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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE SUPREME COURT AND PROPERTY RIGHTS

AUTHORED BY - G. ASWINI¹ & DR. P. BRINDA²

The Supreme Court has, through its interpretation, protected the proprietary rights of individuals and aims to seek a balance between individual rights and socio-economic justice, paving the way for the nation's development. In the present Article let's devolve into various judgements by the Supreme Court and the present position of the right to property in India. Further, the Article examines contemporary issues relating to property and the latest landmark judgments relating to immovable property.

KEYWORDS: Immovable Property, Land Acquisition, Property Rights, Socio-Economic Justice, Supreme Court of India.

I. INTRODUCTION

Our Constitution has a social purpose and economic mission. Articles 19(1)(f) and 31 of the unaltered Constitution guaranteed the right to property as a basic right; however, the Constitutional Amendment Act of 1978 eliminated these provisions. The clauses in Articles 31A, 31B, and 31C do not grant any rights; rather, they restrict property rights and grant immunity to laws that restrict them. This Article aims to comprehend the judicial interpretation of these Articles relating to property rights under the Indian Constitution by the Supreme Court of India.

II. HISTORY OF THE RIGHT TO PROPERTY IN INDIA

A. THE RIGHT TO PROPERTY: Pre-Constitution

Section 299 of the Government of India Act, 1935, established the right to property making it possible to acquire property for the benefit of public purely and with compensation. A simple reading through the Constitutional debates, it could be understood that the framers of our Constitution intended to include the right to property as a fundamental right. A similar right was conferred under Article 17 of the Universal Declaration of Human Rights, 1948

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B. THE RIGHT TO PROPERTY: Post-Constitution

Articles 14, 19(1)(f), 19(5), 31, 32, 39(b) and 39(c), 226, and 265 outline the provisions pertaining to the right to property at the time the Constitution was adopted, granting each person the freedom to acquire, own, and dispose of property. To achieve socio- economic justice, Articles 39(b) and 39(c) of the directive principles of state policy, direct the state to implement policies to secure the ownership and control of the material resources of the community to promote the common good and minimize socioeconomic disparities. The following are the significant Constitutional amendments relating to the right to property:

| S. No. | RELEVANT AMENDMENT ACT | AMENDMENT MADE |
|---------------|-----------------------------------|---|
| 1. | First Amendment Act, 1951 | Articles 31A, 31B and Ninth Schedule were incorporated. |
| 2. | Fourth Amendment Act, 1955 | The scope of Article 31A was extended, along with the insertion of Acts to the Ninth Schedule. |
| 3. | Seventeenth Amendment Act, 1964 | Forty-four Acts were added to the Ninth Schedule, and it prohibited the acquisition of land used for cultivation, if done compensation is to be paid. |
| 4. | Twenty-fifth Amendment Act, 1971 | The word “compensation” in clause (2) of Article 31 was substituted by the word “amount”. Inserted Article 31C. |
| 5. | Forty-second Amendment Act, 1976 | Enlarged the scope of Article 31C, whereby if any law of acquisition is made with the objective of enforcement of DPSP, the reasonableness cannot be questioned under Articles 14 and 19. |
| 6. | Forty-fourth Amendment Act, 1978 | Article 19 (1)(f) was repealed and Article 31 was repealed. Art 300A was inserted. |

The Amendments Act led to many litigations before the Supreme Court, paving the way for many landmark judgments, where the Supreme Court has interpreted the Constitution in light of its spirit and objective. This Article will devolve into the provisions pertaining to the right to property examined, together with the Supreme Court's perspective on them.

III. ARTICLE 300A

The right to property³ is a Constitutional right and the basic structure doctrine does not include the right to property⁴. In acquiring agricultural land, the right to livelihood, which is an integral part of Article 21 is violated in the event of non-payment of compensation.

a. Interpretation of the “Public Purpose”:

The concept of public purpose, a prerequisite for acquisition, is destined to change over time and depending on the current circumstances of a specific geographic area. In a question as to whether the acquisition is for public or private purposes, it has been decided by the legislature. Public purpose or interest is given an expansive meaning, and such purpose should be justified upon the purpose and object of the statute and the policy of legislature.⁵ The Apex court observed that in acquiring land for residential purposes for workers it held that, in such case, a private benefit of a large number of industrial workers will become a public benefit and is within the meaning of Land Acquisition Act.⁶

Public purpose encompasses a purpose that is in the general interest of the community, as opposed to an individual's specific interest in a direct or essential matter.⁷ In *State of T.N. v. L. Abu Kavur Bai*,⁸ public transportation was held to be public interest.

The State government has the ultimate power to decide if land is needed or likely to be needed for public purposes and it is upon the concerned state government to decide whether the land is adaptable or suitable for the purpose for which it is being acquired.⁹

b. Interpretation of “Compensation”:

In *P. Vajravelu Mudaliar v. Special Deputy Collector, Madras*¹⁰, was one of the early cases where the Apex Court held that compensation should be for the true market value and the state must adhere to principles of natural justice.

³ Prior to 1978, right to property was guaranteed as a fundamental right under Article 19 (1)(f) and Art 31, these provisions were removed and inserted Article 300A, by the 44th Amend. Act, 1978.

⁴ *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC 596.

⁵ *K.T. Plantation (P) Ltd. v. State of Karnataka*, (2011) 9 SCC 1.

⁶ *Jhandu Lal v. State of Punjab*, 1960 SCC OnLine SC 331

⁷ *Somawanti v. State of Punjab*, 1962 SCC OnLine SC 23, *Arnold Rodricks v. State of Maharashtra*, 1966 SCC OnLine SC 62 relied in *Venkatamma v. City Improvement Trust Board*, (1973) 1 SCC 188.

⁸ (1984) 1 SCC 515.

⁹ *Laxmanrao Bapurao Jadhav v. State of Maharashtra*, (1997) 3 SCC 493, *Daulat Singh Surana v. First Land Acquisition Collector*, (2007) 1 SCC 641.

¹⁰ AIR 1965 SC 1017.

The expression "amount" was investigated in *Kesavananda Bharati v. State of Kerala*¹¹, that it is something given instead of the property that is acquired, and it could be done only by following certain principles laid down by the law, hence such principle shall not be arbitrary, illusory or shocking to judicial conscience or conscience of mankind. The court pointed out three requirements regarding the acquisition of property, firstly it shall be done only by law, secondly, property can be acquired only for public purposes and finally, it shall be done in a just reasonable manner.

In the *State of Maharashtra v. Maimuma Banu*¹², in spite of reference procedures or an appeal pending before the high court made by the interested person, rental compensation will be decided based on an award set by the Land Acquisition Officer. In case of an upward revision of the amount, the balance can be paid after adjusting to the amount already paid.

In *Kolkata Municipal Corpn. v. Bimal Kumar Shah*,¹³ The following seven sub-rights were recognized by the Supreme Court in connection with the right to property, viz right to be heard, right to a reasoned decision, the duty to acquire only for a public purpose, right to restitution or fair compensation, right to efficient and expeditious process and right of conclusion, the above list is non-exhaustive.

IV. ARTICLE 31A

To improve the economic structure and enable the development of the nation the government came up with various reformative initiatives such as the abolition of zamindari and agrarian reforms, through the acquisition of property and serving as a bridge between individual rights and collective good. The intention of Article 31A was to protect laws that sought to abolish intermediaries and establish a direct line for interaction between the government and the soil's tillers. It covers different categories of social welfare legislation and to enables monopolies in particular trade or business to be created in favor of the State.

Article 31A is still a part of the Constitution, although, with the repeal of Articles 19(1)(f) and 31, much of the rationale underlying Article 31A has disappeared. Article 31A¹⁴ aims to

¹¹ (1973) 4 SCC 225.

¹² (2003) 7 SCC 448, relied in *Kazi Akiloddin Sujaoddin v. State of Maharashtra*, (2013) 14 SCC 8.

¹³ (2024) 10 SCC 533.

¹⁴ *Article 31A(1)(a)* envisages:

(i) acquisition by the state of "estate" or of any rights therein; or

immunize legislative actions taken in the course of land reforms and economic reforms. Due to the enactment of extensive land legislation to reconstruct the agrarian economy, it has generated massive case laws.

Article 31A (1): Article 31A (1)(a) gives protection to legislation that is made to make agrarian reforms, and the court by giving a broader interpretation has noted that it includes legislation designed to raise economic standards, promote rural development, and enhance rural health. It includes any law made for the acquisition, modification or extinguishment of any estate or any right therein.

The Supreme Court noted that it is a fundamental rule of interpretation is that while interpreting this provision had guided to make interpretation in a manner that subdues the mischief and guarantees that the interpretation meets the intended objective and purpose of the law and offers a remedy.¹⁵

Article 31A (1) First Proviso¹⁶: The first proviso states that if a law is passed by the state legislature under Art 31A (1) it shall be valid upon receiving the President's assent.

Article 31A (1) Second Proviso¹⁷: The Supreme Court in interpreting Art 31A (1) second proviso has pointed out that it protects the owner of the land held for personal cultivation and within the ceiling limit, by imposing limitations on legislative power.¹⁸ The Supreme Court has held that this proviso does not give a fundamental right rather, it limits legislative action. A proviso may be used outside of the primary enactment.¹⁹ A Legislation is void if it violates Second Proviso Article 31A (1), and cannot seek protection under Article 31B, even if the acquisition is made by a law included in the Ninth Schedule.

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- (ii) extinguishment of the rights of the holder; or
 - (iii) modification of any such right.

¹⁵ *Dattatraya Govind Mahajan & Ors. Etc vs State of Maharashtra & Anr*, 1977 SCR (2) 790, AIR 1977 SC 915.

¹⁶ *Provided that where such law is a law made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.*

¹⁷ *Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.* (Inserted by the Constitution (Seventeenth Amendment) Act, 1964) .

¹⁸ *State of Bihar v. Kameshwar Singh*, (1952) 1 SCC 528, *Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India*, (1970) 1 SCC 248

¹⁹ AIR 1977 SC 915, *Prabha Tyagi v. Kamlesh Devi*, (2022) 8 SCC 90.

Article 31A(2): The term "estate" has been construed by the Supreme Court in *Kavalappara Kottarathil Kochuni v. States of Madras & Kerala*²⁰, where it was held a large and liberal interpretation for the term "estate", "the right in an estate" and "extinguishment and modification" of any right and henceforth a wide meaning is given to the expression agrarian reform."²¹ The word "Jagir" in Art 31A(2)(a)(i) was interpreted as members of ruling family in whose favour there was grant for maintenance and were not cultivators.²²

V. ARTICLE 31B

Article 31B was added to the Constitution through the First Amendment Act of 1951. The Supreme Court has held that the Parliament had no power to amend the basic structure of the Constitution²³ and in *Waman Rao v. Union of India*²⁴, Acts included in the Ninth schedule before the judgment of *Kesavananda Bharati case* (i.e. 24.04.1973) are valid and Constitutional. Any Act inserted after 24.04.1973 will be subjected to judicial review. Article 31B protects an amending Act, which is incidental and ancillary to the Act under specified under the Ninth Schedule, provided the amending Act does not cover a new field.²⁵

Ninth Schedule: When the Ninth Schedule was introduced, it included 13 Acts, all of which focused on the abolition of Zamindari and issues related to agrarian reforms²⁶, at present the schedule contains 284 Acts as of 22.04.2025.

Article 31B safeguards the amendments and the Acts listed in the Ninth Schedule from being reviewed by the judiciary. In *I. R. Coelho v. State of Tamil Nadu*²⁷ the Supreme Court clarified that the Constitutional Amendment and the Acts are subject to judicial review and only on a case-to-case basis the court can determine if the Act is in confirmation with the basic structure of the Constitution.²⁸

²⁰ 1960 SCC OnLine SC 346.

²¹ *Ranjith Singh and Ors v. State Punjab and Ors.*, AIR 1965 SC 632.

²² *Thakur Amar Singhji v. State of Rajasthan*, 1955 SCC OnLine SC 27.

²³ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

²⁴ (1980) 3 SCC 587.

²⁵ *Ramanlal Gulab Chand Shah v. State of Gujarat*, (1969) 1 SCR 42, Godavari Sugar Mills

²⁶ Noorani, A. G. "Ninth Schedule and the Supreme Court." *Economic and Political Weekly*, vol. 42, no. 9, 2007, pp. 731. JSTOR, <http://www.jstor.org/stable/4419299>. Accessed 22 Apr. 2025.

²⁷ AIR 2007 SC 861.

²⁸ Shruti Rajagopalan, *Interest Groups Repairing Unconstitutionality: India's Ninth Schedule*, vol. 50 Journal of Legal Studies, 172 (June 2021).

VI. ARTICLE 31C

The unaltered Article 31C was deemed valid to the same extent as it was in the *Kesavananda Bharati case*.²⁹ The 42nd Amendment which enlarged the scope of Article 31C was held invalid.³⁰ For legislation to seek protection under Article 31C it shall be with direct and have rational nexus with the principles enshrined in Article 39(b).³¹ In an issue as to the existence of issue as to nexus between these the Court may tear the veil, if necessary to examine the allegation of colourable legislation or abuse of power.³²

Article 39(b): The object of Article 39(b) is that a basic need of the man is to be fulfilled, and the state should endeavour to change the structure of the society.³³

Material resource of the community: The following resources were considered as “material resources” of the community electricity generated and distributed by non-governmental agencies,³⁴ coal mines,³⁵ vehicles and tools,³⁶

The issue as to whether “material resources of the community” includes all privately owned resources in *Property Owners Association & Ors. v. State of Maharashtra & Ors*³⁷, the Apex Court had declared that not all privately owned resources but only some privately owned resources are “material resources of the community”.

VII. CONCLUSION

The right to property is not only a Constitutional or legal right but also a human right. Initially after independence, the government focused on a mixed economy. Later in the 1960s and 1970s, the government moved towards socialist reforms and later in the 1990s it moved more into a liberal economy. At present, in India resources are managed through both public and private investments. In such an economy it becomes vital to strike a balance between protecting individual property rights and ensuring public interest. The right to property in India was weak

²⁹ *Waman Rao v. Union of India*, (1980) 3 SCC 587.

³⁰ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625

³¹ *Assam Sillimanite Ltd. V. Union of India*, (1991) Supp 3 SCR 273 at 290, *Union of India v. Tarsem Singh*, AIR 2019 SC 4689.

³² *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, (1989) 3 SCC 709.

³³ *Samatha v. State of A.P.*, (1997) 8 SCC 191.

³⁴ *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, (1989) 3 SCC 709.

³⁵ *Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.*, (1983) 1 SCC 147.

³⁶ *State of T.N. v. L. Abu Kavur Bai*, (1984) 1 SCC 515.

³⁷ (2024)11 S.C.R. 1.

in the post-independence period, it is the Supreme Court in recent times which has played an important role in upholding individual property rights in India by declaring the rights concerning the acquisition of property by the state and entitlement to fair compensation.

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