2.1 Introduction

Property, as a legal and social institution, has different forms in different cultures and legal systems. However, only a definition of Constitutional property is common in all democratic countries. Since state exercises eminent domain power against private property, it is pertinent to discuss the concept of private property in brief. The institution of private property has been a controversial issue with conflicting views, one completely denying the right to own private property and the other supports the holding of the private property. However, the right to property is a natural and inherent right of an individual.

Most of the modern Constitutions, except those of communist countries have recognized the right of private property. Therefore, citizens have right to own and possess the property. This right of individual conflicts with the right of state to acquire property. A person has a right not to be deprived of his property except through due process of law. These two rights i.e., the right of eminent domain of the state and right of citizen not to be deprived of his property except by due process of law exist in diametrical opposition. They have to be resolved more in favour of citizens by limiting the power of eminent domain. Therefore, property is an institution governing the control and allocation of material object, and placed ultimate control over scarce resource in the hands of individual. In private property system, individuals are granted powers over the control and use of resource. The most obvious manifestation of vesting control in a single person is characterized as an ability to exclude others from access to or use of the same resource in considering the different approaches to the definition of private property in different legal systems. The distinct and common definition for Constitutional property can be offered. The aim of the private law is to regulate relationships between individuals, therefore, definition of property in private law depends on the different aspects of the legal relations among individuals, but aim of constitutional law is to regulate relationship between individual and state, therefore, state protects the property right of individuals. For example, fifth amendment to US Constitution provides that “nor shall any state deprived any person life, liberty, property, without due process of law”. In
India after Constitution came into force property right is recognized as a fundamental right under Articles 19(1)(f) and 31.

In India, no fundamental right has given rise to so much of litigation than property right between state and individuals. Though the Supreme Court of India sought to expend the scope and ambit of right to property, but it has been progressively curtailed through constitutional amendments. The Indian version of eminent domain has found in entry 42 List III, which says “acquisition or requisition of property”. Under the original Constitution Articles 19(1)(f) and 31 provides for protection of property right and later they were repealed and Article 300A was inserted. Accordingly no person shall be deprived of his property save by the authority of law. However, regarding right to property what kind of protection given by the US Constitution similar (not identical) protection provided by the Indian Constitution under Article 300A. For better understanding of Article 300A it is appropriate to discuss the repealed provisions of Articles 19(1)(f) and 31 along with Constitutional amendments.

2.2 Historical Background of Right to Property

The demand for a guarantee of fundamental right to property can be traced back to the time of the Magna Carta, 1215. That Charter set out the rights of the various classes of the medieval community according to their needs. Other ancient documents enrolled on the statute book were the Petition of Right, 1628, the Bill of Rights, 1689 and the Act of settlement, 1701 inaugurated in England an era of Constitutional government. In England after Crown Proceedings Act 1947 came into force, removed the total immunity of the Crown, thus the King could do only what the law of the land allowed. During the time of national emergency the King could demand personal service within the realm. Either the crown or a subject may invade the land of another to erect fortifications for the defence of the realm. The provisions of the Defence Act 1842, which had been incorporated into the defence of the Realm Act and it imposed conditions upon compulsory acquisitioning of land and provided for payment of compensation as a matter of right to persons whose land had been taken over.

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2 Ibid at 144.
3 Ibid at 146.
Similar provisions could be seen in the US Constitution. The Fifth Amendment to the American Constitution provides “….. nor shall any person….. deprived of his life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.”

The Indian desire for civil rights had been traced its roots deep in the nineteenth century. For the first time the Bengal Regulation I of 1824 \(^4\) authorized compulsory acquisition of private property by the state. It was implicit in the policies of the Indian National Congress in 1885, that Indians wanted same rights and privileges that the British masters enjoyed in India and the Bruiser’s had for themselves in England.\(^5\) In 1894 also the Congress passed a resolution demanding “fixed of tenure and immunity from – enhancement of land tax for sufficiently long period of not less than sixty years.\(^6\)

The demand for certain fundamental rights appeared for the first time in the Constitution of India Bill, 1895. A series of resolutions adopted between 1917 and 1919 by the Indian National Congress, repeated the demands for civil rights and equality of status with Englishman \(^7\) (Article 16 of this Bill laid down a variety of rights including right to property). In 1919 of the Montagu-Chelmsford Reforms, the Indian National Congress at its special session held in Bombay in August 1919 demanded for the proposed Government of India Act should include a “declaration of the rights of the people of India as British citizens.”\(^8\) The next major development was that inclusion of the seven fundamental rights provisions in Mrs. Besant’s “Commonwealth of India Bill” of 1925. In 1926 the Indian National Congress passed a resolution for taking steps in the councils to improve the condition of peasants and to protect the rights of labor.\(^9\)

In compliance with the directions contained in the Madras Congress resolution of 1927, a committee was set up to draft a “Swaraj Constitution” for India on the basis of a “declaration of right”, committee came into being in May 1928. Motilal Nehru was its chairman and its report known as the Nehru Report, contained an

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\(^7\) Supra note 5, at 53.
\(^9\) Supra note 5, at 54.
explanation of its draft Constitution.\textsuperscript{10} The report purported to secure the fundamental rights including right to property, that had been denied.\textsuperscript{11}

The preamble to the Independence Day pledge that had been taken on 26th January 1930 affirmed the inalienable right of the Indian people as of any other people “to have freedoms and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunity of growth.”\textsuperscript{12} This pledge was translated into the historic resolution on Fundamental Rights and Economic Programme adopted by the Karachi Congress in 1931.\textsuperscript{13}

Thereafter, the Joint Parliamentary Committee on constitutional reforms for India (1933-34) felt a need for some general provision to be inserted in the Constitution Act safeguarding private property against expropriation.\textsuperscript{14} The committee recommended that Constitution should secure the legislation expropriating the property of particular individual should be lawful only and expropriation confined for public purposes and compensation was to be determined by some independent authority.

In 1934, the Joint Parliamentary Committee refused the Indians request to include a list of rights in the 1935 Act. Only in 1946 did the British tacitly acknowledge the validity of the Indian view when the Cabinet Mission Plan suggested that to constitute an Advisory Committee on fundamental and minority rights to make recommendations concerning constitutional provisions. By 1947, it was commonly accepted belief that the state bore a major responsibility for the welfare of its citizens.\textsuperscript{15}

The leaders of the independence movement made no distinction between the positive and negative obligations of the state. These were the two classes under which the basic rights of the Indian citizen had been grouped in the Constitution of India.\textsuperscript{16} The proposal drafted by the Constitutional advisor, B.N. Rau, was accepted by the Sub-Committee and classified as fundamental rights including right to property and directive principles in Part III and part IV, respectively.\textsuperscript{17}

\begin{flushleft}
\textsuperscript{10} Supra note 4, at 55.
\textsuperscript{11} Supra note 5, at 55.
\textsuperscript{13} Ibid at 266.
\textsuperscript{14} Supra note 5, at 17.
\textsuperscript{15} Supra note 12, at 58-60.
\textsuperscript{17} Supra note 12, at 328.
\end{flushleft}
In Prof. K.T. Shah’s draft Constitution, a fundamental right to property was contemplated to be guaranteed. It not only guaranteed the right to property but also allowed reasonable restrictions on the right. Article X was prepared by the sub-committee on fundamental right – also specifically guaranteed the right of property and restricted the power of the state to make reasonable expropriation for public purposes only.\(^{18}\) It also guaranteed just and adequate compensation for such expropriation. The draft report of the sub-committee formulated five specific rights in which the right to acquire property was one. This was contained in clause 14 which included right to freedom of movement throughout the Union, to reside and settle in any part of the union and to allow any occupation, trade, business or profession. The other four rights were embodied in clause 9.

When the sub-committee re-assembled on April 14, 1947 to reconsider the draft clause of Alladi Krishnaswami Ayyar- initiated the discussion on the necessity for imposing limitations on the right to freedom in situations of grave emergency and danger to the security of the state.\(^{19}\) The sub-committee decided to bring the five rights in the two draft clauses- clauses 9 & 14- under a single provision. The consolidated provision constituted clause 10 of the report of the subcommittee of which sub clause (f) dealt with the right to property.

Subsequently, the entire clause was modified by the amendments of Dr. B.R.Ambedkar and Alladi Krishnaswamy Iyyar incorporated as clause 8 with sub-clauses (e) and (f) with the further consequential change that sub-clause (d) and (f) were renumbered as (d) & (e) respectively. When clause 8 came up for consideration before the Constituent Assembly on April 30, 1947, JJM, Nicholas Roy pointed out that proviso to sub-clause (e ) was put in purposely in order to safeguard the landed and other interests of minorities and tribal people. He pressed for the omission of the word ‘reasonable’ so as to exclude the judicial review. Intervening in the debate, Jawaharlal Nehru supported the deletion of the word ‘reasonable’ for the proviso to sub clause (e) Munshi moved three amendments. The third amendment proposed that sub-clause (e) which guaranteed the right “to acquire property” etc., should be so amplified as to cover also the right to “hold or dispose of” property. Clause 19 of the interim Report of the Advisory Committee provided that the state cannot acquire property for public use unless the law provided for the payment of compensation.

\(^{18}\) Supra note 8, at 52

\(^{19}\) Supra note 12, at 211-215.
While redrafting the constitution clause 8(e) and clause (19) became clauses 15(1) (f) and 25. In January 1948 once again it was renumbered as Arts.13(f) and 24.

Article 13 read 20:

(1) Subject to the other provisions of this Article, all citizens shall have the right  
…….

(f) to acquire, hold and dispose of property; and ……..

(2) Nothing in Sub-clauses (d), (e) and (f) of the said clause shall effect the  
operation of any existing law, or prevent the state from making any law,  
imposing restrictions on the exercise of any of the rights conferred by the said  
sub-clauses either in the interests of the general public or for the protection of  
the interests of any aboriginal tribe.

Article 24 read 21:

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

(2) No property, movable or immovable, including any commercial or  
industrial undertaking shall be taken possession of or amount of the  
compensation or specifies the principles on taking of such possession or  
such acquisition, unless the law provides for the payment of compensation  
for the property taken possession of or acquired and either fixes the  
amount of compensation, or specifies the principles on which, and the  
manner in which, the compensation is to be determined.

The committee was of the opinion that no protection to any minority group  
was necessary in this Article.

(3) Nothing in clause (2) of this Article shall affect –

(a) The provisions of any existing law, or

(b) The provisions of any law which the state may hereafter make for the  
purpose of imposing or levying any tax or for the promotion of public  
health or the prevention of danger to life or property.22

The Article, as so amended, was finally re-numbered by the Drafting  
Committee at the stage of revision as Article 19 of the Constitution:

20 As stood on May, 1948.
21 As stood on May, 1948.
22 Constituent Assembly Debates (CAD), VII p 712.
(1) All citizens shall have the right—(f) to acquire, hold and dispose of property, and...

(2) Nothing in Sub-clauses (d), (a) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the state from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Schedule Tribes.

As opinions were divided on a guaranteed right to property when the justifiability on the fairness of compensation came for consideration. Sardar Patel said that no discrimination should be made and compensation in all cases should be made justifiable. Nehru thundered against inclusion of right to property under fundamental right urging that in the history of man notions of property had changed from time to time and therefore the right to property should not be included as a fundamental right.

However, the right to private property was sought to be given constitutional protection in Article 24 of the Draft Constitution. Munshi in his draft of the fundamental rights included a clause that no person would be deprived of his life, liberty or property—without due process of law. Although many assembly members first approached the due process, experience of the U.S. Constitution making soon taught them that it was intimately connected with two very important problems: with the expropriation of property and compensation for it, and with preventive detention.

The expression “due process of law” in relation to property rights was considered by the sub-committee on Fundamental Rights on March 26, 1947. Two days later the members reinforced their earlier decision providing that no private property could be acquired for public use unless the law called for the payment, according to principles previously determined for just compensation for the property acquired. When this matter went to the Advisory Committee, Govind Vallab Pant said

24 Supra note 8, at 281.
25 It took Assembly Members nearly three years to decide how to treat these matters in the Constitution; See supra note 12, at 84.
26 This classic statement of right to ‘Due Process’ was taken from the fifth amendment of the American Constitution. It was provided ‘“......nor shall any person .... be deprived of life, liberty or property without due process of law, nor shall private property be taken for public purpose without just compensation’.
that if the Clause ‘just compensation’ was adopted, the measures for the acquisition of private property for public purpose might be challenged in courts on the ground of inadequacy of compensation and it would be held up the cases and awaiting for final verdict of the Supreme Court which might take several years, therefore, all social progress could be brought to a stand nil. He further, observed that the word ‘public use’ is ambiguous and therefore, if this included governmental as well as social purpose it would create difficulties by requiring the state to pay adequate compensation. Rajgopalachari said that the question of justness of compensation will go to the courts with the result the governmental functioning will be paralyzed. According to Ayyar, the word ‘Compensation’ carried with it the idea of ‘Just compensation’. If the word ‘just’ was kept, every case will go to the Federal Court. Therefore the word ‘just’ was to be dropped. Even though some of the members did not wish to support this provision, according to them compensation itself meant just and fair compensation. Regarding zamindari abolition, they said that it would be unfair not to give zamindaris just compensation.\(^{27}\)

Closing the debates Sardar Patel observed that the discussion had gone on a wrong track. It was not correct to assume that the object of the clause was to provide for the acquisition of zamindaris, as by the time the clause became law most of the zamindaris would have been liquidated. Compensation would be paid for property taken, and there would be no expropriation. In the light of this explanation, the clause was adopted by the assembly without any alteration.\(^{28}\)

When the Draft Constitution was circulated for eliciting opinion, a number of amendments and suggestions were received from the members. Ultimately after great deal of consultation, the drafting committee brought forward a compromise redraft of Article 24.\(^{29}\) The amendment was moved in the constituent assembly on September 10, 1949, by Jawaharlal Nehru who observed at the outset that although the Article had given much discussion and debate the questions involved were relatively simple. He said that there were two approaches one from the point of view of the individuals

\(^{27}\) Supra note 8, at 282-85.
\(^{28}\) Constituent Assembly Debate (CAD) III p 518.
\(^{29}\) These were the omission of the words “the payment of” from clause (2) and the additional of three new provisions in clauses (3), (4) and (6). Clause (3) requiring the president’s assent for every state law relating to Compulsory Acquisition of Property not meant to be a check on the State legislations. Clauses (4), and (6) intended to protect certain Zamindari Abolition, measures from being challenged in the courts on the ground that they did not fulfill the requirements of clause (2), Constituent Assembly Debates(CAD) IX pp 1246-1260 & 1273.
right to property and the other from that of the community’s interest—but these two approaches did not necessarily conflict with each other.\textsuperscript{30} Nehru further said that the draft Article was the result of a great deal of consultation and the result in fact of the attempt to bring together and compromise various approaches to the question. He analyzed the salient features of the draft as:

1. There was no question of any expropriation without compensation so far as the Constitution was concerned;
2. If property was required for a public use, the state shall pay compensation;
3. The principle on which and the manner in which compensation shall be determined and paid shall be laid down by law;
4. When property was taken by the state for a public use fair and equitable compensation should be paid. But here future millions of people may be affected. Therefore the ultimate balancing majority can only be the sovereign legislature;
5. While fixing the amount of compensation or specifying the principles under which or the manner in which compensation was to be determined the parliament should be the final authority and the judiciary could not come into picture unless there was ‘a gross abuse of the law’ or ‘a fraud on the Constitution’;
6. Finally, in the case of Bills pending before the legislature of a state, the judiciary could have no interference.

Dealing with the question of land, Nehru said that the Zamindari institution in India, is the big estate system, should be abolished and in this case no judge and no Supreme Court stand in judgment over the sovereign will of parliament which represents the will of the entire community. H.V. Kamath, Alladi Krishnaswami Ayyar, K.M. Munshi and Mrs. Renuka Ray urged that the power to determine compensation should be exclusively vested in the legislature whose decision should not be open to challenge in any court and with this object in view they suggested certain amendments to clause (2) of Article 24. According to Mrs. Renuka Roy regarding quantum of compensation the legislature will have the supreme voice. On the other hand, Thakurdas Bhargava and Mahboob Ali Baig felt that it is not only non-justiciable it, went against the right to property as recognized under draft Article

\textsuperscript{30} \textit{Supra} note 8, at 291.
19. Therefore they supported the idea to pay proper and fair compensation. Similar views also expressed by Naziruddin Ahmed and Jaspat Roy Kapoor.

Regarding clause (3) of Article 24, there was not much discussion on it. In fact it offered them an additional safeguard in as much as it required provincial bills providing for compulsory acquisition of private property to receive the assent of the President.31 Clauses (4) and (6) caused great resentment among the propertied interests as well as their opponents.

Regarding clause (5) it was not discussed much. It was commonly assumed that the State has the inherent right to exercise those powers which are necessary to secure peace, order and promote the health, morality and convenience of the people. Kapoor moved an amendment where by Laws relating to evacuee property was sought to be exempted from the requirements of clause (2) of Article 24. Munshi, who replied to the debate at the request of Pandit Jawahalal Nehru, called for the rejections of all these amendments. All the amendments were negative and the Article as moved by Pandit Nehru, with a few verbal amendments emanating from Shri Kala Venkata Rao and Kapoor were approved and finally became Article 31 of the Constitution 32 which read:

(1) No person shall be deprived of his property save by authority of law

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

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

(4) If any Bill pending at the time of commencement of this Constitution in the legislature of a state has, after it has been passed by such legislature, been reserved for the consideration of the President and has received his assent, then,
notwithstanding anything in this Constitution, the law so assented shall not be called in question in any court on the ground that it contravenes the provisions of clause (2);

(5) Nothing in clause (2) shall affect-

(a) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) the provisions of any law which the state may hereafter make-

(i) for the purpose of imposing or levying any tax or penalty, or

(ii) for the promotion of public health or the prevention of danger to life or property, or

(iii) in pursuance of any agreement entered into between the Government of the dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property

(6) Any law of the state enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the president for his certification if it is certifies, it shall not be called in any court on the ground that it contravenes the provisions of clause (2) of this Article 31 or has contravened the provisions of sub section (2) of section 299 of the Government of India Act, 1935.

2.3 Constitutional Perspective of Right to Property

After independence, no Fundamental right has caused so much trouble and has given so much of litigation between the government and citizens as the property right. The reason is that the central and state governments have enacted massive hysterons of laws to regulate property rights. First, the government undertook to reconstruct the agrarian economy, interalia, by trying to confer right to property on tillers, abolition of zamindaris, giving security of tenure to tenants, fixing a ceiling limit on personal holding of agricultural land and redistributing the surplus land among the landless. Secondly, in the area of urban property, measures have been taken to provide housing to the people, clearance of slums and planning, control rents, acquire property and impose a ceiling on urban land ownership etc., Thirdly, government has undertaken to regulate private enterprises and nationalization of some commercial undertakings. These various legislative measures have been
undertaken to effectuate accepted goal of establishing a socialistic pattern of society.\textsuperscript{33} Hence Articles 31\textsuperscript{34} and 19(1)(f)\textsuperscript{35} were repealed. Historical evolution and demise of repealed Articles 31 and 19(1)(f) are still relevant for the understanding of constitutional developments of property right. Since the commencement of the Constitution fundamental right conferred by Article 31 and Article 19(1)(f) has been modified by six times by the constitutional amendments. The first amendment added two explanatory Articles 31-A & 31-B to the Constitution; the fourth amendment amended clause (2) of Article 31, added clause (2A) to the same Article, inserted new provisions in Article 31-A and enlarged the ninth schedule; the seventeenth amendment further elaborated the definition of ‘estate’ in clause (2) of Article 31-A; and the twenty fifth amendment amended Article 31(2), added clause (2-B) and added a new Article 31-C. In the forty second amendment Article 31-C was substituted by the words “the principles specified in clause (b) or clause (c) of the Article 39” for the words “all or any of the principles laid down in part IV of the Constitution”. And

\textsuperscript{33} G.S. Pande, ‘Constitutional Law of India’, (University Book House (p) Ltd., Jaipur, 10\textsuperscript{th} ed., 2007), pp 596-98.

\textsuperscript{34} Article 31 as originally enacted was in the following terms: Art 31(1) no person shall be deprived of his property save by authority of law. (2) No property movable or immovable, including any interest, in or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principle on which, and the manner in which the compensation is to be determined and given. (3) No such law as is referred to in clause (2) made by the legislature of a state shall have effect unless such law, having been reserved for the consideration of the president, has received his assent. (4) If any bill pending at the commencement of this Constitution in the legislature of a state has, after it has been passed by such legislature, been reserved for the consideration of the president and has received his assent, then notwithstanding anything in this Constitution, the law so assented to shall not be cancelled in question is any court on the ground that it contravenes the provisions of clause(2). (5) Nothing in clause (2) shall affect (a) The provisions of any existing law other than a law to which the provisions of clause (6) apply, or (b) the provisions of any law which the state may hereafter make – (i) for the purpose of imposing or levying any tax or penalty, or (ii) for the promotion of public health or the prevention of danger to life or property, or (iii) In pursuance of any agreement entered into between the government of the domination of India of the government of India and the government of any other country, or otherwise, with respect to property declared by law to be evacuee property. (6) Any law of the state enacted not more than eighteen months before the commencement be submitted to the president for his certification, and thereupon if the president by public notification so certifies, it shall not be called in question in any count on the ground that it contravened the provisions of clause (2) of this Article or has contravened the provisions of sub section (2) of section 299 of the government of India Act 1935.

\textsuperscript{35} Guaranteed to every citizen of India the right to acquire, hold and dispose of property
finally forty fourth amendment repealed the entire Article 31 and Article 19(1)(f) & inserted Article 300A.\textsuperscript{36}

\subsection*{2.4 Meaning of Property}

Before discussing the constitutional protection given to the property rights, it will be useful to examine the meaning attached to the term property and changes in its concept in recent years.\textsuperscript{37} The term property as used in the Indian Constitution has been left undefined and it is used in vague manner. Its scope would depend upon the narrow or wider construction of the courts might put upon it.\textsuperscript{38} The subject of property right was considered by the Supreme Court for the first time in \textit{Chiranjit lal Chandhari v. Union of India}.\textsuperscript{39} The question was regarding the right of ordinary share holder to vote at a general meeting as property. The Supreme Court held that such right could only be regarded as property which could be acquired, disposed of or taken possession of, this was with reference to the Article 19(1)(f). This decision did not help much in solving the question what protection property right carries.\textsuperscript{40} In \textit{commissioner H.R.E v. LT Swamar} \textsuperscript{41} court observed that there is no reason why the word property as used in Article 19(1)(f) of Constitution, should not be given liberal and wider meaning and should not be extended to those well-recognized types which have the sigma or characteristics of property rights. In this case the office of a Mahat was held to be a property because the elements of fire and property of duties and personal interests blended together and neither can be detached from the other. In \textit{Saghir Ahmad v. State of Uttar Pradesh} \textsuperscript{42} the same learned judge held that the right to play motor vehicles for gain is an interest is a commercial undertaking and the prohibition of it amounts to deprivation of property within the meaning of Article 31(2).

\begin{itemize}
  \item V.N.Shukla’s ‘\textit{Constitution of India}’, (Mahendra P. Singh, rev’d., Eastern Book Company, Lucknow, 11\textsuperscript{th} ed., 2008), p 273.
  \item Dr. B.S. Sinha, ‘\textit{Law and Social change in India}’, (Deep & Deep Publications, New Delhi, 1986), p 248.
  \item AIR 1951 SC 41.
  \item AIR 1954 SC 282.
  \item AIR 1954 SC 7281.
\end{itemize}
The above three cases are a few representative pronouncements on the question of meaning of property and they show a definite trend. The Supreme Court uses the word property in the widest sense to include not only corporate but also the incorporate one. From this angle whatever has an economic value is considered as property and the decision in *Saghir Ahmed v. State of Uttar Pradesh* \(^{42}\) signifies the extent to which the concept of property can be dragged. But the Supreme Court’s decision did not make it clear as to whether it was only the right of existing permit holders to ply the motor vehicle which constituted property or the right of every person who has the right to do business under Article 19(1)(g). So far as the facts of the case are concerned, it can be contended that the petitioner’s acquired goodwill in the business is definitely property. But the language of the judgment does not make any distinction between the claims of existing permit holders and those who have claim to get permit under Article 19(1)(g).

When property is considered to be not only corporate but also incorporeal, the question arises as to when one right out of the bundle of rights which is the sum total constituting the corporeal property will itself be property. The answer to this question has been dependent on the marketability and exchangeability of the right in question. If the right can be acquired, held and disposed of separately from the corpus to which it is attached, it will be property, but otherwise not. On this reasoning the right of shareholder to vote at a general meeting was not considered as property separately from the share. This demonstrates the dependence of the constitutional protection of property not only on the current ideal relating to property but also on the existing law which gives recognition to certain interests and provided for their marketability.\(^{43}\)

In the recent case of *M.M Pathak v. Union of India* \(^{44}\) the Supreme Court reiterated and emphasized that the word property cannot have one meaning in Article 19(1)(f) another meaning in Article 31 clause (1) still another in Article 31 clause (2). Property must have the same connotation in all the three Articles property within the meaning of Article 19(1)(f) and clause 2 of Article 31 comprises every form of

\(^{42}\) *Supra* note 42

\(^{43}\) *Supra* note 36, at 52 & 53.

\(^{44}\) (1978)2 SCC 50; AIR 1978 SC 803.
property, tangible or intangible, including debts and choses in action, such as unpaid accumulation of wages, pension and cash grant.\textsuperscript{45}

It is to be noticed that the Constitution protects the right to property under two Articles. Under Article 19(1)(f), the protection of which extends only to citizens which confers the right to acquire, hold and dispose of property affirmatively subject to reasonable restriction under clause (5) Article 19 i.e., in the interest of general public and schedule tribes. Article 31(1) specifically protects the right to property by imposing a prohibition on the state against deprivation, except by authority of law. Article 31(2) enunciates the requirements of a law by which property is taken possession of or acquired for public purpose by the state.

\textbf{2.5 Laws under Article 31-A are saved from Articles 14 and 19}

In United States, right to property is protected by fifth amendment to the Constitution in the simple formula that ‘no person shall be … deprived of his life, liberty and property without due process of law’. In India after independence the then Congress ruling party had repeatedly expressed its objective to abolish all the intermediaries between the state and the tiller of the soil with a view to improve the conditions of life of the tiller who bore a heavy burden and also to promote the agriculture economy of the country. Even before the Constitution came into force some of the states had introduced legislations with a view to able to achieve this purpose. Under Article 31(4) and 31(6) legislations were enacted so that the power of eminent domain exercised in respect of the intermediary landed interests but shall not be subjected to the condition of payment of compensation provided under Article 31(2). Article 31(5) also protected certain existing laws other than those to which clause (6) of the Article 31 applied. These provisions protecting property laws already enacted or on avail for these purpose were however found to be inadequate. This led to enact first Constitution Amendment Act,1951, which inserts Articles 31-A and 31-B read with 9\textsuperscript{th} Schedule in the Constitution.\textsuperscript{46}

The Constitution (1\textsuperscript{st} amendment) Act, 1951 added new provisions to the Constitution viz, Articles 31-A & 31-B along with Ninth schedule. It is indeed very important to know the history of introduction of Article 31-A and Article 31-B with

\textsuperscript{45} \textit{Supra} note 36, at 250.

\textsuperscript{46} M.C. Setalvad, \textit{The Indian Constitutional Law}, (University of Bombay publication, 1967). pp 123-126.
ninth schedule to the Constitution. Article 31-B though a part and parcel of the chapter of fundamental rights, does not by itself give any fundamental right. On the contrary, it puts certain restriction on right to property and it was believed that Article 31-B was an exception to Article 31. The then Government in power, soon after the independence undertook to achieve the following task:

1. To reconstruct the agrarian economy, interalia by trying to confer right of property on the tiller, abolition of zamindars, giving security to tenure to tenants, fixing a ceiling limit on personal holding of agriculture land and redistributing the surplus land among the landless.

2. In the area of urban property, measures have been initiated to provide housing to people, clearance of slums and town planning, control rents, acquire property and impose a ceiling on urban land ownership, etc.,

3. To regulate private enterprise and nationalization of some commercial undertakings.

Interesting cases in the property law have arisen and important constitutional battle were fought in the Supreme Court due to efforts of the government to implement above policies in practice. The most significant controversy in these cases was the question of payment of compensation for the property acquired. The protection of agrarian reform legislations from abstractive litigations was one of the prominent policies of the Constitution makers in molding the Constitution as an instrument of social change and a lever of socio economic justice. However, the inadequacy of protection under Article 31(4) & (6) was soon realized after Patna High Court decision in Kameshwara Singh v. State of Bihar.

Abolition of zamindari came first and foremost issue in economic programme of the ruling party. But payment of compensation posed particularly a difficult problem as it appeared to be beyond the financial resources of the country to pay just equivalent of the interest to be affected by such programme. To ensure that such legislation did not run into heavy weather, the Constitution-framers provided a inbuilt safeguard in the constitutional provision relating to property right, viz., the use of the word ‘compensation’ in Article 31(2) without any adjective like ‘just’ or

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48 A AIR 1953 Pat 167; 1953 (1) BLJR 261
‘reasonable’, it was thought, would ensure that compensation need not necessarily be adequate or equal to the property interests affected. In the course of time, this provision proved inadequate to immune the land legislation from challenge in courts. The word 'compensation' came to be interpreted as ‘just compensation’. Legislation pertaining to land could also be challenged under other Constitutional provisions, especially under Articles 14 and 19(1)(f). On this ideology some land legislations were declared invalid.49

Bihar, Uttar Pradesh and Madhya Pradesh executed certain legislations which may be compendiously be referred to as zamindari abolition Act.50 Issue was the Constitutional validity of Bihar Land Reforms Act,1950 which had abolished the zamindari system and provided for compensation to be paid at twenty times in case of acquired land held by a poor man and at three times in case of acquired land held by a rich person. The Patna High Court held that although there could not be a challenge in the matter on adequacy of compensation in the view of Article 31(4) and (6), the statute was violative of Article 14 as it discriminated between zamindars. It is submitted that court did not appreciate reformative spirit of equality as a policy underlying the statute because it wrongly accommodated equality as a legal spirit 51 under Article 14, it classified the zamindar, for the purpose payment of compensation, in a discriminatory manner. The Patna High Court struck down certain provisions of the Bihar Land Reforms Act 1950, as unconstitutional. On the other hand, the Allahabad & Nagpur High Courts upheld the corresponding legislations in Uttar Pradesh & Madhya Pradesh respectively.

While appeal against these High Courts were pending before the Supreme Court, the Union Government realized the unanticipated difficulties which had arisen in implementation of land reform measures. The central government anxious of dilatory litigation and hurriedly came to rescue the state land reform measures with a view to put an end to all litigations relating to land reforms and save the state land reform measure by suitably amending the Constitution.52 Central government felt that if we wait for final verdict of the judiciary may be judicial pronouncements will be

50 Ibid at 1500.
51 Ibid at 1501.
52 Ibid at 240.
endanger the whole zamindari abolition programme.\textsuperscript{53} To overcome this difficulty, then Prime Minister Nehru introduced the Constitutional (First Amendment) Bill in Lok Sabha (Provisional Parliament) on 8\textsuperscript{th} May 1951. Eight days after its introduction, on 16\textsuperscript{th} May 1951 Pandith Nehru moved the bill to amend the Constitution, finally, the Bill was passed and received the assent of the President on 18 June 1957.\textsuperscript{54}

\textbf{2.6 Importance of Article 31-A}

Article 31-A smoothened the process of zamindari abolition, it did not immune the legislation dealing with other aspects of agrarian economy, e.g., fixation of ceiling on agricultural holdings; the development of village panchayats for effective village planning and management; the consolidation of fragmented holdings. In course of time, it was also felt that protection be extended to some types of industrial law as well, such as, temporarily taking over management of industrial concerns. Hence, the scope of Article 31-A was extended by the Constitution (Fourth Amendment) Act, 1955, by adding a few more categories of deprivation of property which were to be immune from an attack under Articles 14, 19 & 31. Exemption now extended from the area of agriculture land reform to industry & mining. Article 31-A is still a part of the Constitution, with the repeal of Articles 19(l)(f) and 31, much of the rationale underlying in Article 31-A has disappeared.

Article 31-A(1) protects from the operation of Article 14 and 19(1)(f) a law providing for the following :-

(a) The acquisition by the state of any ‘estate’ or of any rights therein or the extinguishment or modification of any such rights; or,

(b) The taking over of the management of any property by the state for a limited period either in the public interest or to secure its proper management; or,

(c) The amalgamation of two or more corporations either in the public interest or to secure proper management of any of them; or,

(d) The extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors or directors, managers of corporations, or of any voting rights of shareholders thereof; or,


(e) The extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or license.

The protection of Article 31-A(1) does not apply to a law made by a state legislature unless it has been reserved for the President's consideration and has received his assent.55

**Estate:** The term ‘estate’ in the Article 31-A(1)(a) raises its own problem of connotation. The word 'estate' does not have uniform meaning throughout the territory in India its connotation varies from place to place. Hence, one uniform definition of ‘estate’ could not met the situation. To achieve comprehensive agrarian reform throughout the country it was felt necessary to cover all shades of meaning of the term ‘estate’. Accordingly Article 31-A(2)(a) explains the term ‘estate’ would have the same meaning as is given to it by a local law relating to land tenures. Thus, to define the word ‘estate’ one has to look to the relevant local law and adopt the definition given therein. Even this strategy could not solve all the problems. There could be cases where the local law does not define estate. To cover such situation, Article 31-A(2)(a) says that if in any area the term ‘estate’ is not defined, then its local equivalent would be included therein. To determine whether a term used in a local law is an ‘equivalent’ of ‘estate’ or not, the basic concept of ‘estate’ has to be kept defined in section 31-A (2)(a) in view which is that there must be land paying land revenue and held in accordance with a law relating to land tenures. The term corresponding to this basic concept may be taken as the local equivalent of ‘estate’. Article 31-A(2)(a) further explains that the term 'estate' includes any jagir, inam or muafi or other similar grant.56

Before the 17th Constitutional amendment, Article 31-A could be invoked only to protect the legislation dealing with ‘estates’ in the sense of landed interest of zamindars, inamdars etc., Proprietors of the soil, who are not intermediates between the cultivator and the state and who may pay land revenue directly to the state, hold their land under ryotwari tenure could not come under Article 31-A(2)(a). Their land interests was not ‘estate’ hence, Article 31-A(1)(a) had no application to them. For

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56 Supra note 34, at 1500-1501
this reason the Kerala Agrarian Reforms Act of 1961 was struck down in Karimbil Kunhikonam v. Kerala.\textsuperscript{57} Supreme Court held that the local law in South Canara so defined the term ‘estate’ as not included ryotwari tenures and, therefore, a law seeking to acquire ryotwari was not protected under Articles 14 and 19, and it could be tested by Article 14. To overcome this difficulty two new clauses, Article 31-A(2)(a)(ii) and (iii) were added to the Constitution by seventeenth amendment to bring 'ryotwari settlement within the term ‘estate’ and also “any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste or vacant land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans.” Thus, the connotation of ‘estate’ has been further broadened and the entire corpus of agrarian land legislation has now been immunized from challenge under Article 14 and 19. However, if some land is not ‘estate’ as defined in Article 31-A(2)(i) and (ii), and is also not held or let for purposes of agriculture or ancillary purposes, then it falls outside the scope of Article 31A(l)(a).\textsuperscript{58}

The protection afforded by this provision is very broad. It is a complete answer to any challenge under Articles 14 and 19. It protects a law even if it is confiscatory or discriminatory or compensation payable under it is illusory. Thus, tenancy legislation, howsoever drastic, is protected under Article 31-A(l)(a).\textsuperscript{59} Prima facie, Article 31-A(l)(a) appears to be applicable to all kinds of 'extinguishment' or ‘modification’ of estates for whatever purpose. But in Kavalappara Kottaraothil Kochunini v. State of Madras\textsuperscript{60} the Supreme Court read down this provision and held that its purpose was to facilitate 'agrarian reforms' and, therefore, it would protect only such legislation as had reference to agrarian reform.

In Vajravelu v. Special Deputy Collector\textsuperscript{61} a law providing for acquisition of land for urban development, such as slum clearance, housing schemes, creation of modern suburbs near towns, could not be protected under Article 31-A(l)(a) as it had no relation to agrarian reform. In Balmadies plantation Ltd., v. State of Tamilnadu\textsuperscript{62} it was held that while dealing with the provisions of Gudalur Janman Estate (Abolition and Conversion into Ryothwari) Act that the object and general scheme of

\textsuperscript{57} AIR 1962 SC 723; 1962 SCR Suppl.(1) 829
\textsuperscript{58} (1962)1 SCJ 510; AIR 1962 SC 723
\textsuperscript{59} Supra note 36, at 1502.
\textsuperscript{60} (1955)1 SCR 250
\textsuperscript{61} AIR 1960 SC 1080.
\textsuperscript{62} AIR 1965 SC 1017 (1021)
the Act was to abolish intermediaries between the State and cultivator and help the actual cultivator by giving him the estate of direct relationship between himself and the state. The Act, as such in its broad outlines was held to be a measure of agrarian reform and protected by Article-31-A.

In the case of Kannan Devan Hills produce Co. Ltd., v. State of Kerala 63 the Supreme Court dealt with the provisions of Kanan Devan Hills (Resumption of lands) Act. One of the question which arose was that whether the three purpose mentioned in section 9 of Act, namely:-

(1) reservation of lands for promotion of agriculture
(2) reservation of lands for welfare of agriculture population
(3) assignment of remaining lands to agriculturists and agricultural reform labourers could be protected under Article 31-A of the Constitution.

Court held that the above three purpose were covered by the expression ‘agrarian reforms’ hence, section 9 of the Act protected by the Article 31-A of the Constitution.

In Godavari Sugar Mills v. S.B. Karable 64, Khanna J. said “the following principles can be inferred from the decided case in order to find whether an impugned enactment for acquisition of land is protected by Article 31-A.”

(1) Acquisition of land by the state in order to enjoy the protection of Article 31-A should be for the purpose of agrarian reform.
(2) Acquisition of land by taking it from a senior member of the family and giving it to a junior member is not a measure of agrarian reform.
(3) Acquisition of land for urban slum clearance or for a housing scheme in neighborhood of a big city is not a measure of agrarian reform.
(4) Acquisition of land by the state without specifying the purpose of which land is to be used is not a measure of agrarian reform.
(5) Schemes of rural development envisages not only equitable distribution of land but also raising of economic standard and betterment of rural health and social conditions in the villages. Provisions for the assignment for hospitals, schools manure pits, tanning grounds ensure for the benefit of the rural population and as such constitute a measure of agrarian reform.

63 AIR 1972 SC 2240 (2249)
64 AIR 1972 SC 2301.
(6) Provision for reservation of land to promote agriculture and for welfare of agricultural population constitutes a measure of agrarian reform. Agrarian reform is wider than land reform.

(7) If the dominant general purpose of the scheme is agrarian reform, the scheme may provide for ancillary provisions to give full effect to the scheme.

(8) A provision fixing ceiling area and providing for the disposal of surplus land in accordance with the rules is a measure of agrarian reform.

The broad objective of any legislation to agrarian reforms are maternally four viz., (i) to maximize agriculture output and productivity; (ii) a fair and equitable distribution of agricultural income; (iii) increase in the employment of opportunities and (iv) a social or ethical order.

Article 31-A of the Constitution does not protect the legislation which does not relate to agrarian reform. The Article 31-A saved laws which provide for matters mentioned in clauses (a) to (e) thereof from challenge under Articles 14 or 31 notwithstanding anything contained in Article 13 of the Constitution. Once law is found to have relation with agrarian reform, it is protected by Art, 31A(1)(a), no matter of how drastic its provisions may be. In *Kerala v. Gwalior Rayon & Silk Mfg. Co. Ltd.* a law enacted in 1971 vest forest lands in the state without compensation and, thus, lands having standing timber worth cores of rupees were taken away without any compensation. At the same time, Article 31A(1)(a) provided protection against Article 31(2) which guaranteed compensation. The court held that the Act valid under Article 31-A(1)(a) as a measure of agrarian reform treating forest lands as agricultural lands. The court emphasized that once the legislative area is barricaded Article 31 A, it cannot be breached Articles 14, 19 and 31.

2.6.1 Second Proviso to the Article 31-A(1)(a)-(e)

The seventeenth amendment while expanding the concept of ‘estate’, also imposed one limitation, viz.; the land held by a person under his personal cultivation which is within the ceiling limit fixed by the law, or any building or structure standing thereon or as appurtenant thereto, would not be ‘acquired’ by the state unless the law provides for compensation which is not less than its market value. This is the

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65 AIR 1975 SC 1193.
66 AIR 1990 SC 1747; 1990 SCR (2) 401
67 AIR 1973 SC 2734, 2751.
effect of the second proviso to the Article 31-A(1). Thus, the land of the cultivators which is within the ceiling limit fixed by the law cannot be acquired without paying compensation at the market value thereof. Any law contravening this provision would be void. This provision seeks to confer some protection on small cultivators having small pieces of agricultural land for self-cultivation. If their land is acquired, they should at least be compensated at the market value of the land. The legislature may however pay more if it so likes.68

Though this proviso added by seventeenth constitutional amendment, it has been placed at the end of clause it is, in fact, a proviso to sub clause 31-A(1)(a), because its application is confined to a law for the acquisition of an estate only; it is not concerned with any other sub clause of clause. Secondly, it is to be noted that though it is a proviso, it not only constitute as a mere limitation on the legislative power, but also confers a corresponding fundamental right, upon the person expropriated. Thirdly, under the second proviso—the person whose land is ‘acquired’ is to be ‘compensated’ being not less than that the market value of the land, provided (i) such land is comprised in an estate; (ii) it is under his personal cultivation; and (iii) the quantum of land so held by him is within the ceiling limit of holding. Further, the second proviso inserted by seventeenth amendment, in the view of the fact that the land held under a ryotwari settlement were brought under the purview of Article 31-A(1)(a).

Prior to the insertion of the second proviso to the Article 31-A(1) (a). The, no compensation was payable in cases coming under Article 31-A(1)(a). The right of compensation under the 2nd proviso is better than the right conferred by the erstwhile Article 31(2), because it guarantees the right to the market price which was not available under Article 31(2).

This obligation remains as a substantive liability of the state, notwithstanding the repealed Articles 19(1)(f) or 31(2) and effect of the amendment is prospective in nature hence, it would not affect any acquisition made before 20-6-1964. A law in any case of acquisition violates the requirement of second proviso shall be invalid.69

Section 25 of the Land Acquisition Act has been held to be unconstitutional as regards the actual tillers of the soil. Under the Proviso to Article 31-A(1), the

68 Supra note 36, at 1505.
69 Supra note 36, at 1506.
cultivators have the right to be paid full market value for their land acquired the state cannot acquire the lands for less than the market value.\textsuperscript{70} Supreme Court observed in \textit{D.G. Mahajan v. Maharashtra} \textsuperscript{71} “A great right is created in favour of the owners to get compensation not less than the market value of the lands, if the acquired land is within the ceiling limit and in personal cultivation. This is a fundamental right; and is a creature of the second proviso to Article 31A(1)(a).”\textsuperscript{72}

In \textit{Janabai (Smt) v. Laxman Gunaji Wanole} \textsuperscript{73} held that section 5A(2) of the Maharashtra Restoration of Lands to Schedule Tribes Act, 1975 could not be enforced against the persons who hold land which is under his personal cultivation and it is within the ceiling limit prescribed by the state. However, in \textit{Shivgonda Anna Patil v. State of Maharashtra} \textsuperscript{74} the Supreme Court held that absence of a provision regarding payment of compensation at market rate for acquisition of excess vacant agriculture land was not violative of the second proviso to Article 31-A(1) of the Constitution. Second proviso to the Article 31-A(1) does not debar the legislature from further reducing the ceiling limit once it has been fixed. In \textit{Kunjakutti v. State of Kerala} \textsuperscript{75} Kerala Land Reforms Act, 1963, as amended by the Kerala Land Reforms (Amendment) Act, 1969. Section 82 reduced the ceiling limit and required to surrender the land held in excess of the limit fixed by the Amendment Act without payment of compensation at market value. Once ceiling limit was changed by the amended Act, the second proviso to Article 31-A(1) must be held to refer only to the new ceiling limit fixed by the amended Act. The ceiling limit originally fixed, ceased to exist for future the moment it was replaced by the amended Act. The prohibition contained in the second proviso operates only within the ceiling limit fixed under the existing law at the given time.\textsuperscript{76}

\section*{2.7 Article 31-B Read with Ninth Schedule}

Brief introspection into parliamentary debates concerning the first amendment led by the then prime minister Nehru reveals that the basic intention of the

\textsuperscript{70} D.D. Basu, ‘\textit{Shorter Constitution of India}’, (Wadhwa & Company, New Delhi, 13\textsuperscript{th} ed., 2003), pp 371-375.

\textsuperscript{71} AIR 1977 SC 915; \textit{See also K. Appalaswamy v. Sub Collector & L.A.O., Vizianagram, AIR 1984 AP 381.}

\textsuperscript{72} AIR 1977 SC 915.

\textsuperscript{73} AIR 1985 Bom 290.

\textsuperscript{74} AIR 1925 Bom. 290 (297).

\textsuperscript{75} AIR 1999 SC 2281 (2282).

\textsuperscript{76} AIR 1972 SC 2097.
amendment was to prevent judicial intervention with Acts intended to promote social change towards a more equal justice, and the constitutional goal of egalitarianism.

Article 31-A creates doubt, whether Article 31-B illustrative of Article 31-A. The expression without prejudice to the generality of the provisions in Article 31-B convey the massage protection mentioned in the Article is not limited to any particular Act. Further, the protection under Article 31-B is available against all the provisions of part III of the Constitution. But in case of Article 31-A such protection is limited to agrarian legislations only and protection against to the Articles 14 and 19. Hence, Article 31-B is neither illustrative nor subjected to Article 31-A.

Article 31-B states that validation of certain Acts & Regulations without prejudice to the generality of the provisions contained in Article 31-A, none of the Acts and regulations specified in the ninth schedule nor any other provision thereof shall be deemed to be void, or ever to have become void, on the ground that such Acts, regulations or provisions are inconsistent with or takes away or abridges any of the rights conferred under part III of the constitution and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and regulations shall, subject to the power of competent legislation to repeal or amend it, otherwise continue in force.

When a competent legislature passes a law within the purview of clauses (a) to (e) of Article 31-A, it automatically receives protection under Article 31-A with the result that the law cannot be challenged in any court on the ground that any of its provisions violate Articles 14 and 19. In so far as Article 31-B is concerned, it does not define the category of laws which are to receive its protection, and secondly, going little further than Article 31-A, it affords protection to scheduled laws against all the provisions of the part III of the Constitution. No Act can be placed in the ninth schedule except by parliament. Hence, ninth schedule is a part of the Constitution. No additions or alterations can be made therein without constitutional amendments. Therefore by constitutional amendments all the Zamindari Abolitions laws were placed under the ninth schedule.

Parliament enacted Article 31-A retrospectively, even though, may not be sufficient to ensure the validity of legislation which has already declared as void by the courts. In Kameshwar Sing case court held that it is advisable to have a further

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77 Supra note 49, at 1420-21.
provision i.e., Article 31-B specially to bypass judgments which striking down such legislation. That seems to be the reason why Article 31-B was enacted and statutes falling within Act 31-A were included in the ninth schedule also.\textsuperscript{78}

In order to implement the above policies and to have agrarian reform and to establish socialism, the government acquired property of citizens without payment of adequate compensation as if had no financial resources to meet with the amount of compensation. Citizens used to challenge the concerned acquisition laws on the ground that it violates fundamental right to property. The judiciary also tilt towards protecting property rights being fundamental rights under Articles 19(1)(f) and 31 (now omitted by 44\textsuperscript{th} constitutional amendment). To come out of this situation, to nullify the judgments of the Supreme Court and to uplift the campaign of agrarian reforms, the parliament introduced the Article 31-B and ninth schedule to the Constitution in addition to Article 31-A. Articles 31A & 31B represents a novel innovative and drastic technique of constitutional amendments. It immune the laws against all attack on the ground of breach of any fundamental rights guaranteed under part III of the Constitution.\textsuperscript{79}

\textbf{2.7.1 Ninth Schedule - A Protective Umbrella}

Article 31-B, does not by itself give any fundamental right. The Acts and regulations placed under ninth schedule shall not be deemed to be void or ever to have become void on the ground of its inconsistency with any fundamental right. In \textit{Kameshwar Singh}\textsuperscript{80} case, the Supreme Court said that no Act brought under the ninth schedule could be invalidated on the ground of violation of any fundamental rights.

With the introduction of the above amendment, it became very easy for the Government to acquire property and to carry out different agrarian reforms. Firstly the acquisition laws under the fear of being challenged were inserted in the ninth schedule by the constitutional amendments and thereby the concerned laws were made immune from challenge against any of the fundamental rights guaranteed under part III of the Constitution. Thus, it was not possible for a citizen to challenge the constitutionality of any acquisition law by which his land has been acquired because,

\textsuperscript{78} \textit{Supra} note 54, at 461.
\textsuperscript{79} \textit{Infra} note 94, at 1423-24.
\textsuperscript{80} AIR 1952 SC 252.
it placed under ninth schedule. Means Article 31-B protected every legislation within the umbrella of the ninth schedule.\textsuperscript{81}

Another significant characteristic feature of the Article 31-B is that it is having retrospective effect. As a result of this any legislation earlier declared as void by the Supreme Court on the ground that it violated any of the fundamental rights, revives of such void legislation by inserting the legislation under ninth schedule by constitutional amendment. Supreme Court in \textit{State of Uttar Pradesh v. Brijendra Singh} \textsuperscript{82} held that with this characteristic feature of Article 31-B it became very easy for the parliament to validate any Act already declared as unconstitutional, simply by constitutional amendment putting such unconstitutional Act under the ninth schedule. Once a legislation enters into the protective umbrella of the Ninth Schedule its constitutionality cannot be challenged, this position was maintained till the decision of the Supreme Court in \textit{Kesavananda Bharati} case.

In \textit{Kesavananda Bharati v. State of Kerala} \textsuperscript{83} the court by 7:6 majority held that Parliament can amend any provisions of the Constitution including fundamental rights under its constituent power (Article 368) but it does not include the power to alter the basic structure or frame work of the Constitution. This is a historic judgment which spelt out a new Constitutional implied limitation on the Constitution. i.e., parliament could not have power to amend the basic structure or framework of the Constitution. Therefore any legislations placed under ninth schedule by constitutional amendment if, they affect or alter the basic structure of the Constitution could be questioned in a court of law. Judgment of \textit{Kesavananda Bharati} case is prospective in nature.

However, question arises whether the Acts which are included in the ninth schedule on or after 24\textsuperscript{th} April 1973, would also enjoy the protection under Article 31-B. This question was answered by the Supreme Court in \textit{Waman Roa v. Union of India} \textsuperscript{84} on or after April 24, 1973 ninth schedule has been amended from time to time for inclusion of various Acts & regulations therein, are open to challenge on the ground that whether they are damage or destroy the basic structure of the Constitution. Protection of Article 31-B is only available to original Acts included in the ninth schedule before 24\textsuperscript{th} April 1973. Similarly in \textit{Prag ice and Oil mills v. Union

\textsuperscript{81} \textit{Supra} note 47, at 15.
\textsuperscript{82}AIR 1981 SC 636; 1981 SCR(2) 287
\textsuperscript{83}AIR 1973 SC 1461
\textsuperscript{84}AIR 1981 SC 271; (1981)2 SCC 362.
the court held that the orders and ratifications made to the Acts included in the ninth schedule are not entitled the same protection of Article 31-B as they are not part of the original Acts.

Though Waman Rao upheld the validity of all the insertions in the IX schedule till April 24, 1973, i.e., the date of pronouncement of basic structure theory. After April 24, 1973 there will not be such blanket protection for the laws included in the ninth schedule.\(^{86}\) For four decades now, the landmark basic structure doctrine has formed the bedrock of India’s constitutional jurisprudence. It limits (implied restriction on the amending power of the parliament) the parliament’s power to amend the Constitution.\(^ {87}\)

2.7.2 Has the Ninth Schedule been Misused?

In Minerva Mills case, Bhagavati J. in minority decision rightly pointed out that Articles 31-A and 31-B were introduced to give protection to Land Reforms and Zamindari abolition legislation. The ninth schedule was not intended to include any other laws other than those covered by Art 31-A. Although Article 31-B was originally adopted only to give a more definite and assured protection to legislation already protected under Art 31-A, it has been utilized for totally different purposes in including all types of statutes which nothing to do with agrarian reforms.

The words without prejudice to the generality of the provisions, indicate that the Acts and regulations specified in the ninth schedule would have immunity even if Article 31-A of the Constitution did not attract them. Therefore Article 31-B is not governed by Article 31-A and the protection under Art 31-B is only in the context of the fundamental rights. It does not prohibit the challenge on the ground that the particular enactment is beyond the legislative competency of the legislature.\(^ {88}\) Till the decision of the Supreme Court in Keshwananda Bharati case, Article 31-B and the ninth schedule have been abused.\(^ {89}\)

\(^{85}\) AIR 1981 SC 271.
\(^{86}\) AIR 1978 SC 1296.
\(^{87}\) Jasmine Alex, ‘Ninth Schedule and Principles of Constitutionality in the Light of Coelho’s Case’, Cochin University Law Review 241& 242
Recently, the Supreme Court of India in its landmark judgment in *I.R. Coelho (dead) by L.R. v. State of Tamil Nadu* \(^90\) & others (2007 2 SCCI) tried extensively to determine the nature & character of protection provided by Article 31-B to the laws added to the schedule by Constitutional amendments. Tamil Nadu Reservation Act provided 69 percent reservation for backward classes has been passed through the Constitution (75th amendment) Act, 1994 placed under the ninth schedule to the Constitution and thus to take the legislation out of the ambit of judicial review. However, the Constitutional validity of Tamil Nadu Reservation Act was challenged\(^91\) before the Supreme Court on the ground of landmark judgment in *Indra Sawhney* case. Supreme Court struck down the 75\(^{th}\) amendment and held that 69% of reservation to the backward classes shall be arbitrary and is antithetical to the reasonable classification permitted under Article 14 of the Constitution. Reasonable classification is one of the basic structure of the Constitution.

After the repeal of property right (Article 31) from part III of the Constitution, there was no justification for continuing with anything like the ninth schedule. The whole of it should have been scrapped. Similarly, judicial review over the legislation is that the legislation which alter the basic structure of the Constitution belongs to the court cannot be taken away by any subterfuges like ninth schedule. The 11 January, 2007 judgment in *I.R Coelho (dead) by L.R v. State of Tamil Nadu* restoration that position.\(^92\)

### 2.8 Importance of Article 31-C

The Twenty-fifth Amendment of the Constitution in 1971 added a new clause, Article 31-C, to the Constitution. Originally, Article 31-C runs as follows:

> "Notwithstanding anything contained in Article 13 no law giving effect to the policy of the state towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31; and no law containing a declaration that it is for giving

\(^{92}\) *Supra* note 88, at 3243 & 3244.
effect to such policy shall be called in question in any court on the
ground that it does not give effect to such policy”.

Up to 1971, the position was that fundamental rights prevailed over the
directive principles of state policy, and a law enacted to implement the directive
principle could not be valid if it conflicted with a fundamental right. Article 31-C
sought to change this relationship to some extent by conferring primacy on Article
39(b) and (c) over Articles 14, 19 and 31.93 A new Article 31-C laid down that no
law which declared that it was for giving effect to the principle specified in clause (b)
& (c) of Article 39 would be called in question on the ground that it is inconsistent
with the fundamental rights.94

Thus, Article 31-C was much broader than Article 31A. While Article 31A is
limited to specified topics, Article 31-C was not so limited. It did not lay down
specific heads which were immunized but left a general power to the state legislatures
to select any topic or adopt any measures which might purport to have some nexus
with the objectives under the Article 39(b) & (c). Article 31-C thus dealt with objects
with unlimited scope 95 and it was added to provide protection to non-agrarian
reforms legislation as Article 31A was limited to agrarian reforms only. Art 31C also
contained a proviso that if a legislation contains declaration that it is for giving effect
to Article 31, 39 clauses (b) & (c) it cannot be questioned on the ground that it does
not give effect to such policy.96 It said that when the legislature declared that the law
was to give effect to the policy underlying under Article 39(b) and (c), court would
be debarred from reviewing the same even if the law might not, in reality be
concerning Article 39(b) & (c). The second part of Article 31-C originally sought to
oust the jurisdiction of the courts.97

The validity of Article 31-C was challenged in Kesvananda Bharati v. State of
Kerala (it is also known as fundamental right case). The Supreme Court held that
basic feature of the Constitution cannot be altered even by constitutional amendment.

93 Dr. Subhash C. Kashyap, ‘Constitutional Law of India’, (Universal Law Publishing Co. Pvt. Ltd.,
vol.1, 2008), p 797.
1511.
95 Brij Mishra Sharma, ‘Introduction to the Constitution of India’,( Prentice Hall of India Pvt. Ltd., New
96 Supra note 88, at 1512.
By a majority of 7:6 it was held that judicial review is a basic structure of the Constitution. So last part of Article 31-C which excludes judicial review, is invalid. This mean that a law enacted to implement Article 39(b) & (c) would not be challengeable under Articles 14 & 19, but the courts have power to go into the question whether the law in question does really achieve these objectives or not.

No legislation by its own declaration could make the law challenge proof. The ruling has several positive aspects. By upholding the first limb of Article 31-C the legislature in India have been conceded greater power to implement the socialist socio-economic programmes. Invalidation of the second limb of Article 31-C avoids the possibility of the state legislature immunizing all sorts of law from judicial review. For a law to get the protection of Article 31-C, the court has to determine whether there is a connection between the law in question and Article 39. If the court finds that the dominant object of the law is to give effect to the directive principle, it would accord protection to the law under Article 31-C. But if the law though passed seemingly for effectuating the directive principle is, in pith and substance, one for accomplishing an unauthorized purpose not covered by the directive principle, such law could not protected under Article 31-C.

In *Mirzapur Moti Kureshi Kasab Jamat v. State of Gujarat* a state Act totally banning slaughter of bulls and bullocks was challenged as imposing unreasonable restrictions under Article 19(1)(g) read with Article 19(6) in so far as it banned slaughter of these animals above the age of 16 years when they become useless as drought animals. The state justified the Act as being related to several directive principles, such as Articles 39(b), 39(c), 47 and 48 and thus ruled that the impugned Act had no nexus with any of these Directive principles and refused the protection of Act 31-C. The court held that the Act was unconstitutional in so far as it banned slaughter of bulbs above the age of 16 years.

On the other hand, in the *Rastriya Mill Mazdoor Singh v. State of Maharashtra*, the court found a clear nexus between the impugned Act and Article 39(b). The impugned Act nationalized a spinning and weaving mills. The alternative

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98 *Supra* note 88, at 1512.
99 *Supra* note 88, at 1522.
100 *Supra* note 88, at 1513.
101 AIR 1998 Guj 220.
102 AIR 1996 SC 2791; Cr LJ 4151; AIR 1996 SCW 3555
to the nationalization would be ‘liquidation and unemployment of all the employees of the undertaking”. The Act ensured continuance of the undertaking as a productive unit and continuation in employment of all the employees. Therefore, the impugned Act undoubtedly was for effectuating the directive principles in Article 39(b) towards securing the ownership and control of the undertaking are so utilized as best to sub-serve the common good. The validity of the Act could not therefore, be assessed under Articles 14 and 19 because of the immunity conferred by Article 31-C.\textsuperscript{103}

Article 31-C was amended, its scope was further expanded, and it was sought to be made much more drastic, through the forty second constitutional amendment in 1976. The first part of Article 31-C says that no law giving effect to any of the directive principles shall be deemed to be void on the ground of inconsistency with Articles 14 and 19. Thus primary is now sought to be given to all the directive principles and not only to Article 39 (b) and (c) over Articles 14 and 19.\textsuperscript{104}

In Minerva Mills Ltd. \textit{v} Union of India,\textsuperscript{104 A} Minerva mills was nationalized and taken over by the Central Government under the provisions of the Sick Textile Undertakings (Nationalization) Act, 1974. The petitioners (shareholders and creditors of Minerva Mills Ltd.) challenged the Nationalisation Act on the ground of infraction of Articles 14, 19(1) (f) and (g) and Article 31(2). The Government contended that legislation was protected by amended (scope of Article 31-C was father enlarged by forty second amendment). Article 31-C gives absolute primacy to Directive Principles over Fundamental Rights. “The harmony & balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution. However, this harmony (basic structure of the Constitution) is discarded by forty second amendment and accordingly the scope of Article 31-C was enlarged by forty second amendment was declared as unconstitutional.”\textsuperscript{105}

In Basantibai Mohanlal Khetan,\textsuperscript{105 A} the constitutional validity of the Maharashtra Housing and Development Act 1977 was challenged and High Court declared the Act as void. The matter went to the Supreme Court and it held that the Act is protected under Article 31-C from being challenged as violative of Articles 14, 19.

\textsuperscript{103} Supra note 93, at 1514.
\textsuperscript{104} Supra note 93, at 1519.
\textsuperscript{104 A} AIR 1980 SC 1789; (1980)3 SCC 625
\textsuperscript{105} Supra note 92, at 1513.
\textsuperscript{105 A} AIR 1986 SC 1466
19 and 31 of the Constitution as the Act is intended to secure the objects contained in Article 39(b) of the Constitution.  

While considering the scope, ambit and validity of Article 31-C, the majority judgment in *Kesanvanda Bharati*, held that the first part of Article 31-C was valid but the second part, viz., no law containing a declaration that it is for giving effect such policy shall be called in question in any court on the ground that it does not give effect to such policy” was held to be invalid. Once the conditions mentioned in Article 31-C are fulfilled by the law, no question of compensation arises because the said Article expressly excluded not only Articles 14 and 19 but also Article 31 which, by virtue of twenty fifth amendment has placed the word ‘amount’ for the word ‘compensation’ in Article 31(2).

In *Bhim Singhji v. Union of India*, the Urban Land Ceiling and Regulation Act, 1976, was held to be protected under Article 31-C. The purpose of the law is to inhibit the concentration of urban lands in the hands of few persons and to achieve equitable distribution of such lands to sub serve the common good. The Act is thus intended to achieve and implement the purposes of Article 39 (b) and (c). But section 27 thereof was held to be invalid as it imposed a restriction on the transfer of any urban land with a building or a portion of such building, which was within the ceiling area.

In *Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.*, the Supreme Court considered the question whether the Coking Coal Mines (Nationalization) Act, 1972, was entitled to the protection of Article 31-C. The court ruled that the Act in question promoted the policy of Article 39(b). Reference in Article 39(b) to “material resources” of the community is not only to the resources owned by the community as a whole but also to resources owned by individual members of the community. Resources of the community do not mean public resources only but include private resources as well. The word "distribute" in Article 39 (b) has been used in a wider sense so as to take in all manner and method of distribution. It includes, transformation of wealth from private ownership into public ownership and is not confined to that which is already public owned.

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106. Supra note 97, at 22.
107. Supra note 97, at 23.
108. AIR 1985 SC 1650; 1985 SCR Suppl.(1) 862.
In *Sanjeev Coke Mfg. Co*, case the court also rejected the argument that a discriminatory law could not be protected under Article 31-C. “To make it a condition precedent that a law seeking protection under the Article 31-C must be non-discriminatory or based on reasonable classification is to make the Article 31-C meaningless. If Article 14 is not offended, no one needs to give any immunity from an attack based on Article 14.” Thus, “where Article 31-C comes in Article 14 goes out.” Nationalization laws have invariably been held to be valid under Article 31-C.

If once the conditions mentioned in Article 31-C are fulfilled by law, no question of compensation arises as Article 31 is expressly excluded. The question of compensation becomes totally irrelevant. The court observed that “Article 31-C was not merely a pragmatic approach to socialism but imbibed a theoretical aspect by which all means of production, key industries, mines, minerals, public supplies, utilities and service may be taken gradually under public ownership, management and control”.\(^{110}\)

The state of Tamil Nadu enacted Tamil Nadu State Carriages and Contract Carriages (Acquisition) Act, 1973 to nationalized the entire transport service as also part of the entire assets of the units thereof. The Act was held valid and if sub serves the object of Article 39(b) & 31-C which gives protective umbrella against Article 31(2) the court cannot strike down the Act merely because the compensation for taking over the transport services or its units is not provided for.\(^{111}\)

Article 31-D was inserted by 42\(^{nd}\) amendment but it was omitted by the 43\(^{rd}\) amendment. It sought to save laws which provided for prevention or prohibition of anti-national activities or the prevention of formation of or the prohibition of anti-national associations. Such laws immune from challenge on the ground of violation of Articles 14, 19 or 31. Such immunity was conferred only to central laws. Thus the majority at the centre could easily pave the path to dictatorship and on a party rule by outlawing other parties. Fortunately it was omitted by the forty third amendment.\(^{112}\)

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\(^{110}\) AIR 1983 SC 239; (1983)1 SCC 147.

\(^{111}\) *Supra* note 94, at 1560-77.

\(^{112}\) Chandhari and Chaturvedi’s, ‘*Law of Fundamental Rights*’, (Delhi Law House, Delhi, 4\(^{th}\) ed., 2001), pp 1319-20.
2.9 Difference Between Article 19(1)(f) and Article 31(1)

Under Article 19(1) only citizens of India are entitled to claim the right, whereas under Article 31(1) any person irrespective of citizenship not to be deprived of his property without authority of law. Article 19(1) relates to the rights of citizen to acquire, hold and dispose of property though they are not in immediate possession thereof, but under Article 31(1) the person is already in possession of property and then the deprivation is caused by the state. Both these Articles were repealed by the Forty Fourth Amendment Act, 1978.

Reasonableness of Restrictions

Article 19(1)(f) guaranteed to the citizens of India a right to acquire, hold and dispose of property. Article 19(5) however, permitted the state to imposed reasonable restrictions on this right in the interest of general public or for the protection of the interests of any scheduled tribe. The expression ‘interest of general public’ in Article 19(5) was held synonymous with ‘public interest’. It did not mean that the interest of the public of the whole of India; it meant interest of a ‘section of the public’. The term ‘public interest’ very broad and it includes public order, public health, morality etc. Whether a piece of legislation was in public interest or not was a justifiable matter. A law designed to abate a grave nuisance and thus protect public health or a law to protect the weaker sections of the public, especially members of low castes was held to be in public interest.

A restriction to be ‘reasonable’ means it must not be excessive or arbitrary. A few examples may be cited here to indicate how courts adjudicated upon the reasonableness of restrictions under Article 19(5). Seizure of goods from the possession of a citizen by a police without authority of law infringed Article 19(1)(f). The provisions in the Sea Customs Act laying down that if a public officer seizes gold, diamonds, cigarettes, cosmetics in reasonable belief that, these are smuggled goods was held valid and then the burden to prove that they are not smuggled falls on the person from whom possession the goods have been seized. The provisions has been made to check widespread smuggling and so was held to be in the interest of general public.

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113 Supra note 93, at 109.
115 Mathew v. Collector, Phulbani, AIR 1975 Ori. 4.
2.10 Article 31(2) of the Constitution Provides for Compulsory Acquisition of Land

The power of eminent domain is essential to a sovereign government. The provision of the fifth amendment to the Constitution of the United States is that private property cannot be taken for public use without just compensation. The principle of compulsory acquisition of property is founded on superior claims of the whole community over an individual citizen, is applicable only in those cases where private property is wanted for public use or demanded for the public welfare. Accordingly, the right of eminent domain does not imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation where the public interest will be in no way promoted by such transfer. The limitation on the power of eminent domain is that the acquisition or taking possession of property must be for a public purpose has been expressly engrafted in clause (2) of Article 31 of the Constitution of India.\(^{117}\)

No property shall be compulsorily acquired or requisitioned save for a public purpose. The Supreme Court pointed out in *State of Bihar v. Kameshwar Singh*\(^ {117}\) that Article 31(2), as it stood before the amendment did not expressly make, the existence of ‘public purpose’ a condition precedent to the power of acquisition, but it was an essential ingredient of eminent domain, and the clause proceeded on the assumption that acquisition can be for a public purpose.\(^ {118}\) After a scrutiny of the authorities, Das J. in *Kameshwar Singh* case, reached the conclusion that no hard and fast definition of “public purpose” can be laid down for its concept, it has been rapidly changing in all countries, he formulated as a working definition, that whatever furthers the general interest of the community, as opposed to the particular interest of the individual must be regarded as a public purpose.

Parliament passed the first amendment Act adding two Articles namely 31-A and 31-B with ninth schedule. Article 31-A gives protection to the agrarian laws, and Article 31-B gives protection to the laws which are placed under ninth schedule of the Constitution irrespective of the subject matter of laws. However having regard to the

\(^{117}\) *AIR 1953 Pat 167; 1953 (1) BLJR 261*
properties which were not covered by Articles 31-A and 31-B i.e., right to compensation for the property acquired compulsorily for public purpose covered by Article 31(2) of the Constitution.\textsuperscript{119} Although the framers of the Indian Constitution chose not to prefix the word just or reasonable or ‘adequate’ to the word ‘compensation’ in Article 32(2), this led to for the difficulty.

Article 31(2) as it stood before its abrogation in 1978 run as follows:

“No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount to be given otherwise than in cash.”\textsuperscript{120}

The original Article 31(2) was substituted by the twenty fifth constitutional amendment in 1971 and later Article 31(2) has been repealed but discussion thereon has been included here partly for its historical importance; partly to illustrate judicial activism and creativity in interpreting the Constitution and partly because of a kind of tussle between the Supreme Court and parliament, as the constituent body, on the question of compensation for property acquired. The controversy regarding adequacy of the payment of compensation was finally laid to rest by the fourth amendment to the Constitution. It curtailed the powers of the courts to review law which authorized compulsory acquisition of property.

The following cases gives background to the fourth amendment. In the first three cases the states concerned attempted to deprive the owner benefits of ownership without taking over the property in question.\textsuperscript{121}

Firstly, in \textit{Dwarkadas Srinivas v. Sholapur Spinning & Weaving co. Ltd.},\textsuperscript{122} the Sholapur Spinning and Weaving co. Act of 1950 enabled the government to take control of the property of Sholapur Spinning & Weaving Company. The question was whether the Act was invalid as it did not provide for compensation. The government

\textsuperscript{119} AIR 1952 SC 252, 273.
\textsuperscript{120} M.C. Setalvad, ‘\textit{The Indian Constitutional Law by 1950-65}’, (University of Bombay, 1967), p 128.
\textsuperscript{122} AIR 1954 SC 119; 1954 SCR 674.
did not acquire the property therefore government was contended that Article 31 clause (2) providing for compensation did not apply since only clause (1) applied any authorized law was sufficient to deprive a person property right.

As clause (1) authorizes any deprivation of property under authority of law. The learned chief justice would postulate that the limiting power thereof is correct by clause (2).\(^{123}\)

The Supreme Court held that the Sholapur Spinning and Weaving Company Act 1950 was void. Article 31 clause (1) and (2) should be read together. So when there is deprivation of property, though there is no acquisition by the state clause (2) applied and compensation becomes payable. Hence, any deprivation of property should be:

1. Authorized by law; (Article 31 clause 1)
2. Necessitated by a public purpose; (Article 31 Clause 2)
3. Subject to payment of compensation.\(^{124}\)

Secondly, in Saghir Ahmed v. State of Uttar Pradesh\(^ {124\ A}\) issue was based on the Road Transport Act, 1951, which vested in the state government the road transport services in the interest of the general public. Supreme Court held that the Act was unconstitutional as it offended (did not provide compensation) the provisions of Article 31(2) of the Constitution. The fact that passenger buses of the appellants had not been acquired or might not have been deprived but they were depriving their business of running buses for hire on public roads. Following the Shollapur case discussed above, the Supreme Court held that depriving a person of his interest in a commercial undertaking even though state did not acquire or take possession of it, attracted the provisions of Article 31(2).\(^ {125}\)

State of West Bengal v. Subodh Gopal Bose\(^ {126}\) is the third case relevant to the present discussion. This case made it quite clear that the obligation of paying compensation arose only where the state action resulted in the substantial deprivation of private property of the individual. The Supreme Court held that the abridgment of

\(^{124\ A}\) AIR 1954 SC 7281.
\(^{126}\) AIR 1954 SC 92.
right was not amount to substantial deprivation of the right to property within the meaning of Article 31. The West Bengal Revenue Sales Act 1859 was declared void by the Supreme Court as it infringed Article 31 of the Constitution. The judgment in this case shed new light on the extent of protection of property rights under the Constitution Patanjali Sastri C.J. observed that the Constitution made a definite break with the old order and introduced new concepts in regard to many matters, particularly relating to word ‘acquisition’ which is used in narrow sense in the Constitution it might have used in same sense in pre constitutional legislation.127

In December, 1953 Article 31(1) and 31(2) came for interpretation before the Supreme Court in State of West Bengal v. Bela Banerjee128 case. Provisions of the West Bengal Land Development and Planning Act, 1948 provides for acquisition of land for a public purpose and fixed the limit on the amount of compensation payable for the land acquired so that it may not exceed the market value of the land on 31st December 1946. Impugned Act is a permanent enactment and lands acquired under it may be many years after it came into force, the fixing of the market value on 31st December 1946, as the ceiling on the compensation without reference to the value of the land at the time of the acquisition is arbitrary and cannot be regarded as due compliance with the letter and spirit of the requirement of Article 31(2) but state sought to support this ceiling of compensation on the ground that the legislature had been given under Article 31(2) the discretionary power to lay down the principles which should govern the determination of the amount to be given to the owner for the property acquired. Supreme Court held that such principles must ensure compensation must be just equivalent of what the owner has been deprived of.129 These four cases especially last two cases led the fourth amendment by which second proviso to the Article 31(2A) was added.

Article 31(2A) states “where a law does not provide for the transfer of the ownership or right to possession of any property to the state or to a corporation owned or controlled by the state, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property”. The net result of the fourth amendment to the Constitution was to nullify the decisions of the four cases discussed above.

127 AIR 1954 SC 92; See also Gullapalli Nageshwara Rao v. APSRTC, AIR 1953 SC 308.
128 AIR 1954 SC 170.
129 Supra note 121, at 264-266.
In Chiranjit Lal’s case \(^{130}\) it was held that Article 19(1) (f) would continue until the owner deprived of such property by authority of law under Article 31. If there was ‘deprivation’ of property under clause (1) of Article 31 by law, the citizen was not entitled to compensate at all, while he was entitled to compensation if property was acquired or requisitioned under clause (2) upon the point as to what is ‘deprivation’ there was conflict. In Kochunni’s \(^{131}\) case court made it clear that clause (1) dealt with deprivation of property other than acquisition or requisition as mentioned in the clause (2) and there could be no acquisition or requisition unless there was transfer of ownership or a right to possession to the state or its nominee.

2.10.1 Comparison of Clauses (1) & (2) of Article 31

Clause (1) and (2) are not the same. The former is the genus of which a species is referred in clause (2). In the clause (2) of Article 31 deprivation is restricted to ‘taking possession’ there is no such restriction and deprivation therein relation to ‘any mode of deprivation’. Clause (1) permits deprivation of whatever the kind except by authority of law. Destruction of property in order to prevent fire from spreading will come under clause (1) and not clause (2). Clause (1) may be termed in mere parlance with ‘police power of the state’. While clause (2) refers to the power of the eminent domain. Compensation is allowed only for the latter category and not for the former. Thus if under ‘the police power’ there is a regulation for letting accommodation under the defence of India rules to enable efficient prosecution of the war or the maintenance of essential supplies and services no compensation is liable while clause (2) is a restriction upon the powers of the legislature clause (1) is not later is a limitation on the executive while the former is a restrain on the legislature. Clause (1) cannot be challenged except on the ground of legislative competence. A law arising under the clause (2) to be valid must first fulfill the terms of clause (2) unless it is saved by clauses (4) and (6) or Articles 31-A and 31-B.\(^{132}\)

2.11 The word “Compensation” under Article 31(2)

Since the word ‘compensation’ occurred in Article 31(2), from the inauguration of Constitution, the courts had been faced with two critical questions.
(1) What was the significance of the word ‘compensation’? and (2) What should be the role of the courts in this respect? The developments in this regard could be discussed in three stages.

i) Judicial Interpretation of the word Compensation before 1955

The word 'compensation' in Article 31(2) was not qualified by any adjective like ‘just’ or ‘adequate’. Nevertheless, the courts took the position that such as omission was immaterial, and the word ‘compensation’ standing alone by itself meant ‘just’ and ‘equivalent’ compensation for the interest in the property acquired. This approach was adopted in a number of cases by the Supreme Court viz. (1) Dwarkanath Srinivas v. Solapur Spinning & Weaving Co. Ltd., (2) Saghir Ahmed v. State of Uttar Pradesh (3) State of West Bengal v. Subodh Gopal Bose (4) State of West Bengal v. Bela Banerjee The court emphasized that ‘compensation’ meant ‘just equivalent’ to the property acquired and it is a justifiable matter which the courts could adjudicate upon. The same principle was applied in Madras v. D. Namasivaya Mudaliar. A Madras law providing for payment of compensation for acquisition of lignite-bearing land on the basis of the land value on April 28, 1947, irrespective of the date of acquisition was held invalid. The court held that freezing land value with reference to a specified date denied the landowners increment in land value since the specified date till the date of acquisition and this did not amount to ‘compensation’ as envisaged in Article 31(2). Thus, before 1955, the Supreme Court had taken the position that a statute was liable to be struck down as infringing Article 31(2) on the ground that ‘compensation’ provided by it was inadequate and 'compensation' ought to be the just equivalent of the property of which a person was deprived hence, 'adequacy' of 'compensation' was a justiciable matter.

ii) Judicial Interpretation of the word Compensation from 1955 to 1971

Before fourth amendment to the constitution the Central Government became uneasy at the judicial insistence on payment of full market value for the property...

134 AIR 1954 SC 119; 1954 SCR 674.
135 AIR 1954 SC 119; 1954 SCR 675.
137 AIR 1954 SC 170; 1954 SCR 587.
acquired as it thought that it would place an onerous burden on the country's slender resources and would throw out of year the envisaged socio-economic programme involving reconstruction of property relations. Therefore, the Constitution (Fourth Amendment) Act, 1955, amended the Article 31(2) with a view to make the question of ‘adequacy’ of compensation as ‘non-justifiable’. The courts were now debarred from going into the question whether the quantum of compensation provided by a law for the property being acquired or requisitioned by the state was ‘adequate’ or not.

This amendment however failed to exclude the courts completely from the area of ‘compensation’. In 1961, in *Burrakur Coal Co. v. India*, a law acquiring coal-bearing land provided compensation only for the land but not for minerals therein. The Supreme Court refused to hold the law bad arguing that the question of non-payment of compensation for minerals referred to adequacy of compensation in which the court could not go. This pronouncement was in accord with what the fourth amendment was designed to envisage. But, thereafter, the judicial view underwent a change. In *Vajravelu v. Special Deputy Collector*, the Supreme Court took the view that the amended Article 31(2) still retained the word ‘compensation’ which meant that the meaning of the expression 'compensation' as given to it in *Bella Banerjee* case had been accepted. Therefore, a law provide for acquisition or requisition of property should provide for a ‘just compensation’ for what the owner was being deprived of. Although, under amended Article 31(2), the principles prescribed under legislation the 'just equivalent' compensation could not be questioned on the ground of inadequacy yet, if the principles laid down were not relevant to the value of the property acquired at the time of acquisition, then court could intervene and scrutinize the adequacy of compensation or validity of the principles. Thus, “if the compensation is illusory, or if the principles prescribed are irrelevant to assesses the value of the property at or about the time of its acquisition” then it could be said that the legislature had played a fraud on the Constitution. The compensation given might not be adequate, yet it should not be constitute as a fraud on the legislative power. The court thus asserted a power of judicial review on compensation in certain situations. In fact, however, under the new norm, compensation could be less than the market value of the property acquired. The new formula was somewhat different from, rather less rigorous than, the Bella Banerjee’s

139 AIR 1965 SC 190; (1964)6 SCR 936.
140 AIR 1961 SC 954.
view, but still the courts claimed a foothold in the area of compensation and did not completely vacated the field. In pursuance of this judicial approach, in 1967, the Supreme Court declared invalid the Metal Corporation of India (Acquisition of Undertaking) Act, 1965 in United of India v. Metal Corporation.\textsuperscript{141} As it did not provide for the compensation within the meaning of Article 31(2). The Metal Corporation was acquired on October 23\textsuperscript{rd}, 1965 with a view to providing for the full development of the leading deposits at zawar (Rajasthan) and for the expedient completion of the scheme undertaken by it. Under the Act, there are principles for valuation of its assets. (1) acquisition of unused equipments by the company which is in good condition were to be valued at the actual cost; (2) the used equipment was to be valued at the written down value determined in accordance with the principles contained in the Income Tax Act. The Supreme Court did not agree with the basis of cost price of the unused machinery when it was acquired was relevant to the fixing of compensation at the time of the nationalization of the company nor did the doctrine of written down value accepted in the Income Tax Act afford guidance for ascertaining compensation for the used machinery. Thus two principles regarding valuation and compensation were irrelevant to the fixation of the value of the machinery as on the date of acquisition. Hence the Act was held invalid as it not providing compensation within the meaning of Article 31(2).\textsuperscript{142} The law to justify itself had to provide for the payment of a ‘just equivalent’ of the land acquired or the principles laid down were relevant to fixation of compensation and was not arbitrary then, adequacy of compensation could not be questioned in any court.\textsuperscript{143}

The court however insisted that if the principles are relevant to the fixing of ‘compensation’, and are not ‘arbitrary’, then the ‘adequacy’ of the resultant product could not be questioned in a court. The judicial view appeared to have undergone some change in Gujarat v. Shantilal.\textsuperscript{144} Under the Bombay Town Planning Act,1955 a notification expressing intention of the government to acquire a plot of land was issued in 1942; the actual acquisition took place in 1957, and compensation was assessed with reference to its market value in 1942. This was challenged on the ground that the value of the land determined with reference to the date of declaration of the intension to make the scheme not on the date of actual acquisition hence, it

\textsuperscript{141} AIR 1965 SC 1017.
\textsuperscript{142} AIR 1967 SC 637; (1967)1 SCR 255.
\textsuperscript{143} Supra note 133 at 268-269.
\textsuperscript{144} AIR 1969 SC 634; (1969)1 SC 509.
could not be regarded as the ‘just equivalent’ of the property acquired. The Supreme Court upheld the Act because the principle for determining ‘compensation’ laid down therein could not be said to be ‘irrelevant’ to determination of ‘compensation’, nor could the ‘compensation' be regarded as ‘illusory’. This decision corrected the view expressed in the metal corporation case, that even after fourth amendment the expression “compensation” in Article 31(2) should continue to be interpreted as a ‘just equivalent’ of the property taken over by the state. While repudiating this extreme view, the principle was reiterated that the illusory character of the compensation or the irrelevance of the principles of valuation was still open to judicial review.

The dichotomy of the judicial views expressed in Metal Corporation and Shantilal case were that in the former case, the court laid emphasis on 'just equivalent' of the property acquired, and, therefore, if the law in question specified principles for fixing 'compensation' for the property acquired to achieve that object then the 'adequacy' of the 'compensation' was not challenged in a court of law. In Shantilal case, the court repudiated the idea of 'just equivalent'; it now had emphasis on 'compensation' and would intervene only if it was 'illusory', or if the principles specified for the purpose were 'irrelevant'. To appreciate Shantilal ruling, it is necessary to remember that it is a well-recognized principle of land acquisition that compensation is payable with reference to its value on the date of notification acquiring the land and not on the date the state takes actual possession thereof. Hence, it had to uphold the law in Shantilal even if it involved dilution of the Metal Corporation principle. The Shantilal case thus restored much greater freedom to the legislature to order compensation in the way it wanted for any property acquired. The scope of judicial review was restricted to the extreme situation of abuse of legislative power.

The full impact of this view is seen in the Bank Nationalisation case. The government acquired the undertaking of 14 named banks under Banking Companies (Acquisition and Transfer of Undertaking) Act 1969, The Act laid down the principles for fixation of compensation permitted the named banks to continue non-banking business and do even banking business outside India in those countries where

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146 Supra note 145, at 1485
government controlled banks were not permitted to operate. The Act was struck down by the Supreme Court has as an unconstitutional by a majority of 11 to 1 on the grounds that (i) the prohibition of banking business to the named banks was hostile discrimination forbidden by Article 14; (ii) the principles laid down for fixation of compensation were irrelevant and so what would be determined thereby was not compensation within the meaning of Article 31(2); and (iii) there was an indirect restriction upon the carrying on of non-banking business which is offered under Article 19(1)(f).

This decision criticized on the ground that it runs counter to what the fourth amendment to the Constitution is designed to achieve. There is substantial truth in another criticism that the Supreme Court has often been changing its view on compensation. It naturally results into many difficulties in enacting social economic legislations. But because of Articles 31-A & 31-B, socio economic legislation could not be questioned in court of law. Only few types of laws not falling within the purview of Articles 31-A & 31-B could be questioned under Article 31(2). So long as right to property as a fundamental right exists in the Constitution, it is the duty of the courts to apply it in a meaningful manner. The judgment now clearly shows that Article 19(1)(f) would apply to acquisition of property falling under Article 31(2). Therefore, an enquiry into the reasonableness of the ‘procedural provisions’ of an acquisition law will not be excluded. For instance ‘if a tribunal is authorized by the Act to determine compensation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to struck down under Article 19(1)(f).’

iii) Judicial Interpretation of the Word Compensation after 1971

The judicial view enunciated in the Bank Nationalization case was not palatable to the central government which thought that it run counter to what the fourth amendment of the Constitution was designed to achieve and would create difficulties in the way of government's socio-economic programme. Accordingly, Article 31(2) was reconstructed by twenty-fifth constitutional amendment in 1971. The major change effected in Article 31(2) in 1971 was that substitute the word ‘amount’ for the word ‘compensation’. The word ‘compensation’ had come to be

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148 Supra note 145 at 1487.
interpreted by the courts as just equivalent of the property acquired. But the word
‘amount’ had no such connotation. The purpose of the amendment therefore was to
dilute judicial review of the quantum of money offered by the government in lieu of
the property acquired by it. The amendment also clarified that the 'amount' may be
given wholly or partly otherwise than in cash. The task of fixing the amount, or laying
down the principles on which it was to be paid, must be discharged by the legislature
itself and this matter could not be left to the discretion of the executive. Thus, a legal
provision leaving it entirety to the government that requisition property at any rate
fixed by its discretion violated Article 31(2) as it failed to specify the principles on
which the amount was to be paid for the property acquired.

The effect of the change made in Article 31(2) by substitution of the word
'amount' for 'compensation' came to be considered by the Supreme Court in
Kesavananda Bharati v. Kerala. The broad effect of the multiple judicial opinions
delivered was broadly as follows: 'amount' was not the same concept as
'compensation', and the court would not go into the question of its adequacy.
Nevertheless, ‘amount’ could be ‘illusory’ or ‘arbitrary’ or ‘grossly low’ which would
shock not only the judicial conscience but the conscience of prudent man. Though the
'amount' need not be the market value of the property acquired or requisitioned, yet it
should have some reasonable relationship with the value of such property. On this
view, a restricted judicial review over the ‘amount’ payable for property acquired was
is possible.

2.12 The Concept of Public Purpose Under Article 31(2)

Under Article 31(2), the state could acquire or requisition of property for a
public purpose only. Therefore, a legislature had no power “to acquire property for a
private-purpose”. By virtue of Entry 42, List III of Seventh Schedule, a legislature
could acquire property even without a public purpose, but "Article 31(2) would be an
obstacle for such law. That obstacle would disappear if the law fell within the
compass of Article 31A.

Since the existence of ‘public purpose’ was an essential condition for
acquiring or requisitioning of property under Article 31(2), a law enacted for the
‘purpose’, but having no ‘public purpose’ to support it, was unconstitutional. Whether

150 AIR 1973 SC 1461
151 Supra note 155, at 1487.
a public purpose existed or not was justiciable matter as stated by the Supreme Court in *State of Bombay v. R. S. Nanji*, "prima facie the Government is the best judge as to whether ‘public purpose’ is served by issuing a requisition order, but it is not the sole judge. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a ‘public purpose’. The courts however adopted a very liberal attitude on the question of public purpose, and it was rare indeed for a court to hold that an acquisition of land was not for public purpose. The courts showed a good deal of deference on this matter to the legislative and executive determination and judgment, but, nevertheless, ultimate power vested in courts. Accordingly, a provision excluding the jurisdiction of the courts from this area, and making decisions of either the executive or the legislature as to ‘public purpose’ final and conclusive was held ultra vires under Article 31(2).

Section 6(3) of the Land Acquisition Act, 1894, provides that the declaration by the State Government the existence of public purpose for land acquisition “shall be conclusive evidence that the land is needed for public purpose.” This provision would have been ultra vires Article 31(2) had it not been protected under Article 31(5)(a). This provision completely barred judicial review of public purpose of an acquisition under the Act except when it is ‘colourable’. Neither the meaning nor the existence of public purpose under this Act was justifiable. The finding of the government under section 6(3) was conclusive not only with regard to public purpose but also regarding its need and government’s satisfaction thereon. However, where acquisition would not serve any purpose, or where it was for a ‘private purpose’, it could be challenged as being ‘colourable’.

### 2.12.1 The Ideology of Public Purpose

Under Article 31(2), the state could acquire or requisition property for public purpose only. The concept of ‘public purpose’ connotes public welfare. With the onward march of the concept of socio-economic welfare of the people, notions as to the scope of general interest of the community are fast changing and expanding. The concept of ‘public interest’ is thus elastic and not static, and varies with time and

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152 AIR 1956 SC 294; 1956 SCR 18
153 Supra note 135, at 1486-88.
needs of the society. Whatever furthers the general interest of the community as opposed to particular interest of the individuals, may be regarded as public purpose.

Whether a public purpose existed or not was a justiciable matter as stated by Supreme Court in *State of Bombay v. Nanji*.\(^{154}\) A provision excluding the jurisdiction of the courts from this area, and making decisions of either the executive or the legislature as to the public purpose final and conclusive was held ultravires Article 13(2).\(^{155}\)

A few example of what held judiciary as ‘public purpose’ for which land could validly be acquired under Article 31(2) are:

i. Finding accommodation for an individual having no housing accommodation.\(^{156}\)

ii. Housing a staff member of a foreign consulate; \(^{157}\)

iii. Accommodating an employee of a road transport corporation - a statutory body; \(^{158}\)

iv. Accommodating a government servant; \(^{159}\)

v. Nationalization of land; \(^{160}\)

vi. Agrarian reform abolishing intermediaries between government and tillers of the soil; \(^{161}\)

vii. Establishing an institution of technical education; \(^{162}\)

viii. Constructing houses for industrial labour by a company; \(^{163}\)

ix. Promoting co-operative housing societies in Delhi to relieve housing shortage; \(^{164}\)

x. Planned development of Delhi; \(^{165}\)

xi. Development of housing, shopping and industrial sites; \(^{166}\)

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\(^{154}\) AIR 1956 SC 294; 1956 SCR 18.

\(^{155}\) *Supra* note 135, at 1491-92.

\(^{156}\) *Supra* note 135, at 1493.


\(^{160}\) *H.A. Sarkies v. District Magistrate*, AIR 1966 All 458.


\(^{162}\) *Anil Kumar v. Deputy Commissioner*, AIR 1960 SC 1230.


\(^{165}\) *Bhagwat Dayal v. Union of India*, AIR 1959 Punj 479.

\(^{166}\) *Ratni Devi v. Chief Commissioner, Delhi*, AIR 1975 SC 1699.
2.12.2 President's Consideration for Laws of Acquisition

In addition to the above-mentioned conditions imposed by Article 31(2), a law made by a state legislature, and falling within the purview of Article 31(2), has to fulfill yet another condition viz. it was not to be effective until it had been reserved for the President's consideration and had received his assent.\textsuperscript{167} This was the effect of Article 31(3). The purpose underlying in Article 31(3) was to bring the state legislation providing for acquisition or requisition property under the central government control. So as to ensure that no unjust expropriated legislation enacted by a state.

2.12.3 Article 31 Clause (4)

Clauses 4 and 6 of Article 31 is an exception to Article 31(2). The present clause (4) deals with pending Bills if, a state legislates (not union parliament) relating to acquisition of property at the time of the commencement of the Constitution. Once such a Bill is passed by the legislature and assented by the president it is immune from the “compensation clause” of Article 31(2). A law covered by Article 31 clause 4 will be considered valid even though it does not comply with the requirement of adequacy of compensation.\textsuperscript{168}

2.12.4 Article 31 Clause (5)

This clause provides as an exception to the application of clause (2) of Article 31. Thus Article 31(2) cannot apply to:-

1. the provisions of any existing law other than a law to which Article 31(1) applies. The latter stipulates that laws enacted more than eighteen months before the commencement of the Constitution shall not be affected by Article 31(2).
2. (a) the provisions of any future statute of taxation or penalty; or
   (b) law for promotion of public health or prevention of danger to life or property; or
   (c) law which is the result of agreement between the government of India and any other country with reference to evacuee property.

\textsuperscript{167} Ramchandra Maroti v. Collector, AIR 1975 Bom. 281.
\textsuperscript{168} State of Kerala v. Mother Provincial, AIR 1970 SC 2079.
In respect of the above categories of laws, courts shall have no power to examine their validity on the ground of want of provision for compensation. In *Kamshwer Singh v. State of Bihar* court held that Article 31(4) does not debar the court from questioning the law on the ground of public purpose.\(^{169}\)

### 2.12.5 Article 31 Clause (6)

This clause provides that if a pre-constitution statute has been enacted within 18 months before the Constitution came into force (before 26\(^{th}\) Jan 1950) and it was submitted for the President’s certification by 26\(^{th}\) Jan 1950, and was so certified, such statute cannot be questioned in any court on the ground of contravention of adequacy of compensation under clause (2) of Article 31. It will be seen that clause (4) of Article 31 applied to the bills pending in the state legislature at the time of the commencement of the Constitution while clause (6) pertains the laws enacted by the state within eighteen months from the commencement of the Constitution.\(^{170}\)

### 2.13 Interpretation of Article 31 and Articles 14 and 19(1)(f) of the Constitution

Article 31(2) did not remove the bar of Article 14. A law could be challenged on the basis of discrimination in the matter of payment of compensation. Article 31(2) precluded the challenge on adequacy of amount but not on discrimination, if any, law made discrimination between owners of land under like circumstances and conditions. For example, a person whose land was acquired for construction of a hospital or a school could not be paid less amount than one whose land was acquired for any other lucrative project. Classification could not be made for the purpose of payment of compensation on the basis of the public purpose for which the land was acquired. As regards the owner, he lost his land and it was immaterial for him whether his land was acquired for one or the other public purpose.

The question concerning the inter-relationship between Articles 19(1)(f) and 31 created difficulties and there were several changes in the judicial view in this area. Initially, the judicial view was that Article 19(1)(f) would not apply to a law ‘depriving’, as distinguished from, ‘restricting’ a citizen of his property and the

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\(^{170}\) *Ibid* at 922.
validity of law depriving a person from his property could be adjudged only under Article 31 and not under Article 19(1)(f). If an acquisition law was valid under Article 31(2), the acquisition of property would be justified under the law, and once the property acquired there was no property left in respect of which Article 19(1)(f) could apply.¹⁷¹

This view underwent a change in *KK Kockunni v. State of Madras*.¹⁷² The factual situation was that the petitioner was the holder of the Kavalappara Sthanam having extensive properties attached to it. These properties constituted an impartial estate in which the members of the family had no interest. The Madras legislature enacted a law declaring that sthanam property having certain characteristics would be deemed to be tarwad property. The validity of the Act was challenged under Article 19(1)(f). The Supreme Court held that the Act by treating sthanam property, by a fiction of law, as tarwad property, deprived the sthanes of their properties without compensation.

The law was thus expropriator in character and on its face stamped with unreasonableness also, no public interest was served by the law. Thus, it was held bad under Article 19(1)(f) and was not saved by Article 19(5). The court explained the reason to apply Article 19(1)(f) to ‘deprivation’ of property falling under Article 31(1) as follows: The fourth amendment to the Article 31(2) in 1955 had changed the position. Before this amendment, Article 31(1) and (2) were regarded as not mutually exclusive in scope and content, but as dealing with the same subject-matter, viz., acquisition or taking possession of property referred to in Article 31(2). On this view, Article 31 was a self-contained provision providing for a subject different from that dealt under Article 19 and, therefore, to harmonise the Articles 19 and 31, and to avoid overlapping between these two provisions, Article 19(1)(f) could not be applied to the ‘deprivation’ of property but such an analogy could not be drawn after the fourth amendment. Because Article 31(1) and 31(2) came to deal with two different concepts: Article 31(1) dealt with ‘deprivation’ of property by authority of law, and Article 31(2) read with Article 31(2)(A) which dealt with ‘acquisition and requisition’ of property. The law depriving a person of his property, as envisaged by Article

¹⁷¹ Supra note 169, at 926.
¹⁷² AIR 1960 SC 1080; (1960)3 SCR 887.
31(1), should be a ‘valid’ law which meant that it should not infringe any other fundamental right including Article 19(1)(f).

The Kochunni ruling meant that the legislative power to deprive a person of his property came to be controlled by Article 19(1)(f), and the reasonableness of the law could be adjudged under Article 19(5). ‘Deprivation’ does affect the right to hold, acquire and possession of property. The biggest advantage of the Article 19(1)(f) was that procedural norms of a law depriving a person of his property could be adjudged for their reasonableness, and the law could be declared as void if it lacked proper procedural safeguards against the exercise of administrative power.

The Supreme Court sought to away with this anomaly in the celebrated Bank Nationalization case. Overruling its previous pronouncements, the court held that Article 19(1)(f) would apply to the acquisition of property falling under Article 31(2) and therefore, an “enquiry into the reasonableness of the procedural provisions” of an acquisition law was not excluded. Thus, “if a tribunal is authorized by the Act to determine compensation of property compulsorily acquired without hearing the owner, the Act would be liable to be struck down under Article 19(1)(f).” Thus, an acquisition law had to pass the test of procedural reasonableness. The challenge to an acquisition law under Article 19(1)(f) was limited to the question of procedural unreasonableness. It was the culmination of the trend initiated by the court in Kochunni case but, this view could not run in very long. By the twenty-fifth constitutional amendment, a new clause, Article 31(2-A), was added to say that nothing in the Article 19(1)(f) “shall affect any law as is referred to in Article 31(2).” The idea was to ensure that a law enacted to, acquire any property by the Government would not be tested with reference to Article 19(1)(f). A law of acquisition was only to be adjudged under Article 31(2) but Article 19(1)(f) could still be invoked in case of deprivation.

2.14 Forty-Fourth Amendment

Fundamental right to property we had been studied as a fore front of constitutional controversy for over twenty five years. Despite of number of amendments since 1951, narrowing its scope, controversy did not subside.

\[173\] Supra note 135, at 1491-92
\[174\] Supra note 135, at 1493-94.
Fundamental right to property came in the way of socio-economic reforms. It was therefore, resolved by the Janata Government by the Constitutional forty fourth amendment.

The Constitution (forty fourth amendment) Bill was introduced by the law Minister Shanty Bhushan, inter-alias, for the above purpose in the house of the people on 15th May 1968. It would however be ensured that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice similarly right of compensation at the rate of market value for the property acquired which is within the ceiling limit and under his personal cultivation (second proviso to Article 31-A).

The Bill sought to achieve the objectives by making following amendments in the Constitution. First, deletion of Article 19(1)(f) which guaranteed to every citizen right to acquire, hold and dispose of property. Second, addition of clause(1-A) in Article 30, viz., in making law providing for compulsory acquisition of property of any educational institution established and administered by a minority, referred in clause (1) of Article 30, the state shall ensure that the amount fixed or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. Third, deletion of sub heading “right to property”. Fourth, deletion of Article 31. Fifth, consequential changes in Articles 31-A and 31-C. Sixth, insertion of chapter IV in part XII with the heading “right to property”. The chapter contained Article 300A which provides that “No person shall be deprived of his property saves by the authority of law”. Seventh, omission of entries 87,92 and 130 in the ninth schedule.\footnote{Supra note 135, at 1495.}

The debate:

The main debate on the Bill had taken place is the house of people on 7th, 8th, 9th and 25th August 1978. The first speaker was Shanti Bhushan, he said that right to property was conceived as fundamental, but in the context of India consistency of vast majority of poor people and a few who really possessed extensive properties, to equate the right to property, there was some justification to introduce a provision for putting a curb on the right to property because it came in the way of some scheme
conceived as good for the people, and other fundamental right also got curbed to that extent in the same way.

Ram Jethmalani wanted the retention of Article 19(1)(f) because, its deletion would do disservice to the cause of democracy, freedom and the rule of law. But a provision be made that all private property would be subject to the paramount social good. A provision like Article 31(2) authorizing acquisition of property for the public purpose must be retained. On the contrary to this Narendra P. Nathwani said that the new provision guaranteeing right to property should specifically provide for depreciation of property for a public purpose. Sharma added that since the right to property had been removed form part III and put it as an ordinary right, India now could be proclaimed as “the socialist republic of India”.

While the debate welcoming the amendments P.K. Deo was opposes to the amendment of Article 19(1)(f) as the property was necessary for the subsistence and well-being of the people. There would not be any rational dispute on this except as to the quantum and the kind of property a person should be allowed to hold. There was no democracy in the world in which the right to property was not recognized. C.K. Chandrappan criticized the Deo’s observation he, said that it was clear from the history of human development that for the times immemorial human kind lived without property, private property was not something which was born along with the human being but it was an invention by the human for exploiting others.

The members should be happy that the proposed amendment would put an end to exploitation. This would add to human happiness because the right would no more be used by the judiciary to strike at the very roots of the legislation by which society wanted to advance and struggle against feudalism and monopoly. Ram Jethmalani accepted the thesis that all private property must yield to paramount public purpose. Article 31(2) was the bulwark of many anti-social elements because under it the even poor man could say that the state would not take his property unless and until he was paid market value of the property which is acquired as a compensation. That is why this Article must go.

Referring to Jethmalani’s observations, Bhushan said that “he heard for the first time that Article 19(1) (f) was a charter of the poor”. He believed that when there

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was clash between the rich and the poor, the fundamental rights part was a charter of the rich against the encroachments of the poor. Most of the poor in India did not have any property, and few who possessed did not need Article 19(1)(f) to preserve it, because their right to elect their government was a full guarantee so far as their property was concerned. Bhushan submitted that this Article was not necessary for the poor masses to protect their interest.\textsuperscript{177}

Bhushan, explained the difference between the legal right and fundamental right. The latter could be exercised against the elected legislatures so that it might impose a restriction on the legislative power of the state. On the question of the acceptance of due process or procedure established by law, Bhushan said that it would amount to making the right to property as fundamental right from the back door. In both the cases the judiciary might frustrate the legislative will; he further explained that the question of payment of market value of the property acquired would not arise out of the language used in the draft Article. He also said that the legislature would not acquire property for private purpose but for public purpose.\textsuperscript{178} After the reply of Shanti Bhushan, the house accepted the amendments in property rights as they were introduced by him. This amendments were then discussed in the council of the states. K.B. Asthana, agreeing with amendments he said that as a result of these amendments, compensation on the principle of \textit{quid pro quo} would not be payable. Now a law relating to acquisition of property could not be challenged on the ground that it went against the constitutional scheme which provided for quid pro quo compensation. It would for parliament or state legislatures to pass such a law. They might make any provision for compensation or not even provide for it; it would not be challengeable. Nonetheless law should be fair; for example in case of the rich, it might give one tenth of him property’s value and in the case of poor the whole of it.

Replying on the debate on 31 August, Shanti Bhushan reiterated what he said on Article 300-A (especially on compensation) in the house of the people. In this opinion no scope of the backdoor entry of the market value of compensation in view of the language of this Article. The American concept of due process of law or the expression “procedure established by law” used in Art 21 were not accepted in Article 300-A because that would have amounted to making the constitutional right to

\textsuperscript{177} Supra note 176, at 242-243.  
\textsuperscript{178} Supra note 176, at 244-245.
property as fundamental right from the back door; Again the question of payment of equivalent compensation for the property acquired would not arise in the view of the language used in the Article, and the legislature would acquire property only for a public purpose. Again there would be no danger to small farmers as Article 31-A was being retained. The emphasis was that the popularly elected legislature be trusted. The intention was to ensure that passage of a legislative enactments to justify any kind of deprivation.\textsuperscript{179}

\subsection*{2.15 Right to Property Under Article 300A}

Since property right has been brought outside the preview of part III of the Constitution, the aggrieved individual would not be competent to move to Supreme Court under Article 32, for any violation of Art 300A. This remedy would be under Article 226 or civil court.\textsuperscript{180} 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 reappeared as new Article 300-A 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. In all democratic countries, one basic principle is recognized, viz., that the government cannot interfere with property rights of an individual without authority of law (a valid law). Fact that rights in property can be curtailed, abridged or modified only by exercising its legislative power. An executive order depriving a person of his property, without being backed by law, is not constitutionally valid.\textsuperscript{181}

The word ‘law’ in Article 300-A means a valid law. Such a law will therefore be subjected to other provisions of the Constitution, e.g., Articles 14, 19(l)(g) and 301. Ordinarily, the word ‘law’ in Article 300-A 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 a force of law. Can it be said, content of a law will be solely within the legislative discretion, and legislature can make any law it likes subject to Article 14 and other constitutional provisions.\textsuperscript{182} In \textit{Jilubhai Nanbhai Khachar v. State of Gujarat}\textsuperscript{183} the Supreme Court has stated that the word ‘law’ used in Article

\textsuperscript{179} \textit{Supra} note 176, at 246-48.  
\textsuperscript{180} \textit{Supra} note 176, at 249.  
\textsuperscript{181} Dr. D.D. Basu, ‘\textit{Shorter Constitution of India}’, (Wadhwa & Comp. Law Publisher, New Delhi, 17\textsuperscript{th} ed.) 1995, p 1265.  
\textsuperscript{182} M.P. Jain, ‘\textit{Indian Constitutional Law}’, (Wadhwa and Company, Nagpur, vol. 2, 5\textsuperscript{th} ed., 2003), p 1521.  
\textsuperscript{183} \textit{AIR} 1995 SC 142
300-A must be Act of parliament or state legislature, rule or statutory order having force of law.

After forty fourth amendment, does the Constitutional obligation to pay compensation survive?, because there is no express provision in the Constitution (outside the two cases specified in Article 30(1-A) and the second proviso to the Article 31A(1) requiring the state to pay compensation to an expropriated owner). The effect of the repeal of Article 31(2) would be that the right to compensation would cease to be a fundamental and would be a mere legal right.\textsuperscript{184} The ostensible purpose of repealing Article 31, specially Article 31(2), is to make free the legislature from the restraint of paying compensation for property acquired. But doubts have been raised whether this purpose can be achieved. 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” of the power of eminent domain therefore, of entry 42, List III of the Constitution.\textsuperscript{185}

The word property used under Article 300A must understood in the context of government has sovereign power over the property within its jurisdiction. Deprivation connotes different concept, Article 300A gets attracted to an acquisition or taking possession of private property, by necessary implication of public purpose in accordance with the law made by parliament or state legislature. It is inherent in every sovereign state to exercise its eminent domain power in expropriating private property without owner’s consent.\textsuperscript{186}

\textbf{2.15.1 Requisition of Property for public purpose}

There is basic fundamental distinction recognized by the law between requisition and acquisition itself in the entry 42 of list III of the seventh schedule marks a distinction between acquisition and requisition of property. The original Article 31clause (2) of the Constitution also recognized the distinction between compulsory acquisition and requisition of property. Acquisition means acquiring by title of the expropriated owner whatever the right and extent of the title may be. The right which was vested with the original holder passes to the acquirer leaving nothing

\textsuperscript{184} Supra note 181, at 1522
\textsuperscript{186} Supra note 181, at 196.
for the former. But the concept of requisition involves merely taking of “domain or control over the property without acquiring the rights of ownership” and must be by its very nature of temporary duration. Except public purpose limitation, no other limitation was imposed for acquisition of property.\textsuperscript{187}

After the forty fourth amendment, the crucial question is that now the concept of socialist India is wearing then, will the Supreme Court, is a creative bid, read in 300-A a right to compensation for acquisition/deprivation of private property? There is no gain saying the fact that for growth of wealth and capital is absolutely essential. A strategy which the Supreme Court can adopt for this purpose may be to link Article 300-A with Article 14 and to interpret the word ‘law’ in Article 300-A in the same sense of ‘law’ in Articles 21-22.\textsuperscript{188} However, it should be underlined that Article 21 does not apply to the property area nevertheless, the court can interpret the word Law in Article 300-A 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. But this needs judicial creativity of a high order, such as that displayed by the court in \textit{Menaka Gandhi’s} case.\textsuperscript{189} That there is a possibility that Article 300-A may be interpreted by the court in a creative manner to extend some protection against an extremely harsh law is illustrated by the recent Bombay High Court decision in \textit{Basantibai v. State of Maharashtra},\textsuperscript{189 A} A State of Maharashtra Housing and Development Act, 1976, provides the basis for determination of ‘amount’ for acquisition of land within municipal limits. The law was not just and fair insofar as it provided less compensation for the acquisition of property than provided under the Land Acquisition Act, 1894. The High Court assessed the validity of this portion of the Act. In the first place, the court held that the Act did not effectuate the directive principle under Article 39(b), and so could not claim the protection of Article 31-C against Article 14. In the second place, the court read the dual requirements of public purpose and compensation in Article 300A is inherent in the concept of eminent domain. Under Article 300A, the legislature cannot sanction deprivation of property for a private purpose. The court said: "The entire democratic structure of this country is based upon the concept of 'rule of law' and it is

\textsuperscript{187} \textit{Supra} note 181, at 211.
\textsuperscript{188} \textit{Supra} note 181, at 212.
\textsuperscript{189} \textit{Supra} note 182, at 1075-76.
\textsuperscript{189 A} AIR 1986 SC 1466; 1986 SCR (1) 707
not possible to imagine that the legislation can provide for compulsory acquisition of 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 legislature to deprive a citizen of his property by merely passing a law without complying with the requirement of public purpose and compensation.

In the third place, the provisions of the law providing for compensation were discriminatory as it provided less for urban land and more for rural land which could not be substantiated on valid grounds. The law was thus invalid under Article 14 and also under Article 300-A. The court said that really speaking, the value of land in the developed town within the municipal area could have no comparison with the value of the land in rural area and it was difficult to understand why more compensation, including solatium, was provided for rural lands and the same was denied for urban lands. In the fourth place, this was quite a remarkable assertion on the part of the court, even assuming that the law was protected from challenge against Articles 14 and 19. After Maneka Gandhi case, the expression “authority of law” must mean “just, fair and reasonable” law. Procedure prescribed by the law must be fair and reasonable procedure independently of the protection guaranteed under Article 14 and 19. The legislation providing for deprivation of property under Article 300A must be “just, fair and reasonable”. The impugned provisions did not fulfill 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 300-A. Even if protected from challenge against Article 14, 19 and 31 because of Article 31-C, it could still be struck down as being neither just or fair nor reasonable.

This pronouncement lays down several significant propositions. Firstly, the dual requirements of public purpose and compensation inherent in the concept of eminent domain are to be read in Article 300A itself. Secondly, 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. Thirdly, Article 300-A envisages a “just, fair and reasonable” law and not any law. Fourthly, even if a law is protected from challenge against Article 14, 19 and 31 because of Article 31-C, it can still be invalidated because of its not
being “just, fair and reasonable” these qualities are derivable not only from Article 14 but also from Article 300A after Maneka approach.\textsuperscript{190}

In \textit{Jilubhai Nanbhai Khachar vs State of Gujarat} \textsuperscript{191} the court has 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 fixed or amount determined is not an adequate. But at the same time the amount fixed must not be illusory. The principles laid to determine the amount must be relevant to determine the amount. 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 amount is still necessary; it need not be adequate compensation but at the time it, cannot be illusory. Adequate compensation for property acquired seems to be a dead concept except under land acquisition statute, or such other similar Acts.\textsuperscript{192}

It is however left to the legislature to determine on what terms and conditions can property be acquired by the state for public purpose. The forty fourth amendment makes the legislature supreme in this respect and legislative amendments are not subject to judicial review except on the ground of violation of any other fundamental right, for example, the right to equality in Article 14 or on the ground of legislative competency. It may thus appear that the forty fourth amendment has not made any substantive alternation in so far as right to property is concerned, even before this amendment the right to compensation had been taken away by the 25\textsuperscript{th} amendment, the requirement of public purpose is still implied in Article 300-A. The effect transference of the right to property form part III of the Constitution is that direct enforceability of this right by the Supreme Court (Article 32) is no more. The High Courts are empowered to issue writs not only for enforcement of fundamental rights but ‘for any other purpose.’\textsuperscript{193}

Forty fourth amendment has been prima face made the right to property firmly and comprehensively secured under the Constitution than before, states will

\textsuperscript{190} Supra note 182, at 1523.
\textsuperscript{191} AIR 1984 BOM 366.
\textsuperscript{192} AIR 1995 SC 142.
\textsuperscript{193} M.P.Jain, ‘\textit{Indian Constitutional Law}’, (Lexis News Butterworth’s, Wadhwa Nagpur Publication, Haryana, vol. 2, 6\textsuperscript{th} ed., 2010), at 1865.
not now able to acquire private property without showing public purpose and without paying compensation on market value of the property. In other words, the courts in India will now be free to give some quality and extent of protection to private property as the courts in United States given under due process clause. Because of Entry 42 of the concurrent list, both parliament and state legislature have power to legislate on acquisition or requisition of property. The law must be a valid law and no law of acquiring a private property can be valid unless for a public purpose and payment of compensation. The 44th amendment has made the property right as a human right and constitutional right.

2.15.2 Principles laid down under Article 300-A

1. The Constitution (after 44th amendment) does not expressly confer the right to acquire, hold and dispose of property. But if a person has acquired and hold the property he cannot be deprived of it without the authority of law. A person cannot be deprived of his property by an executive action or by any other similar device.

2. The protection given to private property under Article 300-A is available to all persons who hold property in India, citizens as well as aliens and natural persons as well as legal persons such as corporate bodies etc.

3. The law authorizing deprivation of property must be passed by the proper authority i.e. by parliament or state legislature.\(^{194}\)

4. The law empowering deprivation of property must be consistent with all the provisions of the constitution. This means (a) the law must be passed by a competent legislature, and (b) it must not affect adversely any of the rights, fundamental or constitutional – in a manner not warranted by the Constitution. In this behalf, the validity of such law will be examined in the light of the earlier decisions of the Supreme Court.

5. The law authorizing deprivation of property must be fair and just. The approach of the Supreme Court in Maneka Gandhi’s case the term ‘law’ in Article 21 will be the guiding star to the Supreme Court for determining the validity of a law under Article 300A.

6. Such legislation may be challenged as violative of Articles 14, 19, 26 or 30 etc. or other appropriate fundamental rights. It deserves to be noted in this behalf that Article 31-C which is the present form was inserted by twenty fifth amendment specifically confers superiority on directive principles of state policy over fundamental rights conferred by Articles 14, 19 and 31.

Now, right to property is included in Article 300 A which is not mentioned in Article 31-C. It is submitted that the right to property will have greater protection than what it would have had, it remained in Article 31. Hence it is submitted that the deletion of Article 31 and insertion of Article 300A would make substantial difference as regards the constitutional promotion to right to property. Article 300A is free from the dominance of the ‘Directive principles of state policy and it would afford greater protection to the right to property than what would have been in Article 31.195

Although after the forty fourth amendment, might be property is no more a fundamental right, certain property rights still retain the character of or relation to, fundamental rights. Eg.

a. Article 30(1)(a) provides that any compulsory acquisition of property belonging to an educational institution of a religious or a linguistic minority, the compensation payable shall be such as would not restrict or abrogate the right guaranteed to that minority under Article 30(1)

b. Article 31 protects laws providing for acquisition of states, taking over management etc.

c. Under the second proviso to the Article 31-A, a person holding land within the ceiling limit and cultivate it personally he entitles to the market value as compensation on its acquisition.

d. Article 31-B make valid certain Acts and regulations pertaining to land reforms which are listed in the ninth schedule, notwithstanding any contrary judgment, decree order of any court.

e. Article 31-C provides protection to the laws giving effect to certain directive principles.196

2.16 Recent Developments

In *P.T.Munichikkanna Reddy v. Revamma*, the Supreme Court of India has held that the right to property is not just a statutory right but is also a human right. The Supreme Court appears to have approved the decision of the European Court of Human Rights in *J.A.Pye (Oxford Ltd) v. UK* where the ECHR took the concept of adverse possession very unkindly. In *P.T.Munichikkanna Reddy* the Supreme Court held that the right of property is now considered to be not only a constitutional or statutory right but also a human right. Declaration of the Rights of Man and of the Citizen 1789 enunciates right to property 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. Moreover Universal Declaration of Human Rights 1948 under Section 17(i) and (ii) also recognizes right to property: "17(i) Everyone has the right to own property alone as well as in association with others, (ii) No-one shall be arbitrarily deprived of his property." Human rights have been historically considered in the realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multi-faceted dimension.

In *Karnataka State Financial Corporation v. N. Narasimhaiah*, it has been held that in the absence of any provision either expressly or by necessary implication depriving a person of his right, the Court shall not construe a provision leaning in favour of such deprivation, since right to property is also a human right. Developing further in *Hemaji Waghaji Jat v. Bhikabhai Khengerbhai Harijan* and looking at the position in other countries, the Supreme Court held that the law of adverse possession as irrational.

In *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals*, the Supreme Court has held that the right to property is now held to be not only a constitutional right but also a human right. There the Supreme Court has followed the law laid down in *P.T.Munichikkanna Reddy* and reiterated that property

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197 (2007) 6 SCC 59
198 AIR 2007 SC 1753; (2007) 6 SCC 59
199 2003(5) Kar LJ 164
200 AIR 2008 SC 1797; (2008) 5 SCC 176
201 (2007) 8 SCC 705
rights are also incorporated within the definition of human rights. In *Lachchman Dass v. Jagatram*,\(^{202}\) the Supreme Court reiterated that right to property is a human right.

India is a signatory to various conventions on human rights. Article 51 (c) of the Constitution requires the state (including the Judiciary) to foster respect for international law and treats obligations in the dealings of people with one another. Therefore, it may be argued that the right to property being a part of human rights as embodied in Article 21. Any legislation for depriving such right would require the state to provide for full compensation in the event of deprivation of property. Furthermore, even if such law is placed under the IX\(^{th}\) Schedule and protected by Article 31 B. For example Land Acquisition Act, 1894. In *I.R.Coelho v. State of Tamil Nadu*\(^{203}\) the Apex Court held that even though an Act is placed under the IX\(^{th}\) Schedule by a constitutional amendment, it would be open to challenge on the ground that it destroys or takes away or abrogates the basic structure of the Constitution.

The Court held that the justification for conferring protection (not blanket protection) on the IX\(^{th}\) Schedule shall be a matter of adjudication, examining the nature and extent of infraction of fundamental right by a statute and such statute sought to be constitutionally protected on the touchstone of the basic structure doctrine as reflected in Article 21 read with Articles 14 and 19. The Court held that Articles 14, 19 and 21 are the basic structure of the Constitution therefore, basic essence of the right cannot be taken away. Essence of the human right (which according to the recent judgments include property rights) would necessarily mean full compensation for acquisition of property right. If the laws affects the basic structure could not be protected even though included in the IX\(^{th}\) Schedule.

In *Kesavananda Bharati* case the Supreme Court held that if a law held to be violative of fundamental rights if it is incorporated in the IX\(^{th}\) shall be open to challenge on the ground that it destroys or damages the basic structure of the constitution. The Court further held\(^{204}\) that, constitutional amendments are made by the parliament are subjected to limitation and if the question of limitation is to be decided by the parliament itself, parliament enacts the impugned amendment Act and gives complete immunity to it. It would disturb the checks and balances on the Constitution. The authority to enact law and decides legality of it cannot be vest in the

\(^{202}\) AIR 2007 SC 2458; (2007) 8 SCC 705.

\(^{203}\) 2007(2) SCR 980; 2007(10) SCC 448; 2007(3) SCC 349.

\(^{204}\) (2007) 10 SCC 448.
same organ. The basic structure doctrine requires the state to justify the degree of invasion on fundamental rights. Parliament is presumed to legislate compatibly with fundamental rights. The greater the invasion, the greater is the need for justification. The power to grant immunity on a fictional basis would nullify the basic structure doctrine. It was further held that the Court is bound by all the provisions of the Constitution and also the basic structure doctrine.  

Thus, placing any Act in the IXth Schedule also by constitutional amendment would not save the Act if it violates the part of the Constitution. For example a law does not provide full compensation for depriving the right to property could not be saved even by constitutional amendment placed under ninth schedule. Now property right has the status of human right which would be a basic structure of the Constitution. Since according to the doctrine of basic features, human rights (including property rights as now envisaged) are part of the basic structure under Article 21 read with Articles 14 and 19. Depriving a person of his human right (including property right) by the State may require the State to pay full compensation (market value). Thus, all avenues of depriving a citizen of his property without full compensation would be beyond legislative capacity.

If judicial dictum of the Supreme Court were to develop this trend of right to property is part of human rights and therefore any taking over or acquisition would require full indemnity or compensation in the light of Article 21 read with Articles 14 and 19. It would surely be a wonderful accomplishment. The necessary corollary of this would be that the right to compensation for acquisition of property would be a human right and therefore encompassed under the basic structure of the Constitution. The wheel would surely have turned more than full circle since the entire tussle between the legislature and the Judiciary began immediately after the commencement of the Constitution with regard to refusal of state to pay full compensation for acquisition of property, which may at that time have been necessary but it is totally unjustified.

Under Article 30(1-A) making any law providing for the compulsory acquisition of any property of a minority educational institution, the state is required to ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed to

\[205\] _UP, SEB v. Hari, AIR 1979 SC 65._
establish and administer educational institutions of their choice. Under Article 26 since the right of religious denominations or any section thereof to own and acquire moveable and immoveable property is guaranteed subject to public order, morality and health. That is submitted that any law of acquisition in order to apply to a religious denomination, apart from full compensation, must also satisfy the test of being necessary either for public order, morality and health. Recently Supreme Court in various cases determined the property right is not only statutory and constitutional right, it is also a human right of an individual. Therefore there is no disproportionate interference by the state in acquiring property of an individual hence compensation should be reasonable.

2.17 Conclusion
The original Constitution of 1950 had safeguarded the right to property, recognized the same under part the III of the Constitution. However, soon after the Constitution of India came into force a long drawn out battle commenced between the persons who were sought to be deprived of their property and the legislature and executive until its final culmination. Ultimately by the forty fourth constitutional amendment right to property as originally envisaged by the 1950 Constitution was deleted and only a small fraction of the right was retained in Article 300-A as a constitutional right. The whole genesis of the dispute over the right to property was the unwillingness of the legislature and executive to pay full compensation or full market value for the property acquired. The Constitutional obligation to pay compensation underwent massive changes because of the word ‘compensation’ used in Article 31(2). Hence tussle between the parliament and the judiciary as a result of which brought series of constitutional amendments to property right.

Constitution makers refused to keep the word prefix ‘just’ for the word compensation under the Article 31(2). After the Constitution came into force (position before fourth amendment) court, in series of cases interpreted the word ‘compensation’ as ‘just compensation’ or ‘compensation equivalent to the property acquired’ by the state. Without paying equivalent compensation no property could be acquired even for public purpose, it was a great hurdle for the state. Therefore constitutional fourth amendment brought changes in the Article 31(2) i.e., for the property acquired compensation need not be just or equivalent compensation. The
very object of fourth amendment exclude the judicial review over ‘compensation’ on the ground of ‘just compensation’ was failed to achieve. However even after the fourth amendment in series of cases court interfered by way of interpretation and held that the word ‘compensation’ means ‘equivalent to the property acquired or just compensation’. Even though state has sovereign power to acquire property for public purpose, acquisition cases are came before the courts on the ground that compensation was not adequate. Therefore by twenty fifth constitutional amendment in 1971 the word ‘compensation’ in Art 31(2) was substituted by the word ‘amount’. By this amendment some extent battle between judiciary and parliament comes to an end. Court interpreted the word ‘amount’ something different from word ‘compensation’ these two words are not synonymous and also court held that amount declared for acquisition of property by State must not be illusory or it should not disproportionate to the property acquired. In Kesavananda Bharati v. State of Kerala the majority of the Supreme Court held that the amount which was fixed by the legislature could not be arbitrary or illusory or must be determined by the principle which are relevant for determining compensation.

Up to Forty Second Amendment Act 1976, the essential parts of Article 31(2) were repealed by pride predecessor amendments finally, forty fourth amendment repealed the right to property i.e., Articles 19(1)(f) and 31 altogether from part III of the Constitution and inserted the Article 300-A into the Constitution (Article 31(1) was reappeared in Article 300-A). However, here the question arises even after repealing Article 31(2), can twin requirements ‘public purpose’ and constitutional obligation to pay ‘compensation’ be survived or can government exercise its eminent domain power arbitrarily irrespective of ‘public purpose’ and ‘compensation’. The rationale of forty fourth amendment is loosening the fundamental right status and confirm the status of legal right to the property held by individuals. In case of litigation between the state and individual regarding property right, court always tilt towards in favour of protection of property right had been a fundamental right of individuals. Hence land looser or usurper could directly moved before the Supreme Court for enforcement of property right.

Nowhere in the world democratic government recognized with arbitrary power. India being a democratic country could not exercise its sovereign power in an arbitrary manner. Therefore governmental interference may occur in the form of
Expropriation of property rights of individuals when public interest warrants. Expropriation of property must be subjected to some conditions and limitations and it should not be in accordance with the whims and fancies of the government. The moral basis and conditions of expropriation will be the essential condition of eminent domain power. Hence even after the removal of Article 31 altogether, there must be justification for the interference with individual property right by the Government. Hence, compensation must be proportional to the interference, it is evident from the Land Acquisition Act 1894. In the present scenario, property right is looking from the perspective of human right therefore colonial Land Acquisition Act 1894 replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Forty fourth amendment did not intended to remove the constitutional restraints like ‘public purpose’ and ‘compensation’ on eminent domain power. It can be counter argued that obligation to pay compensation flows from entry 42 of list III of the VII schedule to the Constitution and obligation to pay compensation arise from the doctrine of eminent domain or the right to acquire private property for public purposes which is an incidence of a sovereign state. Major changes after forty fourth amendment, repealing the Property right from Fundamental rights, now property right is only legal right, or constitutional right. Unless statute provides, government need not to pay equivalent compensation to the property acquired. But now the court has addressed the compensation requirement in the context of a fair balance test. Accordingly taking of property without payment of an amount reasonably related its value would normally constitute a dis-proportionate interference which could not be considered as justiciable. However, according to the courts observation statute or constitutional provision does not guarantee a right to full compensation in all circumstances (except under second proviso to the Article 31-A(1)) even though compensation awarded must be qualify the fair balance test. Nevertheless, forty fourth amendment does not have any effect on the power of eminent domain or the sovereign power of the state, further it smoothen the proceedings of acquisition.

At the same time Article 21 cannot be applied to the acquisition proceedings because objective of the forty fourth amendment shift the concept of property from fundamental right status to legal right status. Therefore, if you say proceedings of acquisition hit Article 21, property right again through back door entry make the
property right as a fundamental right, the object of the forty fourth amendment will be defeated.