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## A STUDY ON EVOLUTION OF RIGHT TO PROPERTY UNDER INDIAN CONSTITUTIONAL LAW

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### ABSTRACT

**“LIBERTY CANNOT LONG SUBSIST WITHOUT THE SUPPORT OF PROPERTY”**

**-Jefferson**

The right to property under the constitution of India is one of the supreme rights of a common man. Earlier it is a fundamental right under Constitution of India. Later the right to property changed to the constitutional right or a legal right of a man. The government had decided to develop the country. But there were no sufficient properties to develop the country as expected. So government has decided to acquire the property from the Mass Land Owners for development of the public purpose viz., School, Park, Roads etc. Most of the properties were belongs to Zamindars'. After independence the Government has decided to abolish the position of the Zamindars' and acquired the land for the public purposes from the Zamindars' and Mass Land Owners. They were filed so many suits regarding the right to property as a fundamental right. If acquisition of land is for public purpose government has to compensate the owner for their loss. The property should not be acquired forcibly without any compensation. There are some recent judgements relating acquisition of property in Kolkata Municipal Corporation case the court held that the acquisition of property these 7 Sub Rights should satisfy then only acquisition is valid otherwise it violates the constitution. So in this article we shall know about the history and how the properties were acquired and provision related to the right to property.

**KEYWORDS** – Right to Property, Fundamental Right, Constitutional Right, Public Purpose, Acquisition, Compensations.

### 1. INTRODUCTION:-

In the earlier centuries fundamental rights are mainly focused on two Articles to protect private property, viz., Article 19(1)(f) and 31. Both these constitutional provisions were replaced by Article 300A of the 44th amendment and thus left private property under constitutional right. The 5<sup>th</sup> Amendment says, “No person can be deprived of his life, and liberty or property without due process of law.” Article 300A protection on private property but this constitutional provision does not enjoy the status of fundamental right.

### 2. EVOLUTION:-

#### 2.1. Pre Constitution era of property rights:-

Under Constitution of India there were 2 acts was the foundation of right to property are Government of India Act 1935 and UDHR 1948

#### Government of India Act 1935<sup>14</sup>

**Section 299** deals with protection of right to property

1. No person shall be deprived of his property in British India save by authority of law.

<sup>14</sup><https://indiankanoon.org/doc/163218614/> last visited on 10-11-24

2. Neither the Federal nor a Provincial Legislature shall have **power to make any law** authorising the **compulsory acquisition for public purposes of any land**, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the **law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation**, or specifies the principles on which, and the manner in which, it is to be determined.

3. No Bill or amendment making provision for the transference to **public ownership of any land or for the extinguishment or modification of rights** therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

4. Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

5. In this section “**land**” includes immovable property of every kind and any rights in or over such property, and “**undertaking**” includes part of an undertaking.<sup>15</sup>

#### UDHR 1948:-

A.17 deals recognises of right to property

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property<sup>16</sup>.

In ancient time the right to property is a fundamental right 19(1)(f) and A.31

19(1)(f) guaranteed to the Indian citizens you are right to acquire, hold and dispose of property

The term **acquire** means in parlance to become the owner of unless there is a transfer of Property to another vesting and divesting of property there cannot be any acquisition of property the acquisition must, however, be true legal means.

The term to **hold** means to process the property and enjoy the benefits which are ordinary attached to its ownership including its management.

The term **dispose** of means to transfer assign or sell the property the power to dispose of property is a necessary concomitant of the power to hold property for a latter would be meaningless without the former.

Article 19 (5) however permitted the state to imposed by law double restrictions on this right and interest of the general public or for reproduction of the interest of any schedule tribe.

A.31 (1) lay down the no person could be deprived of his property without the authority of law this provision has been repealed through the 44th amendment but it replaced as article 300A

Four concepts where involved in Article 31 (2)

1. Property
2. Compulsory acquisition and requisitioning by the state
3. Amount and
4. Public purpose

#### 2.2. Post Constitution era of property rights:-

At present right to property it is a constitutional right. Part 4 of the constitution mandates the government to carry out the land reform for establishing and egalitarian society Article 39 provides for equal distribution of material resources of the community for common good thus bringing in control over concentration of wealth.

<sup>15</sup><https://indiankanoon.org/doc/163218614/> last visited on 10-11-24

<sup>16</sup><https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2017&text=No%20one%20shall%20be%20arbitrarily%20deprived%20of%20his%20property.> last visited on 10-11-24



Article 300A Right to property as a constitutional right No person shall be deprived of his property except save by authority of law.

### 3. IMPACTS OF ARTICLE 19(1)(f) :-

Article 19(1)(f) and Article 31 to protect the property as a fundamental right. Now the right to property has been changed through several amendments as constitutional right or human right.

#### 3.1. Reasons for the abolition of right to property as a fundamental right:-

The agrarian reforms were the foremost and immediate objectives of the Central and State Governments in their planning immediately after attaining Independence. So as series of Legislation were enacted in order to sub serve the common, increase agricultural production and to promote social and economic justice. The Land reforms involve 1) ceiling on Land holdings, 2) abolition of Zamindaries, 3) protection of Tenants and 4) conferment of occupancy rights. Further the Governments have wanted to redistribute the surplus lands among landless. For eg. The preamble of the Tamil Nadu Land Reforms (fixation of ceiling on land) Act, 1961, speaks broadly about its goals as enshrined under Article 39 of the Constitution. It is pointed out in **State of Tamil Nadu vs. Narendra dairy farms (P) Ltd**<sup>17</sup>.that "the Land Ceiling Act had been enacted to give effect to the DPSP in Article 39 of the Constitution." The fixing of Land Ceiling, acquisition of excess Land and distribution to the Landless Rural population are the Prime objects of this Act. Apart from Regulation of Agrarian Economy, in the area of Urban Property, housing to the people, clearance of Slums, and Town Planning, Control of Rents, Ceiling on Urban Land ownership were also received consideration of the State Government. The TamilNadu buildings (Lease and Rent Control) Act, 1960, fixes a fare rent, enable the Government to obtain possession of the premises and protect the tenants from

unreasonable eviction. Further the Government have under taken various regulations of private enterprise and nationalisation of sum commercial undertakings. Therefore in order to achieve a socialist pattern of society, the Government tied to regulate the right to property of individuals in various ways. These regulations ultimately led to removal of property right as fundamental right and confer on them as a legal right only. This resulted the appeal of Article 31 and introduction of Article 300A in 1979.

The aspect of Land Reform is adequate payment of compensation. On this account many of the land legislation were challenged and the courts are in favour of adequate payment of compensation this led to several amendments of the constitution.

#### 3.2. Land Acquisition Act 1894<sup>18</sup>:-

This Act was the first acquisition implemented in india but it was repealed for the following reasons: -

It was favouring the British rulers rather than the public purpose the act did not clearly mentioned about public purpose.

No proper reference given as to obtaining the consent from interest or affected parties.

No transparency in procedures of land acquisition.

No mention on rehabilitation and resettlement of affected parties.

No proper guidance on compensation of affected parties.

There was no arrangement for SIA or any such alternative to analyse about damages suffered by interested parties from whom the land is acquired.

During to this reason it is repealed and replaced by the Land Acquisition Rehabilitation and Resettlement Act 2013.

<sup>17</sup>AIR 1987 Madras 161.

<sup>18</sup> Prof. A. Chandrasekaran, Land Laws of Tamil Nadu, 3rd Edition reprint, 2022, C. Sitaraman& Co. Pvt. Ltd, Law Books Publisher

The main aim of the act of LARR, 2013 is to ensure fair and reasonable compensation to the affected parties whose property has been acquired by the government authority, to ensure transparency in the process of land acquisition, and to facilitate the resettlement and rehabilitation to the displaced parties in the procedure of land acquisition.

In the case of M/S. Royal Orchid Hotels Ltd<sup>19</sup>, it was held that the land acquired by the state for public purpose cannot be transferred to private entities for private use, as this would amount to a diversification of public purpose. The concept of public purpose cannot be expanded to legitimize fraudulent activity. The judiciary carefully examines whether the public purpose is being diverted for private use, even after the acquisition process has been completed.

#### 4. CONSTITUTIONAL AMENDMENTS AS TO PROPERTY RIGHT:-

##### 4.1. 1<sup>st</sup> Amendment took place in the year 1951

In 1<sup>st</sup> amendment insertion of Article 31 A and Article 31 B

Article 31 A reads that no law providing for acquisition of any estate or any right therein extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by A.14 and A.19 of the constitution.

Four concepts were involved in Article 31A (1) (a)

1. acquisition by State of any estate;
2. acquisition of any rights therein;
3. extinguishment of rights; and
4. modification of rights.

Estate<sup>20</sup>:-

The term estate is defined under Clause (2) of Article 31 A

i) "The expression Estate shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include:-

i) any jagir, inam or muafi or other similar grant and in the State of [Tamil Nadu] and Kerala, any janmam right ;

ii) any land held under ryotwarisettlement ;

iii) any land held or let for purposes of agriculture or for purposes of ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;]

b) the expression 'rights', in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, tenure-holder, [raiyyot under-raiyyot] or other intermediary and any rights or privileges in respect of land revenue.]

Article 31 B provides that none of the acts and regulations mentioned in the 9<sup>th</sup> schedule of the constitution shall be deemed to be void on the ground that there are inconsistent with any of these rights conferred by part III of the constitution.

The 9<sup>th</sup> schedule initially had 13 Acts mainly pertaining to land reforms. Subsequently initially and contrary to the earlier intention, several more Acts were added from time to time.

##### 4.2. 4<sup>th</sup> amendment took place in the year 1955

Clause 2A was inserted in Article 31 which held that the obligation to pay compensation would arise only when there is transfer of ownership or possession to the state

##### 4.3. 25<sup>th</sup> amendment took place in the year 1971

The Constitution (Twenty-Fifth Amendment) Act, 1971, this amendment would also insert a new clause 31(C) in the Constitution, which would prevent a bill from being challenged in the Court, either under Article 14 equality before the law, Article 19 right

<sup>19</sup>2011 AIR SCW 6081

<sup>20</sup>Dr. V. Nirmala, law relating to human rights, 14<sup>th</sup> Edition 2010, Asia Law House.

to property, freedom of association, speech, religion etc. or Article 31 on deprivation of law except under authority of law, if Parliament certified that the bill was intended to ensure equitable distribution of material resources or to prevent concentration of economic power. **RustomCavasjee Cooper v. Union Of India**<sup>21</sup> The Court also held that a law which seeks to acquire or requisition property for public purposes must satisfy the requirement of Article 19(1)(f). The 25th Amendment sought to overcome the restrictions imposed on the government by this ruling<sup>22</sup>

It ensures that a particular amount is said to be paid to compensate the owners from which the land was acquired compulsorily and this amount to be paid will be determined by the courts in a justifiable manner it was also in the R.C. cooper case<sup>23</sup> or Bank nationalization in this case it was held that the law which seeks to acquire a property for public purpose should also satisfy the requirement of Article 19(1) (f). The main change of 25<sup>th</sup> amendment the word “compensation” and replaced by the word “amount”<sup>24</sup>.

#### 4.4. 29<sup>th</sup> Amendment took place in the year 1972

In 29<sup>th</sup> Amendment added Kerala Land Reform Act, 1969 & Kerala Land Reform Act, 1971 to the 9<sup>th</sup> schedule. The validity of this amendment was upheld by the Supreme Court **KeshavanandaBharati Vs. State of Kerala** Acts and Regulation included in the 9<sup>th</sup> schedule will receive full protection of Article 31B<sup>25</sup>

#### 4.5. 44<sup>th</sup> Amendment took place in the year 1978

In the 44<sup>th</sup> amendment is the main and remarkable which repeal and removed Article 19(1)(f) and Article 31 were deleted on June 20, 1979 and inserted Article 300A which read

that “no person shall be deprived of his property save by authority of law”.

#### 4.6. 45<sup>th</sup> Amendment:

The object of this amendment bill says that the right of persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value would not be affected<sup>26</sup>.

#### 5. A.300A<sup>27</sup>:-

##### 5.1. Eminent domain

In Eminent domain the private property were acquired by the government for public purpose. This Doctrine is based on 2 maxims are:-

A) SALUS POPULI SUPREME LEX ESTON

Which means the welfare of the people is the paramount law.

B) NECESSITA PUBLIC MAJOR EST QUAM

Public necessity is greater than the private necessity

In Eminent Domain state is the first owner of the land there were 2 components as following flow

<sup>21</sup> 1970 AIR 564, 1970 SCR (3) 530, AIR 1970 SUPREME COURT 564.

<sup>22</sup><https://indiankanoon.org/doc/198382/> last visited on 10-11-24

<sup>23</sup>AIR 1970 SC 564

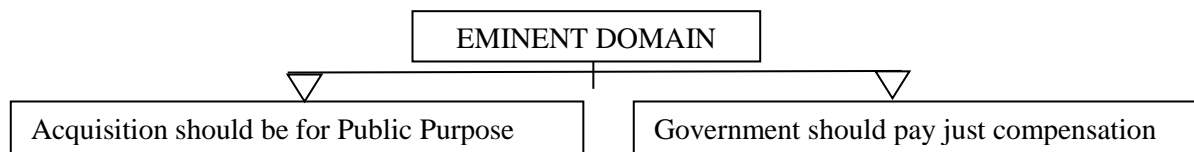
<sup>24</sup>Prof. A. Chandrasekaran, Land Laws of Tamil Nadu, 3<sup>rd</sup> Edition reprint, 2022, C. Sitaraman & Co. Pvt. Ltd, Law Books Publisher.

<sup>25</sup> AIR 1973 SC 146.

<sup>26</sup>Land Reform In India Constitutional Approach - P.K. Agrawal

<sup>27</sup>Law and Justice Bare Act, pg.no. 162

chart :-



In India eminent domain is found in entry 42, List III, of the constitution which says acquisition and requisitioning of property. *Kameshwaran Vs. State of Bihar*, In this case was held at the power to acquire property compulsory meant power to take property for a public purpose and for compensation<sup>28</sup>. The idea public purpose and compensation or inherit in the entry 42 state of West Bengal vs. Union of India

In Britain the rule is that parliament explicitly provides to contrary it must be assume that any legislation authorising compulsory acquisition of property tends to provide full compensation

In USA composition is payable for taking the property for notes the requirement of just compensation is expressly imposed on the central government by the Amendment V

The chapter IV of part XII of the constitution consists of only one Article. This article namely Article 300A deals with the right to property. The Article 31 was deleted by 44<sup>th</sup> Constitutional amendment in 1978 and it has no place in part III of the constitution. Hence a person whose property is deprived cannot invoke Article 32 which is available only for violation of fundamental Rights. He has to Article 226 or file a suit or adhere to any other statutory remedy if available. The right to property is therefore now regulated by ordinary law<sup>29</sup>.

“No person shall be deprived of his property save by authority of law”.

The word ‘law’ under article 300A of the Constitution of India would be a validity and

enacted law meaning there by just, fair and reasonable law.

**Deprived of Property<sup>30</sup>:-**

Compulsory acquisition without acquiring the land or making any payment of the property belong to a private individual is a serious matter having grave repercussions on his constitutional right is not be deployed of a property without sanction of law<sup>31</sup>Legal right to hold a property is not a fundamental right principle is reiterated in **Lakshmi Devi Vs. state of Madhya Pradesh** 2019 right to transfer of removal property cannot be restricted as the same has been held as a human right as well as constitutional right<sup>32</sup>

Applicability of the protection of property available to any person including a legal or juristic person and it is not confined only to a citizen<sup>33</sup>inserted by the 44th amendment act 1978.

**6. JUDICIAL PERSPECTIVE OF RIGHT TO PROPERTY:-**

**Jilubhai Nanbhai khachar Vs. State of Gujarat 1995**

In this case the Supreme Court held at the right to property is not a part of the basic structure doctrine of the constitution.

**Kolkata Municipal Corporation &anrvs. Bimal Kumar Shah &Ors.<sup>34</sup>**

In this case SC was held that these 7 Sub rights has to be followed for the compulsory acquisition of private property only for public purpose. The following 7 principles have

<sup>28</sup>AIR 1952 SC 458

<sup>29</sup>Prof. A. Chandrasekaran, Land Laws of Tamil Nadu, 3<sup>rd</sup> Edition reprint, 2022, C. Sitaraman & Co. Pvt. Ltd, Law Books Publisher

<sup>30</sup>Law and Justice Bare Act, pg.no. 162

<sup>31</sup>Gayatri Devi versus state of Uttar Pradesh writ C.No. 14473 of 2019

<sup>32</sup>Narayan Prasad Vs. State Of Chhattisgarh 2017, Indian Handicraft Emporium Vs Union Of India (2003),7 SCC 589; AIR 2003 SC 3240

<sup>33</sup>Dharamdutt v. U.O.I AIR 2004 SC 1295

<sup>34</sup> 2024 INSC 435



became an integral part of our union and state statutes concerning acquisition and also administrative law culture that our courts have evolved from time to time. Following 7 principles are:-

**i. The right to notice:-**

Aprior notice informing the bearer of the right that the state intends to deprive them of the right to property in itself. The notice to acquire must be clear, cogent and meaningful.

**ii. The right to be heard:-**

Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the property authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham.

**iii. The right to a reasoned decision:-**

That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector.

**iv. The duty to acquire only for public purpose:-**

The acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition, must stand to reason with the larger constitutional goals of a welfare state and distribute justice.

**v. The right of restitution or fair compensation:-**

A person's right to hold and enjoy property is an integral part to the constitutional right under ARTICLE 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been

considered to be an integral part of the process of acquisition.

**vi. The right to an efficient and expeditious process:-**

The acquisition process is traumatic for more than one reason. the administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration consume time and energy. Further, passing of the award, payment of compensation and taking over the possession areequally time consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. this obligation must necessarily form part of Article 300A.

**vii. Right of conclusion:-**

Upon conclusion of process of acquisition and payment of compensation, the state takes possession of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If the possession is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holding is divested and the right, title and interest in the property, along with possession is vested in the state. Without final vesting, the state's, or its beneficiary's right, title and interest in the property is inconclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300A.

These 7 rights are foundational components of a law. If any one of the sub-right fails then it would make the law vulnerable to challenge.

**State of Haryana Vs. Mukesh Kumar<sup>35</sup>**

In the case it was held at the right to property is now considered to be not only a

<sup>35</sup><https://indiankanoon.org/doc/85507930/?type=print> last visited on 10-10-24

constitutional or statutory right but also a human right. Human right have been considered in the realm of individual rights such as right to shelter livelihood health employment etc human right have gained a multi -faceted dimension.

### **Coffee Board Vs. Commisioner Of Commercial Taxes<sup>36</sup>**

In this case was held that the eminent domain is the power of sovereign to take the property for public use with the owners concern upon making just compensation entry 42 of the list three of Indian constitution deals with acquisition and requisitioning of property.

### **AK Gopalan Vs. state of Madras<sup>37</sup>**

In this case it was held that the balance between the right to property and the state regulatory power the court upheld the Madras maintenance of public order act 1949 following the state to seize property for public order.

### **KeshavanandaBharati Vs. state of Kerala<sup>38</sup>**

Discipline court held at the parliament the constitution it cannot change its fundamental structure this ruling indirectly influence the later amendment that three define the right to property as a legal right

### **Minerva Mills limited Vs. union of India<sup>39</sup>**

The Supreme Courtstruck down part of the 40 second amendment act 1976 which gave parliament excessive power to amine the constitution why the code upheld the removal of the fundamental right to property it clarifies that the right remains a constitutional right.

### **Vidyadevi Vs. State of Himachal Pradesh and ors.<sup>40</sup>**

In this case it was held that the forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right , as also the

constitutional right under Article 300A of the constitution.

The Supreme Court arguments the law relating to acquisition of property must also satisfy Article 21 of the constitution. It was held up in **State of Maharashtra Vs. Shandrabhai<sup>41</sup>**, The fundamental right to property has been abolished because of his incompatibility with the goals of justice, social economic, political, equality of status, for opportunity and with the establishment of a social democratic republic,as contemplated by the constitution.

### **Bhim Singh Vs. Union of India<sup>42</sup>**

“The Supreme Court recognised the significance of the Fundamental Right to Property as a Fundamental Right as soon after it was abolished. It relied on the second Fundamental Right of Equality, namely the concept of reasonableness under Article 14 and 16, to invalidate some parts of the urban land ceiling legislation in the absence of this Fundamental Right to Property.

### **State of West Bengal Vs. Bella Banerji<sup>43</sup>**

The compensation to the owners of the land acquired was not exceed the market value of the property. The law was held to be unconstitutional on the ground that compensation no relation to the market value of the land on the date of acquisition. Land could be acquired many years after prescribed date, but compensation for it was still to be assessed with reference to the prescribed date and not the date of acquisition, which was objectionable. That compensation meant just equivalent of the property acquired and that it was a justiciable matter which the courts could adjudicate upon<sup>44</sup>.

<sup>36</sup> AIR 1988 SC 1498.

<sup>37</sup> 1950 AIR 27.

<sup>38</sup> AIR1973 SCC 1491.

<sup>39</sup> Air 1980 SC 1789.

<sup>40</sup> (2020)SCC 569.

<sup>41</sup> AIR 1983 SC 803.

<sup>42</sup> (1981) DLT 446.

<sup>43</sup> AIR 1954 SC 170: 154 SCR 558.

<sup>44</sup> West Ramnad Electric Distribution Co. Vs. State of Madras, AIR 1962 SC 1753: (1963) 2 SCR 747.

## 7. International Perspective of right to property in constitution<sup>45</sup>:-

**Article 9 of the 1978 constitution of China** similarly protect the right of a citizen to own private property which inclusive lawfully earned income saving house and other means of subsistence.

**Article 13 of the 1977 constitution of USSR** with says that the personal property of citizen and the right to inherited or protected by the states and this personal property includes articles of very day use personal consumption and convenience your house and your savings.

**U.S.A. The 5<sup>th</sup> Amendment** says, "Noperson can be deprived of his life, and liberty or property without due process of law."

**In INDIA Article300A** protection on private property but this constitutional provision does not enjoy the status of fundamental right.

## 8. CONCLUSION:-

Thus, we conclude that the constitution of India removed right to property. This is a Historical event. At the same time, steps are taken to protect individual rights new concepts are been accepted towards development and welfare of the nations. As a results while acquisition of property 7 guidelines to be followed if any one of the sub rights fails then it violates the Article 300A of the constitution. Property can be acquired only for Public Purpose.

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<sup>45</sup>Land Reform in India Constitutional Approach - P.K. Agrawal.