

Polity Class 25

13th October, 2023 at 9:00 AM

DILUTION OF RIGHT TO PROPERTY (09:17 AM)

- The 1st CAA added Articles 31A and 31B as exceptions to Right to Property.
- Subsequent amendments were made to include numerous laws under Schedule IX to give way to several specialist reforms.
- 25th CAA replaced the term 'Compensation' with the term 'Amount' to reduce the responsibility of the state to pay an adequate amount in case of property acquisition.
- It also added Article 31C which placed the DPSP under 39(B) and 39(C) higher in priority when compared to Rights under Articles 14, 19 and 31.
- This further enabled the state to acquire an individual's property in the name of socialist reforms.
- Even though the 42nd CAA empowered the state to place all the DPSPs over Articles 14, 19 and 31, it was struck down in the Minerva Mills case.
- The final blow to Right to Property arrived via the 44th CAA that removed Article 19(1)(f) and 31 and included the right to property as a constitutional right under Article 300A.
- Present status of Right to Property
- At present it is applicable to citizens as well as non-citizens.
- It is no longer a fundamental right and one can not approach the Supreme Court directly for its enforcement.
- Laws made can not be challenged on the grounds of violating Article 300A as it no longer enjoy the protection.
- The initial protection provided under 31(2) in the form of the 'Doctrine of Eminent Domain' has been taken away.

FUNDAMENTAL DUTIES (FD) (09:38 AM)

- FDs were not part of the original constitution.
- Citizens' Fundamental Duties were introduced to the Constitution by the 42nd Amendment in 1976, on the suggestions of the Swaran Singh Committee.
- Article 51A of Part IV A of the Indian Constitution constitutes the Fundamental Duties.
- Significance of FD
- They remind the citizens of their duties while they enjoy their rights.
- They serve as a warning to those elements that are a threat to India's unity and integrity.

- They can act as a source of inspiration to citizens to make them active participants in achieving national goals.
- The court has stated that while judging the constitutionality of a law they may take into consideration if it gives effect to a fundamental duty.
- Criticism
- Some of them are vague and subjective in nature and therefore open to multiple interpretations.
- They are non-enforceable in nature and therefore considered to be lofty ideals that serve no purpose other than being ornamental.
- According to some experts, the list of fundamental duties is not comprehensive in nature and is missing some of the essential duties such as casting votes and paying taxes.

UNION EXECUTIVE (10:11 AM)

- The Union executive consists of the President, Council of Ministers, Vice President and Attorney General.
- Art 52- There shall be a President of India.
- The expression 'shall be' denotes that there can be a vacancy in this position as it would reflect a state of Anarchy in the country.
- The absence of the President would mean that the Union Govt can not carry out its functions in the executive domain.
- The president must have a deputy in the form of a vice president who shall fill the office in case of vacancy.
- The Parliament enacted the President Succession Act 1969 to decide the line of succession to the president's office in case the vice president is not able to discharge the duties.
- It also means that the outgoing President should continue to hold the office till the new president is elected and the elections must be completed before the end of the term for the sitting President.
- In case of death, resignation and removal the election of the President should be completed within a period of six months.
- In a general sense, executive power means the power to execute the laws but according to the Supreme Court, it is the residue of what is left after taking out the judicial and the legislative powers of the state.
- These executive powers shall be exercised either directly by the President or through the officers subordinate to him but since the President is the nominal head of the executive, in normal circumstances he is supposed to exercise these powers on the advice of the Council of Ministers through either the council of Ministers or the civil servants.

RELATIONSHIP BETWEEN THE PRESIDENT AND COM (10:45 AM)

- **Art 74(1): There shall be a CoM with the PM at the head to aid and advise the President in the exercise of his functions.**
- **The President shall be bound by the advice of CoM.**
- **Even though India adopted a parliamentary form of democracy in which the President is merely a nominal head, certain doubts were raised over whether the President is bound by the aid and advice of the CoM or not.**
- **For e.g., The President raised doubts that the Indian President can not be compared to the British Crown since he is elected to the position and he possess certain discretionary powers. Therefore, the President can exercise his discretion in certain manners.**
- **The court in Shamsher Singh vs State of Punjab held that India has adopted a Parliamentary form of democracy based on the convention of the British Model and therefore the position of the Indian President is similar to that of the monarch in the UK and he is bound by the aid and the advice of the CoM.**
- **The court relied upon the constitutional assembly debates and the provision of Article 75(3) to arrive at this conclusion.**
- **According to Article 75(3), the CoM is collectively responsible to the House of the People and since power and responsibility go hand in hand with each other, there is no doubt that the President is the nominal head of the executive and the real powers are vested in the CoM.**
- **In order to settle this debate the Parliament amended the text of Art 74(1) according to which the advice of the CoM has been explicitly made binding on the President.**
- **The 44th CAA added a safety valve to this provision according to which the President may require the CoM to reconsider their advice but if the CoM issue the same or different advice on the same issue the President is bound to act as per such advice.**
- **For E.g. In 1998, the President exercised his discretionary powers and asked the CoM to reconsider the advice of imposing President's Rule in Bihar.**

DISCRETIONARY POWERS OF THE PRESIDENT (11:34 AM)

- **As per the proviso Article 74(1), the President may ask for the reconsideration of advice tendered by the CoM.**
- **As per Proviso 211, the President may exercise his suspension veto power with respect to legislation passed by the President.**
- **For e.g. Dr Kalam asked the Parliament to reconsider the office of profit bill in 2006.**
- **As per Article 78(b), the President may ask the PM to provide him with information related to affairs of the Union and other important legislative matters.**
- **As per Article 78(c), the President may ask for the reconsideration of a decision that has been taken by the minister without the consideration of the rest of the CoM.**

- In case of a hung president, it is the President's discretion to decide who shall be invited first to form the government.
- In the case of a minority government, the President may exercise his discretionary powers with respect to the advice given by CoM on the early dissolution of the Lok Sabha.
- In case of the death of a sitting PM, it is the President who shall decide who should be given the first opportunity to assume the position of PM.
- In case a minority government refuses to resign after failing the floor test in the look sabha the president may exercise his discretionary powers and dismiss the government.

TOPIC OF THE NEXT CLASS- PRESIDENT (TO CONTINUE)