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THE CHANGING MEANING OF "OWNERSHIP" IN INDIAN PROPERTY LAW: FROM ABSOLUTE RIGHTS TO REGULATED INTERESTS

By *Himanshu K. Mishra*
B.Sc. LL.B. (Hons.) [Cyber Security], *National Law Institute University.*

By *Harshwardhan Yadav*
B.Sc. LL.B. (Hons.)[Cyber Security], *National Law Institute University, Bhopal*

By *Aditi Raikwar*
B.Sc. LL.B. (Hons.) [Cyber Security], *National Law Institute University, Bhopal*

Abstract

Ownership is often described as the most complete right a person can hold over a thing, yet Indian law has never quite allowed it to work that way. This paper traces how the idea of ownership in Indian property law has moved from something close to an absolute, exclusionary right toward a conditional interest that survives only within limits set by statute and constitutional principle. It begins with the jurisprudential picture of ownership as a bundle of rights rather than a single unbreakable claim, then follows the constitutional history of property from the original guarantee in Articles 19(1)(f) and 31, through the compensation disputes and constitutional amendments of the 1950s to the 1970s, to the removal of property from Part III by the Forty-Fourth Amendment and its relocation to Article 300A. It then examines how the Supreme Court has read procedural and rule of law content into Article 300A even without fundamental right status, most recently in *Kolkata Municipal Corporation v Bimal Kumar Shah*. Finally, it considers how ordinary statutes such as the land acquisition law of 2013, the Forest Rights Act, the Benami law and the Real Estate (Regulation and Development) Act have reshaped ownership from the ground up, turning title into something that is recognised by the state, but always answerable to a public purpose, a procedure, or a regulator standing behind it.

Keywords: Article 300A, right to property, Forty-Fourth Amendment, basic structure, land acquisition, Kolkata Municipal Corporation v Bimal Kumar Shah, bundle of rights.

I. Introduction

When the Constitution of India came into force in 1950, the right to property sat inside Part III alongside the right to life and the right to free speech, guaranteed in the same register as the freedoms that most people would call fundamental in an ordinary sense. Seventy years later, that same right survives as a single, spare sentence in Part XII: no person shall be deprived of property save by authority of law.[1] The distance between those two positions captures, in miniature, the argument of this paper. Ownership of property in India has not disappeared as a legal category, and it has not been reduced to nothing either. It has instead been steadily reworked, from something resembling an inviolable, near absolute entitlement into a regulated interest whose content depends on legislative choice, administrative process and constitutional principle rather than on the bare fact of title.

This shift did not happen in a single moment. It happened across three overlapping fronts. The first is theoretical: even before independence, jurists had already abandoned the idea that ownership means one undivided, exclusionary right, in favour of viewing it as a bundle of separable claims that can be added to, subtracted from, or redistributed by law.[2] The second is constitutional: the story of Articles 19(1)(f), 31,

[1]Constitution of India 1950, art 300A.

[2]John Salmond, *Jurisprudence* (P J Fitzgerald ed, 12th edn, Sweet & Maxwell 1966), discussed in 'Jurisprudential Aspect of Ownership' (iPleaders, 24 November 2020) <https://blog.ipleaders.in/jurisprudential-aspect-of-ownership/> accessed 5 September 2026.

31A to 31C and finally 300A is a fifty year contest between a judiciary insisting on just compensation and a legislature determined to carry out land reform and nationalisation without being stalled in court, a contest that ended with property being read out of the fundamental rights chapter altogether by the Forty-Fourth Amendment.[3] The third is statutory: laws such as the land acquisition legislation of 2013, the Forest Rights Act 2006, the Benami law and the Real Estate (Regulation and Development) Act 2016 have each, in their own way, conditioned what an owner can do with property, who can hold it, and on what terms it can be taken away.

This paper follows all three fronts in turn. Part II sets out the jurisprudential background against which Indian property law developed, and suggests that the picture of ownership as an absolute right was already contested well before 1950. Part III traces the first three decades of the Constitution, when property was formally a fundamental right but was progressively hemmed in by amendment after amendment in response to adverse judgments. Part IV examines the Forty-Fourth Amendment and the case law built around Article 300A since 1978, and argues that the courts have quietly restored a measure of procedural protection to property without ever calling it a fundamental right again. Part V turns to statute law, and shows how ownership has been reconstituted, sometimes fragmented, sometimes made conditional on regulatory compliance, well outside the constitutional text. Part VI draws these threads together and argues that what has emerged is neither absolute ownership nor its abolition, but something closer to a regulated bundle: a set of entitlements that the state recognises, protects through a defined process, and subordinates to purposes it considers to serve the common good.

II. Ownership Before the Constitution: Theory and Inheritance

Ownership is usually presented to law students as the most complete right a person can have over a thing, and the vocabulary used to describe it goes back to Roman law, which distinguished dominium, the legal right to a thing, from possessio, mere physical control over it.[4] Roman dominium was often treated as the nearest thing to an absolute right known to law, a power good against the whole world and limited, in principle, only by law itself. English law absorbed a version of this picture and for a long time treated ownership largely through the lens of possession, with a distinct concept of ownership as separate from possession developing only later.[5]

Even so, the classical jurists writing in the nineteenth and twentieth centuries never agreed that ownership was a single, indivisible right. John Austin described it as a right of user indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration, a definition that drew immediate criticism for treating ownership as though it could never be cut down by the state.[6] Thomas Erskine Holland's definition, that ownership is a plenary control over an object, met the same objection.[7] The most influential corrective came from John Salmond, who argued that what a person owns is never a single right but a complex of rights, capable of being reduced by the creation of leases, mortgages, easements and other encumbrances without the underlying ownership disappearing.[8] On this view, an owner holds whatever residue of the right of use is left over once every partial or limited right created in favour of somebody else has been subtracted, so that ownership

[3] Constitution (Forty-Fourth Amendment) Act 1978, s 2.

[4] 'Ownership in Jurisprudence: Meaning, Kinds, Incidents and Relevance in Contemporary Times' (LawBhoomi, 19 September 2025) <https://lawbhoomi.com/ownership-in-jurisprudence-meaning-kinds-incidents-and-relevance-in-contemporary-times/> accessed 5 September 2026.

[5] ibid.

[6] 'Ownership in Jurisprudence' (n 4); see also 'Jurisprudential Aspect of Ownership' (n 2).

[7] 'Ownership in Jurisprudence' (n 4).

[8] Salmond (n 2).

is better understood as a bundle capable of gaining or losing sticks over time than as a single solid block.[9]

The point matters because it undercuts a common but misleading story in which ownership in India was once absolute and was only later cut down by regulation. Colonial land tenure was itself a patchwork: permanent and temporary revenue settlements created zamindars whose rights over land were closer to a grant from the Crown than to an English freehold, coexisting with ryotwari and other tenures under which cultivators held direct settlements with the state.[10] What the Constitution inherited in 1950 was therefore not a single, clean concept of absolute ownership but an already layered set of land rights, many of which the framers themselves expected to dismantle through land reform in the years immediately ahead.[11]

The Supreme Court's own early definition of property, given within a few years of the Constitution coming into force, described it as covering both the corporeal thing itself and, in its legal or juridical sense, the bundle of rights that an owner can exercise under the law with respect to its use and enjoyment, to the exclusion of others.[12] The bundle, in other words, was there from the beginning of the constitutional story. What has changed in the seventy-five years since is not whether ownership in India is absolute, since strictly speaking it never quite was, but how many sticks the bundle contains, who is entitled to add or remove them, and under what conditions.

III. Property as a Fundamental Right, 1950 to 1977

The framers of the Constitution had before them the model of the Fifth Amendment to the United States Constitution, which ties the taking of property to due process of law and to just compensation.[13] Many members of the Constituent Assembly were wary of importing due process wholesale, fearing that courts would use it to second-guess land reform legislation much as American courts had once used substantive due process to strike down economic regulation. The compromise reached was to guarantee every citizen the right to acquire, hold and dispose of property under Article 19(1)(f), while permitting the state to deprive a person of property under Article 31 so long as this was done by a law that specified a public purpose and either fixed a compensation or laid down principles for determining one.[14] Even in its original form, then, property was a right subject to legislative qualification rather than an inviolable claim standing above ordinary law.

That compromise was tested almost immediately. Independent India's first major economic reform was the abolition of the zamindari system of rural intermediaries, and the Bihar Land Reforms Act 1950 that carried this out was challenged before the Patna High Court and then the Supreme Court in *State of Bihar v Maharajadhiraja Sir Kameshwar Singh of Darbhanga*.[15] The Supreme Court upheld the broad thrust of the Act, though it struck down two provisions as discriminatory under Article 14, and the episode convinced Parliament that agrarian reform legislation could not be left to survive the ordinary process of judicial review case by case.[16] Parliament's response was the Constitution (First Amendment) Act 1951, which inserted Articles 31A and 31B along with the

[9] ibid.
[10] Jaivir Singh, '(Un)Constituting Property: The Destruction of the "Right to Property" in India' (CSLG Working Paper No 05, Centre for the Study of Law and Governance, Jawaharlal Nehru University 2004) 7.
[11] ibid.
[12] *State of West Bengal v Subodh Gopal Bose* AIR 1954 SC 92, quoted in Jaivir Singh (n 10) 30.
[13] Jaivir Singh (n 10) 7.
[14] Constitution of India 1950, art 19(1)(f) and art 31, both as originally enacted, prior to the Constitution (Forty-Fourth Amendment) Act 1978.
[15] AIR 1952 SC 252.
[16] ibid.

Ninth Schedule: Article 31A shielded laws acquiring estates or altering rights in them from challenge under Articles 14, 19 or 31, while Article 31B gave blanket protection to any statute simply by having it listed in the Ninth Schedule.[17] From this point on, the constitutional history of property in India is largely a history of Parliament amending the text of the Constitution every time the Supreme Court read compensation in a way that made land reform or nationalisation harder to carry through.

The next flashpoint was the meaning of compensation itself. In *State of West Bengal v Bela Banerjee*, the Supreme Court held that a law which pegged compensation to a market value fixed several years before the date of acquisition failed to satisfy the constitutional requirement, because compensation had to be a just equivalent of what the owner had lost rather than a sum that Parliament merely thought reasonable.[18] Parliament answered with the Constitution (Fourth Amendment) Act 1955, which rewrote Article 31(2) so that no law providing for compensation could be questioned in court on the ground that the amount was inadequate, and added clause (2A) to clarify that a purely regulatory deprivation of property, one that did not transfer ownership or possession to the state, did not attract the compensation requirement at all.[19] Even after this amendment, the courts kept finding room to review whether what was offered amounted to compensation in substance. In *Vajravelu Mudaliar v Special Deputy Collector, Madras*, the Supreme Court held that principles of valuation that were illusory or arbitrary, bearing no relationship to the value of the property acquired, amounted to a fraud on the legislature's power even though the adequacy of compensation as such could no longer be questioned.[20]

Matters came to a head at the end of the 1960s in two decisions delivered within three years of each other. In *I C Golak Nath v State of Punjab*, an eleven-judge bench held that Parliament could not use its amending power under Article 368 to abridge or take away any fundamental right, including the right to property, a ruling that placed every future amendment touching Article 31 on uncertain constitutional ground.[21] Then, in *Rustom Cavasjee Cooper v Union of India*, widely known as the Bank Nationalisation case, an eleven-judge bench struck down the statute nationalising fourteen major banks on the ground that the compensation it provided ignored the real value of the banks' assets, holding that the Constitution guaranteed compensation in the sense of a genuine money equivalent, whatever label Parliament chose to give it.[22] Parliament's response to both decisions was the Constitution (Twenty-Fourth Amendment) Act 1971, which affirmed its power to amend any part of the Constitution including Part III, and the Constitution (Twenty-Fifth Amendment) Act 1971, which replaced the word compensation in Article 31(2) with the word amount, barred courts from questioning the adequacy of that amount, and inserted a new Article 31C giving laws enacted to secure the directive principles in Article 39(b) and (c) immunity from challenge under Articles 14 and 19.[23]

The constitutionality of these amendments, together with the land reform statute they were meant to protect, was argued before a thirteen-judge bench, the largest ever to sit in the Supreme Court, in *Kesavananda Bharati v State of Kerala*.[24] By a majority of seven to six, the Court held that Parliament's amending power under Article 368, however wide, could not be used to destroy the basic structure of the Constitution, and on this footing it upheld the Twenty-Fourth Amendment while reading down parts of the Twenty-Fifth.[25] Property fared

[17] Constitution (First Amendment) Act 1951, s 4.

[18] AIR 1954 SC 170.

[19] Constitution (Fourth Amendment) Act 1955, s 2.

[20] AIR 1965 SC 1017.

[21] AIR 1967 SC 1643.

[22] (1970) 1 SCC 248.

[23] Constitution (Twenty-Fourth Amendment) Act 1971; Constitution (Twenty-Fifth Amendment) Act 1971, s 3.

[24] (1973) 4 SCC 225.

[25] ibid.

better in this judgment than is sometimes remembered: the amendments to Article 31 were not struck down, and the Court's willingness to shelter directive-principle legislation behind Article 31C was reaffirmed a decade later in *Sanjeev Coke Manufacturing Co v Bharat Coking Coal Ltd*, where the nationalisation of a defined set of coke oven plants was upheld as legislation giving effect to Article 39(b), and therefore immune from an Article 14 challenge notwithstanding that the selection of which plants to nationalise might otherwise have looked arbitrary.[26] What *Kesavananda Bharati* did establish, and what later cases would build on, is that property itself was never treated as part of the basic structure that Parliament could not touch. The ground was therefore already prepared, well before 1978, for property to be removed from Part III altogether without offending the one limit that *Kesavananda Bharati* had placed on the amending power.

IV. The Fall of the Fundamental Right: The Forty-Fourth Amendment and Article 300A

The government that returned to power after the Emergency used its restored parliamentary majority to settle the property question once and for all. The Constitution (Forty-Fourth Amendment) Act 1978 repealed Articles 19(1)(f) and 31 in their entirety and inserted a new Article 300A into Part XII providing simply that no person shall be deprived of his property save by authority of law.[27] The stated reason, given by the law minister of the day, was that treating the right to property as equal in status to rights such as personal liberty had allowed a small propertied class to resist land reform in the name of a right that most Indians, who owned little or no property, had no practical stake in.[28] Whatever the merits of that reasoning, its constitutional effect was drastic: because Article 300A sits outside Part III, its breach cannot be remedied by a direct petition to the Supreme Court under Article 32, and an aggrieved owner must instead approach a High Court under Article 226, or bring an ordinary civil suit, remedies that carry none of the special status attached to the enforcement of a fundamental right.[29]

For close to two decades after 1978, the Supreme Court treated Article 300A as demanding little more than bare legislative authority for a taking. This reading is captured in *Jilubhai Nanbhai Khachar v State of Gujarat*, concerning land taken from erstwhile revenue farmers for mining purposes, where the Court held that Article 300A does not contemplate payment of compensation in the sense of a just equivalent or indemnification of the owner.[30] More significant for later doctrine, the Court held in the same case that the right to property under Article 300A is not a basic feature of the Constitution at all, confirming that property, unlike free speech or judicial review, could be diminished by ordinary amendment without any basic-structure objection standing in the way.[31]

Yet the Court did not treat Article 300A as an empty formality either. In *Vimlaben Ajitbhai Patel v Vatslaben Ashokbhai Patel*, decided in the context of an attempt to attach a mother-in-law's property to satisfy a maintenance claim made against her son, the Court observed that the right to property, though no longer a fundamental right, remains a constitutional right and, more than that, a human right, so that the procedure by which a person is deprived of it must be scrupulously followed.[32] This formula, that property is not fundamental but is still constitutional and human, has been repeated in later cases, and it does real work: it signals that whatever content Article 300A carries must be given effect through strict compliance with the procedure the relevant law lays down, even where no free-standing guarantee of compensation exists in the constitutional text.

The durability of the Ninth Schedule shield built up between 1951 and 1976 was itself tested in *I R Coelho*

[26](1983) 1 SCC 147.
[27]Constitution (Forty-Fourth Amendment) Act 1978, s 2.
[28]Jaivir Singh (n 10) 19.
[29]Constitution of India 1950, arts 32, 226 and 300A.
[30]1995 Supp (1) SCC 596.
[31]ibid.
[32](2008) 4 SCC 649, para 42.

v State of Tamil Nadu, where a nine-judge bench held that any law inserted into the Ninth Schedule after 24 April 1973, the date of the *Kesavananda Bharati* judgment, remains open to challenge on the ground that it damages the basic structure, notwithstanding Article 31B.[33] The Court reasoned that Article 31B could not become a standing device for excluding judicial review altogether, and it framed a rights test and an essence of the right test to decide whether a Ninth Schedule law had gone so far as to destroy the core of a right it purported to override.[34] Although the case did not concern a property statute directly, its logic confirmed that even legislation enacted for agrarian reform, the very purpose the Ninth Schedule was designed to protect, could not shelter behind Article 31B without limit.

The most significant doctrinal development of the Article 300A era came in *K T Plantation Pvt Ltd v State of Karnataka*, a case arising out of a state notification withdrawing an exemption enjoyed by land used to cultivate a particular tree crop. A Constitution Bench held that although Article 300A does not, on its face, guarantee compensation the way Article 31(2) once did, a requirement of compensation is inbuilt in the Article, because a law depriving a person of property must still conform to the rule of law and must be just, fair and reasonable, failing which it can be struck down as arbitrary.[35] The Court's method here, reading a substantive constraint into a provision whose text appears to demand only legislative authority, effectively restored through interpretation a measure of what the Forty-Fourth Amendment had removed through the text itself.

The most recent, and for present purposes the most illustrative, decision is *Kolkata Municipal Corporation v Bimal Kumar Shah*, decided in May 2024. The Corporation had sought to acquire a Kolkata property for a public park by invoking a provision of the Kolkata Municipal Corporation Act 1980 that authorised the identification of land for such purposes but contained no compensation mechanism or acquisition procedure of its own. The Supreme Court held the acquisition invalid, and in doing so held that the words authority of law in Article 300A embed a set of seven minimum procedural safeguards: a right to notice, a right to be heard, a right to a reasoned decision, a requirement that the taking be for a public purpose, a requirement of fair compensation, a duty to conduct the process efficiently and within a reasonable time, and a right to have the outcome of the process communicated to the person affected.[36] The Court described these as sub-rights that together give real content to Article 300A, and held that a taking which lacks even one of them cannot be described as a deprivation by authority of law.[37]

Read together, *Jilubhai*, *Vimlaben*, *Coelho*, *K T Plantation* and *Kolkata Municipal Corporation* trace a coherent arc. Property lost its status as a fundamental right in 1978 and was confirmed soon after to sit outside the basic structure of the Constitution altogether. Yet over the following three decades the Court used the open language of Article 300A, and its own reading of the rule of law into that language, to rebuild a body of procedural and substantive protection that a bare textual reading of the Forty-Fourth Amendment would not have predicted. What Indian owners hold today under Article 300A is not the fundamental right their predecessors held before 1978, but neither is it the empty shell that *Jilubhai* might once have suggested it would become. It is a right whose survival depends on the state following a defined, judicially enforced procedure each time it wishes to interfere with it, a right conditioned on process rather than guaranteed in substance.

V. Ownership Refashioned by Statute: From Title to Conditional Interest

Constitutional doctrine tells only part of the story, because most of the day to day content of ownership in India is fixed not by the Constitution but by

[33](2007) 2 SCC 1.
[34]ibid.
[35](2011) 9 SCC 1.
[36]Civil Appeal No 6466 of 2024 (Supreme Court of India, 16 May 2024) [28].
[37]ibid.

ordinary statute, and it is at this level that the shift from an absolute right to a regulated interest is most visible in practice.

Land acquisition supplies the clearest illustration. For well over a century, the taking of private land for public purposes was governed by the Land Acquisition Act 1894, a colonial statute that gave the Collector wide discretion to determine what counted as a public purpose, fixed compensation largely by reference to market value, and offered no right to rehabilitation or resettlement to those displaced.[38] Parliament replaced this framework with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, in force since January 2014, which does considerably more than raise the price of acquisition, though it does that too: it fixes compensation by multiplying the market value determined under section 26 by a factor of up to two in rural areas and one in urban areas under the First Schedule, and then adds a mandatory solatium of one hundred per cent under section 30, producing compensation of up to four times market value in rural areas and twice market value in urban areas.[39] More importantly for present purposes, the Act changes the process by which land can be taken at all, requiring a social impact assessment before most acquisitions and the consent of seventy per cent of affected families for acquisitions benefiting private companies, eighty per cent for public-private partnerships, together with a statutory entitlement to rehabilitation and resettlement independent of the price paid for the land.[40] Ownership of land earmarked for acquisition is, under this Act, no longer simply a claim to be paid a price fixed unilaterally by an official; it is a position embedded in a multi-stage administrative process in which the owner and the wider affected community can, to a degree, participate and object.

A second and quite different kind of reconstitution appears in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. Rather than protecting an existing owner against the state, this statute creates rights where none had formally been recognised before, vesting individual and community forest rights, including the right to hold and cultivate forest land already in occupation and community rights over minor forest produce and grazing, in Scheduled Tribes and other traditional forest dwellers whom colonial and post-colonial forest law had long treated as encroachers on state-owned forest land.[41] The Act's statement of objects and reasons describes it as correcting a historical injustice done to these communities by forest policies that never recognised their dependence on the forest.[42] What matters for present purposes is the form the right takes: it is heritable but not alienable or transferable, and it is expressly conditioned on continuing occupation and on responsibilities for the sustainable use and conservation of the forest.[43] This is about as far from the classical, freely disposable estate as a property right can get, and it shows the modern Indian state using property law itself, and not merely limits placed on it, as an instrument of redistribution and ecological policy.

A third illustration is the law governing benami transactions, which conditions ownership on the legitimacy of how it was acquired rather than on any relationship between the owner and the asset itself. The Benami Transactions (Prohibition) Amendment Act 2016 substantially rewrote the earlier Act of 1988, providing that any property found to be the subject of a benami transaction, meaning a transaction in which one person holds property while another person

[38] Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, Statement of Objects and Reasons.

[39] Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, ss 26, 30 and sch I.

[40] ibid ss 4, 6.

[41] Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, s 3(1).

[42] ibid, Statement of Objects and Reasons.

[43] ibid s 4(4).

actually provided the consideration for it, is liable to confiscation by the central government, and that a benamidar cannot even transfer the property back to the real owner.[44] The severity of this regime was tested in *Union of India v Ganpati Dealcom Pvt Ltd*, where the Supreme Court held that the criminal and confiscation provisions introduced in 2016 could not be applied retrospectively to transactions entered into before the amendment came into force, and struck down the corresponding unamended 1988 provisions as manifestly arbitrary.[45] That decision was itself recalled by the Court in October 2024 for fresh hearing, on the ground that the constitutional validity of the unamended provisions had not properly been argued before it, leaving the retrospective reach of the benami regime unsettled as this paper is being written.[46] Whatever the eventual outcome, the benami law illustrates a distinct technique for regulating ownership: instead of limiting what an owner may do with property already acquired, it makes the very existence of ownership conditional on the transaction behind it being one the law is willing to recognise, with confiscation, and not merely a fine, as the sanction for a transaction that it is not.

A fourth, more consumer-facing illustration is the Real Estate (Regulation and Development) Act 2016. Before this Act, a person who booked a flat in an under-construction building held little more than a contractual claim against a developer, largely unregulated and often skewed by one-sided agreements for sale.[47] The Act requires most real estate projects to be registered with a state Real Estate Regulatory Authority before they can be advertised or sold, requires the promoter to deposit seventy per cent of amounts collected from buyers into a separate account to be used only for that project's construction, and creates a regulator and appellate tribunal empowered to enforce timelines and penalise delay.[48] What ownership of an apartment under construction means today is therefore inseparable from the regulatory status of the project: a flat bought from an unregistered project, or one where the promoter has diverted escrowed funds, sits in a different legal position from an otherwise identical flat bought from a compliant one, even though nothing about the physical asset itself differs. Regulation here does not merely limit an existing entitlement; it supplies much of the entitlement's content in the first place.

Across these four statutes, and others could be added, such as coastal and forest conservation notifications or municipal zoning and floor space controls, a common thread emerges: resources that might once have been treated as falling wholly within a private domain, entered only occasionally by the state for a defined public purpose, are increasingly treated as bearing on the well-being of the wider community from the outset, so that their ownership is structured around that function rather than around the bare fact of title.[49] This is close to the vision that Article 39(b) of the Constitution expresses when it directs the state to secure that the ownership and control of the material resources of the community are distributed so as best to subserve the common good, a directive principle that Article 31C has, since *Kesavananda Bharati* and *Sanjeev Coke*, allowed Parliament to give effect to

[44] Benami Transactions (Prohibition) Amendment Act 2016, ss 5, 6, substituting ss 5 and 6 of the Prohibition of Benami Property Transactions Act 1988.

[45] (2023) 3 SCC 315.

[46] *Union of India v Ganpati Dealcom Pvt Ltd*, Review Petition (Civil) No 359 of 2023 in Civil Appeal No 5783 of 2022 (Supreme Court of India, 18 October 2024).

[47] Real Estate (Regulation and Development) Act 2016, preamble.

[48] ibid ss 3, 4.

[49] See the discussion of K T Plantation (n 35) in 'Procedural Safeguards in Property Acquisition under Article 300A: Insights from KMC v Bimal Kumar Shah' (CaseMine) <https://www.casemine.com/commentary/in/procedural-safeguards-in-property-acquisition-under-article-300a:-insights-from-kmc-v.-bimal-kumar-shah/view> accessed 5 September 2026.

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even where this comes at the cost of an owner's claim under Article 14.[50]

VI. From Dominion to a Regulated Bundle: An Assessment

It is tempting to tell this history as a fall from grace: property once stood among the fundamental rights, and fifty years of amendment and litigation reduced it to a technicality tucked away in Part XII. The account given above suggests a more accurate, and in some ways more interesting, story. Ownership in India was never the single, absolute right that the word sometimes suggests. It arrived at the Constitution already understood by jurists as a bundle of separable claims, already fragmented by a colonial land tenure system that had no single form of title, and already destined by the framers themselves for large-scale redistribution through land reform. What has changed since 1950 is not a move from an absolute right to a regulated one, but the location, mechanism and intensity of the regulation.

Three shifts stand out. The first is a shift in constitutional status, from a fundamental right enforceable directly in the Supreme Court to a constitutional right enforceable, on the Court's own account in *Vimlaben Ajitbhai Patel* and later cases, as a species of human right that nonetheless commands only the ordinary remedies available under Article 226 and Article 300A itself. The second is a shift in the source of protection, from a textual guarantee of compensation under the old Article 31(2) to a judicially constructed set of rule of law requirements, culminating in the seven sub-rights recognised in *Kolkata Municipal Corporation*, that owners must now rely on interpretation rather than express text to enforce. The third, and arguably the most consequential for ordinary owners, is a shift in the site of regulation from the Constitution to statute. Whether a person actually enjoys secure, transferable, exclusive control over land or another asset today depends far less on Article 300A than on whether a social impact assessment has been completed under the 2013 land acquisition law, whether a forest right has been recorded under the 2006 Act, whether a transaction is one the benami law will recognise, or whether a real estate project is registered under RERA.

None of this means that ownership has become meaningless, and it would be a mistake to read the case law that way. *Kolkata Municipal Corporation* shows a Court still willing to strike down a taking that ignores basic procedural guarantees, even without a fundamental right to lean on. *K T Plantation* shows the Court prepared to treat an uncompensated taking as arbitrary and therefore unconstitutional under Article 14, a doctrine developed independently of Article 300A's own text. What has genuinely changed is the register in which ownership is now defended: less as a private entitlement that trumps the collective interest, and more as a procedurally protected position within a scheme that the state is, in principle, free to redesign so long as it follows a fair process and can point to a legitimate public purpose. Whether that scheme takes from an owner altogether, as under the Benami Act, or gives new owners rights they never held before, as under the Forest Rights Act, the underlying assumption is the same: property in India today is what the law, read as a whole rather than one clause of it, says it is, and not an entitlement that exists independently of that law and merely awaits its recognition.

VII. Conclusion

The title of this paper poses the change as a move from absolute rights to regulated interests, and the case for that description holds up, though with an important qualification. Ownership in Indian law was arguably never absolute in the strict jurisprudential sense: even the framers of 1950 built compensation and public purpose limits into Article 31 from the outset, and the jurists whose definitions Indian courts still cite had already rejected the idea that ownership is a single, unbreakable right rather than a bundle capable of being added to or subtracted from by law. What the

[50]Constitution of India 1950, art 39(b) and art 31C.

last seventy-five years have done is relocate the site of that regulation. Property moved out of the fundamental rights chapter in 1978, was confirmed to sit outside the basic structure of the Constitution soon after, and then had a measure of procedural protection rebuilt around it by judicial interpretation of Article 300A, most recently and most explicitly in the seven sub-rights recognised in *Kolkata Municipal Corporation v Bimal Kumar Shah*. At the same time, ordinary statutes covering land acquisition, forest rights, benami transactions and real estate regulation have done far more than constitutional doctrine to determine what an owner can actually do with property from day to day. The result is a legal category that has neither the inviolability once associated with dominion nor the fragility that removing it from Part III might have suggested. It is, instead, a regulated interest: recognised by law, defended through a defined procedure, and always answerable to the public purposes that the Constitution, in Article 39(b), asks the state to pursue.

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