

# The Evolution of Right to Property-Exploring Pre and Post Constitutional Status

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## ABSTRACT

Property rights have been a foundational aspect of societal organization and economic development throughout history. This article aims to provide a comprehensive analysis of the nuanced journey that the right to property has undertaken in India, traversing through various epochs, socio-political climates, and legislative changes. Commencing with the pre-colonial era, the research navigates through the rich tapestry of ancient Indian legal systems, where property rights held a central position in the social order and were often influenced by cultural and religious norms. With the onset of colonial rule, the dynamics of property rights underwent significant transformations. The British administration introduced new concepts and property laws that aimed to reconfigure the established property relations to suit their economic interests and administrative convenience.

The post-independence period witnessed substantial debates and deliberations over the nature and scope of property rights. The Constitution of India, enshrining the fundamental rights of its citizens, initially recognized the right to property as a fundamental right under Article 19(1)(f) and Article 31. However, the evolution of this right took a pivotal turn with the insertion of the 44th Amendment in 1978, which shifted the right to property from a fundamental right to a legal right, thereby empowering the state to undertake land reform measures and redistribution of property. Through an intricate examination of significant legal cases, constitutional amendments, legislative enactments, and scholarly discourse, this project dissects the multifaceted dimensions of the right to property. It delves into the dichotomy between individual rights and societal interests, highlighting instances where property rights have clashed with developmental imperatives, land reforms, and the goal of achieving socio-economic equity. Furthermore, the research investigates the impact of property rights on economic growth, social justice, and the intricate interplay between property ownership and access to resources. It probes the question of whether property rights have fostered economic advancement or resulted in unjust concentration of wealth. In summation, this article aims to construct a comprehensive historical narrative of the right to property in India, unravelling its transformation from ancient civilizations to colonial rule and finally to the contemporary legal frameworks. By engaging with the intricacies of property rights, the project seeks to shed light on the trajectory of legal thought, policy changes, and socio-economic implications, thereby contributing to a nuanced understanding of the right to property within the broader context of India's legal history.

## INTRODUCTION

The right to property can be considered a natural human right in some ways. It is a hugely contentious issue that affects many countries including the European Union. The right to property was originally regarded as a fundamental right in India, but by the 44th amendment of the Indian Constitution, under the provision of Article 300(A), it was reduced to merely a constitutional right. Though it appears to be

straightforward, the right to property under the Indian Constitution has a unique history that can be described as a long conflict of provisions between India's legislature and the judiciary.

Property is defined as follows under Section 2(c) of the Benami Transactions (Prohibition) Act, 1988: "Property" means "any sort of property, whether movable or immovable, tangible or intangible, and includes any right or interest in such property." Property is defined as follows under Section 2 (11) of the Sale of Products Act of 1930: "Property" denotes the general property in goods, not just a special property.

### **PROPERTY-MEANING**

According to the Supreme Court in *Commr. Hindu Religious Endowment v. Swamiyar* (1954)<sup>1</sup>, the term "property" as employed in Article 31 should be given a broad interpretation and should include all well-known categories of interests that bear the insignia or characteristics of a property right. It encompasses both corporeal and incorporeal rights as observed in *Dwaraka Das Srinivas v. Sholapur Spg and Wvg. Co. Ltd* (1958)<sup>2</sup>. It comprises money, contracts, property interests such as an allottee's interest, licensees, mortgages, and property lessees. An identifiable interest in the property is the Mahantship of a Hindu Temple as identified in *Commissioner of Hindu case (Supra)* and stockholders with Interests in the Company as stated in *State of Bihar v. Kameshwar Singh* (1952)<sup>3</sup>. The right to a pension is a form of property as noted in *State of Kerala v. Padmanabhan Nair* (1984)<sup>4</sup>.

The word property interpreted by SC for Art. 31 has said, should be given a liberal meaning and should be extended to all those well-recognized types of interest which have the insignia or characteristic of property right<sup>5</sup>. The expression property in Article 300A is confined not only to land alone. It includes both corporal and incorporeal rights<sup>6</sup>. It includes Money<sup>7</sup>, contract, interest in the property, etc.

### **PRE 1978 POSITION – FUNDAMENTAL RIGHT TO PROPERTY**

The Government of India Act of 1935 granted the power to possess and dispose the property before independence. Section 299 of the 1935 Act guaranteed the protection of this right to all people, whether they were zamindars or peasants. This protected the people and ensured that their property would not be exploited or abused without sufficient compensation. Furthermore, the Act enabled the government to exploit private land only for public reasons.

The Constitution (First Amendment) Act of 1951 added the Ninth Schedule to the constitution, together with two additional Articles 31A and 31B, to make laws granting zamindars unchallengeable in the courts. Article 31 dealing with the right to property was changed in numerous ways by the Fourth Amendment Act of 1955. The goal of these changes was to give the government more power over forced acquisition and requisitioning of private property. To counteract the effect of the Supreme Court's ruling in *State of West Bengal v. Bella Banerjee* (1954)<sup>8</sup>, the amount of compensation payable for this reason was made unjustified.

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<sup>1</sup> 1954 AIR 282

<sup>2</sup> 1954 AIR 119

<sup>3</sup> AIR 1952 Pat 417

<sup>4</sup> 1985 AIR 356

<sup>5</sup> *Commr. Hindu Religious Endowment v. L.T. Swamiar*, AIR 1954 SC 282

<sup>6</sup> *Dewarka Das Srinivas v. Sholapur Spg. And Wvg.Co.Ltd.*, AIR 1954 SC 112.

<sup>7</sup> *Bombay Dyeing Co. v. State of Bombay*, AIR 1958 SC 328

<sup>8</sup> 1954 AIR 170

During this time, the Supreme Court was generally of the opinion that land reforms should be sustained, even if they directly conflicted with the right to property, however, the Court was dubious of how the government used its administrative power in this area. The Court was adamant that administrative discretion to appropriate or infringe on property rights must be based on law, not on a simple fact. During the period of nationalization, however, the court genuinely struggled with the socialist administration, when the court admirably stood up for the right to property, albeit in a limited way, against the communist state's overreach.

The court in Bank Nationalization case<sup>9</sup> has clearly stated the following two points at this point:

- The right to compensation equal to the monetary value of the property acquired by force is guaranteed by the Constitution.
- The expropriate owner must be compensated for the worth of their property, according to the Constitution (the reasonable compensation for the loss of the property).

### **DOCTRINE OF EMINENT DOMAIN**

The doctrine of eminent domain, which is currently in use, can help to understand this. Even if we have a constitutional right to property under Article 300A and a statutory right under the Transfer of Property Act, 1881, the government has the power to use our property for public reasons such as road and bridge construction. Nonetheless, adequate compensation must be made to the property owner in such cases.

The essential ingredients of this doctrine are as follows:

- Property is taken for the benefit of the public.
- The property that has been seized is compensated for.

However, the use of this doctrine has been replaced.

### **POST 1978 POSITION – FUNDAMENTAL RIGHT TO PROPERTY**

Following independence, the mood was to continue Prime Minister Jawahar Lal Nehru's socialist policies and to remove zamindars and other rural intermediaries who had earned rights to enormous swaths of land during colonial authority. When the government attempted to dismantle these institutions, it was challenged in court under the Constitution's Right to Property section in a series of challenges. As a result, the government decided it would be best to stay out of legal wranglings while attempting to execute its socialist principles of limited private land ownership to avoid wealth concentration and government control over the property as a method of achieving dispersed development.

The backlash against Articles 19(1)(f) and 31 of the Constitution as Fundamental Rights began almost immediately after it was enacted in 1950. After multiple court battles over this sensitive issue, the Janata Party government introduced the 44th amendment, which eliminated the right to property as a fundamental right and replaced it with Article 300A, which reduced it to a legal right.

The owners of Minerva Mills (Bangalore), an ailing industrial concern nationalized by the government in 1974, contested the Forty-second Amendment in the Supreme Court less than two years after the restoration of Parliament's amending powers to near unlimited terms. In the (1981)<sup>10</sup>, and later in the Waman Rao case (1981)<sup>11</sup>, the basic structural theory was reinforced which was first introduced in the

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<sup>9</sup> 1970 AIR 564

<sup>10</sup> 1980 AIR 1789

<sup>11</sup> (1981) 2 SCC 362

famous Kesavananda Bharati case (1973)<sup>12</sup> where despite the court's finding that Parliament cannot violate fundamental rights, the amendment that abolished the fundamental right to property was preserved. The court decided that the change would not violate the Constitution's "basic structure" in spirit.

## RIGHT TO PROPERTY AS A FUNDAMENTAL RIGHTS

Since the Constitution of India came into force in the 1950s, the right to property was given fundamental status. Basically, two articles Art. 31 and Art. 19(1)(f) ensures that any person's right against his property remains protected. Art. 31 clause (1) reads as No person shall be deprived of his property save by authority of law. It gives protection to persons against the government or State's arbitrary action to seize private property for public use and private use. That means a person has right to move to SC in case of violation of this right. At this juncture it is essential to understand the power of Eminent Domain- every government has an inherent right to take and appropriate the private property belonging to an individual citizen for public use.<sup>13</sup> It is based on the legal maxim *Salus Populi est suprema lex* meaning the welfare of people or the public is the paramount law.

In America, this power was limited by imposing three restrictions:

- There must be a law authorizing the taking of property
- the property must be taken for a public purpose
- just compensation should be paid.

In India clause (1) of art. 31 provides for first restriction and clause (2) reading, No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition of the property for an amount which shall be fixed by such law, and no such law be called in question in any court on the ground that the amount so fixed is not adequate for the other two restrictions. Article 19(1)(f) provides the freedom to citizens to acquire, hold, and dispose of the property within the territory of India.

But by the Constitutional 44th Amendment act 1978, these two above mentioned articles were deleted and a new chapter IV was added in Part XII, containing only one article 300A. The legal status of the Right to Property was changed from the fundamental right to constitutional right. As a result, people were not allowed to approach Supreme Court directly u/A 32 of the constitution for violation of the Right to Property although they still could invoke jurisdiction at high court u/A 226 of COI. In *Jilubhai Nanbhai Khachar v. State of Gujrat*<sup>14</sup>, it was held that the Right to property u/A 300A is not a basic structure of the Constitution. It is only a constitutional right.

## WHY THE 44<sup>TH</sup> AMENDMENT ACT WAS MADE?

In order to understand why such a step was taken by the Parliament of India, it is necessary to understand that before India got its independence there were four major systems prevailing the Ryotwari system, Mahalwari system, Zamindari system, and Jagidari system. Due to these large parts of land was in possession of zamindars, tenants, and like people, which causes an unequal distribution of land and increases the gap between rich and poor.

Since 1947-1950, the constituent assembly worked day and night to draft the Constitution of India. Members of the constituent assembly were concerned by the situation at that time and knew various land reforms

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<sup>12</sup> (1973) 4 SCC 225

<sup>13</sup> Charanjit Lal v. Union of India, AIR 1951 SC 41

<sup>14</sup> AIR 1995 SC 142

and acquisition acts will be needed to pass, due to the above-mentioned system, so in order to redistribute land and to rectify the damage various steps were taken:

Provisions related to saving of certain laws were added- By Constitution 1st amendment act 1951 Art. 31A and 31B were added. Art.31A provides that no law providing for the acquisition of any estate or any right or modification of any right will not be deemed to be void on the basis that it is inconsistent with Art. 14 and 19. Art.31B provides for validation of certain acts and regulations, it says that none of the acts and regulations mentioned in the IX Schedule of the constitution would be deemed to be void on the ground that it is inconsistent with the rights conferred in Part III of the constitution. Later on, by the 4th amendment 1955, the scope of the estate was increased, it includes any jagir, inam or muafi, or any other similar grants.

Land ceiling was one of the strongest measures taken in this regard. Ceiling means the maximum limitation on the area that can be acquired by a private person. In the year 1959 at the Nagpur conference of Indian National Congress, it was decided that laws or acts related to the restriction of land limits must be implemented till the end of the year.

Despite such efforts by the government the zamindars and other land owners whose ceiling limit exceeded approached Supreme Court using their fundamental right to property with the intention to hold acts unconstitutional. So, in order to stop this from happening and with a view to doing economic justice, Art.31, and Art. 19(1)(f) ceased to be a fundamental right and was modified as a constitutional right in new chapter IV Part XII of the Constitution as Art. 300A, which continues to exist and follow till today.

The Right to Property would no longer be a fundamental right, but rather a constitutional right and a human right (as held in various court decisions such as *State of Haryana v. Mukesh Kumar* (2011)<sup>15</sup>

## **JUDICIAL APPROACH REGARDING CONSTITUTIONAL RIGHT TO PROPERTY**

Article 19(1)(f) and Article 31 read with the under noted entries gave rights that were so intricately woven into the fabric of our Constitution that they could not be taken out without leaving a jagged hole and broken threads. To harmonize with the rest of the Constitution, the hole must be repaired and the broken threads must be replaced. The task is difficult, and courts have been called upon on several occasions to resolve issues far more difficult than those brought by Article 31 after it was changed several times. After the 1980s, the court has done a better job of protecting our country and people than the legislature.

Soon after the Fundamental Right to Property was abolished, the Supreme Court recognized the value of the Right to Property as a Fundamental Right in *Bhim Singh v. Union of India* (1981)<sup>16</sup>. In the absence of this Fundamental Right to Property, it relied on the second Fundamental Right of Equality, namely the idea of reasonableness under Article 14, to invalidate certain provisions of the urban land ceiling legislation. Though the right to property is not a fundamental right, it is a valuable constitutional right, according to the Supreme Court in the case of *B. K. Ravichandra v. Union of India* (2020)<sup>17</sup>, which ordered the Centre to return the land to its owners. The Supreme Court's decisions and the history of the right to property reveal that, while its primacy as a fundamental right has been questioned, it is nonetheless protected by the rule of law. This court's expanding jurisprudence also demonstrates that it is a valuable right that guarantees basic liberties and economic liberty. Article 300-A's wording is crucial, and its resemblance to Articles 21 and 265 cannot be overlooked— they are, after all, a guarantee of the supremacy of the rule of law.

<sup>15</sup> (2011) 16 SCC 517

<sup>16</sup> (1981) DLT 446

<sup>17</sup> CIVIL APPEAL NO. 1460/2010

In a more recent case of *Bajranga v. State of Madhya Pradesh (2021)*<sup>18</sup> “right to property is still a constitutional right under Article 300A of the Constitution,” the Supreme Court has ruled in a case where the government took ownership of surplus land even though there was none. The deprivation of a right can only be done in conformity with the legal procedure.”

The courts have also acknowledged the State’s interference in the citizen’s right to property. It was held in *Ravindran v. The District Collector, Vellore District (2020)*<sup>19</sup> that the government has no authority to interfere with a citizen’s right to property unless it is done in compliance with the law which was later on reiterated in *Jayalakshmi & Ors. v. State of Tamil Nadu (2021)*<sup>20</sup>. Recently, the Madras High Court made a noteworthy statement, saying that under Article 21 of the Indian Constitution, the Right to Property has a tight relationship with the Right to Life.

### **RIGHT TO PROPERTY AS HUMAN RIGHTS**

The Supreme Court recognized in *State of West Bengal v. Haresh C. Banerjee (2006)*<sup>21</sup> that, even though the right to property was no longer a fundamental right after the repeal of Article 19(1)(f) and Article 31 (1) of the Constitution by the Constitution (Forty-Fourth Amendment) Act, 1978, w.e.f. June 20, 1979, it was still a constitutional right, as provided in Article 300A of the Constitution. The right to a pension was viewed as if it were a right to property. The High Court of Judicature of Bombay in *Purushottam Kashinath Kulkarni and others v. State of Maharashtra and others (2016)*<sup>22</sup> and the High Court of Chhattisgarh in *Ramlal Sharma v. State of Chhattisgarh (2015)*, relying on *D.S Nakara and others v. Union of India (1982)*<sup>23</sup>, concluded that pension payments could not be postponed. Like the property, it is thus a hard-won benefit of an employee. This was reiterated by the Apex court in *Dinavahi Lakshmi Kameswari v. State of Andhra Pradesh (2020)*<sup>24</sup> where it was also observed that “according to a liberal interpretation of these two clauses (Article 300A of the Constitution and Article 25(1) of the Universal Declaration on Human Rights (UDHR), the goal is to safeguard owners of mobile and immovable property merely from Executive fiat, laying minor constraints on the State’s power. This contrasts sharply with the terminology used in the Indian Constitution.”

The right to property under Article 300-A of the Indian Constitution is not only constitutional or legal, but also a human right, and it can only be taken away by the authority of the law as observed by the High court in *Narayan Prasad v. State of Chhattisgarh (2017)*<sup>25</sup>. “Article 300A declares that a person’s property cannot be taken away only based on presidential fiat without any explicit legal authority or the support of a competent legislature’s statute. Although the right to property is no longer a fundamental right, it is nonetheless protected by the Constitution as a Constitutional and a human right”, reminded the Allahabad High court to the government. in the case of *Gayatri Devi v. the State of UP (2019)*.

Although the right to property is no longer a fundamental right, it remains a constitutional right under Article 300A and a human right, as this Court noted in *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai*

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<sup>18</sup> CIVIL APPEAL No.6209 of 2010

<sup>19</sup> W.P.No.19428 of 2020

<sup>20</sup> W.P.No.181 of 2021

<sup>21</sup> Appeal (civil) 2579 of 1998

<sup>22</sup> WRIT PETITION NO. 2630 OF 2014

<sup>23</sup> 1983 AIR 130

<sup>24</sup> WRIT PETITION (PIL) No. 128 OF 2020

<sup>25</sup> MCRC No. 5224 of 2017

Patel and Others (2008)<sup>26</sup>. According to Article 300A of the Indian Constitution, no one's property can be taken away from them unless they have legal authorization to do so. The appellant trust's property cannot be taken from it unless it is done in conformity with the law. It was observed by division bench in a recent case of Hari Krishna Mandir Trust v. State of Maharashtra (2020).

### **PRESENT LEGAL STATUS OF RIGHT OT PROPERTY**

By 44th Amendment Act 1978 of the Constitution of India, a new article namely 300A was inserted and titled as Right to Property. It read as: No person shall be deprived of his property save by authority of law. This article provides restrictions on the State that it cannot take anybody's property without the force of law also interpreted can be deprived of the force of law. The word 'law' here means a validly enacted law which is just, fair, and reasonable<sup>27</sup>

In the case of Hari Krishna Mandir Trust v. the State of Maharashtra And Others<sup>28</sup>, it was held by the SC that the appellant cannot be deprived of his strip of land being a private road, without the authority of law, if allowed will be a violation of Art. 300A.

Art. 31 used to impose a similar limitation on the power of Eminent Domain as in America but thenew Art. 300A only imposes one restriction on this power that is the authority of law. It is obvious such deprivation will have the force of law only when it is for public welfare and is just, fair and reasonable. In the case of K.T. Plantation Pvt. Ltd. v. State of Karnataka<sup>29</sup>, it was held by SC that the requirement of public purpose is invariably the rule when a person is deprived of his property.

The main question arises if any person is deprived of his property by the force of law for the public interest, will he be entitled to compensation?

The answer is yes. Although it is not explicit like in Art. 30(1)(A) as well as in 2nd proviso of Art. 31A(1) but yet it can be inferred in Article 300A. The State has to justify its stand on reasonable grounds which depends upon legislative policy. In the recent judgment of Vidhya devi v. The state of Himachal Pradesh & ors<sup>30</sup>, it was held by SC that the right to own private property is a human right and cannot be denied. The party depriving one's right to property must have the authority of law. In this case, the plaintiff was given compensation for the wrong acquisition of property by the state.

### **CONCLUSION**

Due to the excessive possession of land by the zamindars and tenants, the legal status of the Right to property was changed from a fundamental right to a constitutional right in order to avoid the situation of misusing of right to property as a fundamental right by zamindars and another landowner against state measures to acquire land and to implement land ceiling laws in India. This right is available to all persons as a constitutional right and can invoke the jurisdiction in high court u/A 226 of the Constitution of India.

### **SUGGESTION**

The historical background of right to property in India reveals a complex journey shaped by political, social, and economic influences. This 'suggestions' highlights the gaps in India's contemporary land laws

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<sup>26</sup> Appeal (civil) 2003 of 2008

<sup>27</sup> M/s. Delhi Airtech Services Pvt. Ltd. V. State of U.P., AIR 2012 SC 573

<sup>28</sup> Civil Appeal No. 6156 of 2013., decided on 07-08-20.

<sup>29</sup> AIR 2011 SC 3430

<sup>30</sup> SC, DB, Appeal (civil), 60-61 of 2020, Judgement date: Jan 08 2020

and proposes ways to enhance them, fostering equitable, efficient, and sustainable land tenure.

### **1. Clear Definition of Property Rights:**

Ambiguous property rights definitions lead to disputes. A comprehensive framework outlining ownership, usage, transfer, and inheritance is crucial. This clarity would reduce conflicts and provide stakeholders a better understanding of their rights.

### **2. Streamlined Land Records:**

Outdated land records hinder ownership verification and transactions. Transitioning to digital records with regular updates can ensure accuracy, accessibility, and transparency, minimizing disputes.

### **3. Tenant Protection and Reform:**

Weak tenant protection discourages investment. Prioritizing tenant rights through fair leases, tenure security, and dispute resolution mechanisms can balance landlord-tenant interests.

### **4. Land Consolidation and Fragmentation:**

Fragmented land holdings hinder efficient land use. Encouraging voluntary land consolidation with safeguards for small landholders can promote better land utilization.

### **5. Women's Land Rights:**

Gender inequality in land ownership persists. Establishing legal provisions ensuring women's equal rights to land ownership, inheritance, and decision-making can promote gender equity.

### **6. Environmental Considerations:**

Inadequate environmental provisions lead to unsustainable land practices. Integrating environmental assessments and sustainable land management principles into laws can balance development and preservation.

### **7. Conflict Resolution Mechanisms:**

Lengthy land dispute resolution processes deter development. Specialized and accessible dispute resolution mechanisms can expedite justice and alleviate legal burdens.

### **8. Urban Land Management:**

Urbanization strains land resources, leading to unplanned growth. Comprehensive urban land management policies, including affordable housing provisions, can drive sustainable urban expansion.

### **9. Indigenous and Tribal Land Rights:**

Historical injustices affect indigenous land rights. Recognizing and protecting their traditional rights through respectful legal measures can empower these communities.

### **10. Transparent Land Acquisition Process:**

Opaque land acquisition processes trigger conflicts. Enhancing transparency, consultation, fair compensation, and rehabilitation measures can establish a more equitable approach.

In conclusion, India's land laws have evolved, yet challenges persist. Embracing these suggestions can transform the land tenure system, respecting rights, minimizing conflicts, and promoting sustainable development.