

Right to Property as an Aspect of Right to Life under Article 21 of the Indian Constitution

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I. Introduction:

The term property is derived from the Latin term '*proprietat*' and the French equivalent '*proprius*' which means a thing owned with exclusive right of possession, enjoyment and disposition.² Property is such a broad term that its application is very extensive embracing every possible interest which a person can have and can be extended to all recognised types of interests which have the characteristic of property rights. Property is classified as movable and immovable³, corporeal and incorporeal. It may mean a thing or a right which a person has in relation to that thing⁴. It is an object of legal rights which embraces possession or wealth collectively and connotes individual ownership of the same.

In law the term property refers to individual possession of things and these things may be tangible such as land or goods or they may be intangible things as well such as stocks, bonds or the most recent concept of Intellectual Property. Every civilized state in the world recognises the relationship between a person and his property. It is protected to some extent by constitutional law, criminal law and civil law. The concept of property is such that a person who is in possession of a thing has the exclusive right to possess, use and transfer the thing on his will.⁵

In essence property includes all things that enable's a man to survive and in order to support oneself through reason and stay alive, one must be able to own and use the product of one's labour. If the tools of one's survival are subject to random confiscation, then one's life is subject to random destruction. Property has always been seen as an instrument of life and justified as an instrument to a full human life. A man's life and his freedom

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² S.N. Dhyani, "*Jurisprudence and Indian Legal Theory*", Central Law Agency, Allahabad, 3rd Ed., 1999 at p.269

³ Sections 3 (26) and 3 (36) of the General Clauses Act, 1897

⁴ K. Subba Rao, "*Property Rights under the Constitution*", (1969) 2 *SCC (Jour)* 1

⁵ Sec. 5 of the Transfer of Property Act, 1882 defines "Transfer of Property" as an act by which a living person conveys property, in present or in future, to one or more other living persons or to himself and one or more other living persons and "to transfer property" is to perform such act.

of action is so closely intertwined with economic activities that it is difficult to separate life, thought and free will from property. That is why our constitutional framers incorporated the right to hold and dispose of property as a Fundamental Right. They certainly had realised the Fundamental nature of property right in a person's life. The Universal Declaration of Human Rights recognises right to property as basic rights of human being while the constitution of India excludes after recognising it as a Fundamental Right. It is very absorbing to note that Right to Property has induced the most number of amendments to our constitution and also has formed the core from which some commendable and historic decisions emerged out of our judiciary which has been extensively studied by every students of law but sadly they have never been studied from the importance of property rights in a person's life.

The life of a person enshrined under Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence; it has a much wider meaning which includes all those aspects of life which go to make a man's life meaningful. The bare necessities, the minimum and basic requirements which are essential and unavoidable for a person are the core concept of life and it surely would include right to property which is essential for an individual to sustain his life. So far property serves as a means of livelihood it is an extension or an integral aspect to right to life and deprivation of such property would violate a person's right to livelihood under Article 21 of the Constitution.

But, such a basic right has been hastily curtailed from the chapter of fundamental rights of our Constitution without examining its far reaching consequences. At this juncture it has become very crucial issue of deliberate investigation as to whether, Right to property is a part of right to life under Article 21 of the Indian Constitution? If it is so, is it an absolute or unrestricted right? The present paper is an effort to analyse the issue from the viewpoint of philosophical foundation of right to property, its development under the constitution and through the judicial decisions, the actual functions performed by property in the life of an individual.

II. Evolution and Concept of Property:

The notion of property has evolved over centuries. Man in his primitive state had no place for either law or property. Then, the only law that operated was that of "might is right"; he who had greater power had greater position over things. Life indeed echoed in between Hobbes's famous appellation "nasty, brutish and short". Slowly, as civilization progressed, the concept of legitimate interest took roots in human consciousness. Gradually, rights or claims came to form a bulwark against

brute power. Just of notions of family and marriage developed so did ideas of property.⁶

The Roman doctrine of *Occupatio* or occupancy may be treated as one of the natural modes of acquiring property at the dawn of human civilization. A similar idea of occupancy is discernible in the notion of property in the early Hindu Jurisprudence. *Manu* refers to this concept of property right when he quotes a principle to the effect that the “*field belongs to him who cleared away the timber and a deer belongs to him who first wounded it with an arrow*”. It is believed that the earth and its fruits were at one time common and it is through the doctrine of occupancy that the notion of individual property came into existence.⁷

The history clearly states that in ancient times during the initial stages of community development when people moved from place to place having no permanent shelters, there was not much attachment to property. But as the number of communities increased, the need for cultivating land for the production of sufficient quantities of food was realised. And the greed of human instinct gradually took its march leading to the concept of ownership of property with a sense of security and protection which seems to be inherent in every individual.

The concept of property is as old as the evolution of society itself. Undoubtedly, the concept has been changing with the economic evolution and change in the social structure of the society. It can be better understood in terms of several layers which form as one of the basic need for a human existence. The first comprises those objects without which human dignity cannot exist, the food, shelter and clothing constitute pertinent example of this layer. The second extends to a person’s avocation, profession and livelihood in general. The third layer entails the right to acquire and retain objects without which his enjoyment of his life and hard work is diminished.⁸

The earlier view about the concept of property makes it abundantly clear that property is a creation of social recognition and economic growth. It has the quality of satisfying human wants. As rightly pointed out by Aristotle and supported by Hegel that, “property is essential for the satisfaction of natural instinct of men. It is the condition of good life and expression of human personality.”⁹

⁶ A.K. Ganguli, “Right to Property: Its evolution and constitutional development in India”, Vol.48, Issue 4, 2006, *Journal of Indian law Institute*.

⁷ Sir Henry Maine, *Ancient Law*, World Classic Series, 1931 at p.203.

⁸ *Supra note 6*

⁹ N.V. Parnajape, “Right to property in India”, Vol. 10, 1976, *Journal of constitutional and parliamentary studies*

References to recognition of property right of men are also to be found in Kautilya's Arthashastra, wherein he observed that, "wealth alone is important in as much as charity and desire depend upon wealth for their realisation. It is through wealth that men get virtue, satisfaction and salvation"¹⁰

The concept of property is also based on the philosophy that man cannot live his life on earth without using the material goods with which the earth abounds and which are absolutely necessary for existence of human life. In all societies by a social process the individual controls these things, uses them and consumes them to satisfy his own needs. Property under such aspect, therefore, is said to such which is owned or that over which one has the exclusive right of control and disposal at will.

The concept of property is known to ancient Greeks, Romans, Hindus and Jews in varying forms. From Biblical sermon that "*thou shalt not steal*" and the platonic significance of property without which it is impossible to live virtuously we find the valuable character of property in the works of Hobbes, Locke, Adam Smith, David Hume and all the constitutions that were adopted during 18 and 19 centuries.¹¹

The gist of the whole concepts of property that has evolved over various stages or periods of time in fact is based on the dual philosophy of individualism and socialism. The doctrine of Individualism at one end is the doctrine of private property. It holds that self interest is ingrained in human nature and that there will be no incentive to work unless a person can enjoy the fruits of his labour. According to this school the state came into existence to protect private property because in a state of nature it was not secure in the absence of any authority to maintain law and order amongst the warring individuals. However, the Individualism does not discard the Collective interest and holds that certain legitimate restrictions to prevent any offence could be imposed by the state in the Collective interest but should be kept to the minimum.¹²

Socialism, on the other hand holds that private property does not in fact give toiling man the rewards of his labour but leads to inequality of wealth and opportunity in favour of a few. The Socialism, believes that means of productions are to be owned by the society or the state itself and equitably distribute the fruits of labour amongst all. At its logical extreme, therefore, there should be no private property and all the means of

¹⁰ Kautilya's Arthashastra, Ch. VII, para. 12

¹¹ S.N. Dhyani, *Jurisprudence and Indian legal Theory*, Central Law Agency, Allahabad, 3rd ed., 1999

¹² D.D. Basu, *Commentary on the constitution of India*, Vol. C, 6th ed., J.N. Ghose & Sons, Calcutta, 1977 at p. 281

production should be owned and managed by the state, which should equally distribute the goods produced to each according to his labour.¹³

III. The Conflicting Views Regarding the Nature of Property:

Today, the instinctive notion of property has been replaced by a legal approach to the right to property in a more civilised condition which made it necessary to frame the rules to govern the acquisition, preservation and disposal of the property in its various forms. These rules underwent a continuous evolution and have now reached a stage of almost perfection in most of the civilised societies. With the rapid rise in the mode of transport and means of communication the societies living in different parts of the world have been brought nearer and the laws and concept pertaining to the property have been greatly inter-changed. There have been conflicting views with regard to the nature of right to property. Some eminent persons have laid great stress on the fundamental nature of property while others have regarded it as a social evil.¹⁴

The way the concept of “freedom”, “liberty” and “rights” have changed from age to age and from society to society so has the attitude of philosophers, jurists and political scientist towards the nature of property rights has fluctuated through the ages. The great Greek philosopher, Plato, in his Republic outlined a form of communism, at any rate, as regards the cream of society constituting the guardian of ruling class. He observes, “None should have any property beyond what is absolutely necessary; neither should they have a private house with the bars and bolts closed against anyone who has a mind to enter”. Sir Thomas More, in his Utopia pleaded for the total abolition over right to property. In his view “the perversity of modern society is mainly due to the right to property which creates in man an inordinate sense of self interest resulting in the corruption of human motives.”¹⁵ Even Karl Marx, in his Communist Manifesto endeavoured to demonstrate that human history ever since the creation of right to property has been a history of class struggle. Bernard Shaw endorsing the view of Proudhon, who regarded exclusive property as theft has said that this was the only perfect truism that has ever been uttered.¹⁶

As against this opinion on right to property we have an equally respectable body of authority supporting the fundamental nature of right

¹³ *Ibid.*

¹⁴ M. Hidayatullah, *Constitutional Law of India*, Vol. 2, The Bar Council of India Trust, at p.357-58

¹⁵ Prof. G.C. Venkata Subbarao, Property rights and the 25th amendment, *The Supreme Court Journal*, 1972 at p. 1

¹⁶ *Supra note 1* at p. 358

to property who holds that property is a means of securing to individuals control over things and their disposal within the given legal system. The fundamental nature of property is justified by the fact that the existence of human life would be impossible without right to property as it is the means for securing to people the means for living.¹⁷ Property is an essential guarantee of human dignity. In order that a man may be able to develop himself in a human fashion, he needs a certain freedom and a certain security and these are assured to him only through property.¹⁸ Even the studies of primitive cultures conclude that property rights were a central part of people's existence. Infact, there is no record in anthropological studies of societies that were unaware of property rights.¹⁹ John Locke in his *Two Treatises of Government* (1690) commented that property rights existed prior to the government. So property right is not a creation of the government, but instead, the source of the government. In his own words, "Government has no other end but the preservation of property."²⁰

Aristotle, in his 'The Politics' suggested that the idea of property rights is clearly implanted in man's nature: His love of self, of money, and of property, is tied together in a natural love of exclusive ownership. Right to property had existed always and everywhere. To impose communal property on society would be to disregard the record of human experience, and to leap into the new and untried. Abolition of right to property would probably create more problems than it would solve.²¹

The justification as to the fundamental nature of property rights has always ultimately gone with either to the individual's right to lead a more meaningful life or to a right to one's own body and hence to one's own labour and hence to the fruit of one's own labour and therefore, to the means of one's labour.²² The right to life and property is the presupposition of every positive legal order. Property therefore, is no arbitrary idea as some people would imagine, but is founded in man's natural impulse to extend his own personality. Without right to property

¹⁷ R.S. Bhalla, *The Institution of Property Legally, Historically and Philosophically Regarded*, Eastern Book Company, Lucknow, 1984, at p. 104

¹⁸ K.K. Mathew on *Democracy, Equality and Freedom*, edited by Upendra Baxi, Eastern Book Company, Lucknow, 1978 at p.84

¹⁹ Terry L. Anderson, Laura E. Huggins, *Property Rights A practical guide to Freedom and Prosperity*, Hoover Institution Press, Stanford University, California, 2003 at p. 6

²⁰ Kaushik Das: *The right to property*, available at http://www.ccs.in/ccsindia/policy/rule/articles/kdas_right_to_property.pdf

²¹ Murray N. Rothbard, "Aristotle on Private Property and Money", available at <https://mises.org/daily/3902>

²² *Supra note 6* at p. 83

man cannot exist, cannot make good his right to marriage or to a family or to security of life, and cannot maintain his sphere of individual right to a life of his own.²³ His freedom of action is so closely intertwined with economic activities that it is difficult to separate thought and free will from property.²⁴

Right to property confers a level of dignity and self respect upon individual because of the liberty and freedom associated with ownership. Ownership is a method by which, in the words of Kant, 'individual can objectify their true meaning and spirit'. In modern society, people develop certain aspirations and expectations which are often expressed through the accumulation of particular objects; it is important that the law acknowledges these expectations in order to regulate social behaviour and to reinforce human expression. Right to property confers freedom and self-sufficiency and stimulates a sense of personal dignity.²⁵

IV. Constitutional Foundation and Development of Right to Property:

The nature of the right to property is one of the most contentious issues of the constitutional law throughout the world. The question of whether the right to property ought to be regarded as a fundamental constitutional right has proved controversial. Historically the right to property has been regarded as a paradigm for rights in general and an access to the basic means of subsistence. The right to property has been the subject of intense philosophical and legal controversy throughout history and the debate focused on the question whether right to property is a basic right or not has raged from antiquity, through the middle ages and to the early modern philosophical discussions of Grotius, Pufendorf, Locke and Rousseau, which exerted a profound influence on the recognition of property as a fundamental right in the modern written constitutions of the world.²⁶

The foundation of right to property as a Fundamental right under the Indian constitution had raised a disturbance in the Constituent Assembly with divergent views expressed by the members. The reasons for the foundation of property as a Fundamental right by the members of the

²³ *Ibid.*

²⁴ P. Ishwara Bhatt, "Tracing right to property in the Bosom of right to life and personal liberty: Comparative reflection on recent constitutional development in America, Canada and India", *Journal of Indian Law Institute*, Vol. 38:1, 1996 at p. 13

²⁵ Dr. Samantha Hepburn, *Principles of Property Law*, Routledge Cavendish Publication Ltd., Australia, 1st Edn. 2006 at p.14

²⁶ Bret Boyce, "Property as a Natural Right and as a Conventional Right in Constitutional Law", available at www.law.syr.edu at p. 101-102.

Constituent Assembly could be traced to fulfil the aspirations of the exploited Indians under the domain of the British rule. The economic ruin of the country during the British rule which had created few capitalist and some other privileged classes had caused to be the economic ills of the country. The leaders of independence movement, who dominated the process of the constitution-making, were committed to bring about socio-economic regeneration of Indian people.

In this context, Mr. Sukhcharan K. Bhatia commented, “the true individual freedom cannot exist without economic security and independence. Necessitous men are not free men”.²⁷ Thus, property as fundamental right was incorporated with a view to secure to the Indian citizens true liberty and to accomplish social revolution by creating a society that is classless and that liberty was no longer the privilege of few.

The framers at the same time were aware of the fact that Fundamental right to property may lead to concentration of property in the hands of few resulting to the denial of right to and enjoyment of property to the common man. Thus, the framers through the constitution had contemplated that in the larger interest of the people and for the welfare of the society at large the state had to acquire property. In this process, it could be inferred through the debate of Constituent Assembly that determination of the nature of property was to be considered as to whether expropriated property is a source of livelihood to a person or a means of control, wherein compensation equivalent to the property acquired was to be made in the former case and nominal compensation in the later case.²⁸

After such a lengthy deliberation on property right the members of the Assembly were confronted with two basic approaches- the Socialist and the Individualist approach to be considered with the right to property. But it is interesting to note that the framers took the middle course on adapting the said right. The right to property on its final draft was made a fundamental right of the citizens of India. However, the state was given the power to acquire property for public purpose and for the welfare of the society at large on payment of compensation to the expropriated owner.

The original constitution of India as framed by the members of the Constituent Assembly who were men of vision and experience, guaranteed under Article 19(1)(f) the Right to Property as a Fundamental Right to all citizens. The right conferred on all citizens “to acquire, hold and dispose of property” subject to reasonable restrictions which might be imposed either in the interest of the general public or for the protection of the interests of the

²⁷ Sukhcharan K. Bhatia, *Jurisprudence of amending process under Indian Constitution*, Deep & Deep Pub., New Delhi, 1989, at P. 106

²⁸ CAD ,Vol., III, at p. 518

Schedule Tribes. The right to property was further subject to the right of “Eminent Domain” that is, the superior right of the state to take away private property (on account of public urgency and for public good). Article 31(1) of the constitution provided “No person shall be deprived of his property save by authority of law”. This clause was intended to be a protection against arbitrary executive action, but not against legislative deprivation. The state could acquire the property by fulfilling the conditions laid down in Article 31(2) namely;

- a. Through a valid law,
- b. For the public purpose, and
- c. By providing compensation to the owner by fixing the amount of compensation or by prescribing the principles on which the amount of compensation might be determined.

Indians having been the subject of domination and exploitation of the British for more than two hundred years were optimistic of new social order after the independence. Therefore, the earliest task of the Government after independence was to bring about agrarian reforms and the same was proposed to be done in two stages;

1. By abolishing zamindaris and intermediaries, and
2. By imposing ceiling on land and distributing surplus land among the landless labourers.

In pursuance of these objectives, several Zamindari Abolition Acts were passed. But when the Bihar Zamindari Abolition Act was struck down in *Kameahwar singh's case*²⁹ on the ground that it violated Article 14, Parliament undertook the 1st Amendment Act to avoid further litigations. These Acts did not directly amend Article 31 but inserted two new Articles-31A and 31B. Article 31A saved laws providing for acquisitions of estates etc. from challenge in a court of law on the ground that they violate Article 14, 19, or 31. Article 31B read with the Ninth Schedule validated certain Acts and Regulations and gave complete immunity to the enactments included in the Ninth Schedule from judicial scrutiny.

But a controversial question arose in regard to the compensation payable for acquisition of an undertaking under Article 31(2) of the constitution. It was held in the twin cases of *Dwarka Das*³⁰ and *Subodh Gopal*³¹ that clauses (1) and (2) of Article 31 must be read together whenever there was any substantial deprivation of property, the question of compensation would arise. It was further held in the case of *Bela Banerjee*³²

²⁹ AIR, 1951 Pat. 91

³⁰ AIR 1954 SC 119

³¹ AIR 1954 SC 92

³² AIR 1954 SC 170

that compensation in Article 31(2) meant just equivalent or market value of the property taken. These decisions created serious difficulties for the government as it was not possible for the government to take over the management of a sick company even temporarily without paying compensation nor could they afford to nationalise any big business or industries by paying full compensation to the owners.

Under these circumstances to override those decisions Parliament undertook the 4th Amendment which provided;

1. There should be no obligation to pay compensation for mere deprivation of property, when the property is not acquired by the state;
2. The question of compensation should be left to the judgement of parliament and its adequacy should not be questioned by the court of law

Notwithstanding these amendments, the controversy regarding compensation continued so did the amendments on right to property through 7th and 25th amendments. The effect of decisions of the Supreme Court in *Vajravellu*³³, *Metal Corporation*³⁴ and *Bank Nationalisation*³⁵ cases was that even under the amended Article compensation meant equivalent of the property taken with its existing advantages and potentialities. In these cases the Supreme Court also refused to vest parliament with unfettered power to determine compensation by the abuse of legislative process.

Finally, the entire amendments to the right to property that had followed since the working of the constitution was cemented by the 44th Amendment Act which forever omitted the right to property from the chapter of Fundamental Right and made its place on Chapter IV, Part XII under Article 300A as a mere legal right which reads as, “No person shall be deprived of his property save by the authority of law”.

V. Justification of Deletion of Right to Property:

The justification that has been provided through the Statement of Objects and Reasons of the 44th Amendment through paragraphs 3, 4 and 5 runs as follows:

- **Para 3.** “In view of the special position sought to be given to fundamental rights, the right to property, which has been the occasion for more than one Amendment of the constitution, would cease to be a fundamental right and become only a legal

³³ AIR 1965 SC 1017

³⁴ AIR 1967 SC 637

³⁵ AIR 1970 SC 564

right. Necessary amendments for this purpose are being made to Article 19 and 31 is being deleted. It would however be ensured that the removal of property from the list of fundamental rights would not affect the rights of the minorities to establish and administer educational institutions of their choice.

- **Para 4.** Similarly, the right of person holding land for personal cultivation and within ceiling limit to receive market compensation at the market value will not be affected.
- **Para 5.** Property, while ceasing to be a fundamental right, would however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law³⁶

This, statement for deleting the right to property has always been in the forefront of controversy for more than thirty years in between many followers of the Individualism, (who holds that property to a person is fundamental for his existence) and Socialism, (who holds that property should be distributed for the common good of the society). However, in practice both the views holds true, if one goes with the individualistic than it is evident through various recent incidents of bloodshed against acquisition of lands which could not had been, if right to property was a fundamental right. But at the same time looking into the socio-economic condition of the people of India, it is warranted to have major reforms on every field to improve the conditions of the Indians in parallel to other developing nations, and fundamental right to property proved to be a hindrance to achieve such goals.

VI. Is Right to Property an Absolute Right?

It is important to acknowledge at the outset that the nature of individual's right to property are not absolute and it is recognised that there are necessary limitations imposed upon the owner of the property. The first broadly accepted limitation is the state regulation or the governmental interference to control the use of property by police power regulations to ensure that an individual's use of their property does not unreasonably affect the right of others to enjoy their own property. Under the police power regulations, is the state's mediator role in the resolution of conflicts between individual rights. The government can restrict the use of property to protect health, safety and morals of the community.³⁷

³⁶ Statement of Objects and Reasons of the Constitution (Forty-fourth Amendment) Act,1978

³⁷ Ali Riza Coban, *Protection of Property Rights within the European Convention on Human Rights*, Ashgate Publishing Limited, England, (2004) at p.107

The second limitation on the individual's right to property is the Taxation Power of the Government. In order to provide basic public services such as national defence and security, and the administration of justice, government needs monetary resources. Taxation has long been accepted by all the nations as a legitimate power of a sovereign authority as a means of financing public burdens. Article 13 of the French Declaration of Rights, 1789 states that, "for the upkeep of a police force and for the expenses of the administration, common taxation is indispensable. This should be shared equally among all citizens, according to their means".³⁸ In every society, the state or government may impose tax upon the owner of the property for the good of the whole people, for military purposes, and for other reasons which the society accepts as cogent.³⁹

The third and the most controversial state regulation has been the traditional right of 'Eminent Domain' also once known as the 'despotic power', wherein the state compels the individual's to transfer the property to the state for some public purpose. The eminent domain power can be defined as the state's prerogative to seize property, dispose of its ownership and assume full legal right and title to it in the name of some ostensible public good. The state or the government needs some material goods to be able to fulfil its duties and functions and if the power of eminent domain is not recognised, the government has to get such goods through purchase from the free market. Free market transactions, however, are not always suitable and efficient to realise large projects such as building highways, railways and so on which may require the specific property of several individuals for their realisation. Therefore, eminent domain power has long been recognised as a legitimate authority of state even by natural law doctrines.⁴⁰

However, the power of eminent domain has been restrained by the 'public interest' and 'compensation' requirements to prevent the abuse of such a strong power. The public interest requirement serves to prevent arbitrary government and arbitrary confiscation of private property. The compensation requirement serves to equalise the sharing of public burdens. Many theorists of eminent domain asserted that compensation was a natural or necessary corollary of power itself.⁴¹

³⁸ *Id.* at p. 81

³⁹ John W. Spellman, *Political Theory of Ancient India A Study of Kingship from the earliest times to circa A.D. 300*, Oxford University Press, (1964) at p. 203

⁴⁰ *Id.* at p. 93-94

⁴¹ *Ibid.*

VII. Present Status of Right to Property under Indian Constitution:

The right to property which after such a long deliberations in the Constituent Assembly had been incorporated in the Chapter of fundamental right, considering, being one of the basic right of a person for his freedom proved to be a hindrance before the commitment of bringing social change and economic progress of the nation, which was very soon realised with the experience and the actual functioning of the constitution. The right to property was even said to be one of the weakest right amongst all fundamental rights.⁴² The Janata Party which came into power in 1977, after defeating the Congress was eager to prove its socialistic character and the deletion of right to property proved to be one of the weapons of maintaining its socialistic character. The right to property under Article 19 (1) (f) which guaranteed to every citizen the right to acquire, hold and dispose of property subject to reasonable restrictions and also the entire Article of 31 was deleted by the forty-fourth Amendment Act. However, the provision of Clause (1) of Article 31 has been re-enacted as Article 300A precisely in the same words.

The new Article 300A reads as; “No person shall be deprived of his property save by the authority of law”.

The amendment of right to property as a fundamental right and its insertion on Chapter IV, Part XII under Article 300A has two immediate implications:

1. The right to property is now a mere constitutional or legal right and the legislation violating the constitutional or legal right to property could now be challenged only in High Courts and not directly before the Supreme Court.
2. Due to the deletion of Article 31 the Government was no longer under an obligation to compensate persons whose land had been acquired as per a law passed by the parliament.

The aftermath of the forty-fourth amendment to the right to property and the language used under Article 300A, on its surface had given the citizens an impression that the state is now free to impose any restrictions on the enjoyment of property and acquire private property for any purpose without paying any compensation to the expropriated owner.⁴³ But thanks to the infinite wisdom of the few learned professors and judges, who through their experiences, knowledge and arguments dared to hold the sanctity of property right in a person’s life by imposing an implied condition upon the state to acquire private property for public purposes through payment of compensation.

⁴² *Golaknath v. State of Punjab*, AIR 1967, SC 1643 at p. 1710

⁴³ P.K. Tripathi, “Right to property after 44th Amendment- Better protected than ever before”, *AIR (Journal)*, 1980 at p.49

The views or the opinions that has been shared by the learned professors regarding the status of right to property after its deletion by the forty-fourth Amendment was that, it has been more firmly protected under the constitution ever than before. The arguments placed before by Prof. P.K. Tripathi was that, the court should insist that the word “authority of law” used under Article 300A must be sanctioned by a valid law and the criteria for such validity would be reimbursement or compensation to the expropriated owner, which must be of equal to the market value.⁴⁴ Prof. S.P. Sathe’s observation on Prof. Tripathi’s reflection has stated that, the forty-fourth Amendment has provided an opportunity for the courts to interpret right to property in such a way that it will not prove to be a hurdle before the developmental effort of the state and on the other hand does not leave property owners to the whims and caprices of the ruling party. Further, it was opined to adopt more realistic criteria of compensation rather than market value to be the sole criteria.⁴⁵

A further more comprehensive status of right to property after the amendment has been laid down by Justice A.M. Bhattacharjee, wherein, it has been put forth after analysing the propositions of the Supreme Court in the expression “personal liberty” of Article 21 of the constitution that, right to acquire, hold and dispose of property is very much a personal liberty had it not been separately listed under Article 19 (1) (f) and now that it has been repealed by the 44th Amendment it would be included in the expression personal liberty under Article 21 and Article 21 would accordingly take in and comprise the same as the residue of personal liberties. Thus, in spite of the abrogation of the property clauses, purporting to make the right to property to cease to be a fundamental right and to remove property from the list of fundamental rights, the right to property remains a Fundamental Right under Article 21 of the Indian Constitution.⁴⁶

VIII. Judicial Interpretation on Right to Property as Dimension of Life:

Article 21 of the Indian constitution says that: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. It was believed that Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive and not from legislative action. The state could not interfere with the liberty of citizens if it could not support its action by a valid law.

⁴⁴ Id. at p.50-51

⁴⁵ S.P. Sathe, “Right to property after the 44th Amendment: Reflections on Prof. P.K. Tripathi’s observation”, *AIR (Journal)*, 1980 at p.98

⁴⁶ Justice A.M. Bhattacharjee, “Right to property after 44th Amendment”, *AIR (Journal)*, 1982 at p.52-53

Those were the days where the Courts breathed substantive life into Article 21 by subjecting state action interfering with a person's right to life to a test of reasonableness and had even held that right to life under Article 21 would not include right to livelihood⁴⁷. But, the *Maneka Gandhi's* case⁴⁸ gave a new dimension to Article 21. Today, the Courts provides a broader protection of individual freedom and Article 21 has been given the widest amplitude covering every aspects of life which goes to make a man's life meaningful, complete and worth living. The recent judicial activism of justifying Right to Property with right to life is an evolution of the new dimension of life that has been gifted by the judiciary itself, though not expressly but it could be inferred through various case laws, primarily dealing with the right to livelihood as a part of life under Article 21 of the Indian constitution.

After defining the word life in Article 21 in broad and expansive manner, the Supreme Court in the case of *Board of Trustees of the port of Bombay v. Dilip Kumar*⁴⁹ came to hold that the right to life guaranteed under Article 21 includes the right to livelihood.

A five judge bench of the Supreme Court in the *Pavement Dwellers* case⁵⁰ has held that, the right to life includes the right to livelihood. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away according to procedure established by law, which is one aspect of the right to life; an equally important facet of that right is the right to livelihood because no person can live without the means of living. If the right to livelihood is not treated as a facet of right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. Such deprivation would not only discard the life of its effective content and meaningfulness but it would make life impossible to live.

The integral components of right to life are those basic necessities which make life liveable and property is one such component that makes a person's life liveable or in other words some amount of property is a means of livelihood for a person to sustain his life.

The wheels of attaching property with life had started rolling since the case of *Ambika Prasad v. State of U.P.*⁵¹, which paved a cautious path for the development of law in this sphere, wherein it could be impliedly taken through the arguments placed by judges that deprivation of property which is

⁴⁷ Re sant ram case

⁴⁸ *Maneka Gandhi v Union of India*, AIR 1978 SC

⁴⁹ AIR 1983 SC 109

⁵⁰ *Olga Tellis v Bombay Municipal Corporation*, AIR 1986 SC 180

⁵¹ AIR 1980 SC 1762

a means of livelihood to a person could be held as deprivation of life and liberty.

The view that total deprivation of property would result in deprivation of means of livelihood and abridged Article 21 was more firmly established by the court in *Gadigeppa Mahadevappa v. State of Karnataka*⁵² wherein, one acre of wet land of the petitioner farmer was sought to be acquired by the state for distribution of residential sites. The said land was the sole means of livelihood for the petitioner who had been already deprived of 2 acres and 30 guntas during an earlier acquisition. The court in its striking words had said; “the petitioner will have to set out on voyage of misery with a begging bowl in his hands clamouring for succour seeking fresh grant of land for sheer survival. In the rudderless boat are crammed the dependents of the hapless petitioner resigned to a fate with an uncertain future in an unkind world”.⁵³

The court was not convinced by the arguments that the acquisition was with the purpose of distributing sites to the poor and the houseless. The court further observed that; “one man’s meat is another’s poison. Such a paradox compounding the spirit of man with ludicrous sadism, annihilating the concept of human rights is hardly reconcilable with the object of the legislature.”⁵⁴

The court besides holding property as a means of livelihood has even started granting compensation on the basis of Article 21 read with Article 300A in cases of riots and destruction of private property. It has been held in the cases of *R. Gandhi v. Union of India*⁵⁵ and *M/s. Inder Puri General Store v. Union of India*⁵⁶, that, state is under an obligation to protect the life and property of the citizens and ensuing them all the benefits of fundamental rights enshrined under the part III of the constitution. As and when life and property is taken away by any individual or organisation, a duty is cast upon the state representing the will of the people to compensate the victim by granting adequate compensation. The monarchical rule has to be distinguished from democratic set up and the state cannot shrink in its responsibility to protect the life, liberty and property of the citizens, state is under a constitutional obligation to compensate the victim adequately where loss is caused to the property which is one of the inviolable right of a person.

The Declaration of Rights of Man and of the Citizen, 1789 enunciates right to property under Article 17:

⁵² AIR 1990 Kant. 2

⁵³ *Id.* at p. 3

⁵⁴ *Id.* at p. 3-4

⁵⁵ AIR 1989 Madras 205

⁵⁶ AIR 1992 J&K 11, at p.14

“Since the right to property is inviolable and sacred, no-one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid”.

Moreover, Universal Declaration of Human Rights, 1948 under section 17(i) and 17(ii) also recognises right to property:

Section 17(i) reads as; *“everyone has the right to own property alone as well as in association with others”.*

Section 17(ii) reads as; *“no one shall be arbitrarily deprived of his property.”*

The Supreme Court of India taking into account the same principles had in the matter of adverse possession in the case of *P.T. Munichikkanna Reddy v. Revamma* has held that, “Human Rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension”,⁵⁷

The recent judicial trend towards property right shows that, the right to property today is not only considered as a constitutional or statutory right but also a human right. Even in the case of *Chairman, Indore Vikas Pradikaran v. Pure Industrial Cock and Chem. Ltd.*, right to property has been considered within the widened dimension and contours of human right.⁵⁸

In the case of *Karnataka State Financial Corporation v. N. Narasimahaiah*⁵⁹, it has been held, “right to property, although no longer a fundamental right, is still a constitutional right. It is also a human right. In the absence of any provision either expressly or by necessary implication, depriving a person there from, the court shall not construe a provision leaning in favour of such deprivation.

A recent case of *Delhi Airtech Services Pvt. Ltd. V. State of U.P.*, has also disclosed the relation of right to property with right to life and property as a basic human right. It has been expressed by the court that, the expression law which figures both in Article 21 and Article 300A must be given the same meaning. In both the cases the law would mean a validly enacted law which must be just fair and reasonable as expressed in the case of *Maneka Gandhi* and has held that right to property has been given a status of a basic human right.

⁵⁷ AIR 2007 SC 1753 at p.1762

⁵⁸ AIR 2007 SC 2458 at p.2470

⁵⁹ AIR 2008 SC 1797 at p.1805

The judicial creativity in different decisions of the courts has given a magnanimous interpretation to the term 'right to life'. In its narrowest meaning, it will be the right to remain alive. A little broader meaning of the term will bring into its fold the right to the sanctity of bodily limbs and a simultaneous meaning will add things which help to sustain the life, like food, shelter and clothing. But, the Supreme Court has gone much beyond this and has included those things and facilities which make life liveable and property is one such component that makes life liveable.

IX. Conclusion:

For a man to realise a humane life, property is an essence to an individual. This perception has been accepted from the very dawn of human civilization and engraved in the writings of various eminent philosophers, thinkers and jurists of all ages. Polity of all civilized states in different stages of history legislate the right to property. Accordingly, the genesis of property right in its present form could be traced in *Dharmashastras*, and *Smriti* of ancient India. The founding fathers had also realized the importance of right to property of an individual and thus incorporated it in the chapter of Fundamental Right of the original constitution of India.

In the course of the constitutional foundation and development of right to property, we see that property under the Indian constitution is no more considered as a fundamental right, but the new judicial approach of broadening the concept of right to life by covering within its ambit various other rights, right to property though not an absolute right, finds an indispensable place as an aspect of right to life under Article 21 of the Indian Constitution.

The Indian judiciary has uniquely explored the liberal interpretation of Article 21 which was not mandated by the framers of the constitution. They have in the course firmly distinguished and differentiate the right of dignified human life connoted under Article 21 from mere animal existence or life as mere physical act of breathing. With this philosophical foundation of human life, the extension of the scope of right to life under article 21 brings within its ambit, right to livelihood and in equal footing the property right as indispensable means to earn livelihood through which a man can realise his self and life dignified. The link between life and property has been so recognised that court have awarded compensation on the basis of Article 21 read with Article 300-A even in the cases of riots and destruction of private property. Moreover, through some of the landmark cases, the court has also held that right to property is not only a constitutional or statutory right but also a human right.

But, since independence the role of the state in promoting public welfare has become far more numerous than ever before and acquisition of

land for development of the nation is inevitable. Thus a balance has to be maintained with the rights of an individual whose land is to be acquired so that such acquisition does not deprive an individual's means of livelihood. The dynamic judicial activism of the Supreme Court which has provided an expansive meaning of 'right to life' under the Indian constitution would be wide off the mark if the property which is a means of livelihood to its owner is not recognised; deprivation of such property would violate his right to livelihood.

It though appears through the judicial creativity that right to property has been treated as an aspect of right to livelihood and as an essential prerequisite for the continuance of human life, property at the same time could be understood in another sense as well. When one has accumulated wealth to an extent that he owns and controls not only vast resources and capital, property ceases to be a source of survival and instead becomes a source of power to control others. In such case, property cannot be said to be a means of livelihood of a person. Therefore, a distinction between property which is necessary for a purposeful life and property which is a means of control over others needs to be categorised before prescribing property as a means of livelihood.