

# **WHERE STATUTORY AUTHORITY AND LAWS OF SUCCESSION INTERSECT: A NEW METHOD FOR INHERITANCE AND SUCCESSION OF PROPERTY**

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## **Introduction**

The Hindu Succession Act confers a vested interest in property to the legal heirs of a person as soon as they are born. This has led to a situation where the big landowners control majority of the land in rural areas, which is getting fragmented by the successive generations. Meanwhile, the market is deprived of the option to purchase this joint-family owned land, which is inappropriate from an economic point of view. This paper presents a new methodology for deciding succession of property. Through application of the theory of eminent domain and widening its scope, the government should take over the land of any person who dies, regardless if he died testate or intestate. The government then shall allot the land to the highest bidder through an open auctioning process.

This would help in land consolidation as the farmers which need large tracts of land can procure it through an open market, as all property would be open to purchase without being secluded from the market due to succession laws. Second, it would serve an economic purpose as land would be available to the person more suited for it, rather than the land being passed down to successive generations.

## **The Theory of Eminent Domain**

This theory postulates that the king or the government is the ultimate owner of all land in a country. Even though land can be transferred among individuals and between individuals and the

government, the right of ownership shall always remain with the government.<sup>1</sup> The concept of private property arose in England from the 17<sup>th</sup> century onwards following the enclosure movement. Today, private property is recognized as a legal, if not constitutional, right in many countries. Private property is useful to attach a value to land, and thus can be used for trade or collateral. It is considered an integral part of the modern economic scenario.

However, the right to private property clashes with the power of the State under eminent domain. Under its statutory authority, the government can take private property for public use. But the exercise of this power is not used arbitrarily, and a just compensation is provided to the individual who has lost his/her land. Article 31A of the Indian Constitution recognizes the power of eminent domain in India. In the case of *Chiranjit Singh v. Union of India*<sup>2</sup>, the Supreme Court held that the power of the State to appropriate private property is inherent in its sovereignty. The Land Acquisition Act, 2013 regulates the practice of acquisition of land by the State after a payment of reasonable compensation to the land owners. In the current scenario, the power of eminent domain is applied rather judiciously by the State and only when there is an overriding public purpose behind the acquisition.

### **The Laws of Succession**

One of the primary advantages of owning private property is the ability to pass it on to one's legal heirs upon one's death. In India, Mitakshara joint family system is followed, where the moment a person is born in the family, he acquires certain rights in the property. These rights include right of joint ownership, right to common enjoyment and right of common use of property.<sup>3</sup> The Hindu Succession Act, 1956 and Indian Succession Act, 1925 impart a right to the legal heirs of a person to his property, in case of his intestate death. The legal heirs include his widow, children or other relatives depending on the relevant sections applicable.

But there are a few problems with the current system of succession in India. Firstly, the big landowners can effectively block availability of huge tracts of land from the market by passing it

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<sup>1</sup> Dr. N. Maheshwara Swamy's, 'Land Laws', (Asia Law House, Hyderabad, 1st ed., 2006), p 4.

<sup>2</sup> AIR 1951 SC 41

<sup>3</sup> Dr. Paras Diwan, 'Family Law', (Allahabad Law Agency, 9<sup>th</sup> ed., 2009), p. 385

among their own lineage. The scenario thus leads to economic efficiency, as it cannot be assumed that the son or heirs of a person are best suited to optimally utilize the land. A farmer with better cultivating skills or purchasing power to employ power tools than the legal heirs of a person may be unable to buy fertile land.

Secondly, the current system of succession and partitioning is leading to increasing fragmentation of land in India. Research indicates that there are three main factors for the land fragmentation problem. These are: firstly, law of inheritance of paternal property; secondly, absence of a progressive tax on inherited land and thirdly, underdeveloped land market.<sup>4</sup> Land fragmentation discourages commercialization and modernization of the farming process. Further, as land holding diminishes, the farmer goes for intensive cropping techniques, as his livelihood and survival are dependent on the small tract of land. However, this depletes the nutrient holding capacity of the soil and leaves it less productive after successive cropping cycles.

### **The solution hypothesis**

This paper suggests a new way of handing succession of private property among the members of a joint family. When a person dies, all immovable property owned by him or her does not pass down to the legal heirs. Instead, the government takes over administration of the land owned by the recently deceased for a temporary transition phase. This would be an extension of the sovereign power of eminent domain that it possesses. The government shall then arrange for an open-market auction of the land, where the most suited buyer shall then have full ownership rights over that land. In effect, the successors of the deceased person shall have no claim or interest over the land, regardless of their relation to the deceased person.

The advantages of this methodology shall be discussed here. The primary gain is economic efficiency. A farmer, or an industrialist, or an entrepreneur may be able to utilize the land in a more

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<sup>4</sup> "Impact of land fragmentation, farm size, land ownership and crop diversity on profit and efficiency of irrigated farms in India", A.V. Manjunathaa , Asif Reza Anikc, S. Speelmand, and E.A. Nuppenau, Land Use Policy 31 (March 2013) 397–405

efficient manner than the successors of a person. An educated farmer may use new, scientific methods of farming and may produce greater yield. An industrialist may establish a small-scale unit over such land that would boost the economy and provide employment to the nearby region. An entrepreneur may use the land for secondary, non-farming purposes like poultry rather than intensively farming. The new method would make a piece of land open to the general public, which had been essentially cut-off from the market due to the succession laws.

Another direct advantage of the proposed method would be land consolidation. Suppose there is a farmer who owns 3 acres of land that borders another piece of land on one side. In case any of the owners of the adjacent lands die, the other owner can consolidate the two properties. This would pave the way for efficient utilization of labor and other inputs, leading to more productivity and efficiency.<sup>5</sup>

### **Some expected issues**

The primary issue would be the mindset of the common man. There is sentimental value attached to land as it has been passed down from generations before. Denying the right of succession to the next generations might cause much pain to the heirs.

The transition can also lead to suppression in property demand and subsequently a drop in real estate prices. The person who acquires a property through auction will not have any avenue to pass it on to its legal heirs, and thus the financial risk attached to land purchase increases. However, real-life examples show such a fear may be unfounded. People purchase expensive sports car knowing full well that they may crash it the very same day and their entire investment will be moot.

There could be administrative hurdles to the change. The succession system would have to revamped and this may cause delay at the respective government offices. Any inordinate delay

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<sup>5</sup> "Impacts and causes of land fragmentation, and lessons learned from land consolidation in South Asia", Gajendra S. Niroula, Gopal B. Thapa, Land Use Policy 22 (2005) 358–372

would further harm the transition. Further, it could prove to be difficult to arrange for physical auctions of properties of people who have deceased.

### **Conclusion**

The succession method proposed in the paper suggests a radical new direction based on the application of theory of eminent domain to succession laws. There may be pain in the short term if this policy is implemented, but the long term economic gains will be tremendous. It would be a difficult task to convince the citizens of the potential benefits of the policy, particularly as it involves one of the most prized possessions in India. If implemented, it could lead to higher economic efficiency and deal with the problem of land fragmentation.