

Right to property as a Constitutional right

July 11, 2021 14908 0

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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.

The "[constitutional right to property project](#)" examines the right to property's tumultuous history under the Indian Constitution, from its inception as a fundamental right in 1950 through its elimination as a basic right and its reinstatement as a constitutional right in 1978. The Fundamental Right to Property had the distinction of being not only the second most contentious provision in the Constitution's drafting, but also the most amended/edited, and the only fundamental right to be eliminated in 1978.

Meaning of the term "property"

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.

According to the Supreme Court in *Commr. Hindu Religious Endowment v. Swamiyar (1954)*, 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)*. 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)*. The right to a pension is a form of property as noted in *State of Kerala v. Padmanabhan Nair (1985)*.

Pre 1978 position – Fundamental right to property

The terrible [Government of India Act of 1935](#) granted the power to possess and dispose off 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)*, the amount of compensation payable for this reason was made unjustified.

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 this [Bank Nationalisation case](#) has clearly stated the following two points at this point:

1. The right to compensation equal to the monetary value of the property acquired by force is guaranteed by the Constitution.
2. 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).

The 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:

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

However, the use of this doctrine has been replaced.

Post-1978 position – the Constitutional 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 nationalised 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 [Minerva Mills case](#) (1981), and later in the [Waman Rao case](#) (1981), the basic structural theory was reinforced which was first introduced in the famous [Kesavananda Bharati case](#) (1973) 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.

Implications of 44th amendment Act

- 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)).
- Only the High Courts, not the Supreme Court, can now challenge the legislation that violates the fundamental right to property.
- With the repeal of Article 31, the government no longer had to pay anyone whose land had been taken under the authority of a statute passed by Parliament.

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). 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), 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.

In a more recent case of *Bajranga v. State of Madhya Pradesh* (2021) "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) 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). 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 a human right

The Supreme Court recognized in *State of West Bengal v. Haresh C. Banerjee* (2006) 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) 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), 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) 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). "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 Patel and Others* (2008). 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. This was observed by a 2 judges bench in a recent case of *Hari Krishna Mandir Trust v. State of Maharashtra* (2020).

Conclusion

Now, it is categorical that property rights and their protection has been the talk of the town from the ancient period and is not a *de novo* concept and hence, the act of switching right to property from a fundamental right to a legal right was towards saving the rights of people along with curtailing the accumulated rights of zamindars. So, while the right to property as a fundamental right is no longer valid, the constitutional right to property must continue to exist for the sake of justice. Since the right to property is a part of the basic structure it can be amended.