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**EVOLUTION OF OWNERSHIP: TRACING THE JOURNEY FROM  
FUNDAMENTAL RIGHT TO CONSTITUTIONAL CORNERSTONE**- Jithin S<sup>1</sup>**Introduction**

The Constitution of India is the longest-written Constitution; it is a social charter under which the government legitimately exercises power on behalf of the people of India. The Indian Constitution was enacted amidst the hassles of partition and in response to the 'divide and rule' established by the British colonial State; the founders had a tremendous task: to develop India as a socio-economic and political society. Our first vice president, Dr Radhakrishnan, noted in his speech on the Objectives Resolution of the Constituent Assembly, "There are those who are suspicious, who are wavering, who are hostile, and who look upon the work of this Constituent Assembly with considerable misgivings. Some people affirm that it will not be possible for us to affect either real unity in the country or true freedom or economic security. They tell us that they have seen squirrels move around in cages, and it will not be possible for us to effect the revolutionary changes the country aims for. However, ensuring territorial integrity, political freedom, economic security, and social dignity were precisely what the founders set out to accomplish".<sup>2</sup>

The property rights dealt with each of these issues. The "dignitarian rights discourse" and the "utilitarian development discourse" were the main issues of concern regarding the Right to Property. There were diverse opinions within the Constituent Assembly, as to "what rights should be secured", but also "how development should be achieved" with those rights. The discussion surrounding the "right to property" was particularly contentious due to disagreements

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<sup>2</sup>'*Fundamental Rights of Property*' <<https://legalserviceindia.com/legal/article-2709-fundamental-rights-of-property.html>> accessed 8 January 2024.

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among the founders regarding the significance of property rights in fostering both dignity and development.<sup>3</sup> There existed consensus within the Constituent Assembly that the Constitution must provide fundamental civil and political rights.<sup>4</sup>

The Congress liberals and conservatives agreed to incorporate property rights within civil and political rights. In contrast, the Congress Socialists asserted that property rights contradicted all social and economic rights, especially labour rights. Concurrently, there was a unanimous agreement within the Assembly regarding the paramount importance of poverty alleviation and economic development as the government's primary objectives. It was widely acknowledged that land reform, specifically the abolition of intermediary tenures like the zamindari system, was deemed essential for realizing these overarching goals.<sup>5</sup>

There was, however, yet to be a consensus on how zamindari abolition was to be achieved. This paper delineates crucial discussions surrounding the property rights' incorporation, substance, and legal implementation. The objective is to provide an overview of the deliberative process that transformed the founders' abstract policy goals into the constitutionally guaranteed fundamental rights of Indians, focusing on the right to property and its evolution into a constitutional right.

## Constitutional Provisions

Initially, the Constitution outlined the right to property within Articles 19 and 31. Article 19 ensures that every citizen has the right to acquire, hold, and dispose of property. Meanwhile, Article 31 stipulated that "no person shall be deprived of his property save by authority of law," further asserting that compensation must be granted to individuals whose property is acquired for public purposes.

The provisions concerning property rights underwent several changes, notably with the 44th Amendment of 1978, which eliminated the right to property from the category of fundamental

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<sup>3</sup>Namita Wahi, 'The Constituent Assembly Debates on Property: Unravelling the Property Paradox' (5 September 2021) <<https://papers.ssrn.com/abstract=3918094>> accessed 8 January 2024.

<sup>4</sup>Diganth Raj Sehgal, 'Right to Property as a Constitutional Right' (*iPleaders*, 11 July 2021) <<https://blog.iplayers.in/right-property-constitutional-right/>> accessed 8 January 2024.

<sup>5</sup>'Constituent Assembly Debates on Property - W W W . C P R I N D I A . O R G W O R K I N G P A P E R The - Studocu' <<https://www.studocu.com/in/document/sri-guru-gobind-singh-college-of-commerce-delhi-university/business-economics/constituent-assembly-debates-on-property/75959263>> accessed 8 January 2024.

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rights. In its place, a new provision, Article 300-A, was introduced to the Constitution, stating that "no person shall be deprived of his property save by authority of law." Consequently, if a legislator enacted a law that deprived a person's property, the State would no longer be obligated to provide compensation. Moreover, the affected individual would lose the right to seek legal remedy under Article 32 since the property right ceased to be a fundamental right. However, it retained its status as a constitutional right. Before the Amendment, if the government's actions seemed unjust, aggrieved citizens could challenge those actions in court.

Farmers have taken to the streets in large numbers to oppose economic liberalization and the government's plan to establish special economic zones. As a result, there have been demands to restore the basic right to private property. In 2010, the Supreme Court denied a PIL after receiving a notification from the government that cast doubt on the restoration of the property right.<sup>6</sup>

### **Causes for Removal of Right to Property as a Fundamental Right**

Before India gained independence, impoverished peasants bore the weight of oppression from zamindars and landlords. Establishing a constitution that ensured equal rights and opportunities for all citizens became imperative. In the interest of national development, the State required access to property, whether for constructing hospitals, institutions, or other public facilities. However, controversies arose when the government sought to acquire land for the collective benefit of society.

Articles 31A and 31B were introduced through the First Amendment Act of 1951 by the Parliament to address such concerns. Article 31 initially compensated individuals whose property was taken over by the State. However, this provision was later repealed under the forty-fourth Amendment act.<sup>7</sup>

After Article 31 has been repealed, the cases under the right to property do not guarantee compensation to the landowner. When the property right held a fundamental right, any individual

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<sup>6</sup>Fundamental Rights in India', *Wikipedia* (2024) <[https://en.wikipedia.org/w/index.php?title=Fundamental\\_rights\\_in\\_India&oldid=1193645109](https://en.wikipedia.org/w/index.php?title=Fundamental_rights_in_India&oldid=1193645109)> accessed 8 January 2024.

<sup>7</sup>'44th Amendment of Indian Constitution - Indian Polity Notes' (*BYJUS*) <<https://byjus.com/free-ias-prep/44th-amendment-act/>> accessed 8 January 2024.

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could approach the Supreme Court of India under Article 32, asserting the violation of their rights. The escalating trend of individuals resorting to the Apex Court for various grievances and many cases involving disputes between individuals and state governments created a challenging environment. To address this, the Amendment sought resolution by redefining the status of property rights. It shifted the right to property from being a fundamental right, which led to numerous legal conflicts, to a constitutional right, aiming to provide a more balanced and sustainable framework.

### **Forty-Fourth Amendment Act**

The Parliament enacted the forty-fourth Amendment in 1978, which repealed Articles 19(1)(f) and 31 related to the Right to Property. Additionally, Article 300 was introduced to counteract Supreme Court judgments and safeguard specific laws from being contested based on violating fundamental rights. The contentious nature of the Right to Property prompted its repeal, and in its place, Article 300A was inserted under Part XII of the Indian Constitution. Following the Amendment, the assurance of compensation rights in the event of state acquisition was no longer guaranteed.<sup>8</sup>

### **Eminent Domain Doctrine**

*Eminent domain* is a legal strategy that enables a federal or local government to seize private property for public use. The confiscating authority is obligated to provide fair compensation for the seized property. The Doctrine of Eminent Domain, in its broad application, signifies the unparalleled authority of the king or government, wherein the property of any individual can be taken over for the greater good and welfare of the general population. Over the years, paying the landowner has been all that has been needed to enable rulers or administrations to assume control over their property. This definition of eminent domain explains how the power of the lord or legislature to seize private property for public use makes sense.<sup>9</sup>

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<sup>8</sup>Right to Property under Article 300A of Constitution of India | Law Column' <<https://www.lawcolumn.in/right-to-property-under-article-300a-of-constitution-of-india-2/>> accessed 8 January 2024.

<sup>9</sup>Admin, 'Doctrine of Eminent Domain for UPSC Law Optional' (*De Facto Law*, 11 September 2019) <<https://www.defactolaw.in/post/doctrine-of-eminent-domain-for-upsc-law-optional>> accessed 8 January 2024.

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The principle of 'eminent domain' is grounded in two maxims: "*Salus populi suprema lex esto*," signifying that the welfare of the general population is the supreme law, and "*necessita publica major estquamprivatanecessitas*," implying that public necessity outweighs private necessity. Eminent Domain is the sovereign's intent to secure a person's property for public use without needing his assent. This power depends on the sway of the State. The instalment of only pay to the proprietor of the gained land is a piece of activity of this power. The power of Eminent Domain is considered an inherent authority of the State to acquire private property for public purposes. This authority is grounded in the superior dominion of the State over all property within its boundaries. A coincidental constraint of this power is that the property will not be taken without just remuneration.<sup>10</sup> "eminent domain" signifies the State's authority to acquire permanent or significant territory on a particular property.

The power of the State to acquire private property for public purposes and the corresponding right of the owner to receive compensation are constitutional provisions in India. According to the Indian Constitution, both the Union and State governments have the authority to enact laws related to property acquisition. The application of eminent domain authority for land acquisition is further justified when a specific parcel of real estate that lacks a suitable alternative can only serve the public interest in question.

### **The Constitutional Debate on the Public Use Doctrine**

The Constituent Assembly arguments revolved upon the interconnectedness of public use, the authority of eminent domain power, and the subject of compensation, primarily due to the Zamindari problem.<sup>11</sup>Section 299 of the Government of India Act, 1935 employed the term "public purpose," while the subcommittee's drafted clause used the phrase "public use." The ambiguity surrounding the scope of these phrases raised considerable concerns about what activities and objectives they would encompass.

Govind Ballabh Pant was concerned that the phrase "public use" was ambiguous, and it was unclear if it limited the government only to acquiring land for its use; there was uncertainty about

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<sup>10</sup>'Eminent Domain in India - Law Corner' (28 December 2019) <<https://lawcorner.in/eminent-domain-in-india/>> accessed 8 January 2024.

<sup>11</sup>'The Fundamental Right to Property in the Indian Constitution' (CPR) <<https://cprindia.org/bookchapters/the-fundamental-right-to-property-in-the-indian-constitution/>> accessed 8 January 2024.

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whether these phrases could be broadened to encompass social objectives, such as the dismantling of the zamindari system. In the 1940s, the apprehension revolved around the possibility of the law obstructing the abolition of the zamindari system. Today, a similar concern arises about farmers potentially impeding the process of industrialization.

Pant argued that if the government were to acquire property for its use, such as for building roads, there should be limitations on its authority, and compensation must be paid. However, when the government pursued socially beneficial legislation, like the abolition of the zamindari system, Pant believed that this power should not be restricted and that there should be no obligation to provide "just compensation."<sup>12</sup>

Further, compensation must be left to the legislature, not the courts. Counterintuitively, he advocated replacing the phrase "public use" with "governmental purpose" to ensure that the additional requirements of the eminent domain clause would not constrain any legislation falling outside that scope. As the exception (Zamindari) would cover more ground than the requirement (purchase for government reasons), the wording was strange. Pant did not want to curtail the state's authority; rather, he wanted to broaden the scope of eminent domain so that it might acquire private land for public purpose as well.

Ambedkar and Ayyar thought that Section 299 of the Government of India Act, 1935 did not hinder the government's ability to acquire property. They believed this provision could be utilized for acquisition for governmental purposes and social objectives.<sup>13</sup> Consequently, formulating the provision would be easy for future governments. Rajagopalachari raised the question: shouldn't the provision explicitly state that no property shall be taken except for public use? Despite echoing the American phrasing, he expressed concern that if the clause encompassed all forms of acquisition, including Zamindari, it might lead to legal disputes over the compensation issue in the judiciary. Munshi's proposed solution to this dilemma was to exempt Zamindari from the provision, preserving robust protections for individual rights against expropriation in the remaining part.

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<sup>12</sup>Shruti Rajagopalan, 'Our Founders and the Right to Property – Pragati' <<https://www.thinkpragati.com/opinion/1849/founding-fathers-right-property/>> accessed 8 January 2024.

<sup>13</sup>Ibid.

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Nehru argued that while there should be no arbitrary seizure of property, a differentiation should be made between "petty acquisitions" and "large schemes of social reform." He believed that in endeavours such as abolishing Zamindari, where significant societal benefits were at stake, individual rights should not take precedence.<sup>14</sup>An inconsistency becomes apparent when examining the essence of Nehru and Pant's argument. If one accepts their argument, it suggests that the legislature could conveniently convert a "petty acquisition" into a "large-scale scheme" to evade constitutional constraints. This implies that the State would only have authority if it infringes upon the rights of many, not just one.

Interestingly, one issue remained conspicuously absent from this debate. As the Constituent Assembly deliberated on the matter, it became evident that the government had an overtly socialist agenda. The question arose: when the government owns a wide range of entities, including steel firms, hotels, airline companies, and even bakeries, what exactly constitutes a "government purpose"? What constitutes public use? When addressing the use question, the Assembly demonstrated a narrow focus, primarily deliberating on zamindari and immediate concerns.

Considering the mixed economy and the Fabian/gradual socialism that the Nehru administration envisioned, a more extensive discussion about what might be considered a valid public purpose ought to have taken place. Court jurisprudence in subsequent years was similarly marred by a lack of discussion and analysis. There was no attempt to establish a theory for what constitutes a public purpose; instead, anything the legislature stated as a public purpose was taken as a legitimate one.

### **Equitable Compensation**

Regarding pay, three key points arose. The first was how different forms of acquisition and usage should be compensated. A second issue was whether or not pay should be considered "just." Additionally, the third concern was whether the government or courts should have the authority to dispute such payments. There ought to be no inherent right to property, according to socialists like KT Shah and Jayaprakash Narayan. As a result, they missed an opportunity to

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<sup>14</sup>Ibid.

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address compensation in their sidetracked discussions on the general provisions.<sup>15</sup> Acquisitions made for public use should be remunerated, according to the majority of members. Failure to do so would be a violation of personal liberty.

However, they also believed that compensating zamindars was fundamentally unjust. The issue was not specifically with zamindars but rather with the broader system of property acquisition in Indian society. AP Jain, VD Tripathi, RK Sidhwa, and V.C. Keshava Rao argued that the clause was overly stringent in mandating compensation for acquiring all property. They asserted that property acquired immorally by feudal lords should be exempt from this compensation requirement.<sup>16</sup>

The Zamindari method of property acquisition was seen by even the most liberal members, such as Rajagopalachari, as inherently unfair. According to them, the system ensured that a small number of people would always have a disproportionate amount of money. Disrupting the fundamental relationship between individual labor and property, the Zamindari system notably lacked the typical liberal principles linked with property rights and voluntary commerce. The argument takes a liberal stance, arguing that the zamindari system is so illiberal that it doesn't deserve protection based on liberal principles' rights. Consequently, the resolution of the compensation issue should hinge on the purpose of the acquisition—whether it was for abolishing Zamindari or other objectives.

In contrast, Syamananda Sahaya, representing the minority view, contended that denying compensation to zamindars based on assumptions about the origin of their wealth would be unjust. Also, he was worried that the provision would hurt the people who were supposed to benefit from it. Societal laws like these might not be compensable if the next land reform plan calls for forming communes via the acquisition of tenants' land. Considering that the clause included all types of property, whether it be immovable or movable, and not only the zamindari system, there was opposition to watering down the compensation provision. Vallabhbhai Patel shared a similar perspective, although his reasons were entirely distinct.

As a member familiar with the government's agenda, Patel believed that the property debate was predominantly centred around the issue of land acquisition. At the same time, the actual question

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<sup>15</sup>Rajagopalan (n 12).

<sup>16</sup> Ibid.

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was more extensive. He contended that most zamindari estates would have been dissolved when the provision became law. The true intent of such a provision safeguarding property was to empower the State to acquire land for public purposes and, consequently, subject such acquisition to conditions of public use and just compensation, thereby preventing the arbitrary seizure of property.<sup>17</sup>

The second issue revolved around whether the provision should stipulate that the payment be "just." Ayyar and Sahaya argued that appending "just" before compensation did not add much since compensation inherently had to be just. On the contrary, KM Pannikar was worried that including "just" before compensation could render the amount of compensation subject to legal scrutiny. The committee ultimately accepted Pannikar's suggestion to remove the word "just" before compensation, transforming "just compensation" into simply "compensation." A related issue regarding the concept of just compensation concerns the payment method. The question was whether such compensation should be provided in cash and in full at the moment of acquisition or if it could be spread out over some time.

Nehru believed that providing compensation in cash, especially in the context of zamindari abolition, would be an impractical endeavour. This perspective was not without merit, considering the delicate financial State of the newly inherited Indian treasury. Such acquisition would have to be paid for in government bonds. Nehru also believed that the legislature should be responsible for determining the amount and the method of compensation, asserting that the court should only intervene if there were an abuse of the law.

Ambedkar opted for a moderate stance on this matter. It would be ridiculous, in his opinion, to exclude the courts from hearing cases involving the rules for deciding compensation or the quantum since he believed there was a difference between the two. However, he said that lawmakers should decide on the exact method of payment.

Munshi was the lone voice calling for a reasonable and justiciable compensation system that would allow courts to decide on both the amount and the way it was paid out. His mind raced

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<sup>17</sup>Rajagopalan (n 15).

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with questions for the other members as he considered the possibility that, if the matter were to escape court review, the legislature may mandate a hundred-year payout schedule.

The parties involved eventually came to an agreement that recognized the role of lawmakers in setting compensation levels but also maintained that the courts should have ultimate say to avoid misuse. The socialists' vehement opposition to this section added a third perspective to the debate, joining that of liberals and advocates of social policy. With this provision, Narayan compared India to "Magna Carta in the hands of capitalists of India." The proceedings gave scant support to this viewpoint. It is important to remember that in 1978, the right to property was removed as a basic right by the Janata administration, which was swayed by figures like Jayaprakash Narayan.

## Due Process

Prior to the discussion of eminent domain in the Constituent Assembly, the question of due process arose over the limitation of state power and the preservation of the right to property. The due process clause—or what would later become Article 21, the right to life—was its original source. The Fourteenth Amendment to the United States Constitution was the source of the idea of limiting governmental action by requiring due process to protect life and liberty, which asserted, "nor shall any State deprive any person of life, liberty, or property, without due process of law."<sup>18</sup>

Since preventative detention and arrests were commonplace during India's independence struggle, there was a strong desire to include this clause in the country's constitution. Along with the question of property, which is fundamental to the American constitutional framework, it was one of the sections that had tremendous popularity. Among the few members of the Constituent Assembly who pushed for expanding the right to life to include property was Munshi. The following phrase was proposed to the subcommittee on fundamental rights: "No person shall be

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<sup>18</sup>"Right to Property Is Still a Constitutional Right under Article 300A of the Constitution"; S.C. Reminds in a Case Where State Took Possession of Surplus Land in Absence of Surplus Land | SCC Blog' <<https://blogscconline.azurewebsites.net/blog/post/2021/01/27/right-to-property-is-still-a-constitutional-right-under-article-300a-of-constitution-deprivation-of-this-right-can-only-be-in-accordance-with-the-procedure-established-by-law-sc-cla/>> accessed 9 January 2024.

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deprived of his life, liberty, or property without due process of law," which is strikingly similar to the language of the 14th Amendment to the United States Constitution.

Rau shot back at Munshi's idea by bringing up the fact that the due process provision in the US Constitution had caused the US Supreme Court to hear a plethora of cases when Roosevelt was in office. He expressed concerns that adopting a similar clause and applying it retrospectively to pre-constitutional laws could lead to a surge in litigation. To address this issue, Rau suggested the addition of an extra clause that would offer an exemption or provide lesser protection for private property, aiming to reconcile individual rights with the legislative agenda.

Utilitarians favored social legislation, while others favoured private property rights; Ayyar cautioned that this had created a schism in American courts over the New Deal's progressive laws. The inclusion of such a provision in the Indian Constitution raised concerns that the courts may block expropriation laws designed to dismantle Zamindari. Although he did not explicitly disagree with the addition of "property," he did raise concerns about the difficulties that future administrations and courts may encounter. Legal factors were at the center of this discussion. Each term was carefully examined by Munshi, Rau, and Ayyar, who thought about how various kinds of Indian courts may interpret it in the future. They wanted to find a middle ground where socialist state goals could coexist with individual liberties.

GB Regarding property and the abolition of the Zamindari system, Pant's early concerns centered on the due process provision. It was his hope that the legislature would be able to continue acquiring property and passing tenancy reform laws without having to pay market-rate compensation or worry about legal challenges. Pant was concerned that the United Provinces' zamindari legislation may encounter problems and experience judicial delays.

Not everyone shared Pant's view that the right to liberty should be curtailed, especially in relation to the zamindari abolition. The historical background of the colonial authority gave rise to a significant interest in limiting the capacity of the state to arrest, repress, and quell uprisings. Except in extreme cases, Ambedkar thought it was inappropriate to give the government the power to initiate arrests. A separate component might handle property acquisition, expressly

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establishing the State's eminent domain authority, in his view, so the due process clause need not necessarily obstruct land reform legislation. So, the group was moving in the direction of an opinion that valued life and liberty above all else and wanted to find a way to include property rights in the due process clause.

The KM Fabian Socialist Party In the end, the remedy that Pannikar had suggested was approved. He maintained that the difficulties in integrating the "life and liberty" and "property" provisions might be overcome by dividing them and removing property from the due process clause. According to Pannikar, the right to own property was separate from the right to life and liberty. There should be no limits on the former other than those imposed by public order, whereas the later should be secured exclusively by law. He spoke for the moderates in the Constituent Assembly when he said that people's rights, especially their political rights, should be protected.<sup>19</sup> On the other hand, such safeguarding was unnecessary for property rights, which enriched the affluent and formed the basis of capitalist society.

Rajagopalachari and Ambedkar supported the idea of dividing the two clauses, even if GB Pant was still skeptical. After the property was separated from the provision, there was an additional diluting. Before "liberty," BN Rau included the term "personal" in the October 1947 constitution draft. The wide interpretation that may result from leaving liberty unqualified prompted this addendum. It was meant to be clear that liberty included both individual and economic freedom. Without the qualifier, courts may uphold property rights and other transactions as protected by the due process clause. One possible interpretation of a pricing control measure is that it restricts the freedom of contract between consumers and businesses. The members approved of this caveat, notwithstanding Munshi's protests.

In his argument, BN Rau proposed replacing "due process of the law" with "except according to the procedure established by law." In his opinion, the due process clause's inherent authority to conduct judicial reviews was both undemocratic and an unnecessary burden for the court. Munshi rebutted BN Rau's arguments by arguing that the mention of property should be removed

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<sup>19</sup>*Yash Ghai*, 'The Role of Constituent Assemblies in Constitution Making'.

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and the concept should be qualified as personal liberty. On the other hand, he warned against ignoring due process altogether and instead restricting the provision to legal proceedings.

Munshi claims that doing so might make the safeguards vulnerable to legislative majorities that want to impose social control. A parliamentary majority of this kind may adopt a bill giving the president extensive powers. To strike a fair balance, Munshi said that governments should have to explain their rationale for restricting individual freedoms in court. By taking this tack, we hoped to keep the executive branch in check and guarantee that any limits on individual freedom would face due process in the courts. Because he thought a court of three to five individuals determining what constituted due process was undemocratic, Alladi Krishnaswami Ayyar pushed for keeping "except according to the procedure established by law."

In the end, there was a lot of controversy and difficulty over how the due process provision was worded in India. They included another preventive detention provision because of concern that the government will make a large number of arrests. "No person shall be deprived of his life and liberty retaining except according to the procedure established by law." And finally, the section concludes with these words. This safeguard extended beyond property rights to include all issues pertaining to life and liberty.

## Judicial Conundrum

*Dwarkadas Srinivas v. Sholapur Spinning and Weaving Co. Ltd.*<sup>20</sup> In this case, the Sholapur Spinning and Weaving Co. Act of 1950 empowered the government to take control of the property of the Sholapur Spinning and Weaving Company. The crucial question revolved around the validity of the Act, as it did not include provisions for compensation. The government argued that since it did not technically acquire the property, Article 31, clause (2), which provides for compensation, did not apply. Instead, the government contended that only clause (1) applied, asserting that any authorized law was sufficient to deprive a person of their property right, as clause (1) authorizes any deprivation of property under the authority of law.

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<sup>20</sup>1954 SCR 974.

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The learned Chief Justice asserted that clause (2) correctly provides the limiting power. The Supreme Court, in its ruling, declared the Sholapur Spinning and Weaving Company Act 1950 void. The interpretation was that Article 31, clauses (1) and (2), should be read together. Therefore, in cases of deprivation of property, even when there is no formal acquisition by the State, clause (2) applies, making compensation payable. Hence, any deprivation of property should meet the following conditions:

1. Authorized by law (Article 31, clause 1).
2. Necessitated by a public purpose (Article 31, Clause 2).
3. Subject to payment of compensation

*Saghir Ahmed v. State of Uttar Pradesh*<sup>21</sup> The issue in question revolved around the Road Transport Act, 1951, which granted the state government control over road transport services in the general public's interest. The Supreme Court ruled that the Act was unconstitutional as it violated the provisions of Article 31(2) of the Constitution. Even though the passenger buses of the appellant had not been formally acquired or might not have been deprived, the court found that the Act was depriving them of their business of running buses for hire on public roads. Following the *Sholapur Case*<sup>22</sup> discussed above, the Supreme Court held that depriving a person of his interest in a commercial undertaking. However, the State did not acquire or possess it, which attracted Article 31(2) provisions.

*State of West Bengal v. Subodh Gopal Bose*<sup>23</sup> is the third case relevant to the present discussion, as it emphasizes that the obligation to pay compensation arises only when state action results in the substantial deprivation of private property. The Supreme Court, in this case, clarified that the abridgement of the right does not necessarily amount to substantial deprivation of the right to property within the meaning of Article 31.

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<sup>21</sup>AIR 1954 SC 728.

<sup>22</sup>Ibid at 11.

<sup>23</sup>AIR 1954 SC 92.

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The case involved the West Bengal Revenue Sales Act of 1859, declared void by the Supreme Court for violating Article 31 of the Constitution. This judgment provided new insights into the extent of protection afforded to property rights under the Constitution. Patanjali Sastri C.J. noted that the Constitution marked a distinct departure from the old order and introduced new concepts, especially regarding the term 'acquisition.' While it may have been used narrowly in pre-constitutional legislation, the Constitution employed it differently.

In *Chiranjit Lal Chowdhuri v. Union of India*,<sup>24</sup> the court held that Article 19(1) (f) would persist until the owner is deprived of such property by the authority of law under Article 31. It distinguished between the deprivation of property under clause (1) of Article 31, where the citizen was not entitled to compensation, and the acquisition or requisition of property under clause (2), where compensation was mandatory.

*Kochunni's Case*<sup>25</sup> clarified that clause (1) of Article 31 dealt with the deprivation of property other than acquisition or requisition, as mentioned in clause (2). It emphasized that there could be no acquisition or requisition unless there were a transfer of ownership or a right to possession to the State or its nominee. This distinction was crucial in understanding the scope and application of compensation under constitutional provisions in cases of property deprivation.

## Conclusion

India's legal landscape undergoes a profound transformation in tracing the trajectory of the right to property, from its status as a fundamental right to its evolution into a constitutional right. This journey reflects the nuanced interplay between historical context and contemporary challenges. The shift signals a legal transition and unveils a socio-cultural clash, exemplified by recent

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<sup>24</sup>AIR 1951 SC 41 (1951).

<sup>25</sup>Kochunni v. State of Madras, AIR 1959 SC 334 (336).

conflicts over land acquisition. The contested nature of property rights in India underscores the need for a dynamic legal framework that adapts to evolving societal norms. As property rights occur within the constitutional fabric, their role in shaping individual freedoms and the broader societal landscape becomes increasingly pivotal. Recognizing this evolution is not merely a legal formality but an acknowledgement of the intricate dance between tradition and progress; it is imperative to ensure that the constitutional protection of property aligns with the ever-changing dynamics of Indian society.



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