



RIGHT TO PROPERTY AND THE CONSTITUTION OF INDIA

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1. ABSTRACT: The Constitution of India initially granted the Right to Property as a fundamental right under Article 19(1)(f) and Article 31. However, the 44th Amendment in 1978 repealed these rights, introducing Article 300A and amending Articles 31A, 31B, and 31C. Article 19(1)(f) emphasized an individual's right to acquire, hold, and dispose of property, while Article 31 protected against deprivation except by lawful authority. Post-amendment, Article 300A states that no person shall be deprived of property except by authority of law. The 44th Amendment removed the right to property as a fundamental right, allowing regulation through ordinary laws. The legal right to property does not protect against legislative action, and violations must be addressed in the High Court under Article 226. While the fundamental right to property under Part III was abolished, Articles 30 and 31A still provide compensation guarantees in specific cases. Agrarian reforms drove the abolition, aiming to redistribute surplus lands among the landless. Articles 31A, 31B, 31C, and 300A now govern the right to property, protecting against arbitrary deprivation. Article 31A safeguards laws related to land reforms from challenges based on violation of fundamental rights. Article 31B protects Acts in the Ninth Schedule from being void on the grounds of inconsistency with Part III rights. Article 31C empowers Parliament and State Legislatures to enact laws securing directive principles without challenge under Article 14 and 19. The 44th Amendment clarified that laws added to the Ninth Schedule after April 24, 1973, are subject to judicial review. Article 31C, introduced by the 25th Amendment, safeguards laws implementing directive principles from being void due to contravention of fundamental rights. Further amendments, such as the First, Fourth, Twenty-Fifth, and Forty-Fourth, refined aspects like compensation and legislative protection. The Forty-Fourth Amendment in 1978 deleted Article 31 along with Article 19(1)(f), making the right to property a legal right under Article 300A. Eminent domain, akin to the power of taxation, allows the state to take private property for public purposes upon just compensation. Overall, the evolution of property rights in India reflects a balance between individual rights and societal welfare.

IndexTerms: Right to Property, Fundamental Rights, 44th Amendment, Article 300A, Articles 31A, 31B, 31C, Article 19(1)(f), Agrarian Reforms, Ninth Schedule, Judicial Review, 25th Amendment

2. INTRODUCTION:

The evolution of the right to property in the Indian Constitution reflects a transformative journey from being a fundamental right under Article 19(1)(f) and Article 31 to its subsequent repeal through the 44th Amendment in 1978. This transition gave rise to new provisions such as Article 300A, 31A, 31B, and 31C, shaping the legal landscape surrounding property rights. This shift was driven by the imperatives of agrarian reforms, social justice, and the redistribution of resources. In this context, we explore the key amendments and their implications on the right to property.

- Under the constitution of India, the framer of constitution has provided Right to Property as a fundamental rights.

- That was provided in two facets

1. Article 19(1)(f)

2. Article 31

After 44th Amendment 1978, these rights were repealed and the right is available under Article 300A, 31A, 31B, 31C.

- Article 19(1)(f) reads as “Every individual is having fundamental right to acquire, holds, and to dispose of his property”

- Article 31 reads as “No person shall be deprived of his property, save by authority of law”

But this was repealed by the 44th Amendment in the year 1978.

The concepts which were found in the above articles were taken from the said category and a new article namely 300A has been newly created and inserted and has no place in part III of the Constitution.

Article 300A reads as follow

“No person shall be deprived of his property, save by authority of law”

3. Article 13:

- Originally, the right to property was one of the seven fundamental rights under Part III of the Constitution. It was dealt by Article 19(1)(F) and Article 31.

- It empowered the State to acquire or requisition the property of a person on two conditions:

- a. It should be for public purpose

- b. It should provide for payment of compensation(amount) to the owner.

- Therefore, the 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III

- The right to property as a legal right (as distinct from the Fundamental Rights) has the following implications:

- a. It can be regulated ie, curtailed, abridged or modification without constitutional amendment by an ordinary law of the Parliament.

- b. It protects private property against executive action but not against legislative action.

- c. In case of violation, the aggrieved person cannot directly move the Supreme Court under Article 32 (right to constitutional remedies including writs) for its enforcement. He can move the High Court under Article 226.

- d. No guaranteed right to compensation in case of acquisition or requisition of the private property by the state.

- Though the Fundamental Right to property under Part III has been abolished, the Part III still carries two provisions which provides for the guaranteed right to compensation in case of acquisition or requisition of the private property by the state.

- a. When the State acquires the property of a minority educational institution (Article 30).[44th Amendments Act 1978]

- b. When the State acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limits (Article 31 A).[17th Amendments Act 1964]

4. Reasons For The Abolition Of Right To Property As A Fundamental Right:

- The agrarian reforms, were the foremost and immediate objectives of the Central and State Governments in their planning immediately after attaining Independence.

- So a series of legislation were enacted in order to sub serve the common good, increase agricultural production and to promote social and economic justice.

- The land reforms involve ceiling on land holdings, abolition of Zamindaries, protection of tenants and conferment of occupancy rights.

- Further the Governments have wanted to redistribute the surplus lands among landless.

5. Articles 31a , 31b, 31c And 300a Are Existing Articles Relating To Right To Property :

- Under Article 31A, that no law providing for acquisition of any 'estate' or any right therein extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of right conferred by article 14 or 19 of the constitution

- Article 31B provides that none of the acts and regulations mentioned in the ninth schedule to the constitution shall be deemed to be void on the ground that they are inconsistent with any of the rights conferred by part III of the constitution

- Article 31C empowers Parliament as well as State Legislatures to enact laws towards securing the directive principles of state policy specified in Article 39(b) and (c) of the constitution and such laws cannot be challenged on the grounds that they are violate Article 14 and 19 of the constitution

- Article 300A of the Constitution, says that “No person shall be deprived of his property save by authority of law”

6. Article 31A (First Constitutional Amendment 1951):

- Article 31A says that no law providing for acquisition of any 'estate' or any right therein extinguishment or modification of any such rights, shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of rights conferred by Articles 14 or 19 of the Constitution.

- This Article was originally inserted by the First Amendment with retrospective effect and was further amended by the Fourth, Seventh and Forty-fourth Amendments.

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7. Saving Of Laws Providing For Acquisition Of Estates , Etc:

Article 31A saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) and Article 19 (protection of six rights in respect of Speech, assembly, movement, etc.).

They are related to agricultural land reforms, industry and commerce

- The object of this Article is not only to validate acquisition of Zamindaries or abolition of Permanent Settlement without interference from Courts but also to protect social welfare
- Legislations.
- Agrarian reforms will include provision for the development of rural economy, encouragement self cultivation, equitable distribution of lands, transfer of surplus land to the village Panchayat for the use of general community, settlement of agricultural labour and so on.

8. Proviso:

There are two provisos under this Article 31A.

The first proviso says that the protection of Article 31A (1) shall 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.

The second proviso was inserted by the Seventh Amendment. It prescribes payment of compensation at the market value where cultivable land is acquired by the State provided such land is within the ceiling limit. The purpose of this proviso seems to be that a farmer who is cultivating land personally and within the ceiling limit should not be deprived of that property unless compensation at market rate is given (*Bhagat Ram vs. State of Punjab*¹).

9. Article 31B:

9.1 Validation of Certain Acts and Regulations:

Article 31B saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the fundamental rights. (New schedule was made) (court cannot intervene)

- Article 31B provides that none of the Acts and Regulations specified in the Ninth Schedule to the Constitution, shall be deemed to be void on the ground that they are inconsistent with any of the rights conferred by the part III of the Constitution. This Article was inserted by the Constitution (First Amendment) Act, 1951.
- This provision immunizes the various pieces of Legislations included in the Ninth Schedule from an attack on the ground of their nonconformity with any of the fundamental rights. No Act mentioned in the Ninth Schedule can be invalidated on the ground of its violation of any other fundamental right (*State of Bihar vs. Kameshwar Singh*²)
- The object and purpose of introducing Articles 31A and 31B was to protect agrarian reforms from invalidation. Article 31A saves laws enacted to implement the objects set out in Clause (1) thereof from attack under Articles 14 and 19.
- Article 31B protects Statutes included in the Ninth Schedule from any of the provisions of part III. A Statute which has been included in the Ninth Schedule and is also covered by Article 31A will thus be protected from any challenge that it violates the provisions of Part III.

For Article 31B, there has to be a Constitutional Amendment to include a legislation in the Ninth Schedule.

• The First Amendment which added the Ninth Schedule initially had 13

Acts mainly pertaining to land reforms. Subsequently and contrary to the earlier intention, several more Acts (not connected with agrarian reforms) were added from time to time.

• However, in a significant judgement delivered in *I.R. Coelho*³ (2007), the SC ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule.

- It said that the laws placed under the Ninth schedule after April 24, 1973, are open to challenge in court if they violated fundamentals rights guaranteed under Articles 14, 15, 19 and 21 or the 'basic structure' of the constitution.
- It was on April 24, 1973, that the SC first propounded the doctrine of "basic structure" or 'basic features' of the constitution in its landmark verdict in the *Kesavananda Bharati* case⁴

¹ *Bhagat Ram vs. State of Punjab* (1967 SC 927)

² *State of Bihar vs. Kameshwar Singh* (AIR 1952 SC 252)

³ *IR Coelho vs, Tamil Nadu* (AIR 2007 SC 861)

⁴ *Kesavananda Bharati vs. State of Kerala* (AIR 1981 SC 271)

• The Supreme Court held that all Acts and Regulations included in the ninth schedule prior to 24th April, 1973 (the date on which the Kesavananda Bharati judgment was delivered) will receive full protection of Article 318. All Acts and Regulations which were added to the Ninth Schedule after this date will be valid only if they do not damage or destroy the basic structure of the Constitution (Waman Rao vs. Union of India⁵.)

• While Article 31A protects law of particular category only, Article 318 empowers. Parliament to include such laws as it thinks fit (Waman Rao vs. Union of India⁵). This view virtually enables Parliament to pass any law and include it in the Ninth Schedule and completely insulate that enactment from judicial review on the ground that it violates the fundamental rights contained in part III.

10. Article 31C:

Saving of Laws giving effect to Certain Directive Principles, Article 31C, as inserted by the 25th Amendment Act of 1971, contained the following two provisions:

No law that seeks to implement the socialistic directive principles specified in Article 39 (b) or (c) shall be void on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) or Article 19 (protection of six rights in respect of speech, assembly, movement, etc.) [Bank Nationalization case]

Article 39(b) that the ownership and control of the material resources of the community are so distributed as best to subserve 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."

- In the Kesavananda Bharati case⁶ (1979), this provision of Article 31C was held to be constitutional and valid.
- The 42nd Amendment Act (1976) extended the scope of the above first provision of Article 31C by including within its protection any law to implement any of the directive principles specified in Part IV of the Constitution and not merely in Article 39 (b) or (c).
- However, this extension was declared as unconstitutional and invalid by the SC in the Minerva Mills case⁷ (1980)

11. Changes Introduced Under Article 31:

• Originally Article 31 consisted of six clauses. Article 31(1) said that 'no person shall be deprived of his property save by authority of law.

Clause(2) was with respect to payment of compensation and clause 5 was saving clause.

11.1 First Amendment :

- The Article 31A and 31B were inserted by the First Amendment of the Constitution in the year 1951
- The purpose of protecting various land legislation from attack on the ground that they violated articles 14,19 or 31,the Article 31A was introduced
- Article 31B protects legislations included in the Ninth Schedule from challenge because they were inconsistent with or took away some of the fundamental rights.
- Article 31B protects legislations included in the Ninth Schedule from challenge because they were inconsistent with or took away some of the fundamental rights.

11.2 Fourth Amendment:

- In the year 1955, the Constitution(Fourth Amendment) Act, 1955, substituted clause 2. It also inserted clause 2A in Article 31. The result of the Amendment was to make the adequacy of Compensation non-justiciable.
- Clause 2A made it clear that the obligation to pay compensation would arise only on the transfer of ownership or possession to the state or a state owned or controlled corporation.

11.3 Twenty-Fifth Amendment :

• Once again the right to property was amended in the year 1971 which came into force on 20th April, 1972. This Twenty-Fifth Amendment again Substituted Clause (2) and also inserted Clause (2B). It also inserted Article 31C. This amendment was to overcome the decision in Cooper, R. C. vs. Union of India⁸ (the Bank Nationalisation case). In this case the Supreme Court held that the compensation had to be a just equivalent in money the property compulsorily acquired.

⁵ Waman Rao vs. Union of India (AIR 1981 SC 271)

⁶ Kesavananda Bharati vs. State of Kerala (AIR 1981 SC 271)

⁷ Minerva Mills VS. Union of India (AIR 1970 SC 1789)

⁸ R.C.Cooper vs. Union of India⁸ (AIR 1970 SC 564)

The Statement of Objects and Reasons for the Constitution (Twenty-fifth Amendment) Act, 1971 says "Article 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given shall be called in question in any Court on the ground that the compensation provided by that law is not adequate.

- In the Bank Nationalisation case⁸, the Supreme Court has held that the Constitution guarantees the right to compensation, that is the equivalent in money of the property compulsorily acquired.
 - Thus in effect, the adequacy of compensation and the relevancy of the principles laid down by the Legislature for determining the amount of compensation have virtually become justiciable in as much as the Court can go into the question whether the amount paid to the owner of the property is what may be regarded reasonably as compensation for loss of property. In the same case, the Court has also held that a law that seeks to acquire of requisition property for a public purpose should also satisfy the requirements of Article 19 (1) (f).
 - The Twenty Fifth Amendment omitted the word "compensation" and replaced by the word "amount"
 - This Amendment introduced a new Article 31C which empowered Parliament as well as State Legislatures to enact laws toward securing the Directive Principles contained in Clauses (b) and (c) of Article 39.
- The validity of the Twenty-Fifth Amendment was challenged and it was upheld in *Kesavananda Bharati vs. State of Kerala* ⁹.

11.4 Forty-Fourth Amendment :

- Finally, in the year 1978, the Constitution (Forty-Fourth Amendment) Ac 1978 deleted Article 31 along with Article 19 (1) (f) and made the right property as only a legal right and not as a fundamental right.
- The right property was inserted as Article 300A which reproduced the wording as were under Article 31.
- Now the Articles 31A, 31B, 31C and 300A are the existing provision regarding right to property, after all these amendments.

11.5 Eminent Domain :

- The State has the sovereign right to take private property for public purposes. This power is known as eminent domain. It is like the power of taxation, an offspring of political necessity.
- The eminent domain is the power of the sovereign to take property for public use without the owner's consent upon making just compensation.
- The taking of property is thus subject to the payment of just compensation.
- Entry 42 of List III of the Constitution of India deals with the "Acquisition and requisitioning of property".
- Under Indian law also the State can take property for a public purpose and for compensation (*State of Bihar vs Kameshwar Singh*¹⁰)

12. Conclusion:

In conclusion, the constitutional journey of the right to property in India underscores a delicate balance between individual rights and societal welfare. The amendments, especially the 44th Amendment, redefined property rights, emphasizing the broader principles of social justice and equitable distribution. While the fundamental right to property may no longer exist, the legal right remains subject to legislative action, reflecting the evolving priorities of the nation. Understanding this evolution is crucial for comprehending the complex interplay between individual rights and the broader goals of a just and equitable society.

13. REFERENCES:

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