

An Analysis of Constitutional Amendments on Fundamental Right to Property

Anushree Banerji*

B.A LL.B., LL.M, Maharashtra National Law University, Aurangabad

Abstract - The Second Amendment's protection of the right to private property was the second most contentious provision fought over during the Constitution's creation, and it was the first fundamental right to be ultimately negated in 1978, giving it a unique refinement. The Indian State has made consistent efforts to reshape property relations in the public arena to achieve its goals of monetary improvement and social redistribution, and this can be seen in the development of the right to property in the Constitution from the drafting of the first established property proviso through legal understanding, enactment, and protected change. As a legitimate form of social organization, property has different forms under different legal systems. The legality of private property ownership is a point of contention between those who support the right to own such property and those who oppose it. Land acquisition legislation in India has a long and tumultuous history, with two clear lines of development: one beginning with the Constitution of India, 1950, which guaranteed the fundamental right to property, and the other beginning with the establishment of the Land Acquisition Act, 1894. Not only should both be studied simultaneously, but in recent years they have both moved freely and independently of one another.

Keywords - Constitution of India, Right to Property, Right to Property and Constitutional Right

-----X-----

INTRODUCTION

It seems reasonable that the Indian constitution protects a set of rights called as Fundamental Rights for all Indian citizens. Indian citizens have the right to live in peace in accordance with the country's constitution and other laws as long as they are physically present in India. Citizens of India enjoy the same basic protections as people in every other democratic nation. The Bill of Rights in England, the Bill of Rights in the United States, and the Declaration of the Rights of Man in France are all important precursors to the modern concept of human rights. Every researcher into the bleak history of property rights under the United States Constitution will be haunted by these words. Even in our communist democracy, the right to property was mocked as the "least defensible" right. It is fascinating to see how the Right to Property has been the driving force behind so many changes to our Constitution and how it has served as the bedrock for the emergence of some remarkable and landmark rulings from our judicial system. The purpose of this paper is to chronicle the legislative and judicial drama that ultimately resulted in the elimination of the Right to Property from the Bill of Rights. All American law students are familiar with the most of the cases we'll discuss below, but to our dismay, they have never been examined from the standpoint of property rights. A ridiculous justification for doing away with property rights is that it stirred up so much debate that it was decided it was best to do away with it. But if we examine the long and winding path of right to property cases and revisions. It's important to learn from this that he placed such a high

value on his property rights that he was willing to go to great lengths and use creative tactics to protect them. It is upsetting to see how our government treats a basic human right like property ownership. According to a Montesquieu adage, a person is more likely to forget the one who murdered his father than the one who stole his possessions.

Pre-Constitutional Position of Right to Property

The Government of India Act of 1935 and the Declaration of Human Rights serve as cornerstones of the Indian Constitution (1948). The right to property was guaranteed by Section 299 of the Government of India Act, 1935, which also included protections against expropriation without compensation and acquisition for private advantage. Additionally, India is a party to the Universal Declaration of Human Rights (1948), and Article 17 of that document likewise recognizes the right to private property. Several countries' constitutions that protect citizens' fundamental liberties were studied by the Constituent Assembly. It is stated that "broadly speaking, the rights declared in the Constitutions relate to equality before the law, freedom of speech, freedom of religion, freedom of assembly, freedom of association, security of person and security of property" (Constituent Assembly of India, Constitutional precedents (Third Series), 1947). All these privileges have their limits, but they are universally acknowledged. Our Constitution's drafters clearly gave property enough weight to include it in the chapter of fundamental rights, as seen by the heated arguments in the Constituent

Assembly over the proposed Article 19(1)(f) and Article 31. Some members of the Constituent Assembly advocated for moving the clause protecting the right to engage in "trade and intercourse" from the chapter of fundamental rights into its own section (Article 301). The fact that similar proposals regarding property rights were rejected is noteworthy.

Post Constitutional Developments

There is confusion about the extent of the property right guaranteed by the United States Constitution. Some people have come to believe, seemingly on the basis of no evidence other than repetition, that the right to property is so deeply rooted in our Constitution that it is impossible to apply the fundamental principles without amending the document. This assumption is false, as can be seen by looking at the relevant provisions of the Indian Constitution as they stood on January 26, 1950. These provisions include Articles 14, 19, 19(1)(f), 19, 19(5), 31, 32, 39(b), and (c), 226, and 265. The essence of the aforementioned provisions can be summed up as follows: The right to buy, own, and sell property is a fundamental human right. This right comes with a responsibility to exercise it reasonably so as to not infringe on the rights of others. Therefore, it's important that information be used reasonably and in the public good. To ensure that the ownership and control of the community's material resources are so distributed as best to serve the common good and that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment, the state is directed by the relevant principles outlined in the Directive principles of state policy, which lay down the fundamental principles of state policy and the governance of the country. In reality, when the state uses its authority to uphold this principle, it is also upholding the responsibility associated with that right. By imposing constraints on both the right of citizens and the authority of the state to enforce the aforementioned values, the tension between the two can be resolved. This so-called fundamental right has its limits. The law of reasonable restrictions in the public interest applies to this situation. Any law passed by the state that infringes on the aforementioned fundamental right must pass the twin test of reasonableness and public interest in order to be upheld. The government can seize private property for public use, but only if it provides enough compensation to the owner first. It also has the authority to levy taxes on an individual's wealth. All legislation enacted under these authorities must adhere to the principle of classification while also adhering to the doctrine of equality. However, the legitimacy of such rules of social control, taxes, and acquisition is a matter that can be settled in a court of law. In a nutshell, the right to property is subject to judicially enforceable social control regulations under mentioned rules.

Fundamental rights' Case and Attitude of Judges towards Right to Property

Perhaps ironically, the KesavanandaBharathi case, the single most important event in India's constitutional history, is also the most likely to result in the country's Bar becoming increasingly illiterate. Most members of the Bar will not read a judgement that runs over 700 densely printed pages, and even if they do, it is quite improbable that they will fully understand it after a single reading. However, the growth of American constitutional law will be hampered if lawyers fail to take into account the liberal and legal interpretation of this ruling. Every time, it's the literate's lack of education that impedes progress the most. In its original form, the well-known Twenty-fifth Amendment appears to remove the role of the judiciary in determining whether or not a party should be compensated for the loss of property. The misconception that the Supreme Court of India has been a champion of property rights and an opponent of any attempt at a more equitable social order stems from the court's insistence on paying fair market value for any property it acquires. A lot of people, including the court's intended victims, customers, and students, have done a lot of work to keep this idea alive. The mythologization campaign has been so effective that it has even persuaded even members of the country's judiciary, such as Justice Kesavananda, against their better judgment. There is some truth to the idea that myths can serve a useful purpose in society, but I don't think this one has done us any favors. The thesis rests on the implausible premise that the very accomplishment of the Directive principles of state policy is impeded by the right to property and judicial review of laws affecting it. In reality, the constitutional conception of social justice for India is spelled out in full detail by all of the fundamental rights and the vast majority of the directive principles; and this conception, like all conceptions of social justice, embodies values that can't be met simultaneously in a scarce resource economy. From among all the values with equal moral weight, choices must be made giving emphasis to one or the other. Once this is understood, claims such as "preferring the norm of equitable recompense is always opposed to "social justice" or "confiscation is always congruent with "social justice" cannot be made in good faith in the abstract. Kesavananda is also responsible for the creation of the judicial curse, or at least its revival. He warns, "Woe betide those in whom the country has placed such huge reliance" if the social objectives end up being "a landfill of sentiments" despite the extensive powers currently granted to parliament. But even if the most powerful people in the country curse the tales, that won't stop them. Voltaire once remarked that if you want to slaughter a herd of sheep with curses, you need to mix in a little bit of arsenic as well. Kesavananda agrees with the view that Parliament has some rights to change the Constitution, but argues that these are more of a constituent than a legislative nature. There is zero clarity on the extent of the component amending power thus recognized. It is possible to mechanically determine the "majority" and "minority" of Kesavananda and state that seven judges (the Chief

Justice, Shelat, Grover, Hegde, Mukherjee, Jagmohan Reddy, and Khanna, J J), and six other judges (Ray, Palekar, Mathew, Beg, Dwivedi, and Chandrachud, J J), assert certain limitations to the constituent amending power.

Reinstating the fundamental right to property in the Indian Constitution

Since the turn of the century, widespread land acquisition by the State for dams, infrastructure, and private industry has received significant public attention due to the massive displacement of poor peasants and traditional communities like forest dwellers, cattle grazers, fishermen, and indigenous tribal groups. Sanjiv Agarwal v. Union of India, a public interest case filed in 2009, asked the Supreme Court to reverse the effects of the 44th amendment to the Indian Constitution and restore the right to private property. The petitioner justified his request by referencing the widespread population shifts brought on by the establishment of SEZs, as well as other projects like the Narmada dams and the land issues in Singur and Nandigram. The petitioner maintained that the Supreme Court's statement in Kesavananda about the "basic structure" did not apply to fundamental rights after the judgement in I.R. Coelho v. Union of India. The Forty-fourth Amendment was found to be illegal because it went against the "basic structure" of the Constitution by eliminating the right to property guaranteed by Articles 19(1)(f) and 31. In 2010, the Supreme Court rejected the petition without addressing its merits on the grounds that the petitioner was a public interest litigant who would be unaffected by the elimination of the right to private property and that the Court's consideration of the petition would force it to revisit previously decided constitutional case law. The petitioner mentioned maybe resuming the case in a recent discussion with the author.

Article 300A's prerequisites of "public purpose" and "compensation" have, however, been restored in recent years by the Supreme Court. The Supreme Court of India ruled in *KT Plantation Private Ltd v State of Karnataka* that the 'rule of law' applied in India and that the Court was not 'powerless' in a situation 'where a person was deprived of his property... for a private purpose with or without providing compensation.' This means that any State acquisition of property must meet the requirements of 'public purpose' and 'compensation' under Article 300A. The Court restated these conditions in the context of intellectual property in *Super Cassettes Industries Ltd v Music Broadcast Private Ltd*. The Court emphasized that because copyright is 'property' within the meaning of Article 300A, the provisions for compulsory licensing found in section 31 of the Copyright Act, 1957 must meet the requirements stipulated therein, such as that such deprivation must occur pursuant to a valid law and must satisfy a public purpose.

During the month of September 2013, Parliament passed the contentious Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act 2013 (hereinafter LARR Act).

Forcible land acquisitions are compensated for more generously under the Act, and displaced people are eligible for relocation and rehabilitation grants. 81 The Act also aims to limit what can be considered a "public purpose" by offering a long, specific list of examples. In response to the erosion of the right to property in the Constitution, the LARR Act has enhanced the requirements of public purpose and compensation through legislation. While the LARR Act allowed public-private partnerships and private companies to acquire land for the enumerated public purposes, it marked a significant departure by requiring the approval of 70% of families affected by the project in the case of public-private partnerships and 80% in the case of land acquisition by companies. When the government takes possession of land for its own purposes, however, consent is not required. In addition, the LARR Act requires a thorough social impact assessment (SIA) procedure for any such purchase.

On Jan. 1, 2014, the LARR Act became law. For the first year after the Act's passage, however, its rules did not apply to property acquisitions conducted under thirteen sector-specific land acquisition laws. The Land Acquisition, Rehabilitation, and Resettlement (Amendment) Ordinance, 2014 (hence "LARR Amendment Ordinance") was signed into law by the President on December 31. As a result of this Ordinance, the thirteen previously excluded legislation are now included under the LARR Act's compensation and rehabilitation provisions.⁸⁸ However, it also exempted a number of types of projects from the LARR Act's approval and SIA prerequisites. It turned out that the LARR Amendment Ordinance was much more divisive than the original LARR Act. A bill intended to replace the Ordinance (hence the "LARR Amendment Bill") failed to pass into law because of insufficient support from the public and the political spheres. In April, the President re-promulgated the Ordinance, and by May, the government was under pressure to refer the LARR Amendment Bill to a joint parliamentary committee. The committee's report is scheduled for the upcoming parliamentary winter session. In the same month that the LARR Amendment Ordinance was signed into law, three non-governmental organizations in Delhi and a farmers' organization challenged its constitutionality in the Supreme Court. Therefore, in 2015, all branches of government were preoccupied with the content of the right to property as revised by the LARR Act and the LARR Ordinance, adding to the persistent political and legal uncertainties surrounding the right to property. It's interesting to note that the narratives of economic growth and social redistribution of resources from the agrarian classes to the industrialized classes have also been at the center of the controversy surrounding the implementation of the LARR Act, 2013 and its attempted amendment by the LARR Amendment Bill, 2015.

The political and legal climate is volatile even as this chapter is being written. The LARR Amendment bill expired on August 31, 2015. As a result, the

Supreme Court challenge to the Ordinance's constitutional legality has been rendered moot due to the government's choice not to re promulgate it a third time. Recent electoral losses make it unlikely that the LARR Amendment Bill would pass in Parliament during the upcoming winter session, despite claims that the government is still working to develop agreement in Parliament to do so. To that purpose, the federal government has instead encouraged the states to change the LARR Act, which they are allowed to do under Article 254(2) of the Constitution because the LARR Act is a Concurrent List issue, subject to ratification by the President. At least three additional states are expected to follow Tamil Nadu's lead.

Right to Property as the Supreme Right of All Rights

There was a time when people placed a higher importance on things like the right to vote, the right to free expression, and personal liberty than they did on the right to one's own property. Therefore, the judges were wiser to overturn laws that violated fundamental rights than those that threatened private property. However, the famous judge Learned Hand thought the difference was illusory, and he wondered aloud why nobody had given any attention to the topic of why property rights are not personal rights. In 1972, the Supreme Court of the United States issued a ruling that essentially said, "the dichotomy between personal liberty and property rights is a false one," thus burying the idea that there is any meaningful separation between the two. Nothing in property has any rights. All individuals are entitled to certain protections. Even while a welfare check, a house, or a savings account are all examples of "property," the ability to enjoy them without unlawful deprivation is a "personal" right just like the right to talk or the right to travel. It's true that the individual's right to liberty and the individual's right to property are inextricably linked. Without one another, they would both be meaningless. Property rights have long been acknowledged as fundamental civic liberties. If the right to free expression or personal liberty is a fundamental right, then it stands to reason that the right to private property should be a fundamental right as well, as the former would be meaningless without the latter. Securing property is essential to safeguarding personal liberty. Learned Hand warned a long time ago. One factor that could lead to its demise in their minds is a culture where people no longer feel safe in their homes since their possessions are not subject to the whims of a majority vote. The men who drafted our Constitution were outstanding, a group of men whose qualities and skills have rarely been matched in this country. They had that uncommon mental capacity that bridges the gap between theory and practice. They grasped the specific realities of the land and the unchanging desires of the people, and they molded their ideals to fit the particular nature and ingenuity of the country. They valued the right of individual property ownership over the will of the momentary majority, envisioning a society in which everyone has

access to at least a small piece of land for use as a source of subsistence and protection from political and economic persecution. They passed Article 39, which mandated the state's equal distribution of wealth and the reduction of the concentration of wealth in the hands of a few. There is no longer any justification for supposing that the form of society they envisioned is inappropriate for our own era.

The concept of "property" is the most open-ended in the English language. It includes a wide range of rights that are quite dissimilar from one another except that they are all enjoyed by individuals and protected by the state. Therefore, arguing for or against private property without mentioning its size or worth is pointless. Certain types of property can only be defended or destroyed by certain arguments. As an economy progresses through its many stages, the factors that were once decisive may no longer be relevant. Because naming conventions are not necessarily indicative of quality parity. It is clear that property in both long-lasting and short-lived consumer goods, as well as in the means of production labored by their owners, must be protected by the higher law on the same logic on which it is proposed to safeguard by that law the interest in libel. If it is assumed that the right to property does not pertain to basic structure and can be amended by parliament without a referendum, as is proposed in the case of other fundamental rights regarding citizens, then there can be no doubt that the right to property in If the state or a state-owned corporation were to acquire these properties for public use, the owners would be entitled to fair market compensation. "Property in the means of production that are not worked or directly managed by their owners is not an instrument of freedom because it gives power not only over things but through things over persons, whereas property in the things themselves can be justified as a necessary condition for a free and purposeful life. There is no impropriety in estimating the compensation payable to the deprived owners based on principles of social justice, since the founders of the Constitution intended to break up the concentration of this type of property under Article 39 and divide it among the have-nots. But here's where we need to give this some serious thought: Justice K K Mathew delivered the most eloquent and liberal view in favor of property rights. But in the end, even he seems to have become lost in the so-called clash between directive principles and fundamental rights in his pursuit of safeguarding property rights. Any just state that grows and thrives on the foundation of rule of law will find it nearly impossible to rationally grant unlimited right to property while also needing to respect the sanctity of a directive principle against concentration of wealth.

CONCLUSION

Property rights in India have come full circle. It originated as a protection against the colonial state's abuse of power by preventing the confiscation of

private property without due process of law, for a public purpose, and in exchange for fair recompense. Colonial legislation, beginning with the Bengal Regulation I in 1824 and ending with the Land Acquisition Act in 1894, guaranteed this freedom. Section 299 of the Government of India Act, 1935 later raised the right to the status of a "entrenched" or "constitutional" right. The right to property was proclaimed a "fundamental right" when the Constitution was ratified in 1950, making it subject to judicial review and preventing the state from legislatively removing restrictions on its ability to acquire private property. Some restrictions on the State's ability to acquire property, such as the need to pay market value compensation, were removed through a series of constitutional amendments that carved exceptions out of the fundamental right to property. The constraints on the State's capacity to acquire property are no longer justiciable because to the Forty-Fourth Amendment, which removed the right to property from its 'fundamental' right status in 1978. The status of this right as a basic right, as it existed prior to the Forty-fourth amendments, has been challenged in court in the previous five years. At the same time as the Land Acquisition Act of 1894 was repealed and replaced by the LARR of 2013, the standards of "public purpose" and "compensation" were made more stringent by law. Intense social and political contestation surrounds the contours of the right to property, both as a legal and constitutional right, as evidenced by the thrice promulgated LARR Amendment Ordinance within a year of the enactment of the LARR Act, and the government's inability to garner parliamentary support to pass the LARR Amendment Bill, 2015. The Indian State has consistently tried to reshape property relations in society to achieve its goals of economic development and social redistribution, and this is evident in the trajectory of the right to property in the Constitution, from the drafting of the original constitutional property clause, through judicial interpretation, legislation, and constitutional amendment. Each revision of the property clause reflected heated debate between opposing parties that used the legislative and judicial branches to advance their interests, with some groups' property rights strengthened and others' reduced. Concurrently, the Court's concern with the potential arbitrariness of State action has been a driving factor in the evolution of the Supreme Court's doctrinal jurisprudence. Almost every single instance involving a violation of a person's right to property also had a challenge based on the equality guarantee in Article 14, and in the vast majority of these cases, the law was struck down because it violated the right to equality rather than the right to property. The battles over the passage of the LARR Act and the LARR Amendment Bill are illustrative of this phenomenon, as are the agrarian reform cases that resulted in the First, Fourth, and Seventeenth Amendments to the Constitution.

REFERENCES

1. Allen, T., 2007. Property as a fundamental right in India, Europe and South Africa. *Asia Pacific Law Review*, 15(2), pp.193-218.
1. 2.Sripati, V. and Thiruvengadam, A.K., 2004. India: Constitutional amendment making the right to education a Fundamental Right. *International Journal of Constitutional Law*, 2(1), pp.148-158.
2. 3 Chaudhry, F., 2016. A Rule of Proprietary Right for British India: From revenue settlement to tenant right in the age of classical legalthought. *Modern Asian Studies*, 50(1), pp.345-384.
3. 4 Gae, R.S., 1973. Land law in India: with special reference to the constitution. *International & Comparative Law Quarterly*, 22(2),pp.312-328.
4. 5.Ganguli, A.K., 2016. 11_Right to Property: its Evolution and Constitutional Developments in India.
5. Murphy, J., 1992. Insulating land reform from constitutional impugment: an Indian case study. *South African Journal on Human Rights*, 8(3), pp.362-388.
6. Banerjee, A. and Somanathan, R., 2007. The political economy of public goods: Some evidence from India. *Journal of developmentEconomics*, 82(2), pp.287-314.
7. Jariwala, C.M., 2015. Emerging Right to Environment: An Indian Perspective.
8. Morris, S. and Pandey, A., 2007. Towards reform of land acquisition framework in India. *Economic and Political Weekly*, pp.2083-2090.
9. Singh, J., 2006. Separation of powers and the erosion of the 'right to property'in India. *Constitutional political economy*, 17(4), pp.303-324.
10. Gilbert, J., 2013. Land rights as human rights: the case for a specific right to land. *SUR-Int'l J. on Hum Rts.*, 18, p.115.
11. Sinha, K. and Singh, N., 2016. Land Acquisition in India: History and Present Scenario. *Journal of Legal Studies and Research*, 2(4), pp.2455-2437.

Corresponding Author

Anushree Banerji*

B.A LL.B., LL.M, Maharashtra National Law University, Aurangabad