

Course Name - B.A.LL.B 4TH sem/
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Subject - Constitution of India

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Concept - Right to Property

Right to Property-

Property, as a legal social institution, has different forms in different cultures and legal systems. However, only a definition of constitutional property is common in all democratic countries. Since the state exercises eminent domain power against private property, it is pertinent to discuss the concept of private property in brief. The institution of private property has been a controversial issue with conflicting views, one completely denying the right to own private property and the other supports the holding of the private property.

However, the right to property is a natural and inherent right of an individual. Most of the modern constitutions, except those of communist countries have recognised the right of private property. Therefore, citizens have right to own and possess the property. This right of individual conflicts with the right of state to acquire property. A person has a right not to be deprived of his property except through due process of law.

International Convention on The Elimination of All Forms of Racial Discrimination

Which states in Article 5 that everyone has the right to equality before the law without distinction as to race, color and national or ethnic origin, including the “right to own property alone as well as in association with others” and “the right to inherit”.

Convention on The Elimination on All Forms of Discrimination Against Women

The convention on the Elimination of All Forms of Discrimination against women recognizes the property rights in Article 16, which establishes the same right for both spouses to ownership, acquisition, management, administration, enjoyment and disposition of property, and Article 15, which establishes women’s right to conclude contracts.

Convention Relating To The Status of Refugees

These international human rights instruments for minorities do not establish a separate right to property, but prohibit discrimination in relation to property rights where such rights are guaranteed.

Universal Declaration of Human Rights

Article 17 of the Universal Declaration of Human Rights (UDHR) enshrines the right to property as follows:

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property

The **object** of the right to property as it is usually understood nowadays, consists of property already owned or possessed, or of property acquired or to be acquired by a person through lawful means. Not on opposition but in contrast to this, some proposals also defend a universal right to private property, in the sense of a right to every person to effectively receive a certain amount of property, grounded in a claim to Earth's natural resources or other theories of justice.

Constitution of India

In India, no fundamental right has given rise to so much of litigation than property right between state and individuals. Through the Supreme Court of India sought to expand the scope and ambit of right of property, but it has been progressively curtailed through constitutional amendments. The Indian version of eminent domain has found in entry 42 List III, which says “acquisition or requisition of property”. Under the original Constitution Article 19(1)(f) and 31 provides for protection of property right and later they were repealed and Article 300A was inserted. Accordingly no person shall be deprived of his property save by the authority of law. However, regarding right to property what kind of protection given by the US Constitution under Article 300A. For better understanding of Article 19(1)(f) and 31 along with constitutional amendments. Article 31(2) of the constitution provides for compulsory Acquisition of land. The power of eminent domain is essential to the sovereign government. The provisions of the fifth amendment to the constitution of the United states is that private property cannot be taken for public use without just compensation. The principle of compulsory acquisition of property is founded on superior claims of the whole community over an individual citizen, is applicable only in those cases where private property is wanted for public use or demanded for the public welfare. Accordingly, the right of eminent domain does not imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation where the public interest will be in no way promoted by such transfer. The limitation on the power of eminent domain is that the acquisition or taking possession of property must be for a public purpose has been expressly engrafted in clause (2) of Article 31 of the constitution of India.

No property shall be compulsorily acquired or requisitioned save for a public purpose.

The Supreme Court pointed out in **State of Bihar V. Kameshwar Singh** case that Article 31(2), as it stood before the amendment did not expressly make, the existence of 'public purpose' a condition precedent to the power of acquisition, but it was an essential ingredient of eminent domain, and the clause proceeded on the assumption that acquisition can be for a public purpose. After a scrutiny of the authorities, Das J. in Kameshwar Singh case, reached the conclusion that no hard and fast definition of "public purpose" can be laid down for its concept, it has been rapidly changing in all countries, he formulated as a working definition, that whatever furthers the general interest of the community, as opposes to the particular interest of the individual must be regarded as a public purpose.

Dwarkadas Srinivas v. Sholapur Spinning and Weaving Co. Ltd., the Sholapur Spinning and Weaving Co. Act of 1950 enabled the government to take control of the property to Sholapur Spinning and Weaving Company. The question was whether the Act was invalid as it did not provide for compensation. The government did not acquire the property therefore government was contended that Article 31 clause (2) providing for compensation did not apply since only clause (1) applied any authorized law was sufficient to deprive a person property right. As clause (1) authorizes any deprivation of property under authority of law.

The learned Chief Justice would postulate that the limiting power thereof is correct by clause (2). The Supreme Court held that the Sholapur Spinning and Weaving Company Act 1950 was void. Article 31 clause (1) and (2) should be read together.

So when there is deprivation of property, though there is no acquisition by the state clause (2) applied and compensation becomes payable. Hence, any deprivation of property should be:

- (1) Authorized by law; (Article 31 clause 1)
- (2) Necessitated by a public purpose; (Article 31 Clause 2)
- (3) Subject to payment of compensation.

Saghir Ahmed v. State of Uttar Pradesh issue was based on the Road Transport Act, 1951, which vested in the state government the road transport services in the interest of the general public. Supreme Court held that the Act was unconstitutional as it offended the provisions of Article 31(2) of the constitution. The fact that passenger buses of the appellant had not been acquired or might not have been deprived but they were depriving their business of running buses for hire on public roads. Following the **Shollapur case** discussed above, the Supreme Court held that depriving a person of his interest in a commercial undertaking even though state did not acquire or take possession of it, attracted the provisions of Article 31(2).

State of West Bengal v. Subodh Gopal Bose is the third case relevant to the present discussion. This case made it quite clear that the obligation of paying compensation arose only where the state action resulted in the substantial deprivation of private property of the individual. The Supreme Court held that the abridgment of right was not amount to substantial deprivation of the right to property within the meaning of Article 31. The West Bengal Revenue Sales Act 1859 was declared void by the Supreme Court as it infringed Article 31 of the constitution. The judgement in this case shed new light on the extent of protection of property rights under the constitution Patanjali Sastri C.J. observed that the constitution made a definite break with the

old order and introduced new concepts in regard to many matters, particularly relating to word 'acquisition' which is used in narrow sense in the constitution it might have used in same sense in pre constitutional legislation.

Chiranjit Lal's case it was held that Article 19(1) (f) would continue until the owner deprived of such property by authority of law under Article 31. If there was 'deprivation' of property under clause (1) if Article 31 by law, the citizen was not entitled to compensate at all, while he was entitled to compensation if property was acquired or requisitioned under clause (2) upon the point as to what is 'deprivation' there was conflict. In **Kochunni's case** court made it clear that clause (1) dealt with deprivation of property other than acquisition or requisition as mentioned in the clause (2) and other could be no acquisition or requisition unless there was transfer of ownership or a right to possession to the state or its nominee.

Conclusion

Indian experiences and conception of property and wealth have a very different historical basis than that of western countries. The fact the present system of property as we know arises out of the peculiar developments in Europe in the 17th to 18th century and therefore its experiences were universally not applicable. A still more economic area in which the answer is both difficult and important is the definition of proper rights. The notion of property as it has developed over centuries and it has embodied in our legal codes, has become so much a part of us that we tend to take it for granted, and fail to recognize the extent to which just what constitutes property and what rights the ownership of property confers are complex social creations rather than self evident propositions.

This also seems to be the hidden reason why the right to property is suddenly much contested throughout India today and why the state is coming up unexpectedly against huge resistance from unexpected quarters in attempting to acquire Land in India. The action of the state to assert the Eminent Domain over http subsidiary claims on property and the clash which resulted there from Singur, Nandigram and other parts of India is precisely a manifestation of a clash of cultures. That right inproperty are basic civil rights has long been recognised. This again would show that if the fundamental rights to freedom of speech or personal liberty pertains to basic structure, there is every reason that the fundamental right to property should also pertain to it, as the former set of rights could have no meaning without the latter. Protection of freedom depends ultimately upon the protection of Independence, which can only be secured, if property is made secure.