CHAPTER III

CONSTITUTIONAL VALIDITY OF LAND ACQUISITION

3.1 Introduction
This chapter is aimed to analysis of Indian Constitution in reference to right to property of individual. In this chapter relevant Constitutional provisions shall be considered in the light of decided case laws relating to property rights, limits of executive organs of the state as well as legislative actions.

3.2 Constitutional Protection to Land Acquisition
Our constitution makers were greatly influenced by the Western doctrine of eminent domain and they incorporated the right to property as a fundamental right under Article 19(1) (f) and element of public purpose and compensation in Article 31 (2). It was also felt that some of the principles laid down in Directive Principles of State Policy (DPSP) which had its influence in the governance of the country, would not be achieved if those articles were literally interpreted and applied. The DPSP lay down the fundamental principles for the governance of the country, and through those principles, the state is directed to secure that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good and that the operation of the legal system does not result in the concentration of wealth and means of production to the common detriment. Further it was also noticed that the Fundamental rights are not absolute but subject to law of reasonable restrictions in the interest of the general public to achieve the above objectives specifically to eliminate zamindari system.

The Indian Constitution (Forty-fourth Amendment) Act, 1978 which deleted Article 19(l) (f) and Article 31 from the Constitution of India and introduced Article 300-A reveals the following changes:

i. Right to acquire, hold and dispose of property has ceased to be a fundamental right under the Constitution of India.

ii. Legislature can deprive a person of his property only by authority of law.

iii. Right to acquire, hold and dispose of property is not a basic feature of the Constitution, but only a constitutional right.

iv. Right to property, since no more a fundamental right, the jurisdiction of the

Supreme Court under Article 32 cannot be generally invoked; aggrieved person has to approach the High Court under Article 226 of the Constitution.

Article 300A enables the state to put restrictions on the right to property by law. That law has to be reasonable. The legislation providing for deprivation of property under Article 300A must be a just, fair and reasonable. A law seeking to acquire private property for public purpose cannot say that “no compensation shall be paid”. In India the Land Acquisition Act, 1894 gives sweeping legal powers to Government to acquire land for public purposes. Public purpose is a pre-condition for deprivation of a person from his property under Article 300A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property, the state has to justify the grounds which may depend upon the scheme of Land Acquisition Law, Legislative policy and other related factors. The Land Acquisition Act, 1894 was pretty old and some of its provisions have become obsolete, so a new legislation in its place was need of the hour. Hence The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 aimed to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families whose land has been acquired or proposed to be acquired, or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status and for matters connected therewith or incidental thereto.

3.3 Scope of Article 19(1) (f) and 31

In Article 19 (1) (f) ‘property’ is used in the widest sense, whereas, in Article 31 (2), the word is circumscribed by the implications of the doctrine of “Eminent Domain” and so cash and choose-in-action are not capable of compulsory acquisition. This view was repeated by the Supreme Court in Bombay Dyeing case and Shinde’s case. There is divergence of opinion among jurists in the United States of America on this question.

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3 *Bombay Dyeing and Manufacturing Co. Ltd. v State of Bombay* A.I.R. 1958 SC. 328
and though in the earlier decisions of the American Courts, it was said that the power of eminent domain cannot be exercised in respect of money and choose-in-action, the modern trend, as pointed by Nichols on Eminent Domain⁵ seems to be that the right of eminent domain can be exercised on choose-in-action.

Supreme Court of India opined “But even if the preponderant view in the United States were that chooses-in-action cannot come within the power of eminent domain, it would not be right to allow us to be unduly influenced by this view in the interpretation of the scope and ambit of Cl. 2 of Article 31. We must interpret Article 31, Cl. (2) on its own terms without any pre-conceived notions borrowed from the law in the United States on the subject of eminent domains”⁶.

While discussing the scope and contents of Entry 42 in List III of the VII Schedule to the Constitution which confers power on parliament and the State Legislature to legislate with respect to “acquisition and requisitioning of property”, it was pointed by Justice Shah, speaking on behalf of the majority in R. C. Cooper v. Union of India⁷ that the property which can be compulsorily acquired by legislation under this entry means the highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another’s courtesy; it includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copy rights, patents and even rights in personum capable of transfer or transmission such as debts, and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured”.

It is clear from the scheme of fundamental rights embodied in Part III of the Constitution that guarantee of the right to property is contained in Article 19 (1) (f) and cl. (1) and (2) of Article 31. It stands to reason that “property” cannot have one meaning in Article 19(1) (f), another in Article 31 (1) and still another in Article 31 (2). “Property” must have the same connotations in all the three Articles and since these are Constitutional provisions intended to secure a fundamental right, they must receive the widest interpretation and must be held to refer to property of every kind⁸.

3.4 Relationship of Article 19 (1) (f) and 31

Before coming to the judicially pronounced doctrines with respect to the relationship of

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⁶ Madan Mohan Pathak v Union of India (1978) 2 S.C.C. 50 at 72
these two articles, it will be helpful to look at the original provisions of these two Articles.

Article 19, its clauses (1) (f) and clause (5) lay down that every citizen has a right to acquire, hold and dispose of property subject to state’s right of imposing by law reasonable restrictions on its exercise in the interest of the general public or for the protection of the interests of any Scheduled Tribe. Article 31 lays down that no person can be deprived of his property save by the authority of law, and that no property may be compulsorily acquired or requisitioned “save for a public purpose and save by the authority of law”.

Although Mr. Justice S.R. Das gave indications of his views in regard to the interpretation of Articles 19 and 31 in Chiranjit Lal v. Union of India\(^9\) as early as in the year 1951, a full-fledged discussion of these views is to be found for the first time only in State of West Bengal v. Subodha Gopal\(^10\). The petitioners in Subodha Gopal’s case\(^11\) by purchasing lands at a revenue sale, had acquired under the law then existing, certain valuable rights including, inter alia the right to eliminate certain sub-tenures. A later legislation, the constitutional validity of which was in question, sought to take away this right of eliminating the sub-tenures. The petitioners complained that the impugned legislation, violated their fundamental rights under Article 19 (1) (f) and 31.

Broadly speaking, Mr. Chief Justice Patanjali Shastri, with whom Mahajan and Ghulam Hassan JJ, seemed to have agreed, took the view that Article 19 did not apply to the situation and that only Article 31 was applicable. The reason for excluding Article 19 was that this Article “declare the Citizen’s right to own property and has no reference to the right to the property owned by him, which is dealt with in Article 31”. Applying Article 31 Court held that cl. (2) of Article 31 deals with nothing else but “deprivation” of property, though, the “deprivation” is not to be found in that clause. “Acquisition”, “requisition” and “taking possession” of property, the expression used in cl. (2) amounted precisely to “deprivation” as contemplated' in cl. (1). On the basis of this reasoning, held that clss. (1) and (2) of Article 31 together dealt with the same subject, namely, ex-appropriation. These two clauses; His Lordship observed, incorporated the American doctrine of “eminent domain”. Mr. Justice S. R. Das, in a separate opinion, propounded the theory that clss. (1) and (2) of Article 31 deal with two distinct and

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\(^11\)Ibid page 95.
separate objects. According to him cl. (1) dealt with the American doctrine of “police powers” because, that clause, read positively, only meant that the State had the power by legislation to deprive a person of his property. Cl. (2), on the other hand according to the learned Judge, dealt with the doctrine of “eminent domain”. Mr. Justice S.R. Das seemed to be in complete agreement with the Chief Justice in holding that Article 19 (1) (f) was irrelevant to the situation in hand. This was because His Lordship read the doctrine of “eminent domain” in clause (2) and the “police powers” in cl. (1). In *State of Bombay v. Bhanji Munji* a final stamp of authority was given to the doctrine of Eminent Domain under Article 19 (1) (f) and Article 31 (1) are mutually exclusive in application. In that case it was held that when a restriction on the right to property did not amount to a total deprivation, it was only Article 19 that applied, whereas, when the restriction amounted to a total deprivation Article 31 alone was applicable.

This doctrine was demolished by Justice Subbarao speaking for the majority in *Kochini v. State of Madras*. It was pointed out in that decision that any analogy drawn from the relationship between Article 19 and 21 in *Gopalan’s case* would be faulty in dealing with the relationship between Articles 19 and 31. The learned Judge pointed out that Article 19 (1) (d) dealing with the right to move throughout the territory of India (which figured in the arguments in the *Gopalan case*) dealt with a different “concept” than Article 21. Whereas, in the case of Articles 19 and 31 the concept was common, each article was dealing with the right to property. In effect it was held that Article 19 would control all acquisitions under Article 31 (1).

Shortly after *Kochenni’s case* in *Sita Bati Devi v. West Bengal* Sarkar J. (who had been a minority Judge in *Kochenni’s case*) read a judgment for unanimous Court in which he made it clear that Article 19 applied only to Article 31 (1) and not to Article 31 (2).

However, in the *Bank Nationalization case* Justice Shah who read the majority judgment established a link between Article 19 and 31 (2) holding that the guarantee under Article 19 (1) (f) protects not only an abstract right to property; but also to concrete rights as well.

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3.5 Constitutional Validity of Land Acquisition

3.5.1 Property Right from Fundamental Right to Legal Right

The Forty-Fourth Amendment of the Constitution in 1978 transformed the right to property from the category of Fundamental Rights by repealing Article 31, and converted it into constitutional right by enacting Article 300A instead. Article 300A merely says: “No person shall be deprived of his property save by authority of law.” Though Article 300A is not a Fundamental Right, nevertheless, it does not make much of a difference except that a writ petition is not maintainable under Article 32 in the Supreme Court to vindicate the right under Article 300A. A person challenging violation of Article 300A must go to a High Court under Article 226 with his writ petition.

The constitutional right to property under Article 300A is not a basic feature or structure of the Constitution. After the Forty-fourth Amendment of the Constitution right to property is a human right and a constitutional right but not a Fundamental Right. The Court further held that control of property short of deprivation does not entail payment of compensation.

Right to transfer land is incidental to right of ownership of the land and cannot be taken away without authority of law. Ownership of land jurisprudentially involves a bundle of rights. One of such rights is the right to transfer. An owner of a property, subject to reasonable restrictions which may be imposed by the legislature, is entitled to enjoy the property in any manner. The statutory interdict of use and enjoyment of the property must be strictly construed. The right to property is now considered to be not only a constitutional right but also a human right. The Declaration of Human and Civic Rights of 26-8-1789 enunciates under Article 17:

Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid.

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20 Indian Handicrafts Emporium v Union of India AIR 2003 SC 3240.
22 Bhavnagar University v Palitana Sugar Mills (P) Ltd. AIR 2003 SC 511.
Further under article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution it is stated that:

(i) Every-one has the right to own property alone as well as in association with others,
(ii) No one shall be arbitrarily deprived of his property.

Earlier human rights were more or less confined to the claim of individuals’ right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights.

Article 300A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by Parliament or a State Legislature, a rule or a statutory order having force of law. It is inherent in very sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent.

3.5.2 Authority to Interfere or Limit Property Rights of Individual

Article 31(1) laid down that no person can be deprived of his property without the authority of law. Article 31(1) has been repealed and Article 31(1) re-appears as new Article 300A saying that no person shall be deprived of his property save by authority of law. Thus, a law will be necessary to deprive a person of his property. To ensure that a person is not deprived of his property without the authority of law, it does not matter whether it is a Fundamental Right or a constitutional guarantee, for in either case, a law is needed to deprive a person of his property.

In all democratic countries, one basic principle is recognised, viz., that the Government cannot interfere with property rights of an individual without the authority of a valid law. The most dramatic reiteration of this principle can be seen in the U.S.A. in Youngstown Steel and Tube Co. v. Sawyer, where the U.S. Supreme Court held the seizure of steel mills by a presidential decree unconstitutional as there was no law to support it.

Article 300A ensures that a person cannot be deprived of his property merely by an
executive fiat. The rights in property can be curtailed, abridged or modified by the state only by exercising its legislative power. Deprivation of property can only be done according to law, without law there can be no deprivation of property. No law, no deprivation of property the principle underlying Article 300A. An executive order depriving a person of his property, without being backed by law, is not constitutionally valid\(^{28}\).

Article 300A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law deprivation by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300A\(^{29}\).

### 3.5.3 Protection of Individuals Property Against Executive

Article 300A thus constitutes a protection against the executive organ of the state. Explaining the import of Article 300A, the Supreme Court has observed in *Bishamber Dayal Chandra Mohan v. State of Uttar Pradesh*\(^{30}\), that the state cannot deprive a person of his property by taking recourse to executive power. A person can be deprived of his property "only by authority of law and not by a mere executive fiat or order." In absence of any substantive provisions contained in a statute a person cannot be restrained from dealing with his property in any manner he likes\(^{31}\).

Public interest has always been considered to be an essential ingredient of public purpose\(^{32}\). In *Wazir Chand v. State of Himachal Pradesh*\(^{33}\) goods seized by the police from the appellant's possession without any authority of law were ordered to be restored to him. The Court pointed out that the state cannot interfere with the right of others unless it can point to some specific rule of law which authorises its actions.

The Supreme Court admonished the State of Punjab in very strong terms in *Bishan Das v. State of Punjab*\(^{34}\) for illegally dispossessing the appellant of his property. The Court ruled that the State had no right to take the law into their own hands and evict a person by an executive order. Such an action is, 'destructive of the basic principle of the rule of law'. The Court observed:

\(^{28}\) *State of Mysore v KIC, Adiga*, AIR 1976 SC 853.

\(^{29}\) *Chairman, Indore Vikas Pradhikaran v Pure Industrial coke & Chemicals Ltd.* AIR 2007 SC 2458.

\(^{30}\) AIR 1982 SC 33, 48.

\(^{31}\) *State of Rajasthan v Basant Nahata* (2005) 12 SCC 77.


\(^{33}\) AIR 1954 SC 415.

\(^{34}\) AIR 1961 SC 1570.
The action of the Government in taking law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirement of the rule of law apart from what might legitimately and reasonably be expected from a government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the Executive of peaceful possession of property ..... We have here the highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority.”

Recently, in the case\(^\text{35}\), the Supreme Court has again described the action of the State Government in evicting some tenants from its property by force. The Court has ruled that 'possession can be resumed by the State Government only in a manner known to or recognised by law and it cannot resume possession otherwise than in due course of law'. The Court has further asserted that in the absence of a specific statutory provision, a person cannot be evicted by the executive by force without following 'due course of law even on the ground of public interest.'

In a number of cases, a view has been taken that a government servant's right to pension is property and it cannot be reduced by the Government merely by an executive fiat without giving a hearing to the person affected. The courts thus apply the concept of natural justice in this area\(^\text{36}\). Cash grants have also been regarded as property for this purpose\(^\text{37}\). Cancellation of patta of land without giving a hearing to the patta-holder violates natural justice and is thus bad\(^\text{38}\). The concept of property in Article 300A is the same as was developed earlier under Article 19(1) (f)\(^\text{39}\).

3.5.4 Protection of Private Property Against Legislative Action

Article 300A protects private property against executive action. But what about legislative action? As the wordings of Article 300A correspond precisely with those of Article 31(1), all the judicial pronouncements made under Article 31(A) remain relevant to Article 300A as well. Thus, when a demand for tax is made under a law which is not valid, it amounts to a threat to property without law and Article 300A

\(^{36}\) Deokinandan Prasad v State of Bihar AIR 1971 SC 1409
\(^{37}\) State of Madhya Pradesh v Ranojirao Shinde AIR 1968 SC 1053
\(^{38}\) Ka Oldphimai Mukhim v District Council, Jantia Hills AIR 1983 Gau 1.
\(^{39}\) M.P Jain, Indian Constitutional Law, (VI\(^{th}\) Ed., Nagpur, LexisNexis-Butterworth) 1421.
would become involved\textsuperscript{40}. Article 300A is not violated when a tax is levied with retrospective effect\textsuperscript{41}.

But what would be a public purpose in such a matter has been stated in \textit{Prakash Amichand Shah v. State of Gujarat}\textsuperscript{42}. The Court said:

“In order to appreciate the contentions of the appellant it is necessary to look at the object of the legislation in question as a whole. The object of the Act is not just acquiring a bit of land here or a bit of land there for some public purpose. It consists of several activities which have as their ultimate object the orderly development of an urban area. It envisages the preparation of a development plan, allocation of land for various private and public uses, preparation of a town planning scheme and making provisions for future development of the area in question. The various aspects of a town planning scheme have already been set out, on the final town planning scheme coming into force under Section 53 of the Act there is an automatic vesting of all lands required by the local authority, unless otherwise provided, in the local authority. It is not a case where the provisions of the \textit{Land Acquisition Act}, 1894 have to be set in motion either by the collector or by the Government.”

The Court found that the impugned provision did not sub serve such purpose. It is also not a case like \textit{State of Gujarat v. Shantilal Mangaldas}\textsuperscript{43} that when a development is made, the owner of the property not only gets much more than what he would have got if the same remained undeveloped but also get the benefit of living in a developed town having good town planning. The courts should, therefore, strive to find a balance of the competing interests.

The ostensible purpose of repealing Article 31, especially Article 31(2) is to free the legislature from the restraint of paying compensation for property acquired. But doubts have been raised whether this purpose can be achieved at all. For example, it has been argued that the two requirements of ‘public purpose’ and ‘compensation’ in case of acquisition of property are inherent and essential elements, or ingredients, or ‘inseparable concomitants’\textsuperscript{44} of the powers of eminent domain, and, therefore, of entry

\textsuperscript{40}\textit{S.T.C. v Commr. Tax Officer} AIR 1963 SC 1811; \textit{Coffee Board v Jt. Commercial Tax Officer} AIR 1971 SC 870.

\textsuperscript{41}\textit{R.G. Nair v Palode Panchayat} AIR 1959 Ker 43.

\textsuperscript{42} (1986) 1 SCC 581.

\textsuperscript{43} (1969) 1 SCC 509.
42, List III, as well\(^44\).

But before invoking Article 300A, title to the property concerned must be established, and if the title itself is in dispute and is the subject matter of adjudication in proceedings legally constituted. It is only after title is established that the question whether rights in or to property have been improperly or illegally infringed can arise\(^45\).

The principle of trust has imposed restrictions on the power of the State in disposing of property. In a situation where land has been acquired by the state for a public purpose, the state cannot dispose of it in any manner it likes by reason of the public trust doctrine which impresses upon the trust obligation of giving back the property for anything less than the market value\(^46\).

At one time, such a view was endorsed by the Supreme Court\(^47\). But later the two requirements came to be spelt out from Article 31 and not from entry 42. In the future, law can take two courses depending on the judicial attitude;

(i) either, the courts may focus on entry 42 and start reading the two requirements therefrom and, thus, hold a law of acquisition of property invalid if it does not fulfil these requirements; or,

(ii) the courts may hold that in India, these requirements were read from Article 31(2), and, after its repeal, these requirements cannot be spelt out from entry 42, and this may mean that the legislature will be under no restraints at all.

In view of the development of property law in India up to 1979, the courts may not be willing to wipe out all that has happened so far and may re-interpret entry 42 so as to bring in the two elements therein.

The view mentioned in (ii) above is supported by the Kerala High Court in its pronouncement in *Elizabeth Samuel Aaron v. State of Kerala*\(^48\). The Court has said that the purpose of various amendments made in the Constitution will stand defeated if it is held that Article 300A envisions payment of adequate compensation for the deprivation of property to the owner. What Parliament has done is only to transform Article 31(1) into Article 300A and omit Article 31(2) in its entirety.

Even if the first view is taken, it cannot cover the entire law of property, quite a good of property law is enacted outside entry 42. Parliament may enact a law interfering with


\(^{47}\)Kameshwar Singh v State of Bihar AIR 1951 Pat 91

\(^{48}\)AIR 1991 Ker 162.
property rights under its residuary powers rather than under entry 42 and such a law will be from the constraint of giving compensation as it may not amount to acquisition. The State may also enact law affecting property under their exclusive power over land (entry 18, II). Such a law will be free from the constraint of compensation even if it interferes with property as it may not amount to acquisition of property⁴⁹.

Then, it is not necessary that courts interpret compensation in the sense of Bella Banerjee, i.e., adequate compensation⁵⁰. The courts may take a flexible view on this point. Also, there is no reason to suppose that the courts will insist on payment of compensation in situations depicted by the old Article 31 (5) which incorporated, to some extent, the concept of ‘police power’⁵¹.

Arts. 31A, 31B and 31C are still there in the Constitution conferring immunity on certain types of property legislation from being challenged under Arts. 14, 19, or the entire Fundamental Rights.

The word 'law' in Article 300A means a valid law. Such a law will therefore be subject to other provisions of the Constitution, e.g., Arts. 14, 19(1) (g) and 301. Ordinarily, the word 'law' in Article 300A may mean a 'positive' or 'state-made law', e.g., a law made by Parliament or a State legislature, or a rule, or a statutory order, having the force of law⁵². Can it be said, therefore, that the content of the law will be solely within the legislative discretion, and that the legislature can make any law it likes subject to Article 14 and other constitutional provisions.

This could be argued so long as the Gopalan⁵³ view held the field. But since Maneka Gandhi⁵⁴, it is difficult to sustain this argument. It is quite plausible for the Court to assert that a law to be 'law' must not be unreasonable, arbitrary, oppressive or confiscatory; that the law should be fair and reasonable and that it should satisfy the principle of fairness in order to be effective. The Court can invoke the natural law theory to reach this result.

In the alternative, because of the extended significance attached to Article 14, viz., any unjust law denies equality, an unjust law may be vetoed by the Court. However, it

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⁵¹Ibid. p 1397.
⁵³Supra note 47 p 1179.
⁵⁴Ibid
should be underlined that Article 21 does not apply to the property area. Nevertheless, the Court can interpret the word ‘law’ in Article 300A in a meaningful sense, and not in the sense of merely any statutory law. For example, compulsory transfer of A’s property by law to B without any compensation may be held invalid as an unreasonable or arbitrary law. But this needs judicial creativity of a high order, such as that displayed by the Supreme Court in Maneka Gandhi.

In Jilubhai, the Supreme Court has stated that the word ‘law’ used in Article 300A must be an Act of Parliament or of State Legislature, a rule or statutory order having the force of law. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by an executive fiat or order. Deprivation of property is by acquisition or requisition or taken possession of for a public purpose. The Court has also ruled that the law may fix an amount or which may be determined in accordance with such principles as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the ground that the amount so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount. The Court has observed further:

"It would thus be clear that acquisition of the property by law laid in furtherance of the directive principles of State policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of just compensation or indemnification to the owner of the property expropriated. It is the very negation of the effectuating the public purpose. Payment of market value in lieu of acquired property is not sine qua non for acquisition. Acquisition and payment of amount are part of the scheme and they cannot be dissected. However, fixation of the amount or specification of the principles and manner in which the amount is to be determined must be relevant to the fixation of amount. The amount determined need not bearable relationship. In other words, it is not illusory. The adequacy of the resultant amount cannot be questioned in a

57Ibid, at 165.
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Court of law. However, the validity of irrelevant principles are amenable to judicial scrutiny.”

This observation shows that acquisition of property by the state involves payment of some money in lieu thereof. When acquisition of property is linked with Article 39(b) or 39(c), payment of an ‘amount’ is still necessary; it need not be adequate compensation but still it cannot be ‘illusory’. Nothing has been said about acquisition of property unrelated to a Directive Principle. Payment of an amount is necessary in such a case as well, but, may be, the Court takes a more liberal view towards the deprived property owner while adjudging whether it is ‘illusory’ or not. Adequate compensation for property acquired seems to be a dead concept except under the Land Acquisition Act, or such other similar Acts.

Without reference to any particular authority, the Supreme Court appears to have held that no person could be deprived of right to property without payment of any compensation58. This observation of the Supreme Court is of considerable importance and seems to be in line with its earlier pronouncement in Jilubhai [1995 Supp (1) SCC 596].

And now the Supreme Court appears to be proceeding on the assumption that there is a requirement of compensation and since copyright is akin to right to property and is subject to reasonable restrictions i.e. property can be acquired in public interest subject to payment of reasonable compensation59. It is also interesting to note that the Supreme Court has used the word ‘compensation’ and not amount i.e. in effect restoring the original provision of Article 31.

In Basantibai v. State of Maharashtra60, the Bombay High Court did seek to interpret Article 300A favourably to the property owners by reading therein the dual requirements of public policy and compensation as being inherent in the concept of eminent domain. Under Article 300A, the legislation cannot sanction deprivation of property for a private purpose. The High Court said, “The entire democratic structure of this country is based upon the concept of ‘rule of law’ and it is not possible to imagine that the legislation can provide for compulsory acquisition of a private property for a purpose which is not a public purpose.” The Court found it difficult to accept that by deletion of Article 31, the Parliament intended to confer absolute right on the

60AIR 1984 Bom 366
Legislature to deprive a citizen of his property by merely passing a law without complying with the requirement that the deprivation was for a public purpose and on payment of an amount which was not illusory. On this point, the Court observed:

“The doctrine of eminent domain really recognises the natural right of a person to hold property, and if that right can be taken away by the legislation without satisfying the two requirements, then the entire concept of rule of law would be redundant. The introduction of Article 300A in the Constitution while deleting Article 31 clearly indicates that the Parliament intended to confer a right on the citizen to hold property and which could not be deprived without authority of law. In our judgment, in spite of deletion of Article 31, the constitutional obligation to pay adequate amount to the expropriated owner is not taken away.”

In the third place, the provisions of the law providing for compensation were held to be discriminatory as it provided less for urban land and more for rural land which could not be substantiated on valid grounds. For acquisition of property in municipal limits, the impugned Act provided payment of an amount at 100 times the net average monthly income actually derived from urban property acquired; but for agricultural land acquired, the amount payable was to be determined as per the principles laid down in the land Acquisition Article, viz., the market price plus 15% solatium. This provision was held to be invalid under Article 14 and so also under Article 300A. The Court said that, really speaking, the value of land in the developed town within the municipal area could have no comparison to the value of the land in rural area and it was difficult to fathom why more compensation, including solatium, was provided for rural lands and the same was denied for urban lands which were of very high value.

In the fourth place, and this was quite a remarkable assertion on the part of the High Court, even assuming that the law was protected from challenge under Arts. 14 and 19, because of Article 31A, still the impugned provisions were bad as they were neither just nor fair nor reasonable and the deprivation of property under them was not by authority of law. After Maneka, the expression ‘authority of law’ must mean ‘just, fair and reasonable’ law. Procedure prescribed by law must be a fair and reasonable procedure independently of the protection guaranteed under Arts. 14 and 19. The legislation providing for deprivation of property under Article 300A must be “just, fair and reasonable”. The impugned provisions did not fulfil this requirement. The provisions providing for differential compensation for urban and rural lands were
discriminatory. The favourable treatment shown to the owners of land in rural area was not shown to be justified for any reason whatsoever. The provision was invalid under Article 300A. Even if protected from challenge under Arts. 14, 19 and 31 because of Article 31 C, it could still be struck down as being neither just nor fair nor reasonable. This pronouncement laid down several significant propositions. One, the dual requirements of public purpose and compensation inherent in the concept of eminent domain are to be read in Article 300A itself. Two, instead of compensation, the Court has used several times the word ‘amount’ indicating that compensation payable for property acquired need not be an exact equivalent and may be less than that. There, Article 300A envisages a ‘just, fair and reasonable’ law and not any law. Four, even if a law is protected from challenge because of Article 31C, it can still be invalidated because of its not being ‘just, fair and reasonable’ because these qualities are derivable not only from Article 14 but from Article 300A itself because of the Maneka approach. This was the High Court's pronouncement. However, on appeal, the Supreme Court reversed the High Court mainly on the ground that the Act in question was relatable to Article 39(b) and so was protected under Article 31C from being challenged under Article 14. The Supreme Court has made an interesting comment on Article 300A. Article 300A is couched in the same language as Article 31 A (1). Assuming without deciding that the law should be ‘fair and reasonable and not arbitrary,’ and that ‘a law should also satisfy the principle of fairness in order to be effective,’ and that "the said principle of fairness lies outside Article 14, the Supreme Court held, nevertheless, that the law in question fulfilled all these conditions. “Certain vacant lands lying outside a municipal area are being acquired for providing housing accommodation after paying an amount which is computed in accordance with a method considered to be a fair one by the courts. The purpose for which the lands are acquired is a public purpose. The owners are given opportunity to make their representations before the notification is issued. All the requirements of a valid exercise of the power of eminent domain even in the sense in which it is understood in the United States of America where property rights are given greater protection than what is required to be done in our country are fulfilled by the Act”. The Court also ruled that Article 21 has little to do with the right to own property as such. This is also not a case where deprivation of property would lead to deprivation of

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61 Mahesh Kumar Sahria v Nagaland AIR 1984 NOC 268 (Gau).
life, liberty or livelihood. Here land was being acquired to improve the living conditions of the people. To depend on Article 21 to strike the Act in question would amount to a clear misapplication of the great doctrine enshrined in Article 21.

Some other judicial pronouncements on Article 300A may be noted here. The State acquired land of the petitioner in 1977 under the Land Acquisition Act, but no compensation was paid to him for long. He filed a writ petition in the High Court under Article 226 claiming compensation. The High Court held the writ petition was maintainable because of Article 300A. The Court stated that the Land Acquisition Act vests the state authorities to take over a person's property for public purpose, but with corresponding obligation to pay the compensation *in lieu* thereof. If compensation is not paid after acquisition and dispossess of land, the constitutional guarantee provided under Article 300A of the Constitution will be violated. “The right to acquire person's property under the Land Acquisition Act is coupled with a duty to pay compensation and it is implied in the said duty that the said compensation payable should be paid as expeditiously as possible.” If there is either failure to pay compensation, or if there is an abnormal delay in payment of compensation, there will be violation of the constitutional guarantee available under Article 300A.

In *Sri Nath Society, Sirsa v State of U.P* 62, the State took possession of the land of the petitioner society for construction of a road but without acquiring it. The High Court characterised the action of the Government as ‘high handed’ and observed;

“Howsoever laudable object the State may intend to achieve it can neither deprive a person of his property nor can it interfere with his right save by authority of law. Apart from violation of Article 300A of the Constitution such an action of the State is also violative of Article 14 of the Constitution.” The Court awarded Rs. 10,000/- as costs to the writ petitioner against the State and directed the State not to interfere with the possession of the petitioners over the land in dispute.

In this connection, reference may be made to *Yogendra Pal v. Municipality, Bhatinda*63where a provision in the Punjab Municipal Act provided that while framing a town planning scheme, 25% of the land of any person would vest free of cost in the municipality. The Supreme Court treated it as acquisition of land for public purpose without paying compensation and declared relevant statutory provision unconstitutional and violative of Article 14.

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62 AIR 1996 All 187,188.  
63 AIR 1994 SC 2550.
As right to money is property, therefore, non-payment of rent for long by a statutory body to the land owner has been held to be violative of Article 300A. Article 300A imposes a duty and obligation that no person can be deprived of his property save by authority of law. At the same time, Article 300A creates a right in favour of a person that he should not be deprived of his property save by authority of law. Therefore, the corporation is under an obligation and duty not to deprive the petitioner of his property save by authority of law, otherwise, Article 300A is violated.

In Municipal Corporation of Greater Bombay v Lala Pancham, lease executed between the State Government as a lessor and a company as lessee is not a mere contract but it constitutes a transfer of interest in land and creates a right in rem and the right of the lessee amounts to a right to property. This is thus protected under Article 300A. Demolition of property and eviction of a lessee otherwise than in accordance with law is violative of Article 300A. The lessee is not only entitled to be put back in possession in a writ petition but he can also sue for damages. The High Court emphasized:

“In the emerging rainbow of the constitutional law one thing is clear that no executive authority can interfere with the rights of liberty and property of any subject save and except on the basis of a legal provision authorising him to do so”.

Right to recover the mortgage debts is also a right to enforce an interest in the property and therefore property within Article 300A.

The Fundamental Right to property has been the most controversial aspect of the Indian Constitution. It has caused friction and bad relationship between the Supreme Court and Parliament from time to time and has led to a number of constitutional amendments during the last 50 years. It has generated the largest number of Court cases in independent India. The de-escalation of this right in the constitutional scale of values commenced almost immediately after the commencement of the Constitution. In the process, Arts. 31 A, 31 Band 31 C have been added to the Constitution to dilute the effect of some judicial pronouncements and to confer immunity on a broader range of legislation affecting property rights from being challenged under Fundamental Rights.

It might have been better for the constitutional growth of the country if early in the day

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64 Supranote 62.
65 Manmatha Nath Kayal v District Magistrate, FCI AIR 1996 Cal 316.
66 AIR 1965 SC 1008.
67 Hindustan Petroleum Corp. v State of Bihar AIR 1996 Pat 163.
68 Ibid. 172.
69 ICICI Bank Ltd. v SIDCO Leathers Ltd. AIR 2006 SC 2088.
the right to property had been abolished in a direct and straightforward manner by repealing Article 31(2) which has been the main source of trouble. But, instead of that, constitutional amendments were passed adding exceptions upon exceptions on the Fundamental Right to property and even some novel techniques of constitutional amendment, like Arts. 31B and 31C, have been adopted causing a number of distortions in the Constitution. In the process, not only the right to property, but several other rights, like Arts. 14 and 19, have been adversely affected. The institution of judicial review has also been adversely affected. All this happened under the influence of the socialist doctrine.

Before the 44th Amendment, only the husk of property right remained without much real content. Ultimately this right has been removed from the Chapter on Fundamental Rights. Time alone will show as to how the courts are going to interpret entry 42, list III, and Article 300A.

The crucial question however is that now that the concept of a socialist India is wearing thin, will the Supreme Court, in a creative bid, read in Article 300A a right to compensation for acquisition/deprivation of private property. There is no gainsaying the fact that for growth of wealth and capital in the society, some protection to private property is absolutely essential. A strategy which the Supreme Court can adopt for this purpose may be to link Article 300A with Article 14 and to interpret the word 'law' in Article 300A in the same sense as ‘law’ in Article 21.

3.6 Conclusion

The judiciary appears to have misread the mood in the country particularly after the 1984 amendment. Prior to that the mood of nation building probably made the Judges feel that development was not possible unless acquisition was done freely and with public purpose given the widest possible scope. But to continue with such an approach in the period of globalisation where land acquisitions were done to promote corporate interests with the State becoming an estate agent of the companies, is quite another thing. To disregard, in the manner done, the intent of the 1984 amendment indicates how powerful the urge was among industrialists to grab the lands of farmers. As a result, large tracts of lands throughout the country mainly of small farmers, have been forcibly acquired and people displaced. "There were mass protests against displacement everywhere but the superior judiciary remained unmoved, doggedly anchored to their notions of “development” unresponsive to the distress of farmers, tenants and agricultural labourers and the decline of agriculture. During this period of
globalisation from 1990 onwards the Union Government withdrew credits from agriculture and followed conscious anti-farmer policies rendering agricultural production un-remunerative. In this context the compulsory acquisition of lands using Land Acquisition Act, 1894 which was the draconian statute of the crudest blow.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been introduced to set out the problems in deciding compensation and other remedies for compulsory acquisition, keeping in mind Constitutional goal and pace with development. The judiciary must understand that there is grave unrest in rural India and if it is to relate to the rural poor at all it cannot go by the Constitution Bench's decision of the earlier period. Times have changed. The rural economy is in ferment. With rural ferment everywhere, the time has come for the Supreme Court to heed the dissent of Subba Rao, J. in Somawanti case as set out above and the observations of the Supreme Court in National Textile Workers’ Union v. P. R. Ramakrishnan70, “we cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values”.

70 (1983) 1 SCC 228, 255, para 9