

RIGHT TO LAND AND LAND REFORMS IN INDIA

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ABSTRACT

Land seems to be the life of every individual, everyone's dreams to land is shelter, security, a livelihood, an identity, a home. Land and a secure home is the only sure way to establish an identity. When people are denied access to land and when their rights are ignored by more powerful interests, they are invariably made transient and insecure, which creates vast amounts of individual suffering and widespread social instability. Equitable access to land for the poorest and most marginalised is therefore an essential pre-condition to a stable society and economy.

Part IV of the Directive Principles of State Policy also indirectly mandates the government to take measures for land reforms to achieve an egalitarian society. The Entry 20 in the concurrent list also mandates the Central Government to fulfil its role in Social and Economic Planning. The Planning Commission was established for suggestion of measures for land reforms in the country.

Right to property, as enshrined in Article 19(1)(f), was a fundamental right and therefore placed at a high pedestal. Article 19(1)(f) had to be read along with Article 31 of the Constitution in order to prevent the Government from depriving a person of his property without the "*authority of the law*" and further that such law should provide "*for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and give*".

The paper deals the Land Reforms in India, its constitutional provisions, the amendment of the act, the provision relating the reforms act Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. This paper contains the importance of the right of land, abolitions of intermediaries, and advantages of the Act,

Tenancy reforms, and security of tenure. Environment impact study and social impact assessment study under the Act.

INTRODUCTION

The concept of right to land under the provision of Article 19 (1) (f) and Article 31, made it very difficult to proceed with the land reforms and nationalization schemes, it Government simply could not afford to pay reasonable compensation for the lands and corporations acquired by it.

Due to the deletion of Article 31 the Government was no longer under an obligation to compensate persons whose land had been acquired as per a law passed by Parliament. The only reasonable manner to deprive a person of his property would be to offer him, reasonable compensation for the same. *The ownership of any copyright like ownership of any other property must be considered having regard to the principles contained in Article 19(1)(g) read with Article 300A of the Constitution, besides, the human rights on property. But the right of property is not a fundamental right. It will be subject to reasonable restrictions. In terms of Article 300A of the Constitution.*

The term 'law' as defined in Article 300A is understood to mean only a legislation or a statutory rule or order. The source of the 'law' depriving a person of his property has to be necessarily traced, through a statute, to the legislature.

LAND RIGHT

Land rights are an integral part of Land Laws, as they socially enforce groups of individuals' rights to own land in concurrence with the land laws of a nation. Land Law addresses the legal mandates set forth by a country in regards to land ownership, while land rights refer to the social acceptance of land ownership

Globally, there has been an increased focus on land rights, as they are so pertinent to various aspects of development. The UN Global Land Tool organisation has found that rural landlessness is a strong predictor of poverty and hunger.

Article 300A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law

This amendment had two immediate implications:

(i) The Right to Property would now be a Constitutional Right and not a Fundamental Right.

A legislation violating the constitutional right to property could now be challenged only in High Courts and not directly in the Supreme Court.

(ii) Due to the deletion of Article 31 the Government was no longer under an obligation to compensate persons whose land had been acquired as per a law passed by Parliament.

It was only after independence that serious efforts were made to introduce land reforms measures. They are as follows:

Abolition of Intermediaries:

Intermediaries like Zamindars, Talukdars, Jagirs and Inams had dominated the agricultural sector in India by the time the country attained independence.

The first Act to abolish intermediaries was passed in Madras in 1948.

Advantages:

- As a result of the abolition of intermediaries, about 2 crore tenants are estimated to have come into direct contact with the State making them owners of land.
- The abolition of intermediaries has led to the end of a parasite class. More lands have been brought to government possession for distribution to landless farmers.
- A considerable area of cultivable waste land and private forests belonging to the intermediaries has been vested in the State.

Tenancy Reforms:

Rural India witnesses three types of tenants.

- (a) permanent or occupancy tenants,
- (b) Temporary or non-occupancy tenants, and
- (c) Sub-tenants. The permanent tenants have the permanent ownership right over the land. The rent for permanent tenants is fixed. The right to cultivate land goes from generation to generation so long as they pay rent

Hence land is inheritable. Because of such security of holding, the occupancy tenants make improvement on their land. They are almost the owners of land, as they can mortgage or sell their land.

Security of tenure

To protect tenants from ejection and to grant them permanent rights on lands, laws have been enacted in most of the states. They have three essential features.

- Tenants cannot be evicted without any reason. They can be evicted only in accordance with the laws.
- Land can be resumed by the landlord only on the ground of personal cultivation. But the land-lord can resume the land only up to a maximum limit.
- The landlord should leave some area to the tenant for his own cultivation. The tenant in no case should be made landless

Right of ownership

- In some states provisions have been made allowing the tenant to purchase the leased land on payment of a price to the landlord. If any dispute arises between the tenant and the landlord over the payment of price, this may be referred to a land tribunal. The tribunal will decide the price to be paid by the tenant to the landlord

Ceiling on land holdings:

The third important step of land reforms relates to the imposition of ceiling on land holdings. Ceiling on land holdings implies the fixing of the maximum amount of land that an individual or family can possess.

Doctrine of Eminent Domain

Every government has an inherent right to take and appropriate the property belong to individual citizen for public use.

- There must be a law authoring to taking of property.
- Property is taken for public use
- Compensation is paid for the property taken.

These two limitations imposed on the power of eminent domain by the repealed A.31

The doctrine is based on the following two latin maxims

1. *Salus populi est suprema lex* – welfare of the people of the public is the paramount of law
2. *Necessita Publica major est Quam* -Public Necessity is Greater than private necessity.

LAND ACQUISITION IN INDIA

- The union or a State Government in India acquires private land for the purpose of industrialization, development of infrastructural facilities or urbanization of the private land, and provides compensation to the affected land owners and their rehabilitation and resettlement.
- Land acquisition in India is governed by the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.

Purpose

- As per the Act, the union or state governments can acquire lands for its own use, hold and control, including for public sector undertakings and for "public purpose", and shall include the following purposes:
- for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people;
- for infrastructure projects as defined under the Act;
- project for project affected families;
- project for housing for such income groups, as may be specified from time to time by the appropriate Government;
- project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;
- Project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.
- The land can be acquired for private bodies for certain purposes:
- for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in the Act;
- for private companies for public purpose

Legislative changes

- Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013.
- The 2013 Act focuses on providing not only compensation to the land owners, but also extend rehabilitation and resettlement benefits to livelihood looser from the land, which shall be in addition to the minimum compensation. The minimum compensation to be paid to the land owners is based on a multiple of market value and other factors laid

down in the Act. The Act forbids or regulates land acquisition when such acquisition would include multi-crop irrigated area. The Act changed the norms for acquisition of land for use by private companies or in case of public-private partnerships, including compulsory approval of 80% of the landowners. The Act also introduced changes in the land acquisition process, including a compulsory social-impact study, which need to be conducted before an acquisition is made.

CONCLUSION

Article 300 of the Constitution says that the government of India may sue or be sued by the name of the Union of India and Government of a State may sue or be sued by the name of the State, or of the Legislature of the State. Thus the Constitution makes the union and the States as justice person capable of owing and acquiring property, making contracts, carrying in trade or business, bringing and defending legal action just as private individuals. The legal personality of the Union of India, or a State of Indian Union is thus placed beyond doubt by the express language of Article 300.