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## Paper - I Constitutional & Administrative Law

**Right to Property &  
Relationship Between Directive Principles  
and Fundamental Rights**

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## RIGHT TO PROPERTY

### Introduction

- The **Fundamental Right to Property** enjoys the unique distinction of not only being the second most contentious provision in the drafting of the Constitution, but also the most amended provision, **and the only fundamental right to be ultimately abolished in 1978.**
- Originally, the Constitution of India contained adequate provisions to **protect private property** and the **Supreme Court interpreted these Constitutional provisions liberally in the favour of the protection to the institution of private property.**
- Gradually, the policy makers under the impact of the **Socialist philosophy** started devaluing the institution of private property almost from the very day the Constitution came into force.
- The Central and State Governments have enacted a number legislation to regulate property rights.

### Concept of Eminent Domain

- **Hugo Grotius** coined the term 'eminent domain' which implies that state take over the private property of the individuals for public purposes.
- Eminent Domain emerges from the basic concept that all property belongs to the State. It has inherent sovereign domain.
- **Eminent Domain** is regarded as an inherent right of the State. It is an essential incident of State's sovereignty, to take private property for public use.
- By exercising the power of **Eminent Domain**, the State may acquire the private property of the citizen, for the benefit of the general public, irrespective of the wishes of the owner.
- However, the property shall not be taken for public use without just compensation.
- **The Doctrine of Eminent Domain is mainly emphasized on two Latin maxims:**
  1. **Salus populi est suprema lex**, which means the welfare of the common people is the paramount law.
  2. **Necessita public major est quam**, which means public necessity is greater than private necessity.
- The power of eminent domain can, therefore, be defined as the power of the state to take property for public use, without the owner's consent upon making just compensation to him.
- The **two essential ingredients of eminent domain are:**
  1. Property is taken for public use;
  2. Compensation is paid for the property taken.
- The Indian version of eminent domain is to be found in entry 42, List III which provides for:
- "Acquisition or requisition to acquire property."

### Position of Right To Property Before 44th Constitutional Amendment Act, 1978

Before 1978, there existed mainly two Articles to protect private property, viz. Articles 19(1)(f) and 31.

#### As Originally Laid Down in the Constitution of India-

##### 1. Article 19(1)(f) and Article 19(5):

- **Article 19(1)(f)** laid down that -All citizens shall have the right "**To acquire, hold and dispose of property;**"
- **Article 19(5)** laid down that- Nothing in sub-clauses (d), (e) and (f) of the Article 19(1) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the **interests of the general public or for the protection of the interests of any Scheduled Tribe.**

- Article 19 (1) (f) guaranteed to the Indian citizens a right to acquire, hold and dispose of property. Article 19 (5), however, permitted the state to impose by law reasonable restrictions on this right
  - In the interests of the general public, or
  - For the protection of any Scheduled Tribe.
    - Dictionary meaning of the expression **“public interest”** refers to the welfare or well-being of the general public.
    - The **second ground for restriction i.e., to protect "the interest of Scheduled Tribes"**, has been included in the Constitution to protect aboriginal tribes in India which are settled in different parts of the country but concentrated in Assam and other North Eastern States.
- The term **“Scheduled Tribes”** has been defined in the Constitution of India under **Article 366(25)** as those tribes or tribal communities which are mentioned under **Article 342**.
- In the light of the restrictions enumerated above under **Article 19(5)**, several restrictions on the freedom of movement are imposed in order to protect the interest of Scheduled Tribes.

## 2. Article 31:

- Article 31(1)** laid down that **“no person shall be deprived of his property without the authority of law.”**
- The original **Article 31(2)** ran as follows:
  - “No property, movable or immovable, including any interest in, or any company owning, any commercial or industrial undertaking, shall be taken possession of or **acquired for public purposes** under any law authorising the taking 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 compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.”
- Clauses (1) and (2) of Article 31** were taken almost verbatim from **Section 299(1) and (2) of the Government of India Act 1935** with two differences. First, **Section 299** was restricted to cases of ‘**compulsory acquisition of property**’ but under **Article 31**, the protection for property also extended to ‘**taking possession**’ of property for public purposes. Thus, **Article 31** mandated the **payment of compensation even in cases where there was no transfer of title to the government**.
- Public interest has always been considered to be an essential ingredient of public purpose. [**Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., AIR 2007 SC 2458**]
- Clauses (4) and (6) under Article 31** were specially designed to protect land reform legislation.
- Clause 4** exempted laws enacted from bills that were pending at the time that the Constitution went into effect.
- Clause 6** exempted laws that were enacted eighteen months before that date. Laws of both types needed the assent of the President, in effect that of the union executive.
- Article 31 came to be modified drastically through several constitutional amendments. Ultimately, in 1978, by the Constitutional 44<sup>th</sup> Amendment, Articles 19(1)(f) and 31 were abrogated.**

## Position of Right to Property after 44<sup>th</sup> Constitutional Amendment Act, 1978:

### Article 31A, 31B and 31C:

**Article 31A: Saving of laws providing for acquisition of estates, etc.**

#### 1. Notwithstanding anything contained in article 13, no law providing for—

- The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or
- The taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or
- The amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or
- The extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or



(e) The extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [article 14 or article 19]:

- Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:
- Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

## 2. In this article, —

(a) The expression “estate” shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

- (i) Any jagir, inam or muafi or other similar grant and in the States of [Tamil Nadu] and Kerala, any janmam right;
- (ii) Any land held under ryotwari settlement;
- (iii) Any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

(b) The expression “rights”, in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, [raiyat, under-raiyat] or other intermediary and any rights or privileges in respect of land revenue.

- By the **1<sup>st</sup> Constitutional Amendment of 1951**, the Parliament added **Article 31A** to the Indian Constitution.
- According to **Article 31A**, the government can acquire the property of the people and by doing so, the fundamental rights mentioned in **Article 14 and 19 of Indian Constitution shall not be violated**.
- Therefore, under **Article 31A**; any law passed by the legislature which acquires the private property of the people, cannot be challenged on the ground that it is inconsistent with, or takes away or abridges any of the fundamental rights envisaged under Article 14 and 19 of the Constitution of India.
- In **Ambika Mishra v. State of U.P., 1980 AIR 1762, 1980 SCR (3) 1159**, the Supreme Court **upheld the constitutional validity of clause (a) of Article 31A** on the test of basic structure.
- In other words, Article 31A of Indian Constitution was immune to Articles 14 and 19 of Indian Constitution that provide for **Right to Equality** and the **Right to Freedom**, respectively.

## **Article 31B: Validation of certain Acts and Regulations. —**

- Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or Tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.
- **1<sup>st</sup> Constitutional Amendment** also brought about **Article 31B** which states that the provisions mentioned in Article 31A are immune from Indian judiciary and cannot be annulled on the basis that they might violate the fundamental rights mentioned in Articles 14, 19 and 31 of Indian Constitution.
- The constitutional validity of the Article 31B was challenged in **Waman Rao and Ors v. Union of India and Ors. (1981) 2 SCC 362, 1981 2 SCR 1**, wherein, the Supreme Court ruled that the acts and laws mentioned in the IX schedule till 24<sup>th</sup> April, 1973 shall not be changed or challenged, but any attempt to amend or add more acts to that schedule, will suffer close inspection and examination by the judiciary system. This was done to protect the ‘Basic structure’ of the Indian Constitution. The acts already mentioned in the 9th Schedule of Indian Constitution were exempted because of the complexity.

### **Article 31C: Saving of Laws Giving Effect to Certain Directive Principles**

- Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing [all or any of the principles laid down in Part IV] shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [Article 14 or Article 19] [and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy]:
- Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.
- **Article 31C was inserted by the Section 3 of the 25<sup>th</sup> Constitutional Amendment Act, 1971. (w.e.f. 20-04-1972)**
- The words “the principles specified in clause (b) or clause (c) of Article 39” were substituted by the **Section 4 of the 42<sup>nd</sup> Constitutional Amendment Act, 1976** for the words “all or any of the principles laid down in Part IV”.
- Further, the words “article 14, article 19 or article 31” were substituted by the **Section 8 of the 44<sup>th</sup> Constitutional Amendment Act, 1976** for the words “article 14 or article 19”.

### **Constitutional validity of 25th Constitutional Amendment Act, 1971:**

- Section 2(a) and 2(b), and the first part of Section 3 of the **25<sup>th</sup> Constitutional Amendment Act, 1971 was upheld by the SC in the case of Keshavanada Bharti v. State of Kerala, AIR 1973 SC 1461.**
- In **Keshavanada Bharti v. State of Kerala, AIR 1973 SC 1461**, the Supreme Court declared, the extended words of Article 31 C “and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy” to be unconstitutional.

### **42nd Constitutional Amendment Act, 1976 was Further Challenged and Declared Invalid:**

- Further, the **Section 4 of the 42<sup>nd</sup> Constitutional Amendment Act, 1976 by which** the words “the principles specified in clause (b) or clause (c) of Article 39” were substituted for the words “all or any of the principles laid down in Part IV” has been declared invalid by the Supreme Court in **Minerva Mills Ltd. v. Union of India, (1980) 2 SCC 591.**
- Therefore, the **current position** is that: (not written in the Constitution, but as decided by the Supreme Court’s decision in **Minerva Mills case**)
- “Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19:
- Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.”
- **Article 31C** of Indian Constitution was included through the **25<sup>th</sup> Amendment Act of 1971** through which the government tried to give primacy to some Directive Principles of State Policy over the Fundamental Rights.
- In **Minerva Mills v. Union of India, AIR 1980 SC 1789**, the extended version of Article 31C was struck down by the Supreme Court. The Court ruled that the extension of the shield of Article 31C to all the Directive Principles was beyond the amending power of Parliament under Article 368 because by giving primacy to all Directive Principles over the Fundamental Rights in Articles 14 and 19, the basic or essential features of the constitution viz., judicial review has been destroyed.
- Judicial review is the power of the Supreme Court to check the constitutionality of the laws of the government or the acts of a government officials. An attempt was made by the Legislature via. Article 31 C to give primacy to certain Directive Principles of State Policies over and above certain Fundamental Rights, which invariably is destructive of the basic feature of the Constitution of India.
- **Articles 31A, 31B, and 31C** of Indian Constitution put restrictions on the fundamental right to property in the welfare of the public.

## Article 300A:

- **ARTICLE 300A: Persons not to be deprived of property save by authority of law—**
- No person shall be deprived of his property save by authority of law.
- The 'Right to Property' has proved to be the most complicated and controversial. **The Constitution 44<sup>th</sup> Amendment Act, 1978 omitted Article 19(1)(f) i.e., Right to acquire, hold and dispose of property, and Article 31 i.e., Compulsory acquisition of private property for a public purpose (concept of 'eminent domain').**
- The effect of this change is that **the Right to Property is no more a fundamental right.**
- A new **Chapter IV has been inserted in Part XII of the Constitution and the provision in Article 31 has been transferred there as Article 300A**, which provides that-
- "no person shall be deprived of his property save by authority of law'."
- In **State of Maharashtra v. Chandrabhan, AIR 1983 SCC 803**, the Supreme Court held that, after the 44<sup>th</sup> Constitutional Amendment Act, 1978, property right has ceased to be a Fundamental Right under the Constitution and considered the right to property as a legal right.
- Thus, **the Right to Property though a Constitutional /legal right is not a fundamental right. If this right is infringed, the aggrieved person cannot access the Supreme Court directly under Article 32. A person challenging violation of Article 300 A must go to a High Court under Article 226 with his writ petition.**
- **Article 300A gives protection against executive action but not against legislative action.**
- Meaning thereby an order passed by the executive cannot deprive a person of his private property. The rights in the property of a person can be curtailed, abridged or modified only by the State by passing a valid law to that effect, as held in the following two cases:
- In the case of **State of Mysore v. K.C. Adiga, AIR 1976 SC 853**, it was held that Article 300A ensures that a person cannot be deprived of his property merely by an executive fiat. The rights in property can be curtailed, abridged or modified by the state only by exercising its legislative power. Deprivation of property can only be done according to law. Without law, there can be no deprivation of property. No law, no deprivation of property is the principle underlying Article 300A an executive order depriving a person of his property, without being backed by law is not constitutionally valid.

## Right to Property in the Light of Minority Educational Institutions:

### Article 30: (1A)

- "In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause."

### Clause (1A) of Article 30:

- This clause was inserted by **Section 4 of the Constitution 44<sup>th</sup> Amendment Act, 1978. (w.e.f. 20-06-1979).**
- The newly inserted Clause (1A) to Article 30 provides that while making any law for compulsory acquisition of the property of an Educational institution, the State shall ensure that the amount fixed or determined under such acquisition would not restrict or abrogate the right guaranteed under Article 30(1).
- **The Constitution 44<sup>th</sup> Amendment Act, 1978** has abolished the right to property as a fundamental right guaranteed under Articles 19(1)(f) and 31 of the Constitution. Consequently, Articles 19(1)(f) and 31 were omitted from Part III of the Constitution. However, the amendment has taken care that the removal of property from the list of fundamental rights would not affect the right of minorities to establish and administer educational institutions of their choice. For this purpose, the Amendment has inserted a new clause (1A) to Article 30 of the Constitution.

## LAND ACQUISITION IN INDIA

- Land acquisition in India refers to the process by which the Union or a State government in India acquires private land for the purpose of industrialization, development of infrastructural facilities or urbanization of the private land, and provides compensation to the affected landowners and their rehabilitation and resettlement.

- Land acquisition is governed by the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** (hereinafter referred to as **LARR Act**) and which came into force from **1 January 2014**.
- The **LARR Act** provides certain procedures to be followed by the State government in order to make the land acquisition constitutionally valid.
- **Till 2013, land acquisition in India was governed by the Land Acquisition Act of 1894.**

### **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:**

- The object of **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** is to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status and for matters connected therewith or incidental thereto.
- The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act** was promulgated in 2013. It replaced the **Land Acquisition Act, 1894**, a nearly 120-year-old law enacted during British rule.
- It regulates the land acquisition and lays down the procedure and rules for granting compensation, rehabilitation, and resettlement to the affected persons in India.
- It has provisions to provide fair compensation to those whose land is taken away, brings transparency to the process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected.
- It establishes regulations for land acquisition as a part of India's massive industrialization drive driven by public-private partnerships.
- The Act is applicable when the Government acquires land for its own use, hold, and control, including land for Public sector undertakings.

### **Meaning of Expression "Public Purpose":**

- According to **Section 3(za)** of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013** the term "**public purpose**" means the activities specified under sub-section (1) of section 2.

### **The Activities Specified Under Sub-Section (1) of Section 2 are:**

- **Section 2(1) of the Act defines the following as public purpose** for land acquisition within India:
  - For strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or
  - For infrastructure projects, which includes the following, namely:
    - All activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated 27 March 2012, excluding private hospitals, private educational institutions and private hotels;
    - Projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;
    - Project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;



- Project for water harvesting and water conservation structures, sanitation;
  - Project for Government administered, Government aided educational and research schemes or institutions;
  - Project for sports, health care, tourism, transportation of space programme;
  - Any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;
  - Project for project affected families;
  - Project for housing, or such income groups, as may be specified from time to time by the appropriate Government;
  - Project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;
  - Project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.
- When government declares public purpose and shall control the land directly, consent of the land owner shall not be required. However, when the government acquires the land for private companies, the consent of at least 80% of the project affected families shall be obtained through a prior informed process before government uses its power under the Act to acquire the remaining land for public good, and in case of a public-private project at least 70% of the affected families should consent to the acquisition process.
  - The land acquisition can be held valid constitutionally only if it satisfies the criteria of public purpose and along with paying compensation to the affected families.
  - The most recent judgments given by the Supreme Court on public purpose is *State of Karnataka v. All India Manufacturers Organization*, in this case land far away from the actual alignment of the road and periphery had been acquired for constructing highway and, therefore, even if the implementation of the Highway Project was assumed to be for the public purpose, the acquisition of the land far away therefrom would not amount to a public purpose nor would it be covered by the provisions of the Karnataka Industrial Areas Development Act, 1966 (the KIAD Act) [**State of Karnataka v. All India Manufacturing Association (Supreme Court of India, 2016)**].
  - In the case of **Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621**, it was observed that:
  - A law, “to be a law” must not be unreasonable, arbitrary, oppressive, or confiscatory. Therefore, the law should be fair, reasonable and it should satisfy the principles of fairness, in order to be effective.
  - As correctly observed the Court while testing the validity of a law or a legislation can invoke the natural law theory i.e. the principle of natural justice.
  - Therefore, the validity of **the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013** can be challenged on these grounds and if found violative, the court is empowered to declare the Act as unconstitutional.

### **Urgency Clause in The Land Acquisition Act, 1894:**

- **The Land Acquisition Act, 1894 (hereinafter referred to as “The act”)** was a flawed legislation based on arbitrary norms which later assumed a controversial dimension. The act had attracted criticism as it was a defective legislation with major shortcomings in the name of being a welfare provision.
- The title of the old act itself signifies that the main purpose of the act was the acquisition and development then allotment of the land thereafter.
- This act was undemocratic as the concept of ‘**forced acquisition**’ was the foundation of the acquisition mechanism wherein if the authority intended to acquire land, it could do so without considering the number of people being displaced. Though the acts lay down a procedure of issuing notice and holding inquiry but these were mere formalities as private interest had to succumb in front of public interest i.e. construction of railways, highways, infrastructure development, etc.
- The act provides for a hearing before such arbitrary acquisition but it was more of a negotiation to seal the lips of the displaced by luring them with a meagre compensation amount based on the market rates. The rates paid for the land acquired were circle rate which were a grossly miscalculated parameter of the actual market rates of the land.



- As a result, the compensation given to landowners used to be substantially less than the actual market value of the land.
- Under the Land Acquisition Act 1864, the government can take over land of private land owners **only for “public purposes”**.
- But this term **‘public purposes’** was given a very wide definition under this Act and it includes any extension or improvement or development of existing infrastructure, any rural town or city planning, any development in pursuance of any scheme or policy of the government.
- Section 17 of the Act laid down another absolutist provision known as the **‘Urgency clause’**. In cases of urgency, whenever the appropriate Government so directs and award hasn’t been made, the Collector may on the expiration of fifteen days from the publication of the notice mentioned in **Section 9(1)**, take possession of any land needed for a public purpose. There shall be a provision of 80% of the estimated compensation while taking possession and fixing of award thereafter.
- **The most misused and dogmatic law being the clause of ‘Grave Urgency’ wherein the authorities needn’t hold inquiry as under Section 5; thus, they can straightaway issue declaration under Section 6 and take possession after giving the required eighty percent of the estimated compensation.**

### **Urgency Clause in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013:**

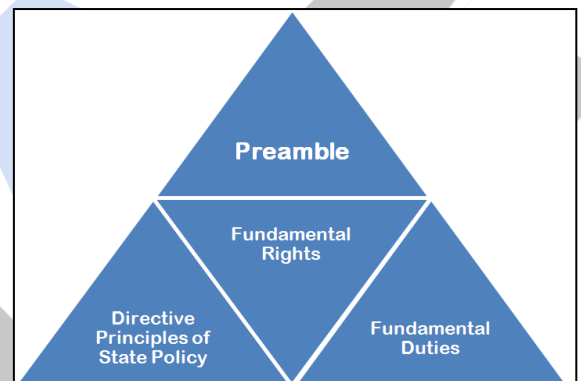
- **Section 40(67) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as LARR Act)**, deals with special power in case of urgency to acquire land in certain case,
  1. In cases of urgency, whenever the appropriate Government so directs, the Collector, **though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.**
  2. The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament.
  3. Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall tender payment of eighty per cent of the compensation for such land as estimated by him to the person interested entitled thereto.
  4. An additional compensation of seventy-five percent of the total compensation as determined under section 27 shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section.
- General procedure to be followed while making land acquisition will be exempted if any land has been acquired by any of the above-mentioned reason.
- All the provision specified above under the LARR Act should be followed by the Government in order to make acquisition of land constitutionally valid at the same time they are also under an obligation to provide adequate remedy to the affected families.

### **Conclusion:**

- **The Forty Fourth Constitutional Amendment in 1978 took away the ‘fundamental right status’ from “the right to property”**, thereby making it easier for the State to acquire private property. Importantly, however, the trajectory of the right to property in the Constitution, as seen from the drafting of the original constitutional property clause, and its evolution through judicial interpretation, legislation, and constitutional amendment, demonstrates the Indian State’s continual attempts to reshape property relations in society to achieve its goals of economic development and social redistribution.

# RELATIONSHIP BETWEEN DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS

- India's Constitution was the framework through which the world's largest and one of its most contentious democracies was brought into being. It is the framework that provides for the management and accommodation of the most complex ethnic, religious and linguistic diversity of any modern nation-State.
- The history of India's struggle for independence and the debates of the Constituent Assembly show how deeply our people value their personal liberties and how those liberties are regarded as an indispensable and integral part of our Constitution. It is significant that though Parts III and IV appear in the Constitution as two distinct facets of Articles, the leaders of our independence movement drew no distinction between the two kinds of State's obligations- negative and positive.
- The **Preamble to the Constitution** contains the clue to the fundamentals of the Constitution. The Constitution of India which is essentially a social rather than a political document, is founded on a social philosophy.
- The edifice of our Constitution is built upon the concepts crystallised in the Preamble. We resolved to constitute ourselves into a Socialist State which carried with it the obligation to secure to our people justice-- social, economic and political. The Preamble to the Constitution sets out the aims and aspirations of the people of India which has been translated into various provisions of the Constitution. The ultimate aim of the Constitution makers was to have a **Welfare State** and an **Egalitarian society** reflecting the aspirations of those who sacrificed everything for the attainment of the country's independence.
- **The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution.**
- Granville Austin's observation brings out the true position that **Parts III and IV are like two wheels of a chariot, one no less important than the other. You snap one and the other will lose its efficacy. They are like a twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves.**
- **In other words, the Indian Constitution is founded on the bedrock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.**
- But just as the rights conferred by Part, same manner the attainment of the ideals set out in Part IV would become a pretence or tyranny if the price to be paid for achieving that ideal is human freedoms. One of the faiths of our founding fathers was the purity of means. Indeed, under our law, even a dacoit who has committed a murder cannot be put to death in the exercise of right of self-defence after he has made good his escape. **So great is the insistence of civilised laws on the purity of means. The goals set out in Part IV have, therefore, to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the core of our Constitution and combine to form its conscience.**
- However, the original Constitution did not mention the **Fundamental Duties** of every citizens of India, but, by the **42<sup>nd</sup> Constitutional Amendment**, fundamental duties were added by inserting **Part IVA to the Constitution** to compliment the obligation of the State.
- The Parliament realized the need for inserting the fundamental duties as a part of Indian Constitution and required every citizen of India to adhere to these duties. The restriction placed on a fundamental right would have to be examined with reference to the concept of fundamental duties as non-interference with liberty of others.
- **A common thread runs through Parts III, IV and IVA of the Constitution of India.** One part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third lays down the fundamental duties of citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of any such interpretation on all the constitutional aspects emerging from these Parts.



- There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty on the other hand. It will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty.
- In **Javed v. State of Haryana, AIR 2003 SC 3057**, Supreme Court held that Fundamental rights are not to be read in isolation. They have to be read along with the Chapter on Directive Principles of State Policy and the Fundamental Duties enshrined in Article 51A.
- Therefore, now the Constitution of India prescribes not only the rights of the citizens but also the fundamental duties which every citizens of India must strictly adhered to.

## Justiciability

- Unlike Fundamental Rights, DPSP as well as Fundamental Duties are non-justiciable and are required to be implemented by means of a valid law.
- According to **Article 37**, the Directive Principles, though they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making law, but they are expressly made non-justiciable.
- On the other hand, fundamental rights are enforceable by the courts (**Article 32**) and the courts are bound to declare as void any law that is inconsistent with the fundamental rights.
- The Directive Principles are neither enforceable by the courts nor can the courts declare any law as void which is otherwise valid, on the ground that it contravenes any of the directives.
- In the case of **State of Madras v. Champakam Dorairajan, AIR 1951 SC 228**, the Supreme Court observed as follows:
- "The Directive Principles of the State Policy, which by Article 37 are expressly made unenforceable by Courts cannot override the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under Article 32. The Chapter on Fundamental Rights is sacrosanct and not liable to be abridged by legislative or executive act or orders, except to the extent provided in the appropriate Article in Part III. The Directive Principles of State Policy have to conform and to run as subsidiary to the Chapter on Fundamental Rights. In our opinion that is the correct approach in which the provision found in Parts III and IV have to be understood."
- Moreover, in **Mumbai Kamgar Sabha v. Abdulbhai, AIR 1976 SC 1455**, the Supreme Court observed that "Provisions as to fundamental duties cannot be enforced by writs. They can be promoted only by constitutional methods. But they can be used for interpreting ambiguous statutes."

## Socialistic Concept

- By reading the word '**socialist**' in the Preamble with the **Fundamental Rights**, contained in **Articles 14 and 16**, the Supreme Court has deduced the Fundamental Rights to equal pay for equal work and compassionate appointment.
- **Article 14** ensures the "equality before law". **Article 15** ensures prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. And **Article 16** ensures equality of opportunity in matter of public employment. **Article 17** abolishes the untouchability in any form found in India. **Article 18** abolishes the titles. Thus the Constitution fully ensures the 'the equality of life' which is the fundamental principle or element for the socialist state.
- **The Preamble, the Fundamental Rights and the Directive Principles have been characterized as the 'trinity' of the Constitution.** Thus **Articles 42, 43, 46 and 48 A** promote the concept of social justice to attain social, economic and political equality. Poor can live with dignity. Poor's living with dignity is one of the goals of socialist state. The purpose of the Directive Principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution.

## Secularism

- Secularism means a State taking a neutral position on religion. It is separation of State and religion. There is no official religion in India. Secularism pervades its provisions which give full opportunity to all persons to profess, practise and propagate religion of their choice. All religions will receive equal treatment. It is neither a theocratic nor an atheistic state.

- While **Article 14** grants equality before the law and equal protection of the laws to all, **Article 15** enlarges the concept of secularism to the widest possible extent by prohibiting discrimination on grounds of religion, race, caste, sex or place of birth.
- **Article 16 (1)** guarantees equality of opportunity to all citizens in matters of public employment and reiterates that there would be no discrimination on the basis of religion, race, caste, sex, descent, place of birth and residence.
- **Article 25** provides 'Freedom of Conscience', that is, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.
- As per **Article 26**, every religious group or individual has the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion.
- As per **Article 27**, the state shall not compel any citizen to pay any taxes for the promotion or maintenance of any particular religion or religious institution.
- **Article 28** allows educational institutions maintained by different religious groups to impart religious instruction.
- **Article 29 and Article 30** provides cultural and educational rights to the minorities.
- The idea of secularism is evident in the DPSP as well wherein, fundamental duty of the State to enact uniform civil laws treating all the citizens as equal, is imposed by **Article 44**.
- **Article 48** incorporates the sentiment of majority of the people towards the cow and against its slaughter.
- **Article 51A** i.e. Fundamental Duties obliges all the citizens to promote harmony and the spirit of common brotherhood and to value and preserve the rich heritage of our composite culture.

### Justice (Social, Economic and Political)

- **Social justice** implies that discrimination on the basis of birth, caste, race, sex or religion should cease. To that end, all citizens should enjoy equal opportunities in the matter of public appointment. It is the good of all people that the Government must strive to achieve.
- **Economic justice** implies that the gap between the rich and the poor is bridged, and the exploitation ceases. Removal of poverty is to be achieved not by taking away assets from those who have but by ensuring a more equitable distribution of national wealth and resources among those who contribute to its creation. This the Directive Principles call upon the state to try and secure ownership and control over resources to subserve the common good, reduce the concentration of wealth, ensure equal pay for equal work, and see that people, especially women and children, are not abused or forced by economic want into work unsuitable for their age or strength.
- **Political justice** implies that all citizens should have an equal opportunity to participate in the political system. One person-one vote is ensured irrespective not only of caste, sex or religion but also of proprietary or educational qualifications. It is the basis of the political democracy envisaged in the Constitution.
- **Social Justice and equality are complementary to each other**, so that both should maintain their vitality. **Articles 14 and 16** read with Preamble give equality of opportunity in matters relating to employment or appointment in any office under the State. **The Principles of reservation is an affirmative action** to accord socio economic justice guaranteed by the Preamble.
- The doctrine of socio-economic justice has been recognized in **Articles 38, 39, 41, 42, 43, 43-A** of the Constitution. The concept of a welfare state as envisaged in the Directive Principles is an embodiment of guidelines for ensuring the social justice expected in the Preamble. **Article 38** directs the State to secure a social order for the promotion of welfare of the people. **Article 38** is supplemented by **Article 39** which lays stress upon certain aspects of economic justice. Newly incorporated **Article 39A** contains the directive of securing Equal justice and free legal aid by suitable legislation.
- Even the fundamental duties under **Article 51A (j)** imposes the duty on every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the national constantly rises to higher levels of endeavour and achievement.

### Equality (Status and of Opportunity) Affirmative Principles

- Equality is incorporated in **Article 14**. Further to achieve the objective of providing equality in opportunities, **Articles 15 and 16** envisages prohibition against discrimination on the ground of religion, caste, etc. and provides for affirmative State actions so as to provide opportunities to the deprived section of the society and attain the constitutional mandate of equality among the equals. **Article 17** abolishes untouchability.



- Even **Article 38** directs that the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Further, **Article 39(a)** directs that the citizens, men and women equally, have the right to an adequate means of livelihood and **Article 39(d)** directs that there is equal pay for equal work for both men and women.
- As it is difficult to anticipate the right to any freedom or liberty without reasonable restriction, it is equally difficult to imagine the existence of a right coupled with duty. The duty may be a direct or indirect consequence of a fair assertion of the right.

## Dignity of Individual

- **Articles 14, 19 and 21** are of prime importance and breathe vitality in the concept of the rule of law. These rights are regarded as the basic principles for the smooth running of life for a citizen and are complementary to each other and grant most basic rights to the Indian citizens and even non-citizens in some cases.
- **Article 38** reaffirms what has been declared in the Preamble to the Constitution, viz., the function of the Republic is to secure inter alia, social, economic and political justice. Preamble and **Article 38** envision social justice as the arch to ensure life to be meaningful and liveable with human dignity and that Article envisages not only legal justice, but also socio-economic justice as well.
- **Article 51A, clause (e)** imposes the fundamental duty on a citizen to renounce practices derogatory to the dignity of women.

## Unity and Integrity of The Nation

- Under **Article 19**, unity and integrity of the nation is considered as a reasonable restriction because no fundamental freedom given to the citizens of India is over and above the unity and integrity of India. The **Article 44 of the Directive Principles of State Policy** envisages the directive of a Uniform Civil Code in order to maintain the harmony and unity amongst heterogeneous population, belonging to different races, religions and cultures.
- **Article 51A (c)** which deals with 'Fundamental Duties' says that it shall be the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

## Can Directive Principles of State Policy override Fundamental Rights?

- In **Re Kerala Education Bill, AIR 1957 SC 956**, the Supreme Court observed that though the directive principles cannot override the fundamental rights, nevertheless, in determining the scope and ambit of fundamental rights the court may not entirely ignore the directive principles but should adopt **"the principles of harmonious construction and should attempt to give effect to both as much as possible."**
- **Article 31 - C was added by the Constitution 25<sup>th</sup> Amendment, 1971.**
- The **first part of Article 31-C** provides that no law which is intended to give effect to the directive principles contained in Art 39 (b) and (c) shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or 19.
- The **second part of Article 31-C** provided that "no law containing a declaration that it is for giving effect to such policy can be called in question on the ground that it does not in fact give effect to such policy."
- The validity of first part of Article 31-C was upheld in the case of **Kesvananda Bharati v. State of Kerala, AIR 1973 SC 1461**, but the second part of this Article, which barred the judicial scrutiny of such laws was struck down as unconstitutional.
- The Supreme Court has further observed that **"directive principles prescribed the goal to be attained and the fundamental rights lay down the means by which that goal is to be achieved."**
- **Article 31-C was again amended by the 42<sup>nd</sup> Amendment Act, 1976.** This Amendment further widened the scope of Article 31-C so as to cover all directive principles. For the purpose, the amendment substituted the words, **"all or any of principles laid down in Part IV"** for the words **"the principles specified in clause (b) or (c) of Article 39"** in Article 31-C of the Constitution.
- Thus, whereas the **25<sup>th</sup> Amendment gave primacy of directive principles contained in Article 39 (b) and (c), over the fundamental rights in Articles 14, 19 or 31**, the **42<sup>nd</sup> Amendment Act, 1976 gave precedence to all the directive principles over the fundamental rights guaranteed in Articles 14, 19 or 31 of the Constitution.**

- In **Minerva Mills v. Union of India, AIR 1980** the Supreme Court by 4 to 1 majority struck down Article 31-C as amended by 42<sup>nd</sup> Amendment as unconstitutional on the ground that it destroys the **“basic features of the Constitution”**.
- The Court held that Article 31-C was beyond the amending power of the Parliament and was void since it destroyed the basic features of the Constitution by a total exclusion of “challenge to any law on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Articles 14 or 19 of the Constitution”.
- **Fundamental Duties was brought by 42<sup>nd</sup> Constitutional Amendment Act in 1976.** However the constitutional validity of Fundamental Duties has not been challenged but in the Minerva Mills case, the Supreme Court held the Section 4 of the 42<sup>nd</sup> Amendment to be violative of the basic features of the Constitution. The rest of the Sections of 42<sup>nd</sup> Constitutional Amendment has invariably passed on the cornerstone of the basic structure.
- The majority observed that the Constitution is **founded on the bed rock of the balance between Part III and Part IV**. To give absolute primacy to one over the other is to disturb the harmony of the Constitution which is the essential feature of the basic structure. **The goals set out in Part IV have to be achieved without the abrogation of the means provided for by Part III.** By the amendment introduced by Section 4 of the 42<sup>nd</sup> Amendment, Articles 14 and 19 stands abrogated at least in regard to the categories of laws described in Article 31-C.
- **The Court held that the unamended Article 31-C is valid as it does not destroy any of the basic features of the Constitution. The unamended Article 31-C gives protection to defined and limited categories of laws, i.e., specified in Articles 39 (b) and (c). They are vital for the welfare of the people and do not violate Articles 14 and 19.**
- **There is no antithesis between the Fundamental Rights and Directive Principles.** They are meant to supplement one another. **Granville Austin in “Cornerstone of a Nation (Indian Constitution) has described the fundamental rights and the directive principles as the “conscience of our Constitution.”**
- In **Unni Krishnan State of A.P., (1993) 1 SCC 645**, the Supreme Court has reiterated the same principle that “the fundamental rights and directive principles are supplementary and complementary to each other and the provisions in Part III should be interpreted having regard to the preamble and Directive Principles of the State Policy.”
- In **Bijoy Cotton Mills v. State of Ajmer, AIR 1955 SC 33**, the Supreme Court **upheld the constitutional validity of the Minimum Wages Act, 1948 because it was enacted to give effect to directive principles of State Policy in Article 43 of the Constitution.** It was held that the fixation of wages for labourers did not violate freedom of trade under Article 19 (5).
- **It can therefore, be construed to be well settled that a harmonious interpretation of Fundamental Rights and Directive Principles is quintessential in ensuring social welfare and the Apex Court is promoting the same view after much deliberation for the benefit of the community at large.**

### Previously Asked Questions in Civil Services Examination

- Q1. What do you understand by the term “Eminent Domain”? Discuss its relevance in the present-day context. [2016 (d)]
- Q2. With special reference to the landmark judgments of the Supreme Court of India, discuss the effect of relegation of the right to property from being a fundamental right to a constitutional right. Also suggest the changes required to be made in the Land Acquisition Act, 1894. [2012 3(a)]
- Q3. Enumerate the list of Fundamental Duties as provided in the Constitution of India. What is the rationale of incorporation of Fundamental Duties under the Indian Constitution through the Constitutional (Forty-second Amendment) Act, 1976? [2020 1(d)]
- Q4. “In recent times certain directive principles have been judicially enforced and made enforceable by imaginative and creative interpretation of fundamental rights . “Do you agree? Give reasons. (97/I/2a/.30)
- Q5. Directive Principles of state Policy have played a significant role in the interpretation of the Constitution. Explain and illustrate your answer. (98/I/2a/30)
- Q6. What are the discretionary powers of the Governors of States? Why is there no provision in the Constitution for impeachment of a Governor? Explain. (00/I/1b/20)

- Q7.** Examine critically the relationship between the Fundamental Rights and the Directive Principles of State Policy in the light of decided cases and the constitutional amendments. **(00/I/2b/30)**
- Q8.** In order to make the best use of the limited resources in the country and to meet certain demands of the journalists and other workers in the newspaper industry; the government plans to enact a law which.
- (i) Fixes the minimum wages for all the journalists and workers,
  - (ii) Declares Sunday and all other national holidays as compulsory holidays for the newspaper industry;
  - (iii) Requires the newspapers to allocate certain percentage of news space to pressing socio-economic issues facing the country; and
  - (iv) Prohibits certain kinds of advertisements, particularly those which make indecent depiction of women.
- Your advice is sought by the government on the constitutionality of such legislation vis-avis Article 19(1) (a). Give your advice with reference to decided cases. **(01 /I/ 2a/ 30)**
- Q9.** Justify the contemporary economic liberalisation reforms on the basis of constitutional provisions. **(02/I/2b/30)**
- Q10.** "While the implementation of the Directive Principles of the State Policy is a pre-condition for the enjoyment of Fundamental Rights, the destruction of the Fundamental Rights will frustrate the realization of the Directive Principles." Discuss. **(03/I/1b/20)**
- Q11.** "Directive principles of state policy are not enforceable in the Court of Law but, nevertheless, they are fundamental in the governance of the country." Discuss this statement with the help of decided cases. **(06/I/2a/30)**
- Q12.** "Fundamental duties are only ethical and moral duties and should not form a part of the fundamental law." Comment. **(06/I/ 1b/ 20)**
- Q13.** Write short note: The scope of the constitutional harmony and balance between 'Fundamental Rights' and 'Directive Principles' of State Policy. **(08/I/4c/20)**
- Q14.** 'Explain and elucidate the significance of the various strategies adopted for the implementation of the 'Directive Principles' of State Policy enshrined in Part - IV of the Indian Constitution. **(08/I/1d/20)**
- Q15.** Spell out the object and reasons of Part IV A of the Constitution of India. Do you support this addition to the Constitution of India? Give reasons and also suggest some effective measures to make these provisions more realistic and operational. **(09/I/3b/30)**
- Q16.** "The Directive Principles which have been declared to be 'fundamental' in the governance of the country cannot be isolated from Fundamental Rights." Explain critically. Also throw light with reference to recent judgments on the Supreme Court's view as regards the interplay of Directive Principles and Fundamental Rights. **(09/I/3a/30)**
- Q17.** Has judiciary been a hindrance or a facilitator in the interpretation of Directive Principles? Examine in the light of various judgments of the Supreme Court? **(13/I/1a/10)**
- Q18.** "Fundamental duties are only ethical or moral duties and should not form a part of the fundamental law." Comment **(13/I/1b/10)**
- Q19.** Is 'Commercial advertisement' covered within the ambit of 'freedom of speech and expression'? Discuss with reference to leading cases. **(13/I/1c/10)**
- Q20.** Critically examine the constitutional validity of an amendment deleting Article 16(4) and authorizing the State to make job reservation in favour of the backward classes of citizens. **(13/I/1d/10)**
- Q21.** Doctrine of equality under the Constitution cannot be applied to legitimize an illegal act. Can equality be invoked to justify another wrong? Critically examine with reference to cases. **(13/I/1e/10)**
- Q22.** Do you agree with the view that "equality is antithesis of arbitrariness. In fact equality and arbitrariness are sworn enemies"? **(13/I/2a/25)**