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MAINS IMPACT– 2025 – 08/11/2024

## RIGHT TO PROPERTY

### SYLLABUS:

GS 2 > Constitution >> Rights

### REFERENCE NEWS:

In a landmark ruling that has implications on the citizen's right to hold property, a nine-judge bench of the Supreme Court ruled that not all private property can be deemed "material resource of the community" for redistribution under Article 39(b) of the Constitution.

### RIGHT TO PROPERTY IN INDIA:

Originally, the **Right to Property was enshrined as a fundamental right** under Article 19(1)(f) and Article 31 of the Indian Constitution. The inclusion of this right as a fundamental right was influenced by the fact that many Indians had suffered arbitrary confiscation of property under colonial rule.

- **Article 19(1)(f)** provided the right to acquire, hold, and dispose of property
- **Article 31** guaranteed that no person would be deprived of their property except by law, and mandated compensation for property acquired by the state.

**First Amendment Act, 1951:** This amendment added Article 31A and 31B to protect land reform laws from being challenged as violating the right to property. Article 31B introduced the Ninth Schedule, allowing certain laws to be placed beyond judicial review, even if they infringed on property rights.

**Fourth Amendment Act, 1955:** This amendment restricted compensation payable for property acquisition, making it less onerous for the government to acquire property for public purposes.

**25th Amendment Act, 1971:** Article 31C introduced which outlined that any law giving effect to clauses (b) and (c) of Article 39 could not be deemed void on grounds that they contravened Article 14 and 19.

**Right to Property as a Constitutional Right:** The **44th Amendment Act of 1978** was a landmark development that redefined the Right to Property. It repealed Article 19(1)(f) and Article 31, removing the Right to Property from the list of fundamental rights. A new

provision, **Article 300A**, was introduced in Part XII of the Constitution. It states: “No person shall be deprived of his property save by authority of law.”

This change **downgraded the Right to Property from a fundamental right to a mere legal or constitutional right**. As a result, while citizens cannot claim the right as inviolable, they can seek recourse if the property is taken without due process of law.

### Key Judicial Interpretations

- **Kesavananda Bharati v. State of Kerala (1973)**: Established the basic structure doctrine, asserting that fundamental rights could not be amended to violate the basic structure of the Constitution.
- **Waman Rao v. Union of India (1981)**: The Supreme Court upheld the Ninth Schedule's power but ruled that post-1973 additions to the Ninth Schedule could still be subject to judicial review if they violated basic structure principles.

The recent judgment, delivered by an 8:1 majority of a nine-judge bench of the Supreme Court on November 5, 2024, deals with the **interpretation of Article 39(b)** of the Indian Constitution concerning the state's power to acquire and redistribute private property for public welfare.

- **Core Issue**: The case addressed whether all private property could be deemed "material resources of the community" under Article 39(b) and thus eligible for acquisition and redistribution by the government. Article 39(b), part of the Directive Principles of State Policy (DPSP), requires that the state ensure the distribution of material resources to serve the common good.
- **Background and Legal Precedents**: Article 31C, was partially upheld in the **Kesavananda Bharati** case (1973), which affirmed the importance of judicial review and limited the immunity provided by Article 31C. The dispute over amendments to the **Maharashtra Housing and Area Development Act (MHADA)**, which allowed government acquisition of private property in Mumbai with 70% resident consent for redevelopment also led to judicial interventions.
- **Majority Opinion**
  - Chief Justice D.Y. Chandrachud, writing for the majority, clarified that **not all private property qualifies as "material resources of the community"** under Article 39(b).
  - The ruling stated that categorizing all private property for state acquisition would reflect an outdated "rigid economic dogma" of excessive state control, incompatible with India's market-oriented economy.

- Instead, the court called for a **case-by-case assessment** of whether private resources serve communal needs, considering factors like the resource's nature, availability, impact on public welfare, and ownership concentration.
- The court upheld Article 31C, affirming that laws supporting Article 39(b) are generally protected from challenges based on Articles 14 and 19 but emphasized that property acquisition must comply with constitutional principles, including Articles 14 and 300A (Right to Property).
- **Concurrences and Dissent**
  - **Justice B.V. Nagarathna's Partial Concurrence:** She agreed that some private resources critical to public welfare might fall under Article 39(b) but asserted that personal possessions should be excluded.
  - **Justice Sudhanshu Dhulia's Dissent:** Justice Dhulia argued that excluding private property from Article 39(b) could undermine DPSP goals, particularly in addressing wealth inequality.

#### **IMPLICATIONS OF THE JUDGEMENT:**

##### **Positive Implications**

- **Balanced Economic Policy:** The ruling acknowledges India's transition from state-controlled economic policies to a more liberalized economy, encouraging both public and private investment. This approach supports private enterprise while still allowing the state to act in public welfare, marking a balance between private property rights and social equity goals
- **Case-by-Case Evaluation:** By requiring a case-by-case analysis to determine if private property serves "communal significance," the judgment adds nuance to property acquisitions. This prevents broad interpretations that could lead to unnecessary or excessive state intervention in private ownership, ensuring that acquisitions are more targeted and justifiable
- **Protection of Private Property Rights:** The decision reinforces constitutional protections by emphasizing that not all private property is subject to state acquisition under Article 39(b). This clarification prevents arbitrary seizure of private property, which is especially important in fostering investor confidence and supporting individual property rights within a market-driven economy
- **Enhanced Judicial Oversight:** The court's stance that property acquisition must respect constitutional guarantees (Articles 14 and 300A) ensures that the judiciary can continue to oversee and correct any overreach, maintaining checks and balances on

state power. This oversight acts as a safeguard for property owners against unjust acquisitions

### Negative Implications

- **Limitations on Wealth Redistribution:** The exclusion of most private properties from Article 39(b) could hinder efforts at wealth redistribution, a key component of the Directive Principles of State Policy (DPSP). Justice Dhulia's dissent highlighted concerns that restricting redistribution could deepen economic inequality, as it limits the state's capacity to equitably distribute resources during a time of widening economic disparity
- **Potential for Increased Litigation:** Since each property acquisition must now be evaluated individually, the judgment could lead to an increase in litigation, with property owners challenging acquisitions on grounds that their properties do not serve the "common good." This may delay the government's ability to acquire property for legitimate public purposes and lead to legal backlogs
- **Ambiguity in Determining Communal Significance:** Although the judgment provides criteria for assessing "communal significance," the flexibility of these factors may lead to inconsistencies in application. This ambiguity could result in uneven enforcement and possibly leave room for subjective interpretations by lower courts or state authorities
- **Challenge to Social Welfare Policies:** The ruling could make it harder to enact social welfare policies that require property acquisition, particularly in sectors like affordable housing and public infrastructure. By limiting state acquisition power, this decision might restrict government efforts to address housing shortages or provide resources to marginalized communities, especially in densely populated areas like Mumbai

### TO BALANCE PRIVATE PROPERTY RIGHTS AND ECONOMIC WELFARE:

- **Strengthen the Framework for "Public Purpose" and "Communal Significance":** The government could introduce laws that more precisely define "public purpose" and "communal significance" in relation to Article 39(b), distinguishing between essential communal resources and individual properties. Establish an independent regulatory body to evaluate whether certain acquisitions serve a legitimate public purpose, assessing each case against specific criteria to prevent arbitrary seizures.
- **Introduce Fair Compensation Mechanisms:** Strengthening the compensation provisions under Article 300A by implementing compensation models that include market rates or benefit-sharing schemes (such as annuities or development-linked benefits) could help mitigate property owners' concerns.

- For acquisitions affecting communities or smaller landowners, providing enhanced resettlement support and development programs can ensure that those affected gain long-term benefits, reducing resistance to redistributive policies.
- **Enhanced Use of Public-Private Partnerships (PPPs):** Encourage public-private partnerships for developing essential resources, such as affordable housing or infrastructure, where the government could retain partial ownership while allowing private investors to manage and develop the property.
  - Implement revenue-sharing or joint ownership models in PPPs, especially in resource-driven sectors, ensuring that the community benefits while maintaining private property interests.
- **Prioritize Strategic Sectors for Redistribution:** Rather than broadly targeting private property, the state could focus on acquiring resources in specific sectors crucial for equitable growth—such as housing, healthcare, and education. This targeted approach would allow the government to meet redistribution goals without encroaching excessively on individual property rights.
- **Strengthen Judicial Review and Grievance Redressal:** Strengthen judicial oversight to ensure acquisitions meet the standards of necessity and fairness, and establish dedicated tribunals to expedite grievances related to property acquisition, minimizing lengthy litigation.

#### International Practices as Models

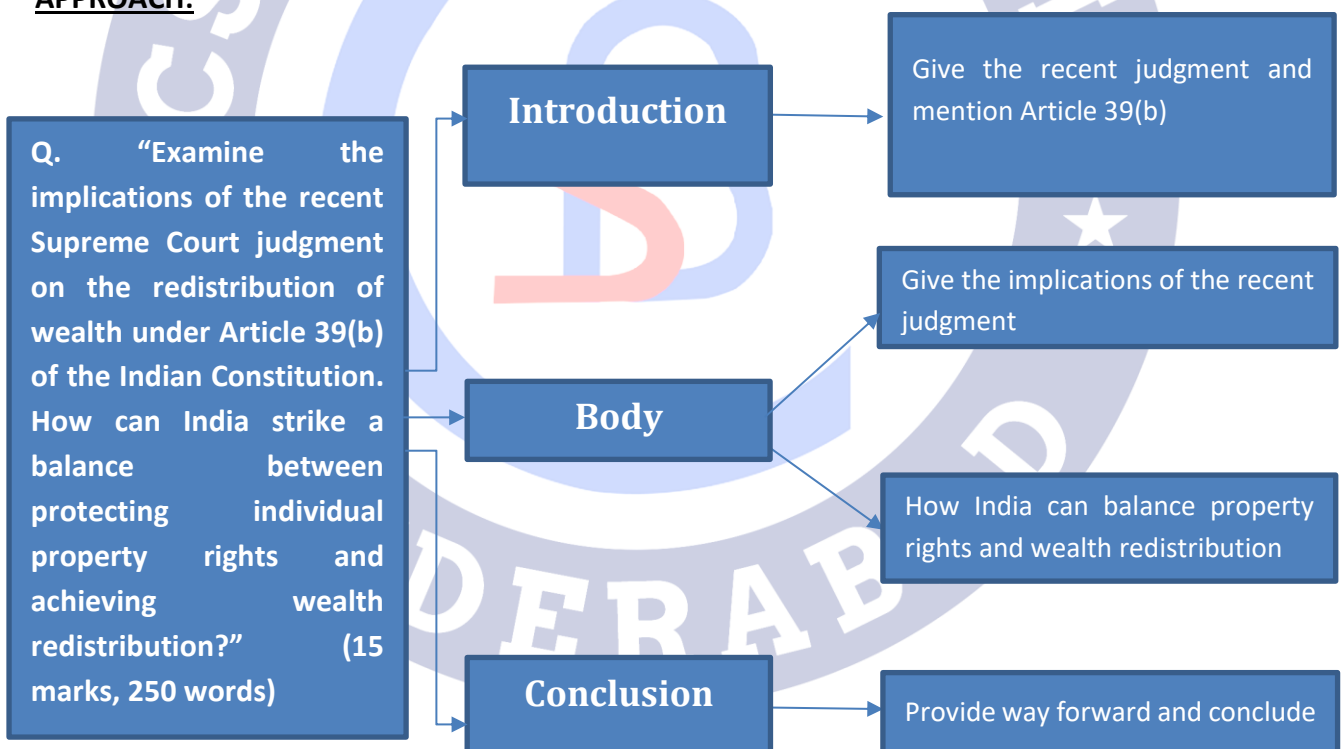
- **Germany's Social Market Economy:** Germany's constitution includes property rights protection but also allows for "social obligations" tied to ownership. Laws focus on property being used responsibly, balancing ownership with social welfare. This model provides a structure for government interventions to prevent harmful concentration of resources, yet respects private property unless it's critical for public interest.
- **UK's Community Land Trusts (CLTs):** In the UK, CLTs allow communities to hold land in trust for specific uses like affordable housing and community development. These trusts acquire property through donations or public funds and develop it for communal benefit, while ensuring that ownership remains with the community.
- **Brazil's Agrarian Reform:** Brazil uses a system of "social function of property," where land not fulfilling a social purpose, like underutilized agricultural land, can be expropriated and redistributed. This approach limits land expropriation to cases where properties aren't effectively used and ties ownership to a broader social responsibility.

- **Singapore’s Housing Model:** Singapore employs a leasehold system, where the government retains ownership of land and leases it for private or commercial use, ensuring the availability of affordable housing. This model balances private property with state ownership, maintaining state control over critical resources like land, while allowing private entities to develop and utilize it.
- **South Korea’s Land Compensation and Benefit-Sharing Models:** South Korea has a well-regulated land acquisition model with comprehensive compensation and benefit-sharing provisions. When land is acquired, affected communities receive a share of the benefits, often linked to the new developments.

**PRACTICE QUESTION:**

**Q. “Examine the implications of the recent Supreme Court judgment on the redistribution of wealth under Article 39(b) of the Indian Constitution. How can India strike a balance between protecting individual property rights and achieving wealth redistribution?” (15 marks, 250 words)**

**APPROACH:**



**MODEL ANSWER:**

Recently, in a landmark ruling, the Supreme Court held that not all private property could be classified as “material resources of the community” for state acquisition under Article 39(b). This judgment reflects India's evolving economic landscape and raises questions about balancing individual rights with social welfare goals.

## IMPLICATIONS OF THE JUDGMENT

### 1. Positive Implications:

- **Protection of Private Property:** By narrowing the scope of state acquisition, the judgment reinforces private property rights, which is critical for fostering investor confidence and economic growth.
- **Case-by-Case Assessment:** The requirement for a detailed, case-specific evaluation prevents arbitrary acquisitions and ensures that only genuinely communal resources are taken over for public welfare.
- **Judicial Oversight:** Emphasizing adherence to constitutional guarantees (Articles 14 and 300A) provides safeguards against unjust acquisitions and helps maintain a balance of power between the state and judiciary.

### 2. Negative Implications:

- **Constraints on Wealth Redistribution:** Restricting state acquisition powers limits the government's ability to address economic inequality, as highlighted in Justice Dhulia's dissent.
- **Potential Legal Challenges:** The case-by-case approach could increase litigation, with property owners challenging acquisitions, potentially delaying important projects.
- **Ambiguity in Interpretation:** The criteria for determining "communal significance" could lead to inconsistent application, complicating acquisition processes and enforcement.

## BALANCING PRIVATE PROPERTY RIGHTS AND ECONOMIC WELFARE

1. **Clear Definition of "Public Purpose" and "Communal Significance":** The government should legislate a precise definition of "public purpose" and "communal significance" under Article 39(b). An independent body could review acquisitions to verify that they serve a legitimate public need, ensuring consistency and transparency.
2. **Fair Compensation Models:** Implementing compensation schemes that include market rates or benefit-sharing arrangements could help property owners receive fair compensation. For acquisitions affecting entire communities, resettlement support should be prioritized to secure long-term benefits and reduce resistance.
3. **Public-Private Partnerships (PPPs):** Encouraging PPPs in sectors like affordable housing and infrastructure could enable resource development without heavy state acquisition. Models of joint ownership and revenue sharing would ensure community benefits while retaining private property rights.

4. **Prioritizing Strategic Sectors for Redistribution:** Instead of broadly targeting all private properties, the state could focus on acquiring resources in critical areas, such as affordable housing, healthcare, and education, thereby advancing equity without extensive private property acquisitions.
5. **Strengthened Judicial Review:** Dedicated tribunals could expedite grievances related to property acquisition, reducing lengthy legal processes. Periodic judicial review of acquisition laws would ensure that the law adapts to changing socio-economic contexts.

#### International Practices for India to Consider

1. **Germany's Social Market Economy:** Germany's model of balancing property rights with social obligations could serve as an example. The state intervenes only when necessary for the public good, protecting private ownership unless a critical public interest is at stake.
2. **UK's Community Land Trusts (CLTs):** CLTs allow communities to own and develop land for communal use, particularly for affordable housing. India could adopt CLTs in urban areas, enabling communities to manage resources while reducing state acquisition needs.
3. **South Korea's Benefit-Sharing Models:** South Korea's compensation framework includes revenue sharing with affected communities in large-scale acquisitions. This approach could be useful in India, particularly in urban redevelopment projects, to ensure that affected communities benefit from new developments.

The recent Supreme Court judgment provides a balanced perspective by protecting private property rights while recognizing the state's duty to serve public welfare. For India to achieve sustainable growth and equity, a nuanced approach is essential—one that respects individual ownership while promoting fair redistribution. By adopting best practices from other countries, India can foster a fair and just property rights system aligned with its socio-economic objectives.