

Right to Property: Diluted or Destroyed?

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ABSTRACT:

What this essay presents is two opposing sets of arguments that have dominated this discourse of the right to property. On one hand, it is deemed as an inviolable right that should be protected at all costs. However, the state must reserve the right to intervene and acquire the right for the large public benefit that is sought to be achieved in this utilitarian interference. Hence, the big debate is regarding the struggle for power and consequent supremacy between the legislature and the judiciary. Why this is important is because it helps delineate the relationship between the legislature and the judiciary and shows how the judiciary has succumbed to political pressures and has ended up significantly reducing the value of a Part III right. This is sought to be achieved through an array of case laws and a string of amendments which portray how the legislature became a supervening force in disrupting the regime of the right to property from its status as a fundamental right to an ordinary legal right. The goal of this essay, in the result it seeks to achieve, goes into the larger constitutional question of how far the legislature can go in altering these so called 'inalienable rights'.

Keywords - “right to property in India”, “44th Amendment Act, 1978”, “land acquisition law by the state” and “adequacy of compensation of property”.

I. INTRODUCTION

The right to property in India has been completely destroyed under the garb of diluting it to facilitate state action. This essay seeks to make an attempt to analyze this right in India in order to establish how a fundamental right can be demoted to such an extent that it essentially loses its value. It also shows how there is a misbalance in this doctrine of separation of powers in India as the legislature, through enactments, has successfully precluded extensive judicial scrutiny on the matter. The right to property, as a bundle of rights, has been a controversial issue in India because of the amount of state regulations on their ownership and use.¹ This paper traces the developments in lieu of this right in starting out as a fundamental right, being diluted through legislative enactments and being ultimately rendered non-existent.

This paper aims to describe the dilution of the right to property from a fundamental right to a legal right in the twentieth century. This essay will delve into issues of compensation and how the state bypassed case-law to set out its superiority in the matter. In the process, the clash between the legislature and the judiciary becomes apparent, and how this has made the issue of separation of powers a blurry area. It then looks at the issue of land acquisition in this context and how the recent legislation has made the state the ultimate arbiter of property rights in the country.

¹ Arvind P. Datar, *Commentary on the Constitution of India* (2nd edition, Lexis Nexis Butterworths – Wadhwa Nagpur, (2010)

II. MATERIALS AND METHODS

Sir Ivor Jennings described our Constitution as “rigid” despite its relatively flexible setup. He felt so because matters under the domain of the legislature were already mentioned in the Constitution.² The legislature has attempted to undermine judicial power in matters of property amendments.

Before progressing any further, it is pivotal to look at the concept of ‘eminent domain’ (this becomes important in land acquisition laws). It refers to the “power of the sovereign to take property for public use without the owner’s consent”.^{3 4} This created a clash between an unlimited power of the sovereign (and later, the state) on one hand and the basic inalienable right to property on the other. Sir B.N. Rau, a constitutional adviser to the Constituent Assembly, also noted that the taking away of property rights by ‘due process’ of law would essentially render the very right meaningless.⁵ It basically aims to balance the economic loss of the landowner on one hand and the economic gain of the state on the other, in this compulsory acquisition of property wherein the state becomes the new owner of the property.⁶

Austin looked at this wrangle for power ever since the inception of the Constitution and felt that the institutionalization of state power saw it becoming an inalienable right despite the perpetuation of power on acquisition of property.⁷ There was thus an underlying confusion as to the meaning of ‘due process of law’. These laws were slowly taken away despite state laws to balance the rights of the state and the citizen.⁸

When we compare the constitutions of the U.S.A. and India, it shall be seen how the legislature misused the following three elements, namely – (1) legal authorization for acquiring property, (2) for a public benefit and (3) with the payment of just compensation.⁹

While analyzing the meaning, scope and application of the term ‘compensation’, state power on property amendments shall be examined to show its collateral impact on the citizens. The argument of the state has been that it has been involved in plenty of litigation over issues of compensation even though it has acquired property and given compensation with the best interests of the public in mind. It thus felt that the right to property ought to be diluted, to discourage baseless petitions under the veneer of violation of Part III rights.

² Durga Das Basu, *Introduction to the Constitution of India* 22 Lexis Nexis (2015)

³ Nichols, *Eminent Domain* (Vol. 1) - pp. 2, 20-21

⁴ N.A. Subramanian, *Freedom of Religion*, Indian Law Institute 323-350

⁵ Gopal Sankaranarayanan, *The Fading Right to Property in India*, Law and Politics in Africa, 44 Asia and Latin America 220-236 (2011)

⁶ PK Tripathi, *Some Insights into Fundamental Rights*, University of Bombay Press 224 (1972)

, Namita Wahi, *The Fundamental Right to Property in the Indian Constitution*, Center for Policy Research 17 (2015)

⁷ Michel Rosenfeld and Andras Sajó, *Oxford Handbook on Comparative Constitutional Law*, Oxford University Press 258 (2012)

⁸ Jaivir Singh, *(Un)Constituting Property: The Destruction of the ‘Right to Property’ in India* [Working Paper Series, Center for Law and Governance, Jawaharlal Nehru University – CSLG/WP/05, August 2004 (2012 Reprint)]

⁹ Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rests Upon the Legislative Power of the States of the American Union*, 1 Little, Brown and Co. (1868)

However, this paper seeks to counter this view by arguing that it is the duty of the state to provide the requisite compensation when it acquires property, which it has not in a number of cases. It is intrinsic to our fundamental rights, and the legislature, in a single blow, destroyed this right.

The first case regarding the issue of compensation was that of *Bela Banerjee v. State of West Bengal*¹⁰. This case was with respect to Section 8 of the West Bengal Land Development and Planning Act of 1948. This Act dealt with the settlement rights of immigrants into West Bengal due to communal disturbances in East Bengal. It sanctioned land acquisition and development for public benefit. The government was the final authority on the public nature of the reason for acquiring the land. Moreover, a limitation of the compensation granted as to not exceed the market value of the land on an anterior date. The court in this case held the particular provision to be constitutionally *ultra vires* and thereby declared it void. The court made it abundantly clear that the public purpose of the acquisition must be judged objectively. The date provided did not take into account the market value of the land at the time of acquisition and was therefore arbitrary and void of Article 31(2) of the Constitution. The term ‘compensation’ under Article 31(2) was interpreted to mean ‘full compensation’ at the time of acquisition. The court also opined that though Entry No. 42 of List III of the Seventh Schedule of the Constitution lays down the principles as to the amount to be appropriated to those displaced, the compensation must be a just equivalent of what the property owner has been deprived of. It called for reimbursement at the current market value and not according to a previous date set in stone. It stated that, “fixing a date without reference to the actual value of the property was arbitrary and noted that mere just compensation was not a necessity for full indemnification of expropriated land. Such a value of an anterior date for acquisition violated fundamental rights.”¹¹ ¹² It further asserted its influence by holding that it had the power to adjudicate on whether the principles took into account all elements to ascertain the true value of the property or not. In other words, if such matters were neglected or excluded, it was a justiciable claim.

Thus, an aggrieved citizen could approach the courts on three tenets of Article 31 – a legislative enactment, public purpose and compensation.¹³

However, only a year later, the legislature enacted the Constitution (Fourth Amendment) Act, 1955. The reason given for this enactment was that the government could not afford to pay the entire compensation due to a paucity of resources. It has been described as an amendment “negated the judicial widening of its scope since the commencement of the Constitution, beyond what the framers of the Constitution had intended its purpose to

¹⁰ AIR 1954 SC 170

¹¹ Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rests Upon the Legislative Power of the States of the American Union*, 1 Little, Brown and Co. (1868)

¹² Durga Das Basu, *Commentary on the Constitution of India*, 9 Lexis Nexis (2014-16)

¹³ Namita Wahi, *The Fundamental Right to Property in the Indian Constitution*, Center for Policy Research 22 (2015)

be”.¹⁴ This is because it essentially made the issue of the quantum and principles of compensation a non-justiciable issue.

The Supreme Court made the following observation –

*“After the Fourth Amendment, the word ‘compensation’ could not mean full and money equivalent, for if it did, the law would have remained unchanged and the Fourth Amendment would have failed its purpose. By excluding a challenge on the ground that the compensation provided by law is not adequate, the Fourth Amendment removed the restriction on legislative power in the sense that for the law to be valid, it was no longer obligatory to provide for the payment of full and fair money equivalent.”*¹⁵

First and foremost, the claim for compensation would stand only if the state formally took title or possession of the property. Other cases of mere deprivation were to be adjudged from the authority of law acquiring that land.¹⁶ What this amendment did was that it precluded petitions which questioned the principles of compensation as being such that serve no public utility or were illusory in nature. Thus, the constitutionality of the statute could not be challenged as such, but the principles of compensation could still be adjudged. As long as the principles or the manner of giving compensation was mentioned and was not *ultra vires* the constitution, the court could not adjudicate on this issue. In addition, it made changes to Article 31(2A) in a way that many categories of landowners lost the status of ‘estates’ and in the process, lost the consequent protection under Articles 14, 19(1)(f) and 31.¹⁷

Many were left asking whether compensation should be looked at from the vantage point of reasonableness, or by seeing if it ensured a fair amount for the loss/damage suffered in the process.¹⁸ The meaning of compensation was becoming a fuzzy sphere and it was unclear as to which organ of government was the final authority on the subject. The all-important constitutional question that this brought forth was whether the judiciary could intervene and invalidate laws that went against the principles of free and fair compensation.

The ‘just equivalent’ standard was also adopted in the *Vajravelu* case¹⁹. In the *Bank Nationalization* case²⁰, the court clarified the meaning of Article 31(2) to be a full monetary equivalent of the property taken and that Article 31(2) must be read subject to Article 19(1)(f). They even held the principles in the case as violative of Article 14 of the Constitution. Using terms like ‘shocking’, ‘arbitrary’ and ‘illusory’, the Supreme Court of

¹⁴ Gopal Sankaranarayanan, *The Fading Right to Property in India*, Law and Politics in Africa, 44 Asia and Latin America 220-236 (2011)

¹⁵ *Bhuri Nath v. State of J&K*, AIR 1997 SC 1711

¹⁶ Namita Wahi, *The Fundamental Right to Property in the Indian Constitution*, Center for Policy Research 23 (2015)

¹⁷ Namita Wahi, *The Fundamental Right to Property in the Indian Constitution*, Center for Policy Research 13 (2015)

¹⁸ K.B. Nambyar, *Fourth Amendment Whether Retrospective – State of Madras v. Namasivaya Mudaliar And Others*, (Cases and Comments, Indian Law Institute)

¹⁹ AIR 1965 SC 1017

²⁰ AIR 1970 SC 564

India held that the intelligible differentia could not be linked with the object. Thus, it reserved the right to intervene when the principles were not related to adequacy, but were in fact illusory in nature.²¹ The same rationale was applied in the case of *Union of India v. Metal Corporation*²².

The only blip in between this strengthened spirit of judicial review was in the case of *State of Gujarat v. Shantilal Mangaldas*²³. C.J. Hidayatullah 'admitted his mistake' in the past with regards to interpretation of the issue in the case of which overruled the aforementioned decisions. This case is considered as an exception to how the court viewed the issue, as the judiciary succumbed to the will of the legislature and precluded questioning the adequacy by holding that the principles of compensation were not impugned and hence this could not be adjudicated by a court of law.^{24 25}

But the claim that this also violated Article 31(2) of the Constitution could not stand post the 1955 Amendment Act as the ground of 'just equivalent' became non-justiciable.

A series of other amendments were passed hereinafter. The Seventeenth (Amendment) Act, 1964 was also a noteworthy amendment. This is because it added a proviso to Article 31A(1) wherein the state could acquire land above the land ceilings at less than the market value. It also changed the scope of 'estate' and added laws to the Ninth Schedule which became exempt from judicial scrutiny.²⁶ In 1972, the 25th (Amendment) Act was passed. This made it clear that in land acquisition disputes, the court could intervene only if the principles were illusory and/or irrelevant to the object and offended constitutional provisions in the process.^{27 28} It replaced the word 'compensation' with 'amount' in the repealed Article 31(2). It added Article 31-C wherein laws could protect state policy, thereby securing Part IV rights. Moreover, no law could be impugned because it does not bring the policy into effect. This amendment sought to reinforce expropriations under the eminent domain doctrine even without compensation in the backdrop of decisions by the apex court on nationalization of private enterprises. In essence, Article 14 and 19 were made subordinate to Part IV socialist state policies.²⁹

Though the highlight of the judgment in the case of *Golaknath I.C. v. State of Punjab*³⁰ was that it displayed a particularly weak attitude of the court. Chief Justice Subba Rao upheld the 1955 Amendment Act despite holding that 'law' included amendments to the Constitution. A 6:5 majority held that the right to property, then

²¹ Namita Wahi, *The Fundamental Right to Property in the Indian Constitution*, Center for Policy Research 26 (2015)

²² AIR 1967 SC 637

²³ AIR 1969 SC 634

²⁴ Gopal Sankaranarayanan, *The Fading Right to Property in India*, Law and Politics in Africa, 44 Asia and Latin America 220-236 (2011)

²⁵ Alice Jacob and Rajeev Dhavan, *The Dissolution Case: Politics at the Bar of the Supreme Court*, 19 Journal of the Indian Law Institute 355 (1977)

²⁶ Namita Wahi, *The Fundamental Right to Property in the Indian Constitution*, Center for Policy Research 13 (2015)

²⁷ *Lilly Kurian v. Lewina* AIR 1979 SC 52 [¶ 37, 40, 52-53]

²⁸ *St. Xavier's v. State of Gujarat* AIR 1974 SC 1389

²⁹ M.D. Mitra, *Evolution of Property Rights in India*, Springer Nature Singapore Pvt. Ltd. 41-42 (2017)

³⁰ AIR 1967 SC 1643

a fundamental right, held a 'transcendental position' and ruled that amendments could not abridge these rights. After this, the Indira Gandhi led government passed the 24th (Amendment) Act, 1971 which made fundamental rights amendable to give effect to Directive Principles of State Policy. This amendment sought to overrule the court ruling and restore parliamentary sovereignty. By diluting the right to property, it was also feared that other Part III rights would soon come in danger of being wiped out.³¹

This, however, was overruled by the landmark case of *Kesavananda Bharati v. State of Kerala*³², a thirteen-judge bench of the apex court. In a 7:6 decision, it reiterated this position that relevant compensation-determining principles could not be held to be 'irrelevant'. It can be seen as a saving rights wherein the court reaffirmed its status as a custodian of rights and held that constitutional amendments that violated the basic structure of the Constitution would have no legal force. Thus, the principles cannot be arbitrary or illusory and must have some link or nexus to the principles of acquisition.

III. DATA ANALYSIS

In 1978, the ongoing clash between the executive and the judiciary became evident with the right to property failing to retain its status as a fundamental right and even lost its backing as a legal statutory right under Article 300A of the Constitution. It deleted Article 19(1)(f) and 31 from the Part-III rights. The 44th (Amendment) Act, 1978 came to its rescue to the extent that it provided protection against executive action. Initiated by the Janata government in power, the implications of the objects and reasons of this amendment were that a property suit could not be subject to writ jurisdiction of the Supreme Court but only as an ordinary suit in the High Courts. The amendment procedure for constitutional laws requires a two-thirds majority as opposed to a simple majority is required for ordinary laws.³³ Since it was no longer a fundamental right, acquisition without the necessity of reciprocal compensation was allowed.

However, this amendment had two exceptions. The first was the addition of Article 30(1A) to the Constitution, pertaining to educational institutions run by minorities. In such cases, the state would endeavor to ensure that the amount of compensation would not impede on the establishment and administering of such institutions. The second was in relation to estates under personal cultivation and within the ceiling limit. In such cases, the state must compensate the landowner for any building or structure acquired from that property.³⁴ The landmark case of *Minerva Mills v. Union of India*³⁵ cleared the air by holding that all constitutional amendments were justiciable, and that fundamental rights came above Directive Principles. It thus declared property rights to be

³¹ Nireekshak, *Right to Property, above All?*, 6 Economic and Political Weekly 1804 (August 21, 1971)

³² AIR 1973 SC 1461

³³ Jatindra Ranjan De, *Role of the Supreme Court in the Process of the Amendments in the Indian Constitution* 25 Indian Journal of Political Science, Indian Political Science Association (1964)

³⁴ M.L. Singhal, *Right to Property and Compensation Under the Indian Constitution*, IJTR 3, (April-June 1995)

³⁵ 1980 3 SCC 625

an executive matter, but sanctioned judicial scrutiny under the 'basic structure' doctrine. This also showed that to settle this contestation, how the court paid much more attention to property rights and less about personal rights in that period.³⁶

The *Basanti Bai case*³⁷ provided some respite from this situation, wherein a division bench of the Bombay High Court held that despite the current status of property rights, the state is obliged to pay compensation to the expropriated owner. A special leave was preferred before the apex court in this case³⁸, which conveniently upheld the principles (of the law being fair and reasonable) but also declared that the impugned law was valid.

The case of *Jilubhai Nambhai Khachar v. State of Gujarat*³⁹ was the most important case in the nineties as it categorically held that the right to property was not a fundamental right. It observed that the court should not be used to bring in a situation wherein compensation becomes a concomitant factor in property acquisition.⁴⁰ The apex court that the 44th (Amendment) Act, 1978 had virtually obliterated the Part III rights pertaining to property. It also held that procedures of unfairness when looking at Article 21 were inapplicable to situations of acquiring property or depriving them of it in giving effect to the Directive Principles of State Policy.

In 1990, the apex court, in the case of *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*⁴¹ observed that the content of Article 31 had been cut down to such an extent that even a law concerning acquisition which does not have protection from Article 31-C would not be a non-justiciable issue provided it was not illusory or unreal. In the process, the right of full indemnification was lost.

This question of adequacy was discussed at length in the *Elizabeth Samuel Aaron case*⁴² where the court held that the Parliament intended to do away with the concept of adequacy of compensation but wanted to preserve the right to be indemnified. Article 300A did not provide for the fixing of amount or principles. It sought to shield laws made by Parliament from previous decisions of the apex court that went into questioning the adequacy or relevancy of these principles. It deciphered the intent saying that all the constitutional amendments through the passage of time would not have been passed but for this end-result.

Thus, the effect of the amendment was that those deprived of property could no longer complain to courts on the ground of adequacy, as the legislature had no constitutional obligation to pay 'adequate' compensation.

³⁶ M.D. Mitra, *Evolution of Property Rights in India*, Springer Nature Singapore Pvt. Ltd. 46 (2017)

³⁷ AIR 1984 Bom 366

³⁸ AIR 1986 SC 1466

³⁹ AIR 1995 SC 142

⁴⁰ M.D. Mitra, *Evolution of Property Rights in India*, Springer Nature Singapore Pvt. Ltd. 47 (2017)

⁴¹ AIR 1990 SC 123

⁴² AIR 1991 Ker. 162 (FB)

Only if such deprivation takes place without authority of law as per Article 300A is the person entitled to judicial relief. In essence, the usage of ‘public purpose’ as envisaged in the constitution, has been eliminated.⁴³

Cases such as *K.T. Plantation Pvt. Ltd. v. State of Karnataka*⁴⁴ in 2011 held that Article 300A imposed an obligation to pay compensation to affected persons, and called for fair, just and reasonable laws⁴⁵ while enacting laws pertaining to this Article. But the fact remains that the right as a fundamental right was significantly stronger and this was lost in the process.

The current status of the Ninth Schedule is also highly controversial in the Constitution as it essentially deprives persons of judicial remedies if laws fall under this schedule. In *Waman Rao v. Union of India*⁴⁶, the Supreme Court upheld the validity of the First Amendment, 1951 which introduced the source of the Ninth Schedule by bringing in Article 31-B and did not question those laws. But it is a source of concern that the right to property is no longer a fundamental right and thus irrelevant to this schedule. This reflected a trend in Parliament to keep such legislations related to land reforms away from judicial intervention.⁴⁷ However, this right is no longer covered by the ‘basic structure’ doctrine and we have reached a stage where its value must be assessed.

IV. OUTCOME

Supreme Court } Game of Property { Legislature

In this public-private divide over who should exercise authority over property, this paper argues that it is very hard to draw a line as to when the judiciary should intervene in legislative actions and vice versa. In the context of property, it is clear that this horizontal separation of powers does not always yield good results. There is a constant, lurking fear that “judiciary may become a hindrance to socio-economic reform and that it may subservient to the legislature.”⁴⁸

Misuse of parliamentary power by the legislature remains another important source of concern. This concern is heightened by the fact that political parties pass amendments in Parliament to override the effect of judicial decisions that run contrary to their interests or their ideology. The 1955 Amendment was controversial in the

⁴³ M.L. Singhal, *Right to Property and Compensation Under the Indian Constitution*, IJTR 6 (April-June 1995)

⁴⁴ AIR 2011 SC 3430 [3463]

⁴⁵ *Delhi Airtel Services Pvt. Ltd. v. State of Uttar Pradesh*, AIR 2012 SC 573

⁴⁶ 1981 2 SCC 362

⁴⁷ M.D. Mitra, *Evolution of Property Rights in India*, Springer Nature Singapore Pvt. Ltd. 48 (2017)

⁴⁸ Phiroze K. Irani, *The Courts and the Legislature in India*, 14 International and Comparative Law Quarterly, Cambridge University Press (1965)

sense that it allowed court intervention when the compensation principles were not enough to bridge the financial loss caused. The contradictory position of courts was seen in this decade. For instance, in *State of Bombay v. Chamarbaugwalla*⁴⁹, the court, despite saying that it would not look into the intent of the legislature, did in fact end up doing the very same thing by questioning the principles of compensation in being illusory or inadequate.

There has been an argument that the judiciary ought not to intervene in social reform issues. However, such restrictions would essentially take away the concept of judicial review.⁵⁰ But courts cannot be precluded from taking measures to curb such transgressions through a blanket ban. Ordinarily, both organs should operate within their sphere of power. This tussle has made the very concept of separation of powers a fuzzy region in the Indian context. Hence, one can see an implicit reluctance among courts to decide matters related to constitutional rights in relation to property.

In the context of land acquisition however, the 2013 Act can be seen as a major reform in property acquisition cases. It enhances compensation in cases of forcible acquisition and provides for resettlement measures in cases of displacement. It further reduces the reach of governmental authorities by narrowing the scope of 'public purpose' to specified acts only, which shall also be subject to a Social Impact Assessment (SIA). Lastly, it seeks to bring exempted laws within the domain of this Act.⁵¹

In the context of a state with thriving communist roots such as Kerala, there has been strict enforcement of land acquisition. With a high population density and large amounts of ancestral property, there have reasonable rates of compensation provided for those who lose property. This was sought to be accompanied by employment packages, provision of infrastructural amenities, and the provision of the socio-economic status of those who have been deprived of their property.⁵² Moreover, there have been judicial strides to achieve fair acquisition as well. Recently, a single bench of the Kerala High Court entertained a petition⁵³ on land acquisition and held that the state cannot negotiate the purchase of land for public purposes, that is not advantageous to the landowner. Thus, the unfettered state power in pursuance of their 'eminent domain' has been limited. Thus, in a state of ideologically divergent political strongholds, state power remains more open to challenge, as opposed to states

⁴⁹ AIR 1957 SC 731, 744

⁵⁰ Jatindra Ranjan De, *Role of the Supreme Court in the Process of the Amendments in the Indian Constitution*, 25 Indian Journal of Political Science, Indian Political Science Association (1964)

⁵¹ Namita Wahi, *The Fundamental Right to Property in the Indian Constitution*, Center for Policy Research 31-34 (2015)

⁵² State Policy for Compensation and Transparency in Land, Acquisition, G.O. (Ms) No.485/2015/RD, Revenue Department, Government of Kerala -

<https://kerala.gov.in/documents/10180/46696/Kerala%20State%20Policy%20for%20Compensation%20and%20Transparency%20in%20Land%20Acquisition>

⁵³ (WP-C No. 19611/2015)

where the central government has an undisputed presence. It is in those states that checking state power becomes hard.

V. RECOMMENDATIONS

Property rights are one of the most important source of rights that determine the sustenance of many groups and communities across the country. Tracing the history of property rights from independence, one can see that there has been an attempt by the legislature to enforce its position as the final arbiter on property rights and the issue of compensation. In the process, there has been a clear dilution of judicial powers with respect to the same. This exhibits a clear deviation from the principle of checks and balances as the legislature is now the supreme authority and leaves a very narrow scope for intervention by the courts.

In the 1950's, the Supreme Court made it clear that the courts would intervene if the legislature did not devise compensation principles that were commensurate with the loss or deprivation of property suffered by the aggrieved parties. In the process, protecting the rights of those property holders were held over the implementation of state welfare schemes. This was criticized as promoting rights of deprived holders at the expense of state action as protection of rights was, in all cases, seen as the utmost priority. This made them extremely cautious in assessing such claims and made it evident that "over-enthusiastic legislators are as dangerous as over-zealous judges".⁵⁴ Judges can thus learn from the past and the legislature can promote democratic socialism while retaining the spirit of the Constitution.⁵⁵ Another nebulous area is that of 'public purpose' and whether or not it forms a part of the basic structure doctrine or not.

These amendments irreversibly altered, and in a sense degraded, the constitutional scheme that was envisaged by our founding fathers. Land acquisition measures have not been able to fill the void of arbitrary acquisitions by the authorities. The legislature has sought to subvert the constitutional set up and curb the areas of functioning of the judiciary by exercising its supreme power to legislate. Citizens have lost their basic rights to fight against land acquisition or subsequent compensation by a recent court order in 2010⁵⁶. In this case, the petitioner argued for the reinstatement of the fundamental right to property and the invalidation of the 44th (Amendment) Act, 1978. The court dismissed the writ petition on the ground that the suit was in the nature of a public interest litigation and did not affect the petitioner personally.

It is thus incumbent upon the state to strive to restore the value of this right and make it as tangible for the citizenry of this country as possible.

⁵⁴ Jatindra Ranjan De, *Role of the Supreme Court in the Process of the Amendments in the Indian Constitution*, 25 Indian Journal of Political Science, Indian Political Science Association (1964)

⁵⁵ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

⁵⁶ Sanjay Kumar Agarwal v. Union of India, Writ Petition (c)No. 464/2007, disposed of on October 18, 2010

VI. CONCLUSION

We can thus see the clear position via the aforementioned clashes: the legislature clearly has the upper hand as far as laws *vis a vis* private property is concerned. The judiciary tried to regain its power post the Fourth (Amendment) Act, 1955 but to no avail. In my opinion, the court has failed to use its power in an empowering way, which has consequently put the state in a huge strain. It had a role not to be secondary to the legislature and intervene when the legislature acted arbitrarily or opposed to the spirit of the Constitution. In interpreting legislations, the court cannot be solely bound by a literary interpretation which has the effect of sometimes legislatively circumscribing its power. Rather, what is required is a wider approach in looking at the social-economic context while analyzing the fairness of the compensation given. Thus, the decision of judges to choose from a range of interpretations to implement social policies must be respected in our constitutional scheme, and that they do not discharge a mere mechanical responsibility of dispute resolution.⁵⁷

This issue can be discussed in a conception of liberty as well. On paper, there are a number of constitutional safeguards to protect this right from compulsory acquisition. However, the use of the ‘authority of law’ has in fact been rather arbitrarily exercised by the legislature, which has clearly superseded judicial scrutiny in the process.⁵⁸

Dr. Durga Das Basu observed that “he would be happy if the Supreme Court could devise some means to nullify any Legislative attempt to deprive the expropriated owner of any compensation at all”.⁵⁹

⁵⁷ S.P. Sathe, *Right to Private Property: Some Issues*, 5 Economic and Political Weekly 743-744 (May 2, 1970)

⁵⁸ A.M. Siddiqi, *Right to Property*, 13 The Indian Journal of Political Science 98-99 (July-September and October-December 1952)

⁵⁹ M.L. Singhal, *Right to Property and Compensation Under the Indian Constitution*, IJTR 6 (April-June 1995)