

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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Descriptive Analysis of the Concept of Ownership

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ABSTRACT

Ownership is one of the most important concepts of Jurisprudence. It is a very important right in relation to one's property. This concept evolved with the evolution of civilization and society. It is a very important concept in both legal and social interest aspects of the society. The word 'Own' in the term Ownership means to have a hold on something. A relationship between a person and an object he owns is called ownership. It means a bundle of rights which a person has over the object. The right of ownership can either be absolute or restricted and is residuary in nature. The owner has the complete right to dispose and destroy the property. The concept of Ownership differs for the Roman law, English Law or the Hindu Law. The Right of Ownership includes various other rights in it such as the right of possession of the property, the right to enjoy the property and also the right to dispose or destroy of the property.

I. INTRODUCTION

This Ownership is a fundamental concept of Jurisprudence. Generally, it means to own something. It holds importance in all systems of law. It is used to describe an absolute and complete right of a person over an object². The rights which the person holds over any property confer to him the ownership of that property. The rights should be absolute. If a person has limited rights over the property concerned, he is not the owner of that property. He can be in possession of the property by way of lease or life interest, however, such interests do not make him the owner of that property. The concept of ownership is said to evolve after the concept of possession with the development of economic and social structure of the society.

Ownership is not just having a physical control over the property but is a blend of several other rights in it such as:

1. The right to enjoy the property.
2. The right to exclude other people from using that property.

¹ Author is a student at Christ (Deemed to be University), India.

²Ownership as a Social Concept, Academike, Articles of Legal Studies, Nidhi Kumari, CNLU, Lawctopus, April 6, 2015, <https://www.lawctopus.com/academike/ownership-social-concept/>, (April 6, 2021, 5:30pm).

3. The right to dispose of the property.
4. The right to destroy the property.
5. The right to manage the property.
6. The right to the income generated out of the property³.

(A) Research Question

1. What is the concept of ownership under various laws?
2. What are the various concepts of ownership provided by various jurists?
3. What is the importance of the concept of ownership in the modern world?

(B) Objective and Scope of the Research

The basic objective behind making this Research Paper is to bring forth the concept of ownership in the light of jurisprudence. The evolution, history, concept of ownership and so on has been illustrated in this Research Paper. It even throws light on the present scenario of the concept of Ownership.

(C) Research Methodology Adopted

The Research Methodology used for this Research Paper is the Doctrinal Method. The sources of information collected for this paper includes books, articles, journals, online databases and so on. The use of all of these sources would be recorded in the paper.

II. DEVELOPMENT OF OWNERSHIP

The whole credit of the development of ownership goes to the development of the civilization. During the nomadic era, people did not reside at any given place, therefore there was no sense of ownership in them. However, with the evolution of agriculture in the society, the idea of ownership began to bud. People began to cultivate, grow their crops on lands and therefore the feeling of that property being their own started to arise. At that time, people did not differentiate between the concepts of possession and ownership. It was believed that the one who has a physical control over the land is the one who owns that land. However, with the advent of modern civilization, this distinction between possession and ownership became clear. This distinction is believed to have been first understood by the Roman law⁴.

III. CHARACTERISTICS OF OWNERSHIP

1. Ownership can be either absolute or restricted. The enjoyment of the property can be

³Ownership, The Nature of Property and Value of Justice, A.M Honore, Page 370-375, JSTOR,

⁴ Supra Note 2.

restricted by the operation of the legal systems or even during the time of emergencies. For example: During a state of war, any land or any property owned by a person can be acquired by the State for the army personnel. If any owner leases out or mortgages his property, then he has a limited interest on that property.

2. An owner cannot use his property in a manner which is injurious to other may be his neighbours or injures the enjoyment of their property.
3. The owner has an exclusive right of possession of the property in ownership. Although, it is not necessary that the property has to be in actual possession of the property.
4. Ownership cannot be transferred to an unborn child or an insane person because they do not have the mental abilities to conceive the consequences and nature of their actions.
5. The right of ownership is residuary in nature.
6. Ownership does not come to an end with the death of the owner, it is then passed on to the legal heirs of the owner.
7. Owner has an exclusive right to dispose of the property. Although, there can be restrictions imposed on the alienation of property by the owner in case it is being done with the intention to defeat the claims of various creditors against him⁵.

IV. MODES OF ACQUISITION OF OWNERSHIP

There are two modes of acquisition of ownership (a) Original Acquisition (b) Derivative Acquisition.

Original Acquisition is executed because of some independent act done on the part of the acquirer of the property. The original acquisition of ownership can be done by three ways which are:

1. Absolute: This type of acquisition can take place when there was no previous owner by the application of *res nullius*. It can be done by two ways: (a) Specification- If a person makes something new out of the material owned by someone else, he becomes the absolute owner. Although, such a rule is not existing in the modern period. (b) Occupation- It means that for a thing who has no previous owner, the first person to occupy that property becomes the owner of that property. According to the Roman Law, property won through conquest also fell under this category⁶.

⁵Ownership, Ritwik Sneha and Rishabh Garg, Legal Service India, <http://www.legalservicesindia.com/article/1281/Ownership.html>, (April 6th, 2021, 4:56pm).

⁶Jurisprudential Aspect of Ownership, Diganath Raj Sehgal, June 24, 2020, Blog iPleaders, <https://blog.ipleaders.in/jurisprudential-aspect-of-ownership/>, (April 6, 2021, 7:56pm).

2. Extinctive: This type of ownership is when one person through his act extinguishes the right of ownership of one person and attains the ownership over that property himself. For example: Ownership attained by prescription.
3. Accessory: Thus type of ownership is when ownership over some property has been attained by accession to that existing property.

Derivative Ownership is when the owner gets the complete or the absolute right over that property from the previous owner. It can be effected by way of inheritance, gift and so on. This type of acquisition is noticed in case of sales of good, succession, transfer of property and so on in India⁷.

V. CONCEPT OF OWNERSHIP

The concept of ownership can be studied under various heads such as:

(A) Roman law

Under the Roman law, ownership is referred to as 'dominium' which means to have the complete right over something. Roman law gives more importance to the concept of ownership because they believe that having a complete or absolute right over a property holds more importance than just having a physical possession or control of it⁸.

(B) English law

It has been mentioned in Maitland as quoted by Dr.Murray that the owner first came to be known back in 1340 and ownership back in 1583. English Law did not come across this concept as early as they came of possession. Their earlier concepts included the ownership rights in possession as well and therefore possession was given importance back then. As stated by Holdsworth, with the gradual development in authority, there was a clearer understanding of the concept of ownership among them. Freedom, power and Immunity were a few rights that they associated with the term ownership⁹.

(C) Ancient Hindu Law

The right of ownership over property was understood even in ancient Hindu law. It has been stated by various commentators such as Narada, Yajnavalkya, Vyas and so on. Although, such ownership rights was restricted only to good motives and noble cause. The people having an

⁷ Supra Note 2.

⁸Introduction to Ownership, Hemant More, February 2020, The Fact factor, https://thefactfactor.com/facts/law/legal_concepts/jurisprudence/ownership-jurisprudence/8891/, (April 4, 2021, 3:45pm).

⁹Ownership –Definition, Concept and Kinds, Laxmi Soni, July 24, 2020, Our legal World, <https://www.ourlegalworld.com/ownership-definition-concept-and-kinds/>, (April 3, 2021. 5:45pm).

ownership right over any property were expected to behave in a certain manner. If they failed to do so, it would be a moral and public indignation which would make them liable for punishment. The ancient laws clearly distinguished between the concepts of possession and ownership. There were various methods stated by which a person could obtain ownership over some property such as by accepting gifts, purchase, conquest, gain, inheritance, investment of wealth and employment. The rule of *res nullius* was even applicable during that period. *Res nullius* is the rule which is applicable to a land which belonged to no one. Anything which had no previous owner can be claimed by other person as per the rule of *res nullius*¹⁰.

(D) Eminent Jurists

Various eminent jurists provide a different understanding and concept of Ownership which has been explained below.

- **Austin:** The definition of ownership given by Austin focused on three main aspects which are unrestricted disposition, indefinite user and finally unlimited duration. Unrestricted disposition means that the owner has complete freedom to dispose of the property in the manner he wishes. He is even free to destroy his property. This aspect is not completely applicable everywhere. In many western countries the concept of *re religitima portis* is prevalent which means that a person is not entitled to dispose of the entire property at hand. The Mitakshara School of Hindu Law also does not allow the alienation or disposal of the ancestral property without the free consent of the other co-parceners. Indefinite user means that the owner of the property is completely free to use his property in the manner he wishes to. However, this right is conditioned by the various restrictions and requirements imposed by the law. The owner was not entitled to use his property for injuring his neighbor's property or enjoyment of property. Unlimited duration referred to the fact that the owner has complete ownership over the property for an infinite period of time but this is not correct as the legal system operating in every country has the power to take the property of that person for public interest¹¹.

- **Salmond:** he described ownership as a bundle of rights which an individual has over his property. It shows the relationship that a person has with the right vested in him and also that ownership is an incorporeal body. Salmond did not clearly define the rights and powers that an owner has in relation to his property and also did not elaborate on the concept of the ownership. Therefore, his concept of ownership is not wholly correct¹².

¹⁰ Supra Note 3.

¹¹ Supra Note 9.

¹² Supra Note 8.

- **Hibbert:** he described ownership as to have exclusive right of control and disposal over any property. He included four major rights in the periphery of ownership which is the right to use, right to exclusion, right to destroy and the right to dispose of the thing.

- **Holland:** he followed the concept of Austin and believed that ownership means to have a complete and unrestricted right over any property. He stated that possession, enjoyment and disposition rights over any property are the main aspects of the right of ownership¹³.

- **Diguit:** he stated that ownership is not just a right but a relationship between a person and a thing and the complete control the person has over that thing. It includes the right of disposal and enjoyment in it.

- Keeton and Pollock have also defined ownership as to have a complete right of enjoyment and disposal over a property. They bring out the reality that ownership is subjected to the limitation that is imposed on it by the legal system¹⁴.

VI. IMPORTANCE OF OWNERSHIP IN THE MODERN WORLD

Ownership is a very important concept of the modern world as it is a bar to measure the wealth and social position of people. Ownership is a social concept and shows how one should use their rights and interests in compatibility to the interests and rights borne by the other members of the society. It is not just a bundle of rights that is borne by a person when he owns a property but it also regulates the usage of the property in order to benefit the others. The concept of ownership has shifted from an individual approach to a societal approach where people are even concerned about their duties towards one another.

Dr. Friedmann had even stated three attributes which are responsible for this shifting culture of the concept of ownership:

1. Narrowed gap between the employer and the labour class because of the various movements of the trade unions or due to nationalization of industries and so on. This has made the bargaining power of both the labourers and the entrepreneurs almost equal.
2. Considerable regulation of the profits earned by the industrialists through taxes or other legal measures.
3. There has been a separation in the power element from ownership due to the increase in the encouragement provided to the corporate sector in the recent decades.

Dias and Hughes had stated that more emphasis should be laid down on the functional analysis

¹³ Supra Note 6.

¹⁴ Supra Note 2.

to appreciate the role of ownership in the present social order¹⁵.

VII. CONCLUSION

Right to ownership has been guaranteed under the Article 300(a) of the Constitution of India. This right of ownership is subjected to various legal provisions and statutes. Ownership as a legal concept denotes a legal relation between a person who is called the owner of the right, and a thing over which he can exercise certain rights. The right of ownership is the most complete and supreme right that can be exercised over anything¹⁶.

¹⁵ Supra Note 2.

¹⁶ Ibid.