Article 31C: Why the SC is deciding if a fundamental right still exists in a case about private property?

What is this article, which was introduced in the constitution through an amendment in 1971? What legal complications followed?

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The Supreme Court is currently hearing a challenge to Chapter VIII-A of the Maharashtra Housing and Area Development Act, 1976 (MHADA). (Express Photo by Amit Mehra)

Last week, while hearing a case to decide whether the government **can acquire and redistribute private property** , a nine-judge Bench of the Supreme Court led by Chief Justice of India D Y Chandrachud decided to take up another issue of "radical constitutional consequence": does Article 31C still exist?

Article 31C protects laws enacted to ensure the "material resources of the community" are distributed to serve the common good (Article 39(b)) and that wealth and the means of production are not "concentrated" to the "common detriment" (Article 39(c)).

Article 39 of the Constitution lists certain directive principles of state policy, which are meant to be guiding principles for the enactment of laws, but are not directly enforceable in any court of law.

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).

So why is the continued existence of Article 31C now under question? How is this article related to the question of private property that the court is considering? What arguments have the parties made?

Introduction of Article 31C

Article 31C was introduced by The Constitution (Twenty-fifth) Amendment Act, 1971. The Statement of Objects and Reasons for the amendment specifically mentioned the "Bank Nationalisation Case" (Rustom Cavasjee Cooper vs Union Of India, 1970), in which the Supreme Court stopped the Centre from acquiring control of 14 commercial banks by enacting The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969.

An eleven-judge Bench struck the Act down by referring to the now-repealed Article 31(2), which said that the government could not acquire any property for public purposes under any law unless the law fixes compensation for the property, or specifies the principles on which compensation will be based.

In the Bank Nationalisation case, the court held that the 'right to compensation' was not appropriately ensured by the Banking Act.

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Noting that the court could now question the adequacy of compensation and the principles used for determining compensation, the government, through the 25th Amendment sought to "surmount the difficulties placed in the way of giving effect to the Directive Principles of State Policy".

One of the means employed to do so was the introduction of Article 31C, which stated at the time:

"…no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy".

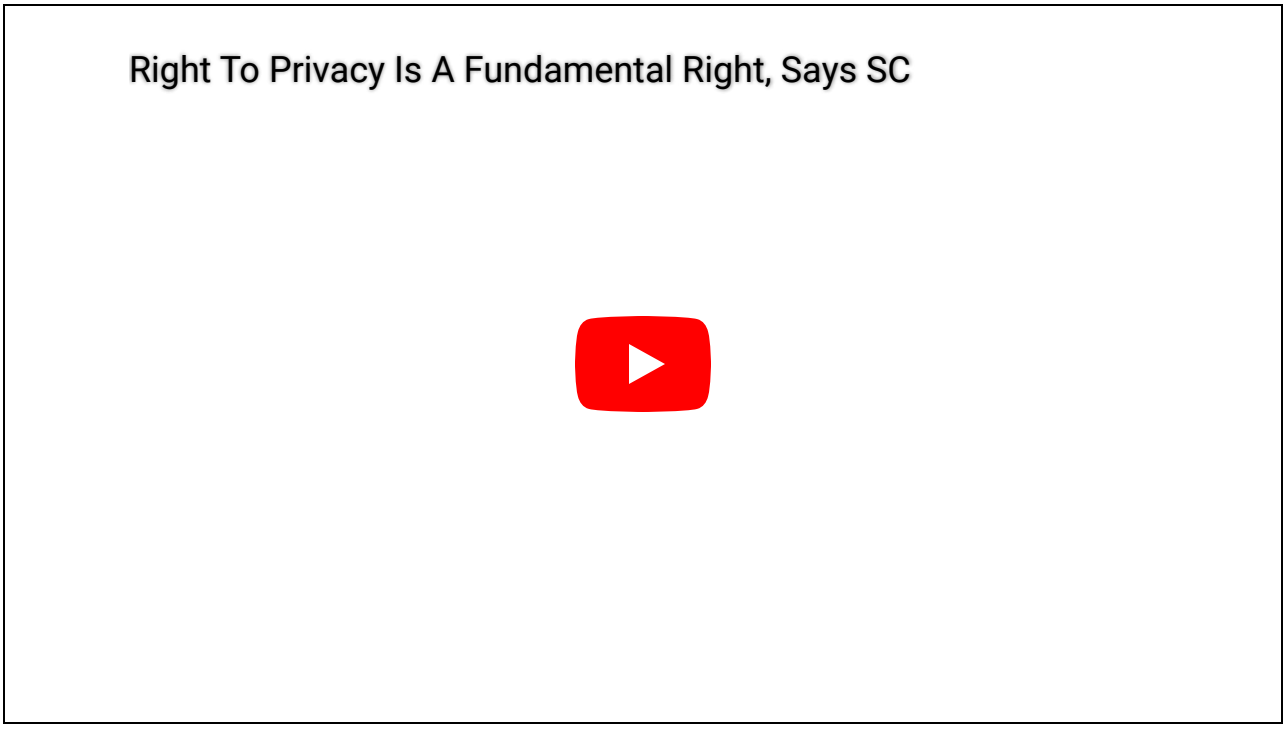
The journey of Article 31C

The 25th amendment was challenged in the seminal Kesavananda Bharati case (1973) in which 13 judges held by a narrow 7-6 majority that the Constitution has a "basic structure" that cannot be altered, even by a constitutional amendment.

As a part of this verdict, the court struck down the last portion of Article 31C, i.e., the part that states "…and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy".

This opened the door for the court to examine laws that had been enacted to further Articles 39(b) and 39(c), to determine whether the purpose of those laws actually lined up with the principles espoused in these provisions.

In 1976, Parliament enacted The Constitution (Forty-second) Amendment Act, which expanded the protection under Article 31C to "all or any of the principles laid down in Part IV of the Constitution", under clause 4. As a result, every single directive principle (Articles 36-51) was protected from challenges under Articles 14 and 19 of the Constitution.



The Statement of Objects of Reasons for the amendment stated that it was meant to give precedence to the directive principles "over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles".

In 1980, in its judgment in Minerva Mills v. Union of India, the SC struck down clauses 4 and 5 of the amendment. The five-judge Bench held that Parliament's power to amend the Constitution was limited, and it could not be used to remove these limitations and grant itself "unlimited" and "absolute" powers of amendment.

However, this ruling birthed a conundrum that the apex court must now address. By striking down part of the 25th amendment, did the court strike down Article 31C

as a whole, or did it restore the post-Kesavananda Bharati position wherein Articles 39(b) and (c) remained protected?

The ongoing case in SC

The court is hearing a challenge to Chapter VIII-A of the Maharashtra Housing and Area Development Act, 1976 (MHADA). This chapter, introduced by an amendment in 1986, allows the government to acquire "cessed" properties in Mumbai at the request of the occupants, citing the obligation under Article 39(b) of the Constitution to distribute "material resources of the community…to subserve the common good".

Occupants of cessed properties — old, dilapidated buildings that house poor tenants despite becoming increasingly unsafe — are required to pay a cess to the Mumbai Building Repair and Reconstruction Board which oversees repair and restoration projects.

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In 1991, the Property Owners' Association in Mumbai challenged the 1986 amendment at the Bombay High Court. But the Bombay High Court upheld the amendment, citing the protection granted by Article 31C to laws enacted in furtherance of Article 39(b).

This decision was appealed at the SC in December 1992, where the question eventually became whether "material resources of the community" under Article 39(b) included private resources such as cessed properties.

Arguments in the SC

When the hearing finally began, on the first day (April 23), **the nine-judge Bench** seemed to agree with the Centre's submission that the case should be restricted to interpreting Article 39(b). CJI Chandrachud said, "It's very clear that the ambit of the reference to nine judges is squarely only on the content of 39(b)," according to reporting by the Supreme Court Observer.

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However, the very next day, the Bench stated that the question of whether Article 31C still lives following the Minerva Mills decision has to be decided to avoid "constitutional uncertainty".

Senior Advocate Zal Andhyarujina, appearing for the petitioners, argued that the original version of Article 31C was 'substituted' with the expanded version provided in the 42nd Amendment. This, Andhyarujina argued, means the older version of the provision ceased to exist once the Amendment came into force. Therefore, when this new Article 31C was struck down in Minerva Mills, the older provision would not automatically be revived.

On the other hand, Solicitor General Tushar Mehta, appearing for the Centre, argued that the doctrine of revival must apply in this case, and the post-Kesavananda Bharati position on Article 31C must be restored. To explain the doctrine and justify its application, Mehta relied on Justice Kurian Joseph's observations in the case where the court struck down the Constitution (Ninety-ninth) Amendment Act.

Justice Joseph held that the old collegium system for judge appointments would be revived once the 99th amendment (which introduced the National Judicial Appointments Commission) was struck down. He observed, "Once the process of substitution and insertion by way of a constitutional amendment is itself held to be

bad and impermissible, the pre-amended provisions automatically resurface and revive. That alone can be the reasonably inferential conclusion."

The court will continue hearing arguments regarding Article 31C on April 30 (Tuesday).

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