



Redistribution of Private Property

For Prelims: Article 39, 31, Article 39(b), Supreme Court, Constitutional Bench of Supreme Court, [Directive Principles of State Policy](#), [Kesavananda Bharati case, 1973](#).

For Mains: Right to Private Property, DPSP Vs. Fundamental Rights, Supreme Court Landmark Decisions.

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Why in News?

Recently, the [Supreme Court \(SC\)](#) of India has begun hearing on legal questions arising from various petitions about whether the government can acquire and redistribute privately owned properties.

- The question raised before the Court is whether **private properties** can be considered "**material resources of the community**" under [Article 39 \(b\)](#) of the Constitution, which is part of the [Directive Principles of State Policy \(DPSP\)](#).

What is the Case All About?

- The case before the SC arose out of a challenge to the 1986 amendment to the **Maharashtra Housing and Area Development Act (MHADA)**, 1976 by owners of 'cessed' properties in Mumbai.
- **MHADA, 1976**, was enacted to address the problem of old, dilapidated buildings housing (poor) tenants despite becoming increasingly unsafe.
 - MHADA imposed a cess on the buildings occupants, which would be paid to the Mumbai Building Repair and Reconstruction Board (MBRRB) to oversee repair and restoration projects.
 - The Act was amended in 1986 by invoking [Article 39\(b\)](#) which
 - It aims to execute plans for acquiring lands and buildings, in order to **transfer them to "needy persons"** and the "occupiers of such lands or buildings".
 - It contains provisions **allowing the state government to acquire cessed buildings** (and the land they are built on) **if 70% of the occupants make such a request**.
 - **Violation of Right to Equality:** The Property Owners' Association in Mumbai challenged the MHADA at the Bombay High Court claiming that the provisions violate the property owners' [Right to Equality](#) under [Article 14](#) of the Constitution.
 - **Immunity to DPSP:** The court held that laws enacted in furtherance of DPSP could not be challenged on the grounds that they violated the right to equality, as per Article 31C of the Constitution ("Saving of laws giving effect to certain directive principles").
 - **Interpreting Material Resources of the Community:** The Association appealed the decision in the Supreme Court in December 1992.
 - Thus, in the apex court, the central question became whether "material resources of the community" as per **Article 39(b)** includes privately owned resources which would include cessed buildings.

What is the Legal View on Private Property and its Distribution?

▪ Constitutional View:

- **Articles 19(1)(f) and Article 31:** This article guaranteed the property as a fundamental right.
 - However, the 44th Amendment Act of 1978 removed this right from the list of fundamental rights and placed it **under Article 300A as a constitutional right.**
 - **Article 300A:** This article declares that no person shall be deprived of his property save by authority of law.
- **9th Schedule:** It lists specific laws that cannot be challenged in courts on the grounds that they violate fundamental rights, including the (once) **Fundamental Right** to Property.
 - Laws included in this Schedule like Land reforms (abolition of zamindari system).
- **Article 39:** It lists certain **Directive Principles of State Policy** (under **Part IV** of the **Constitution**), which are meant to be guiding principles for the enactment of laws, but are not directly enforceable in any court of law.
 - **DPSP** aims at ensuring socio-economic justice for the people and establishing India as a welfare state.
 - **Article 39(b)** places an obligation on the state to create policy towards securing “the ownership and control of the material resources of the community are so distributed as best to subserve the common good”.
 - **Article 39(c)** ensures that wealth and the means of production are not “concentrated” to the “common detriment”.
- **Article 31C:**
 - **Article 31C** saves the laws giving effect to certain **directive principles.**
 - As per **Article 31C**, these particular directive principles (**Articles 39(b) and 39(c)**) cannot be challenged by invoking the right to equality (**Article 14**) or the rights under Article 19 (freedom of speech, right to assemble peacefully, etc).
 - In the **Kesavananda Bharati case, 1973**, the Court upheld the validity of Article 31C but made it subject to **judicial review.**

▪ Interpretations of Article 39(b) by Supreme Court:

- **State of Karnataka vs Shri Ranganatha Reddy Case, 1977:**
 - Court held that privately owned resources did not fall within the ambit of “material resources of the community”.
 - **Justice Krishna Iyer** held a **dissenting opinion** that privately owned resources must also be considered material resources of the community.
 - To exclude ownership of private resources from the coils of **Article 39(b)** is to cipherise (make hidden) its very purpose of redistribution the socialist way.
- **Sanjeev Coke Manufacturing Company vs Bharat Coking Coal Case, 1983:**
 - Supreme **Court affirmed Justice Iyer’s opinion** and upheld central legislation that **nationalised coal mines** and their respective coke oven plants.
 - It held that **privately owned resources must also be considered** material resources of the community.
- **Mafatlal Industries Ltd vs Union of India Case, 1996:**
 - Court felt the need for a 9-Judge **Constitutional Bench** to interpret Article 39(b).
 - Court relied on the interpretation of **Article 39(b)** offered by **Justice Iyer** and the Bench in **Sanjeev Coke Manufacturing Case.**
 - Court held “the words ‘**material resources**’ occurring in Article 39 (b) will take in natural or physical resources and also movable or immovable property and it would **include all private and public** sources of meeting material needs, and not merely confined to public possessions.”

What are Directive Principles of State Policy (DPSP)?

▪ About:

- The **Directive Principles of State Policy (DPSP)** aims at ensuring socio-economic justice for the people and establishing India as a welfare state.

▪ Constitutional Provisions:

- **Part IV** of the Constitution of India (Article 36-51) contains the DPSP.

- **Article 37** of the Indian Constitution States about the application of the Directive Principles.
- **Background:**
 - The directive principles contained in the Indian constitution are taken from the **Irish Constitution**.
 - The idea of such policies can be traced to the Declaration of Rights of Man and the Declarations of Independence by the American colonies as well as the **Gandhian concept of Sarvodaya**.
- **Objectives:**
 - **Checks & Balance:** DPSP aims at socio-economic justice which according to the framers of the constitution Indian State should strive for.
 - They lay down a code of conduct for the legislatures, executives and administrators of India to discharge their responsibilities in tune with these ideas.
 - **Legal Actions & Government Policies:** They embody the aspirations of people objectives and ideals that the Union and the State governments must bear in mind while making laws and formulating policies.
 - **Philosophy of Social Justice:** They represent the philosophy of social justice incorporated in the constitution of India although directive principles are not legally binding by any court however, they are fundamental in the governance of the country.
- **Classification:**



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Classification of Directive Principles of State Policy

- The Directive Principles are classified on the basis of their ideological source and objectives. These are Directives based on:
 - **Socialist Principles: Article 38, 39, 41, 42, 43, 43A, 47**
 - **Gandhian Principles: Article 40, 43, 43B, 46, 47, 48**
 - **Liberal and Intellectual Principles: Article 44, 45, 48A, 49, 50, 51**

Famous Rulings for DPSP By Judiciary:

- **Champakam Dorairajan case (1951):** FR would prevail over the DPSP in case of conflict between the two. However, legislature can amend FR to give effect to DPSP
- **Golaknath case (1967):** FR are **sacrosanct** in nature and cannot be amended for implementation of DPSP
- **Minerva Mills case (1980)** Constitution is founded on the **bedrock of balance** between FR and DPSP

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What are the Arguments Related to Redistribution of Wealth?

▪ Arguments in Favour:

- **Social Justice:** This goes with the **principles of Preamble of the Constitution** which strives to ensure social justice.
 - Unrestricted property rights can exacerbate wealth inequality.
 - The wealthy can accumulate vast amounts of property, leaving less for others. This can lead to social unrest and hinder economic mobility.
 - Eg: The Naxalbari uprising and subsequent **Naxal movement** originated primarily **due to economic and social inequality** in rural areas of India.
- **Poverty Alleviation:** Redistribution programs can help alleviate **poverty** by providing financial assistance, access to education, healthcare, and other essential services to those in need.
- **Address Social Issues:** As property is scarce resource, wise redistribution of wealth enables the government to address social issues like **poverty**, homelessness, or environmental degradation.
- **Enhanced Social Cohesion:** Reducing economic disparities can foster greater **social cohesion and solidarity** by bridging the gap between different socio-economic groups.

▪ Arguments Against:

- **Disincentivizes Work:**
 - Redistribution discourages people from working hard and taking risks if they believe the **government will simply provide for them.**
 - It may disincentivize wealth creation and **entrepreneurship**, leading to slower economic growth and reduced prosperity for all.
- **Market Efficiency:** Redistribution can interfere with market mechanisms and distort resource allocation, leading to inefficiencies and decreased overall welfare.
- **Individual Freedom:** It can infringe upon individual freedom and property rights by forcibly taking wealth from one group of individuals and transferring it to another.
- **Administrative Costs:** Implementing and managing redistribution programs can be costly and inefficient, with significant administrative overhead and potential for bureaucratic abuse and corruption.
- **Earlier Failed Attempts for Redistribution:**
 - Property ownership has cultural and historical significance in many societies. It reflects notions of identity, heritage, and family legacy.
 - Also, previous redistribution efforts like **land reforms failed in most states except in Kerala and West Bengal.**

Way Forward

- **Conditional Property Rights:** There should be a system where property rights are conditional on responsible use.
 - The government could regulate how property is used to ensure it doesn't harm the environment or infringe on the rights of others.
- **Focus on Social Justice:** Rather than absolute property rights, there should be efforts for prioritising social justice and ensuring everyone has access to basic necessities like housing and land.
 - This might involve wealth redistribution or regulations on property ownership.

Drishti Mains Question:

Examine the challenges and constraints faced in the realisation of the objectives of Article 39(b) and suggest potential strategies to overcome them.

UPSC Civil Services Examination Previous Year's Questions (PYQs)

Prelims

Q1. Which part of the Constitution of India declares the ideal of Welfare State? (2020)

- (a) Directive Principles of State Policy
- (b) Fundamental Rights
- (c) Preamble
- (d) Seventh Schedule

Ans: (a)

Q2. Other than the Fundamental Rights, which of the following parts of the Constitution of India reflect/ reflects the principles and provisions of the Universal Declaration of Human Rights (1948)? (2020)

1. Preamble
2. Directive Principles of State Policy
3. Fundamental Duties

Select the correct answer using the code given below:

- (a) 1 and 2 only
- (b) 2 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

Ans: (d)

Mains

Q. 'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions. **(2021)**

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