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## The Evolution of Property Rights in India: Constitutional Reforms and Democratic Implications

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### ABSTRACT :

In India, the history of the right to property has been eventful, to say the least, and it can be described as having changed from a right to a mere right since independence. This paper examines the historical background of property rights, the legislation and constitutional amendment that transform its status and its consequences for citizens and governance. It analyses the philosophical basis and the social and economic implications for reshaping property rights in a democratic society. The book considers the tension between individual freedom and social justice, in particular in the context of historic court rulings and legislative reforms.

**Keywords:** Right to Property, Indian Constitution, Article 300A, Fundamental Rights, Land Reform, Constitutional Law, Social Justice, Property Jurisprudence.

### 1. Introduction

The right to property has traditionally been perceived as one of the cornerstones of liberal democracies, inextricably linked to freedoms related to individual autonomy, the economy, and the social order. India's legal and constitutional history, with its postcolonial evolution, provides an exceptional case of a newly independent nation struggling with the competing values of individual rights and the good of the whole. The Indian Constitution, with the liberal temper of the time, placed the right to property at the high pedestal of a fundamental right in Articles 19(1)(f) and 31, granting inalienable freedom of acquisition and enjoyment of property and also protection against arbitrary deprivation of property by the state.

But this vision faced resistance almost immediately as the new independent state attempted to enforce radical land reforms that would have undermined historical land inequalities and structures of feudalism. A robust property regime simply could not co-exist with the kind of socialist-inspired redistribution, and that resulted in a cascade of constitutional amendments and judicial rulings slowly diluting the power of property rights. This was finally implied in the 44th Constitutional Amendment of 1978, which took away the right to property as a fundamental right and classifies the right to property as a mere constitutional right identified in Article 300A of the Constitution.

This change has deep legal, political and socio-economic consequences. It reshaped the boundaries of state authority and citizen claim, and it questioned the nature of justice and reparation and what it means to deprive someone legally. The Indian experience embodies an unresolved contestation between the norms of a liberal democratic order and the demands of socio-economic justice in a developing nation-state. Analysing this convoluted journey and its modern-day applicability by legal historical inquiry and socio-economic critique, and based on some major cases, amendments and comparative constitutional law, this paper delves into this.

### 2. Historical Foundations of Property Rights in India

On the leaver note, the philosophy of property in India is not a neo-creation; this goes back to a time before colonialism, where its roots can be traced in ancient authentic literature containing Manusmriti, Arthashastra and Dharmashastras. These texts stated a moral and legal basis for property ownership, with kings viewed as custodians of land rather than its ultimate owners. Commoners had rights to grow and transmit portions of land, albeit usually under a monarchy and traditional right.<sup>1</sup> The land revenue system under the Mughal regime was an elaborate one, essentially based on the idea that the emperor held the First Occupancy of all land, though large parts of land remained under the customary control of village communities. But under the British colonial regime, property rights were transformed. The British created intermediaries through systems of land settlement – Zamindari, Ryotwari and Mahalwari, all of which emphasised revenue collection over any equitable distribution of landholding. They were systems that conferred ultimate property rights over chosen categories of land, stripped huge numbers of the countryside of their land and destroyed their customary land use systems.<sup>2</sup> The British entrenching of property rights, notably through the Transfer of Property Act, 1882, enshrined imported notions of title or ownership, alienation and contract into Indian law. The Act provided easy, predictable law and security of tenure, but it ignored the social and economic ground realities of Indian agrarian society. Land had been a factor that had entrenched inequalities wrought in large part by the colonial way of looking at property and ownership,

1 Derrett, J. D. M. (1978). Religion, Law and the State in India. Faber & Faber.

2 Banerjee, A. V., & Iyer, L. (2005). History, institutions, and economic performance: The legacy of colonial land tenure systems in India. American Economic Review, 95(4), 1190–1213.

and the independence of India had been partly an effort to undo this.<sup>3</sup> These historical legacies shaped the context in which the Indian Constitution defined property rights. The drafters recognised the importance of safeguarding individual entitlements as well as dealing with the legacy of colonial and apartheid land tenure systems that had oppressed most of the rural population.<sup>4</sup>

### 3. Constitutional Enshrinement and Fundamental Right Status

India, when the period is of draughting the Constitution, the Constituent Assembly is on two types of challenges: on one hand, individual saving from inner forces, and on the other hand, a socio-economic transformation is essential in this newly independent nation. Report: — Policy: Property rights, seen as necessary for personal freedom and economic autonomy, were accordingly incorporated in the chapter dealing with fundamental rights. Under Article 19(1)(f), a citizen can acquire, hold and dispose of property, and Article 31 prohibits any citizen from being deprived of his property save by authority of law and on payment of compensation.<sup>5</sup> Property was made a fundamental right, embodying the liberal constitutionalism espoused by early makers of the constitution like B. R. Ambedkar and K. M. Munshi. But there were fears even then about what this meant for land reform and redistributive justice. Certain Members of the Assembly, however, believed that a powerful property regime would be an obstacle in the realisation of socio-economic goals and objectives in the Directive Principles of State Policy itself, especially Article 39(b) and (c), which talk about equal distribution of resources and resources being owned and controlled to subserve the common good.<sup>6</sup>

These fears were realised just a few years after independence. Many landowners challenged these laws on the grounds of their fundamental property rights as state reform heads moved to abolish intermediaries and impose ceiling limits. The judiciary had a mixed reaction to such legal activism. The Supreme Court, while upholding the validity of the Bihar Land Reforms Act in *Kameshwar Singh v. State of Bihar*, reiterated that the Act serves a larger public purpose.<sup>7</sup> Yet the Court, in *State of West Bengal v. Bela Banerjee*, declared that the compensation offered is only just and equivalent, thereby granting itself power to intervene in state acquisitions.<sup>8</sup> This jurisprudential tug-of-war brought out the constitutional tension between Part III (Fundamental Rights) and Part IV (Directive Principles). As for the judiciary, it generally sided with the defence of individual rights, while Parliament sought to adopt redistributive policies in the name of its socialist project. This clash paved the way for a succession of constitutional amendments that, throughout the years, would undermine the very essence of the right to property.

### 4. Judicial Interpretations and Legislative Backlash

Judicial interpretation of this right has made the judiciary an arbiter of individual entitlements versus state objectives, a crucial institutional position to be in. An approach that predominated during the 1950s and 60s was for the Supreme Court to take a reactionary stance, often overturning reforms in land tenure when they applied the “just compensation” or due process standard. This reading was evident in *Bela Banerjee* and later in *Rustom Cavasjee Cooper v. Union of India*, where the court said that compensation should be at least at market value, constituting a constitutional guarantee of the sanctity of private property.<sup>9</sup> These rulings created friction between the legislature and the judiciary. We, therefore, as a parliament determined to secure the twin goals of economic equality and agrarian justice, saw the position enjoined by the judiciary to be an obstacle that had to be crossed with – well, hopefully – minimum fuss. As a consequence, it also passed the First, Fourth, and Seventeenth Constitutional Amendments and provided for the inclusion of land reform legislation in the Ninth Schedule so as to entrench them against judicial review by virtue of Article 31B.<sup>10</sup> The enacting of coextensiveness of Part III and Part IV through legislative manoeuvring did not start here but stepped up with the introduction of 31C through the 25th Amendment, which saw the opening of floodgates where the laws made to give effects to the Directive Principles under articles 39(b) and (c) would override articles 14, 19 and 31.<sup>11</sup> The 1969 *Kesavananda Bharati v. State of Kerala* case was a landmark case in which the Supreme Court countered with the “basic structure doctrine”, meaning that Parliament could not amend the Constitution to destroy its basic features. The Court validated the 25th Amendment but also restrained Parliament, stating that even socio-economic legislation has to conform to the [basic structure of the] Constitution.<sup>12</sup> Then, in *Indira Gandhi v. Raj Narain*, it fortified the primacy of constitutional integrity, while in *Minerva Mills Ltd v. Union of India*, the Court held that the balance between Part III and Part IV was part of the basic structure, and the state was not entitled to forgo civil liberties in the quest for economic justice.<sup>13</sup> The making of these decisions was a landmark moment in property legal philosophy, as it reconciled the aspirations for individual justice with the demands of state welfare.

### 5. The 44th Amendment and the Transformation of Property Rights

The 44th Constitutional Amendment Act, 1978, which was enacted after the emergency period by the Janata Party government, contained the most important constitutional change in the history of ownership of property. The second amendment deleted Articles 19(1)(f) and 31 from Part III of the Constitution, and the right to property ceased to be a fundamental right. Instead, Article 300A was inserted into Part XII to provide the thin gruel of “No

3 Baxi, U. (1982). *The Crisis of the Indian Legal System*. Vikas Publishing House.

4 Austin, G. (1966). *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press.

5 Basu, D. D. (2013). *Introduction to the Constitution of India* (20th ed.). LexisNexis.

6 Granville, A. (1999). *Working a Democratic Constitution: The Indian Experience*. Oxford University Press.

7 *Kameshwar Singh v. State of Bihar*, AIR 1952 SC 252.

8 *State of West Bengal v. Bela Banerjee*, AIR 1954 SC 170.

9 *R.C. Cooper v. Union of India*, (1970) 1 SCC 248.

10 Jain, M. P. (2021). *Indian Constitutional Law* (8th ed.). LexisNexis.

11 Seervai, H. M. (2013). *Constitutional Law of India* (4th ed.). Universal Law Publishing.

12 *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

13 *Minerva Mills Ltd v. Union of India*, AIR 1980 SC 1789.

person shall be deprived of his property save by authority of law.”<sup>14</sup> There were two broad reasons for this change. The judicial insistence on fair and commensurate compensation per se was initially viewed as a legal obstacle to land reform and redistribution initiatives. Second, the experience during the Emergency (1975–1977), when property rights were abused and politicised, created a climate where legislators were anxious to establish a distinction between rights that could be enforced in a court and policy objectives.<sup>15</sup> The right to property was therefore changed from a fundamental right to a constitutional right in nature, and consequently, any violation of Article 300A cannot be challenged under Article 32 of the Constitution that concerns the right to constitutional remedies. Rather, it made aggrieved parties go to the High Courts under Article 226, thus making the enforcement of the property rights indirect and not more effective.<sup>16</sup> However, Law 300A is not a dead letter. Though the right to property is no longer a fundamental right, courts have repeatedly held that the deprivation must be by law, and arbitrary confiscation without legislative sanction continues to be unconstitutional. By way of example, in the case of *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, the Supreme Court clarified that the right to property has been removed as a fundamental right; however, it is still subject to the basic provision of the rule of law, and thus no breach can be made in an arbitrary manner.<sup>17</sup> Thus, this 44th Amendment brought remarkable changes that even if property rights are now judicially enforceable, it will only be in consideration of and within the framework of the changing nature of socio-economic rights in India, i.e., the shift from classical liberal entitlement to social justice and equitable distribution. On the other hand, the judiciary has adopted a restrained approach to keep deprivation of property within the sphere of law as well as public purpose.

## 6. Contemporary Relevance and Socio-Economic Implications

The right to property still remains prominent in the socio-economic scenario of India, despite the fact that it was removed from the list of fundamental rights. Land acquisition, displacement and compensation have continued to be key issues that are widely debated around the themes of justice and governance in an age of rapid urbanisation, expanding infrastructure and industrial development. Modern land acquisition statutes aim to reconcile the need for development with safeguards for landless victims of subjugated land alienation.<sup>18</sup>

The LARR Act contained significant safeguards like the consent of affected families, social impact assessments and higher compensation safeguards that were meant to prevent the misuse of state power that was the hallmark of the pre-LARR regime of acquisition under the Land Acquisition Act, 1894. However, the challenges of implementation still hang on. Many projects have been stalled by protests, litigation and process failures, but they often indicate broader systemic challenges around land governance or bureaucratic opacity or weak institutional accountability.<sup>19</sup>

Further executive overreach has also been tempered by courts through the continued protection of Article 300A. In the case of *Delhi Development Authority v. Sukhbir Singh*,<sup>20</sup>

The Supreme Court observed that property cannot be taken away without following process and procedure, and even if leading to deprivation of property is flawed, it cannot be saved on the ground that it was done in good faith, as procedure is the essence of the constitution.<sup>21</sup> In the same vein, the Court in *Himmatlal Harilal Mehta v. State of M.P.* reiterated the same point that even though Article 300A is not fundamental anymore, it is still enforceable and cannot be abrogated simply by an executive act.<sup>22</sup> The issue of the right to property, in its broader socio-political context, is at the crosshairs of tribal rights, urban housing, environmental justice and infrastructure planning. Displacement remains a greater challenge for Indigenous and marginalised communities with little to no resettlement and compensation. But the move away from fundamental status meant that redistribution and economic planning could take place only at the cost of greater responsibility on the shoulders of the legal infrastructure and civil society to protect property rights in practice.

## 7. Conclusion

The development of property as a right in India is a greater constitutional conversation between liberty and equality, individual entitlement and social justice. One of the most crucial and far-reaching changes in the constitutional and political history of India, the right to property has been at the centre of dramatic transformations, starting from its inception as a right in the original Constitution to its current status as enshrined in Article 300A. Its travel embodies the ideologies of a state attempting to mediate between the logic of financial growth and its very own commitments to justice and fairness.

The judiciary's role during this transformation has been nuanced, at times staunchly defending private property, while at other times acquiescing to legislative intent which sought to promote wider societal objectives. Even when unmoored from their basic structure status, property rights remain important to the post-Keshavananda Bharati scheme of judicial review. At the same time, piecemeal legislative reform such as the LARR Act demonstrates that the question of property is a constitutional live wire, particularly for those at the margins of society who experience the brunt of the state's developmental incursions in their lives.

14 Bakshi, P. M. (2018). *The Constitution of India*. Universal Law Publishing.

15 Noorani, A. G. (2000). *Constitutional Questions in India: The President, Parliament and the States*. Oxford University Press.

16 Singh, M. P. (2015). *VD Mahajan's Constitutional Law of India* (8th ed.). Eastern Book Company.

17 *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1.

18 Rajagopal, B. (2013). Pro-Human Rights but Anti-Poor? A Critical Evaluation of the Land Acquisition Law in India. *Indian Journal of Law and Society*, 4(1), 27–55.

19 Bhan, G. (2016). *In the Public's Interest: Evictions, Citizenship and Inequality in Contemporary Delhi*. University of Georgia Press.

20 *Delhi Development Authority v. Sukhbir Singh*, (2016) 16 SCC 258.

21 *Himmatlal Harilal Mehta v. State of M.P.*, AIR 1954 SC 403.

22 Rao, M. G. (2011). Land Acquisition in India: A Review of Supreme Court Cases. *Economic and Political Weekly*, 46(29), 94–102.

In a free society that obeys the rule of law, property cannot simply be an instrument of economic functionality. Closely intertwined with questions around autonomy, security, and identity. Thus, the right to property, though abandoned as a fundamental right in the Constitution, requires strong legal and institutional protection. The ability of the legal system to evolve – of the former to continue to serve economic goals and of the latter to ensure human dignity and distributive justice status quo – is the future of property rights in India.

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