

## RIGHT TO PROPERTY AS NATURAL RIGHT- A CRITICAL STUDY

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### 1. Abstract:

*Diving deep into the paradigm of natural rights to unravel the intricate tapestry of property rights. The historical journey begins with John Locke in the 17<sup>th</sup> century. The most famous social contract theorists, John Locke, argued that the right to property is a natural right that is derived from the right to self-ownership. India initially recognized the right to property as a fundamental right in its constitution in 1950. However, this right was downgraded to a constitutional right by the 44<sup>th</sup> Amendment Act, 1978, which allowed the government to regulate property rights for public welfare and land forms. The current status of the right to property as a natural right is marked by complexity and controversy. While the right to property is acknowledge is numerous global legal systems, its recognition as an inherent natural right remains inconsistent. The research inquires into probing the boundaries, limitation and the intricate relationship between individual property rights and the broader interests of society. This research is to investigate the challenges surrounding the right to property as a natural right and addressing issues such as balance between individual ownership and public interest along with the intersection of property rights with economic inequality in global context. The hypothesis of this critical study on the right to property as a natural right asserts that property rights have evolved significantly over time, influence by societal needs and evolving legal systems. The property rights are subject to increasing limitations to address concerns like environmental sustainability and economic inequality. It anticipates that a critical examination will reveal the resilience of property rights in balancing individual liberties with contemporary societal demands.*

**Key Words:** Right to property, John Locke, fundamental human right, economic inequality, 44<sup>th</sup> Amendment Act, 1978.

### 2. Introduction:

The concept of the right to property as a natural right has been a subject of much debate and controversy throughout history. Proponents of its natural right status argue that it is an inherent and fundamental right, essential for individual autonomy and human flourishing. Conversely, critics challenge its naturalness, highlighting its historical contingency and contending that it arises from social conventions and legal frameworks. This seminar paper aims to critically analyze the concept of the right to property as a natural right, examining its theoretical foundations, historical evolution, and contemporary relevance. The

right to property encompasses a bundle of rights, including the right to acquire, possess, use, enjoy, and dispose of resources and goods. It is a complex and multifaceted concept that has evolved over time, influenced by different philosophical, economic, and social factors. John Locke, a prominent proponent of natural rights, argued in his *Second Treatise on Government* that individuals have a natural right to property based on their self-ownership. He contends that individuals have a right to their own labour and to anything they mix their labour with, thereby justifying the acquisition of property.<sup>931</sup> While Locke's labour theory of

<sup>931</sup> John Locke, *Second Treatise on Government* (1690), Chapter 5.

property remains influential, alternative theories have emerged, including those based on occupancy, first possession, and utility.

The crux of the debate surrounding the right to property lies in determining its origin. Proponents of the natural right perspective argue that it is an inherent and fundamental right, existing independently of any legal or social system. They contend that it is necessary for individual autonomy, self-reliance, and participation in society. Conversely, critics argue that the right to property is a social construct, arising from historical and social circumstances. They highlight the historical variability in property rights regimes and the role of legal systems in defining and enforcing them.

This seminar paper is critically examining the arguments for and against the natural right status of property. It will explore the theoretical foundations of natural rights, analyze Locke's labour theory, and consider alternative perspectives. Additionally, it will examine the historical evolution of property rights regimes and the impact of social and economic factors. Finally, the paper will assess the contemporary relevance of the right to property as a natural right, considering its implications for social justice, economic development, and environmental sustainability.

### 3. Historical Background

#### A. Overview of Natural Rights

The concept of natural rights lies at the core of the debate surrounding the right to property as a natural right. Understanding this philosophical framework is crucial for critically analyzing the arguments for and against its natural status. The notion of natural rights emerged from ancient Greek philosophy, with Plato and Aristotle arguing for inherent human rights derived from nature or reason. This concept was further developed by Roman Stoicism, emphasizing universal principles of justice and equality applicable to all humans. In the Middle Ages, natural rights were often linked to divine law, with theologians like St. Thomas Aquinas

arguing that God bestowed certain inalienable rights upon individuals.

Key Theories of Natural Rights: Several prominent theories have been advanced to explain the basis of natural rights:

- **Natural Law Theory:** This theory argues that natural rights are derived from a universal law of nature, discoverable through reason. Proponents like Cicero and Aquinas argued that this law dictates certain principles of justice and morality, including the right to life, liberty, and property.
- **Social Contract Theory:** This theory, championed by John Locke and Thomas Hobbes, posits that individuals agree to surrender some of their natural rights in order to create a society and government that protects their remaining rights. Locke further argued that individuals retain natural rights to life, liberty, and property, which cannot be infringed upon by the government.
- **Utilitarian Theory:** This theory, associated with Jeremy Bentham and John Stuart Mill, argues that the morality of an action is determined by its consequences. Natural rights, under this view, are those that maximize overall happiness and well-being for the greatest number of people.

The natural rights philosophy offers a compelling framework for understanding the right to property. However, it is important to critically examine its theoretical foundations and acknowledge the challenges and criticisms it faces. This critical analysis is essential for a nuanced understanding of the right to property and its role in contemporary society.

#### B. John Locke's Contribution to Property Rights<sup>932</sup>

John Locke's political philosophy, particularly his *Second Treatise on Government* (1690), remains one of the most influential contributions to the understanding of property rights as a natural right. His labor theory of property laid the

<sup>932</sup> John Locke, *Second Treatise on Government*. 1690.

foundation for modern conceptions of individual ownership and economic freedom.

### Labour Theory of Property:

Locke's central argument is that individuals have a natural right to property based on their labor. He argues that individuals have ownership over their own bodies and the fruits of their labor. By mixing their labor with previously unowned resources, individuals acquire a legitimate claim to those resources. This mixing of labor can be physical, as in the case of cultivating land, or intellectual, as in the case of invention.

### Natural Law and Self-Ownership:

Locke grounds his theory of property rights in the broader concept of natural law. He argues that all individuals are born with certain inalienable rights, including the right to life, liberty, and property. These rights are derived from God and are essential for human flourishing. Self-ownership is the core of this natural law framework. As humans own their own bodies and the labor they produce, they naturally have a right to the fruits of their labor, which translates into a right to property.

### Provisions and Limitations:

While Locke emphasizes the individual's right to acquire property through labor, he acknowledges certain limitations and provisos. He argues that individuals can only acquire property "at least where there is enough, and as good, left in common for others." This provision ensures that individual property acquisition does not infringe on the natural rights of others to access and utilize resources. Additionally, Locke argues that individuals cannot accumulate property beyond what they can use or preserve, as hoarding resources constitutes waste and violates the right of others to access them.

### Impact and Critique:

Locke's labor theory of property has had a profound impact on modern political and economic thought. His emphasis on individual rights and private property ownership played a significant role in the development of capitalism

and liberal democracies. However, his theory has also been subject to critiques. Some argue that it fails to consider the historical and social context of property rights, overlooking inequalities and injustices. Additionally, the proviso of "enough and as good" remains vague and open to interpretation, leaving room for exploitation and unequal distribution of resources.

Despite its limitations, Locke's contribution to the understanding of property rights remains relevant in contemporary debates. His emphasis on individual autonomy and self-ownership continues to be a core value in liberal societies. However, his theory must be critically examined in light of contemporary challenges, including environmental concerns, economic inequality, and the growing power of corporations.

## 4. Legal Evolution in India

The inclusion of the right to property in the Indian Constitution (1950) marked a significant moment in the country's legal and social landscape. While the concept of property rights had existed in India for centuries, its inclusion in the fundamental rights chapter of the Constitution elevated it to a new level of importance and sparked ongoing debates about its nature and scope.

The Constitutional provision for the right to property was initially enshrined in Article 19(1)(f) of the Constitution, guaranteeing citizens the right "to acquire, hold and dispose of property."<sup>933</sup> This provision was intended to protect individual ownership and encourage economic growth. However, it was subject to several limitations, including reasonable restrictions imposed by the state in the interests of the general public or for the promotion of social welfare.<sup>934</sup>

The inclusion of the right to property was influenced by various historical factors, including the desire to protect individual rights against state encroachment, promote economic development, and address the

<sup>933</sup> *The Constitution of India*, Article 19(1)(f).

<sup>934</sup> *The Constitution of India*, Article 19(5).

inequalities inherited from the colonial period. However, the inclusion also sparked debates about the balance between individual rights and collective interests, particularly in the context of land reform and social justice goals. The right to property has undergone significant transformations through constitutional amendments and judicial interpretations. The 44th Amendment (1978) moved the right to property from the fundamental rights chapter to the chapter on legal rights, limiting its protection. Subsequent court rulings further clarified the scope of the right and allowed for greater state regulation in the interests of public good. The right to property remains a contentious issue in contemporary India. While its protection is crucial for individual autonomy and economic activity, concerns exist about its potential to perpetuate inequalities and hinder social justice initiatives. The ongoing debate centers around finding a balance between individual property rights and collective needs, particularly in the context of issues like land acquisition, urban development, and environmental protection. The inclusion of the right to property in the Indian Constitution was a complex and contested process, reflecting the country's historical context and ongoing social and economic transformations. While the right has undergone significant changes over time, its role in debates about individual rights, economic development, and social justice remains central to contemporary India. The 44th Amendment Act of 1978 represents a pivotal moment in the history of property rights in India. By removing the right to property from the list of fundamental rights and placing it under legal rights, the amendment dramatically altered the legal landscape and sparked ongoing debates about its implications for individual autonomy, economic development, and social justice. Prior to the 44th Amendment, Article 19(1)(f) of the Constitution guaranteed citizens the right "to acquire, hold and dispose of property." This provision, enshrined within the Fundamental Rights chapter, afforded the right to property a high degree of protection from

legislative and executive action. However, the 44th Amendment Act removed this provision, effectively downgrading the right to property to a legal right governed by ordinary legislation. Proponents of the amendment argued that the fundamental right to property often impeded the government's ability to implement social justice measures, such as land reforms and poverty alleviation programs. They argued that placing property rights under legal rights would allow for greater flexibility and legal control, enabling the government to balance individual rights with the needs of the greater good.

The 44th Amendment has had a significant impact on individual property rights. With its removal from the fundamental rights category, it became more susceptible to state regulation and legislative control. This has led to several challenges and uncertainties for property owners, particularly concerning land acquisition, urban development projects, and environmental regulations. The amendment's impact on economic development is a subject of ongoing debate. While some argue that it has facilitated the implementation of essential infrastructure projects and promoted economic growth, others contend that it has hampered investment and created an environment of fear and uncertainty among property owners.

It was criticized that it undermines individual autonomy and economic freedom. They also raise concerns about potential abuses of power by the state, leading to arbitrary acquisition of property and violation of individual rights. The debate surrounding the 44th Amendment and its impact on property rights remains relevant in contemporary India. Issues like land acquisition for industrial development, implementation of environmental regulations, and protection of indigenous communities' land rights continue to spark heated discussions about the balance between individual rights and social welfare. The 44th Amendment Act marked a significant turning point in the legal and social understanding of property rights in India. While proponents highlight its role in facilitating social reforms and economic progress, critics raise

concerns about its potential for undermining individual autonomy and fostering arbitrary state action. Finding a balanced approach that respects individual rights while simultaneously addressing social needs and environmental concerns remains a crucial challenge for contemporary India.

#### Case Laws:

##### • **Waman Rao v. Union of India (1981)**<sup>935</sup>:

This case addressed the question of what constitutes "reasonable restrictions" on the right to property, as allowed by Article 19(5) of the Constitution. The Supreme Court established the "principle of proportionality," requiring that any restriction on property rights must be fair, necessary, and proportionate to the public purpose it aims to achieve. This case further clarified the scope of the right to property after its downgrade from a fundamental right.

##### • **State of Bihar v. Kameshwar Singh (1980)**<sup>936</sup>:

This case dealt with the state's power to acquire private land for public purposes under Article 31(2) of the Constitution. The Supreme Court emphasized the need for a genuine public purpose for land acquisition and required the state to follow a fair and just procedure. This case established important safeguards against arbitrary and unfair land acquisition by the state.

##### • **Olga Tellis v. Bombay Municipal Corporation (1985)**<sup>937</sup>:

This case recognized the right to shelter as an integral part of the right to life under Article 21 of the Constitution. It protected informal settlements from eviction without proper resettlement and rehabilitation, marking a shift towards recognizing the rights of marginalized communities. This case set a precedent for ensuring minimum standards of living and upholding the right to life with dignity.

#### 5. Comparison with different other countries

Across the globe, the concept of the right to property takes on different forms, depending on

the legal and philosophical traditions of each nation.

#### Legal Right:

In most countries, the right to property is primarily considered a legal right, enshrined in the national constitution or legislation. This means its scope and limitations are defined by legal frameworks and subject to judicial interpretation. Examples include:

- United States: The Fifth Amendment prohibits the government from taking private property without just compensation.
- Canada: The Canadian Charter of Rights and Freedoms protects the right to peaceful enjoyment of property.
- European Union: The European Convention on Human Rights guarantees the right to peaceful enjoyment of possessions.
- India: The Constitution initially recognized property as a fundamental right but later downgraded it to a legal right.

#### Natural Right:

Some countries recognize the right to property as a natural right, inherent to human existence and independent of legal systems. This view emphasizes the individual's autonomy and freedom to own and dispose of their possessions. Examples include:

- Germany: The Basic Law guarantees the right to property as an inviolable right.
- Japan: The Constitution recognizes the right to property as a fundamental human right.
- South Africa: The Constitution protects the right to property as a fundamental right, subject to limitations in the public interest.

#### 6. Public Interest versus Individual Ownership

##### a) Government Regulations and Public Welfare

The right to property, often viewed as a natural right, remains a fundamental element of

<sup>935</sup> Waman Rao v. Union of India, AIR 1981 SC 271

<sup>936</sup> State of Bihar v. Kameshwar Singh, AIR 1980 SC 1238

<sup>937</sup> Olga Tellis v. Bombay Municipal Corporation, AIR 1985 SC 180

individual autonomy and economic prosperity. However, its absolute protection can be detrimental to the public good and social justice. This necessitates a delicate balancing act between individual property rights and government regulation for public welfare. While individual ownership is crucial, it cannot exist in a vacuum. Unrestricted private property rights can lead to several societal ills, including:

- **Exploitation:** Unregulated ownership can allow powerful individuals or corporations to exploit resources and labour, leading to inequality and social unrest.
- **Environmental Degradation:** The pursuit of individual gain without regard for environmental consequences can lead to pollution, deforestation, and other forms of ecological damage.
- **Market Failures:** Certain situations, like public goods or monopolies, necessitate government intervention to ensure efficient allocation of resources and protect consumers from exploitation.

Finding the right balance between individual property rights and government regulation is a complex challenge. Overregulation can stifle economic activity and individual freedom, while inadequate regulation can lead to exploitation and societal harm. Regulatory measures should be proportionate to the public interest they seek to achieve, avoiding excessive burden on individuals. When exercising eminent domain, the government must provide fair compensation to property owners for their losses.

### **b) Economic Inequality and Property Rights**

The right to property, often considered a cornerstone of individual autonomy and economic prosperity, is deeply intertwined with issues of economic disparity. While it holds the potential to empower individuals and fuel economic growth, the uneven distribution of property rights can exacerbate existing

inequalities and perpetuate a cycle of disadvantage.

Secure property rights incentivize investment, facilitate economic transactions, and encourage innovation. They provide individuals with the confidence to invest their resources in productive activities, contributing to economic growth and development. However, this positive impact is contingent upon equitable access to property rights. Unfortunately, the distribution of property rights is often unequal, with a significant concentration of wealth and resources in the hands of a small minority. This can be attributed to various historical and systemic factors, including:

- **Colonial Legacy:** In many countries, colonial rule resulted in the dispossession of indigenous communities and the concentration of land ownership in the hands of the colonizers or their descendants.
- **Discriminatory Practices:** Racial, ethnic, and gender discrimination have historically limited access to property rights for marginalized groups, creating an uneven playing field.
- **Market Failures:** Unequal access to resources, information, and capital can perpetuate inequalities and prevent individuals from acquiring and accumulating property.

The unequal distribution of property rights exacerbates economic disparities and hinders social mobility. Limited access to land, housing, and other productive assets traps individuals and communities in cycles of poverty. This can lead to various negative consequences. Poverty and lack of resources can restrict individuals' access to essential services, hindering their ability to acquire the skills and knowledge necessary for upward mobility. Deep economic disparities can breed resentment and political instability, posing a challenge to sustainable development and social harmony. The right to property, while essential for individual

empowerment and economic development, cannot be viewed in isolation from the issue of economic disparities. Unequal access to property rights exacerbates inequalities and hinders social mobility. Addressing this challenge requires a commitment to implementing policies that promote equitable distribution of resources and empower marginalized communities. Only by ensuring fair and inclusive access to property rights can we build a society that is both prosperous and just.

## 7. Case Laws:

### • **State of Haryana v. Mukesh Kumar (2011)**<sup>938</sup>:

Facts: The State of Haryana filed a civil suit claiming ownership of a 8 biswas land parcel through the Superintendent of Police, Gurgaon. The defendants contested the claim, denying the State's possession of the land and asserting their ownership. The State maintained that they had possessed the land for over 55 years and built a police line on it. Decision: The Supreme Court ruled in favor of the defendants, dismissing the State's claim of ownership through adverse possession. The court stated that the State had failed to establish continuous and uninterrupted possession of the land for the required period. The evidence presented by the State was insufficient to prove their claim of adverse possession. The defendants had presented evidence of their own ownership and possession of the land. The court emphasized that the State, while entrusted with the responsibility of protecting citizens' property, cannot itself acquire land through adverse possession. The Right to Property would no longer be a fundamental right, but rather a constitutional right and a human right.

### • **B.K. Ravichandra v. Union of India (2020)**<sup>939</sup>:

Facts: The appellants, landowners, challenged the acquisition of their land by the Union of India under the Requisitioning and Acquisition of Immovable Properties Act, 1952. The land was

initially requisitioned for a period of six years, but the period was subsequently extended. The appellants argued that the acquisition was illegal as it was not for a public purpose and adequate compensation was not provided. Judgment: The Supreme Court held that though the right to property is not a fundamental right, it is a valuable constitutional right. The court ordered the Centre to return the land to its owners.

## 8. Conclusion

The right to property, intricately connected to individual autonomy and economic development, prompts fundamental inquiries into its inherent nature and limitations. While conceptualizing property as a natural right provides a compelling framework for individual liberty and economic freedom, its unbridled application can pose challenges to public welfare and social justice. This critical examination has scrutinized the intricacies surrounding the right to property, delving into its historical evolution, legal interpretations, and contemporary challenges.

In-depth exploration reveals that the concept of property as a natural right is contentious, lacking a universally accepted definition and subject to diverse interpretations across cultures and historical periods. The evolution of property extends beyond tangible assets, encompassing intangible forms such as intellectual property and digital assets, necessitating continuous legal adaptations. Striking a balance between individual ownership and public interest requires a nuanced approach, ensuring equitable compensation for individuals while upholding the government's responsibility to address collective needs like environmental protection and social justice.

Key insights also highlight that unequal access to property rights contributes to economic inequality and impedes social mobility. Addressing this issue mandates systemic reforms focusing on land redistribution, financial inclusion, and empowerment of marginalized communities. Looking forward, the

<sup>938</sup> State of Haryana vs Mukesh Kumar & Ors (2011) 10 SCC 404

<sup>939</sup> B.K. Ravichandra & Ors. v. Union of India & Ors., Civil Appeal No. 1460/2010, (2020) 4 SCC 572

"Right to Property as a Natural Right" remains a dynamic concept evolving alongside societal needs and technological advancements. To navigate these complexities effectively, embracing a nuanced understanding, promoting inclusive participation, developing robust legal frameworks, addressing systemic inequalities, and fostering international cooperation are crucial. By acknowledging the multifaceted nature of property rights and adopting a balanced approach that prioritizes both individual rights and collective well-being, we can forge a path towards a just and equitable society where property serves as a tool for individual empowerment and collective prosperity.

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