

Right to Property in South Asian Constitutions: A Comparative Analysis

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Abstract

South Asian countries are deeply connected with each other on several social, cultural, and political issues. As per property rights, they have diversified views. This paper aims to compare the property rights of South Asian countries as per their constitutions. In this regard, the constitutional framework of eight South Asian countries is discussed throughout the whole paper. These countries are Bangladesh, Pakistan, India, Afghanistan, Nepal, Bhutan, Sri Lanka, and the Maldives. While comparing the constitutional frameworks of these countries, a common factor is found in most of the countries' constitutions, which is making property rights a fundamental right. That is undoubtedly a supreme recognition of property rights. Few countries that do not recognize property rights as their fundamental rights and they have some strong views and historical perceptions, which is another viewpoint of this paper. It is challenging to compare them within one roof, but regardless, this comparison may add the most significant and interesting ideas in South Asian property-related matters.

Keywords

South Asian Countries, Comparison, Constitution, Fundamental Rights, Right to Property

1. Introduction

It is challenging to compare South Asian nations within a single framework, particularly when it comes to matters of property since it is one of the most important issues. While South Asian nations share many social, historical, cultural and political characteristics, they also diverge greatly (Malhotra, 2023). The same is true about the state of property rights in South Asia. South Asian property

rights can be compared from various perspectives, but the constitution is the most relevant perspective among all. Property rights are recognized as fundamental rights in the majority of South Asian countries, despite the differences in their constitutions.

The Bangladeshi constitutional court, acting under the authority of the constitution, provides specific legal safeguards for the right to property, which is recognized as a fundamental right under the country's constitution (Art. 42). According to the Constitution of Bangladesh, every citizen, including women, has equal rights to acquire, hold, and dispose of property. In 1947, India gained its independence from British colonial domination. There were several types of land revenue schemes in place prior to independence, especially in *Zamindari*, *Rayotwari*, and *Mahalwari*. India's property rights are currently not included in the list of fundamental rights. The right to property was the only fundamental right to be eventually removed from the list of rights; it was also the second most contentious provision when the Constitution was being drafted. Under Article 300A, at present property rights are merely Indian constitutional rights, and the only people who can use these rights are Indian. Property rights are acknowledged as fundamental rights in Pakistan, where each individual is entitled to the acquisition, possession, and disposal of property in any region of the country as long as it complies with the constitution (Art. 23). This establishes a solid constitutional foundation allowed for the adoption of important and procedural legislation required to guarantee the preservation of such constitutional rights to unencumbered property ownership. Therefore, the laws pertaining to the ownership of land in Pakistan have stayed mostly unchanged. On the other hand, given how quickly the *Taliban* took control of the nation, Afghanistan's constitutional position is not entirely clear. Now, it adheres to the largely constitutional Islamic concept of jurisprudence. In Islam, the ownership of property is valued. Since no state has acknowledged the *Taliban* rule as the legitimate proprietors, there is uncertainty concerning the constitution. The right to possess land is not acknowledged as a fundamental right under the Sri Lankan Constitution. This would give rise to a challenge to the state's acquisition in light of the right to equality. Due to political, cultural, and environmental influences, Bhutan's high-elevation rangelands have seen changes in property rights as well as governance techniques over many generations. The 2008 Constitution of Bhutan, which ushered in an elected democracy, guarantees all citizens the right to own property, including land. However, Bhutan made property rights a fundamental right and provided them with adequate protection (Art. 7). The Maldives' and Nepal's constitutions both prominently recognize property rights. A state can acquire land when it serves the public interest and must always compensate its citizens in compliance with specified law, according to their Constitution. Property cannot be confiscated from someone to make up for a violation; alternatively, each case will be scrutinized by the court to establish the proper amount of compensation if any mala-fide intention arises.

2. Right to Property Explained

Property is not the mere objects or resources rather it denotes the connection of certain rights of persons with respect to such objects or resources (Merrill, 1998). If a person claims and exercises dominion over any external things of the world in exclusion of others, it becomes property (Madison, 1962). A laptop, for example, becomes a property only when a person has some rights of control or disposition over such laptop because of his becoming owner or having other entitlement. Along with the concept of private property of an individual or organization, there exist the concepts of common and public property as well. When a group of people have equal rights to some resources it becomes common property. As suggested by the evolutionary land rights theory, the individual or private property rights evolve from community property rights when the value of land increases (Platteau, 1996). On the other hand, if any governmental entity has rights with respect to some valuable resources it becomes public property (Merrill, 1998). Property rights are a set of economic and social rights of an individual with respect to the utilization of a resource (Furubotn & Pejovich, 1972). Property rights are often considered to be a bundle of rights including use, control, possess and dispose (Veetil et al., 2013). Right to property includes the right of withdrawal, management, exclusion and alienation (Agrawal & Ostrom, 2001). Withdrawal is entering and obtaining the benefit from the resources while management refers to the right to use, control and regulate such resources (Agrawal & Ostrom, 2001). Exclusion denotes the right to decide to whom the right to withdrawal should be transferred and alienation is the right to transfer such resources (Agrawal & Ostrom, 2001).

Right to property has a rich history not only in the legal instruments but also in philosophies and social movements for millennia. Both the Magna Carta of 1215 and the 1789 French Declaration of the Rights of the Man and of the Citizen contained traces of property rights and protection (Siegan, 2018). Also, in the work of Karl Marx, the central question was property (Marx, 2007). After the second world war, in the Universal Declaration of Human Rights (UDHR) the right to property has been incorporated under article 17 although the issue of right to property inclusion was much debated during the drafting of the declaration on many grounds. Because of such debates between east and west the right to property was not eventually enshrined in the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Later, the right to property was enshrined in article 1 of the Additional Protocol to the European Convention of Human Rights, in article 17 of the Charter of the Fundamental Rights of the European Union and in many international, regional and national legal instruments. Because of such a significance of this right, it is argued that right to property has received universal recognition by consistent state practice and *opinio juris* meaning the right to property as enshrined in the first paragraph of article 17 of UDHR represents customary international law (Heri, 2020).

Ensuring property right is ensuring many other fundamental human rights because land, the most significant example of property, is connected with many other resources essential to ensure other human rights including right to food, water, health and work etc. (Wickeri & Kalhan, 2010). The right to property is argued to be equal in status to all other constitutional rights (Rose, 1995). The right to property has been included in many constitutions of the world making it fundamental or even merely constitutional right of the citizen. Constitutional property rights are primarily considered to be essentially same as private property rights (Allen, 2000). Generally, it is observed that Constitutions usually provides right to property to their citizen within some limitations of law including the limitation of land ceiling and compulsory acquisition by the state in the name of eminent domain in exchange of some monetary compensation. Although for compulsory acquisition, monetary compensation is provided, there may arise some situations where monetary compensation cannot stand as compensation because the injury may affect the personal interest of the owner apart from his economic loss (Michelman, 1981). Considering such situations, some constitutions may treat property not a market commodity rather a civic right as is the case in the Constitution of Germany (Alexander, 2002). As the wish of the citizen and government of each country differs, the provision and status of right to property may be different and distinct in each constitution. In the following sections the authors endeavor to examine the status of right to property in the constitutions of all eight South-Asian countries.

3. Rights to Property in South Asian Constitutions

3.1. Bangladesh

Bangladesh was a part of undivided India in the British regime. After the independence from the British, Bangladesh became the part of Pakistan and was then called by East Pakistan. Later, after a bloody war of nine months, Bangladesh became an independent sovereign country in 1971. Because of such historical background, the reflection of colonial English system is prevalent in the legal system and infrastructure of Bangladesh. After the independence from Pakistan, Bangladesh immediately initiated to make its Constitution and so the Constitution is drafted and was adopted on 4 November 1972 and became effective from 16th December 1972. The right to property has been inserted in the Constitution of the People's Republic of Bangladesh as a fundamental right meaning it will have special legal protection by the constitutional courts of Bangladesh within the authority of the Constitution itself. Principles of ownership, property rights of individuals and limitations of property ownership and rights are enumerated in different places of the Bangladesh Constitution.

According to the Constitution of Bangladesh, a private individual may become owner of property. Article 13 of the Constitution enumerated the principles of ownership and state, cooperative and private ownership is recognized. State ownership is recognized in the constitution for dynamic public sectors and

the ownership of state will be on behalf of the people of the country. Along with the state ownership, cooperative ownership is recognized on behalf of their members within the limits of prescribed laws. Private individual ownership is ascribed although this ownership is not unfettered but within the limitations of laws (Islam, 2018). So, a private individual may own a property in his own name and because of such ownership he will have the bundles of rights i.e., acquire, use, hold, transfer or otherwise dispose of such property but he has to pay taxes and follow the provisions of relevant laws in the enjoyment of such property.

Right to property is directly enshrined in part III of the Constitution where fundamental rights are enumerated. In article 42 of the Constitution, a bundle of rights titled “*Rights to Property*” is enshrined. It is stated that every citizen of Bangladesh shall have the right to acquire, transfer, hold or otherwise dispose of property subject to the lawful restrictions meaning prohibition or extinction (Islam, 2012). Also, private property cannot be acquisitioned or requisitioned without the lawful authority. Rights to property as per article 42 of the constitution is, however, subject to compulsory acquisition law by the state. The country may take away of private property by way of nationalization, acquisition or requisition by the authority of law enacted for this purpose. For compulsory acquisition by the state, a law needs to be enacted and this law will provide the amount of compensation to be fixed or specify the principles and manners of fixing such compensation. In the same article, it is also stated that this law on compensation shall not be questioned by any courts of the country. This article 42 of the constitution is based on the doctrine of *eminens domains* and so private property can be compulsorily acquisitioned in lieu of compensation by the state if public purposes require such acquisition (Islam, 2018). The latest law on compulsory acquisition in Bangladesh is *Sthabor Sompotti Odhigrohon O Hukumdakhal Ain, 2017* (Acquisition and Requisition of Immovable Property Act, 2017). In this law, it is provided that the compensation will be 200 percent on the market rate if any land is acquired for government projects and the compensation will be 300 percent if the land is acquired for non-government projects (Islam, 2018).

Some properties are enlisted to be solely within the ownership of the Republic of Bangladesh in Article 143 of the Constitution. All minerals and anything valuable beneath the land territory of Bangladesh is absolutely within the ownership of republic. It is immaterial whether the valuables are beneath the landed property of state or private individual. Also, land, minerals and other valuables underlying the ocean within the territorial sea or ocean over the continental shelf will be the sole property of Bangladesh. In addition, if any land within the territory of Bangladesh is found to be ownerless, that property will then belong to the republic. Furthermore, the executive authority is empowered to extend the acquisition, sale, transfer, mortgage and disposal of property under article 144 of the Constitution.

In Bangladesh a bundle of rights to property is ensured under Article 42 of the Constitution and such private rights of property are protected unless are subject to compulsory acquisition by the authority of law with compensation. Also, the rights of property are not unlimited and so these rights are subject to relevant laws of the land. Within such limitations, rights to property are guaranteed in the constitution recognizing such rights as fundamental right. Like other fundamental rights, rights to property are protected and guaranteed by the constitution. If such rights are violated in excess of power by individuals or state machineries, a person is also entitled to avail enforcement mechanisms such as writ petition as enshrined in article 44 and article 102 of the Constitution. Also, since rights to property is fundamental rights and is inserted in part III of the constitution, such rights are part of basic provisions of the constitution and so are not amendable according to article 7B of the Constitution of the People's Republic of Bangladesh (Islam, 2005).

The word women's property right is not directly mentioned in the Bangladesh Constitution; rather, Article 42 (1) of the Bangladesh Constitution states that, subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer, or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized, or requisitioned save by authority of law. If we take the word "citizen" into consideration, we can clearly say that women's property rights are actually recognized by the Bangladesh Constitution, as Article 152 of the Constitution of Bangladesh states that citizen denotes each and every capable person of Bangladesh, irrespective of their sex, caste, or race. Even though women's property rights are recognized by the Bangladeshi constitution, it's important to keep in mind that other personal laws actually govern property rights in Bangladesh. In Bangladesh, the current inheritance laws, patriarchal societal norms, and social practices all contribute to the entrenchment of discriminatory thoughts. Personnel law, depending on the individual's faith, governs matters pertaining to inheritance (Jinnah, 2013). For example, Muslim women are governed by sharia law, and apparently, they are entitled to half of the property if we compare them with their male counterpart. If we also examine Hindu women's property rights, we may discover that they have less rights than their male relatives or other religious counterparts. Even though Bangladesh's constitution promised to outlaw all forms of discrimination on the basis of caste, sex, and religion, not a single piece of legislation has been passed to change the country's traditional laws (Zahur, 2016).

3.2. India

Once Justice Holmes observed that the life of the law has not been logic rather experience (Holmes & Howe, 1968). His observation has been considerably reflected in the journey of legal status of right to property in Indian Constitution. India has become independent from the British colonial rule in 1947. Before the independence, the land revenue systems were in existence in various forms par-

ticularly in *zamindari*, *ryotwari* and *mahalwari*. The zamindars were the *de facto* owners of large *zamindari* estates (Gae, 1973). After the independence in 1947, the constituent assembly adopted the Constitution of India on 26th November 1949 and it came into effect on 26th January 1950. In this post-colonial Constitution, part III contains certain fundamental rights where the right to property has been made one of such rights under Article 19 (1) (f) and Article 31. As fundamental rights are considered to be negative burden on the state, the fundamental right to property under article 19 (1) (f) and 31 became major obstacles in the acquisition of land for the diversified projects of public benefits by the government (Vitthal, 2021). Because of such impediments faced by the government, eventually in its 44th amendment, the fundamental right to property has been omitted. The fundamental right to property was not only the second most debated provision while drafting the Constitution but also the only right that was finally abolished from the list of fundamental rights (Granville, 1966). Omitting the right to property from the list of fundamental rights, a new Article 300A was inserted under Part XII in new Chapter IV making it only a constitutional right. In this way, the right to property transitions from fundamental rights to mere constitutional right after the 44th amendment of the Constitution of India with effect from 20 June 1979. Therefore, a writ petition under Article 32 for right to property under article 300A of the Constitution in the Supreme Court of India is not maintainable as it was before 44th amendment under article 19 (1) (f) and article 31. Now a writ may be proceeded to the High Court under article 226 for challenging the violation of article 300A as now it stands a mere constitutional right.

Article 19 (1) (f) of the Constitution of Independent India provided every citizen the right to acquire, hold and dispose of property. According to the literal interpretation of the words of the Constitution, the bundle of rights i.e., right to acquire, hold and dispose guaranteed in this article is for the citizens only and not for everyone staying in India. Since sub serving common good is the directive principle of the State in the distribution of ownership and control of the material resources of the community under article 39 (b) of the Constitution, the provision of imposing reasonable restrictions by the state has been inserted in Article 19 (5) with a view to securing and protecting the interest of general public and the interest of any scheduled tribe in enjoying the right to property enshrined in article 19 (1) (f).

Article 31 of the Constitution of India prohibited deprivation of property rights except by the authority of law. In this article provisions on compulsory possession and acquisition of private property by the State was inserted. The State for public purposes, providing compensation or fixing the amount of compensation or specifying the principle of fixing the amount of compensation might possess or acquire private property under any such law authorizing the possession or acquisition of private property. Right to property is protected here in article 31 following the English system. In the English system, compulsory

acquisition is validated only when it is authorized by parliament and it is done for public purposes providing compensation to the landowners (Allen, 2000). Article 31 provided the compulsory acquisition might be done for public purposes with the payment of compensation within the authority of a law enacted in this purpose. Public purpose here denoted as public welfare (2013 AIR CC 1080 (AP)). The original article 31 was devised very carefully to save the various zamindari abolition laws to be passed by the state legislature and pending before the legislatures at the commencement of the constitution from being struck down by the courts for inadequacy of compensation (Gae, 1973). The provision of compulsory acquisition in the original Article 31 is not a new doctrine used in the Indian Constitution. For the necessity of state and public purposes, acquisition of private property that is named as *eminent domain* is originated in Europe in 1625 in the works of Hugo Grotius and Samuel Pufendorf (John Dias, 2004). It is contended that under the *eminent domain* the state may use, alienate and even destroy the property of its subjects if needed for extreme necessity and public utility (Sampat, 2013). The *eminent domain* is based on two maxims: 1) “*Salus populi supreme lex esto*” means the people’s well-being is paramount. 2) “*Necessita publica major est quan*”, which translates as public necessity exceeds private necessity. In article 31 the compulsory acquisition is provisioned if public purposes require such acquisition but the term public purpose has not been ascertained so that it can be constructed extensively and definitively (Pandey, 2023).

After the original provisions, the right to property in Indian Constitution underwent many amendments. In the original article 31, for compulsory acquisition, the system of compensation was kept in a way so that the zamindari abolition laws could remain unchallenged in the courts. But after the Constitution came into effect, the zamindars quickly resorted to the courts demanding their fundamental rights are violated because of not compulsory acquisition articulated in article 31 but because of discriminatory payment of compensation for such acquisition under article 14 of the constitution as no discrimination but equal protection was a fundamental right of the people of all strata (Narain, 1966). To address such issues the first amendment of the Constitution took place just after one year of the commencement of the Constitution in 1951. In the first amendment, two new articles, article 31A and article 31B were inserted. Article 31A provisioned that law affecting *estates* shall not be questioned because of its inconsistency with any fundamental rights conferred in part III of the constitution. Article 31B prohibited questioning laws and regulations passed by state legislatures related to abolition of *zamindaris* as stated in Schedule IX of the Constitution. Later, the right to property in Indian Constitution has been revised in many occasions including in Fourth (1955), Seventh (1956), Seventeenth (1964), Twenty-Fourth (1971), Twenty-Fifth (1972), Twenty-Sixth (1972), Twenty-Ninth (1972), Thirty-Fourth (1974) and Thirty-Ninth (1975) constitutional amendments. At last, in the Forty-Fourth (1978) constitutional amendment, the

right to property has been abolished from the constitutional fundamental rights. Instead, a new Article 300A was inserted under Part XII in new Chapter IV making it only a constitutional right. This exclusion of the right to property from fundamental rights plainly reduces the significance of the Indian Constitutional Law of property rights (Allen, 2000).

In article 300A it is ambiguously stated that a person shall not be deprived of his property except by authority of law. In this Article, “a person” includes men, women or any person of other gender identity and so everyone recognized as person before the law of the land shall not be deprived of his/her right to property. However, The Indian Constitution guarantees equality and women of all religions enjoy right to property under their respective personal laws. An Indian woman has equal rights to acquire, hold, and dispose of property, whether it's inherited or self-acquired. The Hindu Succession Act, 1956, which was amended in 2005, grants daughters the same rights as sons to inherit parental property. Both the state and federal governments in India are authorized under the Constitution to pass legislation pertaining to succession issues. Because of this issue, some of the states enacted their own property laws as per their personal law and as a result, lack of uniformity in laws is evident to govern the property rights of Indian women. In practice, religion plays a very vital role regarding property rights in India. All the succession laws, which are codified separately to various religions utterly, neglect women and gave an unequal status to them (Dhandayuthapani, 2019).

3.3. Maldives

The Maldives is an independent island republic that is situated in the north-central Indian Ocean. It consists of about 1200 small atolls, or groups, of coral islands and sandbanks, 200 of which are inhabited. The islands extend over 510 miles (820 km) in a north-south direction and over 80 miles (130 km) in an east-west direction. The northernmost atoll is approximately 370 miles (600 km) south-southwest of the Indian peninsula, while the middle section, which includes the capital island of Male (Male'), is about 400 miles (645 km) southwest of Sri Lanka. The submerged mountains of a long-gone volcano mountain range gave rise to the coral atolls that make up the Maldives. All of the islands are low-lying, with none rising higher than six feet (1.8 meters) above sea level (Selvam & Selvam, 2018). The present Maldivian constitution was adopted in 2008.

Article 2 of the Maldives' constitution states that the nation is a unitary state that is autonomous, democratic, sovereign, and founded on Islamic principles. It will be referred to as the Republic of the Maldives (Junayd, 2019). Article 40 guaranteed the freedom to own and acquire property. Everyone has the right to acquire, own, transfer, and deal with such property, according to this article. This article goes on to say that private property is untouchable and that the government may only remove it by force if it is needed to serve the interests of the

public and only in compliance with explicit legislative requirements and court-approved decrees. Property cannot be taken from someone in order to make up for an offense; instead, the court will determine what is appropriate compensation in each case.

In July 1993, Maldives became a signatory to the Convention on the Elimination of All Forms of Discrimination against Women. Equality between men and women is guaranteed under the Maldivian Constitution. Gender-based discrimination is prohibited under Article 17 of the Constitution, which guarantees everyone's rights and freedoms. To further ensure rights and opportunities, the Gender Equality Act (18/2016) is a supplement to the promotion of gender equality. Therefore, the constitutional right to property is equally applicable to a woman and so a woman is equally protected to enjoy the constitutional right to property.

The Maldives' unicameral parliament, the *People's Majlis*, approved a measure on July 22, 2015, revising the 2008 Constitution to permit foreign land ownership. The following day, President Yamin Abdul Gayoom signed the measure. According to reports, the law inserts a new chapter and modifies article 251 of the Constitution. In its former version, Article 251 of the Constitution forbade foreign ownership of land. The amended bill contains provisions stating that foreigners must fulfill specific requirements before they can buy freehold land. It is also purported that a modified article declares that the Maldivian state's sovereignty over its territory is unaffected and does not equate to a loss of territory in cases where permitting a foreign entity to hold land falls within certain conditions. The speed with which the modification was approved without sufficient public consultation or legislative discussion has also drawn criticism. Although the Maldivian government has promised them that the Indian Ocean will remain "a demilitarized zone," Indian government officials have expressed fear that China will utilize the law to increase its military influence (Kumar, 2015).

3.4. Nepal

Nepalese property law is multifaceted. They follow customs and unique cultural system, such as *guthi*, *kipat*, and numerous other land patterns. The Nepalese property law confers some rights on the owner of the property. It recognizes the legal right of possession, which allows one to inhabit the property. It also ensures the right to property management. It allows the landowner to enjoy their property free from extraneous interference. Moreover, it uphold the ultimate right to reject the uses or interests of another people's property (Dahal, 2024). Under the Nepali Civil Code 2017 there are several types of ownership like personal ownership, property in common, The joint property, property of the community, public property, assets of the government and property under trust. Land governance is essential to both political and development discourses in Nepal, a country where a significant portion of the population has traditionally been affected by the unequal and biased ownership of land. Under a centuries-old feu-

dal system, a tiny minority of landowners possessed most of the agricultural land in Nepal. After that, rural farmers were employed according to custom, tenancy, and hereditary grounds. As per Article 40 of the constitution the country has initiated a land reform process to protect tenant farmers and ensure secure land tenure for landless *Dalits* and other individuals residing on unofficial and non-formal lands (Bhujel et al., 2020). The constitution of Nepal mandates that all three categories of government—federal, provincial, and local—have particular powers with regard to the management, administration, and governance of land. However, actuality and theory diverge significantly due to a variety of reasons, such as a packed political schedule, technical expertise, a budgetary constraint, and a dearth of follow-up policy measures (Bhujel et al., 2020). When it comes to dividing up property, the spouse, wife, father, mother, son, or daughter all get considered coparceners in Nepal. Every coparcener has an equal share of property ownership. When property is divided among siblings living in a shared home, the wives or children of the siblings may inherit it from their father or spouse (USAID, 2017). An individual who has more than one wife will inherit property from their husband's share of the property upon division. In Nepal, property can be divided through the preparation of a document with witnesses, the signing of the document by witnesses and a coparcener, and the certification of the document by the appropriate authority after fulfilling all legal criteria (Rajini, n.d.).

The Nepalese Constitution consists of 38 parts and 308 articles, of which 5 parts and 10 articles address the question of land and property. The articles that contend for the land and property controversy include Articles 25, 38, 40, 42 and 51. As per Article 25 of the Constitution every citizen shall be free to buy, own, sell, profit from their profession, and utilize or dispose of property in whatever way they see suitable, within legal limitations. Equal treatment within the law has been reinforced by the Nepalese Constitution, which guarantees the right to equality as a basic right. In order to ensure gender equality, it also includes a provision prohibiting prejudice on any basis when applying general law. Property rights have also been acknowledged as fundamental rights in this way. As per Article 38 the constitution safeguards women's rights, including the ban on discrimination based on gender. Nonetheless, there are no particular protections for women with regard to land and property under the Directive Principles and Policies of the existing constitution. Additionally, it includes a specific section that guarantees rights for the defense, emancipation, or advancement of women. Article 42 of the constitution states that in addition to the legal right to access land for agricultural purposes, every farmer has the freedom to decide upon and protect previously utilized indigenous crops and agricultural species. The Nepalese constitution also safeguards and promotes the rights and interests of peasants and makes use of land use policy to boost agricultural productivity and output as well as to commercialize, industrialize, diversify, and modernize the sector (Bhujel et al., 2020).

Notwithstanding significant limitations, like the absence of national laws pertaining to land and property, the incapacity of the constitution to handle current land and other geographical information, and the lack of updated property information, however, because this constitution is amendable, any undesirable clauses can be included in a subsequent revision, and other statutes may be enacted to address the issue identified. The constitution is arguably the best document when it comes to land and property issues because, despite certain rectifiable challenges, it covers every significant matter that could crop up in the arena of land and property governance.

The Nepali Constitution of 2072 (equivalent to 2015 AD) contains a number of promises pertaining to land and property. According to this constitution, the state can acquire land if it serves the public interest or if it was obtained illegally (Bhujel et al., 2020). This constitution confirms that compensation will be paid; nevertheless, the type, quantity, and schedule of payment will be determined by the judicial system.

The constitution also stipulates that boys and daughters receive inherited property equally, which can contribute to the country's freedom from discrimination based on policy. Daughters receive equal property rights as coparceners, inherit their parents' assets and responsibilities, and take on the role of their parents' heir. As protected by the Nepalese Constitution's Rights to Property and Rights to Women, these property rights are legally enforceable in Nepalese courts. In Nepal, daughters have the same rights as sons to inherit property. Section 205 of the National Civil Code, 2074 (2017) states that "The husband, wife, father, mother, son, and daughter shall be deemed to be coparceners for the purposes of apportionment of a property in common." The Code has so ensured that daughters in Nepal have equal parent property rights. Every Coparcener listed above is eligible for their equal portion of the split.

3.5. Bhutan

Property rights and management strategies for Bhutan's high-elevation rangelands have evolved over generations in response to political, cultural, and environmental pressures. Bhutan was not even constituted as a centralized state until the 3rd King's tenure (1952-1972), which is when the country's current legal system was established (Tenzing et al., 2017). The right to own property, including land, is guaranteed to all citizens by the 2008 Constitution, ushering in an elected democracy. Through a process known as rangeland nationalization, the 2007 Land Act of Bhutan seeks to address past inconsistencies in property rights by assigning grazing leases to local livestock owners. The primary item of land legislation is the Land Act. The most recent Land Act of 2007 defines the types of land that can be kept as private or *thram*. There are detailed regulations regarding land registration, landowner rights and obligations, and the processes involved in transfers and sales. Each family is allotted a maximum of 25 acres of land (Pain & Pema, 2004).

It is quite hard to own property in Bhutan, no matter how wealthy one is, especially for those who work in the corporate, government, or private sectors. The right to property is protected by the Bhutanese Constitution which states that, no one may have their belongings taken away by acquisition or requisition unless it is absolutely required for the public welfare and then only after paying fair compensation in accordance with the law. The right to property is the fundamental right of Bhutan. Article 7, Paragraph 9 recognizes property rights. This Article states that, Bhutanese citizens are allowed to possess property, however they are not allowed to sell or otherwise transfer land or other immovable property to non-Bhutanese nationals unless specifically authorized by Parliament. A person cannot have their property taken from them by acquisition or requisition unless it is necessary for the public good and appropriate recompense is paid in line with legal requirements as per the Constitution of Bhutan (Hayward, 2021).

Bhutanese women enjoy much more freedom and equality in various spheres of life in contrast to situations found in many other South Asian countries. All persons are equal before the law in Bhutan. Article 15 states that no one shall be subjected to discrimination on the grounds of race, sex, language, religion, politics, or any other status. Additionally, everyone has a right to fair and effective legal protection. Article 9, paragraph 3, states that the state will endeavor to preserve human rights and dignity, maintain the rule of law, and uphold the fundamental freedoms and rights of all citizens. This paragraph outlines the guiding principles of state policy. It also ensures equal opportunity of all without discrimination of any kind for property rights. In Bhutan, primarily in the area of inheritance, where in most parts of the country, women usually inherit the land. In Bhutan, land is handed down through the mother's side of the family rather than the father's. This means that if a person's mother owns land, her offspring will inherit it rather than the father's family. This arrangement is known as matrilineal inheritance, which indicates that the property is passed down through the female line of the family. It is extremely distinctive because in many other nations, property usually passes down through the male line (Pain & Pema, 2004).

3.6. Afghanistan

The present constitutional status in the country called Afghanistan is somewhat ambiguous. At present the country is under *de facto* control of the *Taliban* fighters who have overrun the country within a very short period of time after the withdrawal of the American forces after twenty years of bloody warfare in September, 2021 (King, 2023).

The Taliban named the country the Islamic Emirate of Afghanistan. Though the emirate has no written constitution, it follows the core Islamic principles of jurisprudence which possess somewhat constitution like manner. The prime source of law is the *Quran*, then *Sunnah*, then *Ijma* and finally *Qiyas* (Hassan, 1984).

The right to private property of both man and woman is respected in Islam.

However, Islam preaches that all property belongs to almighty Allah and people should be responsible and considerate about the needy in use of the property over which Allah gave them control over.

Some verses of the Quran can be referred in this regard. Such as:

“But to God belong all things in the heavens and on earth. And He it is that encompasseth all things.” [The Holy Qur’an, al-Nisaa 4: 126]

“It is He Who hath created for you all things that are on earth.” [The Holy Qur’an, al-Baqarah 2: 29]

“Do ye not see that God has subjected to your (use) all things in the heavens and on earth?” [The Holy Qur’an, Luqman 31: 20]

“It is He Who hath produced you from the earth and settled you therein.” [The Holy Qur’an, Hud 11: 61]

“Give them something yourselves out of the means which God has given to you.” [The Holy Qur’an, al-Nur 24: 33] (“The Holy Quran (Koran),” Ali, 1987)

The ambiguity arises regarding the constitutional regime of Afghanistan because of the fact that, no states have so far recognized the *Taliban* regime as the rightful rulers of Afghanistan. And as such, the *de jure* rulers are still the non-functional government of Islamic Republic of Afghanistan, which seized to exist within the territory of Afghanistan after the Taliban takeover.

As a part of the nation building project initiated after the western NATO powers led by the USA have occupied the country as a part of the military strategy on their global war on terror, a process was initiated with the help of those powers to enact a constitution in the year 2003. An assembly called *Loya Jirga* was also formed for this purpose (Foley & Team, 2005).

The Constitution was enacted and the said constitution of the then Islamic Republic of Afghanistan of 2004 includes several provisions regarding the right to ownership of land (Thier, 2006).

Article 40 of Afghanistan’s 2004 Constitution specifies that:

Property is immune from invasion. No person shall be forbidden from acquiring and making use of a property except within the limits of law.

No person’s property shall be confiscated except within the provisions of law and the order of an authorized court.

Acquisition of personal property is permitted only for securing public interest, in return for prior and just compensation according to law.

Inspection and disclosure of private property shall be carried out only in accordance with the provisions of law.

Foreigners do not have the right to own immovable property in Afghanistan, but may lease it (Articles 41, 42) (Constitution of The Islamic Republic of Afghanistan, 2004).

These rights are listed in the second part of the constitution, and as such is part of fundamental rights and duties of citizens. When the Constitution and judiciary was functioning *de facto*, such rights were judicially enforceable to some extent.

3.7. Pakistan

The constitutional regime of the Islamic Republic of Pakistan, though quite volatile, is nevertheless a unique blend of legal traditions of the legacy of British Empire influenced common law practices, various tribal practices and last but not the least, values of numerous Islamic principles (Abbas, 2023).

It can be argued that, due to the involvement of military in the politics of Pakistan and *coup de tats* after *coup de tats* have not only hampered but also prevented the establishment of a proper constitutional order in Pakistan, however, the principles related to the right of land ownership have remained quite stable.

The culture of majority of the population of Pakistan respects the concept of “*Chadar*” and “*Char Diwar*”, which respects a person’s right to privacy and sanctity over his body and stead. The concept of private property and land ownership is very relevant in this regard to prevent any form of trespassing (Khan, 2023).

Four articles of the present Constitution of Pakistan deal with private property rights in the country. These include Articles 23, 24, 172, and 173 (Ullah & Najib, 2022).

Article 23 illustrates that “Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest”.

Article 24 states that “No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given”.

Article 172 mentions that “Any property, which has no rightful owner, shall, if located in a province, vest in the Government of that province and in every other case, in the Federal Government”. It simply means that if either the federal or the Provincial Government does not own a property, then private individuals shall own it.

Article 173 establishes Federal and Provincial Governments’ rights to purchase or acquire any property that shall vest in the Federal or concerned Provincial Government.

Such strong constitutional footing gave way to enacting necessary substantial and procedural laws to ensure that such constitutional rights of owning lands unencumbered is upheld. A functioning bureaucracy concerning land administration is also found within the territory of Pakistan. The General purpose of such system is to maintain land records and smooth collection of revenue. However, it also helps directly and indirectly in asserting people’s right to exercise ownership in land.

Moreover, Articles 23 and 24 of the Pakistani Constitution are from the Chapter 1 of the Part II, which contains the provisions of Fundamental Rights. These rights are called to be justiciable; meaning any violation of these rights

may be addressed by the higher judiciary under the provisions of Article 199 (*The Constitution of the Islamic Republic of Pakistan, 1973*).

3.8. Sri Lanka

With a history spanning monarchy, colonial domination, and ultimately elected governance, Sri Lanka has experienced an exceptional evolution in the rules, regulations, and usage of land that govern it (*Pinto-Jaywardena, 2012*). Property matters are handled non-discriminatorily in Sri Lanka. In Sri Lanka, equal ownership of land, property, and other business activities is established under the Constitution (*Wageindicator Foundation, 2024*). The acquisition of land by women is not prohibited. Property can be acquired and disposed of by men and women equally. There may be some disparities in who owns land and other property due to Sri Lanka's personal laws. Sri Lanka's Land Development Ordinance can be criticized of discriminating against women in land ownership (*Menaka, 2013*). The majority of Sri Lanka's lands are privately owned, however the government is able to acquire private land for "public purpose" (*Pinto-Jaywardena, 2012*). The state has this authority by virtue of the Land Acquisition Act No. 9 of 1950. The Ministry of Land, the primary agency overseeing lands, was established in 1932. The objectives of the Ministry are to acquire and manage state land policy, safeguard state lands, and implement land acquisition and settlement initiatives for public purpose. The state defines "public purpose" in an extremely wide sense. For instance, land has been acquired for public uses like as reservoir projects, highways and development of infrastructure, police stations, luxurious apartment buildings and commercial centers, military barracks, and hotels managed by the military (*Pinto-Jaywardena, 2012*).

The Sri Lankan Constitution does not specifically recognize the right to possess land as a fundamental right. However, based on the principle of the Rule of Law, one may challenge a State acquisition on the grounds of arbitrary behavior. This would arise from the right to equality. Even while this development is now a part of the country's legal philosophy and the right to equality commonly applies to land acquisitions as well, there is still a rival school of judicial thinking that bases the right to equality on the "equally circumstanced" notion. This is based on the notion that a landowner's application alleging a breach of fundamental rights may only be approved if the landowner can provide evidence of particular discrimination against another owner who is in a comparable circumstance and has been given preferential treatment or different treatment.

The right to equality is protected by the constitution of Sri Lanka. Art 12 (1) of the Sri Lankan Constitution states that "All persons are equal before the law and are entitled to the equal protection of the law." Meanwhile Art. 12 (4) of the Sri Lankan Constitution states "Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons." If there is an attempt to alter personal laws, this section should be used to legitimize the action. The fun-

damental right to equal treatment and protection under the law prohibits discrimination on the basis of race, religion, or sex. However, the application of this fundamental right is severely limited by the provision in Article 16 (1) of the Constitution, which appears in the same fundamental rights chapter and states that “all existing written and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.” This implies that even though legislation that violated the fundamental human rights guaranteed by the Constitution and by international law were in place before the Fundamental Rights Chapter was passed in 1978, they would still be in effect. Since the Constitution forbids judicial review of existing law, personal laws that existed prior to it could not be upheld, not even by the courts (Thamilmaran, 2013).

In addition, under Article 140 of the Constitution, an acquisition may be opposed by submitting a petition for an order in the form of a Writ of Certiorari, prohibition or Mandamus. This can be done on the grounds of the well-known Administrative Law doctrines of oversight of law on the subject of evidence and *ultra-vires* (substantive and procedural), which are subsequently settled and encompass the concepts of illegality, irrationality proportionality (Pinto-Jaywardena, 2012). The English Law’s notion of reasonableness was also included into the legal system as an outgrowth of the *ultra-vires* concept, which was later encapsulated in the theory of proportionality.

Although equality is a fundamental right in Sri Lankan constitution, traditionally, the majority of property is passed through to male family members who are expected to be the breadwinners in the foreseeable future (Wijetunge, n.d). As now the constitution maintains an inclusive stance on land, property, and company ownership, subject to the limitations set by law, both men and women are able to lawfully own, transfer, inherit, and dispose of any land and property. However, in practice the majority of the Sri Lankan people like to transfer property inheritance to male members by thinking them as the future wage earner. In rural areas male enjoys maximum control over land and women’s subordinate position and dependency have been further aggravated (Wijetunge, n.d.).

4. Conclusion

This comparative analysis of the right to property in South Asian constitutions sheds light to the fascinating relationship between the states of this region and their shared legal history and somewhat divergent postcolonial journey in the field of constitutional property law.

While all the constitutions examined acknowledges right to property in one form or another, the nature and scope of such rights varies from country to country at least to some extent. The right to property is recognized in many south Asian countries such as Bangladesh and Nepal as fundamental rights while some other countries like Sri Lanka and Bhutan did not enlist this as fundamental right in their constitution. India put a distinct example by reverting the right

to property from fundamental to mere constitutional right. But it is a common factor in all South Asian countries that their constitutions recognize and protect right to property for their citizen.

It is a common factor that can be observed among the examined constitutions of the South Asian nations that the right to private property ownership is recognized and the protection mechanism against arbitrary deprivation of such right by the state is also provided. An effort is made to strike a balance between the right of an individual to own property and the prerogative of the state to curtail such right for public purposes such as land acquisition for infrastructure development. In this regard the influence of the British Common Law can be observed by the means of due process for acquisition of property.

Some differences can be found in the essence of the provisions of the examined constitutions, especially because of some uniqueness have been formed in the legal systems of the countries of South Asia after their independence from the British colonial rule. The fact that each country has some differences in demography and culture has contributed substantially in this regard.

However, some challenges remain in the sense that the extreme density of population of this region is forcing the respective governments to curtail the rights, at least the right to own land property by imposing ceilings. The issues of climate change and environmental protection also pose some hurdles in this regard.

Nevertheless, this comparative study can be used as a platform to inspire future researchers in the field. It can work as a guide to the policy makers and legal scholars interested in the study of the right to property.

In conclusion, the Right to Property in South Asian constitutions reflects the complex realities of the region. It is a right in flux, shaped by historical legacies, socio-economic needs, and evolving legal interpretations. By acknowledging both the commonalities and divergences, we can foster a richer understanding of this fundamental or constitutional right and its role in ensuring a just and equitable society across South Asia.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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