RIGHT TO PROPERTY: HISTORICAL CONTEXT AND CONTEMPORARY REFORMS

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ABSTRACT

This paper discusses the rights of an individual pertaining to property. It explores the changing nature of the concept of property and the transformation from a fundamental right to a mere legal or statutory right. This big change has been made by an amendment to the constitution, which repealed the provision that made it a fundamental right, and with the same amendment, one provision that made it a legal right was added. Property is one of the important things in one 's life, and it can be treated as an essential or the enjoyment of life. Therefore, the paper tries to go deep into its historical aspects and the contemporary reforms that have taken place and how the right to property stands today.

Keywords: Property, Fundamental Rights, Legal Rights, Constitution, Amendment, etc.

INTRODUCTION

The property in today's time is not only confined to land but carries a wider connotation with itself. It implies everything that a man possesses in terms of his house, valuables, shares, etc. This right is a bit different from the personal rights we have, but it is equally important for one's survival and peaceful living. According to Ahrens, property is "a material object subject to the immediate power of a person[1]." As Guru Dutt Sharma V. State of Bihar[2], observed that it is a bundle of rights, and in the case of tangible property, it would include the right of possession, the right to enjoy, the right to retain, the right to alienate, and the right to destroy. Property can be classified into corporeal and incorporeal in today's times. The former includes material objects like land, etc., while the latter includes immaterial things such as intellectual property, etc. Hence, the perception and meaning of the term property are dynamic in nature and change from time to time due to changes, advancements, and developments in the changing society. This is because, in earlier times, property was confined to land then with advancements in technology, even papers, intellectual property are included in the ambit of the word property.

The right to property was a fundamental right when the Constitution came into being; however, with the 44th amendment to the Constitution, it ceased to be a fundamental right. With the same amendment, Article 300 A[3] was inserted, which authorized the government to deprive anyone of his possession of property for the purposes of public interest. Therefore, from being a fundamental right, it evolved as a constitutional right, and that was due to the prevailing hurdles for the state to ensure peace and order and to acquire private property in the interest of the public. In the State of Haryana v. Mukesh Kumar case[4] (2011) wherein it was held that the right to property is not only a constitutional or statutory right but also a human right. This means that though it had ceased to exist as a fundamental right, it cannot be taken away by the state without any authority or procedure of law. The states cannot on their own take away anyone's property arbitrarily and without justifiable grounds. A person's right to property comes into play only when that property belongs to that person or has either the ownership, or possession, etc. These terms often seem the same; however, carries different meanings. Possession implies that the particular thing or property is in the custody or control of a person; on the other hand,

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[1] Shiva Satiya, ' Right to Property in India,' <Right to Property in India: everything important you should know about (ipleaders.in) >, accessed on 13 April 2024.
[2] AIR 1962 SCR (2) 292.
[3] INDIA CONT. art. 300A.
[4] 2011 (10) SCC 404.

ownership implies that the person has a right over that property to use, sell, destroy, etc., as per his choice. Therefore, the Right to property has different positions in India and in other countries. It has a history of transition from being a fundamental right to a constitutional right. There were two articles in the constitution of India that dealt with the right to property since its formation that is, Article 19 (f)[5] and Article 31.[6] However, its position has been changed now and is dealt with under different articles.

HISTORICAL CONTEXT OF RIGHT TO PROPERTY

The concept of property has its roots in the ancient times when the civilization was started. It is well settled that a man has in his nature the greed or the character to acquire or accommodate more and more. Individual wants are always more and more, even if a person's want is fulfilled, he will definitely have the mindset to acquire more. Therefore, individual wants are endless and unfulfilled in nature. In earlier societies, individuals used to hunt for food and shelter which was their property that time, then with the development of civilization and advancement in society, cities began to emerge and the concept of geography, assets that carry value evolved and people in the city-states became aware of the value and requirements of the assets and belongings which further made people move more towards acquiring more than others. The regulatory control over the ownership of such assets or the property of people can be traced to the Babylonian Code of Hammurabi, while in India, the code of Manu shows the prevalence of the caste system and within how these castes or hierarchy has different ways for the ownership of property. The hierarchical structure included Brahmin at the top who used to acquire their property through religious practices, i.e., with the help of their profession. While the warrior class, who stands second in the hierarchy, used to acquire the property via conquest. The remaining ones used to have access to the ownership of the property with their earnings warned in their business and work. However, women, slaves, etc. were not given the right to property as they themselves were considered to be the property of others, and hence, no right to property was given to them. So, the prevalence of the patriarchal structure and the sharp divide between the rich and poor in society in the earlier times is co-related to the right to property. It was only with the development and advancement of society that the right to property was given to all with the coming of the Constitution.[7] Therefore, the concept of property is not static but is dynamic in nature; it exists according to time and circumstances

[5] INDIA CONST. art. 19 cl. f.
[6] INDIA CONST. art. 31.
[7] Gopal Sankaranarayana, 'The Fading Right to Property in India', Vol. 44, No. 2 (2011), pp. 220-236.

and the requirements of society. As great socialist thinker Harold Gaski quotes about the property, The idea of property is not some one thing identical throughout history and incapable of alteration, but is variable like all other creations of the human mind; at any given time, it is a brief expression denoting the rights over things conferred by the law or custom of some given society at that time; but neither on this point nor on any other has the law and custom of a given time and place a claim to be stereotyped forever. A proposed reform in laws or customs is not necessarily objectionable because its adoption would imply not the adaptation of all human affairs to the existing idea of property but the adaptation of the existing ideas of property to the growth and improvement of human affairs. Even at a conceptual level, the notion of property cannot be confined to a single meaning.[8]

The chronology of the history of fundamental rights including right to property, starting from the British rule in India till the time of framing of the constitution, can traced back to the time of 1895, when the Home Rule Bill was made, which dealt with certain rights such as freedom of expression, inviolability of one's house etc. which also conferred certain rights. Then, the Commonwealth of India Bill 1925 also provided for certain rights of an individual. Then, the Nehru Committee dealt with the issues of fundamental rights and ultimately incorporated them into the Government of India Act 1935.[9] The Committee gave its reports and provided certain safeguards against expropriation of private property but didn't provide for an express right to private property to an individual. Later, the constituent assembly was formed in 1946, and a sub-committee on fundamental rights under it provided for certain recommendations. Several debates were going on in the constituent assembly regarding fundamental rights, out of which the right to property was also one of the main concerns; the members made several observations with regard to it. For instance, K M Munshi, in his draft, had 'No person shall be deprived of his life, liberty and property without due process of law.[10] Therefore, after this when the constitution came into being, it was made a fundamental right.

Changing Nature of Property

In earlier times, the term property was only confined to land. Other moveable property and the valuables and belongings of the people, which in today's times are considered as the property of individuals, were not recognized. This is because the feudal system was prominent in India

[8] Harold J Laski, 'A Grammar of Politics(1925).
[9] Government of India Act, 1935, Acts of British Parliament, 1935(India).
[10] Art. v (1) (e), Munshi's Draft, found in FIC, vol. II.

during the time of British rule, where they used to regulate the lands and rights of people. Several systems, like the Zamindari system, permanent settlements systems, etc., have been in existence during that time related to property, i.e., lands of people and their rights. However, no constitutional recognition was provided. The British Parliament later enacted legislation that expressly dealt with the aspects of land and people's rights. The legislation was known as the Land Acquisition Act. The British parliament's step resulted from problems faced by people amidst the intermediaries or arbitrators in the different systems in India, which were filled with corruption and the like practices[11]. The said act was to regulate the acquisition of land so that the rights of people could be protected as it provided that no land could be acquired arbitrarily and it would only be permissible in the interest of the public at large and that too by compensating the individuals. Therefore, from ancient times towards British rule and then from having different systems prevailing which regulated the lands of people, and lastly, the steps of the British parliament to enact legislation providing for the historical journey of property in the independence period.

After the independence, the constitution came into being on 26 January 1947, which expressly recognized it in two provisions. It was included in Part III[12] of the constitution as a Fundamental Right which have now been considered to be a part of the Basic Structure in Kesavananda Bharti v State of Kerela[13] which implies that these are fundamental in nature and that the state cannot take these rights away except for the restrictions or the exceptions provided in respective provisions. Therefore, the right to property was also included in these fundamental rights, which ensured the importance of this right and the high value it carried and further ensured that the state would not take away any individual's right to property arbitrarily.

During the framing of the constitutions, there were different views of members of the constituent assembly with regard to the right to property. For instance,

- Sir B.N Rao who was the constitutional advisor and the architect of our constitution. He referred to the laws of different countries like Europe, America, and Australia and observed that although private property was "guaranteed" and considered inviolable, it could nevertheless be seized by legal means.

[11] Gopal Sankaranarayana, 'The Fading Right to Property in India', Vol. 44, No. 2 (2011), pp. 220-236.
[12] INDIA CONT. Part III.
[13] Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225.

- Further, the Sub-Committee on Fundamental Rights issued its final report to the Constituent Assembly, acknowledging the debt to Amendments V and XIV of the American Constitution. Clause 12 of the Report included the right to property alongside life and liberty (later changed to Article 21). Clause 26 said that no property could be seized for public purposes without appropriate compensation[14].

- Sardar K.M. Panikkar proposed dissociating property from life and liberty to address problems from zamindars. This idea was supported by legal experts K.M. Munshi, B.R. Ambedkar, and C. Rajagopalachari.[15]

- Therefore, during the framing of the constitution, the constituent assembly's suggestions were considered. Hence, the fundamental right to property was created under two articles in the Constitution. Moreover, with the development and advancement and the interpretations and emergence of numerous cases and situations, the scope of the term property was wider, implying that it was now not confined to land only and included everything that a person possesses or has ownership of.

RIGHT TO PROPERTY AS A FUNDAMENTAL RIGHT:

Article 19(1) f[16] provides that every citizen has the right to acquire, hold, and dispose of property. Article 31[17] provides for the same but it applies to all the persons.

As article 24 of the draft constitution provided that – (1)No person shall be deprived of his property save by authority of law. (2)No property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined. Nothing in clause (2) of this article shall affect- (a) The provisions of any existing law, or (b)The provisions of any law which the State may hereafter make for the purpose of

[14] Shiva Rao, The Framing of India's Constitution, Vol. II, Delhi 1968, at pp. 169-198.
[15] *Id.*, at pp. 231-240.
[16] Supra note 5.
[17] Supra note 6.

imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property[18].

While Article 31[19] of the constitution of India, i.e before the amendment to it provides that- (1) No person shall be deprived of his property save by authority of law. (2) No property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given. (3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. (4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2). (5) Nothing in clause (2) shall affect— (a) The provisions of any existing law other than a law to which the provisions of clause (6) apply, or (b) The provisions of any law which the State may hereafter make— (i) for the purpose of imposing or levying any tax penalty, or (ii) for the promotion of public health or the prevention of danger to life or property, or (iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property. (6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification. Therefore, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.[20]

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[18] Draft INDIA CONST. art.24.
[19] Supra note. 6.
[20] Supra note 4

Therefore, Article 19(1) f[21] dealt with the private property of the people who are residing in the union of India, i.e., the citizens, while Article 31 dealt not only with the citizens but also with the noncitizens or persons. One is narrower and the other one is wider as it applies to all persons. The right to property as covered under two articles is not the same as it would have been provided in one article only if it was to have the same meaning, but they are different and cover different fields and hence have to be read and interpreted differently. Article 19(1)f provides fundamental freedom to the citizens for the enjoyment of their property rights and restrains the state from unlawfully or arbitrarily interfering with or acquiring the property of a person. But a law may be made to take away such rights for noncitizens. Article 31(1) deals with deprivation of property in general. While (2) deals with the acquisition or taking possession, i.e., the different modes of deprivation, and includes all the forms of taking away of rights to property. [22] However, Article 31 has to be construed harmoniously with Article 19(1)f.[23] These articles are interpreted by the courts in different judgments, and several observations have been made regarding the relationship between the two. One is providing for protection, and the other talks about taking the right away. Hence, they have to be interpreted harmoniously so that neither one nor the other can be replaced or overridden by the other, but they have to be interpreted in such a way that both can be given effect as per the cases and circumstances of the case. In one case, the court observed that if the property itself is taken lawfully under Article 31, then the right to hold or dispose of it perishes with it, and Article 19(1)f cannot be invoked[24]. This doesn't mean that any one property can be taken away without any authority of law and without any reasonable or justifiable reason. Hence, Article 31 doesn't expressly or by necessary implications remove the law from the limitations under Article 19(1)f. This means that a law depriving a person of their property would only be bad if made without any justifiable cause. The law would not be bad if made under reasonable restrictions in the interest of the general public or for the protection of the interest of scheduled tribes.[25] The main difference between the two Articles is that Article 19(1)f is provided under the fundamental freedoms while Article 31(1) is a sort of corollary that after the property has been acquired, it cannot be taken away except by the authority of law. The former confers a right to people to enjoy their property, while the latter provides for a restraint on the part of the state not to interfere with this right without the authority of law, and that too under reasonable

[21] Supra Note. 5.
[22] Dwarkadas Shrinivas v. Sholapur (1954) SCR 674.
[23] State of M.P v. Ranojirao Shinde (1968) SC 1053.
[24] Collector of Malabar v. Erimmal Ebrahim Hajee (1957) SCR 970.
[25] Swami Motor Transport(P) Ltd. V. Sri Sankaraswamigal Mutt (1963) SCR 282.

restrictions. The clauses within article 31 are different as (1) provides that deprivation of property must be by the authority of law and no such compensation is mentioned, while (2) necessitates the payment of compensation in case of deprivation effected by acquisition or possession. [26] Though articles are different, the word property used in both is the same or carries the same meaning. Hence, in summary, Article 19(1)f provides that every citizen has the right to acquire, hold, and dispose of the property subject to reasonable restriction under the public interest or interests of STs. Article 31 (1) provides that no person can be deprived of his property except through the authority of law. Article 31(1) provided that the government can only acquire property for public purposes, and compensation has to be given to the deprived person where compensation would be equal to the maket value,however the government wasn't able to provide the compensation as per the market value. The exceptions to right to property are Article 31 A[27] which provides that law for acquisition of large estate will not be invalid on grounds of violation of Article 14[28] and Article 19(1)f. this was added by 1st amendment. The proviso provided that personal cultivation land under ceiling limits has to be compensated by the market value. Also, Article 31 [29]B was added by the 1st Amendment and, along with Schedule 9th of the Constitution, was added. It provided that any law that violates part III will be immune from judicial review if it is under the 9th schedule. Article 31 C was added by the 25th amendment, which provided for the saving of laws giving effect to DPSPs, i.e., Article 39 b and c, and later with the 42nd amendment, it was made to cover all DPSPs. However, this was challenged and held unconstitutional in Minerva Mills V Union of India.[30] With the same amendment, Article 31 D[31] was added, which provided that any law in the context of checking anti-national activities would not be invalid on grounds of Article 14 and Article 19, but this was repealed by the 43rd Amendment.

The 4th amendment was made in 1955, which amended Article 31(2)[32], which provided that compensation given cannot be questioned in any court of law. Later, Article 31(2) was amended by the 25th Amendment, which replaced the word compensation by amount. The said

[26] Charanjit Lal Chowdhury v. Union of India (1950) SCC 833.
[27] INDIA CONT. art.31 A.
[28] INDIA CONT. art. 14.
[29] INDIA CONT. art. 31 B.
[30] 1981 SCR (1) 206.
[31] INDIA CONT. art. 31 D.
[32] INDIA CONT. art. 31(2).

amendment was held to be valid by the Supreme Court and it was observed that the amount must not be so low so that the acquisition becomes confiscation

The importance of the right to property can be ascertained by comparing it with the recognition of such in other countries as even the socialist countries where the state has dominant control over the resources of the economy have also recognized its importance and have provided in some way or other the right to property to its citizens in their respective constitutions. For instance, Article 57 of the USSR Constitution of 1977 states: 'Citizens of the USSR have the right to protection by the courts against encroachments on their honor and reputation, life and health, and personal freedom. The constitution also provides that such enjoyment of their rights must not be detrimental to the larger interests of the society. Article 13 of this new Constitution states that citizens' lawful private property is inviolable. The State, in accordance with law protects the rights of citizens to private property and to its inheritance. The State may, in the public interest and in accordance with law, expropriate or requisition private property for its use and shall make compensation for the private property expropriated or requisitioned. Also, in the American Constitution, the Fifth Amendment provides inter alia that no person shall be deprived of life, liberty, or property without due process of law. In Irish constitution as well, it is provided under article 43. [33]Therefore, the recognition of the right to property in other countries shows the significance of this right particularly in socialist countries and hence this right can be said to be indispensable, however, certain reasonable restrictions or power is given to the state where it can take away this right or can acquire the property of persons is provided in all the constitutions which recognize such right. As in any society, to work well, rights cannot be absolute because, at times, situations exist that necessitate the states to intervene in the rights of individuals. However, this is only an exception and not the general rule. There are numerous cases where the court has dealt with this right; for instance, In the case titled Vidya Devi v. State of Himachal Pradesh, Vidhya Devi was the owner of about 3.34 hectares of land in the northern state of Himachal Pradesh. The state of Himachal Pradesh is the respondent in this case, forcibly acquired the land in about 1967-68 for the construction of a road without following the due process of law. Being illiterate, Vidya Devi was unaware of her rights to her property. She became cognizant of her right to claim compensation in 2010 when her neighboring landowner did the same with respect to the acquisition of his land from the state of Himachal Pradesh. She filed a civil writ petition before the high court of Himachal Pradesh,

[33] A.K Ganguly, 'Right to Property: Its Evolution and Constitutional Development in India', Journal of Indian Law Institute, Vol. 8 (2006).

claiming compensation with respect to her right to property as per the provisions of the Land Acquisition Act, 1894. The high court dismissed the petition in the year 1013 on the grounds that the matter involved the disputed question of law and facts essential for determining the starting point of limitation and also granted liberty to file a civil suit before the appropriate authority. She approached to the apex court regarding the same matter. The apex court observed that The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution.' The Supreme Court further held that the state could not take the plea of adverse possession since it had been in continuous possession of the property for more than 42 years and that the 'State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.' After considering the facts and circumstances of the case, the Supreme Court directed the state of Himachal Pradesh to pay the compensation along with statutory benefits, including solatium and interest, within eight weeks of the decision. The case pertains to the time period when the right to property was a fundamental right.[34] Another case famously referred as Bank Nationalization case, originally titled R.C Cooper v. Union of India, in this case the vice-president of India i.e. V.V Giri, promulgated in 1969 the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance in the exercise of his powers under article 123(1)[35] of the constitution of India. The said ordinance had the effect of nationalizing 14 private sector banks with a deposit base of INR 50 Crore, thereby vesting the ownership of the private banks with the government. The provisions in the ordinance provided that every undertaking, i.e., 14 banks, would stand transferred and would vest in the corresponding new bank, which would be owned by the government. This included the transfer of all assets, rights, powers, authorities, and privileges and all movable and immovable properties of the old bank, which would be vested in the corresponding new bank. For this purpose, the central government was supposed to pay compensation to the banks. However, if achieving consensus was not possible, the central government would refer the matter to the tribunal to determine the compensation payable in

[34] International Bar Association, Private Property is a Human Right, Supreme Court of India Rules, < Private property is a human right, Supreme Court of India rules | International Bar Association (ibanet.org)>, accessed on 29 April, 2024.
[35] INDIA CONT. art. 123(1).

marketable government securities, which would mature after 10 years. Thereafter, in the year, petitions challenging the competence of the president to promulgate the ordinance were filed in the Supreme Court. The lead petitioner was the director of the Central Bank of India, and he held shares in the Central Bank of India, which was to be nationalized, and also in the Bank of Baroda and the Union Bank of India. Before the petitions could be heard by the Supreme Court, a bill to enact the provisions relating to the acquisition and transfer of undertakings of the existing banks was introduced in parliament and was enacted as the Banking Companies (acquisition and Transfer of Undertakings) Act, 1969. The act repealed the ordinance. Therefore, the court observed that the fundamental rights of people can't be overlooked, and any action by the state that violates the fundamental rights is required to be prohibited. The court upheld and focused on the effect test rather than the subject test, which implies that the court is not concerned with the object the act purports to achieve or aim. However, the court will look into the effect it has on citizens. The court observed the said act to be violative as it is against the provisions of Article 31, as the said provisions provide for compensation to the owner in case of acquisition of property. [36]

CONTEMPORARY REFORMS: RIGHT TO PROPERTY AS A LEGAL RIGHT

Since independence, there have been more significant changes to the right to property than any other right. The changes have caused greater troubles and increased litigation between the government and the citizens. On the way of making reforms to the Indian economy and reconstructing it which involved redistribution of property in order to make the way through the discriminatory and arbitrary systems of zamindari, ryotwari systems, etc, prevailing in the society, the Indian economy underwent numerous reforms, one of which comes under the ambit of property right o people. The articles dealing with the right to property were made to change, i.e., from fundamental rights to statutory rights.

In the year 1977, the 44th amendment to the Indian constitution was made which abolished both these rights and at the same time Article 300 A[37] was inserted, which provided that no person shall be deprived of his property except by the authority of law. This gave power to the state to take or acquire the property of people on the grounds of public purpose or some social cause. The new article incorporated doesn't expressly provide for the limitations on the exercise of

[36] Amisha Deshmukh, Payal Tharani, Kavita Verma, Sourav Dixit, Swasti Chaturvedi, Case study on R.C Cooper v. Union of India, 1970.
[37] Supra Note. 3.

the power as was provided in previous articles, and they are considered to be inherent or implied conditions in the present article. For instance, one observation was made by one of the judges in State of Bihar v Maharajadhiraja Sir Kamesh war Singh of Darbhanga[38] that the exercise of the power to acquire the property compulsorily is conditional on the existence of public purpose that beings so this condition is not an express provision of Article 31 which exists on its own in contents of the power itself and hence is an assumption on which the clause itself proceeds. The other condition might be that in the exercise of the power to acquire property compulsorily, provisions must be made for compensation to the expropriated owner. In addition to this, the power given is only confined to the power to acquire and not to confiscate and also only for public purposes. The Indian constitution is a written constitution. This implies that the provisions have to be understood in the way as is expressly provided. However, this doesn't mean that in the absence of such express words, the state can exercise its power arbitrarily or without any authority. The question now pertains to the aspect of compensation involved under the laws as the act providing for such acquisition cannot provide for compensation in every case of deprivation, which was expressly provided under Article 31. So the rule of interpretation has to be based on the maxim Unius est exclusion alterius, which means mentioning one thing is the exclusion of the other, and the express rule of similar nature is one provision of the statute excludes a similar reading in an alternative provision.[39] Therefore, this 44th amendment has created numerous problems for the people, particularly the weaker and underprivileged sections, as with the advancement of the country, more and more investments and developmental projects are undertaken by the country, which requires land, which further deprives the citizens of their land holdings. Getting compensation for that might not satisfy them. Moreover, earlier, they had the right to property as a fundamental right and had a greater scope to go against the state for the enforcement of their fundamental right; however, now, they have limited legal recourse.

In the year 2000, the National Commission to Review the Workings of the Constitution was set up. The commission observed that with respect to the right to property, there is a need to provide displaced persons with lands of similar quality or otherwise adequately rehabilitate them. Consequently, it recommended that Article 300-A be re-framed in the following manner:

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[38] (1952) 1 SCR.
[39] Amar Pal Singh, Ashish Kumar Srivastava, 'Right to Property Under Indian Constitution': Property Laws (2nd ed.).

1 . Deprivation or acquisition of property shall be by authority of law and only for a public purpose.

2. There shall be no arbitrary deprivation or acquisition of property, Provided that no deprivation or acquisition of agricultural, forest, and non-urban homestead land belonging to or customarily used by the Scheduled Castes and the Scheduled Tribes shall take place except by authority of law which provides for suitable rehabilitation scheme before taking possession of such land.[40]

DOCTRINE OF EMINENT DOMAIN

The phrase, eminent domain simply speaking means the overall right of the State to acquire property within its jurisdiction. The doctrine is said to have been derived from the Latin term, '*dominium eminens'*, meaning the Supreme Lordship. Doctrinally speaking the Concept was developed by *Hugo Grotius*, in 1625 in his celebrated work '*De jure belli et pacis*'. According this doctrine the state has the legal capacity to acquire Private property of Individuals for public purposes. In the present context the Doctrine of Eminent Domain raises the classic debate of powers of State versus Individual Rights. Here comes the DID (Development Induced Displacement) which means, the forcing of communities even out of their homes, often from their home lands for the purpose of economic development, which is viewed as a Human Right violation in the international level. Three requirements for exercise of this power are:

- (i)A law authorizing the state to take property;
- (ii)Property acquisition should be for public use;
- (iii)Adequate compensation should be paid.[41]

CONCLUSION

Therefore, the right to property has been one of the important rights since the evolution of civilization. Even under British colonial rule, such rights existed. India as a country has faced the harshness and realities of Britishers, particularly concerning their rights and, more specifically, their rights pertaining to their property, as the sole purpose of Britishness was to

[40] NCRWC Report, Chapter 3 Para 3.16.2.
[41] Supra Note.37.

exploit India and its resources and earn the most out of it. Slowly and gradually, rights came to be recognized and received significance from British times to the making of the constitution, Making it a fundamental right in two articles created a lot of troubles for the state in its functioning and hence it was made a mere legal right and state was now able to work more effectively and efficiently, this is because in today's society governed by rapid advancement, technologies, and growth, globalization, etc., requires the state to take major steps towards for making it a developed country and also for the overall growth of the economy.