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## Kaushik Das: The right to property

It is high time the government makes it a fundamental right again

**Kaushik Das / New Delhi April 14,2004**

Peruvian economist Hernando de Soto is the recipient of this year's prestigious Milton Friedman Prize for Advancing Liberty, which carries a cash award of \$ 500,000. The first winner of this biannual prize — started in 2002 by the Cato Institute — was the late London School of Economics economist Lord Peter Bauer. de Soto has been awarded this prize for his ground-breaking work on property rights.

According to de Soto, the people of less-developed countries seem to be poorer than they actually are because their wealth is often not formally recognised. As he has pointed out in his 1986 book *The Other Path*, "They have houses but not titles; crops but not deeds; businesses but not statutes of incorporation...."

Take India, for example. The Indian Constitution does not recognise property right as a fundamental right. In the year 1977, the 44th amendment eliminated the right to "acquire, hold and dispose of property" as a fundamental right. However, in another part of the Constitution, Article 300 (A) was inserted to affirm that "no person shall be deprived of his property save by authority of law". The result is that the right to property as a fundamental right is now substituted as a statutory right. The amendment expanded the power of the state to appropriate property for "social welfare purposes".

In other words, the amendment bestowed upon the Indian socialist state a licence to indulge in what Fredric Bastiat termed "legal plunder". This is one of the classic examples when the "law has been perverted in order to make plunder look just and sacred to many consciences".

Before we go into the technicalities of property rights, it is worth investigating how property rights evolved in the history of economic thought. It was John Locke, who first shocked the ruling class of his era by proclaiming in his masterpiece *Two Treatises of Government* (1690) that property rights existed prior to the government. So property right is not a creation of the government, but instead, the source of the government. In his own words, "Government has no other end but the preservation of property."

The other two great stalwarts to emphasise the role of liberty and property were David Hume and Adam Smith. They contended that formal property rights backed by a just and effective legal system, coupled with guaranteed liberty, were sufficient to set the wealth of nations on a course of almost eternal growth.

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Now, what exactly are property rights? Why are they so important? Let us proceed to investigate these questions in a step-by-step method.

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Property rights are defined as a bundle of entitlements defining the owner's rights, privileges and limitations for use of a resource. For a country that has eschewed the capitalist form of society for more than half a century, property rights make little sense for the elite socialist planners, simply because almost all the factors of production were concentrated in the hands of the state until just the recent decade. Private property in India has been looked upon with the utmost disdain and has been considered the root cause of disharmony among fellow citizens. But for countries that have astutely embraced capitalism, property rights form one of the three most important pillars for running the system successfully, the other two being free trade and liberty.

If we observe carefully, we will find that the numerous disputes we encounter relating to resources arise from the fact that no one owns them or perhaps because everyone owns them, as in the case of public property. It is not difficult to see that people care for their own property much more than they care for the public property. Many of the environmental problems we face today, ranging from pollution, the depletion of rainwater forest or animal species becoming extinct, are largely due to the absence of formal property rights.

One of the greatest problems that is staring in our face today in India is the scarcity of private investment in real estate for poor people. Real estate prices have been artificially hiked due to the effects of draconian laws such as rent control. This infringement of property rights has led to the emergence of numerous slums, run by slumlords.

However, these disputes could be resolved if the unclaimed resources were divided up as private property. Then if someone wanted to use your property, you could charge them a fee. Or if they exploited your property, you could sue them in court. Assigning property rights greatly enhances the ability to resolve disputes over the use and abuse of resources.

A recent spate of studies, pioneered by William Easterly of the Centre for Global Development and Ross Levine of the University of Minnesota, points out that sound institutions such as political stability, property rights, legal systems and patterns of land tenure are more important for development than the geography of the country or economic policy.

The recognition of de Soto's work on property rights could not have come at a better moment. The timing coincides perfectly with China's decision to incorporate property rights in its constitution. These two landmark accomplishments elucidate the immense efficacy of sound institutions such as property rights to the rest of the less developed countries. Indian politicians and legislators should take lesson from these two unprecedented achievements and waste no more time in incorporating property rights as a part of the Indian Constitution if they really want India to be counted as one the developed countries of the world. If a communist country like China is able to appreciate the importance of property rights, why should we Indians lag behind?

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