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# Right to Property Constitutional Policy after 44th Amendment and its relevance in Present Times

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KANWALJIT SINGH<sup>1</sup>

## ABSTRACT

*The right to property has undergone significant transformation within the Indian constitutional framework, especially following the enactment of the 44th Amendment Act, 1978. Originally enshrined as a fundamental right under Article 31, the right to property was relegated to a constitutional legal right through Article 300A, thereby altering the citizen-state relationship in matters of property ownership and acquisition. This paper critically examines the evolution of the right to property, tracing its doctrinal foundations, including the principles of eminent domain and adverse possession, and analyses the legal and constitutional ramifications post-1978. Through a doctrinal and analytical approach, the study evaluates the socio-legal implications of this shift, the judiciary's interpretative role, and whether the current status of the right adequately protects individuals from arbitrary state action. Furthermore, the research explores whether the classification of the right to property as merely a legal right suffices in the context of modern economic and human rights frameworks. By revisiting judicial trends and socio-political developments, this study highlights the ongoing relevance and challenges associated with property rights in contemporary India.*

**Keywords:** *Right to Property, 44th Amendment Act, Article 300A, Eminent Domain, Adverse Possession, Constitutional Law, Human Rights, Judicial Interpretation, Fundamental Rights, Property Law in India*

## I. INTRODUCTION

Property Rights are contentious in any jurisdiction. But the right to property in India, adopted as a fundamental right in Article 31 of the Constitution of the India, 1950 ("Article"), has had a particularly tumultuous legal and political history. It holds the distinction of being the second most debated Article in the Constituent Assembly, the most amended provision of the Constitution and the only fundamental right to ever be deleted. The history of the Article is commonly understood as arising from an ideological institutional conflict between a Parliament

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<sup>1</sup> Author is a Phd Research Scholar at Rajiv Gandhi National University of Law, Punjab, India.

in pursuit of socialism and a judiciary safeguarding individual freedoms. However, looking at the Article and its initial amendments from a “law and development” perspective provides a critique of the current narrative of “conflict” and offers an alternative interpretation of the history of Article 31.

The paper argues that rather than arising from the pursuit of either authoritarian socialist planning or an egalitarian social revolution, the travails of the Article came in the context of India’s quest for economic modernity through a process of “passive revolution”. The powers of eminent domain reinforced in the Article empowered the state to modernise economic relations in industry and agriculture by restructuring a semi-feudal pre-capitalist property rights regime established during colonialism along productive capitalist lines. In this process, the Article helped to consolidate the powers of the developmental state in the domain of economic policy; forged the relationship between state, market and the individual; and helped shape the regime of private property rights in India. Understanding the evolution of the fundamental right to property in India therefore, not only tells a key part of India’s development story but also contributes to the “law and development” literature by assimilating diverse historical experiences within its framework, which, as critics have long argued, tends to have a strong Eurocentric bias.

But in recent times the role of we have seen the Government taking the property of the individuals for the welfare and development of country but it had led to major question on right to property is a basic human right of any individual and need for proper compensation for property taken by state. And most important to forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. There are also need of the hour to make changes in the provision to settle the tussle between judiciary and parliament regarding right to property and the need to protect the citizen’s right to own private property as it is a basic human right.

This paper aims to see the impact of right to property after 44<sup>th</sup> constitutional amendment and its position in present times.

## **II. HISTORICAL BACKGROUND**

In India, the establishment of property rights started in the 1950s. The right to property was first introduced in India because of the existence of the ‘zamindari system’ during the British period and to remove this system and to form a proper system for alleging right over the property.

Before the 44th amendment took place the Constitution of India guaranteed the right to property as a fundamental right under Part III of the Constitution.

The amendment was made due to several cases of exploitations of the right to property and hence it covers provisions that provide protection but not in the same way they used to provide as a fundamental right. Originally, after India got Independence, the right to property was included as a 'fundamental right' under Article 19(1) (f) and Article 31 in Part III of the Constitution when the Constitution of India came into force on 26th January 1950. The right to property being a fundamental right protected property and gave the legal status of the land to the people living in newly independent India.

However, it was abrogated because the Indian government wanted land reforms by administering the surplus land with the landowners to the landless farmers to encourage social equality and justice. This right was an interesting development influenced by the British as for the first time it was sanctioned and recognized as an individual's right over the property against the state.

However, soon after the right was enforced the lawmakers perceived that the right to property as a fundamental right is a source of disagreement and worked as a hurdle as it curtailed the state to acquire property for public use, which was important for the development of the state, that is, construction of roads, railways or industries, etc.

Therefore, to make the infrastructure of the country a matter of success, the Supreme Court in his historic judgment stated that the right to property doesn't constitute the Basic Structure of the Constitution and shall be altered from Part III of the Constitution and therefore, the government was allowed to take or acquire individual's property for a good cause in good faith for the sole purpose of public interest as has been held in the case of *KT Plantation Private Ltd Vs. State of Karnataka*<sup>2</sup>.

This judgment, however, leads to the 44th Amendment Act which made the property right invalid as a fundamental right and added it under Article 300A of the constitution thus including all types of property<sup>3</sup>, that is, tangible or intangible, corporeal or incorporeal property<sup>4</sup>. The provision is also applied on intangible property like copyright, intellectual property rights, mortgage, and money<sup>5</sup> or any other interest in the property, lease, and license. It also includes

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<sup>2</sup> *KT Plantation Private Ltd Vs. The State of Karnataka*, (2011) 9 SCC 1

<sup>3</sup> *Union of India Vs. Martin Lottery Agencies Ltd.*(2009) 12 SCC 209

<sup>4</sup> *Dwaraka Das Srinivas Vs. Sholapur Spg and Wvg. Co. Ltd*, AIR 1958 SC 328

<sup>5</sup> *Bombay Dyeing Co Vs. The State of Bombay*, AIR 1958 SC 328

the right to receive a pension is property.<sup>6</sup> There have been some major clashes between legislature and judiciary which were aggravated by the Supreme Court decision in *IC Golaknath Vs. The State of Punjab*,<sup>7</sup> which held that the right to property is a fundamental right and thus forms a part of the basic structure of the Constitution, which the legislation cannot be amended.

However, in *Kesavananda Bharati Vs. State of Kerala*<sup>8</sup>, it was held that:

“The right to property was not part of the ‘basic structure’ of the Constitution, even after the 25th Amendment; the Court must inquire whether what is given as compensation is completely illusory or arbitrary.”

#### **A. MEANING OF TERM “PROPERTY”**

Property is defined as follows under Section 2(c) of the Benami Transactions (Prohibition) Act, 1988<sup>9</sup>: “Property” means “any sort of property, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.” Property is defined as follows under Section 2 (11) of the Sale of Goods Act of 1930<sup>10</sup>: “Property” denotes the general property in goods, not just a special property.

According to the Supreme Court in *Commr. Hindu Religious Endowment v. Swamiyar*<sup>11</sup>(1954), the term “property” as employed in Article 31 should be given a broad interpretation and should include all well-known categories of interests that bear the insignia or characteristics of a property right. It encompasses both corporeal and incorporeal rights as observed in *Dwaraka Das Srinivas v. Sholapur Spg and Wvg. Co. Ltd*<sup>12</sup> (1958). It comprises money, contracts, property interests such as an allottee’s interest, licensees, mortgages, and property lessees. An identifiable interest in the property is the Mahantship of a Hindu Temple as identified in *Commissioner of Hindu case (Supra)* and stockholders with Interests in the Company as stated in *State of Bihar v. Kameshwar Singh*<sup>13</sup> (1952). The right to a pension is a form of property as noted in *State of Kerala v. Padmanabhan Nair* (1985)<sup>14</sup>.

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<sup>6</sup> *State of Kerala Vs. Padmanabhan Nair*, (1985) 1 SCC 429

<sup>7</sup> *IC Golaknath Vs. The State of Punjab*, 1967 AIR 1643

<sup>8</sup> AIR 1973 SC 1461

<sup>9</sup> <https://indiankanoon.org/doc/41470524/>

<sup>10</sup> <https://indiankanoon.org/doc/1935273/>

<sup>11</sup> 1954 AIR 282, 1954 SCR 1005

<sup>12</sup> 1954 AIR 119, 1954 SCR 674

<sup>13</sup> AIR 1952 Pat 417, 1952 21 ITR 382 Patna

<sup>14</sup> 1985 AIR 356, 1985 SCR (2) 476

### **Article 31: Right to Property**

Like many parts of the Constitution that evolved from various provisions of the Government of India Act 1935 (an Act of the colonial government that was, in many ways, a predecessor to the Constitution of India), Article 31 was also largely based on one of the provisions of the Act – Section 299. Despite the fact that both provisions protected the right to property, there were key differences between the two. First, unlike Article 31, Section 299 did not protect the right to property as a fundamental right (there were no fundamental rights or writ jurisdiction in the 1935 Act akin to the Indian Constitution). Second, Section 299 protected and solidified the property rights of the colonial economy, which included British property interests and also land tenures like zamindaris. On the other hand, the motivations behind the drafting of Article 31 was entirely different. When the provision came up for consideration before the Constituent Assembly (“Assembly”), the question that plagued its members was how to protect the right to property as a fundamental right in a way that allowed the post-colonial state to dismantle colonial property rights (especially zamindari rights) in order to hasten “development”. After much debate, the draft of the fundamental right to property proposed by Nehru, which he argued met all the objectives fairly, was adopted as Article 31.

### **The Doctrine of Eminent Domain<sup>15</sup>**

The doctrine of eminent domain, which is currently in use, can help to understand this. Even if we have a constitutional right to property under Article 300A and a statutory right under the Transfer of Property Act, 1881, the government has the power to use our property for public reasons such as road and bridge construction. Nonetheless, adequate compensation must be made to the property owner in such cases.

The essential ingredients of this doctrine are as follows:

1. Property is taken for the benefit of the public.
2. The property that has been seized is compensated for.

However, the use of this doctrine has been replaced.

### **Doctrine of Adverse Possession<sup>16</sup>**

It is a legal doctrine that allows a person who possesses or resides on someone else's land for an extended period of time to claim legal title to that land.

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<sup>15</sup> <https://ijtr.nic.in/articles/art41.pdf>

<sup>16</sup> *Right to property and its evolution in India: Legal service india - law articles - legal resources* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-3774-right-to-property-and-its-evolution-in-india.html> (Accessed: 17 May 2025).

In India, a person who is not the original owner of a property becomes the owner because of the fact that he has been in possession of the property for a minimum of 12-years, within which the real owner did not seek legal recourse to oust him.

The state cannot trespass into the private property of a citizen and then claim ownership of the land in the name of 'adverse possession. Grabbing private land and then claiming it as its own makes the state an encroacher.

### III. POST 1978 POSITION – RIGHT TO PROPERTY AS CONSTITUTIONAL RIGHT

Following independence, the mood was to continue Prime Minister Jawahar Lal Nehru's socialist policies and to remove zamindars and other rural intermediaries who had earned rights to enormous swaths of land during colonial authority. When the government attempted to dismantle these institutions, it was challenged in court under the Constitution's Right to Property section in a series of challenges. As a result, the government decided it would be best to stay out of legal wranglings while attempting to execute its socialist principles of limited private land ownership to avoid wealth concentration and government control over the property as a method of achieving dispersed development.<sup>17</sup>

The backlash against Articles 19(1)(f) and 31 of the Constitution as Fundamental Rights began almost immediately after it was enacted in 1950. After multiple court battles over this sensitive issue, the Janata Party government introduced the 44th amendment, which eliminated the right to property as a fundamental right and replaced it with Article 300A, which reduced it to a legal right.

The owners of Minerva Mills (Bangalore), an ailing industrial concern nationalised by the government in 1974, contested the Forty-second Amendment in the Supreme Court less than two years after the restoration of Parliament's amending powers to near unlimited terms.<sup>18</sup> In the Minerva Mills case (1981), and later in the Waman Rao case (1981), the basic structural theory was reinforced which was first introduced in the famous Kesavananda Bharati case (1973) where despite the court's finding that Parliament cannot violate fundamental rights, the amendment that abolished the fundamental right to property was preserved. The court decided that the change would not violate the Constitution's "basic structure" in spirit.

#### A. NEED FOR 44<sup>TH</sup> AMENDMENT

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<sup>17</sup> *Right to property - meaning, evolution, 44th amendment, SC Judgements, significance - Indian polity notes.* Available at: <https://prepp.in/news/e-492-right-to-property-indian-polity-notes> (Accessed: 17 May 2025).

<sup>18</sup> Saldanha, K. (2025) *All about right to property in India [2025]*, Mygate. Available at: <https://mygate.com/blog/all-about-right-to-property-in-india/> (Accessed: 17 May 2025).

In order to understand why such a step was taken by the Parliament of India, it is necessary to understand that before India get its independence there were four major systems prevailing the Ryotwari system, Mahalwari system, Zamindari system, and Jagidari system. Due to these large parts of land was in possession of zamindars, tenants, and like people, which causes an unequal distribution of land and increases the gap between rich and poor.<sup>19</sup>

Since 1947-1950, the constituent assembly worked day and night to draft the Constitution of India. Members of the constituent assembly were concerned by the situation at that time and knew various land reforms and acquisition acts will be needed to pass, due to the above-mentioned system, so in order to redistribute land and to rectify the damage various steps were taken:

1. Provisions related to saving of certain laws were added- By Constitution 1st amendment act 1951 Art. 31A and 31B were added. Art.31A provides that no law providing for the acquisition of any estate or any right or modification of any right will not be deemed to be void on the basis that it is inconsistent with Art. 14 and 19. Art.31B provides for validation of certain acts and regulations, it says that none of the acts and regulations mentioned in the IX Schedule of the constitution would be deemed to be void on the ground that it is inconsistent with the rights conferred in Part III of the constitution. Later on, by the 4th amendment 1955, the scope of the estate was increased, it includes any jagir, inam or muafi, or any other similar grants.
2. Land ceiling was one of the strongest measures taken in this regard. Ceiling means the maximum limitation on the area that can be acquired by a private person. In the year 1959 at the Nagpur conference of Indian National Congress, it was decided that laws or acts related to the restriction of land limits must be implemented till the end of the year. The land ceiling act was implemented from 1960-1972 and from 1976-1999.

Despite such efforts by the government the zamindars and other land owners whose ceiling limit exceeded approached Supreme Court using their fundamental right to property with the intention to hold acts unconstitutional. So, in order to stop this from happening and with a view to doing economic justice, Art.31, and Art. 19(1)(f) ceased to be a fundamental right and was modified as a constitutional right in new chapter IV Part XII of the Constitution as Art. 300A,

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<sup>19</sup> Network, L. (2021) *What is right to property under Indian Constitution?*, *LAW INSIDER INDIA- INSIGHT OF LAW (SUPREME COURT, HIGH COURT AND JUDICIARY)*. Available at: <https://www.lawinsider.in/columns/what-is-right-to-property-under-indian-constitution#post-14244-endnote-11> (Accessed: 17 May 2025).



which continues to exist and follow till today.<sup>20</sup>

### **The 44th Amendment Act, 1978 – Article 300A**

The human right, that is, the right to property was recognized in Article 17 of the Universal Declaration of Human Rights as it states that: “Everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property”

Before the 44th amendment act, 1978 it was originally incorporated under Article 19(1)(f) of the Indian Constitution which stated that all the persons are entitled “to acquire, hold and dispose of property” read with Article 31 which states that no person can be deprived of his property without the consent of a proper authority which were repealed by the 44th Amendment Act of the Indian Constitution. Both the articles were based on the English concept of private property to provide certain provisions to safeguard against the compulsory acquisition of individual properties. Article 19 thus also provides certain exceptions and reasonable restrictions to balance this under Article 19(5).<sup>21</sup>

However, after the articles were repealed the right to own property is treated as a legal right rather than being a Fundamental Right. Moreover, before the final 44th amendment act there have been many modifications and provisions related to the right to property which was amended several times in various amendment acts.

Article 31A was inserted by the 1st Constitutional Amendment Act, 1951 as the right was thus required to safeguard the interests of the tenants and improve the agricultural advancement of the country. The ultimate property right has not been considered as a fundamental right to which every citizen of India is entitled to according to the Constitution and thus not a part of the basic structure of the constitution.

However, the 44th amendment eliminated and abolished the right to acquire, hold and dispose of the property as a fundamental right and made it more of a general, legal, and statutory right that was inserted under Article 300A of the constitution which states that “No person shall be deprived of his property save by authority of law.” to ensure that no person is deprived of his property and certain provisions are provided to safeguard their property.

However, it was clear that the concerned authorities cannot deprive a person of his right to property without the enforcement of the law. The State thus can acquire a person’s private

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<sup>20</sup> *Right to property and its evolution in India: Legal service india - law articles - legal resources* (no date a) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-3774-right-to-property-and-its-evolution-in-india.html> (Accessed: 17 May 2025).

<sup>21</sup> <https://ijtr.nic.in/articles/art41.pdf>

property for a public purpose by giving the compensation which need not be equivalent to the exact value of the property but it is to be ensured that such compensation is not irrationally disproportionate or deficient.

According to the latest position concerning the right to property in the Indian constitution, it is well established in the case of *Indian Handicraft Emporium Vs. Union of India*, [9] by the Supreme Court of India that the right to property is a constitutional right under Article 300A and not a fundamental right. "It is indeed a Statutory right but each and every claim to property would not be property rights."

### **B. Significance of Right to Property<sup>22</sup>**

1. Economic Growth: It encourages investment and economic growth. It ensures a person's freedom if the government is unable to seize their property. Additionally, it encourages private investment in the infrastructure sector.
2. Security: People can pursue their businesses because their property is secure. A farmer, for example, wouldn't cultivate crops or further develop his land if he knew that the government may seize it.
3. Important to eradicate poverty and empower the Vulnerable section: Without effective land tenure arrangements, economies run the risk of losing the building blocks for long-term expansion, endangering the livelihoods of the most vulnerable and underprivileged people. Without achieving significant advancement in land and property rights, it is simply impossible to eradicate poverty and increase shared wealth.
4. Can prevent Large informal Settlements: The urban poor may not be able to afford properties due to rising property values as a result of the failure to clarify land rights and correct unfair land policies. Large informal settlements have already grown as a result of these gaps in several places all over the world.
5. Can ensure women's right to property: The legal system does not fully allow equal access to property ownership or the use of land titles as collateral without a male guardian, which continues to deny land rights to many women throughout the world.
6. Help in recognising the rights of Indigenous People: In addition to being a matter of human rights, recognising the land rights of indigenous peoples is also sensible from an economic and environmental standpoint. Indigenous peoples will be able to exploit the resources on their land more sustainably if their land rights are acknowledged, which

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<sup>22</sup> *Right to property - meaning, evolution, 44th amendment, SC Judgements, significance - Indian polity notes.* Available at: <https://prepp.in/news/e-492-right-to-property-indian-polity-notes> (Accessed: 17 May 2025).

will raise their economic and social status and make them a more positive influence in society.

### **C. What are the provisions of compensation under Article 300A?**

The abolishment of the right to property as a fundamental right also gave the implied provision for the government to pay a certain amount to the deprived party for acquiring their land as compensation which may not be equal to the exact amount of the land but in the form of compensation as to take away their property<sup>23</sup>. However, the compensation must be the equivalent to the market price of the property at the time of procurement as it is illegal, unjust and violates the principle of fair compensation if the property is acquired at the rate lower than the prevailing market price, though this has not been expressly mentioned under Article 300A of the Constitution. Moreover, the aggrieved party whose right to property has been transgressed cannot directly approach the Supreme Court under Article 32 as it is no longer a fundamental right but the right to property still being a constitutional and statutory right the aggrieved person may challenge the infringement in the High Court under Article 226 of the Constitution as it does not just deal with the breach in use of fundamental rights but also administrative tribunals. He can seek justice from the High Court in the case when the amount of compensation is unfair.

The right to property is neither a fundamental right nor a basic structure of the Constitution of India but the court can make sure that the amount of the compensation is fair or not. If the amount of compensation is illusory then the court may set aside the acquisition proceeding as has been held in the case of *Jilubhai Khachar Vs. The State of Gujarat*,<sup>24</sup>. The Supreme Court held that the court can determine the principles on which the amount of the compensation decided was enough and not illusory.

As also in the case of *Kesvanand Bharti Vs. State of Kerala*, the Supreme Court reiterated that it is not the arbitrary decision of the government to decide the amount of compensation as it should not be illusory and according to the market rate. Even though the right to property has been removed by the 44th amendment act of 1978 but it does not empower the government to acquire land paying inadequate compensation.

## **IV. JUDICIAL APPROACH TO RIGHT TO PROPERTY**

Article 19(1)(f) and Article 31 read with the under noted entries gave rights that were so intricately woven into the fabric of our Constitution that they could not be taken out without

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<sup>23</sup> A.K. Ganguli, *Right to Property: Its Evolution and Constitutional Development in India*, 48 JOURNAL OF THE INDIAN LAW INSTITUTE 489 (2006).

<sup>24</sup> *Jilubhai Khachar Vs. The State of Gujarat*, (1995) Supp (1) SCC 596

leaving a jagged hole and broken threads. To harmonize with the rest of the Constitution, the hole must be repaired and the broken threads must be replaced. The task is difficult, and courts have been called upon on several occasions to resolve issues far more difficult than those brought by Article 31 after it was changed several times. After the 1980s, the court has done a better job of protecting our country and people than the legislature.

Soon after the Fundamental Right to Property was abolished, the Supreme Court recognized the value of the Right to Property as a Fundamental Right in *Bhim Singh v. Union of India* (1981). In the absence of this Fundamental Right to Property, it relied on the second Fundamental Right of Equality, namely the idea of reasonableness under Article 14, to invalidate certain provisions of the urban land ceiling legislation.

Though the right to property is not a fundamental right, it is a valuable constitutional right, according to the Supreme Court in the case of *B. K. Ravichandra v. Union Of India* (2020), which ordered the Centre to return the land to its owners. The Supreme Court's decisions and the history of the right to property reveal that, while its primacy as a fundamental right has been questioned, it is nonetheless protected by the rule of law. This court's expanding jurisprudence also demonstrates that it is a valuable right that guarantees basic liberties and economic liberty. Article 300-A's wording is crucial, and its resemblance to Articles 21 and 265 cannot be overlooked—they are, after all, a guarantee of the supremacy of the rule of law.

In a more recent case of *Bajranga v. State of Madhya Pradesh* (2021) “right to property is still a constitutional right under Article 300A of the Constitution,” the Supreme Court has ruled in a case where the government took ownership of surplus land even though there was none. The deprivation of a right can only be done in conformity with the legal procedure.”

The courts have also acknowledged the State's interference in the citizen's right to property. It was held in *Ravindran v. The District Collector, Vellore District* (2020) that the government has no authority to interfere with a citizen's right to property unless it is done in compliance with the law which was later on reiterated in *Jayalakshmi & Ors. v. State of Tamil Nadu* (2021). Recently, the Madras High Court made a noteworthy statement, saying that under Article 21 of the Indian Constitution, the Right to Property has a tight relationship with the Right to Life.

#### **A. Right to Property as a Human right**

The Supreme Court recognized in *State of West Bengal v. Haresh C. Banerjee* (2006) that, even though the right to property was no longer a fundamental right after the repeal of Article 19(1)(f) and Article 31 (1) of the Constitution by the Constitution (Forty-Fourth Amendment) Act, 1978, w.e.f. June 20, 1979, it was still a constitutional right, as provided in Article 300A of the

Constitution. The right to a pension was viewed as if it were a right to property. The High Court of Judicature of Bombay in *Purushottam Kashinath Kulkarni and others v. State of Maharashtra and others* (2016) and the High Court of Chhattisgarh in *Ramlal Sharma v. State of Chattisgarh* (2015), relying on *D.S Nakara and others v. Union of India* (1982), concluded that pension payments could not be postponed. Like the property, it is thus a hard-won benefit of an employee. This was reiterated by the Apex court in *Dinavahi Lakshmi Kameswari v. State of Andhra Pradesh* (2020) where it was also observed that “according to a liberal interpretation of these two clauses (Article 300A of the Constitution and Article 25(1) of the Universal Declaration on Human Rights (UDHR), the goal is to safeguard owners of mobile and immovable property merely from Executive fiat, laying minor constraints on the State’s power. This contrasts sharply with the terminology used in the Indian Constitution.”

The right to property under Article 300-A of the Indian Constitution is not only constitutional or legal, but also a human right, and it can only be taken away by the authority of the law as observed by the High court in *Narayan Prasad v. State of Chhattisgarh* (2017). “Article 300A declares that a person’s property cannot be taken away only based on presidential fiat without any explicit legal authority or the support of a competent legislature’s statute. Although the right to property is no longer a fundamental right, it is nonetheless protected by the Constitution as a Constitutional and a human right”, reminded the Allahabad High court to the government. in the case of *Gayatri Devi v. the State of UP* (2019).

Although the right to property is no longer a fundamental right, it remains a constitutional right under Article 300A and a human right, as this Court noted in *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Others* (2008). According to Article 300A of the Indian Constitution, no one’s property can be taken away from them unless they have legal authorization to do so. The appellant trust’s property cannot be taken from it unless it is done in conformity with the law. This was observed by a 2 judges bench in a recent case of *Hari Krishna Mandir Trust v. State of Maharashtra* (2020).

### **Right to own Private Property is a Human Right**

In the recent judgment of *Vidhya Devi v. The State of Himachal Pradesh & Ors.*<sup>25</sup>, it was held by SC that the Right to own Private Property is a human right and cannot be denied. The party depriving one's right to property must have the authority of law. In this case, the plaintiff was given compensation for the wrong acquisition of property by the state.

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<sup>25</sup> CIVIL APPEAL NOS. 6061 OF 2020

## V. CONCLUSION

The right to property which was treated as a fundamental right prior to the 44th amendment act, 1978 has now been treated as a legal and constitutional right which is provided under Article 300A of the constitution.<sup>26</sup> Even though the land has been the most precious asset in India, the government has the right to acquire the land for the public by paying a certain amount of compensation which may not be equal to the market price, however, it is an implied right provided under the same provision for the aggrieved party to file suit in case of incompetent compensation.

Thus, it is to be ensured by the government and the concerned authority that when the government needs land and it acquires the land, an adequate amount of compensation is paid to the landowners. The amount of compensation must be just, fair and reasonable as the right to property is not a fundamental right but it is still a constitutional right.

Now, it is categorical that property rights and their protection has been the talk of the town from the ancient period and is not a de novo concept and hence, the act of switching right to property from a fundamental right to a legal right was towards saving the rights of people along with curtailing the accumulated rights of zamindars. So, while the right to property as a fundamental right is no longer valid, the constitutional right to property must continue to exist for the sake of justice. Since the right to property is a part of the basic structure it can be amended.

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<sup>26</sup> Journal of the Indian Law Institute , October-December 2006, Vol. 48, No. 4 (October-December 2006), pp. 489-526