

TRANSITION OF PROPERTY RIGHTS FROM FUNDAMENTAL TO LEGAL RIGHTS

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INTRODUCTION

Real property, real estate, realty, or immovable property is 'Land' which is someone's property. It belongs to the person who has the legal ownership of that land along with its resources and can decide how they can be used. The definition of real property also includes all structures, improvements and fixtures integrated with or affixed to the land, such as buildings, ponds, dams, canals, crops, machinery, etc integrated or affixed to the land. It must be noted that land and its resources must be tangible and excludes all kinds of personal property (movable property).

Coming to the context of real property rights in our country, everyone is allowed to fully own and employ their assets, land and resources according to their benefit without the interference of the government or any other entity/ individual. Still, property rights are not adequately protected by the State and the Property laws in India have been subjected to a lot of volatility with a string of amendments in the 20th century.

Article 19(1)(f) of the Indian Constitution had provided for freedom of citizens to acquire, hold, and dispose of the property within the territorial boundaries of India. Article 31() provided for the procedure of land acquisition by the State. But by the 44th Constitutional Amendment act 1978, these two articles were deleted and a new chapter (chapter IV) was added in Part XII, containing only one article 300A. **The legal status of the Right to Property changed overnight from a fundamental right to a constitutional right.**

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WHAT ARE PROPERTY RIGHTS - THEN vs. NOW

Brief History- With the emergence of civilizations, group and national ownership of land took shape; subject to government regulations of the changing regimes and conquests. The earliest traces of property and ownership regulations are found in the Babylonian Code of Hammurabi. Apart from providing food and means of sustenance, the finer attributes of land (such as geography, utility, and residence) led to its treatment as a valuable real asset. In India, the Code of Manu that evolved around the 5th century B.C was the first text which mentioned the different ways of acquisition and ownership of land among the four Varnas or Castes.

Historians have little or no information regarding pre-British Property Rights. It was the British Parliament that intervened in the existing feudal system of India consisting of Zamindars, Jagirdars, Raiyatwars, and Imams. India's first land legislation was passed by Britishers through Bengal Resolution I of 1824, a law enabling them to acquire land to build transport links, i.e. roadways, railways, and canals. Similar Laws were brought in different territories. The Act VI of 1857 finally unified all the state laws and made them uniformly applicable throughout British Indian territories.

It was only in 1894, that the first Land Acquisition Act, which forms the basis for all land laws in our country today was passed. It applied to all states in India except for the three princely states(Mysore, Hyderabad, Travancore) which had separate land laws.

After Independence Laws (Pre-44th Amendment)- In 1947, India adopted the Land Acquisition Act and enforced it across "all the provinces of India" without exception. As and when the Constitution of India came into force in the 1950s, the property right was given the status of a fundamental right. Article 31 and Article 19(1)(f) of the Constitution ensured the protection of a person's right to their property. The term property- as interpreted by the Supreme Court in Article 31- was given a literal meaning. Both tangible and intangible property rights were included in the definition. Article 31 guaranteed the right of private ownership of property as well as the right to enjoy and dispose of property free from government interference or any restrictions (except for reasonable restrictions for the public good. The article states that no person shall be deprived of his/her property, except by authority of law. It is also mentioned that compensation would be paid to a person whose property has been taken for public purposes, although the compensable amount is to be fixed by law and the sufficiency of such could not be questioned in a court of law.

By an amendment in 1951 itself, Article 31(A) and 31(B) were added. Article 31(C) was added later through 25th Amendment Act.

1. Art 31(A) mentioned that notwithstanding any law contained in Article 13, no law providing for the acquisition of land in the public interest shall be deemed to be void on the ground of inconsistency or abridgment of any rights conferred by Article 14 or Article 19 of Constitution.
2. Art. 31(B), as before abrogation, provided that no law contained in the Ninth Schedule shall be deemed void on the grounds that it is inconsistent with the Fundamental Rights in Part III of the Constitution. Nevertheless, a property could only be acquired by an authority of law providing for such procedure of acquisition/requisition.
3. Art. 31(C) provided that no law made towards fulfillment/securing of The Directive Principles of the State laid down in Part IV, shall be deemed to be void on the ground of inconsistency or abridgment of any rights conferred by Article 14 or Article 19 of Constitution.

Art. 19(1)(f) of the Constitution provided Indian citizens with a right to acquire, hold and dispose of the property. Article 19 (5) permitted the state to impose by law reasonable restrictions on this right in the interests of the general public or for the protection of any Scheduled Tribe. Although, State could take over tracts of land only through the due course of law, leaving aside any scope of arbitrariness on the State's part.

Post-44th Amendment - The 44th Amendment act 1978 deleted both Articles 19(1)(f) and 31 from the Constitution and added a new chapter. Chapter IV was added in Part XII, containing only one article 300A. The legal status of the Right to Property changed overnight from a fundamental right to a constitutional right. As a result, people now were barred from approaching the Supreme Court directly under 32 of the constitution for violation of Property Rights. Although one could still invoke jurisdiction at the high court under 226 of the Constitution.

The term property in Article 300A is confined not only to land alone but also includes both corporal and incorporeal rights such as money, contract, interest in the property, etc. Article 300A provides that no shall be deprived of property save by authority of law.

The 1894 Land Acquisition Bill too, after slacking in the Parliament for years, passing through multiple calls for amendments, the Land Acquisition Rehabilitation and Resettlement Bill,

(LARR) 2011 was introduced again by the UPA government and passed in 2013. This act forbids the acquisition of land which is a multi-crop irrigated area. It required a social impact study to be made before acquisition. Land acquisition by private companies or public-private partnerships required the approval of 80% of the landowners of the area to be bought.

The Supreme Court in its most recent judgment dated 11th March 2020 has reiterated that property right is both a human right and a constitutional right (under Article 300A of the Indian Constitution). Forcible dispossession of any individual's private property without due process of law is to be regarded as a human right violation.

PROPERTY RIGHTS AS A FUNDAMENTAL RIGHT

No other fundamental right of India has sparked more litigation than Property rights between state and individuals. Article 31 along with Article 21 (Right to life) are two unique rights that do not provide or bestow any right, instead declared that these two rights- Right to Life and Right to Property as inherent rights. In addition, while most of the other rights are available only to citizens, articles 15, 21, 19, and 31 which are now abrogated were available to everyone. Although the Right to Property was guaranteed as inviolable, such assurances could be meaningless if property rights are taken through the process of law now and then.

PROPERTY RIGHTS AS A LEGAL RIGHT

Agitated by the much-touted Land Reform Programmes going out throughout India, Property rights stood as an obstacle in the way of accomplishing an Ideal Socialist State. The defence of property rights as a fundamental right prevented the government from Redistribution of Power and economic wealth. Thus, the Court through the 44th Amendment Act removed property rights from the scope of judicial review under Article 32. It also put the subject on Ninth Schedule, enabling Constitutional Amendments to nullify the judgements of the Court. Nonetheless, Property Right as a statutory right is Human Right and no person shall be deprived of basic human rights.

WHY THE CHANGE?

The scope of property rights has been continuously diminishing through the curtailments posed by constitutional amendments one after the other. Many times legal proceedings have arisen, attributable to the legislation enacted by the state on Regulation of Property Rights. All these

amendments have stirred up a lot of controversies regarding the payment of compensation (a just compensation) for the property rights acquired. Many a time the government has blamed the judiciary for posing an obstacle to the abolition of the Zamindari system of India. Large tracts of land in possession of zamindars, tenants, and the elite class, caused an unequal distribution of land and increased the gap between rich and poor. Despite earnest efforts by the government to eliminate inequality, the zamindars and other landowners whose ceiling limit of land to be owned exceeded, used to approach the Supreme Court using their fundamental right to property. To prevent this misuse of rights by the selfish privileged class and to do economic justice, Art.31, and Art. 19(1)(f) was erased from part III of the Constitution (comprising of fundamental rights) and was modified into a constitutional right in chapter IV Part XII of the Constitution as Art. 300A, which exists and is followed till today.

The amendments brought about by the Government is based on the doctrines of two Latin maxims,

- (1) *Salus Populi Suprema Lex*, i.e. Welfare of the People Is the Paramount Law.
- (2) *Necessitas Publica Major est Quam*, i.e. Public Necessity Is Greater Than Private Necessity.

The Court had often produced judgements in favour of the elite class by enforcing the state to pay heavy compensations which were beyond the capacity of the state to provide. Many ministers too have criticized judgements preventing the state to acquire land for public benefit. By these amendments, the Government curtailed the scope of a judicial inquiry on the public acquisition of land to a great extent.

LAND ACQUISITION ACT, 2013

As per the LARR Act, the State and Private entities could acquire land only for building public infrastructure, and that too after due study of the social impact of that infrastructure plan. The state can acquire land for the development of planned cities/towns/villages or housing purposes of the landless poor.

RELEVANT CASES

In *Jilubhai Nanbhai Khachar v. the State of Gujarat*, the Court was held that the Right to property u/A 300A does not fall under the basic structure of the Constitution but is only a constitutional right. Although in *Hari Krishna Mandir Trust vs the State of Maharashtra And*

Others, the Supreme Court SC that the appellant cannot be deprived of his strip of land (being a private road) without the authority of relevant law and procedure. Moreover, the Supreme Court in the case of *K.T. Plantation Pvt. Ltd. v. the State of Karnataka*, stated that the "requirement of Public Purpose" is invariably the rule or test of justice when a person is deprived of his property. There must be visible public benefit borne out of the land after acquirement and modification.

The Court may also order the State to hand back the possession of land to its owner in case the land so acquired fails to provide any public benefit or has not been used for any productive activity at all for long periods. One example of such a case is *BK Ravichandra v. Union of India*. All the amendments adopted by the Government is in line with Article 17 of the Universal Declaration of Human Rights (UDHR) convention which enshrines the following characteristics of the Right to property:

- (1) Every person has a right to own property on their own(alone) as well as in others' association.
- (2) No person shall be arbitrarily deprived of their property.

Recently, the Supreme Court bolstered the inheritance rights of all Hindu women. The court provided Hindu Women with equal rights of inheritance and ownership at par with men (in the context of the Hindu Succession Law). All women, now, could acquire land inherited after 1956.

CONCLUSION

The state has to justify its stand on justiciable grounds which depends upon legislative policy, to take over and modify the land. If the ultimate aim of the common good through public use of land is not fulfilled, the power of the state to acquire any land would look overarching on personal rights and arbitrary misuse of power. Constitutional provisions contained in Article 39(b), (c) reflect our State's growing concern against the concentration of wealth in the hands of the few to the detriment of the social interests of everyone.

In any egalitarian society, fair and equitable distribution of wealth subserves the common interest of all sections of the society. Equity has been the guiding principle in the regulation of property by the State through the instrumentality of Law. Socialization of property shall be the

end aim of all governments rather than adopting a narrow individualistic approach. It is through these Property Laws, that the state aims to fulfill such an aim.



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