

Concept of Right to Property in Indian Constitution (With special reference to land)

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Received
28 Nov. 2019

Reviewed
30 Nov. 2019

Accepted
05 Dec. 2019

Right to property as fundamental right created a barrier for both the government and landless people as the government was unable to generate the comprehensive revenue from the land where as the landless are unable to cultivate and earn their livelihood aptly. To overcome this issue the status of the right to property was changed from fundamental rights to constitutional right. As per the social economic and caste census of 2011, which acknowledge and counted landlessness as a major poverty indicator and the data that came out is shocking which reveals that nearly 494, 9 million (49.9 Crore) people are still landless in India after so many years of independence. With so much significance on market-driven economy has resulted into the negligence of such an important trend. This paper depicts a subjective look at the attribute of the constitutional and other amendments in land laws as Zamindari abolition Act, ceiling Act and other laws. It also explains how it stems the agrarian reform to the last straw. Further discussion on the contradiction of land laws with the Constitution of India in the light of Supreme Court judgments and its impact on landless persons. The paper provides an objective look into the legal provisions regarding the right to property and suggests essential changes which might be beneficial for both government and landless persons into the long run.

1) Introduction

As per the resolution mentioned in Preamble we, the people of India adopted the Constitution on 26th November 1949. In which the various land laws measures are as following:

1. Right to property
2. Fundamental rights (article 31A, 31B, 31C.)

Meaning of property:

In general term: The word property means everything which is subject of ownership, corporeal or incorporeal, tangible or intangible visible invisible, real or personal, everything which

has exchangeable value or which goes to make up wealth. Private property also comes under the ambit of it.

In the legal term: Anything that is owned by a person or entity. Property is divided into two types: “real property” which is any interest in land, real estate, growing plants or the improvements on it, and “personal property” (sometimes called “personality”) which is everything else. “Common property” is ownership by more than one person of the same possession. “Community property” is a form of joint ownership between husband and wife recognized in sev-

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eral states. "Separate property" is property owned by one spouse only in a community property state, or a married woman's sole ownership in some states. "Public property," refers to ownership by a governmental body such as the federal, State, county or city governments or their agencies (e.g. school or redevelopment districts). The Government, and, in particular, the courts are obligated to protect property rights and to help clarify ownership.¹

According to Article 17 of the Universal Declaration of Human Rights²

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

2) Right to the property before the 44th amendment 1978³

Right to property was the 7th kind of Fundamental Right enshrined in the original Constitution and guaranteed by Article 19(1) (f) and Article 31.

Article 19 (1) (f): to acquire, hold, and dispose of the property.

Article 31: Ensures that any person could not be deprived of property except by authority of law. It also mentioned that the State could acquire property only for public purposes and in return of which compensation had to be paid.

At the time when the Indian Constitution was adopted, the organization of land was dominated by Zamindars, intermediary, Ryotwari settlement, Mahalwari settlement, etc. and a substantial portion of the land was cultivated through tenants at will and sharecroppers who were paying about one half of the produce as rent to the Government and holding were very small. So, for doing justice with landless or poor people, to uplift them, Indian Government started passing various laws like Zamindari abolition Act, Land ceiling Act and Land tenure Act, etc. But in these laws, some part becomes contradictory to the 3rd part of the Constitution i.e. Fundamental Rights especially to

Article 19(1) (f) and Article 31.

For example:

1. Zamindari Abolition Act⁴ becomes challengeable in the court because it was contradictory to Fundamental Rights Article 19(1)(f) and Article 31 as these two Article says that person having right to acquire, hold and dispose of property but Zamindari abolition Act is obstructing people to acquire land and getting proper compensation.

2. Land Ceiling Act: By this Act limit of holding land was decided and land beyond the limit would go in the account of Government, which again became contradictory to Article 19(1)(f) and article 31.

Therefore to remove such complication and betterment of all, Article 19(1) (f) and Article 31 repealed by the 44th Amendment Act.

3) Right to the property after the 44th amendment 1978

By 44th Amendment the Article 300 A came into the picture by redrafting the article 31(1) as Constitutional right. Article 31A, 31B, and 31C were added by 1st and 25th Amendment, the reason behind such additions are:

Firstly Article 31 A was added to remove the compensation-related problem arising out of Zamindari abolition Act. The importance of this Article increased by the 44th amendment.

Secondly, Article 31 B validates the Acts and regulations specified in the 9th Schedule. The laws and regulations related to 9th Schedule, which passed before the Case of Kesavanda Bharati Sripadagalvaru and Ors. V State of Kerala⁵ could not be challenged in court based on contradiction with Fundamental rights.

Thirdly, Article 31C approves laws giving effect to the policy of the State towards achieving all or any of the principles enshrined in Part IV (Directive principle of state policy) of the Constitution. The objective of this article was to ensure a socialistic pattern of society in the country. The ambit of this Article was also extended

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by the 42nd Amendment Act, 1976. The extension of the range of the Article 31-C to all directive principles was held to be ultra vires by the Supreme court in the case of Minerva Mills case⁶

Article 300A gives protection against deprivation of property. A person can only be deprived of his property by the authority of law. It means proper compensation shall be given for deprivation according to laws made under Article 31A. Such denial can't be questioned before any court. The remedy under Article 32 is not available against the violation of Article 300. But a person has the right to file a civil suit in civil court and the high court under Article 226.

4) Deprivation: Deprivation occurs when a substantial bulk of the rights constituting property is taken away.

For example:

1. The owner dispossessed,
2. The property seized or confiscated,
3. A business was taken over by the State,
4. A trustee removed from the trust etc.

Deprivation does not necessarily mean that the State has acquired the property. If the Government pulls down or demolishes a house to prevent the spread of fire, the owner is deprived, but the property has not been obtained.

The law mentioned in the Article 300A is subjected to the Article 14; Article 19

5) Conclusion

The provisions and historical background of the Right to Property show that the step of removing the right to property from the fundamental right was to save, uplift more underprivileged sections. And to take out more revenue from land as a tenant at will and sharecropper was unable to pay much to the Government as their part on land was less. Time passes by with the popup of new sources of taxes and revenue which made the concept of revenue from land vanish. It is such revenue from which the dream of upliftment of tenure holder and poorer section was built and above mentioned actions by the Government of India took place. So presently at the age of 72 of India, we should remember its importance, to revive land revenue again to spread its benefit to the above said group and Government too. The scope of this section now will also apply to Jammu and Kashmir from 5th August 2019 onwards which means it will get the more enhanced range.

¹legal-dictionary.thefreedictionary.com/property

²www.un.org/en/universal-declaration-human-rights/

³Basu, (2012). Introduction to the Constitution of India, Lexis Nexis
⁴Chandra, Mukherjee, Mukherjee (2007). India since Independence, Penguin

⁵AIR 1973

⁶AIR 1980

Reference:

1. Basu, (2012). Introduction to the Constitution of India, Lexis Nexis
2. Chandra, Mukherjee, Mukherjee (2007). India since Independence, Penguin
3. Chandra Nathjha (2016). Land Revenue code.
4. www.un.org/en/universal-declaration-human-rights/
5. <http://www.legalservicesindia.com/article/1435/Emergence-of-Article-31-A,-B-and-C-and-its-validity.html>

