the people.

(2) LABOUR THEORY OF PROPERTY

John Locke is the propounder of the labour theory of property. He argued that either by natural reason or religious percepts issued out of revelation. One has to come to the conclusion that every man born in this world has got the right to live. In order to live he has the right to have things necessary for his sustenance which nature gives. It is inconceivable and illogical to postulate that God has created this world to give it only to one person like the king or group of persons as in aristocracy to appropriate the good things for themselves. Whatever one produces by mixing with his labour belongs to himself. Every one is entitled to the full produce of his labour. Others have no right on that. Hence, God has given all things for man to enjoy. Anyone who adds labour to it makes the things his own property. But Locke also admits anything beyond that, that is not mixed up with labour, nor unnecessary for his enjoyment, is not his share and belongs to all others. The extent or quantum or the measure of property which a person can acquire for himself is determined by the extent of one’s labour and conveniences of life. If this principle is accepted and followed, man can acquire property without detriment to the right of the other. Locke observes that though the things of nature are given in common, yet man, by being master of himself and proprietor of his own person, can own things of his own making. That created foundations of property. Hoarding and exchange developed in course of time

resulted in the accumulation property.

The exchange of things helped the man to start hoarding. Locke says that labour theory then explains the origin of title of property in the common things of nature and also limitations that are imposed and the extent of right to property. This theory makes it clear what each man can possess. It holds that it is dishonest and useless to take too much for oneself which is not necessary for himself. It is interesting to note that labour theory, is considered to be self-evident both by the Champions of laissez faire and also by the socialists. Both believe that capital is formed by the savings of labour. Karl Marx said that capital is a stored labour. But the significant thing to note is that excepting in primitive societies or in the state of nature no man lived and worked without mixing up of his labour with that of others. Especially in a civilised society and much more in a modern society. Economic goods are never the result of any one man's unaided labour. Hence, the labour theory fails to determine as well as to justify an unlimited and exclusive right over things. "More over much wealth is not the result of labour at all, but of some fortunate accident, e.g. the increased value of land on which oil, or coal are found."

Moris Cohen observes that even in the case of clear exclusive production, absolute right for appropriation to oneself cannot be accepted, when there is dire necessity of the same goods for others. Socially our dependance is so intimate that no man can justly say: "This wealth is so entirely and absolutely mine as a result of my own unaided effort". Relativity in social solidarity does not exclude the pre-eminent right to society. Property is usually transmitted from generation to generation. Each generation started with the stock of

property not of its own. It may be information or even skills acquired from others. Secondly, property requires protection from Government against external aggression. Labour theory is based upon the idea that individual effort and labour has to be encouraged by distributing property that creates ambition to acquire more property by greater productivity by greater efforts. This may be useful for the increase in production and prosperity. To that extent the theory is sound, but it has got serious limitations. Firstly, it is wrong to presume that all things that are produced are good, if they are produced at an unjustified expense in human life and world. Secondly, the goods that are produced may be harmful and dangerous to the society. Ambition for greater production and wealth may blur the producers to the consequences of their production. The producers may become indifferent to the effects of their production to the society. Thirdly, in real social life it is desirable that a good deal of property accrues to those who are not producers and a good deal of property does not and perhaps should not receive its reward in property. According to religious theory, Christians and Hebrews "the first requirement of property is by the man who needs it, rather than the man who created it".

The test for the corrections of distribution of property in society based on labour is that whether it serves the larger social interests or not.

Labour Theory serves the need for instigating enterprise. Enterprise is necessary for property. Hence, both these theories are on the face of it, complimentary to each other.

But there is conflict between the two theories. Security of the continued possession, results in stagnation of

PROPERTY in agriculture economy where transfer of lands by law for several purposes is opposed by the owners. Law meant for such transfers are disfavoured by them. On the other hand commerce and Trade prosper only when easy transfer and transactions are permissible under law under which transferee should acquire the title.

(3:1) METAPHYSICAL OR PERSONAL THEORY OF PROPERTY

This theory refers to the relation of the property to personality. It is favoured by ideologists like Hegel, Ahrens, Lorimer, and others. The right to property is said to be deduced from the individual's right to act as a free personality. Freedom requires an exclusive spatial sphere, free activity, self assertion and creativity in the external world. The private property with exclusive right to ownership and user provides the proper setting for the free expression of personality.

This theory is based on metaphysical ideas of freedom. It is not helpful to explain the real legal facts. The notion of personality is very vague. It is difficult to draw any definite relationship between the personality and property. It is also difficult to formulate the extent of ownership that is required for the preservation of individuality.

Even an extreme communist would not deny the necessity for the ownership and possession of some essential personal effects to the total exclusion of all others. If this theory is correct the right to property in reality to the vast multitude means that they have no personality and individuality. Perhaps, it is because of that they are termed as faceless masses. They are denied the right in facts by reason of the expropriation of most of the property by few. This theory of personality cannot justify the monopoly by a few by which...

others are compelled to be at the mercy of those who have got the property concentrated in their hands. In fact it resulted in the loss of freedom for many. The right of individuals to own property should be subordinated to the interest of the society so that the fruits of it will be available to all.

(4) PHILOSOPHICAL THEORY OF PROPERTY: 1

Rashdall says:

"For the most part the modern attempts to place the rights of property upon an apriori basis have followed very much the lines laid down by Locke".

Kant who accepted the social contract basis of property and subscribed to the theory of the divine right of grab says:

"The first occupier acquired thereby a sacred right to the ownership of it for all eternity" 2. Kant qualifies the theory and distinguishes it from ethical from unethical. He holds that a man had only right to so much property as he can defend 3. Kant goes further and postulates that the acquisition of property can be only by the implicit consent of society. Hegel says that every man has right to direct his will upon any object and make it his own but the effects of such appropriation of wealth should be taken into account. Rashdall observes that Hegel contributed to a better theory of property by a more organic view of nature of the society, and a juster view of the functions of the State. Hegel says that property is an expression of personality 4.

In the middle of the 19th century Herbert Spencer developed a doctrine of private property based on Darwinian

2. Ibid, 387.
3. Ibid, 387
4. Ibid, 391.
doctrine of evolution different from utilitarian school of Bentham. Spencer pleads that struggle for existence should go on unchecked without interference by state, for development and happiness. Taxation is the limit of interference. He revived the theory of Locke, based on individualism and justified the extremist view of the sacredness of property on the ground of a man's natural right to the produce of his labour. He has gone to the extreme beyond Kant. Kant has respect for the State. They assume that system of private property involves a less measure of state interference than a system of socialism or even communism. Rashdall effectively poses a challenge:

"A very little reflection will show that it is not through an unrestricted struggle for existence, through laissez-faire on the part of the State, that an infant of two inherits on the death of his father a landed estate extending over half a country. It is rather owing to an extreme interference on the part of the State, with the 'natural right of the strong man to grab the vacant estate', and to the employment of a host of legal officials, police and (if necessary) soldiers to prevent the fight for the property which in a 'State of Nature' would inevitably ensure upon the death of the last owner. Rashdall says Spencerianism has lost its force in practical politics.

Another important theorist of this school in Thomas Hill Green. Green, an English disciple of Hegel gave equal importance both to Hegelian reverence for the State and Hegelian respect for property as the expression of personality. It was felt strongly that property was necessary for building up of character. However, Green did not exalt the sacredness of property.

1. Idem.
2. Ibid, 392.
property, in the hands of large owners. He insisted on the necessity of legislation for equitable distribution among the masses. Prof. Ritchie developed a more socialistic version of Hegelian theory. On the other hand Prof. Bosanquet gave more individualistic interpretation to the same theory. Aristotle's justification of property as an instrument of best and highest life is the basis of philosophical theory.

According to modern political philosophers justification of the institution of property lies in its tendency to promote for the whole community a well being which is not to be identified with pleasure, but which includes the development of character and intelligence as well as pleasure.

If property is essential for the development of personality and character vast masses of people are deprived of it by the concentration of wealth in the hands of a few under a political and economic system which adores right to property.

Does a propertyless labourer under the ordinary capitalistic regime enjoy any liberty of which socialism would deprive? Professor Bosanquet and many other philosophical critics of socialism forget that socialism does not aim at the extinction of private property. It pleads for the abolition of private capital. It is wrong to suppose that unearned income is necessary for man's moral well being. Rashdall argues though he supported a restricted right to private property 'we cannot justify the whole capitalistic system enblock by the bare formula that property is necessary to the development of character. Thus he says private property in some form is a permanent institution and the exact form and the extent of right are to be determined by the particular stage of social development by each country by its experience. Rashadall further criticises Bosanquet's defence of private property by saying that he was aware only the good effects of it and blind to the bad effects upon character by unrestricted competition and unlimited accumulation. Virtues like industry foresight, self
reliance; and self-respect, are important. But the intense selfishness fostered by our present system is harmful. Rashadall pleads that 'the justification of property must depend not upon any apriori but upon its social effects'. He pleads for the evolution of a system which combines the virtue of individual right to property without its vices.  

(5) SOCIAL TRUST THEORY OF PROPERTY

Some great thinkers considered that an individual should hold the property not merely for the welfare of himself and his family but should hold the property as trustee for the beneficial enjoyment of his kith and kin and all others who are connected to him one way or other. In other words the owner holds the property as a trustee on behalf of the society. Gandhi "enjoined ancient Hindu principle of trusteeship on big landlords, the princes and other rich people reminding them that wealth is held in trust to share with and serve the interests of the poor". Gandhi's new economic ideology is the doctrine of Sarvodaya based on moral values of life. "By his theory of trusteeship he showed the way of destroying evils of capitalistic system without violence and this together with his emphasis on 'apigraha' (non-possession) shook the very foundation of the institutions of property. He repudiated the theory of class struggle. He ruled out abolition of private property. His solution for economic problems is based on the doctrine of trusteeship. "He would like to dispossess every person of all kinds of belongings. If he tolerates the institution of private property, it is not because he loves it or

1. Ibid, p. 400.
'holds it to be necessary for the progress of humanity, but because he has yet to discover a truthful and non-violent method of abolishing the institution'. If the rich would refuse to become trustees of their wealth he advised non-violent, non-co-operation and civil disobedience as the right and infallible remedy on the ground that 'the rich cannot accumulate wealth without the co-operation of the poor in society'. The theory of trusteeship was the central point of the economic policy contemplated by Gandhi for the National Government of India. He first propounded it in 1929. He appealed to the Zamindars and rich people to follow it. When his expectations of generous response from Indian Capitalists and Zamindars was found to be utterly poor in actual practice he revised his views and accepted the idea of statutory trusteeship. He declared in 1938 that 'a trustee has no heir but the public'. Gandhian doctrines of bread labour and trusteeship were based on ancient Hindu scriptures. Vadilal Lallubhai Mehta who is continuing the crusade in favour of trusteeship, in his recent book "Equality through Trusteeship and full employment", p. 37, gives a summary in terms of a six point formula, belied to have had the blessings of Gandhiji, the essential of practical trusteeship.

1. K.G. Mashruwala, Gandhi & Marx, p. 78.
5. Harijan, April 30, 1938.
7. According to him the doctrine of trusteeship is implicit in first verse of Isavasyopanishad.
(1) Trusteeship provides a means of transforming the present capitalist order of society into an egalitarian one. It gives no quarter to capitalism, but gives the present owning class a chance of reforming itself. If is based on the faith that human nature is never beyond redemption.

(2) It does not recognise any right of private ownership of property, except in so far as it may be permitted by society for its own welfare;

(3) It does not exclude legislative regulation of ownership and use of wealth;

(4) Under State-regulated Trusteeship, an individual will not be free to hold or use his wealth for selfish satisfaction or in disregard of the interest of society;

(5) Just as it is proposed to fix a decent minimum living wage, a limit should also be fixed for the maximum income that would be allowed to any person in society. The difference between such minimum and maximum incomes should be reasonable and equitable and variable from time to time, so much so that the tendency would be towards obliteration of the difference eventually; and

(6) Under the Gandhian economic order, the character of production will be determined by social necessity and not by personal whim or greed.

Nehru rejected trusteeship as baron. He advocated on the other hand that the sole trusteeship that can be fair is the trusteeship of nation and not of one individual or a group. He did not believe in self-appointed trustees.


2. Jawaharlal Nehru, The Discovery of India, p. 534.
Nehru advocated for disposition for vested interests through legislation and even force. He pleaded for state ownership or control of ownership over natural resources. Gandhi's doctrine of trusteeship is more idealistic than practicable in view of the human nature to cling to possession. In the Occident John M. Mecklin is one of the advocates of the social Trust Theory of property. He says that property is based on ethics. According to him: "The general will that provides the sanction for the right must also determine the scope and purpose of the right. It must be exercised in the interest of the social good." He says that the fact that property is primarily a social trust conditions fundamentally the ethical implications of property; to exercise the right of property as a social trust forces the individual to reflect upon the bearing of its exercise upon the welfare of the community as a whole. There arises a constant need for correlating the laws that govern the property and human values it is designed to serve.

He advocates: "The institution of private property must be emancipated from the moribund legal abstractions of the 18th century. It must cease to be a dead juridical entity and serve the needs of a progressive society, and that without surrendering its economic or ethical value." Mecklin thinks that property by itself is neither good nor bad. It is the social situation, the traditions and habits of thought that form the ethics of property. Hence, the instrumentality for socialising private property is the creation of a "new social conscience inspired by a deeper insight into the meaning of property itself, a conception which realises that private property is a social trust." According to Macklin this can

3. Idem.
achieved without making a departure from American tradition by taxation.

The origin and the nature of property shows that there is no absolute right of private property against the right of the community. But according to him as right to the property originates from the State which provides, facilities for acquisition and protection for retention, the state has power to interfere with and regulate the means of acquisition and the ends to which the property is used. There is another striking illustration of the social welfare of property in the right of eminent domain. This has been defined by the American Supreme Court as "the ultimate right of the sovereign power to appropriate, not only the public property, but the private property of all citizens within the territorial sovereignty to public uses." (Charles Rever Bridge vs. Warren Bridge, Leven Peters 420 (1837))

"This fundamental right of society in the land is probably to be traced back to an earlier undifferentiated stage when all land was held in common. The negation or repudiation of this right of society endangers the vital interests of the society. Mecklin quotes with approval justice Holmes: "no society has ever admitted that it could not sacrifice individual affairs to its own existence." The doctrine of police power, another instance of the State regulation of Right to property which was originally restricted to the protection of life and public health is gradually extended to encompass to which gamut of the socio-economic welfare in modern times even in the western countries. In several states like Germany, the doctrine of police power has absorbed almost the entire life of the community political, economic and even cultural that this power is of recognised importance.

1. Ibid, p. 351.
2. Ibid, p. 351.
John Atkinson Hobson criticises the social trust theory of property, from a socialist point of view. Hobson says that a selfish man who either gets unearned income or acquires property by illegal and immoral practices, and by natural proclivity a wastrel cannot be social in his spending. He lives in idleness and luxury. He is not fit for the efficient and honest administration of a social trust. "He who does not eat cannot work; he who does not work cannot eat"; Hobson points out that a person with ill-gotten money spends also in ways injurious to society. "It is more socially injurious for the millionaire to spend his surplus wealth in charity, than in luxury for by spending it on luxury he chiefly injures himself and his immediate circle, but by spending it in charity he inflicts a graver injury upon society". Hobson rejects the arguments that man is by nature selfish and combative. He should be given opportunity for that instinct. Welfare measures destroy incentive for personal effort. Professional taxation impairs professional efficiency in commerce and industry; and public management cannot be maintained with efficiency and honesty. He warns that the individualistic system with profit motive "de-rationalised the intelligence and demoralises the character of all of us". They are inherent in the defective structure of the individualistic industrial society.

Mr. Carnegie and Mr. Rockefeller have seriously propounded the theory that certain individuals are endowed by nature or circumstances with the opportunity and power of accumulating great wealth, but that their wealth, though legally their private property is rightly regarded by them as a 'social trust' to be administered by them for the benefit of their fellow men, it seems to them a matter of indifference how this wealth is acquired provided that it is productively expended.

1. Ibid, p. 362.
The western concept of Social Trust Theory postulates that the means of acquisition of property however unethical they might be, accumulated by individuals possessing undesirable qualities of ruthlessness, avarice, cunning and gross indifference to human suffering in the acquisition process should not be questioned provided they utilise their property to some extent in charitable purposes. The theory is opposed to state and social ownership of property. On the other hand, the protagonsists of this theory like Mecklin believe in the mitigation of the evil fall outs of the acquisitive society by the triple action of the eminent domain, police power and taxation. But much depends upon the scope and efficacy in application of this three means in achieving economic justice. Hence, following these doctrines as they are understood in the west speedy and effective equitable distribution of wealth cannot be effected in developing societies.

(6) UTILITARIAN THEORY OF PROPERTY:

According to Jeremy Bentham, the object of legislature in its function distributing the rights and obligations should be the greatest happiness of the greatest number. This object can be analysed into four subordinate ends namely subsistence, abundance, equality and security. As these four aspects are perfectly safeguarded by the institution of property, the social happiness will be the maximum. These multiple ends of law are closely inter-related in practice, though they appear to be independent in theory. Some times, two or more of these ends may be served at the same time by a piece of legislation. But, some times these ends may conflict with each other. This contradiction between some of these ends require reconciliation by fixing strictly the order of priorities, and also by giving pre-eminence to one.

According to Bentham subsistence and security constitute life itself; whereas abundance and equality are the ornaments of life. The first object of legislation shall be the security. The subsistence should be made also the object of legislation. Liberty may be an adjunct of security but it should be subordinated to the general security. The greatest good of the community can be achieved only by subordinating and sacrificing some liberty to the general good. What constitutes the greatest good may change from time to time depending upon the circumstances. In a conflict between equality and security, security is to be preferred. Equality cannot be inferred without security. "Equality if taken as the basis of the social arrangement will destroy both itself and security at the same time". Perfect equality of right through legislation is impossible. Every law results in inequalities because some get rights under the law by imposition of obligation upon others. However, the main object of law is security. This can be achieved only through law. Without law there is no security. If there is no security there will be no abundance and certainty of subsistence. Bentham analyses the evils which results from the attacks upon property as evil of non-possession, paid of looking, fear of looking and deadening of industry. Equality of misery will be the out-come in the society. Law is the creator of fixed and durable position. Property is the creation of law. Bentham says, that there is no such thing as natural property. It is entirely the work of law. "Property is nothing but the basis of expectation; the expectation of deriving certain advantages from a thing which we are said to possess in consequence of the relation in which we stand towards it". It is not material, it is metaphysical; it is more conception of the mind. This expectation is the work of law. Law promises and guarantees.

2. Ibid, p. 211
3. Ibid
"Property and Law, are born together, and die together. Before laws were made there was no property; take away laws, and property ceases." Bentham argues that the poor people would not be better without laws because in the state of nature their position would be worse. Jeremy Bentham's utilitarian theory of property based on security does not help to justify the right to property in the modern welfare state in the present day world. The common man looks to the welfare state for his security more than to his individual right to property. The emphasis in the 20th century has shifted to equality and equitable distribution of property. Unbridled right to property based on security results in deprivation of the same security to substantial section of population. Hence, equality should be given primacy over security in any theory of justification of right to property.

(7) ECONOMIC THEORY.

The argument of propounders of economic theory is that the maximum production of goods and services is the aim of the society. It can be achieved by means of maximum productivity. The classical economists argued that it depends on the successful businessman. The successful businessman is one who makes the greatest profit. He foresees the effective demand. Otherwise his enterprise fails. So he is the captain of the economic

1. Ibid, p. 213.
2. Ibid, p. 213.
4. Julius Stone says "It has been seen that claims of economic purport are entangled with law in some of the most intimate claims of personality". Social Dimensions of Law and Justice, p. 243. See the same for comment on Roscoe Pounds classifications of claims to control valuable things to the exclusion of others.
activity in the country. On the face of it, it appears to be true that production will increase through greater productivity in industry and agriculture under individual ownership. It may be explained through psychology and economic theories. But the question is whether the production and productivity are canalised towards socially desirable ends. On scrutiny it can be found that the quality, quantity and nature of production is correlated and geared to increase the individual profits. The desire for individual profits which is paramount, subordinates, all other ends, useful to society. Secondly, private property by itself does not result in the increase of certain things. Ex. Lands in cities and monopoly in limited goods. It is proved by experiments that land yielded more fruits under government care than under private ownership. Ex. French and Irish lands.

On the other hand it can be shown that private ownership thrives on scarcity created by manipulation. A patent of the discovery which produces the commodity cheaply may be bought by the producer of the commodity who never uses it. Thus, he artificially controls the increase in production. Advertisement is another device, by which the consumers are deceived to purchase a substandard commodity. Private enterprises and free competition have inherent defects of wastefulness, harm and abuse of the resources and corruption of morals in society. In a competitive society, which is always imperfect, competent and principled enterpreneurs are eliminated by manipulative enterpreneurs to their advantage at a great cost to society. The social interest and social justice are casualties to the greed of monetary profits of such persons. The man power as well as natural resources are equally exhausted by frenzied activity and production, for the sake of immediate profits. Justification of unrestricted and unlimited right to property based on the reason d'etere of maximum production spurred by avaricious acquisitive profit motive activity is objectionable both on moral and eco grounds. Economic prosperity
based on this philosophy results in debasing of human values, 
degeneration in culture, unscrupulous exploitation and econo­mic injustice to many. Concentration of wealth in the hands 
of few leaving the vast masses in abject poverty and penury 
ultimately adversely affects both production and productivity.

(8) THEORY OF PROPERTY AS A FUNCTION NOT A RIGHT:

Richard Henry Tawney in his "The acquisitive Society" 
considers that property is not a right of man but only a func­tion. He defines function 'as an activity which embodies and 
expresses the idea of social purpose'. He says that the 
essence of it is that the agent does not perform it merely 
for personal gain or to gratify himself, but recognises that 
he is responsible for its discharge to some higher authority. 
He emphasizes the social significance of economic activity and 
observes that societies have adapted various expedients of 
emphasising that. The violence and greed are controlled thus. 
The social will in this respect is to be institutionalised and 
continuous vigilance is required to protect it from degenera­tion. The de-generation of the social control resulted in 
tyranny and revolution against tyranny. It brought the pendu­lam to the other extreme during the middle of the 18th century 
in European countries under which unbridled individualism has 
triumphed in the process of clearing the dead wood. The indivi­dual rights became enlarged by the emancipation of individuals. 
The application of responsibility of authorities and insis­tence on some individual rights irrespective of any social 
respect, created private rights and private interests and the 
idea of its purpose itself has vanished. He says 'the result 
of such ideas in the world of practice was a society which was 
ruled by law, not by the caprice of government, but which re­ognised no moral limitation on the pursuit by individuals of

1. Richard Henry Tawney, "Poverty as a function not as a 
right another view", Rational basis of Legal Institutions, 
p. 329.
their economic self interest\(^1\). According to the norms of
acquisitive society, society is founded on rights and not on
functions. Rights are not supposed to be derived from func-
tions. Rights are not based and contingent upon the performance
of services. Individual acquires a right for the free disposal
of his property, and the pursuit of his economic self interest.
These rights are considered to be anterior to and independent
of any socially useful function.

Almost all legislation meant to do social justice was
opposed in the name of the rights of property, eg. Factory
legislation, housing reform, interference with adulteration of
goods, compulsory sanitation of private houses, etc. The argu-
ment was that the owners of property know better what to do with
their own property. The social justification is negatived for
the enjoyment of property and direction of industry. No social
purpose is recognised. The right to property is considered to
be an end in itself. Tawney described a function of society
based on the conditions for acquisition upon the discharged
obligations, proportionate remuneration to service and denial
of property to those who do not do any service. The main em-
phasis is on social performance of functions. Tawney says
that functional theory helps in distinguishing the legitimate
and illegitimate types of property. The concept of private
property occupied a central position in the last one hundred
years. It has become an object of criticism and several social
movements were organised against that\(^2\). The major criticism
has come from socialists. According to them "the economic evils
of society are primarily due to the unregulated operation,
under modern conditions of industrial organisation, of the
institution of private property\(^3\)." It is argued that property

1. Ibid, p. 330.
2. Ibid, p. 333.
is not only a legal right but also a moral right. It ensures the producer the result of his efforts without being deprived by violence. If the tiller of the soil is given security of his labours from the land and right to transmit by inheritance it is a great stabilising factor of the society. Tawney says that the proponents of functional theory, do not dispute this but ask that it should be carried to logical end, by justifying the right to property only on the basis of the functions performed by the owner.

The structure of society has changed and accordingly the concept of the society has also changed. The whole theory of property can be understood when the property was distributed to almost among all people. But in modern society property is concentrated in few families. More and more people are becoming mere labourers. Bigger properties are proved to be menace to the small properties. It creates insecurity, among many. The ownership of property is not active but passive now. The owners do not treat property as a means to work. It is considered as an "instrument for the gain of the exercise of power and that there is no guarantee that gain bears any relation to service, or power to responsibility". Nature of property is itself changed, from tools of production and private effects to that of multitude of rights, like royalties, ground rents, shares etc., Ownership is normally divorced from use.

Such property may be called passive property, or property for acquisition, for exploitation, or for power to distinguish it from the property which is actively used by its owner for the conduct of his profession or the upkeep of his household. To the lawyer the first is, of course, as fully property as the second. It is questionable, however, whether economists shall call it 'property', at all, and not rather as Mr. Hobson has suggested, 'Improperty', it is not identical with the

rights which secures the owner the produce of his toil, but is opposite of them.

On this basis Tawney classifies the property into nine kinds: (1) Property in payments made for personal services (2) Property in personal possessions necessary to health and comfort (3) Property in land and tools used by their owners (4) Property is copyright and patent rights owned by authors and inventors (5) Property in pure interest, including much agricultural rent (6) Property in profits of luck and good fortune; 'Quasirent' (7) Property in monopoly profits, (8) Property in urban ground rents and (9) Property in royalties.

According to Tawney the first four kinds of property are related to condition the performance of work, and to promote creative work. They discourage idleness. Where as the last five have no relation to the performance of work. All those later kinds of property are tributes paid by the workers to those who do not work. It is wrong to raise alaram when property is attacked, that a small land owner, a craftsman, or a man with household goods will be effected. On the otherhand it is the monopolists, the capitalists and those who get un-earned income that will be affected. They theory of property based on security by which each man would enjoy the fruits of his own labour has become outmoded, and underwent changes. It might be true when it was originated. The economic realities disprove that theory. No longer private property can be justified on this case. Security is necessary not merely for few but for all people. The lack of it to many is the gravest indictment of our civilisation'. Property is only a means and not an end. It is not the only means to provide security. Alternative means can be found for giving security by means of

1. Ibid, p. 337.
2. Ibid, p. 338.
amenities etc. In fact most of the people do not have enough savings to provide security in old age. Property consists of a multitude of rights. It is a complex and not a simple concept. All rights implied incidental or ancillary to property need not necessarily be protected, for instance, unlimited acquisition without labour. Tawney points out "indeed, functionless property is the greatest enemy of legitimate property itself. It is the parasite which kills the organism that produced it. Bad money derives out good. Functionless property grows, and as it grows it undermines the creative energy which produced property and which in earlier ages is protected.' Tawney further observes that it is wrong to think that when property is attacked it will affect all and kill the qualities, incentive to work and creative spirit. Different types of property are to be discriminated. Those that are good should be preserved, and those which are bad and illegitimate should be abolished. People who do not distinguish like this want to preserve all private property even in its most degenerated form. Perversions of property should be removed, Tawney, advocates the preservation of sufficient personal possessions. He does not advocate a utopian communism. He realises minimum property is essential for healthy and self-respecting life. What he wants is such kind of life should not be the preserve and privilege of minority but should extend to all the people. It is naïve to say that all proprietary rights are equal in sanctity. "They will distinguish it sharply between property which is used by its owner for the conduct of his profession of the upkeep of his household and property which merely a claim on wealth, produced by another slave. They will insist that property is moral and healthy only when it is used as a condition not of idleness but of activity, and when it involves the discharge of definite personal obligations. They will endeavour, in short, to base it upon the principle of function".

1. Ibid, p. 343 - 344.
The functional Theory of property is also propounded by Leon Duguit of France. He criticised apriori and dogmatic method of viewing the law held by classical jurists. Property is an institution developed by law, to meet an economic need. As economic needs change the evolution is towards the socialisation of property. The result is the private ownership is ceasing to be a private right and becoming a social function. This theory does not explain the evolution to right to property. In so far it is related to the adult and able bodied individuals, it provides a basis for the acquisition and accumulation of property. It is silent with respect to the problem of inherited wealth. It is difficult to assess and evaluate and quantify the correlation between the performance of functions and the acquisition and accumulation and retention of property. The functional theory may be useful more in the distribution of income. This theory does not provide for the subsistence and maintenance of people who for various reasons may not perform any functions, eg. Orphans, old and sick people, blind and deaf etc.

(9) COLLECTIVIST OR SOCIALIST THEORY OF PROPERTY.

Both the theory and practice of Socialist or Collectivist approach to property which gained respectability and currency in all the countries including in the citadals of traditional capitalism in open avowal or disguised form in different hues and degrees has its roots in remote ages in pastoral nomadic tribal and, communal properties. Plato in his 'Republic' suggested a complete social system of communist society. Moore also picturised an ideal community based on total communism. In the 17th century Campanelia published his 'Casty' of the Sun elaborately deliniating a pure communistic society. Rousseau in his 'Contract Social' maintains that man surrendered every thing he posses to the hands of the community by social contract and impledly accepts communism. Yet, he advocates the sanctity or property. Robert Oven also advocated as well as
established, after he went to United States from England, small societies of common ownership. Louis Blank of France in his 'organisation of Labour' which appeared in 1845 portrayed vividly the exploitation and misery of the poor and pleaded for the abolition of heridity in property and the establishment of the great public industrial organisations absorbing all private industries. In Germany Fichte and others and later Lassalle and Marx took up the cause of socialism. Marx, who earned the reputation as the father of scientific socialism, devoted his life in expanding a theoretical background of scientific socialism and also laying down foundation for international working class movement. He attacked capital in his magnum opus Das Capital. He developed "Theory of Surplus Value". He attributed accumulation of private property to violation and fraud. He propounded the Doctrine of dialectical historical materialism to show the inviolability of the establishment of a socialist state and communal society. Henry George in U.S.A. pleaded for the recognition of the soil as the common property as it was not created by man. He advocated for the acquisition of land by the community without payment of compensation. He pleaded also for the confiscation of property of all the richest members who are loyal to the union. According to the socialist or collectivist theory of property the means and instruments of production and almost all the land should be owned by the society or the state. The natural resources and property should be utilised for the common good. Exploitation of man by man is to be eliminated. Instead of competition, cooperation should be promoted for the development of the economy. Avarice is to be discouraged. Private property is recognised. It need not be abolished totally. But private property should be limited to the fruits of one's own labour. And, acquisition of property

Rational basis of Legal Institutions by various authors 1969, pp.232 to 267.
by succession is also to be recognised to certain extent. Concen-
tration of wealth is prohibited. Income is to be distri-
buted according to the capacity, and according to the work done. 
Most of the wealth in society is vested in the state or society.

The collectivist and socialist theory of property based 
on common ownership of property is possible to a large extent. 
But, as recognised by many of the socialist it is not possible 
to totally abolish private property nor it is desirable. Even 
the soviet union in its constitution recognises Right to Property 
though to a limited extent. The application of the socialists 
theory of property is limited both in time and space. Excepting 
in primitive societies in ancient times and some societies in 
present day world there are long periods of history when pri-
ivate property dominated the economic structure of the society. 
Further, it appears to be that excepting for short periods it 
is difficult to avoid human greed and profit motive. While on 
the one hand the traditional capitalist societies in the west 
are moving towards greater social regulation in control and 
ownership of means of production and reduction of inequalities 
by taxation, on the other hand the socialistic states like Soviet 
Union and China are compelled to provide higher material incen-
tives and larger possession of material things for stimulating 
economic growth. Without some private property individual 
personality, dignity, identity, and liberty will be adversely 
effected. Hence, theories of socialism or collectivism which 
do not subscribe to the preservation of some private property 
are exposed to valid criticism.

E. CONCLUSION.

A NEED FOR A NEW RELATIVITY THEORY OF PROPERTY.

None of the theories discussed above explained satis-
factorily the origin, evolution, basis, justification and con-
tinuation of the right to property valid for all the times 
and climes. The Metaphysical and Philosophical apriori 
theories failed to explain the divergence between the theory 
and the reality both on ethical and practical grounds. The
occupation theory is antiquated and limited to earlier times in social history when the place on earth was almost unlimited in relation to the meagre population and has absolutely no relevance to present day world. The Labour Theory is exploited creating confusion by those who supported the exploiters of labour. In actual application it is fraught with many difficulties. The priorities advanced by utilitarian theory between security and equality are reversed by the sea change in the conception of state in modern times. The Social Trust Theory is more moralistic than realistic and serves no purpose when once it is accepted that the legal owners of the property are not the real owners of it. And the general concepts of eminent domain, police power and taxation without specification of their context will be of no avail for socialisation of property in all societies. The economic theory might be suitable to the early industrialised period of western societies which had the advantage of colonies for exploitation with increase in the standard of living conditions workers with the simultaneous catalyst of science. The Functional Theory of property appears to be closer to the realities of the present day world with increasing number of votaries in many countries. It is more forward looking as it does not explain the origin of property but provides conditional justification of right to property. It leaves outside its field small sections of society. A socialist or collectivist theory of property, firstly, does not explain the existence of other systems at different times satisfactorily, and secondly may not be useful in some societies.

A theory of property, to be significant cannot be a whole sale defence of the status quo, nor can it restrict itself to a socialist or individualist utopia or a jurists heaven of legal concepts.

Hence, it can be concluded that only a new Theory of Relativity of right to property can satisfactorily explain the origin, evolution, justification and function of right to property. Right to property has to be based and justified
with reference to the time and place in any society. It can be explained only in the context of the prevailing conditions and needs of a given society. In extreme cases the right to property may be totally extinguished and become extinct even if it is for a small period of time, on the other extreme it might have been possible in old times to allow the right without any restriction or limitation whatsoever. In between the two extremes the extent and limitation on the right may vary from society to society and from time to time. Each generation in modern times has to decide the contours of the rights, keeping in view the density and pervasiveness of its distribution, the background of its existence, the needs of the society and the notions of distributive justice, the awakening and expectation of the masses of the people. No cut and dry policy or clear cut solution or permanent panacea can be offered by any theorician. The basic principle of all the theories in different degrees form the basis of theory of relativity of right to property. The concepts of contribution, function and justice are the foundations of the theory of relativity of right to property. The conceptions of these concepts may change but the broad concepts remain.