

44th Constitutional Amendment, Right to Property and Right to Compensation

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Abstract

In India, no fundamental right has generated as much debate and as much controversy between government and citizen as the right to property. In liberated India, no fundamental right has caused so much suffering and given rise to so many controversies between governance and the citizen, as the right to property. Whatever laudable the state intends to achieve, it cannot deprive a person of his property or violate this right, except as a rule of law. The purchase can be made against the will of the owners but the guaranteed compensation is paid to the owners or those interested in the land. State can acquire land for public purpose and also for the company under Land Acquisition law but due regard must be given to the amount of compensation, and right to compensation should not get hampered. The term "public purpose" flows from public welfare and the welfare of the people should be the primary focus of any legislative or executive action.

Keywords: Amendment, Article, Compensation, Constitution, Corporate, Law, Property, Public

INTRODUCTION

The Constitutional Law (forty-fourth amendment), 1978, constitutes a crisis in the evolution of the fundamental right to property in this country. This amendment means the end of the fundamental right to property. Articles 19 (1) (f) and 31 are two important fundamental rights who were responsible for the enforcement and protection of right to property, and 44th amendment to the Constitution made major change the right to property and these two Articles got replaced by said Amendment.

The United States Constitution in the Fifth Amendment states, "No person may be deprived of his life, liberty or property without due legal process [1]." In our country, on the other hand, politicians under the impact of socialist philosophy have begun to curtail the institution of private property almost from the very day the constitution came into effect.

In liberated India, no fundamental right has caused so much suffering and given rise to so many controversies between governance and the citizen, as the right to property. Logically fundamental rights are negative burden on state and article 19 (1) (f) – right to property was a major obstacle in the acquisition of land for various public purposes. Along with article 19 there was article 31 of the Constitution which has protected the property of the citizens and also provided them compensation on compulsive acquisition of property. Within the Constituent Assembly, there was a consensus on treating major land reform programs on a different footing from other kinds of State acquisition of property [2].

ARTICLES 19 (1) (F) AND 19(5)

Until 1978, Art. 19(1) (f) existed in the Indian constitution which gave a protection to private property. Article 300 A was introduced in the

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Received Date: November 08, 2021
Accepted Date: December 15, 2021
Published Date: January 05, 2022

Citation: Irale Vikram Vitthal. 44th Constitutional Amendment, Right to Property and Right to Compensation. Journal of Constitutional Law and Jurisprudence. 2021; 4(2): 31–35p.

Constitution by removing Article 19 (1) (f) and 31 of the constitution. This move has very much diluted constitutional protection to the right to property in India. Article 19 (1) (f) guaranteed to the Indian citizen's a right to acquire, hold and dispose of property [3]. In the interest of general public or for the protection of the interest of any scheduled tribe, Article 19 (5), permitted the state to impose reasonable restrictions.

Thus, four essentials are involved in acquisition of property by state:

1. Property
2. Compulsory acquisition of requisitioning by the state.
3. Public purpose and
4. Compensation

Now State can acquire a property for a public purpose or private company. The concept of 'public purpose' connotes public welfare [4]. A Few examples of what were held judicially as 'public purpose' for which land could be validly acquired are:

- Housing facility to the individual having no housing place.
- Nationalization of land
- accommodating a government servant
- establishing an institution of education
- Development of industrial sites.
- Construction of canals, roads, dams, hospitals etc.

The Fundamental Right to Property enjoys the unique distinction of not only being the second most argumentative provision in the drafting of the Constitution, but also the only fundamental right to be ultimately abolished in 1978 [5].

At present the Right to Property is guaranteed as - "No person shall be deprived of his property save by authority of law" under Article 300A inserted by Constitution 44th constitutional Amendment [6].

Acquisition of Property by State for Companies

Land Acquisition Act, 1984, outlines land acquisition as the act of the government whereby it acquires land from its titleholders in order to attain certain public purpose or for any company [7]. This acquisition can be done against the will of the owners but compensation is paid to the owners or to those interested in the land. This can be distinguished from an absolute purchase of land on the marketplace. Government land acquisitions are generally mandatory in nature, ignoring the owner's refusal to part with the land.

Meaning of Property

The Concept of property and ownership are very closely related to each other. Property and ownership, one necessarily implies the existence of the other. There can be no property without ownership and no ownership without property. The term 'property' is used to denote the proprietary rights of a man as opposed to his personal rights [8].

In the beginning 'property' included only the corporeal objects. But gradually the meaning went on expanding. This expansion took place due to following reasons.

1. The jurists who propounded the contract theory of the origin of the state attempted to give a wide meaning to the term 'property'. According to Locke every man has the right to preserve his property, life, liberty, and estate. Though this wider meaning seems never to have received legal recognition, it helped in expanding the meaning of the term [9].
2. Equity jurisdiction in English courts also helped in extending the meaning of the term property. There was a maxim to define equity jurisdiction which said that equity will protect only the right of property.

3. In modern times many legal system's have given constitutional protection to the term property. The state is restrained from arbitrary interference in the individual's enjoyment of his property, or taking it without payment of compensation.

Generally speaking the word 'property' has a very broad connotation, and is indicative and descriptive of every possible interest which a person can have not only the thing which is the subject matter of ownership, but even dominium or the right of ownership, possession etc. full within the scope of this term.

To begin with, the right to property guaranteed by Article 19 (1) (f) means that right, which by them and taken independently are capable of being acquired, held or disposed of as property. In *Chiranit Lal v. India* [10] Court interpret the term property in Article 19 (1) (f) somewhat restrictively in order to limit the guarantee there under.

In *State of West Bengal V. Subodh Gopal Sastri*, C. J. Propounded the theory that Article 19 (1) (f) dealt only with the natural right inherent in the citizens to acquire, hold, dispose of property in the abstract without any reference to any particular property; that article 19 (1) (f) concerned only with the abstract right & capacity to hold, acquire and dispose of property and had no relation to concrete property rights. In other words, the Article forbade the state to deny to particular individuals, or classes of individuals, the right to own property, but did not protect a citizen's interest in a particular piece of property or business from state interference [11].

In *Dwarka V. Sholpur Mills* [12] DAS. J. held specifically that, the mills, machinery, Stock etc. were property as also contract or agreement which a person might have with another. Again the term 'property' was given a broad meaning in *commissioner Hindu Religious Endowments V. Lakshmindra* where the Supreme court observed that there was no reason why the word 'property' as used in Article 19 (1) (f) should not be extended to those well recognized types of interests which have the characteristics of proprietary rights & that Article 19 (1) (f) applies equally to concrete as well as abstract rights of property [13].

In United States there are limitations on the power of sphere,

1. There must have be a law authorising the taking of property.
2. Property must be taken for public purpose.
3. Just compensation should be paid.

Constitutional Amendment and Article 300 A

The Constitutional Amendment in question introduced Article 300 – A. in the constitution to give some protection to property. Article 300 – A does center some semblance of protection on private property, but this constitutional provision does not enjoy the status of fundamental Right. Article 300 A provides that "no person shall be deprived of his property save by authority of law."

Though Article 300 A is not a fundamental Right, nevertheless, it does not make much of a difference except that a writ petition is not maintainable under Article 32 in the Supreme Court to indicate the right under Article 300 A. A person challenging violation of Article 300 – A, must go to a High court under Article 226 with his writ petition.

In *Wazir Chand V. State of Himachal Pradesh* goods seized by the police officer from the appellants possession without any authority of law were ordered to be restored to him. The court pointed out that the state cannot interfere with the right of others unless it can point to same specific rule of law with authorizes its actions [14].

Concept of Public and Private Purpose, Interest, Compensation

In all democratic countries one basic principle is recognized viz. that the Government cannot interfere with property of an individual without the authority of a valid law. The most dramatic

reiteration of this principle can be seen in the U.S.A in *Youngstown steel and tube co v. sawyer* where the U.S. supreme court held the seizure of steel mills by a presidential decree unconstitutional as there was no law to support it [15].

The concept of general purpose connotes the general welfare. With the advancement of the socio-economic welfare of the people, the scope of the public interest of the community is rapidly changing and developing. The emphasis unmistakably shifts from the individual to the community. Thus, when a public need demands the acquisition of property, that need is not denied because of the reluctance of individuals to sell. When the need arises, individuals may be asked to relinquish ownership of the property as long as they are provided with the fair compensation required by the codification. Therefore, the power of the eminent domain can be defined as the power of the state to take property for the public interest without the consent of the owner who provides him with fair compensation.

In *Jilubhai Khachar V. State of UP* the Supreme Court declared that the word 'law' used in Article 300 A must be an Act of parliament or of the legislature of a state, rule or law of law having lawful authority. Disposal of property must be by the power of law alone, or by a member of parliament, and not by decree. Disposal of property is by acquiring or claiming or taking property from the public [16].

In *Basantibai V. State of Maharashtra* [17] the Bombay High court did seek to interpret Article 300 A favorably to the property owner's by reading therein the dual requirement of public policy and compensation as being inherent in the concept of eminent domain. Under Article 300 A the legislature cannot sanction deprivation of property for private purposes.

In *Sri. Nath Educational Society V. State of U. P.* [18] the state took possession of the land of the petitioner society for construction of a road but without acquiring it. The High court characterized the action of the Government as 'high handed' and observed that Howsoever laudable object the state may intend to achieve it can neither deprive a person of his property nor can it interfere with this right save by authority of law. Apart from violation of Article 300 A of the constitution such an action of the state is also violative of Article 19 of the constitution.

CONCLUSION

Before 44th Constitutional amendment Right to Property was fundamental right which could be enforced by Supreme Court under Article 32 of the constitution or even by High Court under Article 226 of the Constitution. But Article 300 A made it mere Constitutional right where general public can approach to High Court to protect their right against non-bona fide state actions. Also compensation is important factor which is considered as right of the person who land is under process of acquisition. Due care must be taken while granting the compensation to the affected person that his interest should not get hampered while serving public purpose.

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