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RIGHT TO PROPERTY AND MARCH OF LAW- Abdul Raheman Sudes¹**ABSTRACT**

The provision right to property was at times a fundamental right to the citizens of India. As time passed, the provision was needed to change for the welfare of the state and for the improvement for the economical standard of the Union and State both. As time passed the provision right to property was been removed and in was only said to be as a legal right to the citizen of India, because the provision was not allowing the government to take the economical decisions for the welfare of state, as this was the negative side of the provision it was has been removed from the Indian Constitution. The provision right to property the negative aspects, the positive aspects, the doctrine, the supreme court decision, maxims which relate to the provision right to property has been clearly elaborated and described by referring to the legal webs, books, and internet. This research paper elaborate the excluded provision on Indian Constitution that is the Right to Property.

KEY WORDS : Property, provision, intellectual, tangible, intangible.

INTRODUCTION

Property a legal and social institution has different cultures and legal system in Indian society. Definition of constitutional property is similar in all democratic countries and its constitution. State has a wide thinking on the domain “property”, so the concept must be discussed in brief.

Right to property is the only fundamental right and provision which seems to be controversial and has been abolished from the Indian Constitution in the year of 1978. The first amendment in the provision right to property was made in the year 1951 and from

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there the amending of right to property started and the final amendment, the forty fourth amendment was made in regards of right to property was in the year 1978 which deprived the 'Right to Property' from its 'Fundamental Rights'. The orientation of 'Right to Property' in the constitution has seen the drafting and amending of its original constitution property clause and its evolution through judicial interpretation and legislation and constitutional amendment demonstrates the Indian states to reshape the property relation in the society to achieve the economical goals of the state for the re-establishment of the society of the betterment of the society. At the same time under Article-300(A) of Indian Constitution it was stated that no person shall be deprived of his property which has been saved by the government or by the authority of law.²

Under the Indian Constitution the provision 'Right to Property' has tried to approach and balance the both right to property and the pressure by the state and the society. Balance the right to property by compensation, in the form of compensating to the ones to whom the property belongs to as the acquisition throughs an absolute fundamental right to property, and at same balancing the pressure with reasonable restrictions and adding the further fundamental rights and compensating in case the properties are acquired by the state.

Few hundred years ago there was a king, he was in need of salt petre (potassium nitrate, use in manufacturing of fireworks) to make the gun powder, as he was in search of salt petre he has grabbed hold of a private mine. As the land was stolen the man approached the House of Lords, and the House of Lords stated that "Sovereign and anything, if the act of sovereign involves public interest". It means that the sovereign an acquire the land of the citizens for the benefit and the welfare of the society for the public use and many more things.³

MEANING OF PROPERTY

Property is a virtual entity which can be owned or purchased by an individual or jointly by in group by members. Human life is not possible without property. Property is a socio-political, economic, sometimes religious implication. It is the domain, which describes the ownership of a individual or a joint members group. The basic hypothesis of property is having a certain control and ownership on a particular thing. Here the most important thing in the ownership of a property is 'Thing'. The owner of the property must have a power and control on his property to sell, rent, mortgage, transfer, exchange or destroy and even he must have power to exclude other from doing so to his property. Property right includes some of the traditional principles an they

² Article at legal service India(definition & concept of property)

³ Centre for policy research (Fundamentals of property)

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1. Control over the use ofproperty.
2. Right to take any benefit from theproperty.
3. Right to transfer or sell theproperty.
4. Right to exclude others from theproperty.

KINDS OF PROPERTY

Property has been divided into some parts they are as follow :⁵

- **MOVEABLE PROPERTY** : Moveable property has been defined under various acts and some of the are as:

Moveable property under section 3(36) of the General Clause Act defines as :
“Moveable property here seems to be each and every property unless it is a moveable property”

Moveable property under section 2(9) of Registration Act defines property as :

“Standing timber, growing crops and grass, fruit upon an juice in tree and property of every other description except the moveable property a moveable property”.

⁴ Centre for policy research (Fundamentals of property)

⁵ Article at lawyers club India (Right to property under Indian Constitution)

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Moveable property under section 22 of IPC is defined as :

“Moveable property in this section is defined as any description, except the thing attached to the earth can be a moveable property. Here thing which shouldn't be attached to earth stands for they shouldn't be stick to earth but they can be a part of earth such as cart or truck loaded of sand, stones, etc.”

- **IMMOVABLE PROPERTY:** Its same as moveable property, the immovable property is also defined in various central acts. Transfer of Property Act (T.P.A) is the most important act which deals with the immovable property, even in T.P.A the term immovable property is defined in exclusive terminology and its described widely.

Immovable property under section 3 of Transfer of Property Act defined as :

“Standing timber, growing crops or grass are not included in immovable property, this things have been excluded here. Immovable property as building, machineries fixed into the buildings and companies can be considered as immovable property according to Transfer of Property Act”

Immovable property under Section 3(26) of General Clause Act is defined as:

“Immovable property stands for permanent fastened to anything attached to earth. Immovable property includes land, benefits to arise out land and things attached to earth, here it clearly says that property attached to earth can be considered as immovable property”.

Immovable property under Section 2(6) of Registration Act. 1908 defined as:

“Land, hereditary allowance, building, right to way, lights, ferries, fisheries or any other benefits that arise of land and the things that have been attached to the land can be considered as immovable property but standing timber, growing crop and grass doesn't fall under the definition of immovable property according to the Registration Act1908.

- **TANGIBLE AND INTANGIBLE PROPERTY:** Tangible property means property that can be generally moved or felt on earth such as furniture, jewelry, art, writings, or household goods; basically the property which is not attached to real property to the earth

Intangible property basically means the personal property of an individual that cant actually be moved or felt but it may be represented such as negotiable instrument,

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securities, service and intangible assets.

- **INTELLECTUAL PROPERTY:** Houses, cars, furniture, currency, investment etc. are not only the properties which should be taken care and be protected by the government and the law. There are even many other properties such as intellectual properties which can be also said as intangible properties have been recognized under the law and have been granted protection by the government for the infringement of the property.

RIGHT TO PROPERTY REMOVED AS FUNDAMENTAL RIGHT

Right to property was the provision which was present in the Indian Constitution under Part-3: Fundamental Right, Article 31 but later on the provision Right to Property was abolished by the 44th Amendment Act, 1978 by the law making bodies in India. Actually it was formed for the protection and ensuring safety to the property and the property holders.⁶

But later on the provision right to property was abolished and was removed from the Indian Constitution, because the government was coming up with the idea of land reforms and encourage social justice by taking away the land from landowners who have surplus land and then distributing those surplus land to the land less farmers or also using those surplus lands for the benefit of the public use such as making of road, bridges, etc.. It was also established to aim an distribute the resources equally, where the distribution is required.

Further more the provision Right to Property was making a problem in the development of both Union and State; it was making problem for the development of both state and union such as if a government has to construct a road, dam, bridge, etc. they take the land from the people where the project is going to start; as they take land from the people at the same time the government was compensating those people with the money(as per the value of land) or giving them the land in some other place, on one hand they were taking from them and on another hand they were giving the compensation to those people but as people were not happy with the decision that their land are being taken they started revolting and approaching the judiciary even though the government was compensating them by giving money and land, hence this revolting and approach of people to the judiciary even after compensating created the problem for the development of the Union and State, the provision of Right to Property was been removed from the Indian Constitution.

Now under the Indian constitution it is made clear that, constitutional right under Article 300A which states that:

⁶ Ipleader.com (Right to property in India: Everything important you should know)

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“No person will be deprived from his/her property unless and until the authority of law states them to vacant their lands or property”

The responsibility of government is to make law for the social, political and economically development . Right to property was removed from our fundamental rights and it was just made a legal right by the 44th Amendment Act of 1978. The provision was actually removed because as mentioned under Part-4 of Indian Constitution i.e. Directive Principles aims to establish a welfare state, which means to narrow down the difference between the rich and the poor. Many zamindars had acquired vast lands and areas which were existed of those rich and the poor during the Colonial Rule. As rich grew richer and the poor remained poorer this provision was removed. So, the main aim of removing the provision of Right to Property was the development of state. It was tough to acquire the land of people for the welfare of the state which would benefit public at last, but as the people were not ready to lend their lands for the development and welfare of state it remained the Legal Right of citizen and it was no more the Fundamental Right of the citizens.

MAXIMS

The Doctrine of Right To Property is based upon the following to Maxims:

1. Salus Populi Est Suprema Lex Welfare Of The People Of The Public Is The Paramount Law;
2. Necessita Public Major Est Quam Public Necessity Is Greater Than PrivateNecessity.

As per the doctrine every government holds an inherent right to take the private property of an individual for the purpose of welfare of the state or for the use of public. The power whichthe government uses to take the property of an individual is known as Eminent Domain. It's the offspring of the political necessity. These mentioned rights rests on the maxims mentioned above. Thus doctrine explains that property may be acquired by the government bodies for the welfare of the state such as government office, libraries, public school, public park, hospitals, highways, telephonenumber, colleges, dams, drainages, etc. the exercise of such Eminent domain power is exercised in many of the countries through out the India and world for the public necessity and payment of compensation.⁷

In the United States of America, there are some limitations on the doctrine of power of Eminent Domain, but this power is subject to some restrictions in the Indian constitution:-

1. There must be a law authorizing for taking of the property.

⁷ LiveLaw.com (Right to property a constitutional right)

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2. The property must be taken by the government authority for the public use.
3. Compensation should be paid to the individual if the property is taken for the welfare of the state.

In this doctrine of Right to Property it arises debate of power of State v. Individuals right to a property. Then here comes the Development Induced Displacement(DID) which means, “The forcing of people and communities from their homes often from the own property, land, farms for the purpose of the economic and public welfare development”, which has been viewed as the human right violation in the international, but later on for the economic and welfare state development it has been removed from the fundamental right and its only a legal right now in the India.⁸

ESSENTIALS FEATURES OF THIS DOCTRINE

As per the doctrine of Right to Property there have been two essentials to be followed:

1. Property must be taken for public welfare or public use.
2. Compensation must be paid for the property taken.

As per the provision the above mentioned are the two limitations that are imposed on the power of Eminent Domain by the revoked Article-31, but Article-300A imposes only one limitation on the provision of Right to Property that is Authority of Law, which is the only power. Authority of the law is the only one limitation which has been amended in the new provision of Right to Property .which say that law can expel the people from their land and property for the welfare use and no one can revolt on it as it is not a fundamental right any more.⁹

SUPREME COURT APPROACH TO THE RIGHT TO PROPERTY

The approach of the supreme court on the doctrine of Right to Property can be divided into two parts :

1. The time till when the provision of Right to Property was considered as a fundamental right, that is Pre 1978.
2. The time after the right to property converted as the constitutional law that is Post 1978.

⁸ Lawyers club India

⁹ Indian Constitution (Article-31 & 300A)

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AMENDING POWER OF THE PARLIAMENT

Till the date, it is considered as amending and removing of this provision has been considered as the most trivial phase faced by the legislature and the judiciary in the entire constitutional history of our nation. As it is already explained herein it was considered that there was a lot of tussle between the legislature and the judiciary regarding the provision of the article right to property. And whenever the judiciary was invalidating the provision of right to property as unconstitutional then conveniently it would be upheld and amended by the supremacy over the judiciary.¹⁰

UNIVERSAL DECLARATION OF HUMAN RIGHT

The Universal Declaration of Human Rights (UDHR) enshrines that right to property under the Article-17 of its act as follow:

1. Every one has the right to own and purchase a property alone by an individual or in association with others.
2. No one should be or deprived from an individuals property arbitrarily.

The object property or right to property as usual is considered and understood in nowadays as, a property already owned by one or possessed by someone, or property which has been acquired or going to be acquired by a person through a lawful meaning. Not on opposition with the provision right to property but in contract to this, some of the proposal even defend to be a universal right to the private property of a person, in the sense of right to each and every person to be effectively to be received with a certain amount of property, by grounding it to be the earth's natural resource or to the other theories of the judiciary of India.

CONCLUSION

By the provision of Right to Property either it may be the amending of the provision or abolishing of the provision from the Indian Constitution, India has experienced a very good conception, and wealth have been a very different historical basis than that of western countries. The concept of property has been developed centuries ago and it has taken part in the legal code of our constitution, it has been removed but still it has a place in law as legal right. We people have also take the property law as granted, and fail to recognize the extent to which it constitutes the property. And the rights which a ownership holds on his property confers and are complex social creations rather than self-evident propositions. The reason behind there voking

¹⁰ Legal Service India (Indian Constitution "Article-48")

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of the article of right to property from the Indian Constitution is that it was not allowing the economic growth to increase and the development of the state and union was stopped as the people were starting revolting against the government that there land are being snatched by them. As the government is paying them the compensation they were expecting the people to give there land without making and problem but they were even though again protesting for their land, so the government planned to revoke the provision of right to property from the Indian Constitution for the betterment and development if the welfare of the state. The main finding and research was of finding the exact meaning of property as it isn't defined anywhere, there are various meaning of property. It is defined different in Sale of Goods Act 1930 from Benami Transactions (Prohibition) Act, 1988. The transfer of property act is the most important act of property doesn't not have definition of the term property.

