

A Study Of Fundamental Right To Property And The Constitutional Objectives For India's Socio-Economic Development

Dr. Sudeep Kumar*

Assistant Professor, DAV College Pehowa, Kurukshetra - 136128

Abstract - The researcher's goal here is to understand how the Constitution's socioeconomic goals weakened the right to private property. The original intention of the right to property was to safeguard individual property from tyrannical government. Multiple laws governing ownership are now in effect, both at the federal and state levels. The constitutional goals for India's social and economic structure have been translated into law. These laws have been challenged in court, and the resulting animosity over property rights is palpable. While there have been calls to do away with property rights altogether, others have argued that protecting private property is crucial to maintaining a functioning democracy. The State initially watered down the Fundamental Right to Property through successive Constitutional amendments before reducing it to a mere constitutional right.

Keywords - Fundamental Right, Constitutional Objectives, Socio-Economic Development, Property, Central and State governments

-----X-----

INTRODUCTION

When man was at his most rudimentary, there was no need for a system of law or private property. Back then, the 'might was right' legal system was the only option. The more powerful person had more control over possessions, visualizing Hobbes's remark that man is "nasty, brutish, and short." Over the course of history, people began to internalize the idea of rights or claims as a result of their legitimate interests. There is a strong legal basis for the rights to be inherited. This led to the development of a sense of proprietary and individual interest, and ultimately, the concept of property. Many different levels of meaning can be ascribed to the concept of property rights. Items like food, shelter, and clothing are all part of the first layer since they are essential to human dignity. The second includes everything a person uses to make a living, including the book a lawyer uses and the stethoscope a doctor uses. Finally, the third layer protects his right to acquire and keep property that is necessary to his satisfaction with his life and efforts.

DEVELOPMENT OF PROPERTY RIGHT IN INDIA

Expropriation of private property was a topic addressed in the report by the Joint Parliamentary committee of Indian Constitutional Reforms. It became clear to the Joint Parliamentary committee that certain general measures were needed to include into the Constitution Act protecting private property against expropriation, in order to quiet suspicions which had been raised in those years by various India remarks. It was evident that it would be difficult to

write any general rule with this aim without unreasonably restricting the powers of the Legislature in respect to taxation; in fact, many of the same challenges would be presented as those which they had considered in connection to fundamental rights. They had not attempted to define precisely the scope of provision they had in mind in that report, as its drafting would require careful consideration for the reasons they had indicated, but they thought that it should secure that legislation expropriating or authorizing the expropriation of the property of particular individuals should be lawful only if confined to expropriation for public purposes and if compensation is determined either in the first instance or by a court of competent jurisdiction. 48 The Governor General or Governor (as the case may be) should be consulted before introducing any piece of general legislation that would result in the transfer of private property to the public domain or the extinguishment or modification of private rights in favor of the state. In such a case, the Governor should be instructed by an instrument of instructions to consider the nature of the provisions proposed for inclusion in the bill. According to the report by the Joint Parliamentary committee on Indian Constitutional Reforms, a prevalent type of private property in India is better described as "vested interest," and it needs to be protected in a very specific way. At the request of the Attorney General, who believed that the safeguard might be provided through a veto exercised by the Governor-General, the reference to the assessment of compensation by some independent entity was removed from the Bill during its third reading.

The Government of India Act, 1935, was dealt with compulsory acquisition of land etc. The provisions were as follows:

1. No person shall be deprived of his property in British India save by authority of law.
2. Neither the Federal nor a Provincial Legislature shall have the authority to enact any law authorizing the compulsory acquisition for public purposes of any land, or of any commercial or industrial undertaking, unless such law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which and the manner in which, it is to be determined.
3. Without the prior approval of the Governor-General in his discretion, no Bill or amendment providing for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including right or privileges in respect of land revenue, shall be introduced or moved in either chamber of the Federal legislature, or in a chamber of a Provincial Legislature.
4. Nothing in this section shall affect the provisions of any law in force at the date of passing of this Act.
5. In this section "land" includes immovable property of every kind and any rights in or over such property and "Undertaking" includes part of an undertaking.

CONSTITUTIONAL ASSEMBLY DEBATES ON RIGHT TO PROPERTY

The modification to remove the word "reasonable" from the provision was backed by a number of other members of the Constituent Assembly, including Dr. P.S. Deshmuk and Mr. Somnath Lahri. Sri Rohini Kumar Chaudhary, on the other hand, voted for the main resolution as revised by Mr. Nicholas Roy, albeit with several caveats. According to the Hon'ble Pandit Jawaharlal Nehru, many people in the Constituent Assembly misunderstood and conflated the meaning of the sub clause and its proviso. He said that the section at issue dealt with a basic right that should be viewed, not through the lens of the immediate challenge it posed, but as something the people wished to cement into the constitution. However significant the other issue is, it needs to be viewed not from that permanent and fundamental vantage point but from a more transitory one. He wholeheartedly agreed that precautions should be taken to safeguard tribal lands and the indigenous people who live there. The Rev. Nichols-Roy and Mr. Jaipal Singh, according to the Hon'ble Sardar Vallabhbhai Patel's submission, were worried about the safety of tribal areas and minority populations. He felt that the name "tribes" was inappropriate, and that the phrase "protection of tribal regions" was similarly negative. The phrase "the

protection of tribal areas" would have a different connotation if external trouble were anticipated or incursion was going to be made in those areas, but it would still convey the idea that they are concerned with the protection of such areas. He claimed that the curse of untouchability had persisted for two centuries because rulers did not want there to be any change. He argued that they were trying to free people from curses by granting them basic freedoms.

RIGHT TO PROPERTY AS FUNDAMENTAL RIGHT

All levels of government, from the federal to the state and municipal levels, are subject to constitutional limits and protections known as "fundamental rights." No law or government regulation can be enacted that violates a person's fundamental rights. Man's primitive psychobiological needs for survival drive him to seek for and consume food from the tangible world. He has a lot of leeway to do what he wants, but it's hard to tell where his thoughts and actions begin and end when it comes to his business dealings. "If emphasis is placed upon my requirements, then the possession of property appears as a means to their satisfaction," Hegel writes. "But the genuine position is that, from the stand point of freedom, property is the earliest manifestation of freedom and therefore is in itself a substantive and." Property, in his view, is created when one's mental and physical assets are converted into marketable objects.

RIGHT TO PROPERTY UNDER ARTICLES 19 (1) (F) AND 19 (5)

According to article 19(1) (f): "The right to buy, sell, and otherwise deal with property is guaranteed to every citizen. However, in the interest of the public or to protect any interest of a scheduled tribe, the state may impose by law appropriate restrictions on this right (Article 19(5)). Since "to acquire" means "to become the owner of," it is impossible to acquire property unless it is first transferred to another party or until the property is vested and then divested. But it must be obtained lawfully. A person who commits theft, usurps the property of another, or cannot legally justify his acquisition of property is not protected by Article 19(1). (f). To "keep" anything means to have custody of it and to exercise the rights and responsibilities that come with being the legal owner of something. To "dispose of" anything is to "transfer, assign, or sell" it. The right to possess property is meaningless without the ability to transfer that property to someone else.

In Art 19(5), the phrase "interest of general public" was interpreted to mean "public interest." It did not mean the interest of all of India's citizens; rather, it meant the interest of a "segment of the public," thus a law impacting only a select group of people in a specific area might still be considered to be in the public interest. It is not in the public interest to leave any group of people suffering from a grievance;

hence it is in the public interest to remove major abuses, grievances, discontent, or hardships that affect a specific group. 144 Section 372(g) and a portion of Section 385 of the Bombay Municipal Corporation Act 3 of 1888, as amended by Act 14 of 1961, have been declared ultra vires by the High Court of Bombay on the grounds that they violate the rights guaranteed by Article 19 (1) (f) and (g) of the Constitution in the case *State of Maharashtra v. HimmatBhaiNarbheeramRao and Others*.¹⁴⁵ A petition filed by Maharashtra state and the Greater Bombay Municipal Corporation reached the Supreme Court. In determining whether a law's limitation on a person's freedom is justified, the Supreme Court has said that the law's rationale must take into account the nature of the right at issue, any potential harm that could arise from the unrestrained exercise of that right, and the need to safeguard the public from any potential harm that would arise as a result of that right being exercised. Without striking an appropriate balance between the freedom allowed in Article 19(1)(g) and the social control permitted in clause (6) of Article 19, legislation will be found to be lacking in the quality of reasonableness. ¹⁴⁶ Although the Court found that the challenged provisions do not violate the freedom guarantee under Article 19 (1) (f) of the constitution, the law which imposes a reasonable restriction upon the right of a citizen to acquire, hold, and dispose of property is not on that account free from the challenge that it infringes the guaranteed freedom under Article 31. Therefore, the appeals were granted and the order passed by the High Court was reversed.

SOCIO-ECONOMIC VISION OF THE CONSTITUTION AND RECONSTRUCTION OF PROPERTY RELATIONS

The debates in the Constituent Assembly made it abundantly clear that the members intended for the right to property to be enshrined as an inalienable fundamental right. After much debate, the Constituent Assembly guaranteed the people of India the right to private property. The Constitution's directive principles require the creation of a state where social, economic, and political fairness serve as the guiding principles for all aspects of national life. The State shall, in particular, work to reduce income disparities and remove status, facility, and opportunity gaps, not just between individuals but also between groups of persons who live in various geographic locations or have different occupations.

The fundamental right to property in our constitution, as when it was enforced, may be summarised as follows:

- (1) Every citizen had a fundamental right to acquire, hold and dispose of the property under Article 19 (1) (f).¹⁶⁷
- (2) The State could make a law imposing reasonable restrictions under Article 19(5) on the said right in public interest.

- (3) Whether a restriction imposed by law on a fundamental right was reasonable and in public interest or not, was a justiciable issue.
- (4) The State could by law, deprive a person of his property if the said law of deprivation amounts to a reasonable restriction in public interest within the meaning of Article 19(5).
- (5) The State, under Article 31, could acquire or requisition the property of a person for a public purpose after paying compensation.
- (6) The adequacy of the compensation was not justiciable.

According to the Constitution's Directive Principles, policymakers have been influenced by socialist ideology since the very beginning, and as a result, private property has been systematically devalued from the beginning. The right to property was demoted from essential to merely a legal right as a result of the Constitution's socio-economic agenda. One of the arguments for demoting the right to property from basic to legal status was so that it could be protected from executive intervention but not legislative interference.

IMPACT OF SOCIALIST PHILOSOPHY ON FUNDAMENTAL RIGHT TO PROPERTY

By examining the numerous articles of part IV of the Constitution, i.e. the Directive Principles of the States Policy, it may be possible to provide a clear explanation of the effect of socialist thought on the right to private property. Although the provisions of Part IV are not enforceable by any court (as stated in Article 37), the principles within are essential to the proper functioning of government, and it is the responsibility of the State to respect these principles when drafting legislation. According to the court's ruling in the *Minerva Mills* case, "harmony and balance between fundamental rights and directive principles is an essential aspect of the basic framework of the Constitution." The judicial system should use the guiding principles as a standard of interpretation. Therefore, it's important to consider the state's guiding principles when interpreting citizens' basic rights, and to include those values into the interpretation whenever possible. According to Article 38, the government must work to reduce income inequality and promote social justice by eliminating disparities in social standing, material resources, and professional and educational opportunities for all citizens. In general, this article directs the State to guarantee a social order for the advancement of welfare of the people. According to Article 39(b), the state must work to ensure that economic power is not concentrated in too few hands by ensuring that everyone has access to the community's material resources. Property, both movable and immovable, such as land, buildings, workshops, automobiles, etc., is also considered a material resource. Articles 39(b) and (c) address the equitable sharing of the community's material resources. Distributing national wealth for the common good is socialism's ultimate

goal. Those living in a socialist state are guaranteed to have access to economic and social security. Article 39 enshrines the socialist principle of distributive justice (b). It was decided in the case of H. S. SrinivasaRaghuachar v. State of Karnataka that agrarian reform initiatives, such as putting land ownership in the hands of farmers, achieve the goals set forth in Articles 39(b) and 40. (c). Article 39(c) considers potential actions to limit the accumulation of wealth and corporate control over the means of production. In violation of Articles 39(b) and 40, the majority of the land was unfairly distributed to a select few in the community (c). Therefore, agricultural reform and Zamindari abolition legislation to achieve the goals set forth in Articles 39(b) and 40. (c). The State's priorities should be set so that the majority of its citizens benefit economically from the community's material wealth, rather than everyone else. The reimagining of property relations was profoundly influenced by Article 38's consideration of the Constitution's socio-economic agenda. This article envisages the idea of social justice. To achieve a more equitable distribution of material resources amongst society's members, the Supreme Court in LingappaPochanna v. State of Maharashtra ruled that laws may take the form of forced redistribution of wealth or legislative control of unfair agreements. According to Article 46, it is the State's responsibility to ensure the safety and prosperity of the most vulnerable members of society. The State shall safeguard the interests of the economically vulnerable, especially those of the Scheduled Castes and the Scheduled Tribes, against social injustice and all forms of exploitation, and shall work to advance such interests. The Act established by the Maharashtra Legislature barring alienation of agricultural lands by members of Scheduled Tribes to someone not belonging to the Scheduled Tribes was found legitimate in LingappaPochanna v. State of Maharashtra. The Act was characterized as an example of distributive justice, which means, among other things, the elimination of economic inequalities and the rectification of injustice resulting from dealings or transactions between unequal in society. This was because the Act was deemed to be nothing more than a remedial measure in keeping with the policy of the state to render social and economic justice to the weaker section of the society. Using the principle "from everyone according to his capacity, to each according to his needs," "the Court has underlined that legislation should be utilized as a tool of distributive justice to accomplish a fair division of resources among the members of the society." Through examination of the above, it is possible to deduce that the provisions of the Directive Principles of State Policy have been profoundly influenced by socialist thought. When citizens in a country are without access to basic essentials like food, clothing, and shelter, the State has a fundamental obligation to step in and ensure that these people are cared for. In order to fairly share the community's limited resources, the distribution of property had to be fair.

CONCLUSION

Many nations around the globe have acknowledged the importance of protecting the right to private property. Section 299 of the Government of India Act, 1935 confirmed the ownership. After the Constitution of India was ratified, Article 19(1)(f) and Part III, Article 31 established the right to property as a basic right. The right to property had been hotly contested in the Constituent Assembly. There were members who thought the state could legally take the land without compensating the owners, and members who thought any compensation should be fair and reasonable for the property's value. All citizens should have the right to acquire, own, and dispose of property subject to reasonable restrictions in the benefit of the general public or for the protection of the interests of the tribes, as stated in Article 19(1)(f) of the original Constitution. Article 31(1) states that no one may be deprived of his property without due process of law, while Article 31(2) guarantees compensation in the event of compulsory purchase of private property for public use or by any government agency. Even though no qualifying words like "just" or "sufficient" were included, the Courts ruled that the word "compensation" meant that the payout had to be fair and reasonable. The question of whether or whether the compensation is enough was made "non-justiciable" by the Constitution (Fourth Amendment) Act of 1955. However, the courts were not entirely kept out of the compensation process by the fourth amendment. According to the Constitution (Twenty-Fifth Amendment) Act, 1971, the word "amount" was replaced for the word "compensation" in Article 31 after the decision in the Bank Nationalization case¹ (2). Given that the government had to uphold the socio-economic vision outlined in Part IV of the Constitution, Article 31C was added to the Constitution by the Twenty-Fifth Amendment Act of 1971 so that Article 39(b) and (c) could be put into effect (c). Article 39 (b) and (c) of the constitution, which provide a socioeconomic vision, was the primary tool for watering down and eventually removing the property right as a fundamental right. The State shall direct its policies toward ensuring that the material resources of the community are divided fairly for the public welfare, and that the economic system is managed so that wealth and the means of production are distributed equitably, as stated in Article 39 (b) and (c).

REFERENCES

1. Chaube, Shibanikinkar Constituent Assembly of India - New Delhi: Manohar Publishers & Distributors, 2000
2. Basu, Durga Das Introduction to the Constitution of India - New Delhi: Wadhwa and Company Law Publishers, 2002
3. Basu, Durga Das Introduction to the constitution of India - New Delhi: prentice-hall of India Pvt. Ltd. 1995
4. Bakshi, P.M. The Constitution of India - Delhi: Universal Law Publishing, 2002

5. Basu, Durga Das Shorter Constitution of India - New Delhi: Prentice-Hall of India, 1988
6. The Constitution of India, Commemorative Edition Ministry of Law and Justice, GOI.
7. Keith , Arthur Berriedale A Constitutional History of India 1600-1935 - London :Methuen & Co. Ltd.,1937
8. Coupland, R. The Constitutional Problems in India -London: Oxford University Press,1945
9. Jain, Subhash C. The Constitution of India: Select Issues & Perceptions – New Delhi: Taxmann Publications, 2000
10. Raj , Hans The Constitution of India - New Delhi: Surjeet Publications, 1998
11. Basu ,Durga das Introduction to the Constitution of India - Agra: Wadhwa and company law publishers, 2002
12. Austin, Granville Working A Democratic Constitution: The Indian Experience; -Delhi: OUP, 1999 23. Report of the National Commission to Review the Working of the Constitution Vol.1 - New Delhi: Universal Law Publishing, 2002 ISBN-81-7534-284-2
13. Basu, Durga Das Constitutional Law of India - New Delhi: Prentice-Hall of India Ptv. Ltd. 1991
14. Swarup, Jagdish Constitution of India 2nd Vol –1, II , III - New Delhi: Modern Publications, 2006
15. Jain, M.P. Indian Constitutional Law Vol- 1, 2 - New Delhi: Wadhwa and Company Nagpur, 2003
16. Hansaria's Justice B.L. Sixth Schedule to The Constitution - Delhi: Universal Law Publishing Co., 2005
17. Bakwshi, P.M. The Constitution of India - Delhi: Universal Law Publishing Co., 2006
18. Jois, Justice M. Rama Legal and constitutional History of India - Delhi: Universal Law Publishing Co., 2005
19. Sharma, Brij Kishore Introduction to the Constitution of India - New Delhi: Prentice-Hall of India, 2005

Corresponding Author

Dr. Sudeep Kumar*

Assistant Professor, DAV College Pehowa,
Kurukshetra - 136128