

TOPIC: EVOLUTION OF OWNERSHIP

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ABSTRACT:

The word ownership itself defines a control over a property by an individual or group of individuals. In the Roman law ownership was termed as 'Dominium', it consists of other claims such as power, liberty and immunity in respect of the things they owned. The project will talk about the four ownership institutions while giving a brief on the idea the development regarding ownership and stating the relationship of ownership with nomadic and agriculture life, with further talking about the history of ownership while explaining about its evolution and lastly discussing the land ownership system.

INTRODUCTION

The word ownership itself defines that there is a control over a property by an individual or a group of individuals. According to oxford dictionary ownership means "the state of having complete legal control of something. Like all other legal concepts, ownership has also been defined by many jurists, which will be discussed below. As of now, we can define ownership as a legal right to the possession of a thing / object. Such an object can be tangible or intangible.¹

The known use of word 'owner' was made in 1340 and of 'ownership' in 1583. The concept of ownership is a complex concept. The concept of ownership has its origin in the ancient Roman law. This concept of ownership is complex because it is very much similar to the concept of possession. There is thin line which separates both the concepts.

In Roman law ownership is termed as '*dominium*' and possession as '*possessio*'. The word *possessio* denotes only a physical control but *dominium* means an absolute right over an object.

Ownership was given more importance than that of possession because an absolute right over a thing is prior to a physical control. For example: A who is an owner of a key has lost it on B's

¹ US Legal, Inc, "ownership law and legal" www.uslegal.com , accessed on April 21, 2020

property. B finds it and keeps it in his possession. But as A is the real and absolute owner, A has a better right over that property than B.

Ownership consists of many other claims such as power, liberty and immunity in respect to the thing owned.² The ownership must not be by the way of an illegal Act nor the property must be an illegal and banned by the Indian laws. Historically speaking the idea of possession came first into the minds than the concept of ownership. Hence we can say that the concept of ownership followed the concept of possession.³

The concept of ownership is both legal and of social interest. Not only have the courts utilized the idea in such a way as to give effect to changing views of the individual and social interest, but there potentialities in the recent times has focused on the governmental policy.⁴ There are numerous things that many man different from animals. One such difference is the ownership.

Only we humans have the right to own property. They have the right to posses and control but they do not own things. The concept of ownership is a unique human concept.⁵ One of the earlier applications of the evolutionary game theory is the model how nonhuman animals intent to defend territory prevents the conflicts within the groups. A 'first possession' convention is taken as the basis for human ownership institutions. Resource items are retained by the transfer of possession to others. These transfers are governed by various ownership rules.

The four ownership institutions governing such retentions are:

1. First possession
2. Communal
3. Command
4. Titled property⁶

The present problem related to ownership cannot be resolved without looking into the past structure of ownership. The concept of past ownership plays vital role in shaping the perceptions.

²Ritwik sneha & rishab garg, Indian legal S(ownership) www.legalservicesindia.com , accessed on aril 22, 2020

³ Dr. V D MAHAJAN ,jurisprudence and legal theory , page no. 285 , eastern book company, lucknow

⁴ R W M Dias, jurisprudence , page number 292,aditya books private ltd, new Delhi , 5th edition , 1994

⁵ "You don't own that!" (economics Feb. 5,2017) www.economics.com , accessed on April 24, 2020

⁶ Hartley T, " the continuing evolution" (Feb. 12,2019) , www.ncbi.nlm.nih.gov , accessed on April 24, 2020

Often the problems faced now are actually affected by the past. Hence it's important to understand the land ownership of the past.⁷

DEVELOPMENT OF THE IDEA OF OWNERSHIP

The idea of ownership was developed with the growth of civilization. Ages ago when people were wandering from place to place, they didn't settle anywhere. They didn't have an idea of ownership. The idea of ownership began the people had planted trees and started to build homes for themselves. Metamorphosis from pastoral to agricultural economy helped in the development of the idea of ownership. People started to believe in "mine and thine".⁸

RES NULLIUS AND TERRA NULLIUS

Res nullius is a Latin term which was derived from the Roman law. The word res nullius means nobody's thing. That is a property which is not yet the object of right of any particular subject. In short it can be said that those properties are to be considered as ownerless properties. These ownerless properties are free to be acquired by means of occupation.

Terra nullius means a land which belongs to none. That is no one has the right over that land. In short no man's land.

THE BEGINNING OF OWNERSHIP

In the beginning the land on the earth was terra nullius but gradually from terra nullius it has become to 'mine and thine'. The evolution of ownership took place gradually but it has brought a lot of changes in the people. Once the most essential things were clothing and food, but later as time changed even a permanent shelter has become an important part of man's life.

NOMADIC AND OWNERSHIP

⁷ Vinoba bhave (historical analysis of land ownership) www.mkgandhi.org , accessed on April 23 , 2020

⁸ Supra note 3 page no. 4

Nomadic are the people who wander everywhere in search of hunting and food. These people didn't have a concept of permanent ownership over a property. About 12,000 years ago, human community started to function differently than in the past. They didn't rely on hunting or gathering food. Many societies created systems for production of food. Later humans began to establish agriculture villages.

AGRICULTURE AND OWNERSHIP

By 10,000 BCE humans began to establish agriculture. Contrary to migrating hunter-gatherer bands, farmers invested a great deal of their time in cultivation in specific areas of land. Farming undeniably revolutionizes human history. Farming spread rapidly all over the world in no time. They started to acquire land for cultivation especially in banks of the rivers.

PERMANENT SETTLEMENT

The cultivation gave people a great advantage. The income produced through agriculture made people to settle wealthy. There was assured food supply through agriculture. This encouraged the people to permanently settle. Once they started earning more they had moved to more village sort of area in groups and made permanent shelter. Gradually people started to work in fields other than agriculture. They started producing textiles, pottery, tools etc.⁹

LOCATION FOR PERMANENT SETTLEMENT

The location had to be for human existence and survival. As many of them still depended on agriculture they had to settle in the place where the land is fertile and where a good quality of water is available. As a result, the river valleys were the popular place for settlement.

River valleys were given priority for settlement because of the land which was very fertile and there is no scarcity of water and food (example: fish). They had extracted soft clay which was

⁹ "social, political and environmental characteristics of early civilization" www.khanacademy.com , accessed on April 23, 2020

good for constructing the huts. The first settlements in the river valley areas of India and China are known as the Fertile Crescent.

CIVILISATION AND THE CONCEPT OF OWNERSHIP

There is reason for observance of this taboo. The private ownership was marked as the dawn of civilization.¹⁰ The civilizations rise and fall with the rise and fall of individual freedom. At the same time, the individual freedom rises and falls to the degree that private ownership. Individual freedom is an out of question when there is no ownership. The private ownership lies in the thesis of fundamental on the defensible assumption.¹¹

BACK TO THE HISTORY

There were numerous discussions among the scholars and other people regarding the concept of ownership and property all around the world. The ancient authors formed theories in relation between the property and virtue. Plato argues that collective ownership was necessary to promote common pursuit of common interest. Aristotle argued that private ownership promotes virtues like responsibilities and prudence.¹² In the medieval period, Thomas Aquinas discussed the Aristotelian idea that virtue might express in the use that makes one's property.

In the early modern period, philosophers turned their attention to the way in which the property might have been instituted. Hobbes argued that there is no natural 'mine' or 'thine' and the property must be understood as the creation of the sovereign state.¹³ G.W.F. Hegel's account of property centers on contributing property makes to the development of the self, superseding and replacing the subjective stage of the personality.¹⁴

ROMAN LAW

¹⁰ Galles GM "civilization and private property" (FEE, January 12, 2018), www.fee.org, accessed April 24, 2020

¹¹ ibid10

¹² Waldron J, "property and ownership" (March 21, 2020) www.plato.stanford.edu, accessed on April 24, 2020

¹³ ibid12

¹⁴ ibid12

In Roman law the concept of possession was considered as 2 different concepts. As already discussed Dominium means an absolute right over a thing whereas possession indicated only as physical control over a thing. Possession had no legal consequences in the early law.

OWNERSHIP UNDER ANCIENT INDIAN / HINDU LAW

Same as Roman law the Hindu law also distinguished ownership from possession. The right to ownership was recognized in the ancient Indian laws. The right to ownership was emphasized by narada, vyas and yajnavalkya. This right was used for noble cause and also for good motive.

It was laid down by Manu and yajnavalkya that the possession of an immovable for more than 20 years and 10 years for movables gives the title by prescription.¹⁵ Katyayan regarding law of sale without ownership said that: If a man lost his chattel and discovers the same in the possession of someone else, then he should prove that the chattel belongs to him by means of witnesses and other evidences.

The ancient Hindu law ordered officially to the men to behave in certain way with respect to the property owned by them. Any mischief done by them or any misuse of such a right would entail them for moral and public wrong and such men will be liable for punishment. According to Manu, property of king or the state could only be conquest but the king doesn't have any right to interfere or acquire the private property. When it comes to the no-one's land (*Res Nullius*) Manu says that such a property belongs to the one who has claimed it first under cultivation. In case of treasure, if it is found in his own land then he has the right over it. But if it was found on someone else's land then he can acquire only half of the discovered treasure.¹⁶ Ancient Hindu jurists have said about the means of acquiring ownership. Manu declares almost 7 means of acquisitions of ownership. Gautama also speaks about 7 similar ways of acquisitions of ownership.¹⁷

EVOLUTION OF OWNERSHIP IN ENGLISH LAW

¹⁵ Yajnavalkya-11,24

¹⁶ Supra note 6 page no. 6

¹⁷ Supra note 2 page no. 4

The idea of ownership with respect to land and chattels evolved through 2 different methods. In the feudal system, the concept of ownership in land was a product of peculiar features. In this system land was held in return for the services provided. This holding was known as '*seisin*'. Seisin was a right to get back the product from possession. It was a right to the possessor. It later emerged in the form of right to possess to the idea of ownership. In the early times, the rights in movables were not of such a nature to be called as "ownership".

SIGNIFICANCE OF OWNERSHIP IN THE MODERN CONTEXT

Ownership is a socially significant concept because it is a source of wealth and social position and it earns a reputation in the society. Ownership was a means of controlling the government. In a feudal system, the qualifications to vote were based on the ownership of the land. Its importance to keep in mind that ownership is not only a right over a property but it is also associated with various kinds of liabilities, duties, disabilities and responsibilities, such as land tax, wealth tax etc. The Marxist theory says the product which is been created by him through the raw materials and his own tools then the manufactured products remain in his ownership until later he trades his own property.

Professor Renner traced the gradual evolution of ownership. He says that in the early stages of the development of the society the owner would collect raw materials and produce a good. Later they traded it and became wealthy. So they afforded to hire laborers and produced the goods by providing raw materials and tools to them. But still the industrialists are the sole owners of the good.¹⁸

LAND OWNERSHIP SYSTEMS

When we look into the Indian land rights, the British has introduced various land ownership and transfer systems, such as:

1. The zamindari system
2. Ryotwari system
3. Mahalwari system

¹⁸ Supra note 6

4. Indian forest act

But the land distribution under these systems was unequal.

Post – independence land reforms:

The Indian leaders promised that the land would be equally distributed among the farmers after the Britishers left. India has brought various land reform legislations:

1. The agricultural land ceiling Act
2. The forest Act

Unfortunately these legislations did not led to substantial progress towards equal distribution.¹⁹

CONCLUSION

As we spoke about the evolution of ownership and ownership in various texts, we can conclude that ownership took place a reason of civilization. People started to believe that they need something to be owned for various reasons such as social status, assets etc we also came across how land ownership played a vital role in the qualification for voting. Ownership was first in the Roman law later it was accept by all other. Many jurists argued on the concept of ownership but somewhere down the line the definition or the concept still stays ambiguous. There is slight difference between possession and ownership. This was well differentiated by many scholars. We know that in today's world women are given more opportunities like men. Women have also started playing an important role in the defense sectors of the country too. But unfortunately the number of women who owns a property in their own name is very low. This has to be changed in the upcoming years. As Land is an investment for rest of our life, it provides us security.

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