
RIGHT TO PROPERTY IN INDIA: A COMPARATIVE STUDY OF FUNDAMENTAL RIGHTS AND CONSTITUTIONAL RIGHTS

R. Deepakkumar, B.A. LL.B.,
S. Thangapazham Law College, Vasudevanallur, Tenkasi, Tamil Nadu

M. Ajay Sundar, B.B.A., LL.B. (Hons.), (Ph.D),
S. Thangapazham Law College, Vasudevanallur, Tenkasi, Tamil Nadu

ABSTRACT

The Right to Property occupies a distinctive position in the constitutional history of India. At the commencement of the Constitution, property was protected as a Fundamental Right principally through Articles 19(1)(f) and 31. Repeated constitutional amendments and judicial decisions gradually reshaped the relationship between private property and public interest. The decisive change came through the Constitution (Forty-Fourth Amendment) Act, 1978, which deleted Article 19(1)(f) and Article 31 and inserted Article 300A. As a result, the Right to Property ceased to be a Fundamental Right and became a constitutional right outside Part III. This research paper examines that transformation, the objectives and consequences of the Forty-Fourth Amendment, and the present legal status of property under Article 300A. It compares Fundamental Rights with constitutional rights, focusing on source, scope, beneficiaries, enforceability, remedies and judicial protection. Major judicial decisions concerning property and Article 300A are examined, including *State of Bihar v. Kameshwar Singh*, *R.C. Cooper v. Union of India*, *Kesavananda Bharati v. State of Kerala*, *Jilubhai Nanbhai Khachar v. State of Gujarat*, *K.T. Plantation Pvt. Ltd. v. State of Karnataka* and *Vidya Devi v. State of Himachal Pradesh*. The paper concludes that the Forty-Fourth Amendment did not abolish constitutional protection of property; rather, it recalibrated that protection to accommodate social justice, public interest and State development while retaining the rule-of-law guarantee against unlawful deprivation.

Keywords: Right to Property, Fundamental Rights, Constitutional Rights, Article 300A, Land Acquisition, Judicial Review.

1. INTRODUCTION

Property is one of the oldest legal institutions associated with individual autonomy, economic security and social organisation. In constitutional democracies, property rights also raise questions concerning human dignity, livelihood, equality, economic policy and the limits of governmental power.

When the Constitution of India came into force in 1950, the Right to Property received prominent protection in Part III. Article 19(1)(f) guaranteed citizens the right to acquire, hold and dispose of property, while Article 31 dealt with compulsory acquisition and deprivation. These provisions were intended to protect individuals from arbitrary interference with their property while the Directive Principles directed the State towards social and economic justice.

The early decades after independence were marked by land reform. The abolition of zamindari, tenancy reform, land ceilings and redistribution were considered necessary for dismantling colonial-era agrarian structures. Property owners frequently challenged such measures, producing repeated constitutional amendments and important judicial doctrines.

The Forty-Fourth Amendment represents the culmination of this constitutional evolution. By deleting Article 19(1)(f) and Article 31, Parliament removed property from the catalogue of Fundamental Rights and inserted Article 300A in Part XII. The present constitutional formula is that no person shall be deprived of property save by authority of law.

The contemporary relevance of the subject is evident in infrastructure projects, urban development, highways, industrial corridors, environmental regulation, compulsory acquisition and resettlement. The central question is therefore not simply whether the State may acquire property, but under what conditions, through what procedure and subject to what constitutional safeguards.

1.1 Objectives of the Study

- To trace the constitutional history of the Right to Property in India.
- To examine the legal position of property as a former Fundamental Right.
- To analyse the Forty-Fourth Constitutional Amendment and Article 300A.
- To compare Fundamental Rights with constitutional rights.
- To examine major judicial interpretations of the Right to Property.
- To critically assess whether Article 300A is a weak or meaningful constitutional guarantee.
- To identify the present balance between private property, public purpose and social justice.

1.2 Research Questions

- Why was the Right to Property originally made a Fundamental Right?
- Why did Parliament remove it from Part III?
- What is the present scope of Article 300A?
- How does a constitutional right differ from a Fundamental Right?
- How have courts strengthened the protection available under Article 300A?

1.3 Research Methodology

The paper follows a doctrinal and analytical research methodology. It relies primarily on the Constitution of India, constitutional amendments, reported Supreme Court decisions, bare acts, statutory provisions, and standard legal treatises/books by authoritative legal scholars (such as M.P. Jain, H.M. Seervai, D.D. Basu, and V.N. Shukla) as well as legal journal publications. Secondary materials such as constitutional-law scholarship provide contextual support. The study is comparative in the sense that it contrasts the former Fundamental Right with the present constitutional right and evaluates their respective remedies and protections.

2. STATEMENT OF THE PROBLEM

The central legal problem is how to reconcile the constitutional protection of private property with the State's objectives of land reform, redistribution, infrastructure and public welfare. The removal of property from Part III reduced its formal constitutional status, but Article 300A continues to constrain governmental deprivation. The continuing uncertainty concerns the extent to which legality, procedure, compensation, fairness and judicial review limit State power.

3. RESEARCH OBJECTIVES

The objectives are to examine the historical constitutional framework, evaluate the Forty-Fourth Amendment, analyse Article 300A and its judicial interpretation, compare Fundamental and constitutional rights, and propose a balanced understanding of property protection consistent with public purpose and the rule of law.

4. RESEARCH QUESTIONS & HYPOTHESIS

4.1 Research Questions

- To what extent does Article 300A protect persons against unlawful deprivation of property?

- How have judicial decisions reconciled property protection with land reform and public purpose?
- What remedial differences exist between the former Fundamental Right and the present constitutional right?
- What safeguards are necessary to ensure fair and transparent acquisition?

4.2 Research Hypothesis

The hypothesis is that Article 300A is formally weaker than the former Fundamental Right but remains a meaningful constitutional guarantee because judicial review, statutory safeguards and related constitutional principles constrain arbitrary deprivation.

5. RESEARCH METHODOLOGY & SCOPE

This study adopts doctrinal, analytical, historical and comparative methods. Primary sources include the Constitution of India, constitutional amendments, statutory bare acts, and Supreme Court precedents. Secondary sources include leading constitutional-law treatises (e.g., M.P. Jain, H.M. Seervai, D.D. Basu, V.N. Shukla) and academic journals/institutional materials. The study is confined principally to Indian constitutional law and focuses on the historical period from the commencement of the Constitution through the contemporary interpretation of Article 300A.

6. REVIEW OF LITERATURE

The constitutional-law literature generally treats property as an important site of conflict between individual rights and social transformation. Prominent scholars such as M.P. Jain, H.M. Seervai, D.D. Basu, and V.N. Shukla discuss Fundamental Rights, constitutional amendments, judicial review, and property in their seminal commentaries.¹

The judicial literature, particularly the cases arising from land reform, nationalisation and acquisition, demonstrates the transition from a compensation-centred Fundamental Rights framework to the rule-of-law protection under Article 300A.²

The literature gap addressed here is the need to assess the present status of property not merely by its removal from Part III, but by examining the substantive protection developed through judicial interpretation, academic scholarship, and statutory evolutions.

¹ M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) .

² Upendra Baxi, 'Taking Rights Seriously in the Fifth Class:

7. SUBSTANTIVE LEGAL ANALYSIS & DISCUSSION

7.1 Right to Property as a Fundamental Right

The original Constitution treated property as a significant individual right. Article 19(1)(f) formed part of the freedoms guaranteed to citizens and protected the ability to acquire, hold and dispose of property. Article 31 separately addressed deprivation and compulsory acquisition. Together these provisions gave property a specially protected constitutional status.³

Article 19(1)(f) was not absolute. The Constitution permitted reasonable restrictions in the interests of the general public, while Article 31 recognised the State's power to acquire property under law. The framework therefore sought to balance ownership with regulation and public purposes.⁴

7.2 Article 19(1)(f)

Article 19(1)(f) protected the right of citizens to acquire, hold and dispose of property. Because it was located in Part III, laws interfering with the right could be tested against the constitutional requirements applicable to Fundamental Rights.⁵⁶

7.3 Article 31

Article 31 originally contained safeguards against deprivation of property. Its history became central to disputes over acquisition, compensation and land reform. Successive amendments modified the constitutional position before Article 31 was ultimately repealed.¹⁶¹

Parliament subsequently enacted constitutional amendments, including the First, Fourth, Seventeenth and Twenty-Fifth Amendments, and introduced the Ninth Schedule to protect specified laws from ordinary Fundamental Rights challenges.⁷

3 The Constitution (Seventeenth Amendment) Act, 1964.

4 The Constitution (Twenty-Fifth Amendment) Act, 1971.

5 The Constitution (Forty-Fourth Amendment) Act, 1978.

7.4 Early Constitutional Conflict

In *State of Bihar v. Kameshwar Singh*, the Supreme Court considered Bihar land reform legislation and the constitutional conflict between agrarian reform and proprietary interests.¹

7.5 Property and the Basic Structure Doctrine

Kesavananda Bharati v. State of Kerala established that Parliament's power to amend the Constitution is subject to the basic structure doctrine.

Although the Right to Property itself was later removed from Part III, the constitutional struggle contributed to the development of broader principles concerning constitutional supremacy and judicial review.⁸

7.6 The Forty-Fourth Constitutional Amendment

The Constitution (Forty-Fourth Amendment) Act, 1978 removed the Right to Property from the category of Fundamental Rights. Article 19(1)(f) was omitted, Article 31 was repealed, and Article 300A was inserted, providing that no person shall be deprived of property except by authority of law.⁹

The amendment changed both the conceptual and remedial status of property. Before the amendment, property disputes could invoke the Fundamental Rights framework. After the amendment, the constitutional inquiry focuses on lawful authority, statutory procedure and compliance with other constitutional standards.

7.7 Right to Property as a Constitutional Right under Article 300A

Article 300A provides: 'No person shall be deprived of his property save by authority of law.' The provision contains two central ideas: deprivation of property and authority of law. The word 'person' is not textually confined to citizens, unlike Article 19.

Authority of law means that executive convenience or administrative instruction alone cannot ordinarily justify compulsory deprivation. There must be a valid legal basis, and the deprivation must be traceable to legislation or other legally recognised authority capable of producing the constitutional.

⁷ V.N. Shukla, *Constitution of India* (13th edn 2019) 315.

⁶ S.P. Sathe, *Judicial Activism in India* (Oxford University Press 2002) 68-72.

⁸ Constitution (Forty-Fourth Amendment) Act 1978

The existence of a statute is not necessarily the end of constitutional inquiry. A law authorising deprivation remains subject to the Constitution, including legislative competence and other applicable constitutional guarantees. Modern acquisition regimes (such as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) also provide compensation and procedural safeguards beyond the bare text of Article 300A.¹⁰

7.8 Comparative Legal Perspectives

Fundamental Rights are principally contained in Part III and have a specially protected remedial architecture. Article 32 enables direct Supreme Court remedies for enforcement of Fundamental Rights, while Article 226 gives High Courts broad writ jurisdiction. Article 300A is located in Part XII and is not itself a Fundamental Right; accordingly, Article 32 is not ordinarily available solely for an Article 300A claim. Judicial review may nevertheless be pursued under Article 226 and through statutory remedies where appropriate.¹¹

8. CASE LAW ANALYSIS & JUDICIAL TRENDS

8.1 State of Bihar v. Kameshwar Singh

Case Name & Citation: State of Bihar v. Kameshwar Singh, AIR 1952 SC 252.

Factual Matrix: The case concerned Bihar land reform legislation and illustrates the early conflict between agrarian reform and constitutional property protection. It demonstrates the role of Articles 14, 19 and 31 in challenges to legislation affecting proprietary interests.

Ratio Decidendi / Critical Commentary: The decision forms part of the historical background to the constitutional amendments designed to protect land reform measures.

8.2 R.C. Cooper v. Union of India

Case Name & Citation: R.C. Cooper v. Union of India, (1970) 1 SCC 248.

Factual Matrix: Popularly known as the Bank Nationalisation case, the decision is important for the constitutional treatment of property and the approach to Fundamental Rights. The Court examined the actual effect of State action rather than relying on rigid compartmentalisation.

⁹ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (Act 30 of 2013)

¹⁰ Constitution of India 1950, arts 32, 226, 300A.

Ratio Decidendi / Critical Commentary: The case remains important for understanding the historical strength of property-related Fundamental Rights and the evolution of rights jurisprudence.

8.3 Kesavananda Bharati v. State of Kerala

Case Name & Citation: Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

Factual Matrix: The case arose partly in the context of property and land reform and established the basic structure doctrine.

Ratio Decidendi / Critical Commentary: Its lasting significance lies in limiting Parliament's amending power and strengthening constitutional judicial review.

8.4 Jilubhai Nanbhai Khachar v. State of Gujarat

Case Name & Citation: Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596.

Factual Matrix: The decision clarified the post-Forty-Fourth Amendment status of property and the requirement that deprivation have authority of law.

Ratio Decidendi / Critical Commentary: It is frequently relied upon for the proposition that Article 300A protects against deprivation without lawful authority.

8.5 K.T. Plantation Pvt. Ltd. v. State of Karnataka

Case Name & Citation: K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1

Factual Matrix: The Court considered Article 300A in relation to acquisition and compensation and recognised that property is no longer a Fundamental Right but remains constitutionally protected.

Ratio Decidendi / Critical Commentary: The judgment rejects the proposition that the State possesses unlimited power merely because property is outside Part III.

8.6 Vidya Devi v. State of Himachal Pradesh

Case Name & Citation: Vidya Devi v. State of Himachal Pradesh, (2020) 2 SCC 569.

Factual Matrix: The Supreme Court considered State occupation of private land without following lawful acquisition procedures.

Ratio Decidendi / Critical Commentary: The decision emphasised that the State cannot take private property without authority of law and illustrates the contemporary seriousness of Article 300A protection.¹

¹¹ E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

¹² Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596.

¹³ K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1.

8.7 Recent Judicial Developments

Recent property jurisprudence has continued to emphasise legality, fairness and constitutional accountability. Article 300A cannot be reduced to a formal requirement under which any statutory label automatically validates deprivation; the rule of law remains relevant to the constitutional assessment.

9. WHY WAS THE RIGHT TO PROPERTY REMOVED FROM FUNDAMENTAL RIGHTS?

9.1 Land Reform and Abolition of Zamindari

Independent India inherited unequal landholding structures. Abolition of intermediaries, tenancy reform and redistribution were regarded as necessary to achieve social justice.

9.2 Socio-Economic Equality

The Directive Principles encouraged the State to reduce economic inequality and prevent concentration of wealth. Removing property from Part III gave policymakers greater flexibility in redistributive legislation.

9.3 Constitutional Litigation

Repeated litigation over compensation and acquisition created institutional tension between Parliament and the Supreme Court. Constitutional amendments were frequently enacted to protect reform laws.¹²

9.4 Public Interest and Development

A modern State requires land for roads, railways, dams, public institutions, housing and other infrastructure. The post-1978 framework sought to permit legitimate public development while retaining rule-of-law protection.

9.5 Balance Rather Than Abolition

Removal from Fundamental Rights did not abolish property as a legal institution. Ownership continues to be recognised and protected under ordinary law and the Constitution; the amendment changed the level and method of constitutional protection.

¹⁴ M.P. Jain, *Indian Constitutional Law* (8th edn 2018) 945

¹⁵ H.M. Seervai, *Constitutional Law of India* (4th edn 2015) vol 2, 1120.

¹⁶ D.D. Basu, *Shorter Constitution of India* (15th edn, LexisNexis 2018) 210

¹⁷ Constitution of India 1950, art 31 (repealed by the Constitution (Forty-Fourth Amendment) Act 1978).

¹⁸ *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252.

10. ARTICLE 300A AS A WEAK RIGHT: A CRITICAL EXAMINATION

Compared with a Fundamental Right, Article 300A is weaker in certain procedural and remedial respects. Property is no longer in Part III, Article 32 is not ordinarily available solely for an Article 300A violation, and Article 300A does not itself prescribe a detailed compensation formula.

At the same time, Article 300A is stronger than an ordinary statutory right because it is entrenched in the Constitution and limits governmental power. Executive action without legal authority cannot ordinarily deprive a person of property, judicial review remains available, and constitutional principles such as Article 14 may reinforce the protection.

10.1 The Importance of Article 14

Article 14 can reinforce Article 300A where acquisition or deprivation is manifestly arbitrary, discriminatory or procedurally unfair. The practical protection of property therefore cannot be measured solely by reading Article 300A in isolation¹³.

10.2 Compensation

The absence of an express compensation formula in Article 300A does not necessarily mean that compensation is constitutionally irrelevant in every situation. The governing acquisition statute may provide compensation, rehabilitation and resettlement, while judicial review may examine whether the framework effectively authorises confiscation or otherwise violates constitutional requirements¹⁴

10.3 Remedy Under Article 226

High Courts have wide powers under Article 226 to review State action. A property owner may challenge unlawful acquisition, non-compliance with statutory procedure, arbitrary possession or other defects, subject to the facts and the availability of alternative statutory remedies.¹⁵

11.2 Concerns About the Present Framework

The lower formal status of property can leave owners comparatively vulnerable, particularly where acquisition procedures are prolonged, compensation is disputed or possession is taken before legal requirements are completed.

¹⁹ M.P. Jain, *Indian Constitutional Law* (8th edn 2018) 880

²⁰ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Constitution of India 1950, art 226;

11. CRITICAL ANALYSIS

11.1 Advantages of the Present Framework

The present framework gives the State greater room to implement land reform, infrastructure and development programmes while Article 300A prevents simple executive seizure without legal authority.

11.3 Need for Transparent Acquisition

A sound acquisition system should provide clear statutory authority, adequate notice, meaningful opportunity to object, transparent valuation, timely compensation and accessible judicial review.

11.4 Social Justice and Property Rights

Property rights cannot be separated from social justice. Land may provide livelihood and security, but concentrated ownership can also perpetuate inequality. The constitutional system must therefore permit reasonable regulation and redistribution while preventing arbitrary dispossession.

11.5 Property and Human Dignity

Property can be closely connected to livelihood, shelter, family security and economic independence. Arbitrary loss of property can therefore have consequences extending beyond financial value..

11.6 Development Versus Displacement

Large infrastructure projects may produce public benefits while imposing concentrated costs on landowners and communities. Lawful acquisition should be accompanied by appropriate compensation and, where the statutory scheme provides, rehabilitation and resettlement.

11.7 Overall Critical View

The Forty-Fourth Amendment responded to the historical need to prevent property rights from obstructing social and economic reform. Nevertheless, Article 300A should not be interpreted as a constitutional licence for arbitrary State action. The best interpretation is one of balance: property is not absolute, but deprivation must be lawful, rational and constitutionally reviewable.

12. SUGGESTIONS & POLICY RECOMMENDATIONS

- Statutory clarity: Acquisition statutes should clearly specify authority, public purpose, notice, hearing, valuation and compensation requirements.
- Procedural fairness: Authorities should strictly comply with mandatory acquisition procedures before taking possession.
- Transparent valuation: Compensation assessment should use transparent and reviewable valuation methods.
- Accessible remedies: Effective and timely judicial or statutory review should be available for unlawful possession and acquisition.
- Protection against arbitrary deprivation: Courts and authorities should treat Article 300A together with Article 14 and principles of natural justice where applicable.
- Balanced development: Development policy should reconcile genuine public purposes with fair treatment of affected property owners and communities.

13. CONCLUSION

The constitutional journey of the Right to Property in India demonstrates the dynamic nature of constitutionalism. Property began as a Fundamental Right protected through Articles 19(1)(f) and 31. Land reform, redistribution, acquisition and constitutional litigation exposed tensions between private ownership and the State's social and economic objectives. Parliament ultimately responded through the Forty-Fourth Amendment, removing property from Part III and inserting Article 300A.

The present position is clear in principle: the Right to Property is no longer a Fundamental Right, but it remains a constitutional right. Article 300A prevents the State from depriving a person of property except by authority of law. Judicial decisions have given practical meaning to this guarantee by insisting upon lawful procedure and by scrutinising arbitrary or confiscatory State action. The description of Article 300A as a weak right is therefore only partially accurate. It is weaker than a Fundamental Right in formal terms, particularly because Article 32 is not ordinarily available solely for its enforcement, yet it remains stronger than an ordinary statutory entitlement because it is constitutionally entrenched. Ultimately, the Indian constitutional model does not treat property as an absolute individual entitlement, nor does it permit unrestricted State power. The appropriate balance is to allow acquisition and regulation for genuine public purposes through valid law while ensuring transparency, procedural fairness, compensation where required by law and effective judicial review.

REFERENCES / BIBLIOGRAPHY

A. Table of Cases

- 1 Bishan Das v. State of Punjab, AIR 1961 SC 1570.
- 2 Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545.
- 3 R.C. Cooper v. Union of India, (1970) 1 SCC 248.
- 4 State of Bihar v. Kameshwar Singh, AIR 1952 SC 252.
- 5 State of West Bengal v. Vishnunarayan & Associates (P) Ltd, (2002) 4 SCC 134.
- 6 Sukh Dutt Ratra v. State of Himachal Pradesh, (2022) 7 SCC 508.
- 7 Vidya Devi v. State of Himachal Pradesh, (2020) 2 SCC 569.

B. Table of Statutes & Legislations

- 1 The Constitution of India, 1950 (Arts. 14, 19, 31, 32, 226, 300A).
- 2 The Constitution (First Amendment) Act, 1951.
- 3 The Constitution (Fourth Amendment) Act, 1955.
- 4 The Constitution (Seventeenth Amendment) Act, 1964.
- 5 The Constitution (Twenty-Fifth Amendment) Act, 1971.
- 6 The Constitution (Forty-Fourth Amendment) Act, 1978.

C. Books, Treatises & Commentaries

- 1 Austin, Granville, Working a Democratic Constitution: The Indian Experience (Oxford University Press 1999).
- 2 Basu, D.D., Commentary on the Constitution of India (9th edn, LexisNexis 2017).
- 3 Basu, D.D., Shorter Constitution of India (15th edn, LexisNexis 2018).
- 4 Jain, M.P., Indian Constitutional Law (8th edn, LexisNexis 2018).

D. Academic Journals, Reports & Institutional Sources

- 1 Baxi, Upendra, 'Taking Rights Seriously in the Fifth Class: Constitutional Analysis of Property Rights' (1989) 29 Journal of the Indian Law Institute 412.
- 2 Department of Land Resources, Ministry of Rural Development, Government of India, Reports on Land Acquisition and Rehabilitation.