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RIGHT TO PROPERTY AND ITS CONSTITUTIONAL VALIDITY- Manisha Priyadarshani¹**Abstract:**

Property is being defined in a wider sense in Article 300 to cover both corporeal and incorporeal things. The article discusses the reasons why the Right to Property is no more a fundamental right and was turned into a constitutional right, how the country reacted to this change and what are the repercussions of removing the right from the chapter of fundamental rights. The article also discusses the current legal status of the right and how the right is claimed as a basic human right. The right to property is not supreme to all other fundamental rights but it can be placed in the same parlance as other rights. The defects in the drafting of the article have kept open loopholes that the courts need to take care of. The 44th amendment act brought varied changes to the Constitution in that it limited the executive fiat of the government in acquiring private property. This was a kind of legal plunder. The victimized party could not get adequate compensation also.

Keywords: Property, Right, Amendment, Private, Plunder

Objectives:

The objective of this research is:

- (i) Bring about the history of the right to property
- (ii) Why it was reduced to a constitutional right from the fundamental right
- (iii) Repercussions of the above-mentioned change

Sources of data:

The main sources of the data collected for the successful completion of this paper are secondary sources. Each question was thoroughly researched to achieve the objectives of this paper in perfection. The questions were researched in the right format and right setting. All the statistical data are profoundly researched to prevent any kind of misconception on the topic.

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Introduction:**Defining property:**

Property has been defined in different statutes in a different ways and also defined differently in judgements given by the Supreme Court. Property as defined in the Benami (Prohibition) Transactions Act of 1988 under Section 2(c) as “any sort of property whether movable or immovable, tangible or intangible, and includes any rights or interest in such property.” Property as per the Sale of Goods Act of 1930 denotes property as the goods which are generally preferred and not any special property.

Supreme Court has also at times various interpretations of the term “property”. One such case is *Commr. Hindu Religious Endowment vs. Swamiyar*, 1954² where the Court said that the term property under Article 31 of the Indian Constitution has a much wider scope as it includes all well-known categories of interests that bear the characteristics of a property right. Again in the case of *R.C. Cooper vs Union of India*, 1970³ the Court said that the term property includes both corporeal things such as land, money, contracts, etc. and incorporeal things such as patents and copyrights. From time to time the Court has tried to widen the ambit of the term property through its judgements. Like in the case of *Padmanabhan Nair vs. the State of Kerala*, the 1985 pension has been also termed as property.

The historical significance of the Right to Property:

Citizens of India have been enjoying this right to property for a long time since colonial rule. The infamous Government of India Act, 1935 under its section 299 provided the zamindars and peasants with exclusive rights against their property that can only be exploited by the government for public use and in return, the government needs to pay adequate compensation. Later on, through the Constitution (First Amendment) Act of 1951 along with the Ninth Schedule, two other provisions namely Article 31A and Article 31B were introduced to protect the right, title and interest of the zamindars over their land more effectively and the right was made unchallengeable in any court of law.

Article 31 was at that time considered a fundamental right, the property right. But it has been changed numerous times by the Fourth Amendment Act of 1955. All these changes were made

² *The Commissioner, Hindu ... vs Sri Lakshmindra Thirtha Swamiar*, AIR 1954 SCR 1005

³ *R.C.Cooper v. Union of India* AIR 1970 SC 564

just to support the government and give it power for the acquisition and requisition of private property. This was being done by the government because according to the then Nehru government they wanted to grow the newly independent India into a socialist state and for that, the government is required to have ownership of all land diminishing the idea of private property.

During this time, the apex court of the country thought that in the name of land reforms the government is trying to exploit its administrative power even if it directly conflicted with the right to property which was then a fundamental right. The Supreme Court finally took a stand in the Bank Nationalisation case and stated that the right to get compensated equal to the market value of the land is a must for the government if it was acquiring any private land for any public purpose.

What is the doctrine of eminent domain?

Right to Property is now a constitutional right under Article 300A and a statutory right as per the Transfer of Property act. As per these rights, the government can acquire private property for public uses only.

The doctrine of eminent domain has two essentials:

- The property can only be acquired for public use.
- The property being acquired must be justly compensated.

But currently, the use of the doctrine has been replaced.

44th Constitutional amendment:

The 44th amendment which came in 1978 brought many major changes along with which came the change of the 'Right to Property' from a fundamental right to merely a constitutional provision. This empowered the state with more power to acquire private property, which should be done by the law. It limited the exercise of executive power in this matter.

Authority of law as under Article 300A is understood by only legislative or statutory rule or order. The basis of this was that if a person is deprived of his right to property which is also one of the basic human rights, the source of law should be traced through a statute, to the legislature.

Literature review:

Right to property: current legal status

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The right to Property is no more a fundamental right after the 44th amendment was made to the Indian Constitution in the year 1978. Article 300A states, “No person shall be deprived of his property save by authority of law”. This article is a limitation to the government’s executive fiat. At the end of the day, the correction presented to the Indian communists express a permit to enjoy what Fredric Bastiat named legal plunder. This is one of the exemplary models when the law has been debased to make plunder look just and holy to numerous inner voices. The word ‘law’ here in article 300A means a law which is enacted fairly and reasonably.

Article 31 was also doing the same benefit for the citizens of India but since the government was concerned about the doctrine of eminent domain present in Article 31 therefore they by using justified legislative means repealed the aforesaid article and later on it was replaced with Article 300A which only imposes one restriction on the power of government that is the authority of law. But this doesn’t make the government escapable from compensating the victim party. Though it is not explicitly mentioned in the article to give the party just compensation for his land that needs to be inferred. Moreover, such deprivation can only be made by the government when it is done for public welfare.

Right to property as a human right:

In a recent judgment of the Supreme Court in *Dinavahi Lakshmi Kameswari v. State of Andhra Pradesh, 2020⁴* where it was likewise seen that “as indicated by a liberal translation of these two provisions (Article 300A of the Constitution and Article 25(1) of the Universal Declaration of Human Rights (UDHR), the objective is to defend proprietors of versatile and resolute property simply from Executive fiat, laying minor imperatives on the State’s power. This differs strongly from the wording utilized in the Indian Constitution.

Similar was the interpretation of the Supreme court laid by another bench in a recent judgement of *Vidhya Devi v. State of Himachal Pradesh & Ors., 2020⁵* it was held that the Right to Property is now though not a fundamental right but it will always remain as a human right. And hence, any person can only be deprived of his right by the authority of law.

Discussion and analysis:

Why is this right so controversial?

⁴ State of Andhra Pradesh v. Dinavahi Lakshmi Kameswari AIR 2021 SC 2669

⁵ Vidhya Devi v. State of Himachal Pradesh & Ors., 2020

There was a case in Himachal Pradesh where the government took over 4 acres of private land to build a road. It happened in 1967, at a village in Hamirpur district, Himachal Pradesh. The government failed to compensate the land's sole widow and illiterate owner. She had not filed a case for not getting her right to compensation as she was not educated enough or aware of the legal provisions. After a long period, finally she approached the Supreme Court and the court after hearing the case from both sides decided that when the government encroached on her property at that time right to property was a fundamental right and Article 31(2) mentions the need to compensate the owner whose land is acquired by the government. Furthermore, now the property right is though not a fundamental right but it is still a constitutional right protected under Article 300A of the Indian Constitution which mandates that the government can only acquire private land for public use and had to follow the authority of law. Compensating the person is implied in that. Hence, the court asked the state government to compensate the lady with Rs. 1 Crore.

Before the independence of India, there was an ongoing system of zamindari where the zamindars used to hold a huge amount of land. The Drafting Constitution assembly was aware of the fact that after independence the government will bring various statutory acts to curbe the land ownerships of the zamindars so with the First Constitution Amendment Act, 1951 Article 31A and Article 31B were introduced. Article 31A talked about how if the government was acquiring private property, it should not be inconsistent with Article 14 and Article 19(f). Also, under Article 31B it was mentioned that nothing in the Ninth Schedule shall be void of Chapter III; fundamental rights.

But soon after the independence, the government wanted India to be a socialist state where the ultimate owner of all land is the government. For that in the 1959 Nagpur Session of the Indian National Congress, it was decided to bring some land ceiling acts which should come into effect soon by the end of the 1960s. but the zamindars meanwhile went to the Supreme Court filing writ petitions claiming their fundamental rights to be violated. Also, the government couldn't compensate so many people as mentioned in the Constitution. Moreover, it was not mentioned in the constitution how compensation should be made.

Concerned with these controversies the Parliament finally decided to remove Article 31 and Article 19(f) by the 44th amendment, 1978 and the same right was again mentioned in Article 300A as a constitutional right.

Repercussions of removing the right to property from the chapter of

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Fundamental rights:

The rights conferred in Article 19(1)(f) and Article 31 are mutually exclusive to each other as have been decided case by case by the apex court. These two articles are so interwoven with the whole constitution; framework that making any changes to these would shatter things and make it more complicated if the legislature is not able to work on the drafting part properly. These loopholes in drafting will bring in a huge number of cases to the courts.

From several Supreme Court judgements, it can be found that Article 19(1)(f) and Article 31 dealt with different but connected provisions of the property right. The disturbance created by these two articles was solved by the 25th amendment which introduced Article 31(2-B). the conflict was that article 19(1)(f) provided the freedom to acquire property to any individual and article 31 provided the right to that individual to hold that property. But article 31(2-B) provided “Nothing in Article 19(1)(f) shall affect any such law as is referred in clause (2)”. The justification behind this common selectiveness was that when a property is procured for a public reason on an instalment of pay, the right of a resident to hold property is gone and the subject of his entitlement to hold property subject to sensible limitations doesn't change.

Further, Article 19(1)(f) presented residents with the option to procure, hold and discard property framed pieces of a gathering of articles under the heading “Right to freedom”. It requires no intricate contention to show that property is personally associated with the right to freedom. Article 31 showed up under the heading “Right to Property”; for the right to freedom presented by Article 19(1)(f) would be worth little if the property when obtained could be removed by regulation. Thus Article 31 gives that private property could be procured exclusively for a public reason and on the payment of “compensation”. There isn't anything in that frame of mind of Objects and Reasons to show that Parliament no longer views the option to get, hold and discard property as a piece of the Right to Freedom.

The major fault in this amendment that how the judiciary interpreted the provisions and asked for modifications and the way the legislature framed the draft there is a huge gap in that. It is easy to make promises the bringing the amendments but leaving loopholes in those amendments becomes all the more hectic for the courts to deal with the regularly coming up issues.

Way Forward:**All other personal rights and Rights to Property on the same platform:**

This right to property has an equalizing effect on human life as the other rights like the right to speech and expression or the right to life. But earlier the courts were giving the latter rights

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more importance. Subsequently, the courts were shrewder to strike down regulations, which encroached upon these freedoms, than upon property privileges. In any case, Learned Hand, an extraordinary adjudicator, felt that the qualification between the two was stunning and said that no one appears to have given any thought to the inquiry of why property freedoms are not private privileges.

The property doesn't have freedoms. Individuals have freedoms. The option to appreciate property without unlawful hardship, at the very least the option to talk or the option to travel is in truth an 'individual' right, whether the 'property' being referred to be a government assistance check, a home or a bank account. A principal relationship exists between the individual right to freedom and the individual right to property. Neither could have importance without the other. That freedoms in property are fundamental social liberties has for quite some time been recognised.

Therefore, currently, the courts are giving property rights equal importance along with all other fundamental rights.

Conclusion:

Right to property is a very essential right. In developed democratic countries this right has been kept under the category of fundamental right but since India is a developing country and its economic status is not so sound to provide its citizens with the right to possess their property freely, therefore, the government's decision to bring this right from fundamental right to a general constitutional right is somewhat justified. The problem here is with the loopholes in drafting the amendment. The gaps in the provision will keep on entertaining loads of cases in the courts. Courts have been constitutionally powered by filling these gaps with their interpretations.

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