

Right to Property: A Mere Constitutional Protection or Property Law? A Functional Approach towards Comparison of Constitutional Provision and Transfer of Property Act, 1882

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Abstract

This research paper discusses this delicate interaction of protection of the right to property given in the Constitution i.e., under article 300A of Indian Constitution and vast statutory provisions of Transfer of Property Act, 1882 (TPA). In a functional comparative approach from the standpoint of the opponent, the position of property right after 44th Amendment has been critically evaluated in the work by considering the legal, historical and socio-economic causes which led to the removal of fundamental right and the establishment of constitutional right. It poses questions on the legal and statutory systems which govern transaction, ownership and transfer processes and compares them with the constitutional impositions and confines on state action, especially as regards eminent domain and compensation. The paper summarizes historic Supreme Court decisions developing modern jurisprudence and practice tensions between property rights of individuals and societal well-being with the paper expected to offer meaningful contributions to academics, practitioners, and policy makers.

Original Research Article

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I. Introduction

The right to property has always attracted much attention in the Indian legal discourse and statecraft. The fact that it has undergone a critical change in the balance between individual liberty and state power is notable because it transformed from a fundamental right to a constitutional and a legal right [1]. The current research issue is narrowly framed: Does the constitutional protection provided by Article 300A, which comes after the 44th amendment, constitute a substantive protection or had the statutory protection of property law, especially the TPA, taken the center of that which regulates property relations. What does it mean in practical terms to have these two legal regimes interaction with each other and conflict still reigning? Using functional approach, the article grants precedence of roles that these regimes hold in the lives of the citizens and the consequent practical impacts these regimes have on the citizens, institutions and the government. The investigation is driven by deeper concerns of fairness present in the process of acquisition, remuneration, is the state going too far to intervene in the property of the individuals [2][3].

II. The Indian Property Rights Evolution.

Colonial Period and Early Constitutional Period.

Still, the rights to property are deeply colonial in India - there are three systems: zamindari, ryotwari, and tenure. These were subsequently inherited by the post-independence legal structure but the Constitution drafted these provisions of strong protection under Article 19(1) (f) and Article 31 [4]. Article 19(1) (f) made it possible for citizens to gain, possess and alienate property and Article 31 showed that PR could not be deprived of property except by an order of the law, and the state was to provide compensation if property was taken [5].

Reforms to Land, Reforms to Amendments and the Reforms to Social Justice.

The reform and redistribution aspirations for the land tended to clash with the strong judicial upholding of the land owners. These rights were downsized during the frequent constitutional amendments in order to allow the agrarian

reforms and disgust of land-concentration [6]. Cases such as, State of West Bengal v. The process of acquisition has judicially reviewable value because the Mrs Bela Banerjee placed high value on just compensation [7].

44th Constitutional Amendment & Period of the Article 300A.

Article 300A [8] took the place of Articles 19 (1)(f) and Article 31, which was done by the 44th Amendment of 1978 [8]. It was the future of right to property that was placed in list of fundamental rights to be a constitutional legal right not enforced directly under Article 32 by the Supreme Court but through ordinary courts pursuant to Article 226 [9]. The transition was aimed at the accelerated reforms of the land and state takeovers without lengthy court battles.

III. Constitutional Framework Article 300 A

Text and Meaning

Article 300A reads as follows: No man shall part with his property except on legal authority [10]. The provision is for the citizens and non-citizens and immovable and movable property. Deprivation should be rooted in legitimate law, which should protect them from the ad hoc executive authority [11].

Courts, Interpretation and Jurisdiction.

Even though Art 300A does not enforce compensation right as a fundamental right the courts have confirmed that the process of acquisition should be fair in the process and in most cases comprehensive compensation [12][13].

Landmark Judgments:

K.T. plantation Pvt. Ltd. and State of Karnataka (2011): The Supreme Court determined that right to property no longer being one of the fundamental rights is a constitutional right which was liable to remuneration and civic cause. Should there be reasonable restrictions then they are allowed [14].

Vidya Devi v. State of Himachal Pradesh (2020): The court disapproved forced dispossession without legal process or compensation on the ground that it amounts to the violation of Article 300A and human rights [15].

Ultra-tech cement Ltd. vs. Mast Ram (2024): compromise for compensation was seen going against the spirit of article 300A & the provision of welfare principle [16].

Overlapping with the concept of Directive Principles and Social Justice.

The state policy is guided by article 39(b) and 39(c) of the Directive Principles of State Policy which are aimed at equal distribution of resources which in turn supports social justice purposes of regulatory interventions into property [17]. New decisions of Supreme Court on clarifying, that, not every private property is invariably a material resource of the community, include under such qualifiers the qualification of public interest [18][19].

IV. Transfer of Property Act, 1882: Law.

Structure and Principles

The TPA is the most important law that governs the exchange of properties through act of parties. The definition of transfer of property in Section 5 declares the transfer of property to be an act where a living person transfers property to one or more living persons in present or in future [20]. The modes of transfer which are shown in the Act are many: sale, mortgage, lease, exchange, gift, and actionable claims [21]. It gives the procedural fairness, some title, registration provision and controls the rights and obligations of transferees and transferors.

The Necessary Doctrines and Provisions.

- a. Sale (Section 54): Should be of financial consideration and must be by a registered instrument of transfer of immovable property and that the consideration should exceed a particular value [22].
- b. Mortgage (Sections 58 - 104): There are six classes of mortgages having rights, and liabilities.
- c. Lease (Sections 105-117): Legal surface of property, in regard to a period of time.
- d. Gift: This is a voluntary transfer by way of without consideration and acceptance and registration are required (Sections 122-129).
- e. Doctrine of Notice, Ostensible Owner and Rule Against Perpetuities These provide protection against frauds and restraint in the long-term as well as illegal assignments.
- f. Buyer and Seller Right And Duties (Section 55) Guarantees title to a buyer, delivery, possession and Seller owes duties on clear transfer [23].

Functional Role of TPA

Although Article 300A in constitution makes it illegal to deprive without law, the TPA provides protection on property transactions providing day-to-day protection. It establishes competence, contract, fairness and remedies of flawed or litigious transfers [24]. The prominence of the statutory regime in the promotion of ownership and commerce can also be stressed by the difference in the functions.

V. Comparative Analysis Functional Approach.

Methodological Framework

The functional method focuses on the left practical working of the law norms and its conclusions attach more importance to its consequences rather than its form [25]. It raises the question of what legal regime is better in terms of providing for the protection, distribution of justice, prediction and economic growth and not which is better for the formal hierarchy.

Regulation and Antitrust Interdependence

Constitutional regulations have limitations in as far as what a state can do in the matter of acquisition, protection and

compensation but on the other, statutory law regulates the transfer, check-up of title, encumbrance and any remedies [26]. The interaction is not highly competitive, but rather the two different regimes co-exist: the constitutional principles set the outer boundaries whereas the property law is the one dealing with the every day operation of the market.

Case Studies and Jurisprudence Case law refers to the way in which the legal practice takes in the states.

Jilubhai Nanbhai Khachar v. State of Gujarat: SC made it clear about right to property and said that it is not part of the basic structure and Parliament can regulate it or restrict it at any time because of the common good [27].

Association of Property owners v. State of Maharashtra (2024): SC, that, only some of the private possessions could be regarded as material resources of the community in order to be distributed fairly under Article 39(b) [28].

Setting Preeminence of Statutory Law in Transactions.

In the practical aspects as of sale, mortgage, leasing, inheritance the TPA and other legislation prevail in most cases. The constitution has been used to provide constitutional defense against instances of deprivation by the state but not to simple transactions among the citizens [29].

Critical Tensions & Complementarity.

In conflict may arise between the regimes, when:

The state tries to steal property without the procedural protection or compensation.

Transactions disputes occur when parties seek constitutional protection of what really constitute title/transfers disputes.

But they are normally considered to be supplementary a legitimate transfer with TPA should not violation of constitutional rights and state acquisitions should accept both the statutory formalities and constitutional restraints [30].

VI. Legal Interpretation and the Law of the Cases.

State of West Bengal Vs. Mrs. Bela Banerjee (1954).

The SC decided the compensation provided according to article 31 should be reasonable and should not exceed the market value; the discretion of the legislature should be considered as inferior to the just equivalence [7].

Kesavananda Bharati v. State of Kerala (1973)

The SC decided upon the basic structure doctrine by holding that Parliament can never contravene the fundamental characteristics of the Constitution but denied that right to property was a fundamental characteristic and thereby endorsed a regulatory intervention for the socio-economic justice [31].

K.T. Plantation Pvt. Ltd. Vs State of Karnataka (2011)

Equity in environmental protection require a balance to property rights, restriction on regulation as much as it is

reasonable, proportionate and in the interest of the people [14].

Vidya Devi v. State of Himachal Pradesh (2020)

The denial of property without law or compensation was thus established to violate the constitutional and human rights which enhance the procedure and substantive guarantees under Article 300A [15][32].

Ultra-Tech Cement Ltd. Vs Mast Ram

The argument was reiterated that the non payment of prompt compensation on acquisition of land is a violation to Article 300A and the principles of a welfare state [16][33].

Association of Realtors v. Property owners. State of Maharashtra (2024)

Elaborated the determinacy of Article 39(b) and Article 31C, that only qualifying private property could be taken in account as being material resources of the community to be fairly allocated [28][34].

Jilubhai Nanbhai Khachar v. State of Gujarat (1995)

Defined the power of the Parliament to control property which separated property rights and doctrine of basic structure. [27]

VII. Famous Domain and compensation.

Constitutional and Statutory Underpinning.

Article 300A is doctrine eminent domain which is the power to take either private property to be used in public works and is implemented through statutes including the LARR Act, 2013 [35]. The acquisition should be made on the basis of the public purposes, due process and fair compensation [36].

Trial and Tribunal Courts and Protection.

The courts have held that such payments, which are not in time and arbitrary, are not compensated [16][37]. The some of the landmark cases are Ultra-tech cement Ltd. vs. Mast Ram and Vidya Devi v. The principles have been strengthened into in the state of Himachal Pradesh [15][33].

Judicial Methods compared.

The decisions of the Supreme Court have been altered to include the need of equal and just compensation [7] to cover the broader scope of the states to fulfill social justice, as long as appropriate procedural protections are taken [31][27].

VIII. Modern Problems and Negotiations.

Urbanization and Housing

With the intervention of the state, especially in the field of slum rehabilitation and urban renewal, conflict between property owners and social needs in the more general sense often arise. The case of the Property Owners Association vs. The state of Maharashtra is an example of these new conflicts and the efforts by the judiciary to strike a balance between conflicting interests [28][34].

Welfare Principles and The Delayed Compensation.

Skid Row of cases like Vidya Devi and Ultra-Tech Cement Ltd. v. Mast Ram are some of the cases courts have routinely witnessed delays by the administration, poor valuation and drawn out litigation [15][16][33].

Dimension(s) of Human Rights that should be increased.

Human rights, including property rights are established by the Supreme Court as human rights, that support the trend in the world legal field, and uniting the constitutional ideas with the international standards [15][38].

Non State Transactions and title Issues and Statutory Disputes.

Cases about registration, forgery, inheritance, defective title, are still to be solved under TPA and contract law, outside of the actual constitutional area [24][39].

IX. Conclusion

The Indian right to property protection is at the farthest edge between appropriated and statutory protection. Article 300A is a powerful separation against directing the activity of the state in the arbitrariness of certain actions, which must be deprived only by the method of violation of the law, and with procedural fairness and, in the majority of situations, compensation. Transfer of Property Act, 1882 on the other hand is the more eminent regime in the day to day property transactions between people.

A working definition reveals that the two regimes co-exist as opposed to hindering each other. Constitutional statements set the limits where the citizens are not expropriated unjustly, while the statutory law disposes the average working of the transactions, economic improvement and independence of a person. The history of jurisprudence, especially, the masterpieces of the Supreme Court, continue to affect the relationship that exists between the state commitment, the individual rights, and the welfare of the society.

The difficulty which the future has thrust ahead is to balance between the demand of rapid development and constitutional and statutory fair play which will determine trust in property rights and the ethical way of equity and common good. Strict judicial scrutiny, simplicity in legislation and efficiency in the administration, are fundamental in making sure that property law meets its functional and constitutional role in the present day India.

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- * Both authors have made an “Equal Intellectual Contribution” to the present research.
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