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NAVIGATING PROPERTY RIGHTS IN CONTEMPORARY INDIA: EXPLORING NOZICK'S ENTITLEMENT THEORY

AUTHORED BY - PARIDHI DAVE¹

INTRODUCTION

The concept of property is not fixed but rather has evolved over time in a flexible and dynamic way. Its meaning varies across societies, legal systems, and historical periods, and even within the same society and legal system, it can differ significantly. Property can be classified in various ways, with one common method being the distinction between real or corporeal property and incorporeal property.

The burden of this paper is to explore the sphere of property rights in India via the lens of Nozick's entitlement theory, which asserts that all individuals acquire property either by just acquisition or just transfer. Tracing Indian history, wherein several socio-economic disparities have arisen over the decades, there have been many issues concerning land acquisition, land distribution and other property disputes. By examining the historical evolution of property, and the interaction of Nozick's theory with socio-economic realities, this research aims to provide a nuanced perspective on the state of property rights in contemporary India.

RESEARCH QUESTIONS

1. Whether Nozick's Entitlement Theory is applicable to the complexities of property rights in India?
2. Whether the theory addresses land acquisition and distribution issues contributing to socio-economic disparities in India?

RESEARCH METHODOLOGY

The methodology adopted for this paper is doctrinal. Emphasis will be placed upon the analysis of legal rules, principles or doctrines. For this purpose, the law shall be referred to with the help of the Constitution, digital sources, relevant statutes, judicial pronouncements, and discussions

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by renowned authors in books, debates and reputed journals.

SCOPE AND LIMITATIONS

The scope of this paper is restricted to corporeal property, with emphasis on land holdings. This paper does not cover intellectual property in its ambit. The limitations of the author are firstly, relatively limited field experience in the realm of property rights issues, which hinders the ability to provide nuanced insights. Secondly, there is a possibility of inherent bias which may unintentionally reflect in the research. Thirdly, placing reliance solely on one theory may result in a limited perspective.

ROBERT NOZICK AND THE ENTITLEMENT THEORY

ROBERT NOZICK

Robert Nozick is an American political philosopher and a libertarian. His seminal work is the book “Anarchy, State, and Utopia” written in 1974.

In the eighteenth and nineteenth centuries, Nozick advocated individualism and capitalism respectively. He especially criticizes John Rawls, perhaps one of the most influential political philosophers of the 20th century. Indeed, Nozick vehemently opposes the redistribution of power and maintains that it is in contradiction with the concept of self-ownership. He proposes the theory of entitlement, as an alternative theory to that of Rawls.

Before delving into Nozick’s theory, it is important to understand the theory propounded by Rawls. This will help in realizing why Nozick chose to not only contend what Rawls said, but also give his own theory.

RAWLS’ THEORY

Rawls has propounded that two principles of justice arise in the original position when analysed through the veil of ignorance. “These principles are in a hierarchical order.

1. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all

2. Social and economic equalities are to be arranged so that they are both to the greatest benefit of the least advantaged, consistent with just saving principles and attached to offices and positions open to all under conditions of fair equality of opportunity.”²

As far as Rawls is concerned a distribution can be labelled as ‘just’ “if everyone is entitled to the holding they possess under the distribution.”

ROBERT NOZICK’S ENTITLEMENT THEORY

Nozick disregards this theory of distributive justice offered by Rawls. Rather, drawing inspiration from Locke, he propounded his theory which is ‘the entitlement theory’ of justice.

According to Nozick: “If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

- (1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- (2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
- (3) No one is entitled to a holding except by (repeated) applications of 1 and 2”

In simple words, an individual’s holdings are just if they are acquired either by “just original acquisition” or “just transfer” and lastly, if injustice still prevails in certain aspects, then he offers the principle of “justice in rectification”

It is crucial to understand each of these principles, which are explicated below:

Justice in acquisition

“Justice in acquisition” sustains that an individual who acquires a holding in a just manner is entitled to that holding, i.e., properties that were not under the ownership of anybody are open to being acquired by an individual. In Nozick's view, the first act of acquisition confers unlimited rights of use and disposal. Nozick labels it as a historical process, when asked how the bearers acquire their property. He is unable to define and provide a specific definition as to which of the various “initial methods of initial acquisition” should be preferred. In addition to this, drawing inspiration from Locke’s labour theory – Nozick states that if an individual themselves creates anything from the resources acquired justly, then it is their own property.³

Taking an example, if an individual X comes across a patch of forest which is not owned by

² John Rawls, *A Theory of Justice* (1971)

³ Casey Rentmeester, ‘3. The Need for Basic Rights: A Critique of Nozick’s Entitlement Theory’ (*Socrates*, 2014) <<https://philpapers.org/archive/rentnf.pdf>> accessed 23 September 2023

anybody, then X can claim the forest as his own. Moreover, X can also derive profits from the wood that he sells.

Therefore, it can be said that this principle of justice in acquisition goes to the root question of “the legitimate first move.”⁴

Justice in transfer

According to this principle, an individual who acquires a holding in a just manner via transfer from another individual who has an entitlement to that holding, is justly entitled to the holding so acquired.

Arguably, Nozick has clearly failed to provide a clear interpretation of what he intended when he utilised the word “justice” in “justice in transfer.” It begs the question, whether justice should be taken in its broadest meaning, or should it have a specific meaning in terms of “justice in transfer”? There may arise a circumstance wherein one party may believe that such transfer was just and the other party may not. Nozick does not provide a solution for such grey areas.

An example of this is that if an individual X has a plot of land which he thinks is good for agriculture but since he does not wish to use it, he decides to sell it to a farmer for some consideration, much like a contract. Another example is that if X has a car, he can give it as a gift to his daughter.

Justice in rectification

The society is not always ideal and injustices are unavoidable. To correct the injustice in holdings, the third principle comes into the picture. This principle involves past injustices which arise when there is a failure to apply the aforementioned principles. This can be rectified by the present principle. Even if a preliminary examination of history is conducted, it demonstrates that the present allocation of property is as much a product of stealing and conquest as it is of libertarian entitlement.

Nozick states that “historical entitlement is subject to the principle of rectification which attempts to use historical information to reproduce what would have occurred... if injustice had not taken place.” Regardless, it may happen that when an attempt is made to rectify past injustices, it could potentially affect ingenuous owners and challenge the certainty of a legal title, leading to the conclusion that claims concerning rectification should ideally be barred beyond a stipulated

⁴ Pulin B. Nayak, ‘Nozick’s Entitlement Theory and Distributive Justice’ (*EPW*, 28 January 1989) <<https://www.epw.in/journal/1989/4/review-political-economy-review-issues-specials/nozick-s-entitlement-theory-and>> accessed 23 September 2023.

duration.⁵

For example, if a plot of land which belonged to a certain family was taken away unjustly from them in the past, then under this principle such family would not only be reinstated as the lawful owner but also be compensated with such money that they would have earned had the injustice not taken place. Nozick is of the opinion that intervention by the government is only required in those cases where direct injustice takes place. Direct injustice occurs when the first two principles are not followed.

PROPERTY RIGHTS IN INDIA

HISTORICAL EVOLUTION

India was under a feudalistic regime for many decades. The kings and the emperors who ruled over India distributed the lands into “Jagirs” and appointed Jagirdars to take care of it. Creating a system of social hierarchy, these Jagirdars further appointed agents or middle persons called Zamindars, with the objective of supervising the said jagirs and collecting revenues from the cultivators.

Under the British regime, the Zamindari system continued by virtue of the Permanent Settlement Act. After achieving independence, it was imperative to introduce systematic and institutional reforms to go from a feudalistic society to a socialist society. At this juncture too, the inequalities continued and the disparity of wealth between the rich and the poor became blatant.

When the Indian Constitution was enacted, the Preamble provided that “justice – social, economic and political” will be secured to all its citizens. Later on, Article 39A also lent support to the above proposition. In this regard, bringing reforms in land ownership was a necessary measure towards achieving social and economic justice. This is because land is a major asset which has an important role to play in the development of the individual and the society. As per the distribution of powers envisaged under the Indian Constitution, land reform is an entry in List II, which bestows powers upon the State Legislature to make the laws.⁶

It would not be wrong to say that one of India’s biggest achievements in the realm of land policy

⁵ Salahuddin A, ‘Robert Nozick’s Entitlement Theory of Justice, Libertarian Rights and Minimal State: A Critical Evaluation’ (*Journal of Civil & Legal Sciences*, 2018) < <https://www.omicsonline.org/open-access-pdfs/robert-nozicks-entitlement-theory-of-justice-libertarian-rights-and-the-minimal-state-a-critical-evaluation-2169-0170-1000234.pdf> > accessed 20 September 2023

⁶ The Constitution of India 1950, Schedule VII

was the abolition of the Zamindari system.⁷ However, in dealing with this issue – the Constituent Assembly unwittingly created a catena of problems. It is important to note that the assembly was overly focused on the issue of zamindari, leading them to make a mistake in the drafting of the taking clause. The clause refers to property in general, as if it only applies to agrarian reforms. The constituent assembly wished to acquire land for agrarian reform without having to pay compensation for it, so they chose to include this lack of due process in the law itself, rather than creating an exception for it. This means that the state can decide to not pay “just compensation” for acquiring any property, not just property meant for agrarian reform.⁸

Under Part III of the Constitution which guarantees fundamental rights, Article 19(1)(f) provides for the right to property. In the same part, Article 31 was added which stated that “no person shall be deprived of his property save by authority of law.” Interestingly, Article 31(2) provided only for “compensation” instead of providing for “just compensation.” The Supreme Court in the judgment of *The State of West Bengal v. Mrs. Bela Banerjee*⁹, read ‘just compensation’ into Article 31. Later on, this right was diluted by the introduction of Article 31A and Article 31B, vide the First Amendment in 1951.¹⁰ Articles 31A, 31B, and 31C can be said to be exceptions to the right to property.

CONTEMPORARY LAW REGARDING PROPERTY RIGHTS

Over the next three decades, constituent rules gradually eroded, eventually concluding in the Forty-Fourth Amendment Act 1978, which removed Articles 19(1)(f) and 31 from the Constitution. This constitutional amendment eliminated the right to property as a fundamental right and instead established it as a weak legal/constitutional/statutory right under Article 300-A which reads as “No person shall be deprived of his property save by authority of law.” The consequence of this legislative measure was that since the right was removed from Part III, it also eliminated the *locus standi* of the people to appear before the Supreme Court to protect their rights.¹¹ However, since it is a legal right¹², it is available to all individuals and can be relied upon

⁷ Ritwik Prakash, ‘Land Reforms Pre & Post Independence: A Comparative Study of India’s Land Reforms’ (*IJLMH*, 2021) <<https://www.ijlmh.com/paper/land-reforms-pre-post-independence-a-comparative-study-of-indias-land-reforms/>> accessed 20 September 2023

⁸ Divyanshu Dembi, ‘Eminent domain doctrine in India and the lack of due process’ (*THE LEAFLET*, 9 November 2021) <<https://theleaflet.in/eminent-domain-doctrine-in-india-and-the-lack-of-due-process/>> accessed 27 September 2023

⁹ 1954 SCR 558

¹⁰ Hashmat Ali Khan, ‘The Land Acquisition Policy in India with Special Reference to Property Rights: An Analysis’ 23 ALJ (2015-16) 303

¹¹ The Constitution of India 1950, Art 32

¹² Soumya Ray, ‘Evolution of Right to Property in India - Development of Law Perspective’ (2022) 3 Jus Corpus LJ 1181

to establish locus before the High Courts.¹³

As stated above, the subject matter of 'land' falls under List II, however, the subject matter of 'land acquisition' falls under List III, which is the Concurrent List. This means that both the Centre and the States have the authority to formulate laws vide their legislative wing. Until now, the primary law governing the process of land acquisition was the Land Acquisition Act, 1894. The act underwent many amendments over the years, but it became painfully evident that the law was archaic.

To remedy this situation, the "***Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*** (hereinafter referred to as 'LARR Act')" was introduced. This law sought to weigh and balance on one hand, the concerns of the farmer's community and people whose livelihoods depend on the land and on the other hand, the need to facilitate the acquisition of land for public welfare such as industrialization or building transportation infrastructure or dams.¹⁴ One provision of this Act is that for defence or national security or any emergencies which may arise due to natural calamities, the collector can compulsorily acquire the land after a 30-day notice period, and then "such land shall vest absolutely in the Government, free from all encumbrances."¹⁵

An interesting case to note in this regard is that of Vidya Devi's. Briefly, the facts of this case were that somewhere around 1967-68, the State of Himachal Pradesh had forcibly acquired Vidya Devi's land for constructing a road, without following the due process of law as it existed then. She was unaware of her right to property and consequently did not take any legal action. The catch was, that this right was removed as a fundamental right in 1978, and then she filed a case in 2010 to claim compensation. Thus, the State resorted to the argument of adverse possession.¹⁶

In 2020, the Supreme Court issued a judgment in this case that a "citizen's right to own private property is a human right. The state cannot take possession of it without following due procedure

¹³ The Constitution of India 1950, Art 226

¹⁴ A.K. Ganguli, 'Right to Property: Its Evolution and Constitutional Development in India' 48 JILI (2006) 489

¹⁵ Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, s 40

¹⁶ *Vidya Devi v State of Himachal Pradesh*, (2020) 1 SCC (Civ) 799

and authority of law. The state cannot trespass into the private property of a citizen and then claim ownership of the land in the name of *adverse possession*.”¹⁷

ANALYSIS

Nozick's Entitlement Theory has made a substantial contribution to the discussion over property rights. However, it does not come without objections and conflicts, as is the case with all philosophical theories. While the theory provides a helpful structure for gaining an insight into property rights, its limits and potential blind spots must be examined in order to obtain a broader perspective.

One of the foremost criticisms directed at Nozick's theory is that it is in blatant ignorance of the historical injustices that have prevailed in India. In India, issues of ownership of land and historical grievances have a significant role to play. If one solely focuses on the ‘just acquisition’ or ‘just transfer’ then there is a high chance that the deeply rooted historical injustices may be overlooked. The cases of land grabbing, exploitation under the colonial regime, and discrimination amongst the rich and the poor have shaped property rights in a manner which is unique to India, and Nozick's theory might not necessarily adequately address these systemic issues. The principle of ‘justice by rectification’ may also not prove to be helpful in such circumstances. Right from the times of zamindari system up until now, people have engaged in fraudulent or coercive acts to acquire property. Both the principles suggested by Nozick have mostly not been followed.

The primary focus of the Entitlement Theory is on ‘individual’ entitlements and acquisitions. It is argued that this downplays the role of society and its collective interests. When India achieved independence, the state of the economy was dismal. In that situation, giving preference to individuals over the collective good would have caused more harm than good. Another grey area in his theory is that it fails to provide any guidelines on how to reconcile the differences arising out of individual entitlement and broader societal interest. Since Nozick believes that liberty is incompatible with the patterned theory of distributive justice, it becomes difficult to ascertain issues of land redistribution, public welfare, etc. Even today, when one has to consider public development infrastructure and consequently land acquisition has to take place, who should be given preference? The individual and his right to private property as per the theory or the

¹⁷ Krishnadas Rajagopal, ‘Private property is a human right: Supreme Court’ (*The Hindu*, 13 January 2020) <<https://www.thehindu.com/news/national/private-property-is-a-human-right-says-sc/article30551819.ece>> accessed 20 September 2023

collective good of the society?

Nozick also puts forward his theory of the minimalist conception of justice, which suggests that the state should play a very limited role, essentially acting as a “night watch” state.¹⁸ He argues that state intervention should be to the limited extent of preventing one individual or a group from encroaching on the liberty granted to another. In India, with its diverse population, most of which was illiterate at the time of independence, which holds true even today— if the government had played a minimal role, the situation would have been awful. The rich would have become richer and the poor, poorer. In all probability, land ownership would have only been in the hands of the elite. In India, government intervention in property rights and land reforms played an important role historically.

However, in the contemporary context, it can be said that the level of governmental interference has exceeded limits. In the exercise of the doctrine of eminent domain, the state has indulged in flagrant violations of the property rights of the people. The doctrine of eminent domain prescribes the State’s power to acquire private property of an individual without their consent, for ‘public purpose.’ The Supreme Court has opined that “*it is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government.*”¹⁹ The result is that it is still not clear when the government can legitimately take away land, beyond the vague public purpose test and in the present times too, the government is not bound to give a ‘just’ compensation. In the case of *Project Director, NHAI vs. M. Hakeem*²⁰, wherein the respondent had approached the Apex Court to receive ‘just’ compensation against the acquisition of his land by the government. The district revenue officer had set a meagre amount of compensation which did not match the market value. The court held that it had no competence to increase the compensation so awarded.

Another significant question that comes up for consideration is whether Nozick's theory supports or contradicts land reforms and policies aimed at rectifying historical injustices in India. The first two principles emphasize just initial acquisition and just transfer; however, land reforms often involve state-mandated land redistribution. This raises questions about whether such redistributive measures are in tandem with his theory. The debate underscores the tension between individual property rights and the pursuit of social justice in a country with a history of

¹⁸ Augustine Terhide Maashin, ‘Robert Nozick’s Minimal State: A Critique’ (*Jurnal Ilmu Sosiologi Dialektika Kontemporer*, December 2022) <<https://ojs.unm.ac.id/elektikakontemporer/article/download/46152/21424>> accessed 23 September 2023

¹⁹ *M/s Delhi Airtech Services Pvt. Ltd. v State of Uttar Pradesh*, (2011) 9 SCC 354

²⁰ 2021 SCC Online SC 473

land inequities.

Land acquisition for infrastructure and industrial development is a highly controversial issue in India. Although development projects are essential for economic growth, they often necessitate the acquisition of land from farmers and local communities. Critics argue that this process can violate property rights and displace vulnerable populations. The debate revolves around striking a balance between economic development and safeguarding property rights.

CONCLUSION

To sum up, although the Entitlement Theory provides beneficial perspectives on property rights philosophy, it is not impervious to criticisms and disputes. As we navigate the intricate terrain of property rights in India, it is clear that sticking to a single philosophical framework may not be enough to address the diverse challenges and complex historical factors that shape property rights in such a diverse country.

Nozick's preoccupation with individual rights could lead to selfish gratification for him and some others at the cost of the community. In their world, which comprises only of "individuals," the community is non-existent. For Nozick, referring to the "collective good" of human beings is merely a way of disguising the fact that an individual is being exploited for the benefit of others. Contemporary property rights challenges in India are multifaceted, encompassing land acquisition, environmental conservation, and social justice. Addressing these challenges requires a nuanced approach that balances individual entitlements with collective interests. Thus, to a certain extent this theory may not prove to be applicable or even useful in the Indian context.