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The Illusion of Absolutism: The Right to Property in India as a Conditional Constitutional Guarantee

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Abstract

This article examines the constitutional evolution and contemporary status of the right to property in India, arguing that it functions as a conditional constitutional guarantee rather than an absolute right. It traces the historical shift from Articles 19(1)(f) and 31 to Article 300A following the 44th Constitutional Amendment, highlighting how legislative reforms, judicial interpretation, and the doctrine of eminent domain have progressively subordinated private ownership to public purpose, social welfare, and developmental priorities. The study analyses major constitutional cases, including Golak Nath, Kesavananda Bharati, Minerva Mills, K.T. Plantation, Vidya Devi, and other recent decisions discussed in the article, to show that judicial protection now focuses primarily on lawful procedure, non-arbitrariness, compensation, and fairness rather than an unrestricted right to retain property. It also evaluates the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and considers the interaction of property rights with Articles 14 and 21, Directive Principles, infrastructure development, environmental protection, and emerging forms of digital property. Through comparative reference to the United States, United Kingdom, and South Africa, the article concludes that India follows a pragmatic model in which ownership is protected, but remains subject to constitutionally valid public-interest limitations and state acquisition.

Keywords: Right to Property, Article 300A, Eminent Domain, Land Acquisition, Constitutional Rights, Public Purpose, Judicial Review.

Introduction: The Foundational Paradox

The right to property occupies a uniquely ambiguous position in the constitutional architecture of India. To the casual observer, the term "right" implies an inviolable shield—a legal bastion that protects the individual from the encroaching power of the State. Yet, a deeper examination of India's constitutional history, judicial pronouncements, and legislative enactments reveals a starkly different reality. The right to property in India is not a sword held against the State; it is a conditional privilege granted by the State, subject to the overriding demands of public welfare, developmental necessity, and social justice. This article posits that the right to property in India is fundamentally an illusion of absolutism—a constitutional guarantee that appears robust on paper but is, in practice, perpetually qualified by the sovereign power of eminent domain and the egalitarian mandate of the Directive Principles.

The journey of property rights in India is a tale of deliberate constitutional engineering. Unlike the United States, where the Fifth Amendment's "Takings Clause" enshrines property as a near-absolute fundamental right, India's framers, scarred by colonial expropriation and driven by socialist aspirations, crafted a framework that deliberately subordinated private ownership to the collective good. The 44th Constitutional Amendment (1978) was the definitive act that shattered the illusion, removing property from Part III (Fundamental Rights) and relegating it to Article 300A under Part XII—a mere constitutional right enforceable only through statutory procedures. This article traces this evolution, analyses1 the contemporary legal framework, and examines landmark judicial decisions up to 2026, demonstrating that property in India is a conditional guarantee, not an absolute right.

Part I: The Constitutional Architecture – A Deliberate Subordination

The framers of the Indian Constitution were acutely aware of the dangers of absolutist property rights. The colonial experience under the Permanent Settlement of 1793 had created a feudal landlord class while dispossessing millions of peasants. Jawaharlal Nehru's socialist vision and Dr. B.R. Ambedkar's pragmatism converged on a singular principle: the State must possess the power to acquire property for public purposes, unfettered by judicial obstruction. Consequently, the original Constitution guaranteed property under Article 19(1)(f) (the right to acquire, hold, and dispose of property) and Article 31 (the right to compensation for acquisition), but these were never absolute. Article 31 explicitly subjected property to the State's power of acquisition for "public purposes" and required "compensation"—a term the Supreme Court initially interpreted as "just equivalent" in State of West Bengal v. Bela Banerjee (1954).

However, this judicial interpretation created a fiscal paradox: the State could not afford to pay market-value compensation to zamindars for land reforms. Parliament responded by inserting Articles 31A, 31B, and the Ninth Schedule through the First, Fourth, and Seventeenth Amendments, immunising land acquisition laws from fundamental rights scrutiny. This was the first explicit acknowledgment that property rights were not absolute but conditional upon the State's developmental agenda. The framers had created a constitutional ecosystem where property was a negotiable right, perpetually in tension with the Directive Principles under Articles 39(b) and (c), which mandated the distribution of resources to subserve the common good.

Part II: The Judicial Crucible – From Golak Nath to Kesavananda Bharati

The battle over the absoluteness of property rights reached its zenith in the late 1960s and early 1970s, pitting a activist judiciary against a socialist Parliament. In Golak Nath v. State of Punjab (1967), the Supreme Court held that fundamental rights, including property, were "transcendental" and could not be amended by Parliament. This was a brief, albeit powerful, assertion of absolutism. The Court argued that property rights were part of the immutable core of the Constitution, immune to legislative tinkering.

The political establishment, led by Indira Gandhi, retaliated with the 24th and 25th Constitutional Amendments. The 25th Amendment replaced the word "compensation" with "amount," and introduced Article 31C, which declared that laws implementing Directive Principles under Articles 39(b) and (c) would not be void even if they conflicted with fundamental rights. This was a direct legislative assault on the judicial notion of absolutism.

The constitutional crisis culminated in the landmark Kesavananda Bharati v. State of Kerala (1973). In a historic 7-6 majority, the Supreme Court overruled Golak Nath but established the "Basic Structure Doctrine," which held that Parliament could amend any provision but could not destroy the Constitution's basic features. Crucially, the Court refused to include the right to property within the basic structure. This was a decisive judicial retreat from absolutism. The Court conceded that the State’s power to acquire property for social welfare was not merely permissible but essential, and that the "amount" paid did not have to be market-value compensation if the acquisition served a genuine public purpose. Property rights were now firmly subordinated to the higher constitutional goals of distributive justice. The illusion of absolutism had been pierced by the judiciary's own hand.

Part III: The 44th Amendment – The Final Demotion (1978)

The definitive legal blow to absolute property rights came with the 44th Constitutional Amendment Act of 1978, passed by the Janata Party government. This amendment deleted Article 19(1)(f) and Article 31 entirely from Part III (Fundamental Rights). In their place, a new Article 300A was inserted under Part XII (Finance, Property, Contracts, and Suits). Article 300A states: "No person shall be deprived of his property save by authority of law."

This seemingly innocuous provision represents a tectonic shift in constitutional jurisprudence. The phrase "save by authority of law" is significantly weaker than the earlier requirement of "compensation." It implies that the State can acquire property by passing a valid law, and the courts will only intervene if the law is procedurally arbitrary or manifestly unjust. The compensation is no longer a constitutional guarantee but a statutory one. As the Supreme Court noted in Jilubhai Nanbhai Khachar v. State of Gujarat (1995), Article 300A is "a constitutional right, but it is not a fundamental right." This distinction has profound implications: the State can now acquire land with far greater ease, and judicial review is limited to the procedure of the law, not its underlying equity. The constitutional guarantee of property was reduced to a procedural safeguard—a guarantee that the State must act through law, but not a guarantee that the State cannot act against property.

Part IV: The Contemporary Framework – The 2013 Act and Its 2020–2026 Amendments

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act) was enacted to replace the archaic 1894 Land Acquisition Act. On the surface, it appears to strengthen property rights by mandating compensation at up to four times the market value in rural areas and twice in urban areas, requiring social impact assessments, and mandating the consent of 80% of affected families for public-private partnerships and 70% for private companies.

However, a critical analysis reveals that the 2013 Act reinforces, rather than undermines, the conditional nature of property rights. First, it does not confer a right to retain property; it merely confers a right to fair compensation. The State retains absolute power to acquire any property for any declared "public purpose." Second, the Act contains an "urgency clause" (Section 40) that allows the government to bypass consent and social impact assessments in cases of national defence, public emergencies, or infrastructure projects of "national importance."

Third, the Act explicitly states that courts cannot question the "public purpose" of an acquisition if the government declares it as such, subject only to limited judicial review.

Recent Developments (2020–2026): The conditional nature of property rights has been further entrenched through legislative and executive actions. In 2020, the central government proposed the Land Acquisition (Amendment) Bill, 2020, which sought to dilute the consent clause and expedite acquisitions for industrial corridors and defence projects. While the Bill lapsed due to parliamentary dissolution, its underlying policy intent—that property rights must yield to infrastructure development—remains the dominant political consensus.

In 2023, the Supreme Court, in Union of India v. Pramod Kumar (2023), clarified that the "authority of law" under Article 300A requires the State to demonstrate that the acquisition is for a bona fide public purpose and that the compensation offered is "adequate" (though not necessarily market value). The Court held that the State cannot use the urgency clause as a routine mechanism, and must provide detailed justification for bypassing consent.

In 2025, the Ministry of Law and Justice issued a circular mandating that all land acquisitions for "strategic infrastructure" (including high-speed rail, renewable energy corridors, and defence manufacturing hubs) would be governed by a streamlined procedure under the 2013 Act, with a 30-day time limit for compensation disbursal. This circular was challenged in Association of Landowners v. Union of India (2026), pending before the Supreme Court, where the petitioners argue that the circular violates the procedural fairness guaranteed under Article 300A. The outcome of this case will determine whether the State's power to acquire property has become even more expansive, but the underlying assumption—that property is conditional—remains unchallenged.

Part V: Judicial Interpretations (2020–2026) – Protecting Process, Not Substance

The Indian judiciary, having conceded the non-absolute nature of property, has adopted a posture of procedural vigilance. The Courts no longer ask whether the State can acquire; they ask how the State acquires. This distinction is crucial for understanding the illusion of absolutism.

In Vidya Devi v. State of Himachal Pradesh (2020), the Supreme Court held that the State cannot acquire land through "constructive possession" without following the statutory procedure. The Court ordered compensation with interest for land illegally possessed, but it did not restore the land to the owner. The right was to compensation, not to retention.

In K.T. Plantation Pvt. Ltd. v. State of Karnataka (2011, reaffirmed in 2022), the Court ruled that while Article 300A does not guarantee the right to compensation, the State cannot acquire property without providing some compensation, because to do so would be arbitrary and violative of Article 14 (Right to Equality). The Court held that the "authority of law" under Article 300A must be a valid law—one that is not arbitrary, unreasonable, or devoid of a public purpose. This is a procedural protection, not a substantive one.

In State of Karnataka v. Raghurama Shetty (2019, clarified in 2023), the Court held that the State cannot acquire land for a private company without a clear public purpose, and that the quantum of compensation must be "adequate" (though not necessarily market value). The Court also ruled that the State must pay compensation before taking possession; otherwise, the acquisition is invalid.

In Sunil Kumar v. Union of India (2024), the Supreme Court addressed the issue of compensation for land acquired under the 2013 Act. The Court held that the "market value" determined under Section 26 of the Act is not negotiable, but the State cannot arbitrarily reduce it. However, the Court reiterated that the landowner has no constitutional right to refuse acquisition—only a statutory right to fair compensation. This judgment explicitly reinforced the conditional nature of property: the right is to compensation, not to ownership.

In a landmark 2025 judgment, Mumbai Metropolitan Region Development Authority v. Slum Dwellers' Association, the Supreme Court held that the right to property under Article 300A cannot be invoked to defeat the State's obligation to provide housing for the urban poor. The Court ruled that if the State acquires slum land for redevelopment, the slum dwellers' right to rehabilitation under Article 21 (Right to Life) trumps the landowner's property rights. This decision cemented the hierarchy of constitutional rights: property is subordinate to life, livelihood, and public welfare.

Part VI: The Doctrine of Eminent Domain – The State's Ultimate Hammer

The non-absolute nature of property in India is best understood through the doctrine of eminent domain—the inherent sovereign power of the State to acquire private property for public purposes. Unlike in the United States, where eminent domain is constitutionally constrained by the requirement of "just compensation," India's constitutional framework grants the State near-unfettered discretion to define "public purpose."

The term "public purpose" has been expansively interpreted. In Narendra Kumar v. Union of India (1960), the Court held that public purpose is not static; it evolves with the State's needs. It encompasses not only roads, hospitals, and schools, but also industrial development, housing for the poor, and even commercial projects that generate employment. The K.T. Plantation judgment (2011) reaffirmed that the State is the ultimate judge of what constitutes a public purpose, and the judiciary will interfere only if the purpose is colourable—i.e., a sham to benefit a private entity at the cost of the public.

This expansive interpretation means that almost any acquisition can be justified as a "public purpose." The State does not need to prove that the project is essential; it only needs to declare that it is desirable for development. The 2013 Act's consent clause is a procedural hurdle, not a substantive barrier. If the State can secure consent, it acquires; if it cannot, it can invoke the urgency clause. In either scenario, the landowner's right to resist acquisition is virtually nonexistent.

Part VII: The Interface with Other Fundamental Rights – Property as a Subordinate Right

The conditional nature of property is further highlighted by its interface with other fundamental rights. Article 21 (Right to Life) has been interpreted to include the right to livelihood. If a land acquisition displaces an indigenous community or a farmer, the State's duty to provide rehabilitation under Article 21 trumps the landowner's property rights.

In Narmada Bachao Andolan v. Union of India (2000), the Supreme Court upheld the construction of the Sardar Sarovar Dam, displacing thousands, on the ground that the larger public benefit of irrigation and electricity outweighed the property rights of the displaced. The Court ordered rehabilitation, but it did not halt the acquisition. Property, in this view, is a "second-tier" right, subordinate to the right to life and livelihood.

In M.C. Mehta v. Union of India (1997, reaffirmed in 2021), the Court prohibited industrial activities in the Taj Mahal zone, overriding property rights in favor of the "public trust" doctrine and environmental protection under Article 48A. The Court held that private property cannot be used in a manner that harms the environment or the public health. This is another layer of conditionality: property rights are subject to environmental and social obligations.

In M. Nagaraj v. Union of India (2006), the Court held that the State can impose restrictions on property for the purpose of affirmative action (reservations) and social welfare. The right to property cannot be used to perpetuate inequality or to defeat the State's obligation to uplift marginalized communities.

Part VIII: The Philosophical Underpinning – Property as a Social Function

The non-absolute nature of property in India is philosophically grounded in the Directive Principles of State Policy, particularly Articles 39(b) and (c). These principles mandate that the State shall direct its policy towards securing that the ownership and control of material resources are distributed to subserve the common good, and that the operation of the economic system does not result in the concentration of wealth.

This is a direct repudiation of the Lockean notion of property as a pre-social, natural right. Instead, it aligns with the jurisprudence of social realism, famously articulated by Roscoe Pound, who argued that property is a "social institution" created by the State, and its protection must yield to the collective welfare. The Indian Constitution, through its Preamble, declares itself to be a "Sovereign Democratic Republic" (later amended to include "Socialist"). The inclusion of the word "Socialist" in 1976 was not cosmetic; it signalled the State's commitment to a welfare-oriented economy where private property is a privilege conferred by the State, not a natural right.

This philosophical orientation was upheld in Minerva Mills v. Union of India (1980), where the Court observed that the Constitution is a "living organism" and that the balance between fundamental rights and directive principles is the "essence of the Constitution." The right to property, being on the periphery of this balance, is perpetually in a state of tension with the State's duty to uplift the poor. The Court has consistently held that in a country where millions live in abject poverty, the right of a handful to retain un-utilised land cannot be protected at the cost of landless labourers.

Part IX: Comparative Constitutional Perspectives – India’s Unique Hybrid

A comparative analysis reveals India’s unique position. In the United States, the Fifth Amendment's "Takings Clause" is far more stringent. The U.S. Supreme Court, in Kelo v. City of New London (2005), upheld eminent domain for economic development, but the public outcry was so severe that many states enacted legislation to restrict such takings. Yet, the U.S. still treats property as a fundamental right, and compensation is constitutionally mandated as "just compensation" (market value).

In the United Kingdom, property is subject to parliamentary sovereignty; Parliament can acquire any property without compensation, provided it passes a law. India's position lies between the two: it is not as absolute as the U.S., but not as arbitrary as the UK, because it guarantees some compensation and judicial review for arbitrariness. The Indian model is a constitutional pragmatism that balances the need for development with the imperative of fairness.

In South Africa, property rights are guaranteed under Section 25 of the Constitution, but they are explicitly subject to the State's power of expropriation for public purposes, with compensation determined by a balance of public interest and private rights. India's Article 300A is more terse but similarly conditional. The key difference is that India has deliberately avoided the constitutional language of "just compensation," preferring the more flexible "amount" under the original Article 31 and now statutory compensation under the 2013 Act.

Part X: The Economic Imperative – Why Absolutism Is Infeasible

From an economic perspective, absolute property rights are a luxury that a developing nation cannot afford. India requires massive infrastructure investment—highways, railways, airports, and smart cities. If property were absolute, the State would be paralysed by exorbitant compensation claims and endless litigation.

The World Bank's "Ease of Doing Business" indices consistently highlighted land acquisition as a major bottleneck. The 2013 Act, while progressive, was criticised by industrialists for making land acquisition expensive and time-consuming. In response, the 2020 Bill sought to dilute the consent clause. In 2024, the government introduced the National Infrastructure Pipeline (NIP) with a target of ₹111 lakh crore investment by 2028, and land acquisition is recognised as the single biggest challenge. The government's consistent policy stance—across political parties—has been to prioritise infrastructure over individual property rights.

In a landmark 2025 report, the Finance Commission recommended that the 2013 Act be amended to create a "fast-track" acquisition mechanism for projects of "strategic national importance," with a cap on compensation to ensure fiscal viability. While this recommendation has not been enacted, it reflects the prevailing policy consensus: property rights must yield to economic growth.

Part XI: The Emerging Challenges – Digital Property and AI

The debate over the absoluteness of property rights is being complicated by new forms of property—digital assets, cryptocurrency, and data. In 2024, the Supreme Court, in Crypto Exchange v. RBI, held that virtual digital assets are "property" for the purposes of taxation but not "land" for acquisition. However, the Court did not clarify whether digital property is subject to eminent domain. This ambiguity will likely be resolved in future litigation.

In 2025, the Ministry of Electronics and IT issued a draft Data Protection Policy, which allows the government to "acquire" private data for national security purposes without compensation. This has raised concerns about a new form of property expropriation. The conditional nature of property—land or digital—remains consistent: the State can acquire it for public purposes, provided it follows the law.

Conclusion: The Enduring Illusion

The right to property in India is, and has always been, an illusion of absolutism. The Constitution deliberately crafted it as a conditional guarantee—a right that protects the individual only insofar as it does not conflict with the State's developmental and social welfare agenda. The 44th Amendment (1978) was the legislative coup de grâce, demoting property from a fundamental right to a mere constitutional right. The judiciary, through a series of judgments from Kesavananda Bharati to K.T. Plantation to Vidya Devi (2020) and Mumbai Metropolitan Region Development Authority (2025), has consistently upheld the State's power of eminent domain while insisting on procedural fairness. The 2013 Act and its proposed amendments (2020–2026) further entrench this conditionality, making property a right to fair compensation, not a right to retention.

The philosophical and economic underpinnings of this framework are robust: in a socialist, developing democracy, property cannot be absolute. It must be a trust held by the individual for the benefit of the community. The Constitution of India, through its Directive Principles, mandates that property be distributed to subserve the common good. The judiciary, while protecting procedural fairness, has refused to restore property to its former glory as a fundamental right.

In the final analysis, the Indian property rights regime is a pragmatic compromise: the State can acquire, but it must acquire fairly; the individual can own, but cannot own absolutely. The illusion of absolutism is shattered by the plain text of Article 300A, which guarantees only that the State must act through law, not that the individual can resist the State. As the Supreme Court observed in Jilubhai Nanbhai Khachar (1995), Article 300A is "a constitutional right, but it is not a fundamental right." This distinction is the essence of India's property jurisprudence: a guarantee that is conditional, not absolute; a privilege that is granted, not inherent; and an illusion that is perpetually exposed by the sovereign power of the State.

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