Raising the Guardrails on Property Rights: Kesavananda, Minerva Mills, and the 2024 Recalibration of State Power

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Abstract

The Supreme Court ruling in Property Owners Association v. State of Maharashtra (2024) is a decisive institutional recalibration in the history of property rights in modern India. This article examines the judgment's implications for the scope of property rights. We focus on the limits the judgment seeks to place on the state's power to acquire private and community resources, to give effect to the directive principles in Part IV of the Constitution. We argue that the judgment is a decisive step toward a stronger protection of property rights. The apex court has reinterpreted Article 300A of the Constitution to emphasise that the protection of property rights under the article is on par with a human right. To limit the state's ability to infringe upon citizens' rights to property, the apex court has established a set of governing principles. Moreover, it has defined the term "material resources of the community" under Article 39(b). By incorporating the economic and legal doctrine of proportionality, the Court has raised the institutional guardrails on property rights. Furthermore, the Court has observed that judicial interpretations of the Constitution should not be ideology-driven.

Keywords: *Property Owners Association (2024), Fundamental Rights, Directive Principles, Property Rights, Article 39(b), Article 31C, Judicial Review, Article 300A, Kesavananda Bharati and the Minerva Mills*

JEL Classification: *K11, K10, P14, H11*

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1. Introduction

The citizens' right to property vis-à-vis the state's power to acquire it has been a vexed legal issue in Indian constitutional law since Independence. The tussle between the legislature and the judiciary on the scope of individual property rights dates back to the First Amendment to the Constitution.[3] Property rights also sat at the centre of several other constitutional amendments, including the 44th Amendment in 1978, which reduced the status of the right to private property from a fundamental right to a constitutional right. Moreover, some landmark Supreme Court rulings, including the famous judgments in *Kesavananda Bharati* and the *Minerva Mills* cases, resulted from legal disputes over this very issue.[4] Yet the scope and strength of citizens' rights to property vis-à-vis the state remain unresolved. Even after 75 years of independence, these issues remain a source of occasional tension between the executive and the legislature, on the one hand, and the judiciary, on the other.

Against this backdrop, the Supreme Court ("SC") ruling in *Property Owners Association v. State of Maharashtra* (2024 INSC 835) is a landmark in the evolution of property rights in modern India.

In this article, we examine the judgment's implications for the scope of property rights and the limits it places on the state's power to acquire private and community resources to give effect to the directive principles of state policy outlined in Part IV of the Constitution.[5] We argue that the judgment is a decisive step by the judiciary toward better protection of property rights by limiting the state's ability to infringe upon citizens' rights to property. We analyse the *Property Owners Association v. State of Maharashtra* ruling in the context of a series of property-rights-related constitutional amendments and the judicial response to them.

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[3] The First Amendment to the Constitution inserted the Ninth Schedule to the Constitution. The purpose of the Ninth Schedule was to protect certain legislations from judicial review. At the same time, 13 different legislations, each related to land reform, were inserted in the Ninth Schedule and granted protection from judicial review. In *IR Coelho v. The State of Tamil Nadu* (2007 2 SCC 1), the Supreme Court held that laws in the Ninth Schedule could be called up for judicial review if challenged on the grounds of violation of the Basic Structure of the Constitution. See Noorani (2007).

[4] See *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*, AIR 1973 SC 1461, and *Minerva Mills Ltd. & Ors. v. Union of India & Ors*, AIR 1980 SC 1789

[5] For a discussion of the constitutional status of the Directive Principles, non-justiciability of Part IV, and the judiciary's practice of reading of Part IV in conjunction with Part III to give effect to certain socio-economic claims and provide judicial remedies, see Jain (2019).

Several successive constitutional amendments have progressively narrowed the scope of property rights in India. [6] Following the 44th Amendment in 1978, the right to private property was diluted from a fundamental right to a constitutional right under Article 300-A. Previously, Parliament added Articles 31A, 31B, and 31C through a series of constitutional amendments to circumvent judicial scrutiny of certain laws, often those involving the acquisition of, or restrictions on, private property. [7] Furthermore, if state agencies acquire a resource "to give effect" to the Directive Principles in Article 39(b) and (c) of Part IV of the Constitution, Article 31C protects the acquisition from legal challenges on the ground that it violates fundamental rights. Moreover, they are not obligated to compensate the affected owners.

Therefore, when acquiring private property, executive agencies have often invoked Article 31C alongside Article 39(b) and (c) to circumvent constitutional protection of property rights and legal scrutiny on grounds of fundamental rights violations. In addition, as discussed in Singh (2012), they have exploited ambiguities in the definitions of "public purpose" and "resources of the community".

Simply put, legislative enactments and executive processes have sought to restrict the scope of property rights in both law and practice. The affected owners, on the other hand, have resisted such attempts through the courts. Consequently, Articles 31A, B and C and 39(b) and (c) have been extensively scrutinised and litigated against on several grounds, *inter alia*, that they infringe upon fundamental rights granted by Articles 19 (right of expression, employment, protest, etc.) and 14 (equality before law).

It is this strand of litigation that resulted in the landmark cases of *Kesavananda Bharati*, *Minerva Mills* and *I.R. Coelho v. The State of Tamil Nadu.* Together, these judgements cemented judicial review of the state's actions as an unimpeachable component of the Constitution.[8] The SC ruling

[6] For a comprehensive account of successive property-related amendments, see Singh (2006). The author examines the First, Seventeenth, Twenty-Fourth, Twenty-Fifth, and Forty-Fourth Amendments, which have progressively removed aspects of takings decisions from the courts' purview and placed them with the legislature and/or the executive, substantially eroding the right to property in India.

[7] As a result of several Constitutional amendments -namely the 1st, 4th, 7th, 25th, 39th, 40th, and 42nd Amendments- Article 31 stands abolished, and Articles 31A, B, and C have been added. At the time of their inclusion, these articles granted legislatures unbridled power, exempting them from judicial review and challenges on the grounds of violating fundamental rights.

[8] Judicial review has varying connotations across countries. In India, judicial review has one of the widest ambits and strongest significance. It first rose to such significance in *Kesvananda Bharati.* In *Minerva Mills* it was formally and explicitly recognised as a part of the Basic Structure. See Rao and Reddy (1997) for a detailed discussion. More

in *Property Owners Association v. State of Maharashtra (2024)* belongs to this league of pathbreaking judicial pronouncements.

We discuss how, through this judgment, the SC has sought to delineate and restrict the scope of the power enjoyed by the state under Article 31C to acquire property and other resources in pursuit of laws giving effect to the directive principles. The apex court has reaffirmed its long-standing view that provisions of the Constitution that restrict fundamental rights and property rights must be interpreted to minimise infringements of individual rights. Moreover, in the spirit of the proportionality principle, the Court has argued that restrictions on individual rights cannot be unreasonable.[9] Accordingly, the SC has limited the legislature's power to infringe property rights under the guise of the directive principles contained in Article 39(b) and (c). The apex court has also delineated the scope of the term "material resources of the community" under Article 39(b), which has occasionally been a source of disputes between the state and property owners. Equally important, the apex court has reinterpreted the protection to property available under Article 300A of the Constitution.

Our analysis contributes to the literature on the evolution and the current state of property rights protection in India (For a comprehensive review of this literature, see Singh (2006), Singh (2012) and Allen (2015)). We also contribute to the discussion of the state's power to acquire property and the scope of judicial review of the acquisition process and practices.[10] We argue that the apex court has, in effect, ruled that the laws and rules empowering the state to acquire

recently literature has examined judicial review as a constraint on specific forms of executive lawmaking, particularly the ordinance-making power (Maurya & Sood, 2024).

[9] The proportionality principle requires that the degree of infringement of individual rights in pursuit of the public good should be minimal and, in any case, not disproportional to the public good achieved. The principle is widely applied in constitutional law across many jurisdictions, helping protect individual rights against state action. The list includes Canada, Germany, Israel, Spain, Poland, Portugal, the European Court of Justice, the European Court of Human Rights, and the Appellate Panel of the World Trade Organisation, among others. The US Supreme Court uses other comparable checks to determine whether limiting a fundamental right is justified on public-interest grounds. For application of this principle in the context of eminent domain laws, see Schaefer (2018), Schaefer and Singh (2018) and Singh (2004).

[10] The property rights have been at the core of the question: can any portion of the Constitution be amended, to any extent, by the Parliament? Tussle between the judiciary and the legislature on this question has been marked by landmark judgements such as *Kesavananda Bharati*, *Minerva Mills* and *IR Coelho.* At the crux of it all was the Court's belief that though every part can be amended, the amendments cannot violate the basic structure of the Constitution. Over the years, various constitutional benches have spelt out what this basic structure entails. For a longer discussion on the conflict around the amending powers of the legislature, see Noorani (2007), Baxi (1999). Also see Supreme Court Observer (2025).

properties should be reasonable in the spirit of the proportionality principle (Schaefer, 2018; Schaefer and Singh, 2018).[11]

The struggle between the judiciary and the legislature over property rights can be mapped to a broader constitutional issue: what restrictions on fundamental and other legal rights are reasonable in pursuit of directive principles of state policy? Judicial interpretation of the relationship between the directive principles and individual rights has moved through different stages (Ambrose, 2013). This debate over the place of individual rights in collective welfare calculations also appears in the broader law and economics literature. One strand of this literature has argued that individual rights should not be treated merely as another component of aggregate welfare calculation. Individual rights must operate as independent constraints on state action (White, 2019). We place the SC ruling within this strand and examine its implication in the context of property rights.

The article is organised as follows. Section 2 provides the legal context for the issues at hand. It traces the trajectory of judicial decisions and constitutional amendments concerning Articles 39(b), (c), and 31C, and details how these constitutional provisions, often a source of conflict between the legislature and the judiciary, have been interpreted by the Courts over time. Section 3 outlines the facts of Property Owners Association v. State of Maharashtra and examines the key legal questions the Court addressed. Section 4 analyses the judgment and its broader implications on the right to property in India. Section 5 concludes by explaining how the judgment recalibrates the balance between the State's redistributive powers and the constitutional protection of private property.

2. The Legal Context and the Trajectory of Amendments

The Indian State and its organs ordinarily acquire private property by exercising the eminent domain power listed as entry 42 of the Third List of the Seventh Schedule of the Constitution. Several acquisition laws are also presented as measures intended to give effect to Article 39(b) and (c) of Part IV of the Constitution. Specifically, Article 39(b) and (c) state that:

The State shall, in particular, direct its policy towards securing

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[11] We infer this from *Property Owners' Association v. State of Maharashtra*, 2024 INSC 835, paras 203, 217–220. The Court held state action depriving individuals of property must satisfy procedural protections that are "just, fair and reasonable."

b) "*that the ownership and control of the material resources of the community are distributed to subserve the common good".*

c)*" that the operation of the economic system does not result in concentration of wealth and means of production are not concentrated to common detriment"*

Acquisition under eminent domain enjoys protection under the saving clause of Article 31A. That is, acquisition cannot be challenged on the grounds that it violates the fundamental rights, the rights conferred by Article 14 (equality before law) or Article 19 (right of expression, employment, protest etc.). Article 31A offers such a protection to eminent domain laws on the condition that compensation, no less than the market value, is provided for the acquisition.

By contrast, laws enacted to give effect to the provisions of Article 39 (b) and (c) enjoys the 'safe harbour protection' under Article 31C. Simply put, such laws are protected from being challenged on the grounds that it infringes upon fundamental rights as mentioned in Articles 19 and/or 14. Historically, when right to property was protected under Articles 31 and 19(f), Article 31C also protected qualifying laws against challenges under Article 31. Therefore, a law enacted to give effect to Article 39(b) and (c) could not be invalidated on the grounds that compensation provided was insufficient or illusory. Given this additional protection, state agencies found it attractive to use Article 39(b) and (c) to acquire all sorts of resources during the drive for nationalisation. Several states enacted laws to acquire resources with the purported aim of giving effect to Article 39. The so-enacted laws have been used to acquire a wide range of community and private resources, including contract carriages, land, housing, Coke oven plants, assets of sick textile undertakings, drugs, capital, licenses for felling bamboo, refractory plants, mines and minerals, mining leases, natural gas, among others.[12]

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[12] Article 39(b) has been used for the acquisition:
Of contract carriages: see *State of Karnataka v. Shri Ranganatha Reddy* (1977) 4 SCC 471;
Of land, see *Maharao Sahib Shri Bhim Singhji v. Union of India* (1981) 1 SCC 166;
Of housing, see *B Banerjee v Anita Pan* (1975) 1 SCC 166;
Of coke oven plants, see *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.*(1982) 1 SCC 147
Of assets of sick textile undertakings, see *National Textile Corp Ltd. v. Sitaram Mills Ltd.* AIR (1986) SC 1234; Of drugs, see *Union of India v. Cynamide India Ltd.* (1987) 2 SCC 720.
Of capital, see *N. Parthasarathy v. Controller of Capital Issues*, (1991) 3 SCC 153;
Of licenses for felling of bamboo, see *Orient Paper and Industries Ltd. v. State of Orissa*, (1991) SCC 81;
Of refractory plants, see *Assam Sillimanite Ltd & Anr v. Union of India* (1992) SCC 692;
Of Mines and minerals, see *Tata Iron & Steel Co v UOI,* (1996) 9 SCC 709;
Of Mining lease, see *Victorian Granites Pvt. Ltd. v. P. Rama Rao & Ors* (1996) 10 SCC 665;
Of Natural Gas, see *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.* (2010) 7 SCC 1.

Unsurprisingly, the affected individuals have sought court intervention against the pervasive use of Article 39(b) and (c) by the state agencies. Laws declaring that they give effect to Article 39(b) and (c) and the states' actions under them have been challenged on multiple grounds. Early on, the litigant owners disputed the sweeping extent of the 'safe harbour protection' given to the states to acquire resources in the name of Article 39 (b) and (c).

Following the Supreme Court (SC) ruling in *His Holiness Kesavananda Bharati Sripadagalvaru vs State of Kerala,* AIR 1973 SC 1461 (commonly referred to as the *Kesavananda Bharati* case), all laws proposing to realise objectives of Article 39 (b) and/or (c) and seeking safe harbour under Article 31C are subject to judicial inquiry.[13] Specifically, laws purporting to materialise Article 39(b) and (c) are subject to review on whether they have a direct nexus with the objectives of the clauses in Article 39. Courts have used the nature of the connection between the stated objectives of a law and the provisions in clauses (b) and (c) as a touchstone to determine whether the broad protections of Article 31C should be granted to the law.

Specifically, the SC in *State of Maharashtra v. Basantibai Mohanlal Khetan (*AIR 1986 SC 1466*)* has held that protections of Article 31C are to be accorded if the Court is satisfied that the law in question gives effect to provisions of Article 39 (b) and (c), *even if an explicit declaration to this effect is not made in the text of the Act itself*. However, the protections of Article 31C are to be accorded only to those provisions of law which are necessary for giving effect to the objects of Article 39.[14]

Once taken up for judicial review, a law must satisfy the necessary condition of whether it serves the common good or achieves a public purpose.[15] Furthermore, for the protections of Article 31C to be available, the resources in question *must be* "material resources of the community".

However, what constitutes "material resources of the community" has remained unsettled in the entire saga of litigation surrounding Article 39. The judicial pronouncements have been inconclusive.

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[13] At the time of its inclusion, Article 31C had two parts. The first provided protection to laws giving effect to directive state principles as mentioned in Article 39(b) and (c), and the other restricted judicial review of such laws. The second part stated, "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." This provided the State with sweeping, unrestricted powers. In *Kesavnanda Bharati (1973)* this restriction on judicial review was held to be violative of the basic structure of the Constitution, and consequently, the second part was struck down.

[14] *Maharashtra State Electricity Board vs Thana Electric Supply Co. & Ors* AIR 1990 SC 153.

[15] Much litigation against the use of eminent domain has involved affected individuals disputing the official claim that the acquisition was for the public good. See Singh (2013).

In *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.* (AIR 1983 SC 239), hereafter referred to as *Sanjeev Coke*), a 5-judge bench of the SC held that "material resources of the community" are not confined to natural resources, but include *all* natural, man-made, public and privately-owned resources.

Sanjeev Coke's broad interpretation of "material resources of the community" has influenced several subsequent decisions.[16] For instance, in *State of Tamil Nadu v. L. Abu Kavur Bai (AIR 1984 SC 326), the SC further expanded the scope of material resources beyond Sanjeev Coke to include movable and immovable property*. In this case, the Court held that Article 31C was based on *"the theoretical aspiration that means of production, key industries, mines, minerals, public utilities and services may be taken under public ownership".*[17] Besides, the Court held that people whose properties are taken over under Article 39(b) cannot "be heard to complain" that the award should be based on the market value.

Such a sweeping interpretation of "material resources of the community" by some SC judges did not sit well with the consensus among the judiciary. Here, it is pertinent to note that the judgment in *Sanjeev Coke* drew upon a minority judgment authored by Justice Iyer in the earlier case of *The State of Karnataka v. Ranganatha Reddy* (AIR 1978 SC 215). The majority in *Ranganatha Reddy* had refrained from making any observations on Article 39 (b) and had explicitly distanced itself from the observations of Justice Iyer.[18]

The mainstream judicial view on the scope of the "material resources of the community" differed from the ruling in *Sanjeev Coke.* This became evident from the SC judgment in *Minerva Mills*, which came a couple of years later. According to the then-prevailing view among judges, laws giving effect to the principles of Article 39(b) and (c) enjoyed a sweeping set of protections

[16] For instance, courts have provided Article 31C protection to laws acquiring electrical energy (or licenses to provide thereof) (T*insukhia Electric Supply Co. Ltd vs State Of Assam*, AIR 1990 SC 123), and refractory plants (*Assam Sillimanite Ltd. vs Union Of India* , AIR 1990 SC 1417)

[17] *State of Tamil Nadu v. L. Abu Kavur Bai*, AIR 1984 SC 326, paras 29-31, 78-83

[18] In *Ranganatha Reddy,* Justice Iyer authored a minority opinion in which he observed that all man-made, private, public resources are material resources of the community. The majority distanced itself from his views. While the judges are at liberty of authoring a dissenting, separate judgement, only the majority opinion is binding on all subsequent benches of co-equal or lesser strength. Since *Ranganatha Reddy* had a bench of seven judges, *Sanjeev Coke* (a bench of five judges) was bound by the majority opinion. However, in *Sanjeev Coke*, the bench drew upon Justice Iyer's minority opinion and upheld the constitutional validity of the acquisition of coke oven plants. Coke oven plants were held to be within the scope of Art 39(b), precisely because Justice Iyer had said all resources are material resources of the community.

under Article 31C. Still, their infringement of fundamental rights could not be unreasonable.[19] In effect, majority in the judiciary stressed on the need to assess the impact on people's rights and the general harm done to them, compared to public benefits achieved by the acquisition. This concern with balancing individual rights and public objectives can be understood through the proportionality principle discussed in Schaefer (2018) and in Schaefer & Singh (2018). We use proportionality here as an analytical principle, without suggesting that the judgments of this period applied the formal proportionality test, developed in later constitutional jurisprudence. The principle requires that the acquisition be carried out in a way that ensures the mildest infringement of the rights of the affected people.

In *Kesavananda Bharati,* the Court had noted that the objective of (safe harbour) protections against Articles 14 and 19 was never intended to give "absolute primacy to one over the other" and "disturb the harmony of the Constitution". The Court deemed the balance between fundamental rights and directive principles an essential feature of the Constitution's basic structure. More recently, in *I.R. Coelho v. State of Tamil Nadu, the Court held that, while interpreting laws, there is an underlying assumption that* Parliament would not legislate contrary to fundamental rights.[20] They need to strike a balance between. Further, the Court held that:

> *"by enacting Fundamental Rights and Directive Principles which are negative and positive obligations of the States, the Constituent Assembly made it the responsibility of the Government to adopt a middle path between individual liberty and public good. Fundamental Rights and Directive Principles have to be balanced. That balance can be tilted in favour of the public good. The balance, however, cannot be overturned by completely overriding individual liberty. This balance is an essential feature of the Constitution."*[21]

[19] Justice Y.V. Chandrachud noted in *Minerva Mills* "Article 31-C has removed two sides of that golden triangle which affords to the people of this country an assurance that the promise held forth by preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculation of the rights to liberty and equality which alone can help preserve the dignity of the individual."

[20] In *Waman Rao vs The Union of India* (1981 2 SCC 362*)* the Court observed that if laws truly gave effect to clauses (b) and (c) of Article 39, then it was difficult to conceive how they would violate the fundamental rights. That such laws would rather, strengthen the basic structure of the Constitution.

[21] In *IR Coelho* the court held, "The framers of the Constitution have built a wall around certain parts of fundamental rights, which have to remain forever, limiting ability of majority to intrude upon them. That wall is the 'Basic Structure' doctrine..."

Moreover, the scope of safe harbour protection under Article 31C remains unclear. The Forty-Fourth Amendment repealed Articles 19(f) and 31 and introduced Article 300A, changing right to private property from a fundamental to a constitutional right. Even though Article 31C previously protected qualifying laws against challenges under Article 31, it did not expressly provide similar protection against Article 300A. This left uncertainty about whether, and to what extent, a law protected by Article 31C could be challenged under the constitutional right to private property, including on the grounds that the compensation provided was illusory or inadequate.

Against this backdrop, the SC ruling in *Property Owners Association v. State of Maharashtra* is a milestone because it addresses two longstanding uncertainties: the scope of the phrase "material resources of the community" and the extent of protections that Article 31C offers against the constitutional right to property under Article 300A.

3. The Key Legal and Economic Issues

In *Property Owners Association v. The State of Maharashtra,* the property owners mounted a legal challenge against the Maharashtra government's use of Article 39(b) to acquire private buildings under the Maharashtra Housing and Area Development Act of 1976.

The appellants, owners of old and dilapidated, multistoried residential buildings in the Brihan Mumbai area, were significantly affected by the Bombay Rent Act. This Act restricted landlords from charging market rent and made tenant eviction nearly impossible. In effect, it severely hampered the property owners' control over their properties.[22] Although landlords retained de jure ownership of their properties, restrictions on raising rents and evicting tenants effectively stripped them of meaningful de facto control. As a result, they neither had the incentives nor the means to carry out repairs or rebuild them. This restricted the supply of new housing in the area, thereby exacerbating the housing shortage and the spread of slums.[23]

[22] As long as the tenant pays the standard rent or is willing to pay it. Additionally, the hardship/grievance clause of the Act made it extremely difficult to evict tenants. It stated "No decree for eviction shall be passed ... if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. Where the Court is satisfied that no hardship would be caused either to the tenant or the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree."

[23] See *Property Owners Association v. The State of Maharashtra*, paras 5-12, where the Court discusses the introduction of rent control, the deterioration of old residential buildings, shortage of housing and inadequacy of repair and reconstruction measures and establishes these as background to the enactment of contested provisions.

To address this problem, the state government enacted the Maharashtra Housing and Area Development Act, 1976 (MHADA). Chapter VIII of the Act provides for repairs and reconstruction of the dilapidated buildings in Brihan Mumbai, and collection of "cess" to repair the rent-controlled buildings, referred to as "cessed buildings" hereafter. The MHADA was amended to include Chapter VIII-A. The amendment pertains to the buildings constructed before September 01, 1940.[24] Under Chapter VIII-A, the State government may acquire a cessed building and transfer control to a cooperative society of the building's occupiers for repair or reconstruction if at least 70% of such occupiers petition the government to do so. The amended MHADA explicitly states that it aims to give effect to Articles 39(b) and (c) by distributing ownership and control of these buildings, thereby serving the common good.

The owner is to be paid compensation of a hundred times the monthly rent for such acquisition. As rent rates are excessively suppressed, the compensation amount is meagre compared to the market value of these properties, leaving the affected owners worse off.

Unsurprisingly, the acquisition-affected owners have challenged the acquisition of their properties on multiple grounds. The appellant owners have challenged the MHADA's declaration that it gives effect to the objectives of clauses (b) and (c) of Article 39[25] on two fronts. First, they have challenged the classification of these privately-owned, old buildings in a state of bad repair as a "material resource of the community". Second, they have argued that such a classification of buildings is arbitrary and bears no relation to the stated objective. In other words, the owners have questioned the official claim that the acquisition under the Act is for the common good.

The property owners have argued that Chapter VIII-A of the Act violates their fundamental rights under Articles 14 and 19 of the Constitution, deprives them of their property for illusory or arbitrary amounts, and does not achieve any common good. By claiming the compensation to be *illusory*, they have questioned the adequacy of the compensation amount.

See also para 33, where the Court refers to *Malpe Vishwanath Acharya v. State of Maharashtra*, (1998) 2 SCC 1. In *Malpe*, the Court discussed the effect of frozen rents and restrictions on eviction. It recorded that the rent-control regime had reduced landlords' capacity to maintain and repair old buildings, discouraged investment in rental housing, and contributed to the shortage of housing and the growth of slums.

[24] These efforts to levy a cess and establish an authority for structural repairs failed to achieve the desired results due to the significant scale of the problem and the insufficiency of funds.

[25] Chapter VIII-A and the explicit declaration towards the objective of giving effect to the principles of Article 39(b) were added through an amendment in 1986.

As a separate count, the property owners have contested the treatment of their buildings as "material resources of the community". The property owners have, in effect, questioned the SC ruling in *Sanjeev Coke* that "material resources of the community" are not confined to natural resources, but include natural, artificial, public and privately-owned resources. Moreover, they argued that, because these properties are privately owned, they cannot be considered community resources.

4. An Overarching Judgment: Legal and Economic Implications

4.1. Defining the material resources of the community

The 9-judge judgment in *Property Owners Association v. State of Maharashtra* is a watershed moment in the evolving history of the right to property vis-à-vis the State. This landmark ruling by the SC has unequivocally restricted the scope for the legislature and executive to infringe upon property rights in the name of Article 39(b) and (c) and the safe-harbour clause contained in Article 31C. To this end, the SC has addressed the main issue arising from the case details discussed in Section 3 above, namely, the scope of the term "material resources of the community".

The court has defined community resources as natural resources and those that have a community element. The qualifiers of materiality and community element need to be identified on a case-by-case basis. Therefore, whether a resource is a community resource can be determined by examining its impact on the ecology and/or the well-being of the community. The apex court has provided an outline of the guiding principles:

a) The nature of the resource and its inherent characteristics
b) The impact of the resource on the well-being of the community
c) The scarcity of the resource; and
d) The consequences of such a resource being concentrated in the hands of private owners.

Expanding on these criteria, the court has included, in a non-exhaustive list of community resources, common-good resources such as forests, ponds, wetlands, and resource-bearing lands, as well as natural resources like mines, minerals, and natural gas. Furthermore, the court has broadened the scope of acquisition under Article 39(b) to include not only tangible but also intangible resources, such as spectrum and airwaves, that affect the general well-being of the public.

Regarding ownership, the court has clarified that privately owned resources, as a class, can neither be categorically included nor categorically excluded from the scope of the Article. Natural and community resources, even if in private hands, fall within the scope of Article 39(b). However, the Court has emphatically dismissed the view that all privately owned resources fall within the scope of Article 39(b).

Therefore, the SC judgment in *Property Owners Association v. State of Maharashtra* marks a stark departure from the court's articulations in *Sanjeev Coke* and other judgments based on Justice Krishna Iyer's views - who was of the opinion that all means of production, and their produce, are of the community, and can be acquired by the State under Article 39(b). The SC observed that the interpretation of "resources of the community" adopted in Sanjeev Coke and several subsequent judgments was rooted in a particular economic ideology: the view that the State's acquisition of private property benefits the country. The Court observed that Justice Iyer (in *Ranganatha Reddy*), by including all private property within the ambit of the phrase, cast a wide net. The Court has emphatically rejected such a sweeping interpretation of Article 39(b).

In a course correction, the 9-judge bench explicitly held that view to be incorrect. The SC has restricted the scope of Article 39(b) to scarce and finite common resources that directly affect the community's well-being. Covering all private property under the ambit of community resources that can be distributed, the bench has argued, would be equivalent to endorsing a particular economic ideology and structure for the economy, which is contrary to the spirit of the Constitution.

The Court has argued that when reading and interpreting the Constitution, one cannot render certain words in a provision otiose. The Court has drawn upon the debate and discussions in the Constituent Assembly around the Directive Principles, in general, and Article 39(b) in particular. The Court has held that: "The Constitution was framed in broad terms to allow succeeding governments to experiment with and adopt a structure for economic governance which would subserve the policies for which it owes accountability to the electorate." According to the Court, this flexibility to pursue economic policy in accordance with domestic and international requirements of the time gets the credit for the country's economic growth.

To corroborate this, the SC has highlighted Dr Ambedkar's objection to any constitutional proposals that explicitly express a preference for a social structure or economic policy for future governments. The apex court has noted that "according to Dr Ambedkar, if the Constitution laid down a particular form of economic and social organisation, it would amount to taking away the liberty of people to decide the social organisation in which they wish to live. He opined on several occasions that economic democracy is not tied to one economic structure, such as socialism or capitalism, but to the aspiration for a 'welfare state'."

Furthermore, underscoring the importance of constitutional protection of property rights, the court has argued that "the interpretation of Article 39(b), both as a precursor to the protection of Article 31C and as an aspirational Directive Principle, cannot run counter to the constitutional recognition of private property. To hold that all private property is covered by the phrase 'material resources of the community' and that the ultimate aim is state control of private resources would be incompatible with the constitutional protection"

4.2. Limits on Eminent Domain

According to the apex court, state agencies may exercise the sovereign power of eminent domain, subject to the constraints arising from Article 300A. The court has elaborated upon the strength and character of property rights inherent in Article 300A of the Constitution.

To provide context, before 1978, Article 31C's protection of laws aimed at implementing directive principles was broader. It extended to protection against the then-existing Article 19(f) and Article 31; also, under Article 19(f), the right of private property was a fundamental right, Article 31 (also a part of fundamental rights) necessitated compensation for the acquisition of private property and required the acquisition to serve a public purpose. Specifically, before 1978, any law acquiring a resource, purporting to give effect to the directive principles in Article 39(b) and (c), was protected from being challenged on the ground that the compensation provided was illusory and/or insufficient.

Since the 44^{th} Constitutional Amendment Act 1978, however, Article 19(f) has been abolished, and Article 300A has replaced the original Article 31. As a combined effect of the 44^{th} Amendment, the property right has been reduced from a fundamental right to a constitutional right. In this backdrop, a key unsettled constitutional issue is whether the original protection afforded by Article 31C to Article 19(f) and Article 31 automatically extends to acquisitions under Article 300A. Therefore, it was unclear if laws acquiring private property to give effect to Article 39(b) and (c) could still circumvent constitutional protections to the right to private property.

The SC has emphasised that, although the property right is not a fundamental right, the Constitution continues to provide a potent safety net against "arbitrary acquisitions, hasty decision making and unfair redressal mechanisms". To clarify the scope and character of Article 300-A, the Court has relied upon and reiterated the judicial view articulated in *Kolkata Municipal Corporation v. Bimal Kumar Shah* (2024 INSC 435). In this ruling, the SC observed that compulsory acquisition by the State must be validated beyond the twin conditions of serving a public purpose and paying compensation. Assuming that the constitutional protection of the right to property is restricted to just these two conditions would be a disingenuous reading of the provision and offensive to the egalitarian spirit of the Constitution. The post-colonial reading of the constitutional right to private property must consider the larger labyrinth of sub-rights. The court observed:

> "*The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the 'power of eminent domain'. Even within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. […] A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands*."

These sub-rights, which are integral to the larger constitutional right to property, include the right to be heard on objections to the acquisition and the right to a reasoned decision (in the spirit of the proportionality principle). In addition, they entail the state's duty to inform the person of the rationale behind its acquisition decision. The apex court's message is clear: Do not take property rights lightly.

4.3. Kesavananda Bharati and Minerva Mills Judgments Revisited

From the above, it is evident that through the extant judgment, the SC has intended to strengthen property rights by restricting the scope for the legislature and executive to acquire resources under Article 39(b) and also Article 300A. The SC has noted that the safe-harbour clause of Article 31C, which protects legislation dealing with Article 39(b), grants the state vast powers with far-reaching consequences. Because of the potential implications of this power for individual rights, the matter cannot be left entirely to the legislature's discretion. The Court clarified the extent of protections that Article 31C afford to qualifying laws. If a law falls within the purview of Article 39(b), it is protected only against infringements of fundamental rights under Articles 14 and 19. The safe harbour clause of Article 31C does not extend to individual rights under other provisions of the Constitution.

The apex court has argued that Article 31C "does not grant the legislature absolute authority to include any legislation within the fold of Article 39(b) without a governing principle". The need for a governing principle to judge a law seeking safe harbour has been addressed by the Court in this judgment. Thus, the Court reiterated the case for judicial review of laws that seek Article 31C protections in pursuit of Article 39(b) and (c), as in the landmark judgement of *Kesavananda Bharati.* By subjecting such laws to judicial review, the judgment enabled subsequent benches of the court to protect individuals' right to property from the unreasonable exercise of state power. [26]

Further, the SC has settled a constitutional issue that arose after the Minerva Mills judgment. As mentioned earlier, the 42nd Amendment to the Constitution in 1976 aimed to expand the scope of Article 31C's protection beyond clauses (b) and (c) of Article 39 to cover "any or all of the principles laid down in Part IV" of the Constitution, which lists the directive principles. As a result, laws enacted to give effect to any directive principle could infringe fundamental rights without judicial scrutiny. In the *Minerva Mills* case, the SC struck down this all-encompassing phrase and thus the extension of Article 31C's protection to all of the directive principles. In doing so, the Court restricted the scope for the legislature and executive to evade legal scrutiny

[26] Successive benches of the court have used the unimpeachable status afforded to judicial review to review and restrict unreasonable acquisition practices. The courts have often done so by broadly interpreting the narrow constitutional provisions of Article 300A. Although Article 300A does not explicitly call for compensation, the courts have nevertheless inferred it. See Allen (2015) for a detailed discussion

of fundamental rights violations simply by appealing to *any* directive principle. Additionally, the judgment in *Minerva Mills* made judicial review an unamendable part of the Constitution that Parliament cannot alter. Court did so by explicitly adding judicial review to the list of features that constitute the basic structure.[27]

As the original protections of Article 31C applied to "*principles specified in clause (b) or clause (c) of article 39",* by striking down the phrase *"any or all of the principles laid down in Part IV"*, the judgement in *Minerva Mills* raised a question: Did the court intend to strike down the original protections offered to Article 39(b) and (c); or did the court intend to revive the original statement, "*principles specified in clause (b) or clause (c) of article 39"*? In the existing judgment, the SC clarified that protection under Article 31C applies to clauses (b) and (c) of Article 39, subject to judicial review.[28]

In *Property Owners Association v. State of Maharashtra*, the SC went beyond reiterating the significance of judicial review and sought to further strengthen individual property rights by subjecting any takings decision to the procedural diligence and various sub-rights described in section 4.2 above. What is new and even more critical is the SC's observation that Article 31C protection can be challenged under Article 300A, which also pertains to the constitutional right to property.[29] No matter under what constitutional provisions the private resource is acquired, the constitutional guarantee of the right to property, as outlined in Article 300A, cannot be circumvented. Any acquisition of private property needs to be compensated for, justified on the grounds of serving a public purpose, and sub-rights of the harmed party (to be heard, to an expedited process, etc.) are to be adhered to. The apex court's description of the right to property as a human right speaks volumes about the importance it assigns to property rights.

[27] The Basic Structure doctrine is a larger concept that originated in the judgment of *Kesavananda Bharati*. We have analysed only one aspect of the doctrine, which has been used to protect property rights better. Many constitutional scholars have looked at the Basic Structure Doctrine as a protector of constitutional integrity. For a detailed discussion, see Kumar (2007), Nariman (2025), Baxi (2023).

[28] Ours is an economic analysis of the judgement and pertains to the impact this judgement has on the evolution of property rights and use of eminent domain. While this issue on the current status of Article 31C is significant to legal discourse, we mention it here in a limited sense for the sake of completeness.

[29] The Court has clarified that this interpretation of Article 39(b) does not limit the state's power of acquiring privately owned resources via other provisions of the Constitution.

5. Conclusion

In 1991, the state government of Maharashtra acquired privately owned, rent-controlled, and dilapidated buildings in Brihan Mumbai, under Chapter VIII-A of the Maharashtra Housing and Area Development Act (MHADA). The purported aim of the acquisition was to serve the larger common good under Article 39(b) of the Directive Principles: to rehabilitate the tenant residents of these buildings. The owners of these buildings challenged the acquisition chapter, particularly MHADA's characterisation of privately-owned buildings as a "material resource of the community". This legal challenge snowballed into broader constitutional questions. The legal disputes ultimately reached the apex court in *Property Owners Association v. State of Maharashtra* (2024 INSC 835).

The SC ruling in this case has addressed several unsettled constitutional questions: What constitutes a material resource of the community? To what extent is the infringement of private property rights justified in the state's pursuit of giving effect to Article 39 (b) and (c) or any other directive principles of the state policy? What is the scope of property rights under Article 300A?

The Court holds that the laws and processes enacted to give effect to Article 39(b) and (c) continue to enjoy Article 31C protection against challenges on the grounds of being violative of Articles 14 and 19 (fundamental rights). However, any such law or act is subject to judicial review to test whether it bears a direct nexus with the directive principles contained in Article 39(b) and (c). Reinforcing its rulings in the celebrated judgements in *Kesavananda Bharati and Minerva Mills,* the Court has provided governing principles to determine whether a law can avail itself of the protections under Article 31C.

As to what is a "material resource of the community", the Court has argued that all scarce and finite resources, whose concentration in private hands would be detrimental to the public good, such as natural resources (wetlands, ponds, mines etc.) and community resources (e.g. spectrum and airwaves) qualify as community resources. Privately owned resources, as a class, can neither be categorically included nor categorically excluded from the list of community resources. Determining whether acquiring a resource is in the community's interest must be done on a case-by-case basis.

With this definition, the SC has set aside the ruling in *Sanjeev Coke* regarding the definition of community resources, which included not only natural resources, but all artificial, privately or publicly owned resources. The SC has held that such a sweeping interpretation would be akin to imposing a particular economic ideology and structure, which runs counter to the ideal of economic democracy embedded in the Constitution by the framers.

To emphasise the significance of property rights in the Constitution, the apex court has observed that the right to private property, though not a fundamental right, is a constitutional right. The court has described property rights protection under Article 300A as on a par with a human right. Therefore, even if an acquisition is made to give effect to the directive principles in Article 39(b), the state agency must justify the acquisition on the grounds of serving the common good and pay adequate compensation. In addition, it should respect the sub-rights of private property, such as the right to timely notice, to be heard of any objections, to restitution, and to an expeditious and efficient process, among others.

In sum, going beyond *Kesavananda Bharati* and *Minerva Mills*, *Property Owners Association v. State of Maharashtra* has significantly strengthened property rights by delineating and restricting the scope of the state's power to infringe private property in pursuit of directive principles. The judgement emphatically underscores the sacrosanct nature of private property in the Indian Constitution. With clear guiding principles for the use of Articles 39(b) and (c) and the importance of property rights underscored, the SC has set the stage for stronger judicial protection of property rights.

REFERENCES

Allen, T. (2015). The Revival of the Right to Property in India. *Asian Journal of Comparative Law, 10(*1), 23-52.

Ambrose, A. D. (2013). Directive Principles of State Policy and Distribution of Material Resources with Special Reference to Natural Resources – Recent Trends. *Journal of the Indian Law Institute, 55*(1), 1–20. Retrieved from http://www.jstor.org/stable/43953624

Assam Sillimanite Ltd & Anr v Union of India (1992) SCC 692

B Banerjee v Anita Pan (1975) 1 SCC 166

Baxi, U. (1999): "The Perils and Politics of Amending Power", *Reconstructing the Republic,* Upendra Baxi, Alice Jacob and Tarlok Singh (eds.)*,* New Delhi: Har-Anand Publications, 173-196.

Baxi, U. (2023). Foreword. *NUJS Law Review, 16*(4)

Chaturvedi, P. & Singh, R. (2026, accepted for publication). "Towards a Better Protection of Property Rights," *Economic & Political Weekly*.

His Holiness Kesavananda Bharati Sripadagalvaru v State of Kerala, AIR 1973 SC 1461

IR Coelho v The State of Tamil Nadu, 2007 2 SCC 1

Jain, P., (2019). Economic Rights: Issues & Suggestions with Reference to Constitutionalization, Adjudication & Policy Making, *GNLU Journal of Law & Economics*, Vol. 2, pp. 45-49.

Kumar, V. (2007). Basic Structure of the Indian Constitution: Doctrine of Constitutionally Controlled Governance [From Kesavananda Bharati to I.R. Coelho]. *Journal of the Indian Law Institute, 49*(3), 365–398. Retrieved from http://www.jstor.org/stable/43952120.

Maharao Sahib Shri Bhim Singhji v Union of India (1981) 1 SCC 166.

Maurya, K. and Sood, S. (2024). A Law & Economic Analysis of "Ordinance Raj" in India: Navigating the Rule v. Standard Debate in the Legal Design as a Mechanism to Reduce Political Cartelization, *GNLU Journal of Law & Economics*, Vol. 7(1), pp. 94–120.

Minerva Mills Ltd. v Union of India, 1980 AIR 1789

N. Parthasarathy v Controller of Capital Issues, (1991) 3 SCC 153

Nariman, R. (Ed.). (2025). *The Basic Structure Doctrine: Protector of Constitutional Integrity* (1st ed.). Gurugram, Haryana: LexisNexis.

National Textile Corp Ltd. v Sitaram Mills Ltd. AIR (1986) SC 1234

Noorani, A. G. (2007). Ninth Schedule and the Supreme Court. *Economic and Political Weekly, 42*(9), 731-734. Retrieved from http://www.jstor.org/stable/4419299

Orient Paper and Industries Ltd. v State of Orissa, (1991) SCC 81

Property Owners Association v State of Maharashtra, 2024 INSC 835

Rao, V. N., & Reddy, G. B. (1997). Doctrine of Judicial Review and Tribunals: Speed Breakers Ahead. *Journal of the Indian Law Institute, 39*(2/4), 411–423. Retrieved from http://www.jstor.org/stable/43953285.

Reliance Natural Resources Ltd. v Reliance Industries Ltd. (2010) 7 SCC 1

Sanjeev Coke Manufacturing Company v Bharat Coking Coal Ltd., (1982) 1 SCC 147

Schaefer, H-B. & Singh, R. (2018). Takings of Land by Self-Interested Governments: Economic Analysis of Eminent Domain Law. *Journal of Law and Economics*, *61*(3), 427-459. Retrieved from https://ssrn.com/abstract=3026204

Schaefer, H-B. (2018). Towards Precise Norms for Land Acquisition in Developing Countries, *GNLU Journal of Law & Economics*, Vol. 1(1).

Singh, J. (2006). Separation of Powers and the Erosion of the 'Right to Property' in India. *Constitutional Political Economy, Springer, 17*(4), 303-324.

Singh, R. (2004). 'Full' compensation criteria: An enquiry into relative merits. *European Journal of Law and Economics, 18*(2), 223-237.

Singh, R. (2012). Inefficiency and Abuse of Compulsory Land Acquisition – An Enquiry into the Way Forward. *Economic and Political Weekly, 47*(19) 46-53.

Singh, R. (2013). Litigation over Eminent Domain Compensation. *International Growth Centre, London School of Economics*, WP 2013/9.

State of Karnataka v Shri Ranganatha Reddy (1977) 4 SCC 471

State of Maharashtra v Basantibai Mohanlal Khetan, AIR 1986 SC 1466

State of Tamil Nadu v L. Abu Kavur Bai, AIR 1984 SC 326

Supreme Court Observer (2025). *Nature of Private Property.* Retrieved from https://www.scobserver.in/cases/nature-of-private-property-property-owners-association-v-state-of-maharashtra/

Tata Iron & Steel Co v UOI, (1996) 9 SCC 709

Union of India v Cynamide India Ltd. (1987) 2 SCC 720

Victorian Granites Pvt. Ltd. v P. Rama Rao & Ors (1996) 10 SCC 665

White, M.D. (2019). The Neglect of Rights in Law and Economics, *GNLU Journal of Law & Economics*, Vol. 2, pp. 22–39.