

# Constitutional Evolution of Property Rights in India: An analysis

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## ABSTRACT

The right to property in India has undergone a transformative constitutional journey since the enactment of the Constitution in 1950. Initially recognised as a fundamental right, it has been re-engineered through multiple constitutional amendments and judicial interpretations to reconcile individual property interests with the socio-economic objectives of the State. This paper traces that evolution, explores major legal changes, landmark cases, and the contemporary status of property rights under Indian law. This paper examines the evolution of property rights in India from the colonial era to the present constitutional framework. It traces how property rights transformed from being a fundamental right in the original Constitution to a legal right under Article 300A. The paper analyzes the socio-economic context, landmark constitutional amendments, judicial interpretations, and the balance between individual rights and public interest.

**Keyword: Property, Right, Social justice, Public welfare, Ownership and Land reforms.**

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## INTRODUCTION

Property has always been a central concern in constitutional democracies, reflecting the balance between individual liberty and public welfare. In India, the Constitution initially positioned property rights within the broader goals of nation-building and social transformation. Unlike freedoms such as speech or equality, the right to property followed a distinct constitutional and political path. Broadly understood, property rights refer to the legal authority to acquire, hold, use, and transfer possessions. Over time, these rights in India were substantially restructured to align with socio-economic objectives, including agrarian reforms, equitable distribution of resources, and welfare-oriented governance.

The development of property rights reveals an ongoing balancing act between private ownership and the collective good. While modern democracies often grapple with similar tensions, India's experience has been particularly dynamic. Originally protected as a fundamental right under Articles 19(1)(f) and 31, the right to property was later reclassified as a constitutional legal right under Article 300A. This shift reflected the State's commitment to implementing land reforms and advancing the Directive Principles of State Policy, even when such measures required limiting individual property claims in pursuit of social justice.

## HISTORICAL BACKGROUND

### Pre-Colonial Period

Property ownership was largely customary and community-based, especially in agrarian societies. Land belonged either to the king (state) or to communities, individual ownership existed but was limited and rights were often linked to social status, caste and occupation. Before British rule, property rights were governed by customary laws and agrarian systems. The British introduced formal property concepts emphasizing individual ownership and market transferability. Main attributes of that time rights is statutory recognition of proprietary interests, codification through laws like the Indian Transfer of Property Act, 1882 and land revenue codes and gradual expansion of contractual and land rights. These developments laid the groundwork for post-independence constitutional treatment.

### Colonial Period (British India)

The British introduced formal property laws, creating a legal framework for private ownership. Main developments of permanent settlement is recognized zamindars as landowners in Bengal, giving them revenue-collection rights. Ryotwari

and mahalwari systems recognized individual cultivators as landowners in other regions and land became commoditized with legal enforceability and property rights were formalized in courts. The British colonial administration formalized proprietary rights through codified legislation such as the Transfer of Property Act, 1882 and various land revenue systems.<sup>1</sup> These laws introduced concepts of absolute ownership, transferability, and enforceability in courts.

### **Constituent Assembly Debates**

Members of the Constituent Assembly debated extensively whether property should be a Fundamental Right.<sup>2</sup> The inclusion reflected liberal democratic values, but concerns were raised regarding agrarian inequality and zamindari abolition.

### **Post-Independence & Constitution**

The Indian Constitution initially recognized property as a fundamental right Article 19(1)(f) is Right to acquire, hold and dispose of property. Article 31 is protection against deprivation of property without compensation. The aim of the article was balance to protect individual ownership while allowing the state to implement land reforms and redistribute wealth.

## **CONSTITUTIONAL AMENDMENTS AS TO PROPERTY RIGHT**

### **Property Rights in the Original Constitution**

At the commencement of the Constitution on 26 January 1950, the right to property was included under the Fundamental Rights chapter (Part III) is Article 19(1)(f) guaranteed the right of all citizens to acquire, hold and dispose of property. Article 31 protected this right by providing that no person could be deprived of property except by authority of law, and required compensation for acquisition. This inclusion reflected early constitutional choices to uphold private ownership while enabling limited state regulation for public purposes.

### **First Amendments and Early Modifications**

As India embarked on land reforms to dismantle feudal land relations and promote equitable land distribution, pressure mounted for constitutional changes the first amendment introduced restrictions against unfettered property rights to facilitate agrarian reform legislation. To protect land reform legislation from judicial invalidation, parliament inserted Articles 31A and 31B and introduced the Ninth Schedule<sup>3</sup>.

Subsequent amendments (e.g., Fourth, Seventeenth, Twenty-Fourth through Thirty-Fourth) further modified Article 31 and added exceptions to accommodate a broad array of welfare laws. These amendments altered the judicial scope to challenge expropriatory or redistributive legislation.

### **The Constitution (Fourth Amendment) Act, 1955**

It was mainly passed to strengthen the state's ability to acquire private property for public purposes and to facilitate land reforms and main changes in amended Article 31 made it easier for the government to acquire property without excessive judicial interference. Added Part A to Article 31 is allowed the State to acquire estates or excess land holdings more efficiently. Protected land reform and agrarian legislation from being challenged as violating the right to property.

In the early 1950s, courts had struck down several land reform laws, declaring them unconstitutional because they violated Article 31. The Fourth Amendment (1955) made it clear that such laws were valid even if they affected property rights, thus giving the state priority over individual property in favor of social justice. Clause 2A was inserted in Article 31 which held that the obligation to pay compensation would arise only when there is transfer of ownership or possession to the state. These amendments further curtailed judicial review of compensation adequacy.<sup>4</sup>

### **The Constitution (Twenty-Fifth Amendment) Act, 1971**

This amendment would also insert a new clause 31(C) in the Constitution, which would prevent a bill from being challenged in the Court, either under Article 14 equality before the law, Article 19 right to property, freedom of association, speech, religion etc. or Article 31 on deprivation of law except under authority of law and Article 31 provided that no person shall be deprived of property save by authority of law and mandated compensation for compulsory acquisition<sup>5</sup>, if Parliament certified that the bill was intended to ensure equitable distribution of material resources or to prevent

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<sup>1</sup> The Transfer of Property Act, No. 4 of 1882, Acts of the Governor-General of India.

<sup>2</sup> 7 Constituent Assembly Debates (Dec. 1948).

<sup>3</sup> The Constitution (First Amendment) Act, 1951.

<sup>4</sup> The Constitution (Fourth Amendment) Act, 1955.

<sup>5</sup> INDIA CONST. art. 31 (repealed 1978).

concentration of economic power. In case of *Rustom Cavasjee Cooper v. Union Of India*<sup>6</sup> The Court also held that a law which seeks to acquire or requisition property for public purposes must satisfy the requirement of Article 19(1)(f). The 25th Amendment sought to overcome the restrictions imposed on the government by this ruling<sup>7</sup>. Article 19(1)(f) guaranteed citizens the right to acquire, hold, and dispose of property.<sup>8</sup> This right was subject to reasonable restrictions under Article 19(5).

In *R.C. Cooper v. Union of India*,<sup>9</sup> the Supreme Court had earlier expanded judicial scrutiny, prompting Parliament's response.

### **The Constitution (Twenty Ninth Amendment) Act, 1972**

To facilitate the acquisition of private property for public purposes, especially in the context of land reforms and abolition of zamindari systems. Amendment of the First Schedule and Article 31 in certain territories and lands were excluded from the ambit of property rights challenges. To ensure smooth transfer of land from private owners to the state for redistribution and agrarian reforms. Focused on state objectives is to Strengthened the state's power to implement socio-economic reforms without being blocked by judicial review and protected laws under the 25th Amendment, reinforcing immunity for legislation implementing directive principles of state policy. The 29th Amendment was a technical but important step to support the government's land reform agenda. By clarifying and extending the legal protection of state acquisitions, it further limited the judicial scope for challenging property-related legislation. It represents a progressive weakening of property as a fundamental right, paving the way for the 44th Amendment.

### **The 44th Constitutional Amendment Act, (1978): A Turning Point**

To reclassify the Right to Property and reduce its status from a Fundamental Right to a Constitutional/Legal Right, reflecting the shift toward social justice and land reforms. The most significant shift came with the 44th Constitutional Amendment Act 1978, which deleted the right to property from Part III (Fundamental Rights). Key changes included Repeal of Article 19(1)(f) and Article 31, Insertion of Article 300A in Part XII, making the right to property a constitutional/legal right rather than a fundamental one. Article 300A states: "No person shall be deprived of property except by authority of law." This shift marked a constitutional priority on social welfare and economic planning over strong judicial protection for property rights.

The Forty-Fourth Amendment removed Articles 19(1)(f) and 31 from Part III and inserted Article 300A under Part XII.<sup>10</sup> Property thus ceased to be a Fundamental Right and became a constitutional legal right. Deletion of articles from fundamental rights of Article 19(1)(f), Right of citizens to acquire, hold and dispose of property was deleted. Article 31 of the constitution law, is the protection against deprivation of property without authority of law and compensation was removed.

Insertion of Article 300A (Part XII – "General" provisions), property rights were retained as a legal right under Article 300A "No person shall be deprived of his property save by authority of law." The right to property was no longer enforceable as a Fundamental Right, meaning it cannot be directly challenged in the Supreme Court or High Court under Part III. Implications for state power is to allowed the state to acquire land for public purposes and implement social reforms without the strict scrutiny previously required under Part III. Compensation continued to be payable, but adequacy was determined by law, not judicial standards.

## **JUDICIAL INTERPRETATION AND SUBJECTIVE BALANCING**

Although the status of property rights was downgraded from fundamental to constitutional, Indian courts continued to develop doctrine on property protections of recent rulings reaffirmed that deprivation of property without adequate compensation is unconstitutional under Article 300A. The Supreme Court's evolving jurisprudence continues to navigate the tension between state powers and individual rights regarding land and resources. Additionally courts have examined the scope of state authority in acquisitions and the standards of justification needed when limiting property rights for public purposes.

Judicial Developments After the 44th Amendment.

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<sup>6</sup> *Rustom Cavasjee Cooper v. Union Of India* AIR 1970 SUPREME COURT 564

<sup>7</sup> <https://indiankanoon.org/doc/198382/> last visited on 10-11-24

<sup>8</sup> INDIA CONST. art. 19(1)(f) (repealed 1978).

<sup>9</sup> *R.C. Cooper v. Union of India*, (1970) 1 SCC 248 (India).

<sup>10</sup> The Constitution (Forty-Fourth Amendment) Act, 1978.

In *Minerva Mills Ltd. v. Union of India*,<sup>11</sup> the Court emphasized harmony between Fundamental Rights and Directive Principles. In *K.T. Plantation Pvt. Ltd. v. State of Karnataka*<sup>12</sup> the Court held that compensation cannot be illusory and that deprivation must be just, fair, and reasonable. In *Delhi Airtech Services Pvt. Ltd. v. State of U.P.*<sup>13</sup> the Court reaffirmed that Article 300A embodies a constitutional limitation on state power.

In *Jilubhai Nanbhai Khachar v. State of Gujarat*,<sup>14</sup> the Supreme Court clarified that Article 300A only protects against executive arbitrariness. Thus, while no longer fundamental, property retains constitutional protection against arbitrariness.

### Contemporary Status of Property Rights

Today, the right to property in India is not a Fundamental Right, but a constitutional right under Article 300A. Subject to legislative regulation and judicial review based on principles of reasonableness, fairness and due process. The right retains legal protection against arbitrary deprivation but without the high-level scrutiny originally afforded under Part III. The enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reflects a statutory commitment to fair compensation and procedural safeguards.<sup>15</sup> The legislation rebalances developmental needs with individual property rights.

### Critical Analysis

The constitutional evolution of property rights illustrates three major shifts:

- i. From Liberal Individualism to Social Redistribution: Early constitutionalism emphasized private ownership; later reforms prioritized equitable distribution.
- ii. Judicial-Legislative Dialogue: Amendments often responded directly to Supreme Court judgments.
- iii. From Substantive to Procedural Protection: Article 300A protects against unlawful deprivation but does not guarantee substantive compensation standards.

While critics argue that removing property from Part III weakened economic liberty, others contend it enabled agrarian justice and socioeconomic reform.

## CONCLUSION

The constitutional evolution of property rights in India highlights a dynamic interplay between individual liberties and state objectives of planned development and social justice. Starting as a fundamental constitutional entitlement, property rights were progressively reshaped to empower land reforms and socio-economic redistribution, culminating in their reclassification as constitutional rights under Article 300A. The Indian experience illustrates how constitutional design and amendment processes reflect broader political and developmental priorities.

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<sup>11</sup> *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625 (India).

<sup>12</sup> *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1 (India).

<sup>13</sup> *Delhi Airtech Services Pvt. Ltd. v. State of U.P.*, (2011) 9 SCC 354 (India).

<sup>14</sup> *Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC 596 (India).

<sup>15</sup> Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, No. 30 of 2013, India Code.