PROPERTY “RIGHT” AND FUNDAMENTAL “RIGHTS” : LAW AND POLITICS

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GLOBAL HISTORY OF THE RIGHT TO PROPERTY

- Right to Property was a check against the power of the King – Magna Carta – recognition of the rights of the Lords.

- American Revolution – was about property – escape from feudalism and creation of private property rights- abolition of right of primogeniture and right to hold property in perpetuity (fee tail or entail).

- France – attack on property from Society perspective – French Revolution- Article 17 of the Declaration of the Rights of Man- Robbespiere – more extreme Diderot – against private property –as the source of the highest evil and manifestation of “avarice”.

- Colonialism – destroyed the old property holding systems in colonies – and created new ones – a whole new class – anti colonial struggles became anti property rights as well.
GLOBAL HISTORY


- 3rd World – 1950s to 1980s – spate of nationalisations – perceived to be extension of the anti colonial struggle

- 1990s – collapse of communism – Property rights became the touch stone of democracy and free market.

- Mixed Economies in the world – like India – post 1990s – needed land for expansion of industry to leap frog to the stage of Developed Countries – land was difficult to get.

- Conflict and return of Right to Property – not as a privilege of the privilege of the rich but an instrument of resistance of the poor.
INDIC CONCEPTIONS OF CLAIMS TO PROPERTY

- Svatta – ownership – roughly claim on property – traced back to Vedas.
- Property can be acquired by purchase, getting, buying and exchange.
- Svatta – is absolute but is one amongst interlocking rights – and your Svatta may be subject to others (Paratantra) who are completely independent – like Raja, Guru, Jati, Kula (who are Svatantara-independent).
- Claims are not hierarchical – equal and sometimes even contradictory – right to coparcenor v. right of karta.
- Society recognises property not state – king has no superior claim – can only retain what is his – even what he has recovered from thieves.
- Transactions can be done on each svatta but does not clear the slate of the other existing claims.
- 3 propositions of Bharatiya property holdings recognised in law – HUF, Devottur and land to the tiller.
- Till today Law does not recognise claims on common lands and lands held by villages – to a lesser extent tribes – Forest Rights Act.
Right to Property in the Government of India Act, 1935 and the Constitution of 1950

**Govt of India Act, 1935:**

**Article 298** - Any body can hold property but special protection to agricultural tribes of specific areas.

**Article 299** - No person to be deprived of his property except by authority of law

Property can only be acquired for public purpose.

**Article 300** - Special Protection of titles of grants made (special exception to Zamindars)

**Constitution of India, 1950:**

**Article 19(1) (f)** – right to acquire, hold and dispose property – subject to 19(5) reasonable restrictions in interests of general public and STs.

**Article 31 (1)** – No one could be deprived of property without authority of law

**Article 31(2)** Property can be acquired for public purpose save by authority of law and that law will have to provide for compensation or a mechanism to calculate it.

Subsequently 31(2) was amended and then Articles 31A, 31B added before removing Right to Property to 300A as a Constitutional Right.
3 Phases

• The **Conflict** phase - (Liberal phase)- **Kameshwar Singh** (abolition of Zamindari), **Sholapur Spinning and Weaving Company** (compulsory acquisition of shares). Stood up against compulsory acquisition.

• The **Compromise** phase on nationalisation – Stood up for compensation and accepted nationalisation – **RC Cooper** (Bank Nationalisation Case) , allowed abolition of privy purses in **Privy Purses case**. (Socialist Phase)

• Post Liberalisation Phase – trying to read in Property Rights as a Human Right – first surreptitiously in **Indore Vikas Pradhikaran** – 2007 by Justice Sinha – as human right and then as a right of the poor in the **Land Acquisition cases** of Justice Singhvi in 2011 - 2012.
THE POLITICS OF THE RIGHT TO PROPERTY IN INDIA

• Pre Independence – Mahatma Gandhi, Rajaji and Sardar Patel (Conservatives) v. Nehru, Bose and JP (Socialists) – Gandhi- “Trusteeship” – Limiting the Right to Property to property.

• Post independence – Socialists wanted land redistribution and abolition of right to property – after death of Sardar – large scale amendments brought in – prolonged battle with the Courts.

• Nehru tried to collectivise farming – spectacularly opposed successfully by Rajaji and Swatantra Party.

• Indira Gandhi – nationalisation – Swatantra and Jan Sangh spoke about protection of the right to property - abolition of Privy Purses and Bank Nationalisation and nationalisation of other industries – followed by amendment to Preamble.

• Janta – to get rid of the problem once and for all – moved it to a Cosntitutional Right – effectively putting an end to the right to property debate for quite some time.

• Post Liberalisation – economy was deregulated – land acquired by stealth for industry.

• Came up against the Singur movement – that too against the Communists.

• **Now the failure of the Land Acquisition Bill – Right to Property is for the little person.**
FUTURE OF THE POLITICS OF THE RIGHT TO PROPERTY IN INDIA

• There is pressure on Land – Land is required for industrialisation – Make in India.
• Without industrialisation – India cannot progress.
• However there is also pressure on agricultural land – huge shortage of land – cultivation of land in different countries in Africa.
• Land is also a cultural, civilisational issue.
• Solution – Possibly lease, possibly redevelopment.
• Property rights as to nationalisation – seems to be settled presently.
• In fact use of Property rights defence by recalcitrant industrialists to avoid payment of legitimate dues are questions which we are facing.
• Every issue as mentioned above has a political impact.
RIGHT TO PROPERTY AS A FUNDAMENTAL RIGHT – FUTURE FORM

• Property rights are important – but history has taught us – that civilisationally and even for the rule of law it cannot be absolute.

• The Right to Property is a tool of the weak and not a privilege of the rich – that is now increasingly being recognised.

• Taking it away as a fundamental right was a mistake – because no one knows what is a constitutional right – but the right to property has to be adequately made subject to other restrictions like other Fundamental Rights.

• I personally would like more recognition of methodologies of Indic property holdings as part of property rights – inclusion of conceptions of Svatta and non recognition of “eminent domain”.

• If we have to release animal spirits and a market system has to be truly representative – it has to culturally and civilisationally close to its people.

• Less of “rights and entitlements” – and more of recognition of claims – traditionalisation of constitutionalism.