

The Right to Property in India

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ABSTRACT

This research paper talks about the right to property in India which was enshrined as one of the Fundamental rights by the constituent assembly at the commencement of the constitution in 1950 with certain limitations. The assembly aimed to guarantee rights such as liberty, equality as well as property, basing it upon its goal to get social and economic transformation resulting through land reforms and redistribution of resources. The Constitution 44th Amendment Act, 1978, deleted the “right to property” from its fundamental right-character, and adorned it with status of Constitutional/legal right. Articles 19(1) (f) and 31 were deleted from the Part III of Fundamental Rights and only a fraction in the form of Art. 300 A which corresponds to Art. 31(1) only, has been inserted in Part XII under a separate Chapter V “Right to Property”. Art. 300A is not a basic feature or structure of the Constitution. It is only a Constitutional right. The right has become of the most debated topics by the Indian legislature as well as by the judiciary.

Keywords

Fundamental, Law, Property, Right, India

Article Received: 10 August 2020, Revised: 25 October 2020, Accepted: 18 November 2020

Introduction

In the original Constitution adopted by independent India, the Right to Property, as enshrined in Article 19(1) (f), was a fundamental right and therefore placed at a high pedestal. Article 19(1) (f) had to be read along with Article 31 of the Constitution. both Article 19(1) (f) and Article 31 proved to be a considerable headache to the Indian Government, as these provisions made it very difficult for the govt. to proceed with its socialist agenda of land reforms and nationalization schemes, because the Government simply couldn't afford to pay reasonable compensation for the lands and corporations acquired by it. Initially the Congress Party which was in power at the Centre aimed toward maintaining the legality of its action by introducing new provisions like Article 31A, B & C together with Schedule IX to the Constitution which was made proof against review, included all those legislations which offended the elemental rights enshrined partially III of the Constitution. Ultimately count there have been a minimum of 285 legislations, most of them reform legislations, locked up under the security of Schedule IX

The right to property is one of the most debated provisions of the Indian Constitution along with the most amended one. It is the only right that was a fundamental right but was abolished later in 1978. The right had to be removed from the ambit of Fundamental rights because even though the rights such as right to life, liberty and equality are intangible rights and can be said to have been granted to the individuals at least theoretically, the same is not the case with the right to property as property is tangible and the distribution of property is not equal on India and therefore it was removed as a fundamental right.

The constituent assembly aimed to be in line with democratic socialism and therefore it wanted to convert into a liberal democratic legal order. The assembly aimed to guarantee rights such as liberty, equality as well as property, basing it upon its goal to get social and economic

transformation resulting through land reforms and redistribution of resources.

The assembly faced heated debates because of the contradictions between safeguarding the existing property rights and emphasising on a more egalitarian society by the means of redistribution of land.

The right to property was adopted as a Fundamental right but was subject to reasonable restrictions. It was provided by the constitution in Article 31 that any state acquisition of the property must be only through a valid law, as well as for a purpose that is valid and upon payment of a compensation.

Right To Property As A Statutory Right

After having so many amendments, as the First Amendment, Fourth Amendment, Seventeenth Amendment, Twenty-fifth Amendment, Forty- second Amendment, Forty-third Amendment and ultimately Forty-fourth Amendment passed by Janata Party in 1978, the nature of right to property has been changed. The Constitution of India 44th Amendment Act, 1978, deleted the “right to property” from its fundamental right-character, and adorned it with status of Constitutional/legal right. Articles 19(1) (f) and Article 31 were deleted from the Part III of Fundamental Rights and only a fraction within the kind of Art. 300 A which corresponds to Art. 31(1) only, has been inserted partly XII under a separate Chapter V “Right to Property”. The result is that the right to property as a fundamental right is now substituted as a statutory right. The amendment expanded the power of the state to appropriate property for social welfare purposes. The 44th amendment eliminated the right to acquire, hold and dispose of property as a fundamental right. Article 31 however was only partly deleted in the sense that Article 31(1) which provided that “no person shall be deprived of his property, save by the authority of the law” was transferred out of the fundamental rights chapter and shifted to Chapter IV of Part XII, in the form of Article 300A.

Abolition Of Right To Property As A Fundamental Right

The fundamental right to property “has been abolished because of its incompatibility with the goals of justice, social, economic and political and equality of status and of opportunity” and with the establishment of a social democratic republic, as contemplated by the Constitution. The right to property under Art. 300A is not a basic feature or structure of the Constitution. It is only a Constitutional right.

The Hon'ble Supreme Court in *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, AIR 1990 SC 123 at p. 138 has observed that even though Article 31 had not been deleted (at the time of the 42nd amendment) “Its content had been cut-down so much, so that even under a law providing for acquisition of property which did not have the protection of 31-C the adequacy of the ‘Amount’ determined was non-justiciable and all that was necessary was that it should not be unreal or illusory. By then the Constitution had done away with the idea of a just equivalent or full indemnification principle and substituted thereof the idea of an ‘Amount’ and rendered the question of the adequacy or the inadequacy of the amount non-justiciable.”

A Full Bench of the Kerala High Court in *Elizebath Samuel Aaron*’s case observed-

“The legislative history behind the deletion of Article 31 and the introduction of Article 300-A eloquently shows that Parliament intended to do away with the concept of a just equivalent or adequate compensation in the matter of deprivation of property, and to provide only a limited right, namely that no person shall be deprived of his property save by authority of law. In other words, the limited constitutional protection intended to be continued (not as a fundamental right) was only that there should be a law authorising and sustaining any deprivation of property, and that none shall be so deprived by mere executive fiat. Article 300A does not provide for anything more. It does not go further and provide that the law should provide for compensation and either fix the amount, or at least specify the principles on which the compensation is to be fixed and given. Evidently, Parliament intended to shield all such legislation for acquisition or requisitioning of property from challenge on any of the grounds on which they could be challenged as per the various decisions of the Supreme Court on the ground that the compensation was inadequate or illusory or that the principles laid down for fixing the compensation were irrelevant or irrational. If this were not the intent of the series of Constitutional amendments, and if this were not achieved thereby, one wonders why Parliament should have under taken all the exercise and effaced Article 31(2) altogether from the Constitution.”

In a very recent case of *Jilubhai Nambhai Khachar v. State of Gujarat* the Apex Court held that after the Constitution Forty Fourth Amendment Act has come into force, the right to property in Arts. 19(1)(f) and 31 had its obliteration from Part III, Fundamental Rights. Its abridgment and curtailment does not get retrieved its lost position, nor gets restituted with renewed vigour claiming compensation under the garb „deprivation of property in Art. 300-A. The court further held that the principle of unfairness of the procedure

attracting Art. 21 does not apply to the acquisition or deprivation of property under Article 300A giving effect to the Directive Principles. Now, if the property of a person has been acquisitioned/requisitioned even not for a public purpose, and without payment of compensation though under the authority of law, the owner cannot grouse or grumble against the same, the Legislature is no more under a Constitutional obligation to pay the compensation what to say of adequate compensation. Such a person cannot ventilate grievance before the Court that the compensation granted is illusory one. Only where a person is deprived of his property by the executive without the authority of law, in that event he would be entitled to legal relief on the ground that such executive action abridges the provisions of Art. 300A of the Constitution.

Meaning Of ‘Deprived’ Under Article 300 A

Deprivation of property may take place in various ways, such as destruction or confiscation, or revocation of a proprietary right granted by a private proprietor, seizure of goods or immovable property from the possession of an individual in exercise of the ‘police power of a State’. Thus there is a ‘deprivation’ within the meaning of Article 31 (1) if a substantial bulk of the rights constituting property is taken away, e.g., where the right to occupy, transfer, assign or sublet is taken away from a leasehold interest, or a trustee is removed from the management of a public trust.

It is true that right to property is not a fundamental right, but it is an acknowledged legal right under the constitution not flowing from a contract between the parties under the law of contract. Where a public road constructed through private property and the plea that the party had given its consent to such construction without claiming any compensation was not established, the construction of the road was held to be illegal.

A Divided Government And Judiciary

Today, the time have changed radically. India is no more seen through the eyes of only political leaders with a socialist bias. It is India Shining seen through the corporate lenses of financial giants like the Tatas, Ambanis and Mahindras, with an unfathomable zeal for capitalism. There is another angle. There is a clamor by industrialists and developers for land all over the country for establishment of Special Economic Zones. Protests by poor agriculturists have taken place to defend their meager land-holdings against compulsory acquisition by the State. In particular, the riots and killings in Singur, Nandigram etc. in a State (of West Bengal) ruled by communists has turned the wheel full circle. Socialism has become a nasty word and therefore the Right to Property has become a necessity to assure and assuage the sentiments of the poor quite those of the rich. Soon after the abolition of the elemental Right to property, in *Bhim Singh v. UOI*, Supreme Court of India realised the word of Right to Property as a Fundamental Right. In the absence of this Fundamental Right to property, it took recourse to the other Fundamental Right of Equality which is absolutely the concept of Reasonableness under Article 14 of the Constitution of India for invalidating certain aspects of the urban land ceiling legislation. Today, the need is felt

to restore the right to property as a Fundamental Right for protecting at least the elementary and basic proprietary rights of the poor Indian citizens against compulsory land acquisition. Very recently, the Supreme Court, while disapproving the age-old Doctrine of Adverse Possession, as against the rights of the real owner, observed that The right to property is now considered to be not only a constitutional right or statutory right but also a human right. Thus, the trend is unmistakable. By 2050, if the Constitution of India is to be credited with a sense of sensibility and flexibility in keeping with the times, the bad word socialist inserted in the Preamble in 1977 shall stand omitted and the Right to Property shall stand resurrected to its original position as a Fundamental Right.

Recent Amendments By The Supreme Court

A recent PIL filed in the Supreme Court which was still pending within the Honble Court, it was held that the correct to property related to a mere statutory right within the late 1970s isn't now not relevant. It absolutely was argued by Harish Salve, the learned counsel for the petitioners that: The right to property is formed a statutory right in 1978 to abolish large land holdings with zamindars and rich and their distribution among landless peasants; Having achieved the very purpose behind the legislative action within the late 1970s, the govt should now initiate fresh measures to place right to property back within the fundamental rights.

Earlier, the apex court in its famous Keshavanandan Bharti case of 1973 had first termed some basic and unalterable parameters and features of the Indian state and its constitution just like the country's democratic kind of government, as its basic structure, which couldn't be changed the least bit even by constitutional amendment. But, within the judgement of the case, Justice H.R. Khanna had made a passing observation to the effect that fundamental rights accorded to the citizens won't be a basic structure of the Constitution. This had left the scope open for changing or diluting the elemental right of the citizens. Though later in 1975, while adjudicating another famous lawsuit between erstwhile Prime Minister statesman and prominent politician of his times Raj Narain, Justice Khanna had tried to clarify that his observation had been misconstrued. Despite that clarification, the Janata Party government, under the recommendation of then law minister Shanti Bhushan, had changed the Constitution, removing the proper to property from the list of fundamental rights.

Conclusion

The right to property has been the subject of a lot of legislation as well as litigation. It began by being a legal right that could be enforced against the state in case of any arbitrary action by the state such as taking away of any property of an individual without any legally valid reason or without having a public purpose, that too has to be done with a reasonable compensation being provided to the person who is being bereaved of his property. The right before being enshrined into the Constitution of India was present in Bengal regulation 1 of 1824 and in the Land Acquisition Act, 1894. It was later that the right was

given the status of a constitutional right by Section 299 of the Government of India Act of 1935.

In 1950, when the constitution was adopted, the right was granted the status of a Fundamental right and the fact that the government could not legislatively remove the limitations imposed upon its power to acquire property and made the right judicially reviewable. However, through a series of constitutional amendments, exceptions were carved out of the fundamental right to property as a result of which some of the limitations on the State's power to acquire property, specifically the requirement to pay market value compensation did not apply in particular cases.

The Forty Fourth constitutional amendment in 1978 deprived the right to property of its 'fundamental' right status, thereby making the limitations on the State's power to acquire property non justiciable. However, in the last five years, there have been attempts made judicially to restore the right to its fundamental right status, as it existed before the Forty Fourth amendment. Simultaneously, the requirements of 'public purpose' and 'compensation' have been strengthened legislatively through the repeal and replacement of the Land Acquisition Act 1894 by the LARR 2013.

The LARR Act's amendment by the thrice promulgated LARR Amendment Ordinance within a year of its enactment, and yet the inability of the government to garner parliamentary support to pass the LARR Amendment Bill, 2015, into law, testifies to the intense social and political contestation around the contours of the right to property, both as a legal and constitutional right.

The evolution of the right to property law, as it stands today reflects upon India's consistent efforts to re model the relations with respect to property that exist in the society in the present day and age. The country has back and again tried to achieve the goal of economic redevelopment with respect to social redistribution. Every new edition of the law aimed towards property rights in favour of certain groups and weakened those of others and was led by the groups who used the judiciary as well as the legislature to see to their interests.

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