

# Private Property as a Human Right

September 25, 2020

The recent verdict of the Supreme Court on right to private property in a democratic polity governed by the rule of law is a landmark one. It summarizes that the state being a welfare state cannot arrogate to itself a status beyond what is provided by the Constitution.

**In news:** The Supreme Court bench in a judgement has held that the right to property is a 'human right'.

**Placing it in syllabus:** Law and policy

**Static dimensions:**

1. Original position of Private property in the Constitution

**Current dimensions:**

1. SC ruling and its arguments
2. Importance of the judgement

## Content:

### Original position of Private property in the Constitution:

- The Constitution of India 1949 contained **Article 19(1)(f)** as well as **Article 31**, which provided right of private ownership of property, and freedom to acquire, enjoy and dispose it off by lawful means.
- This freedom was limited only by 'reasonable restrictions' regarding exigencies of public welfare, or protection of the interests of a Scheduled Tribe.
- **Article 31(1)** provided that a person could be deprived

of his property only by the authority of law, that is, private property couldn't be taken away by an executive order.

- **Article 31(2)** stated that the state could take over someone's private property only for public purposes, and only after payment of a compensation as provided for in the law.
- Due to these provisions, measures of agrarian reforms, acquisition of land for public infrastructure often ended up in complex situations as people approached the Supreme Court.
- Article 31A, 31B, 31C were introduced to nullify the effects of certain judgements.
- The **44th Constitutional amendment, 1978 completely removed Article 19(1)(f) and Article 31 from the Part III** (Fundamental Rights).
- Instead, it introduced **Article 300A in Part XII**, which states that *no person shall be deprived of his property except in accordance with law*.
- Therefore, the right to property ceased to be a fundamental right, and can be regulated with the parliamentary law.

### SC ruling and its arguments:

- Referring to an earlier verdict the bench held that the **right to property is considered not only a constitutional or statutory right, but also a human right**.
- The state cannot take possession of private property without following due procedure and authority of law.
- The **state cannot trespass into the private property of a citizen** and then claim ownership of the land in the name of 'adverse possession' (**Adverse possession-** A plea which allows a trespasser, that is, a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years).

- This **act of grabbing private land and then claiming it as its own makes the state an encroacher.**
- Forcibly dispossessing citizens of their private property, without following the due process of law, would be to violate a human right, as also the constitutional right under **Article 300A** of the Constitution.

### Importance of the judgement:

- In 1967, the Himachal Pradesh government had forcibly taken over a widow's four acres at Hamirpur district to build a road.
- Taking advantage of the woman's illiteracy, the state had failed to pay her a compensation for 52 years.
- It had not followed necessary proceedings while acquisition of land.
- In the judgement the **court directed the state government to pay the compensation of ₹1crore to the widow in eight weeks with all statutory benefits.**
- The court held that when the government forcibly took over her land, 'right to private property was still a fundamental right' under Article 31 of the Constitution.
- The SC exercised its extraordinary jurisdiction under **Articles 136 and 142** of the Constitution.

#### **Article 136:**

The Supreme Court, in its discretion, may grant **special leave** to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

#### **Article 142:**

The Supreme court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for **doing complete justice** in any cause or matter pending before it. It vests sweeping powers in the Supreme Court and is usually used

in cases involving human rights and environmental protection.

**Mould your thought:**

1. Right to property though no longer a fundamental right, is definitely qualified as a human right. Analyse.

**Approach to the answer:**

- Constitutional position of Right to property
- Recent SC ruling
- Conclusion in 2-3 sentences