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LAND ACQUISITION IN INDIA BALANCING GROWTH AND RIGHTS

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ABSTRACT

Every person has the right to own, possess, and enjoy their property without interference from anyone. However, because of certain exceptions and irregularities under Article 300 of the Constitution, which discusses eminent domain, and certain provisions in the Land Acquisition Act of 1894, there are issues such as the fact that the compensation paid is insufficient given the state of the market and that the evicted landowner has not received satisfactory rehabilitation. This research paper will go into further detail about whether violating someone's rights can be justified in light of society's overall welfare. The development of the legislation controlling land acquisition, a few rules concerning compensation, and the adoption of the Indian right to property will all be covered in this research paper. I would like to remind the readers once more that acquisition is a very broad topic that is governed from the beginning by a number of regulations. I will therefore limit myself to the purpose of this research work. The Land Acquisition Act of 1894 and the LARR Act of 2013 would be analyzed in relation to each other. We would be aware of any conflicting ideas, such as the right to property, the principles of eminent domain, etc., as well as how the concepts of property and compensation were portrayed, whether the compensation provided by the acts is satisfactory to the individuals covered by them, and how the compensation scheme evolved over time. We would examine the justification for designating the right to property as a basic right.

INTRODUCTION

Nowadays, land is used for building homes, cultivating crops, and improving one's social standing. Property definitions have changed over time, despite what the general public believes. In the past, there was a period in human history when the king possessed all property, including people, animals, and land¹. A property's worth used to be based on how many cows and bullocks it had. As a result, the land property became more important. The British ideology

¹ Nakshatra Gujrati, Land Acquisition Act, Manupatra, Pg 1, September 20, 2022 <https://articles.manupatra.com/article-details/Land-Acquisition-Act-History-The-Need-to-Strike-Down-Right-to-Property>

of acquiring land for public welfare reasons is what gave rise to the concept of the Land Acquisition Act. In 1850, special provisions were added to several acts, such as the Madras Act XX of 1852 and the Building Act XVIII of 1839². This was because railways were first introduced at that time, and the government needed land to widen roads, build canals,³ build railway tracks, etc. Anything the government wanted to acquire would be included in the public welfare clause. The Land Acquisition Act of 1894 had to be implemented as a result of the East India Company's belief that all laws should be abolished and replaced. In 1857, terms such as arbitration, compensation, and civil proceedings were first introduced. This may sound too good in theory, but in reality, arbitration was corrupted and inadequate.

LAND ACQUISITION ACT 1894

This led to the development of the Act of 1894, which subsequently underwent several amendments. The idea of filing objections to the purchase and having them heard by the relevant body was established in 1923, marking the most significant change. The fact that the Act of 1894 only applied to British India and not the princely kingdoms is among the most crucial points to remember. The Travancore Land Acquisition Act of 1809 and the Hyderabad Land Acquisition Act of 1899 are two examples of the land purchase laws that the princely kingdoms drafted. It was acknowledged that without land, the topic of compensation could not be discussed. The inviolability of one's house was one of the specific rights guaranteed by the house Bill Rule, which went into effect in British India in 1895. The Government of India Act of 1935, which gave British subjects in India certain rights, was the first document to clearly define the right to property. The Land Acquisition Act of 1894 was in effect until 2013, but there were a number of problems with it, such as the fact that the compensation given to individuals in the name of a public purpose was neither legitimate nor justified, the ambiguity of the term "public welfare" because it was solely determined by an executive authority, One of the most significant problems with the act was that the compensation given to the evicted renters was insufficient, and rehabilitation of the displaced inhabitants was not precisely a method under the act. All of these abnormalities were exacerbated by the Indian Constitution's poor process for claiming compensation and the destruction of the right to property.

² Madras Act XX, 1852

³ Law Commission of India, Law of Acquisition & Requisition of Land (Law Com No 10, 1958).

ISSUES WITH THE LAND ACQUISITION ACT 1894

Sections 6 and 9 of the property purchase Act of 1894, which deal with compensation claims and property purchase under public benefit, were troublesome since they weren't functioning properly. This might also apply to section 54 of the act, which discusses judicial proceedings. Certain cases, such as *Nabin Chunder Sarma v. The Deputy Commissioner of Sylhet*⁴, demonstrate how the main issue in this case was that the old act of 1870 was repealed and the new act of 1894 was passed while the case was still pending. As a result, the situation was peculiar in that the petitioner unintentionally alluded to dist while the case was in district court. Despite the fact that the unnamed collector of this plea increased the amount of compensation, the judge no longer want to pursue legal action against the collector. The petitioner is no longer qualified for the higher compensation amount, the district judge said. The petitioner, Nabin Chunder, then petitioned the Calcutta High Court for a greater compensation judgment. The court decided that, in accordance with Section 25 of Act No. 1 of 1894.⁵

Since the applicant or petitioner himself withdrew from the case and wants to return because of the higher compensation requested by the other party, the applicant was not disqualified to obtain the benefit of the enlarged sum set by the judge, which was quite ambiguous in nature. In a different instance, the Baroora Tea Garden's 17.4 acres were acquired by the Sylhet administration in order to build the Assam-Bengal railways. The railroad divided the tea garden in two. The deputy commissioner gave the tea estate's owner 1,675 rupees per acre. The tea garden's owner also asked the deputy commissioner to enhance his compensation, claiming that the division of the land had made it more expensive for him to operate his business. When the Deputy Commissioner rejected the landowner's claim, he launched a lawsuit to get compensation. The court stated that it may be taken into consideration after calculating or assessing certain parameters, which were once again peculiar. Section 23 of the Land Acquisition Act 1894⁶ addresses factors to be taken into account while awarding compensation.

The act states that "the market value of the land at the time of publication of the notification, the injury suffered by the person interested or any standing crop got damaged by the act of acquisition, if the person is forced to change his place of residence, any diminution of profits

⁴ *Nabin Chunder Sarma v. Deputy Commissioner of Sylhet*, MANU/WB/0207/1896

⁵ Land Acquisition Act § 25, 1894

⁶ Land Acquisition Act § 23, 1894

during the publication under the said act's section 6⁷ and the actual taking of the land by the collector, all of these factors must be taken into consideration." Additionally, these were previously improperly complied with. taken into consideration. Additionally, these were previously improperly complied with.

VALIDITY OF LAND ACQUISITION RESPECT TO THE CONSTITUTION OF INDIA

The Indian Constitution of 1949 initially guaranteed the right to own and enjoy private property, but it was subject to a number of reasonable restrictions that had to be both fair and lawful. Additionally, there were clauses like "No person shall be deprived of his property save by the authority of law" found in Article 31(1)⁸. Furthermore, since the collector had the power to make purchases, it guaranteed that no one's property could be taken away by executive action, which is manifestly incompatible with the colonial system. However, the purpose of both acquisition and requisition was to purchase items for the benefit of the general public.

The Land Acquisition Act of 1870 and a few other British Raj regulations then made reference to compensation for the first time. It is noteworthy that although compensation was specified in British statutes, the 1949 Constitution's article 31(2)⁹ made it a basic right. It shows that it become a legally binding clause against the government. The administration's main point of dispute during this time was the fundamental right to compensation; nevertheless, the 4th, 17th, 25th, and 42nd amendments altered or weakened the concept of compensation itself.

The Fourth Amendment Act of 1955 modified the legislation such that, although Parliament must provide the compensation, its sufficiency cannot be contested. In contrast, the Supreme Court interpreted "compensation" as "whole sum." The Indian government then asserted that if it started paying compensation based on the full market value of the item acquired, it might not be able to sustain economic stability because the nation had just recently earned independence. The 25th (1971) amendment substituted "amount" for "compensation." In the end, the Kesvananda Bharti case demonstrated that the legislature could not set an arbitrary or false figure, even though the Supreme Court had once again left the matter up to judicial intervention.

⁷ Land Acquisition Act § 6, 1894

⁸ INDIA CONST. art. 31. Cl. 1.

⁹ INDIA CONST. art. 31. Cl. 2.

In response, the government enshrined exclusions in Articles 31A–31D¹⁰ and created particular acquisition criteria that were beyond the scope of Article 31. Prime Minister Indira Gandhi passed the 42nd Amendment Act of 1976 to restore her government's power after being alarmed by the Kesavananda Bharti case. Article 31 C's jurisdiction was expanded in 1976 with the passage of the 42nd Amendment Act.

Therefore, no law that adopts DPSPs can be declared unlawful on the basis that it violates on fundamental rights or that its rationality is called into question by Articles 14 or 19. However, the Minerva Mills case nullified this extension. Because the right to property was reduced to a mere constitutional right, removed from 31(1), and introduced as article 300 A¹¹ in the Indian Constitution, we can observe through these scenarios how slowly Article 191(f)¹² was diminished and its impact on society. Prior to the 44th Amendment Act, citizens could claim the right to property under the Supreme Court of India, meaning they could get speedy redress.

LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT 2013

Through ongoing examination and critique of India's earlier land laws. The recent act which is called the LARR act¹³ could solve some issues for example the act provides for measures such as adequate compensation, resettlement, and rehabilitation which the previous law didn't touch upon, the act was to be applied retrospectively for example if there was a suit in which the award of compensation wasn't given and is the acquisition happened 5 years ago then the entire acquisition was to be started fresh. The market value of the land and the assets would then need to be added and given in the case of urban areas, according to different formulas for compensation that stated that if the land was in an urban area, the value of the land would be multiplied by two.

CONCLUSION

In order to determine whether the concepts of land acquisition and the right to property are mutually exclusive, this paper looked at the history of land acquisition in India, the relationship between them, a comparison of the 1894 and 2013 land acquisition acts, and the reasons for

¹⁰ INDIA CONST. art. 31. Cl. A &D.

¹¹ INDIA CONST. art. 300A

¹² INDIA CONST. art. 19. Cl. 1. f.

¹³ Land Acquisition Act, Rehabilitation and Resettlement Act 2013

the necessity of eliminating the right to property as a fundamental right. However, some issues still exist, such as the most recent amendment, which does not require consent for government projects. As a result, many landowners may be evicted without proper plans for their rehabilitation and relocation. Since the colonial era, resettlement and compensation have been controversial topics. When the constitution attempted to address these issues by incorporating Articles 19(f) and 31, it became evident that land was also an essential resource for the country's development. Considering that 500 acres of property were privately held based on the facts of the IC Golaknath case¹⁴.

We can easily picture the Significant disparity in the distribution of land after the split. It was true that the government couldn't pay everyone for the additional land they held due to its financial circumstances at the time, but the right also applied to small landowners and farmers, who surely suffered when the constitutional provisions were repealed. Because the right to property mentioned acquisitions "except for the public objectives," the concepts of land acquisition and the right to property were not inherently incompatible. Even though the Land Acquisition Act of 2013 requires a procedure and compensation, injured parties are unable to petition the Supreme Court or a high court for a prompt resolution of their dispute, indicating that the swift redressal system has also been destroyed. Additionally, I think that eminent domain, which is covered by Article 300 of the Indian Constitution, should be subject to judicial review. This is because in certain cases, like Project Director, NHAI V. M. Hakeem¹⁵, government officials consistently gave Hakeem pitiful compensation for his land, which was taken away for public purposes—in this case, the construction of highways. Another problem with this Act, in my opinion, is that the LARR Act replaced the Land Acquisition Act of 1894, which had no definition of public purpose at all. The LARR Act does define public purpose, but its broad definition leaves little room for interpretation, making it impossible to imagine what would be considered activities for a public purpose. The majority of persons whose lands are stolen are impoverished and unable to pay legal expenses, despite the LARR allowing compensation issues to be filed before the Supreme Court. The average compensation is only around one-fourth of the land's market value, according to a review of 1660 rulings from the Punjab and Haryana High Court.

¹⁴ I.C Golaknath and Ors. v. State of Punjab and Anrs., MANU/SC/0762/1967

¹⁵ Project Director, NHAI V M. Hakeem, 2021

Given that meagre compensation is the default in land acquisition cases, the NHAI¹⁶ Act is even worse because it makes it impossible to effectively challenge the government-set compensation at all. The arbitrator is a government employee, and the court lacks the authority to increase the arbitral award. In my opinion, the government's authority to use its eminent domain rights in various situations should be constrained and clearly defined, and the definition of public purpose should be more detailed and exact.



¹⁶ National Highway Authority Of India Act, 1956s