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THE EVOLUTION AND IMPACT OF PROPERTY RIGHTS UNDER CONSTITUTIONAL LAW

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ABSTRACT:

Property rights have always played an important role in society, serving as a foundation for personal freedom, economic development, and legal stability. Under constitutional law, the concept of property rights has evolved significantly over time. In the beginning, property was mainly seen as a personal and absolute right, often protected strongly by the Constitution to ensure individual liberty and prevent government interference. However, as societies developed, the meaning and scope of property rights began to change. Modern constitutional law now views property rights not just as personal freedoms but also as rights that must be balanced with the needs of the public. For example, governments can take private property for public use through processes like eminent domain, but only with fair compensation. This shows how property rights are no longer absolute, but subject to reasonable restrictions in the interest of the community. Land reforms, urban development, environmental regulations, and housing policies have all influenced how courts interpret and enforce property rights today. The evolution of these rights reflects changes in political values, economic needs, and social justice concerns. In many countries, constitutional courts have played a key role in defining these limits, sometimes expanding protections and at other times allowing for state control.

The impact of this evolution is significant. It shows that property is not just about ownership, but also about access, use, and fairness. Constitutional law helps balance individual ownership with broader social goals, such as reducing inequality or protecting the environment. Understanding this evolution helps us appreciate how legal systems adapt to new challenges while trying to protect both individual rights and the common good.

KEYWORDS: Right to Property, Indian Constitution, Evolution, Impact, Judicial interpretation.

INTRODUCTION:

“Freedom and property rights are inseparable. You can’t have one without the other.”

George Washington

The term "property" is derived from the Latin word proprietary and the French equivalent properties, both of which mean "owning something." The concepts of property and ownership are extremely similar¹. The concept of immovable property holds significant importance in real estate, investment, and legal frameworks. Immovable property refers to assets that are fixed to the earth and cannot be moved without altering or damaging their inherent structure. This typically includes land, buildings, and any permanent attachments to the land such as trees, wells, or fixtures². Located in a strategically advantageous area, this immovable property offers excellent accessibility, a favorable environment for development, and proximity to key infrastructural facilities such as roads, utilities, and civic amenities³. The land and any structures on it are positioned to benefit from both current urban expansion and future regional development plans. As such, the property holds promise for a wide range of uses—residential, commercial, or institutional—depending on the buyer’s intent and applicable zoning regulations. From a legal standpoint, immovable property enjoys robust protection under local and national property laws⁴. While defining the term property, Salmond remarked that the phrase might be understood in one of three ways:

- “The term "property" refers to all of a person's legal rights. That is, it involves a man's total ownership of both material and incorporeal things.
- The phrase refers only to a man's proprietary rights, not his personal rights.
- The word encompasses ownership rights in tangible assets such as buildings.⁵

The Supreme Court of India interpreted the concept of property in the legal regime in the case of R.C. Cooper vs. Union of India⁴. In this decision, the court stated that “the term "property" encompasses both corporeal items such as land and furniture and incorporeal items such as copyrights and patents.” However, the Apex Court's recent tendency has shifted. The Court has begun to evaluate property in light of Article 21 of the Indian constitution as liberties exist,

¹ www.blog.ipleaders.com

² Section 3 of the Transfer of Property Act, 1882.

³ Urban planning reports and local government development plans often influence land value and utility.

⁴ Legal protections vary by jurisdiction but generally include property registration acts and land revenue codes.

⁵ <https://blog.ipleaders.in/concept-of-property>

even with regard to property owned and possessed.

HISTORICAL CONCEPT OF PROPERTY RIGHTS:

The concept of property rights has evolved significantly throughout human history, playing a key role in the development of societies. In early human communities, property was based mainly on possession and use. Nomadic tribes recognized ownership of personal belongings like tools, clothing, and weapons, while land was commonly shared among the group⁶. As civilizations grew more complex, such as in Mesopotamia, Egypt, Greece, and Rome, property systems became more organized. Land was typically owned by rulers or the state, while individuals were granted rights to use it for farming or other purposes⁷. Property ownership was often connected to social status and could be taken away by those in power. During the Middle Ages in Europe, the feudal system shaped property rights further. Kings granted land to nobles in return for loyalty and military service, and land ownership was tied to a rigid social hierarchy between lords and vassals. With the rise of the modern era, especially during the Industrial Revolution, property rights shifted toward individual ownership protected by law. Private property became a cornerstone of capitalist economies, and governments established legal systems to define and protect these rights. Today, property rights continue to influence economic development, governance, and personal freedom.

PRE POSITION OF 1978- FUNDAMENTAL RIGHTS:

Before independence, the Government of India Act of 1935 provided the power to hold and dispose of property. Section 299 of the 1935 Act guaranteed the protection of this right to all individuals, zamindars and peasants alike. This safeguarded the people and guaranteed that their property was neither exploited or misused without adequate compensation. Furthermore, the Act authorised the government to use private land only for public purposes. The Constitution (First Amendment) Act of 1951 inserted the Ninth Schedule to the constitution, together with two new Articles 31A⁸ and 31B⁹, to render laws granting zamindars uncontestable in court. The Fourth Amendment Act of 1955 significantly altered Article 31, which deals with the right to property. The purpose of these modifications was to give the government more authority over forceful acquisition and requisitioning of private

⁶ Richard Pipes, *Property and Freedom* (2000), pp. 15–18.

⁷ Barry Cunliffe, *The Ancient World: A Social and Cultural History* (2008), pp. 112–116.

⁸ INDIA CONST. art 31 A

⁹ INDIA CONST. art. 31 B.

property. To mitigate the impact of the Supreme Court's decision in *State of West Bengal v. Bella Banerjee (1954)*¹⁰, the amount of compensation payable for this reason was reduced.

At this stage, the court in this *Bank Nationalisation case*¹¹ has clearly declared the following two points:

The Constitution guarantees the right to compensation equal to the monetary value of property acquired by force.

According to the Constitution, the expropriate owner shall be reimbursed for the value of their property (fair recompense for the loss of the property).

DOCTRINE OF EMINENT DOMAIN:

Eminent domain is a legal principle that grants governments the power to take private property for public use, provided that just compensation is given to the property owner. This concept is rooted in the idea that the needs of the community can, in certain circumstances, outweigh the rights of individual property owners.

Thus, eminent explained as the power of the king or the government to take over the property of a private person when it is needed for a public purpose. This doctrine is based on two maxim:

Salus populi supreme lex esto - the welfare of the people is the paramount law

Necessita public major est quam - public necessity is greater than the private necessity. Eminent domain is power of the sovereign to acquire property of an individual for public use without the necessity of his consent. This power is based on sovereignty of the state. Payment of just compensation to the owner of the land which is acquired is part of exercise of this power. Power of eminent domain is within the four corner of Article - 31 of the Indian Constitution. It has two main goals:

- Compensation made to person deprived of Right to property.
- Acquisition must be for public purpose.

¹⁰ *State of West Bengal v. Bella Banerjee*, 1954 SCR 558.

¹¹ *R.C. Cooper vs. Union of India*, AIR 1970 SC 564.

POST POSITION OF 1978 - CONSTITUTIONAL RIGHT TO PROPERTY:

The right to property in India has undergone a significant transformation since the adoption of the Constitution in 1950. Originally enshrined as a **fundamental right** under Article 31, the right to property was meant to safeguard the interests of individuals against arbitrary state interference. However, after a series of judicial and legislative developments, particularly in the context of land reform and social equity, the **44th Amendment Act of 1978** altered the status of the right to property. This amendment removed it from the list of fundamental rights and reintroduced it as a **constitutional legal right** under Article 300A. The post-1978 position reflects a delicate balance between the individual's interest in property and the state's commitment to social justice and equitable distribution of resources.

In the early years of independence, the Indian government prioritized agrarian reforms and redistribution of land to correct historical injustices. However, these reforms often came into conflict with the fundamental right to property, leading to numerous litigations and constitutional amendments. Landmark cases such as *Kameshwar Singh v. State of Bihar*¹² and *Golaknath v. State of Punjab*¹³ highlighted the tensions between property rights and the state's socio-economic objectives.

To assert parliamentary supremacy and facilitate land reforms, the government enacted several constitutional amendments, including the 1st¹⁴, 4th¹⁵, 17th¹⁶, 25th¹⁷, and 42nd¹⁸ Amendments, which either limited or excluded judicial review of certain laws affecting property. Despite these changes, the judiciary continued to scrutinize state actions affecting property rights, thereby necessitating a more decisive constitutional response.

1) **First Amendment Act**, Article 31 A & B and 9 th Schedule was inserted.

(Article 31 A & B aimed at Zamindars. Their effect was to remove intermediary & improve lot of the tiller of the soil which was one of the objective of National movement.)

¹² **Kameshwar Singh v. State of Bihar**, AIR 1951 Pat 91.

¹³ **I.C. Golaknath v. State of Punjab**, AIR 1967 SC 1643.

¹⁴ The Constitution (First Amendment) Act, 1951.

¹⁵ The Constitution (Fourth Amendment) Act, 1955.

¹⁶ The Constitution (Seventeenth Amendment) Act, 1964

¹⁷ The Constitution (Twenty-Fifth Amendment) Act, 1971

¹⁸ The Constitution (Forty-Second Amendment) Act, 1976

2) Fourth Amendment Act • Article 31 was amended with retrospective effect by this amendment act.

Clause 2A was added

By section 5 of the same amendment act more acts were added to 9 th schedule.

Four new categories were added which was outside the purview of being challenged on the ground that they are inconsistent.

- i. Taking over the management of any property by state for a limited period.
- ii. Amalgamation of two or more corporations.
- iii. Extinguishment or modification of rights of persons inserted in corporation.
- iv. Extinguishment & modification of rights accruing under any agreement, lease or license relating to mineral or mineral oil.

3) Seventeenth Amendment act

Article 31 A was further amended

Proviso was inserted after Article 31 A (1)

44 Acts were added to the 9 th Schedule and total no. of acts was 69 in the 9th Schedule.

4) Twenty Fourth Amendment Act,

Article 13 and Article 368 of the Indian Constitution was Amended and hence out the jurisdiction of Judicial Review.

5) Twenty Fifth Amendment Act

Article 31 (2) was substituted

Article 31 C was inserted

Clause 2B was added after Clause 2A.

6) Twenty Ninth Amendment Act

Added two more act to 9 th Schedule

- i. Kerala Land Reform (Amendment) Act, 1969.
- ii. Kerala Land Reform (Amendment) Act. 1971.

7) Forty Second Amendment Act

Article 31C was Amended.

Article 31D was inserted.

8) Forty Fourth Amendment Act

Right to property under article cease to be a Fundamental Right.

Article 31 was omitted.

Article 300A was inserted.

Right to Property is Now a Constitutional Right

The right to property was originally a Fundamental right under Articles 19(1)(f) and 31 of the Indian Constitution. However, due to conflicts between property rights and land reform efforts, the 44th Amendment Act, 1978 removed it from Part III and introduced Article 300A, making it a Constitutional legal right instead¹⁹. Under Article 300A, “*No person shall be deprived of his property save by authority of law*”, meaning the state can acquire property, but only through legal means and with due process²⁰. This shift reduced the direct enforceability of the right via Article 32 but still ensures that arbitrary deprivation is unconstitutional. The judiciary has clarified that even as a constitutional right, property cannot be taken without fair procedure. In *K.T. Plantation v. State of Karnataka*, the Supreme Court held that the right to property, though not fundamental, is protected as a basic human right and any deprivation must be just, fair, and reasonable²¹. Thus, while no longer fundamental, the right to property remains legally enforceable and continues to play an important role in protecting citizens from arbitrary state action. The basic structural theory was reinforced in the *Minerva Mills* case (1981),²² and later in the *Waman Rao* case (1981)²³ which was first introduced in the famous *Keshavananda Bharati* case (1973),²⁴ 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 determined that the alteration would not violate the "basic structure" of the Constitution in spirit.

IMPACT OF 44 TH AMENDMENT:

The **44th Amendment of the Indian Constitution** had a significant impact on property rights by **removing it from the list of fundamental rights**. Earlier protected under Articles 19(1)(f) and 31, the right to property became a **constitutional legal right** under **Article 300A**. As a result, citizens could no longer approach the **Supreme Court directly** for property disputes. The state gained **greater power to acquire private property** for public purposes, with **less judicial interference**. Although compensation is not guaranteed under Article 300A, courts

¹⁹ The Constitution (44th Amendment) Act, 1978.

²⁰ The Constitution of India, Article 300A.

²¹ *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1.

²² *Minerva Mills Ltd. & Ors v Union of India & Ors*, 1981 SCR (1) 206.

²³ *Waman Rao and Ors v Union Of India*, (1981)2 SCC 362.

²⁴ *Keshavananda Bharti v State of Kerala*, AIR 1973 SC 1461

often demand fairness. The amendment thus balanced **individual rights** with the state's aim of achieving **social justice**.

JUDICIAL INTERPRETATION ON PROPERTY RIGHTS UNDER CONSTITUTIONAL LAW:

Courts have played a very important role in deciding what property rights mean under constitutional law. Judges interpret the constitution to decide how much protection people have over their land and belongings, and how much power the government has to take or control property for public purposes. Across different countries, courts have tried to balance two things: protecting people's private property and allowing the government to act for the public good, like building roads or doing land reform.²⁵

In the United States, the Constitution says that private property cannot be taken by the government without paying a fair amount (called compensation). In *Pennsylvania Coal Co. v. Mahon* (1922)²⁶, the court said that even if the government doesn't take land directly, a law that reduces the value of land too much can still count as a "taking." Later, in *Lucas v. South Carolina Coastal Council* (1992)²⁷, the court said that if a law takes away all value from a property, the owner must be paid. In *Kelo v. City of New London* (2005)²⁸, the court allowed the government to take land from one private owner and give it to another for a public project, which caused controversy.

In India, the Constitution originally treated property as a fundamental right. But in 1978, it was changed, and now property is a constitutional (not fundamental) right under Article 300A. This means the government can take property, but only through a legal process. In *Kesavananda Bharati v. State of Kerala* (1973), the Supreme Court said that the Constitution's basic structure must not be harmed, and that courts can review laws affecting rights. In *Jilubhai Nanbhai Khachar v. State of Gujarat* (1995)²⁹, the court said the state must follow legal rules when taking property. In *K.T. Plantation v. State of Karnataka* (2011)³⁰, the court added that laws taking property must be fair and not arbitrary.

²⁵ Barak, Aharon. *Proportionality: Constitutional Rights and Their Limitations*. Cambridge University Press, 2012.

²⁶ *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922)

²⁷ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)

²⁸ *Kelo v. City of New London*, 545 U.S. 469 (2005).

²⁹ *Jilubhai Nanbhai Khachar v. State of Gujarat*, AIR 1995 SC 142

³⁰ *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1

In South Africa, the Constitution protects property under Section 25. In *First National Bank v. Commissioner* (2002)³¹, the court said that any property law must be fair and serve a real public purpose. The court also talked about the idea of proportionality, meaning that actions by the government must balance public interest and private loss.

In Europe, the European Court of Human Rights said in *Sporrong and Lönnroth v. Sweden* (1982)³² that governments can control property, but they must strike a fair balance and not take away people's rights unfairly.

CONCLUSION:

In conclusion, property rights under constitutional law are an important part of protecting people's freedom and security. These rights allow individuals to own, use, and enjoy their land or belongings without unfair interference. At the same time, the government also has the power to take or regulate property for the benefit of society, such as building roads, schools, or hospitals. However, this power is not unlimited. Courts play a key role in making sure that the government does not misuse this power. If the government takes someone's property, it must do so according to law, and usually, the person must be given fair compensation. In different countries, property rights are protected in different ways. For example, in the United States, the Constitution says property cannot be taken without just compensation. In India, property is now a constitutional right under Article 300A, meaning the government can take property but must follow legal procedures. In South Africa and Europe, courts focus on fairness and balancing public interest with private rights. Overall, property rights are not just about owning things—they are also about justice, fairness, and freedom. The courts help maintain this balance so that both individuals and society are protected under the law.

ANALYSIS:

Property rights under constitutional law play a vital role in ensuring both individual freedom and societal development. These rights give people legal control over their possessions, land, or homes and protect them from being taken away by the state without a proper legal process. However, property rights are not absolute. Governments often need to regulate or acquire private property for public purposes—such as building infrastructure or promoting social

³¹ *First National Bank of SA Ltd v. Commissioner for the South African Revenue Service*, 2002 (4) SA 768 (CC)

³² *Sporrong and Lönnroth v. Sweden*, (1982) 5 EHRR 35

justice—and constitutional law helps manage this balance. Across countries, the protection of property varies. In the United States, the Constitution guarantees that private property cannot be taken for public use without “just compensation.” This means the government can take land, but only if it is for a public purpose and the owner is fairly paid. In India, property was once a fundamental right, but after the 44th Amendment, it became a constitutional right under Article 300A. This means property can still be protected, but not with the same strength as before. The Indian courts have made it clear that even though it’s no longer a fundamental right, the government must still act fairly and follow the law.

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