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MAPPING LAND ACQUISITION JURISPRUDENCE OF INDIA AND THE JUDICIAL INTERVENTIONS RELATING TO IT

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ABSTRACT:

Land is a fundamental requirement for any person and this includes the government too. From cultivation to building of skyscrapers, land is the most basic and necessary requirement. The civil society, as we know has realised this way back and has made laws to handle land-related issues. Land acquisition is one such issue that is always a matter of dispute between the government and individuals. This paper initially explores the historical aspects of land acquisition laws and their emergence. The paper also looks into constitutional provisions and validity relating to land acquisition laws. This paper aims to understand the laws that are presently in place in India to govern such land acquisition issues. It also focuses on certain laws that were previously governing this issue and tries to explore the reasons for repealing those laws. The paper also touches upon some of the significant judicial decisions that have shaped the land acquisition jurisprudence in our country. The paper also focuses on the recent 9-bench judgment of the Supreme Court in the *Property Owners Association v State of Maharashtra* case. The paper concludes by showcasing the current scenario and situation revolving around land acquisition.

Keywords: 1. Land Acquisition, 2. Property Laws, 3. Land Laws, 4. Fair Compensation, & 5. Supreme Court

INTRODUCTION:

Land acquisition is an evergreen issue that never stops growing. It is a process where the state i.e. both the Central & State Governments acquire the lands owned by private individuals for the purpose of infrastructure and other developments. Though land serves as a basic requirement for general public and private individuals, the Government is provided the right to acquire their lands for a public purpose provided that a justified compensation is paid to the

owners. Many questions have arisen as to how such acquisitions can violate the fundamental and constitutional rights of the citizens and they have been answered accordingly by both the legislature and judiciary. These land acquisition enabling laws have time and again come under scrutiny before the courts and have undergone changes that are made by the parliament.

It is safe to say that the jurisprudence behind such laws kept changing but the core principle was to ensure that these laws do not violate the rights of the land owners because post-traditional liberal democratic theories of justice assume that all humans possess equal value and should be treated equally, governed by laws that apply universally.¹ Though the Constitution provides for such acquisition, there was a need for the government to enact laws specific to this purpose. Be it the Colonial British Government or the present Indian Government, both have made many laws to sort out issues relating to land acquisition. Different laws have been enacted during different periods repealing the previous ones and they have undergone various amendments time and again to accommodate the answers given by the courts pertaining to some substantial questions of law.

HISTORICAL BACKGROUND & PRE-INDEPENDENCE PERSPECTIVES OF LAND ACQUISITION IN INDIA:

Ancient Period:

In ancient India, land ownership symbolized social status, with those possessing more land being accorded greater respect and perceived as more valuable.² During the ancient era when kings used to rule over people, the lands were said to belong to the kings by default. The lands were owned by the kingdom and were given to people at their will and the same was taxed by the administration. Pertaining to India, early records and scripts like *Kautilya's Arthashastra* have affirmed the above statement. Kautilya suggested king have control over the land however discouraged complete ownership.³ When it comes to *Manusmriti*, it links the ownership of the land to those who cultivate it. It states that "*Land belonged to him who first cleared the timber and a deer to him who first wounded it.*" On the other hand, Dharmashastra provides for communal ownership of land. It affirmed that no king can allocate land as it belonged

¹ Y.P. Bhagat, Kumar Keshav & Ranjeeta Singh, *Commentary on The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (Vinod Publications (P.) Ltd. 2022).

² Henry Maine, *Ancient Law* (J.M. Dent & Sons Ltd., London, introduced by Prof. J.H. Morgan), available at <http://www.loyalbooks.com/download/text/Ancient-Law-by-Sir-Henry-Sumner-Maine.txt>.

³ *System of Land Tenure in Pre-Independent India*, *Your Article Library*, available at <http://www.yourarticlelibrary.com/india-2/system-of-land-tenure-in-pre-independent-india/4821>.

collectively to the people.⁴

Mughal Period:

Post the ancient era, Islamic leadership started ruling over several parts of the country and they brought in a few reforms. Rulers like Akbar and Sher Shah Suri created some land reforms and taxation procedures. Under these systems, land was categorized into *Khalsa* (directly under the central authority), *Ekta* (given to officials in lieu of salary), and donated lands (for scholars and priests). The intermediate land-owning class collected taxes from farmers until Allauddin Khilji centralized tax collection. Sher Shah Suri's *Jabt* system set taxes based on land size, improving farmers' relations with the state and reducing exploitation.⁵ Akbar maintained *Khalsa* and *Jagir* lands, with a powerful *zamindar* class and two types of farmers: *Khudkashta* (land-owning) and *Pahikashta* (landless).

British Period:

The British era was known to be the most notorious timeline for land reforms and land laws. They inherited some of the systems that were previously kept in place by previous rulers and shaped them in a way to make sure they reap the benefits through taxes. They also systematically centralized the process and made it much more streamlined to ease the administrative process. The colonists also introduced many land revenue systems which acted as a trial and error process to pick out the best system that ensured proper collection of tax. These systems *inter alia* include the *Zamindari System*, *Ryotwari System*, & *Mahalwari System*.⁶

When it comes to land acquisition, the British again set it straight by introducing the Bengal Regulation 1 of 1894. It was the very first legislation in India relating to Land Acquisition. It provided for the company to acquire land for public purpose and welfare. This was followed by the Bombay and Madras Regulations in 1839 and 1854 respectively. With the introduction of Railways and other public works, the acts and regulations had to be improvised and amended. For instance, Act VI provided for the issuance of compensation while Act X

⁴ Tharanath & Vinaya V.S., Land Ownership and Land Acquisition Regime in India, 11 *Int'l J. Humanities & Soc. Sci. Invention* 101 (2022), available at <https://doi.org/10.35629/7722-1112101107>.

⁵ *ibid*

⁶ Dr. Md. Hamid Husain & Firoj High Sarwar, A Comparative Study of Zamindari, Raiyatwari and Mahalwari Land Revenue Settlements: The Colonial Mechanisms of Surplus Extraction in 19th Century British India, 2 *IOSR J. Humanities & Soc. Sci.* (2012).

introduced in 1870 allowed the civil courts to look into land acquisition disputes and compensation matters. This was to curtail the arbitrariness of the collectors and revenue authorities who determine the compensation. Before the British rule, to adjudicate such disputes, farmers had to approach village panchayats. However, post the introduction of these laws by the company, people had to approach the courts.⁷ Whether it is a positive or a negative change is still debatable.

The British at a later point consolidated all these outcomes to enact the Land Acquisition Act of 1894. With the growing demand for land especially due to industrialisation, infrastructure development, etc this act was necessary to ensure expedited acquisition of lands without disputes. The act allowed the government to acquire lands for companies and private institutions which in turn promised to provide job opportunities. However, these promises just appear on paper but the practical applicability of the same was missing. Neither the Government nor the companies kept their promises. On the other hand, landowners stood landless with unfair compensation. In the name of public purpose, the lands of private individuals were taken away, and were left unskilled with no jobs to do.⁸ The act was also criticized for its *Urgency Clause* under Section 17 which provided for the Government to bypass procedures under Section 5A denying them the right to get injunction or object to such acquisition. This is both arbitrary and against the principles of Natural Justice.

POST-INDEPENDENCE SHAPING OF LAND ACQUISITION JURISPRUDENCE:

Post-independence, the Constitution of India was introduced. One of its most significant specialties is to ensure guaranteed fundamental rights and natural justice. Even land acquisition should be in line with these provisions and any violation of the same would render the process invalid. As we know today the right to property is a constitutional right under 300A and not a Fundamental Right like it used to be under Article 19 (1)(f) and Article 31 as amended by the 1st and the 44th amendments of the constitution. The intention is not to make land a fundamental right to the citizens which will ultimately stop land acquisition dead in its tracks. However, this did not make way for the parliament to suppress citizens by taking their land

⁷ Simran Arora, Land Acquisition in India, *SSRN* (Jan. 27, 2017), available at <http://dx.doi.org/10.2139/ssrn.2906856>.

⁸ Janhavi S S, An Overview of Land Acquisition Act and Human Rights Issues, 2 *Int'l J. Humanities & Soc. Sci. Invention* (Sept. 2013).

arbitrarily and without compensation.⁹

Initially, the acquisition and requisition of property in India were covered under Article 31 and various entries in the Seventh Schedule. However, the 44th Amendment Act of 1978 removed Article 31, eliminating the fundamental property right. Instead, the right was reintroduced as a legal right under Article 300A, with property acquisition and requisition now governed by this article and entry 42 of the Seventh Schedule. Payment of compensation and abiding by the principles of Natural Justice is the sine quo non for land acquisition. For a state law on land acquisition to be valid, it must receive the President's assent. Additionally, if a law involves acquiring land under personal cultivation within the legal ceiling limit or includes buildings on such land, the state must pay compensation at no less than market value.¹⁰

POST-INDEPENDENCE JUDICIAL DECISIONS IMPACTING LAND ACQUISITION JURISPRUDENCE IN INDIA:

The case of *I.C. Golaknath Vs. The state of Punjab*¹¹ can be considered as one of the very first and most important cases to deal with land matters. The petitioner challenged the vires of the Punjab Security of Land Tenure Act of 1953 over its land ceiling provisions. The challenge was based on the Right to Property being a fundamental right under Article 19 (1)(f). The case raised key issues: whether Parliament could amend fundamental rights and if such amendments fell under Article 13(2). Contrary to the prevailing belief that all parts of the Constitution were amendable as held in the *Shankari Prasad v. Union of India*¹² case, the Supreme Court ruled that fundamental rights in Part III could not be altered through the amendment process in Article 368; any change would require a new or radically different Constitution.

Following the 44th Amendment, the Right to Property ceased to be a fundamental right and is now a constitutional right under Article 300A, stating that no person can be deprived of property except by legal authority. In *Jilubhai Nanbhai Khachar v. State of Gujarat*¹³, the Supreme Court held that the Right to Property is not part of the Constitution's basic structure but only a constitutional right. Similarly, in *Hari Krishna Mandir Trust v. State of*

⁹ Bishambar v. State of UP AIR 1982 SC 33

¹⁰ P.K. Sarkar, Law Of Acquisition Of Land In India 1 (Eastern Law House 3d Ed. 2012).

¹¹ I.C. Golaknath Vs. State of Punjab 1967 AIR 1643

¹² Sankari Prasad Vs. Union of India 1951 AIR 458

¹³ Jilubhai Nanbhai Khachar Vs. State of Gujarat AIR 1995 SUPREME COURT 142

*Maharashtra*¹⁴, the Court ruled that depriving the appellant of private land without legal authority would violate Article 300A.¹⁵

Another landmark case dealing with land acquisition and the constitution is the evergreen *Kesavananda Bharati Vs. State of Kerala*¹⁶ case. In this, the petitioner challenged the acquisition of land under the Kerala Land Reforms Act, 1963 arguing it to be violative of Articles 25, 26, 14, & 19(1)(f). A relationship between the acquisition of land for public purposes and the right to property was established. The outcomes of this judgment led to the amendment of the constitution which changed the right to property from being a fundamental right to a mere constitutional right.

In the *Kesavananda Bharati* case, the Supreme Court ruled that judicial review is a core aspect of the Constitution, immune from amendment under Article 368. Consequently, the Court limited Article 31C's scope regarding judicial review. Undeterred, Parliament expanded Article 31C through the 42nd Amendment in 1976, stipulating that laws promoting DPSPs couldn't be invalidated for bypassing fundamental rights under Articles 14 or 19. However, the *Minerva Mills Vs. The Union of India*¹⁷ case later nullified this extension.¹⁸ The 44th Amendment in 1978 abolished Article 19(1)(f), removing the right to property as a fundamental right. Property rights moved from Part III to Article 300A, stating, "No person shall be deprived of his property save by the authority of law," eliminating the previous immediate remedy under Article 32.

INTRODUCTION OF THE LAND ACQUISITION, REHABILITATION, AND RESETTLEMENT ACT, 2013:

After pondering upon discussions like compensation, fair treatment, natural justice, etc the parliament introduced the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Herein after LARR Act). The act's target is to

¹⁴ Hari Krishna Mandir Trust vs. State of Maharashtra AIR 2020 SUPREME COURT 3969

¹⁵ Chanchal Kumbhkar, Land Acquisition in India: A Critical Study Concerning Legal Rights, *Academike*, available at <https://www.lawctopus.com/academike/land-acquisition-in-india-a-critical-study-concerning-legal-rights/>.

¹⁶ Keshavananda Bharati vs. Union of India AIR 1973 SUPREME COURT 1461

¹⁷ Miverva Mills Vs. Union of India 1980 AIR 1789

¹⁸ Nakshatra Gujrati, Land Acquisition Act: History & The Need to Strike Down Right to Property, *Manupatra Articles* (Sept. 20, 2022), available at <https://articles.manupatra.com/article-details/Land-Acquisition-Act-History-The-Need-to-Strike-Down-Right-to-Property>.

achieve fair compensation and transparency in land acquisition proceedings. The 2013 Act categorizes land acquisitions for government use, PPPs, or private companies for public purposes, with provisions for compensation, rehabilitation, and resettlement. It mandates a Social Impact Assessment (SIA) to evaluate the project's effects on the community. For PPPs and private acquisitions, affected family consent is required (70% for PPPs, 80% for private). Compensation is based on fair market value, with additional solatium, and includes comprehensive resettlement support. The Act emphasizes fair compensation, ongoing support for displaced families, and infrastructure for resettlement, addressing past inadequacies in large-scale projects.

The 2013 Act, though an improvement, has several issues. Calculating fair market value is challenging due to undervalued sale deeds and black money, often leading to inadequate compensation for landowners. While the Act mandates rehabilitation and resettlement, it excludes temporary land acquisitions. Consent from affected families is required only for private or PPP projects, not for government acquisitions, allowing forcible acquisition for state use. States object to its coverage of agricultural land, arguing it falls under state jurisdiction. Some key laws, like the Railways and Electricity Acts, are exempt from the Act's provisions, creating inconsistencies. The broad definition of "public purpose" is often misused, leading to unjust displacement. Judicial oversight is needed to prevent misuse and ensure transparency, while administrative reform is required to curb state power and improve the fairness of acquisition processes.¹⁹

IMPACT OF THE SUPREME COURT'S POA CASE RULING IN ACQUISITION AND PRIVATE OWNERSHIP OF LAND:

On November 5, 2024, the Supreme Court finally delivered its judgment on one of India's oldest pending cases *Property Owners Association Vs. State of Maharashtra*.²⁰ This case and other relevant petitions have been pending before the top court since 1992. It deals with a significant topic that is still fresh for debate wherein the discussion touches upon the aspects of redistribution of wealth. The contention revolves around articles 39(b) and 39(c) of the constitution of India wherein, the former calls for the distribution of material resources of the community to subserve the common good while the latter discourages the concentration of

¹⁹ Prof. Kahkashan Y. Danyal, Land Acquisition in India - Past and Present, 2016 *Jamia L.J.*, available at *Manupatra Articles*.

²⁰ Property Owners Association Vs. State of Maharashtra 2024 LiveLaw (SC) 855

wealth. The substantial questions of law before the Apex Court were– i) Whether the “material resources of the community” provided under Article 39(b) include privately owned properties? ii) Whether the provisions of article 31C struck down in the Keshavananda Bharati case stand revived?

The issues in this case initially arose in the year 1986 when the Maharashtra Housing and Area Development Act (MHADA) of 1976 was amended to include Chapter VIII which allowed the state (Mumbai Building Repair and Reconstruction Board) to acquire residential properties for reconstruction. The amendment was inspired by the provisions of Article 39(b). Aggrieved by this, the petitioners challenged the impugned provisions stating that it gave unfettered power to the state to acquire properties arbitrarily without proper compensation. They contended that it is against fundamental rights under Articles 14 & 19. They also argued that after the *Minerva Mills* judgment struck down the provisions of the 42nd Amendment and Article 31C, the existing provisions of the article were dead and could not be revived automatically unless done explicitly through parliamentary action.

Before diving into the court’s view, it is pertinent to understand the arguments placed by the state. They contended that private property can be a part of the material resource of the community if the purpose is to subserve the common good. To support this argument, they quoted Justice V.R. Krishna Iyer’s dissenting judgment from the case *State of Karnataka Vs. Shri Ranganatha Reddy*²¹ wherein he stated that all man-made resources be it public or private, are covered under material resources provided in Article 39(b). However, this opinion was not supported by the rest of the bench and they stated that they do not subscribe to the view of Justice Krishna Iyer on this aspect of Article 39(b). They did not express any opinion on the subject matter as well. Fast forward, in the cases, *Sanjeev Coke Manufacturing v. Bharat Coking Coal Ltd.*²² and *Mafatal Industries Ltd. v. Union of India*²³ the Apex Court on both occasions did subscribe to the view put forward by Justice Krishna Iyer. Relying on these precedents, the state cemented its argument stating that private property is part of material resources under Article 39(b). As far as Article 31C is concerned, the respondents were of the opinion that the expanded scope of Article 31C provided by the 42 Amended was alone struck down by the court in the *Minerva Mills* judgment. They stated that since the amendment was

²¹ State of Karnataka Vs Shri Ranganatha Reddy 1978 AIR 215

²² Sanjeev Coke Manufacturing Co. vs. Bharat Coking Coal Ltd. 1983 AIR 239

²³ Mafatal Industries Ltd. Vs. Union of India AIRONLINE 1996 SC 1268

struck down, the existing provisions of Article 31C stood revived by relying on the Doctrine of Revival.

Following the dismissal of these petitions by the Bombay High Court, an appeal was filed with the Supreme Court. Initially, a three-judge bench referred the case to a constitution bench, and later, in 2002, a seven-judge bench escalated the matter to a nine-judge bench.. It has been more than two decades since then and now finally the Apex Court has given the verdict in this matter in November 2024. For starters, the majority of the bench (6-2) which included the Chief Justice of India D.Y. Chandrachud did not subscribe to the views of Justice Krishna Iyer in the *Ranganathan Reddy* case. They also held the other two judgments– *Sanjeev Coke & Mafatlal Industries* that endorsed Justice Iyer’s views to be erroneous. They stated that “*Not every resource owned by an individual can be considered a 'material resource of the community' merely because it meets the qualifier of 'material needs.'*”

The bench also called for the application of the Public Trust Doctrine here to the extent of determining if a resource qualifies as a "material resource of the community" depending on its nature, characteristics, impact on community well-being, scarcity, and the effects of its concentration in private hands. It was categorically stated that the views of Justice Iyer and the bench in *Sanjeev Coke* were in line with some economic perspectives and the same was not the intention of the framers of the constitution.

Though the majority refused to side with the precedents and the views of Justice Iyer, 2 Judges– Justice B.V. Nagarathna and Justice Dhulia had a dissenting opinion. While partially agreeing with the majority, Justice B.V. Nagarathna refused to accept that *Sanjeev Coke* judgment violated judicial discipline and sided with the opinion of Justice Krishna Iyer. She also stated that "Material resources" include state-owned and most private assets, excluding personal items. These resources can be communal through nationalization, acquisition, or donation. Distribution should serve the public, either through state retention or allocation to individuals via lawful means. Meanwhile, Justice Dhulia gave a dissenting judgment stating that Articles 38 and 39(b) and (c) reflect the developmental philosophy India adopted, emphasizing social and economic equity. Despite political and legal equality, significant wealth inequality persists, as noted by Dr. Ambedkar. Therefore, the broad interpretation of "material resources of the community" by Justices Krishna Iyer and Chinnappa Reddy in *Ranganatha Reddy* and *Sanjeev Coke* remains relevant and valuable in addressing these inequalities. It is important to state that,

the whole unanimously laid down that Article 31C is valid to the extent that was held valid in the *Keshavananda Bharati* Case and the same is to remain in force.

In the opinion of the authors, it is stated that this judgment is in the right direction so as to ensure that there is no arbitrary acquisition of property. Of course with utmost respect to the opinions of Justice Krishna Iyer in the *Ranganatha Reddy* judgment and to other Hon'ble judges proposing similar views, the authors beg to disagree with the same. It can be acknowledged that the dissenting views are rooted in a socialist perspective and give effect to the provisions of the constitution that are socialist in nature. However, the civil society is evolving toward a state where the capitalist approach gains popularity and private ownership is considered vital. An arbitrary acquisition action of private property by the state under Article 39(b) will defeat the purpose of the Right to Property as it makes way for easy acquisition under the mere umbrella of "common good." If accepted, this could also defeat the purpose of the LARR Act, 2013 where fair compensation can be denied just because the acquisition is based on the common good. The intentions of Justice Iyer and other Justices are noble and their aim to control societal inequality is to be appreciated however, the impact of providing such unfettered powers to the state in this post-liberalisation world could prove to be fatal. It is again imperative to recall the *Keshavanada Bharati* judgment to stem the fact that fundamental rights cannot be abridged to implement directive principles. Though Justice Iyer and others' views aim to uphold the socialist spirit of the directive principles, the implementation of the same could become catastrophic to the extent that it violated the fundamental rights of private owners of properties.

CONCLUSION:

Land Acquisition is one of the most extensive and inquisitive matters that concern the citizens. As we understand, land is a fundamental requirement and it impacts the lives of people at different levels. When the state decides to acquire such lands it has to consider various things. After analyzing everything that is written in this paper, it is understood that the government cannot act upon such acquisition arbitrarily. This paper explores land acquisition in India, tracking its historical development, the progression of property rights, and the effects of eliminating the Right to Property as a fundamental right. However, issues remain, including vague definitions of "public purpose" and power imbalances between the state and landowners. Effective implementation requires close scrutiny of the government's actions and strengthened judicial oversight to prevent misuse under the guise of public purpose and to better protect

landowners' interests.

This paper examines the origins and evolution of land acquisition in India, the link between land acquisition and the right to property, and the changes from the 1894 Act to the 2013 Act. While the right to property was removed as a fundamental right to support equitable development, this impacted small landowners and farmers. Although the 2013 Act improves compensation mechanisms, affected parties still face barriers to quick legal remedies in disputes. The 2013 Land Acquisition Act includes protections for affected families, requiring a Social Impact Assessment and mandating land return if unused for five years, along with fairer compensation. However, the Act has flaws that need resolution for greater fairness. A balance is necessary between corporate land needs and protecting farmers and landowners. Development must consider both industrial growth and agriculture, recognizing the importance of food security alongside economic progress.

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11. *Mafatlal Indus. Ltd. v. Union of India*, AIR ONLINE 1996 SC 1268.

Legislations and Statutory Provisions:

1. The Constitution of India, 1950.
2. Land Acquisition Act (1894).

3. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Herein after LARR Act).
4. Bengal Regulation 1 of 1894.

