

## **Parliamentary Laws in relation to right of Property in India**

Dr. Vinod Kumar Patidar,

Ph.D., NET,

Principal Indore Institute of Law, Indore

### **Right to Freedom of Religion:**

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

### **Right to Property:**

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

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

*(3)No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of*

*the President, has received his assent.*

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

*(5)Nothing in clause (2) shall effect –*

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

*(b)the provisions of any law which the State may hereafter make – (i)for the purpose of imposing or levying any tax or penalty, or*

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

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

*(6)Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification ; and*

*thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or has contravened the provision of sub - section (2) of section 299 of the Government of India Act. 1935.”*

**Directive Principles of State Policy:**

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

*The State shall, in particular, direct its policy towards securing --(b)that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good ;*

*(c)that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment ; ...”*

**Seventh Schedule:**

*“List I - Union List: 33. Acquisition of requisitioning of property for the purpose of the Union.*

*List II - Union List:36.Acquisition of requisitioning of property, except for the purpose of the Union, subject to the provisions of entry 42 of List III.*

*List III - Concurrent List:42. Principle on which compensation for property acquired or requisitioned for the purpose of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given.”*

**Constitutional Provisions:** The founding fathers of Indian Constitution had included right to property as a fundamental right under Part-III of the constitution. However, Parliament of India in the year 1979, by its 44<sup>th</sup> Constitutional Amendment Act has been deleted the provisions relating to right to property from the Part-III of the constitution. The Seventh Schedule has contained provision in item 33 in List-I. Article 19(1) (f) and Article 31 were deleted by the Forty-Fourth Amendment Act, 1978. The Articles read as follows: Article 19(1) (f).-All citizens shall have the right to acquire, hold and dispose of property. Article 31.-(1) No person shall be deprived of his property save by authority of law. (2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate. (2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisition of property, notwithstanding that it deprives any person of his property. (3) No such law as is referred to in clause (2) made by the legislature of a State shall have effect unless such law having been reserved for the consideration of the President, has received his assent. (4) If any bill pending at the commencement of this Constitution in the legislature of a State has, after it has been passed by such legislature, related to acquisition or requisition of property for Union Purposes, item No.36 of List-II to acquisition or requisition for purposes of the State subject to entry 42 in List-III. Item No.42 of List-III has contained that the principles on which compensations for property acquired or requisition is to be determined and the form and manner in which

such compensation is to be given. Entry 49 of List-I has been totally and exclusively devoted to intellectual laws. The right to property is now included in the constitution under Art. 300A. Therefore right to property is now considered as a constitutional right and not a fundamental right. The adoption of Forty-Fourth Amendment Act rectified the conflict between the Parliament and the judiciary and also indicated the changed nature of the right to property under the Indian Constitution. The provisions in the constitution regarding the right to property have been adopted by Constitutional Assembly after detailed deliberations of various aspects of the questions. These questions were if the right to property included under fundamental right, the State must have power to acquire or requisition private property for public purposes. This was accepted. The next question was regarding compensation of acquire property. In this question the Advisory Committee been reserved for the consideration of the President and has received his assent, then notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall 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, and thereupon if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of sub-section (2) of Section 299 of the

Government of India Act, 1935.

After detailed discussions these were accepted by the Constituent Assembly and same was included under Article 31(2) of the Constitution. Sir Alladi Krishnaswami Ayyar had expressed his view that judicial review of right to property is limited. He observed:

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

Subsequently, Supreme Court's interpretation on right to property in constitution and various Laws enacted by Legislatures relating to this right indicates that judiciary exercised very wide powers and expanded the scope of judicial review. These judgments gave rise to public opinion on the powers of judiciary and of Parliament. In this connection, the Supreme Court of India has accepted that Parliament power to abridge right to property. This position was maintained from 1950 to 1967. But in 1967, the Supreme Court held that the Parliament has no power to abridge fundamental rights even by amending the constitution. This placed the right to property beyond the Parliament's amending power of the Constitution under Article 368. The various judgments of the Supreme Court has discussed that the State's power to acquisition or requisition of private property for public purpose and State's obligation to pay compensation has underwent various changes. A detailed discussion need not necessary in view Forty-Fourth Amendment. However the following cases may be referred to for understanding Supreme Court's attitudes. (1) *State of W.B. v. Bela Bannerjee*, (2) *P. Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition*, (3) *R.C. Cooper v. Union of India*.<sup>85</sup> The approach of the Supreme Court in providing compensation to acquired lands was that the compensation to be paid by the State for acquisition or requisition of private property must be "*just equivalent*". This is an enlarged scope of judicial review. As a result of this view, the Parliament of India has passed many Laws for implementing some of the Directive Principles of State Policy (DPSP's) but without providing for payment of a just equivalent compensation when private property was acquired. These Laws were struck down by the Supreme Court. These problems were highlighted by Shah, J. In *State of Gujarat v. Shantilal* as follows:

*"The decisions of this Court in the two cases – Bala Bannerjee case and Subodh Gopal Bose case– were very ..... likely to give rise to formidable problems, when the principles specified by the Legislature as well as the*

*amounts determined by the application of these principles, were declared justifiable. By qualifying 'equivalent' by the adjective 'just', the inquiry was made more controversial; and apart from the practical difficulties, the Law declared by this Court also placed serious obstacles in giving effect to the Directive Principles of State Policy incorporated in Article 39".*

## **Incorporative Process**

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

### **a) Period-I (1950-1966)**

After Independence, there has been land legislation guaranteed to give land to the tillers of the soil. These laws were abolished to intermediaries like *zamindaries, jagirs, inams etc.* During this period, Socio-economic justice was implemented through enactment of land reforms Act. The Act guaranteed redistribution of land to landless poor and transferable and inheritable rights to tenants. Therefore, the parliament has active in this period to enact Constitutional (Amendment) Acts, which guaranteed right to property through validating abolition of intermediaries on the land. These laws also guaranteed to rural masses sealing down their debts. The parliament has recognized these rights through Constitutional (1<sup>st</sup> Amendment) Act, 1951 and inserted Art 31-B into the Constitution which categorically protect the land reforms Acts. During this period, Constitutional Act only guaranteed to right to property since 'land' is fell on State list. The State has enacted intermediaries abolition Acts which was inserted into Art.31-B for protect it from constitutional validity. Therefore, the parliament has enacted four Acts and one of the Act is guaranteed to moral right of author i.e. parentage and integrity through the Copy Right Act, 1951. The executive has not formulated any policy programmes. But it had sanctioned fund of Rs.450 Crores through five year plans during this period. This fund was utilized for providing compensation to intermediaries. During this period, the Constitutional Amendments validity has been questioned before the Hon'ble Supreme Court. The Court expressly recognized the socio-economic pattern of the society. In this period Court did not recognize right to property expressly but it upheld the abolition of intermediaries Act through which tillers of the soil obtained the right to property. *In toto*, this period was responded to the creation of the Socio-economic pattern of the Society. This period may be considered as rudimentary stage of incorporation of the right to property.

**b) Period-II (1966-1970)**

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

**c) Period-III (1979-1993)**

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

**d) Period-IV (1993-2013)**

During this period, due to scientific technology development, various intellectual properties related rights have been recognized to right to property. These rights were considered as human rights in this period. Due to this India obtained membership in WTO, required to make laws to fulfill the obligation imposed under it. The Parliament had enacted six Acts.

These are expressly guaranteed to right to property includes intellectual property related rights. The executive authorities formulated a policy to computerization of records namely *National Modernization. Programme (NLRMP)*. For this purpose, Rs.24657.86 has been allocated through 5YPs for land reforms, computerization of land records, issuing Patta Pass Book and development of land resources. During this period, the Judiciary has recognized that right to property is fundamental human rights. The Court has an activist approach through Justice Sinha, categorically recognized that right to property is a basic human right and it includes right to adverse possession. The Court also recognized that right to property is a basic human rights and it includes intellectual property right also. Judiciary has decided nineteen cases in which it directly incorporated right to property related human rights instruments into India through incorporative process.

### References

G.S. Sharma (ed.), *Property Relations in Independent India : Constitutional and Legal Implications*,

Entry 49 of list – I states that patterns inventions and designs, copy rights, trademarks and merchandise marks.

T.K. Tope's, *Constitutional Law of India 322* (Eastern Book Company, Lucknow, 2010).

AIR 2007 SC 1753.

*Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

G.S. Sharma (ed.), *Property Relations in Independent India : Constitutional and Legal Implications*, 95 (The Indian Law Institute, New Delhi, 1967).

*Surya Pal v. State of U.P.*, AIR 1951 All. 674

