



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

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Evolution of Right to Property in India – Development of Law Perspective

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Received 23 January 2023; *Accepted* 13 February 2023; *Published* 17 February 2023

The right to property in India is one of the most debated topics, the most amended article of the constitution, and the first-ever fundamental right to be deleted. This article discusses the philosophy behind the right to property and how it has influenced the minds of the Indian subcontinent. To truly understand the development of any law, the initial thought process behind it becomes much essential. The constitutional assembly debates and various opinions of the framers are examined. One cannot go on without expanding on the numerous amendments this right had to go through and the ups and downs it had to face from being a fundamental right which is an absolute right to becoming subordinate to the DPSPs and finally becoming a constitutional right. It discusses the doctrine of eminent domain and its setbacks in modern times. It answers the question as to why we need the right to private property and what is the importance of having a property right.

Keywords: *right to property, constitutional debates, fundamental rights, amendments.*

INTRODUCTION

“Property and Law are born and must die together.”

– Jeremy Bentham.

According to him, property is a result of civil society, not a natural right. Bentham being a positivist, treated morality and law as separate entities. He believed the law to be a social construct.¹ Hugo Grotius believes that all the resources of the world are held by humanity altogether, a commonality among all natural theorists. He gave out the concept of eminent domain. It is kind of a non-ownership in that no person had a specific hold on the natural world. For the same reason, Grotius regarded the right to property as a universal right. But the universal right could not be the same for ground private property.² The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights do not acknowledge the property right, but Article 17 of the Universal Declaration of Human Rights does.³

Property has been defined in various Supreme Court Judgments. In the case of *Guru Dutt Sharma v State of Bihar*, it is a set of rights, tangible property, it includes the right of possession, to enjoy and retain, right to alienate and destroy. The Supreme Court has said that the word property under article 19(f) should be given a liberal and broad meaning extending to all types of interests associated with property rights.⁴

The right to property in India has become a human right from being a fundamental right since the 44th amendment in 1978. Supreme Court in a recent judgment said that for a citizen to own private property is a human right and the state cannot take it away without following the due procedure of law. The state in the name of adverse possession cannot take away private property and that would make the state the encroacher. Here in this case the government of Himachal Pradesh took away the property of Ms. Devi forcibly under the garb of the doctrine of adverse possession. It was 52 years ago when property right was a fundamental right. When she went

¹ Gregory Alexander, 'Property law and the Western concept of private property' (*Britannica*) <<https://www.britannica.com/topic/property-law/Property-law-and-the-Western-concept-of-private-property>> accessed 22 January 2023

² Billy Christmas, 'Hugo Grotius and Private Property' (*Cairn.info*, 12 April 2019) <<https://www.cairn.info/revue-raisons-politiques-2019-1-page-21.htm#:~:text=Grotius%20believed%20that%20the%20universal,physically%20detached%20oneself%20from%20it.>> accessed on 22 January 2023

³ Amruta Patil, 'Right to property' (*Prepp*, 24 January 2023) <<https://prepp.in/news/e-492-right-to-property-indian-polity-notes>> accessed on 22 January 2023

⁴ *Commissioner, Hindu Religious Endowment v K Lakshmindra* AIR (1954) SC 282

to the Apex Court in 2019, it ordered the state to pay her Rs. 1 Crore as it had taken away her land in 1967 when the property right was a fundamental right. Nonetheless, even now under article 300 A the state is required to follow due procedure when it deprives any person of their private property, SC reiterated the government.⁵

The main point of difference between fundamental rights and human rights would be, firstly one is stated in the constitution and enforced by the law while the other is vital to life and principles of equality and dignity, and secondly, one is an absolute right and the other is a limited right.⁶ The right to property being a human right was observed in *Vimlaben Ajitbhai Patel v Vatslaben Ashokbhai Patel and others*⁷. This was cited by the Supreme Court, bringing forth Article 300A, “ no person shall be deprived of his property save by the authority of law” .⁸ Problems started when the Defence of India Act gave the Centre the power to acquire immovable property in the public interest. The Madhya Pradesh High Court in a recent judgment said that Article 300A maintains a good balance between the private property owners and the interest of the state.

CONSTITUTIONAL DEBATES REGARDING THE RIGHT TO PROPERTY

Various political ideas and debates were going on when India was to become an Independent democratic republic. the constitution of various assemblies was taken into consideration in the formation of our constitution. This led to the inception of a dual set of ideas, one was the framers of the constitution were inclined to the American constitution, its bill of rights, and the implementation of an independent judiciary. The other idea was influenced by the socialist and communist countries where all property including private was owned by the State. After much debate, it was finally unanimously decided in Nehru’s favour. Compensation was to be given

⁵ Krishnadas Rajagopal, ‘Private property is a human right: Supreme Court’ (*The Hindu*, 12 January 2020) <<https://www.thehindu.com/news/national/private-property-is-a-human-right-says-sc/article30551819.ece>> accessed 20 January 2023

⁶ Sunita Mishra, ‘What is Right to Property in India? Why does it matter?’ (*Housing.com*, 25 January 2023) <<https://housing.com/news/right-to-property-in-india/>> accessed 25 January 2023

⁷ *Vimlaben Ajitbhai Patel v Vatslaben Ashokbhai Patel & Ors* AIR (2008) SC 2675

⁸ *Hari Krishna Mandir Trust v State of Maharashtra* (2020) Civil Appeal No 6156/2013

to the citizens of their property which was a fundamental right under article 31 of the newly framed constitution.⁹

The same was drafted by the subcommittee as *“No property, movable or immovable, of any person or corporation, including any interest in commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of just compensation for the property taken or acquired and specifies the principles on which and how compensation is to be determined.”* The issue of compensation became the crux of many debates to come. Main issues concerning the compensation. One of the questions was whether it should be just and when the question of compensation is challenged it should be left to whom, the court or the legislature.

Few felt that there was no meaning in adding just as the word compensation in itself implied to be just but KM Pannikar thought that inserting the word just opened doors judiciary to question the compensation, so he suggested dropping it. It was accepted by the committee. Nehru said the quantum and form of compensation both should be left to the legislature as the courts have no role to play here unless there was “gross abuse of law”. Ambedkar took the middle road and said there is a fine line between quantum and form of compensation. The Quantum of compensation is to be left to the courts but the form of compensation is to be with the legislature. Munshi was the only member who vehemently contended that both the amount and the manner of compensation should be fair and justiciable by courts. He questioned the other members as to what prevented the legislature from declaring that compensation would be paid over a hundred years if it was not subject to legal challenge. In the end, a compromise was reached that legislature must have some authority regarding the determination of the compensation. However, must be subject to courts for preventing abuse.¹⁰

The second issue was about the dangers of due process. to protect the property rights of the citizen, should the authority of the state be curtailed? This was the issue in front of the committee. The clause of the due process eventually became article 21. This provision of due

⁹ Shruti Rajagopalan, ‘Our Founders and the Right To Property’ (*Thinkpragati*, 24 July 2017)

< <https://www.thinkpragati.com/opinion/1849/founding-fathers-right-property/> > accessed 18 January 2023

¹⁰ *Ibid*

process had big support from many for a fair justice system as India had a history of preventive detention arrests during the struggle for freedom. Hence, they gave liberty greater support. KM Pannikar came up with the solution to separate life and liberty and property and remove the due process clause from the property. The reason behind this is that life and liberty is a sacred issue and are concerning political rights, they should be given such protection while property rights had their foundation in capitalist societies, and mostly the wealthy benefitted from it and it did not deserve such protection. So finally, the preventive detention article was added and it was about the protection of life and liberty and was not just limited to property rights.¹¹

The freshly formed article 31 outlined all the necessary principles such as public use, legislature, and a water-downed due process of law and compensation. But the drafting committee could not prevent the future abuse this was going to face by making it easier to amend Fundamental rights. The members of the constituent assembly who later became members of the Parliament passed the first amendment act in 1951 further diluting property rights by adding articles 31A and 31B.¹²

The first amendment act and the addition of 31 A and 31 B, made zamindars not liable in courts. Land reform acts such as the Kerala reforms act and Bihar Land Reform Act, destroy the property rights of the intermediaries like the zamindari and raiyatwari rights.¹³ The first and seventeenth Amendments tried to do so. The case of *Kameshwar Singh v State of Bihar*¹⁴, declared the Bihar land reforms act invalid on the grounds of the inadequacy of compensation. The Supreme Court overturned this in the Bela Banerjee case which said that the compensation is to be made on the market value of the land at the time of acquisition.

The fourth amendment this amendment gave the government more power to forcible acquisition and reacquisition of private property. Supreme court ruling of the *State of West*

¹¹ *Ibid*

¹² *Ibid*

¹³ Rashmi Venkatesan, 'The Evolution of the Right to Property in India: From a Law and Development Perspective' (2020) 14(1) De Gruyter <[The Evolution of the Right to Property in India: From a Law and Development Perspective \(degruyter.com\)](#)> accessed 19 January 2023

¹⁴ *Kameshwar Singh v State of Bihar* AIR (1952) SC 252

*Bengal v Bela Banerjee*¹⁵ had a counter effect on the changes made by this amendment. This case was about the compensation payable to the affected people when the property is acquired by the government. The issue was regarding the interpretation of the quantum of compensation. The law of west Bengal was paying the affected people based on the market price of the past. The supreme court ruled rejecting the socialist ideas of the State that the compensation should be “ a just equivalent of what the owner has been deprived of”. The government to make the Bella Banerjee decision ineffective amended the constitution. from there on the issue of compensation whether or not its adequate shall not be decided in court

In the case of *Dwarkadas v Sholapur Spinning and Weaving Co.*¹⁶, the government had appointed its people as the directors of the company to guide the management and administration and prevent its closure due to previous mismanagement issues. The real owner went to court alleging that the government had taken over their property without giving compensation. It violated their fundamental right as it did not provide adequate compensation. The Apex Court upheld the challenge and struck down the Industrial Reform Act as unconstitutional.

In response to this judgment, the fourth amendment was passed. It narrowed the scope of Judicial review, inserted clause 2A to article 31, and amended article 31(2), - “no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate” and it also gave 31A a retrospective effect. Articles 31A, 31 B, and 31C were subject to challenges many times. 31 C was inserted by the 25th amendment. The addition of 31C made DPSPs predominant to fundamental rights. This was negated in *Minerva Mills v Union of India*¹⁷ making them be read in conjunction with each other.

The 42nd amendment is also known as the “Mini constitution”. it was one of the most significant amendments of 1976, enacted by the Indira Gandhi government. It was called so because of the large number of changes made to our Constitution. it led to the centralization of our democracy.

¹⁵ *State of West Bengal v Bela Banerjee* (1954) AIR 170

¹⁶ *Dwarkadas v Sholapur Spinning & Weaving Co* 1(954) AIR 119

¹⁷ *Minerva Mills v Union of India* AIR (1980) SC 1789

It limited the power of the Supreme Court and High Court to try matters relating to the constitutionality of laws. This amendment was passed to overrule the decision made in *Kesavananda Bharti v state of Kerala*¹⁸. It changed Lok Sabha's term from five to six years. It added words like "socialist," "secular" and "integrity" were added to the Preamble. The fundamental rights were made subordinate to the DPSPs. Five subjects of the state in the seventh schedule were transferred to the Concurrent List.¹⁹

In 1978 by the 44th amendment property right was reduced to the mere constitutional right under article 300A. It was held by the SC that one cannot be deprived of their private land without the due procedure being followed and if that has transpired it would be a violation of Article 300A. A person's private property only can be taken away when it is for public welfare and is just and reasonable.²⁰ While compensation was explicitly mentioned under article 30(1)A and the proviso of article 31A but it is just implied under the current article 300A.²¹ *Jilubhai Nanbhai Khachar v State of Gujarat*²², 1995 case where the court held that the property right is not the basic structure but only a constitutional right.²³

The doctrine of eminent domain acts as a setback to due process as the still lays vagueness when it comes to just compensation. In a recent case, where the Supreme Court had to reiterate the amount of compensation to be given under the National Highway Authority of India Act, 1956. It could not enhance the amount of compensation the appellant deserved. It implies that when it comes to legislation established by the Centre, the power of judicial review of it disappears. The doctrine simply means that it is the State's power to take property against the consent of the owner for public purposes.²⁴

¹⁸ *Kesavananda Bharti v State of Kerala* AIR (1973) SC 1461

¹⁹ 'What is the mini constitution of india and changes it added' (*Writing law*)

<<https://www.writinglaw.com/what-is-mini-constitution-of-india/>> accessed on 22 January 2023

²⁰ *KT Plantation Pot Ltd v State of Karnataka* Civil Appeal No 6520/2003

²¹ Constitution of India 1950, art 300A

²² *Jilubhai Nanbhai Khachar v State of Gujarat* (1979) Supp 2 SCC 440

²³ Manoj Mitta, 'Case studies: Supreme Court's landmark shifts' (*Times of India*, 23 January 2010)

<https://timesofindia.indiatimes.com/india/case-studies-supreme-courts-landmark-shifts/articleshow/5490306.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 22 January 2023

²⁴ *Ibid*

IMPORTANCE OF RIGHT TO PROPERTY

Economy – For the growth of a nation's private property works as an incentive to work. People use the property as an incentive to earn, invest and gather wealth. Such accumulation can be used for future consumption. It's human nature to want an infinite amount of property and satisfy his wants, it can be either for self or the future of their child.²⁵

Protection from government control – Various systems attempt to prevent this by allocating property rights since the ease with which the government might seize property is a big concern. Government power limitations are used in some nations, but they do not stop overreach. As an illustration, the US government has a power known as "eminent domain." This permits the seizure of private property for public use, provided a reasonable price is paid. Then, the courts decide what a reasonable price is. However, this cost typically falls short of the owner's worth.²⁶

Protection of the ecosystem - The ecosystem can be considered as part of the importance of property rights. These rights transfer the right to a certain parcel of land. Without this, it is a shared resource that anyone can use and abuse. For instance, it is well-recognized that overuse in areas lacking property rights can result in overfishing. If a fisher has exclusive access to a certain area of the sea, it is in their best interest to make sure there will always be an adequate supply of fish. As a result, resource extraction is restricted. A fisherman will want to be certain they will be able to make money tomorrow. These property rights enable the distribution of resources with the long term in mind. Without it, people will race to grab every fish in the sea before others can reap the rewards.²⁷

CONCLUSION

The question arises why was right to property was changed from being a fundamental right to a constitutional right. It was to prevent situations where zamindars and other landowners misused the right to property as a fundamental right against state measures to acquire land and

²⁵ Paul Boyce, 'The Importance of Property Rights' (*Boycewire*, 28 October 2022) <<https://boycewire.com/the-importance-of-property-rights/>> accessed 21 January 2023

²⁶ *Ibid*

²⁷ *Ibid*

to implement land ceiling laws in India, the legal status of the right to freedom was changed from a fundamental right to a constitutional right as a result of the excessive possession of land by the zamindars and tenants. However, being a constitutional right, this one is accessible to everyone and can be used to request high court jurisdiction under Article 226 of the Indian Constitution. articles 31A, 31B, and 31C are exceptions to the right to property.