

International Human Rights and Right to Property in India

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The right to property is considered as a means of survival. It is closely related to realization of the right to life and liberty. The right to property comes after the realization of right to life and liberty in that order.¹ The concept of property is the most ancient, most vital institution and mainly concerned with human beings. Its original function was to secure physical assistance. G.S. Pathak, the then Law Minister of the Union asserted that functions of property in view of Jhering, *"its original function has been promoted to an all embracing mission of civilization and ethical significance. 'Property' is a social concept and being a social concept is creation of Law"*.² Further he asserted that in view of Bentham, *"property and law are born together and die together. Before the laws were made there was no property; take away laws, and property ceases"*.³ The main objects of the ownership of property are security and stability. It is responsible for attainment of basic needs in life i.e. food, shelter and clothing. The right to property firstly enumerated under the French Declaration of Man and of the Citizen, 1789. It states that *'since the right to property is irritable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid'*

⁴ G.S. Sharma (ed.), *Property Relations in Independent India: Constitutional and Legal Implications* 1 (N.M. Tripathi Private Ltd., Bombay, 1967).

¹ *Id*, at 8. Delivered by the Union Law Minister to the Seminar on Property Relations in Independent India: Constitutional and Legal Implications organized under the auspices of the Indian Law Institute, New Delhi which is held on 25th to 31st of December, 1966 at Ootacamund in Tamil Nadu.

² *Id*, at 14.

³ Art.17 of the French Declaration of Man and of the Citizen, 1789.

The V Amendment of the United States of Bill of Rights has proclaimed that “*no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation*”.⁵ The Right to property has excluded others from claiming possession, title or ownership except its true possessor coupled with title and ownership. It constitutes material benefits and other incorporeal rights attached to material things. Property in legal sense means that the sum of bundles of rights and in the case of tangible property it includes the right of possession, the right to enjoy, the right to destroy, the right to retain, the right to alienate.⁶ In its common connotation ‘*property*’ means that highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another, courtesy; it includes ownership, estates and interest in corporeal things and also rights such as trade-marks, copy rights, patents and even rights in person capable of transfer or transmission, such as debts, and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession and to their capacity of being injured.⁷ The property is a term of the widest important and subject to any limitation or qualification which the context might require, it signifies every possible interest which a person can acquire, hold and enjoy, unless there is something to the contrary.⁸ The Economic Order is to regulate the social order and controls the State. It is entirely dependent on property whether private or public or State-owned.⁹ Property is a symbol of power and energy which a man holds for his use and service. It is also responsible for inequalities of status in man on the basis of differentiation in society and performance of work in the State. Property as power and prestige is liable to be concentrated in a few hands by various ways. At this juncture it ceases to perform its

⁵ Vth Amendment of the U.S. Bill of Rights.

⁶ R.N. Sharma, *Fundamental Rights, Liberty and Social Order* 25–26 (Deep&Deep Publications, New Delhi, 1996).

⁷ *R.C. Cooper v. Union of India*, AIR 1970 SC 564.

⁸ *J.K. Trust v. Commissioner of Income Tax*, AIR 1957 SC 846.

⁹ Justice Palok Basu, *Law Relating to Human Rights under the Indian Constitution and Allied Law*

creative and constructive role in society and endangers unjust conditions like poverty, malnutrition, frustration, slavery, bonded labor etc.¹⁰

The Democratic set up of State embodies the concept of man as "*a doer, an exerter and developer and enjoyer of his human capacities, rather than merely a consumer of utilities*".¹¹ These are responsible for, human capacity requires access to the material resources and also continuous and sufficient intake of material. It means to maintain human energy. If failure of access to the material resources, it is an impediment in the development of human personality. "*This impediment must be described as lack of access to the means of labor if we take labor in its broadest sense of human energy*", therefore Justice Mathew, "*this is where the theory of property assumes importance in a democratic society*".¹² Therefore every community has property that the systems of property must be based on certain principles allocating rights of control over its physical resources such as land and goods to all its members as a pre-requisite of a social order. According to Ely, "*Property is not a thing, but the rights which extend over a thing. The essence of property is in the relations among men arising out of their relations to things*".¹³

The view of Plato about the property is that the property should be divided and distributed among people in the society. But the Aristotle defended the institution of private property and asserted that the equalization of property exercises a strong influence on the political society. The equality of property was necessary to preserve the community and to prevent resolutions which destroyed the State. These contents, Justice K.K. Mathew has observed "*Equality, then, is for both Plato and Aristotle, fundamental principles of justice governing the distribution of property. If we think only of the ruling class in their ideal States, we may say that Plato and Aristotle were absolute egalitarians in the manner of property distribution.*

¹⁰ Kuttayil Kurien Mathew, *The Right to Equality and Property under the Indian Constitution* 47-48. (National Publishers, New Delhi, 1980).

¹¹ *Id.*, at 49.

¹² *Id.*, at 50.

*Whatever new ideas about property might be developed in future men could never escape from the basic concepts which the Greek thinkers have formulated”.*¹⁴ The private property has always required special justifications and qualifications to survive the Society with the public interest. St. Thomas Aquinas has carefully balanced public needs against private rights. He further observed that the right to property is derived from human law. According to him:

*“The common possession of things is to be attributed to natural law, not in the sense that natural law decrees that all things are to be held in common and that there is to be no private possession; but in the sense that there is no distinction of property on the grounds of natural law, but only by human agreement; and this pertains to positive law, as we have already shown. Thus, private property is not opposed to natural Law, but is an addition to it, devised by human reason If, however, there is such urgent and evident necessity that there is clearly an immediate need of necessary substance, if, for example, a person is in immediate danger of physical privation, and there is no other way of satisfying his need, then he may take what is necessary from another person’s goods, either openly or by stealth. Nor is this strictly speaking, fraud or robbery.”*¹⁵

In a modern democratic society, the right to property is not free from social responsibilities and obligations. These responsibilities are states power to impose taxation on private property and if it necessary for public purpose, the State has power to acquire such property after providing compensation that acquired property. These principles are universally recognized and applied. Another kind of obligation is touches the freedom of use of property. It’s growing number of social obligations and attached by the law to the use of industrial property or contracts of employment and service.¹⁶ In essence of the property is an essential and necessary condition for the development of individual. But it is an evil after certain stage i.e. accumulation of

¹⁴ *Id*, at 58.

¹⁵ Sudesh Kumar Sharma, *Distributive Justice Under Indian Constitution* 145 (Deep & Deep Publications, New Delhi, 1989).

¹⁶ *Id*, at 150.

property rights in hands of some persons. Therefore the wisdom of the Legislators and Judges lies in striking a balance between its constructive and destructive use for individual *vis-a-vis* society.¹⁷ Acharya Durga Das Basu has observed that *"the property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess to use it and to exclude everyone else from interfering with it. The domination or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called 'property'. The exclusive right of possessing, enjoying and disposing of a thing is property in legal parameters. Therefore, the word 'property' connotes everything which is subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate or status".*¹⁸ He also stated in constitutional protection of property denotes that *"group of rights inhering citizen's relation to physical thing, a right to possess, use and dispose of it in accordance with law. The property is the most comprehensive of all terms which can be used, is as much as it is indicative and descriptive of every possible interest which the party can have".*¹⁹ The term *"property"* has a most extensive signification and according to legal definition, consists of free use, enjoyment and disposition by a person of all his acquisitions without any control or diminution, save only by the laws of the land.²⁰ Koka Subba Rao, one of the former Chief Justices of India has explained that the concept of property as *"property is a general term of extensive application. It is indicative of every possible interest which a man can have. It may mean a thing or a right which a person has in relation to that thing. It is extended to all recognizable types of interest which has the characteristic of property".*²¹

¹⁷ *Supra* note 6 at 26.

¹⁸ D.D. Basu, *Commentary on Constitution of India 1961. Vol-8* (LexisNexis Butterworths Wadhwa, Nagpur, 2011).

¹⁹ *Id.*

²⁰ *Jilubai Nanthai Khachar v. State of Gujarat*, AIR 1995 SC 142.

²¹ Justice K. Subba Rao, *Man and Society* 21 (Department of Publications, Bangalore University, Bangalore, 1971).

The right to property has considered as controversial because that protects “*haves*” against “*have-nots*”. It clearly has characteristic of social rights with significant implications for the distribution of social goods and wealth. The right to property has major implications for several important social and economic rights such as right to work, the right to enjoy the benefits of scientific progress, the right to education and the right to adequate housing. English Philosopher John Locke (1632–1704) has described about property in his second Treaties on Civil Government that right to property as natural rights such as right to life and liberty, which human beings could not be deprived of.²² Now-a-days property is considered as key concepts to the legal order. Every States economy in the World depends on the property. During 1950s and 1960s Western World has converted private property into public property through nationalization process. Hence, the right to property is not mentioned in both binding Covenants.

International Level

The International Human Rights Law has recognized that right to property is considered as human rights in various instruments. Historically human rights have been 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 multifaceted dimension.²³ Therefore, even claim of adverse possession has been considered as human rights. The English Courts has adopted the activists approach regarding right to property in its various judgments.²⁴ The Court has played vital role for right to property which is recognized international human rights instruments. The Universal Declaration of Human Rights (UDHR), 1948 has proclaimed that “*everyone has the right to own property alone as well as in association with others*”

²² Manish Mishra, *Property Rights and Human Development in India* 10 (Prateeksha Publications, Jaipur, 2014).

²³ Durga Das Basu, *Human Rights in Constitutional Law* 401 (LexisNexis Butterworths Wadhwa, Nagpur, New Delhi, 2008).

²⁴ *Beaulane Properties Ltd. v. Palmer*, (2005) 3 WLR 554; *J.A. Pye (Oxford) Ltd. v. United Kingdom*, (2005) ECHR 921.

and "no one shall be arbitrarily deprived of his property".²⁵ Article 27(2) of the Universal Declaration of Human Rights (UDHR), 1948 recognised intellectual property as a human right. Similarly Article 15(3) of International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 has recognized that any creative intellectual of individual's moral right is protected as a human right. It is noted that the right to property applies to both individual and collective forms of ownership. In draft articles of the Universal Declaration of Human Rights (UDHR), 1948 has not imposed any limitation on right to property.²⁶ Now, the right to property is not an absolute right and it may be deprived if such action is not arbitrary.

The Convention relating to the Status of Refugees, 1951 has mentioned right to property implicitly in various provisions. It recognizes the acquisition of movable and immovable property and others rights relating to lease and contracts relating to such properties,²⁷ right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies,²⁸ desirous of practicing a liberal profession,²⁹ and transfer of their properties and assets to others.³⁰ These similar provisions were mirrored in the Convention on Status of Stateless Persons, 1954.³¹ The International Convention on the Elimination of All forms of Racial Discrimination, 1965 has stipulated the State parties to eliminate racial discrimination and guarantee "*the right to own property alone as well as in association with others*".³² The Convention on Elimination of All Discrimination against Women, 1979 has proclaimed that "*to have access to agriculture credits and*

²⁵ Article 17(1) & (2) of Universal Declaration of Human Rights, 1948.

²⁶ A. Rosar, J.E. Helgasen, D. Goodman, *The Strength of Diversity: Human Rights and Pluralist Democracy*, 138 (Martinus Nijhoff Publishers, The Hague, 1992).

²⁷ Article 13 of Convention on Status of Refugees, 1951.

²⁸ *Id.*, art.18.

²⁹ *Id.*, art.19.

³⁰ *Id.*, art.30.

³¹ Articles 18, 19 and 30 of Convention on Status of Stateless Persons, 1954.

³² Art. 5(iv) of the Convention on the Elimination of All forms of Racial Discriminations, 1965.

*loans, marketing facilities, appropriate technology and equal treatment in land property and agrarian reform as well as in land resettlement schemes".*³³

The Convention also urged state parties to provide equal rights to conclude contracts and to administer property;³⁴ and the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether '*free of charge or for a valuable consideration*'.³⁵ The International Convention on the Protection of the Rights of All Migrant Workers and Members of their families, 1990 recognize the right of Migrant workers or their families holding property and also prevent the arbitrary deprivation of their property whether owned individually or in association with others. If such properties are required for acquisition, the State should provide to fair and adequate compensation.³⁶

The Convention on the Rights of Persons with Disabilities, 2006 provides right to property. It provides that the State parties shall take all appropriate steps in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.³⁷ International Labor Organizations Convention No.169 concerning the Indigenous and Tribal People, 1989 has recognized that the rights of ownership and possession of the people concerned over the land they traditionally having such rights and the State's obligation to identify this land and guarantee effective protection of their rights of ownership and possession.³⁸

Relocation of the Indigenous and Tribal People is required, the State shall take place

³³ Art. 14(2)(g) of Convention on Elimination of Discrimination against Women, 1979

³⁴ *Id.*, art.15(2).

³⁵ *Id.*, art.16(1)(h).

³⁶ Art. 30(3) of the Convention on the Rights of Persons with Disabilities, 2006.

³⁷ Art. 14 of the ILO Convention No.169, Concerned the Indigenous and Tribal Peoples, 1989.

³⁸ *Id.*, art.16.

with their free and informed consent, and they shall be provided with lands of equal equality and legal status or be fully compensated.³⁹

In this context, it is surprising that the right to property is silent in both binding covenants on Civil and Political Rights (ICCPR), 1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). Elbe Riedel suggested in his study of the Travaux Preparatoires explains that this silence. It originated in the antagonistic ideological views of the Western and Eastern blocs as well as those of the North and South.⁴⁰ It also clarified that the non-inclusion of right to property in both finding covenant means not denial of right to property. After 1966, the various international human rights instruments have been adopted by United Nation's General Assembly that categorically recognized the right to property. The Right to Property has been inducted by the regional human rights instruments and Constitution of States in the World. The review of the International Human Rights Law has revealed that the universal recognition of the human right to property. It reflects the generalized and consistent State practice and *opino juris* of the customary nature of the international law. It has recognized the universal acceptance of general interest as a lawful limitation on right to property. The private property may be acquired by the State for public interest i.e. *eminent domain* – it places the social function of property under the realm of customary norms.⁴¹

National Level

a) Legislative incorporation

The Parliament of India is a deliberate and legislative body. It has ample power to enact Laws for whole of India or any part thereof. India had imperial rule

³⁹ Art.15 of International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

⁴⁰ Eibe Riedel, *Theorie der Menschenrechtsstandards* 39 (Duncker & Humbolt, Berlin, 1986).

⁴¹ W.B, Stoebeck, "A General Theory of *Eminent Domain*", 47 Washington Law Review 553-608 (1972).

under the British regime for more than 200 years when right to property and land rights were under British domain. It was a bad experience of a capitalist economy compelled the freedom fighters in India to evolve a mechanism which would provide socio-economic justice to its masses after Independence.⁴² On the objective of the Constituent Assembly, Constitution and Parliament enactments have recognized that right to property in India.

Constituent Drafting Committee: The Constituent Assembly was first convened on 9 December 1946. It adopted Jawaharlal Nehru's Objective Resolution on 22 January 1947 which formed the basis not only of various provisions of the Constitution but in preamble also.⁴³ The Objective Resolution pledged to guarantee and secure to the people *inter alia* social and economic justice, equality and freedom.⁴⁴ The institution of property was destined to play a vital role in the realization of these objectives. The Assembly has constituted several committees⁴⁵ for deliberation of Constitutional protection against State's acquisition of private property and related matters. The Constitutional Assembly has elected an Advisory Committee on 24 January 1947 for reporting *inter alia* on fundamental rights. Subsequently the committee elected Sardar Vallabhai Patel its Chairman.⁴⁶ On the eve of the election of the committee Govind Ballabh Pant emphasized that fundamental rights were meant for the individual citizens who are really the backbone of the State and the cardinal centre of social activity and whose happiness should be the object of social mechanism.⁴⁷ Pant has laid emphasis on both individual liberty and social mechanism. He realized that the ultimate object of social control was the happiness of the individual.

⁴²*Supra* note 6 at 24.

⁴³*CAD, Vols. I - IV*, pp.58-60 (1946 – 47), Preamble of the Constitution.

⁴⁴*Id.*, at 59.

⁴⁵The Advisory Committee, the Sub-Committee on the Fundamental Rights and the Drafting Committee.

⁴⁶*CAD, Vols. I-IV* at 347–348.

⁴⁷*Id.*, at 332.

Subsequently he changed view and tried to strike a balance between individual liberty and social control. The Advisory Committee appointed a Sub-Committee on the Fundamental Rights with Acharya J.B. Kripalani as its Chairman. Both the committees have formulated certain formulae with regard to fundamental rights including right to property.⁴⁸ The Sub-Committee had disposed preliminary notes on fundamental rights as it was prepared by B.N. Ray, the Constitutional Advisor to the Constituent Assembly and K.T. Shah. In his notes Rau dealt with nature of problem of incorporation of fundamental rights in the Constitution and analyzed various rights guaranteed in some important Constitutions. He divided the rights into two classes. The first class dealt with the rights of the State policy which were in the nature of precepts for the Governments and not suitable for enforcement by the Courts. The second class dealt with the fundamental rights strictly enforceable before the Courts in event of illegal action of the Government. Subsequently, the Sub-Committee on Fundamental Rights accepted this division of rights into justifiable and non-justifiable rights.⁴⁹ K.T. Shah also submitted a comprehensive note on fundamental rights. He grouped fundamental rights into social and economic rights forming the corresponding obligations of the State and fundamental rights of citizens and others. The substance of his draft clauses regarding property as:

"every citizen would be guaranteed the right to acquire, own, hold and dispose of property subject to Law in force; the right would be subject to the sovereign power of the State to acquire private property under the law; no proprietary rights would be allowed to, or recognized for, persons in industries concerning defense production; the soil of the Country; mines, forests and other forms of natural wealth; industries declared by Law as key, vital or parent industries; and public utilities, social services and so on; existing rights of ownership of any degree in agricultural land and properties under the preceding item would be acquired by the State subject to compensation, if any, as might be deemed proper and reasonable; Existing rights in

⁴⁸ Naveen Sharma, *Right to Property in India* 47 (Deep & Deep Publications, New Delhi, 1990).

⁴⁹ *Id.*

*property of religious institutions would continue but there would be no acquisition by them in future. The State could acquire their properties and decide whether compensation should be given, and if so, then how much”*⁵⁰.

K.T. Shah conceded individual right to property which could be acquired by the State with or without compensation. In certain cases, it gave compensation, it would be reasonableness. He favored State’s ownership of key properties in the larger interest of the Society. Hence, he foresaw the assurance of human dignity and development of individual personality.⁵¹ The Munshi’s draft on Fundamental Rights included the following provisions related to right to property as: *“all citizens would have right-to acquire property subject to the restrictions imposed by Laws; no person would be deprived of his property without due process of Law; the right to property would be guaranteed inter alia to religious bodies; Expropriation for public reasons only would be permitted on conditions determined by Law and in return of just and adequate compensation determined according to the principles laid down by law.”*⁵² The Munshi’s draft was different from K.T. Shah’s view of right to property. Munshi assigned a wider scope to the individual’s right to property and recognized its sanctity while K.T. Shah was more in the favour State’s ownership at least key properties and he emphasized on the community’s interest in property even though both of them have favored in State’s acquisition for larger interest of public. Shah thought that acquisition can even take place without providing compensation while Munshi felt that just and adequate compensation should be given. Shah has specifically stated that no proprietary rights should be allowed in certain forms of property.⁵³ The draft prepared by Dr. B.R. Ambedkar did not include any specific provision regarding acquisition holding and disposition of property by an individual. But it contained certain provisions about state ownership of certain properties and

⁵⁰ *Id*, p.48.

⁵¹ B. Shiva Rao, V.K.N. Menon, (eds.), *The Framing of India’s Constitution: Select Documents* 36-55, Vol.II, (N.M. Tripathi, Bombay, 1966).

⁵² *Id* at 74-75 & 78

⁵³ B. Shiva Rao, *The Framing of India’s Constitution: A Study* 281–82 (Indian Institute of Public Administration, New Delhi, 19

State acquisition of private property. He suggested that the basic and key industries should be owned and run by the State. The Insurance Company should be State Monopoly and agriculture should be the State industry; and that the State should acquire the subsisting rights and such industries, insurance and agricultural land held by private individuals, the State should provide compensation to them in the form of debenture equal to the value of their rights in land. In reckoning the value of land and other property, no rise in their value due to emergency should be taken into account. The State should divide how and when the bonds would be cashed.

Dr. B.R. Ambedkar has explained that the main purpose of the above provision to put the State under an obligation to plan the economic life of the people so as to have maximum production without closing every revenue to private enterprise and also it provides for equitable distribution of wealth. He said that State ownership in agriculture with a collectivized method of cultivation and a modified version of State Socialism in the area of industry were necessary in the interest of larger interest of the Country. Nationalized insurance would provide individuals greater security and give the State resources essential for financing the economic plan.⁵⁴ Dr. B.R. Ambedkar views on right to property were evidently similar to that of K.T. Shah but in sharp contrast to Munshi's in certain aspects. There was main distinction between Dr. Ambedkar and K.T. Shah that Ambedkar favored compensation while Shah left it to the discretion of the State to pay it or not. It is specifically not worthy that Dr. B.R. Ambedkar did not speak about cash payment but the payment in bonds. Finally, the notes, memoranda and drafts prepared by its various members were discussed by the Sub-Committee. The draft report of the Sub-Committee dated 3 April, 1942 was submitted to the Chairman of the Advisory Committee. The report explained in the

⁵⁴*Supra* note 51 at 99.

covering letters that the rights were divided into justifiable rights which could be enforceable by the legal action and non-justifiable rights which by their nature could not be enforced by the legal action but were intended to be directives for the general guidance of the State.⁵⁵ The draft provision regarding right to property contained in the report were as: *"no person would be deprived of his property without due process of Law; every citizen would be free to acquire property subject to reasonable restrictions imposed by Law; no property, movable or immovable, of any person or Corporation including any interest in any commercial or industrial undertaking would be taken or acquired for public use unless the provided for the payment of just compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation was to be determined."*⁵⁶

Other relevant provisions regarding right to property were as: every religious denomination would have the right *inter alia* to own, acquire and administer property; the property of any religious body would not be diverted except for necessary works of public utility and on payment of compensation⁵⁷. The above provisions were inducted under the part dealing with justifiable rights. Some of the provisions related to right to property have been included by the Sub-Committee on Fundamental Rights in the non-justifiable rights. These were as follows:⁵⁸

1. The State would strive to promote the welfare of the people by securing and protecting as effectively as it might a social order in which social, economic and political justice would inform all the institutions of national life
2. The State would in particular direct its policy towards securing :
3. That the ownership and control of the material resources of the community would be so distributed as best to sub serve the common good; and

⁵⁵ *Id.*, at 137.

⁵⁶ *Id.*, at 139 & 141.

⁵⁷ *Id.*, at 140.

⁵⁸ *Id.*, at 142.

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- a. That the operation of free competition would not be allowed so to develop as to result in the concentration of ownership and control of essential commodities in a few individuals to the common detriment.

It seems that some of the provisions from the drafts of K.T. Shah and Dr. B.R. Ambedkar have a glimpse in the above provisions and their ideology regarding the use of various properties for social good is reflected in those provisions. B.N. Rau has prepared that explanatory note on the draft and has circulated it to the members for discussion and finally submitted its final report to the Chairman of the Advisory Committee on 16th April 1947. In its covering letter of the Sub-Committee explained that in respect of justifiable rights and fundamental principles of social policy were followed in the Irish model and adopted a middle course between the one contained in the constitution of the United States and the one accepted in some recent European Constitutions which mixed up the two sets of rights. It also explained that while some rights were guaranteed to every person, others were confined to citizens only.⁵⁹

The new provision regarding right to property which recast the earlier provision of every citizen would have the right to acquire property. This provision imposed such reasonable restrictions may be necessary. The following were the relevant articles of the draft constitution which were presented to the Constituent Assembly for its consideration. *13(1) Subject to the other provisions of these articles all citizens shall have the right (f) To acquire, hold and dispose of property..... (5) Nothing in sub-clause*

(f) shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of the right conferred by the said sub-clause either in the interests of the general public or for the protection of the

⁵⁹ *Id.*, at 169.

*interests of any aboriginal tribe.*⁶⁰ The Drafting Committee agreed to replace the words "*aboriginal tribe*" by the words "*scheduled tribe*".⁶¹

"24(1) No persons 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 authorizing the 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 the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined. (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 improving or levying any tax or for the promotion of public health or the prevention of danger to life or property".*⁶²

The article was not considered by the Assembly in this form. In fact, a new provision was moved for its consideration by way of amendment.⁶³ The relevant entries in the legislative lists were the following: *be determined for property acquired or requisitioned for the purpose of the Union*".⁶⁴ "Entry 9 of the State List: *Compulsory acquisition of land except for the purposes of the Union subject to the provisions of List III (Concurrent List) with respect to the regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of a State*".⁶⁵

⁶⁰ *Id.*, at 164.

⁶¹ *Supra* note 51 at 522.

⁶² *Id.*, at 526.

⁶³ *Id.*

⁶⁴ *Id.*, at 664.

⁶⁵ *Id.*, at 666 – 667.

The Drafting Committee recommended the revision of these entries by suggesting that the principle on which compensation was to be paid for the acquisition or the requisitioning of property should be the subject-matter of the Concurrent List. Accordingly, it included entry 35 in this list. It also recommended replacing the words "Compulsory acquisition of land" by the words "Acquisition and requisitioning of property". Entry 35 of the Concurrent List: The principles on which compensation is to be determined for property acquired or requisitioned for the purpose of the Union of an State.⁶⁶ Other draft articles worth mentioning here were as follows:

"20. Every religious denomination or any section thereof shall have the right : (c) to own and acquire movable and immovable property ; (d) and to administer such property in accordance with law".⁶⁷

"30. 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".⁶⁸

"31.(1) The State shall, in particular, direct its policy towards securing, (ii) that the ownership and control of the material resources of the community are so distributed as best of sub serve the common good, (iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment..."⁶⁹

⁶⁶ *Id.*, at 307 in Vol. IV.

⁶⁷ *Id.*, at in 670 Vol. III.

⁶⁸ *Id.*, at 524-25.

⁶⁹ *Id.*, at 527-28.

The third reading of the draft constitution was adopted by the Constituent Assembly on 26th Nov. 1949. The relevant constitutional provisions as finally settled and enforced were as follows:

Right to Freedom:

“19(1) All citizens shall have the right (f) to acquire, hold and dispose of property.”

“(5)Nothing in sub-clause..... (f) of the said clause shall affect the operation of any existing law insofar it imposes, or prevents the State from making any law imposing reasonable restrictions on the exercise of the right conferred by the said sub-clause..... either in the interests of the general public or for the protections of the interests of any schedule tribe...”