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Evolution of Eminent Domain in India

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ABSTRACT

Land ownership entails a certain amount of risk in most developing countries. The Government of any country is entrusted to work towards public interests and to achieve this goal, and is an essential resource. Eminent domain is a legal right usually exercised by the State to acquire property. This right of the state is sometimes contended to be immoral/illegal, many cases have been recorded where the state was alleged of not providing fair and adequate compensation. There must be an economic and a social balance drawn between industrialisation and land usage as a fundamental resource for a human. Development via industrialisation and urbanisation requires land resources. However, the State must also account for a fair acquisition of land involving consent and fair compensation principles.

I. INTRODUCTION

Eminent domain is a legal right usually exercised by the State to acquire property. The history of eminent domain in India starts with the Land Acquisition Act (LAA), 1894.² This colonial legislation retained its statutory nature till 1950, as the country experienced large scale land distribution. The LAA manifested into the Land Acquisition, Rehabilitation and Resettlement (LARR) in 2011.³ An alleged movement towards increased capitalism, the right of Eminent Domain is based on the principles of public interest and compensations; the former secures the motivation while the latter assures the legitimacy of the act of procuring property. With many manifestations and amendments of land acquisition laws in India, the State seeks to expand the scope of 'public interest' to effectively use Eminent Domain while dangerously lowering down the scope of 'consent'. The LARR, 2011 was sponsored by the Ministry of Rural Development, arguing the need of Eminent Domain and its importance for achieving increased industrialisation and urbanisation.⁴

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

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² Land Acquisition Act, 1894.

³ Sankaranarayanan, G. (2011). *The Fading Right to Property in India*. *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 44(2), 220-236. Retrieved March 15, 2021, from <http://ezproxy.nujs.ac.in:2100/stable/43239608>.

⁴ Id.

Resettlement Act, 2013⁵ is the recent manifestation of the LAA, 1894. This act has elaborated the importance of the right of Eminent Domain of the State to fulfil a growing and developing economy. The extent of Eminent Domain is usually subjected to critical calculations that are limited to economic and political factors. Referring to an example to reiterate Eminent Domain's influence from a political perspective is the fall of the Left Front in 2011, West Bengal elections. The Left Front was faced with a gruesome electoral ousting by the people of West Bengal for their increased use of the Right of Eminent Domain.⁶ Considering India's current political leadership, it is essential to understand Eminent Domain's influence and importance on the Government's plan of development and urbanisation. The Modi Administration's "Make in India" campaign promotes 100 smart cities and the infamous Delhi-Mumbai industrial corridor. The requirement of land as a resource is critical for these goals to be achieved. The following paper seeks to entail the evolution of the right of Eminent Domain in contemporary India, taking reference from its existence before independence.

II. EARLY LEGISLATIONS

The Bengal Regulation 1 of 1824 is one of the earliest pieces of legislations which entail the Government's right of Eminent Domain. Under Fort William's presidency, the whole of Bengal province was subjected to law with empowered the administration to "obtain, at a fair valuation, land or other immovable property required for roads, canals or other public purposes."⁷ The administration used this regulation to procure land to commence the installation of railways. With growing industrialisation levels, all the land acquisitions provisions in British India were accumulated and merged into Act VI of 1857 and further manifested into the Land Acquisition Act of 1870. The Land Acquisitions Act, 1870 was soon repealed, and one of the most prominent reasons behind that decision is enshrined in the case of Radhey Shyam(D) Through LRs and others v. State of U.P. and others.⁸ The Supreme Court observed that the Land Acquisition Act of 1870 required the State to appoint independent assessors for the property in question. The courts and these assessors were also needed to form a consensus based on the above-mentioned act, which delayed the procedure. The Supreme Court also observed that the

⁵ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

⁶ India Today, *The rise and fall of the Left in West Bengal*, May 13, 2011, Retrieved March 15, 2021, from <https://www.indiatoday.in/assembly-elections-2011/west-bengal/story/the-rise-and-fall-of-the-left-in-west-bengal-133630-2011-05-12>.

⁷ BHATTACHARYYA, D. (2015). *History of Eminent Domain in Colonial Thought and Legal Practice*. Economic and Political Weekly, 50(50), 45-53. Retrieved March 15, 2021, from <http://ezproxy.nujs.ac.in:2100/stable/44002962>.

⁸ Radhey Shyam(D) Through LRs and others v. State of U.P. and others Civil Appeal No. 3261 decided on April 15, 2011.

person to whom the land belonged to did not have a right to object in the matter. Widespread protests and rallies were conducted by those deprived of their land, and to cater to this situation, the British Government Passed the Land Acquisition Act of 1894." *The Land Acquisition Act I of 1894 does not provide that persons having an interest in land which it is proposed to acquire, shall have the right of objecting to such acquisition; nor is Government bound to enquire into and consider any objections that may reach them. The object of this Bill is to provide that a Local Government shall not declare, under Section 6 of the Act.*"⁹

III. THE LAND ACQUISITIONS ACT (LAA), 1894:

The LAA is an existing colonial statute that has retained its prominence even after independence. This act aimed to facilitate infrastructural development in India, including but not limited to, railways, roads, canals, etc. The liberal usage of the phrase "public interests" deprived many landowners, farmers, cultivators of their properties by the British Administration. This deprivation was, however, not only limited to the colonial era. The Government well-exercised Post-Independence, the powers of Eminent Domain to develop dams, defence industries etc., and all these acquisitions were protected under public interests. The misuse of the powers provided to the Government under the LAA extended its scope to the private players.

In accordance to Section 7 of the LAA, 1894, which states: "*Collector to take order for acquisition: Whenever any land shall have been so declared to be needed for a public purpose or for a company, [appropriate Government] or some officer authorised by the [appropriate Government] in this behalf, shall direct the Collector to take order for the acquisition of the land.*"¹⁰ This section's application had led to various state governments acquiring lands on behalf of rich businessmen and builders in the name of public interests. After their illegitimate payments to these governmental officers, these builders built multi story residential/commercial complexes that were later sold to the 'public'. During this process, the landowners who were deprived of their properties struggled with the Government to be at least fairly compensated.¹¹ To understand the agony of people deprived of their property, consider an example of a farmer who spent his entire life procuring a piece of land. As per section 7 of the LAA, 1894, this piece of land was procured and reserved for an MNC by the state government for public purposes. Although the Government provides inadequate compensation,

⁹ Id.

¹⁰ The Land Acquisition Act, 1894, s.7.

¹¹ SAMPAT, P. (2013). *Limits to Absolute Power: Eminent Domain and the Right to Land in India*. Economic and Political Weekly, 48(19), 40-52. Retrieved March 15, 2021, from <http://ezproxy.nujs.ac.in:2100/stable/23527343>.

the farmer is left unemployed. The compensation amount would not guarantee survival, considering the amount so received could be easily mismanaged and unwisely spent. Moreover, the blatant misuse of the urgency clause enshrined in Section 7 of the LAA, 1894 by the state governments was also one of the significant drawbacks of this act.

Section 17(4) of the LAA, 1894¹² was a matter of concern for one of the principles of natural justice- *audi alterem partem* i.e hearing the other side. Referring to the previous example of a farmer whose property has been acquired by the state government, the farmer could not approach the Court for an injunction if the state government invoke the urgency clause. According to the referred section “*In cases of urgency whenever the [appropriate Government], so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, subsection 1). [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government], free from all encumbrances.*” and sub clause 4 “*In the case of any land to which, in the opinion of the [appropriate Government], the provisions of sub-section (1) or sub-section (2) are applicable, the [appropriate Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time [after the date of the publication of the notification] under section 4, sub-section (1).*”¹³ Section 5(A) of the referred act allows the landowner to raise an objection with the competent court, however invoking section 17(4), the state government’s deprived the landowners from their right to raise an objection.

IV. CONSTITUTION OF INDIA, 1950:

The Supreme Court of India and the parliament faced various backlashes on land reforms and land acquisitions by the Government as per the LAA, 1894. The courts were ensuring the protection of property rights as a fundamental right under Article 19(1) (f) of India's Constitution.¹⁴ In response, the parliament transferred all the matters relating to land and land acquisition to the ninth schedule, protected against judicial scrutiny. Moreover, it covers the land acquisition laws from Article 14 scrutiny the parliament introduced Articles 31A(c). With various counter measures set up by the parliament to reduce judicial scrutiny of Eminent Domain, the Supreme Court levelled the playing field in the case of *The State of West Bengal v. Bela Banerjee*.¹⁵ The Court in this discussed the critical nature of the word "compensation"

¹² The Land Acquisition Act, 1894, s.17(1).

¹³ The Land Acquisition Act, 1894, s.17(4).

¹⁴ Gupta, Priya S. *The Peculiar Circumstances of Eminent Domain in India*. *Osgoode Hall Law Journal* 49.3 (2012) : 445-489. Retrieved on March 13, 2021, from <https://digitalcommons.osgoode.yorku.ca/ohlj/vol49/iss3/2>

¹⁵ *The State of West Bengal v. Bela Banerjee*, AIR 1954 SC 170.

in article 31(2) of the Constitution. The Court concluded that the word 'compensation' implies that the Government must evaluate the property's market price so acquired at the time of acquisition. However, the parliament was not keen to accept this provision of the Court for future Eminent Domain cases and therefore passed the fourth amendment act of 1950. This amendment sought to eliminate the Court's playing field relating to adequate compensation in matters related to Eminent Domain. The administration, while exercising their right to Eminent Domain, any compensation which would be determined by it could not be challenged in the Court of law. It was not until the case of *Keshvananda Bharti v Union of India*¹⁶ that the Supreme Court directed the administration to ensure that the amount of compensation is not decided arbitrarily and must be based on some relevant principles.

The 44th Constitutional Amendment Act of 1978 sought to remove the right to property as a fundamental right, thus seeking to increase the power of Eminent Domain. Under article 300A, the right to property is considered to be a mere legal right. The Kerala High Court in the case of *Smt. Elizebath Samuel Aaron vs the State Of Kerala And Ors*¹⁷ discussed the relevance of compensation and article 300 A of the Constitution.

"The legislative history behind the deletion of Article 31 and the introduction of Article 300-A eloquently shows that parliament intended to do away with the concept of a just equivalent or adequate compensation in the matter of deprivation of property, and to provide only a limited right, namely that no person shall be deprived of his property save by authority of law. In other words, the limited constitutional protection intended to be continued (not as a fundamental right) was only that there should be a law authorising and sustaining any deprivation of property, and that none shall be so deprived by mere executive fiat. Article 300A does not provide for anything more. it does not go further and provide that the law should provide for compensation and either fix the amount, or at least specify the principles on which the compensation is to be fixed and given. Evidently, parliament intended to shield all such legislation for acquisition or requisitioning of property from challenge on any of the grounds on which they could be challenged as per the various decisions of the Supreme Court on the ground that the compensation was inadequate or illusory or that the principles laid down for fixing the compensation were irrelevant or irrational. If this were not the intent of the series of Constitutional amendments, and if this were not achieved thereby, one wonders why parliament should have under taken all the exercise and effaced Article 31(2) altogether from the

¹⁶ *Keshvananda Bharti v Union of India*, AIR 1973 SC 1461.

¹⁷ *Smt. Elizebath Samuel Aaron vs State Of Kerala And Ors*, AIR 1991 Ker 162.

Constitution."¹⁸

V. THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013¹⁹ (hereafter referred to as the act), is considered to be a more considerate legislation for invoking Eminent Domain. This act promotes the employment of those affected by the acquisition into the development of the planned project to help stabilise the affected people's economic situation. However, it is to be noticed that although the legislation is not as brutal as the LAA 1894, it still lacks the scope of 'consent'.

Section 2 of the act provides the scope of consent. If land is acquired under this act by the State for a public-private partnership (PPP), consent of at least 70% of the relevant parties having ownership of the said land is required.²⁰ In the case of a private company, the act requires a minimum consent of 80%.²¹ There is no provision whatsoever of consent when a public sector undertaking or the State itself acquires property for its purposes.

The rehabilitation and resettlement provisions in the act are well provided in Section 31.²² Taking into consideration, when the State acquires a land, the affected families would require rehabilitation. Employment opportunities, transportation facilities, etc. and other essential amenities must be provided. Although it covers the rehabilitation and resettlement provisions under the first and second schedule, there are no provisions made of a temporary acquisition.²³

VI. THE INTERLINKAGE BETWEEN THE ACQUISITION LAWS OF 1894 AND 2013:

The 2013 legislation provides for a process where some cases subjected to the LAA, 1894 are heard. If there is a situation where the 1894 act is unable to provide relief, the case will automatically be subjected to 2013 legislation.²⁴ Any situation where the decree for

¹⁸ Id.

¹⁹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

²⁰ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s.2(2)(b)(ii).

²¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s.2(2)(b)(i).

²² The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s.31.

²³ India Today, *What is 2013 Land Acquisition Act and why social activists filed a petition against state amendments to the law*, December 12, 2018, Retrieved on March 15, 2021 from, <https://www.indiatoday.in/education-today/gk-current-affairs/story/what-is-2013-land-acquisition-act-and-why-social-activists-filed-a-petition-against-state-amendments-to-the-law-1407978-2018-12-12>.

²⁴ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s.24.

compensation is passed with respect to the 1894 act but the amount is not credited to the relevant parties, the case will be subjected to the 2013 act.²⁵

VII. CONCLUSION

Land ownership entails a certain amount of risk in most developing countries. The Government of any country is entrusted to work towards public interests and to achieve this goal, and is an essential resource. The evolution of Eminent Domain in India has been subjected to various factors. From considered to be a disorderly law in 1894 to the blatant misuse of land acquisition during the land distribution procedure in 1950 to revoke the right to property as a fundamental right and finally, a relatively liberal law seeking to protect the interest of affected people.²⁶ With the enactment of the Land Acquisition Act of 1894 by the British Government came many challenges, a legislation that empowers the State to take any land without any prior consent of the landowner violates natural justice principles applicable to every law within our republic. The drawbacks and the concerns of the 1894 legislation were addressed and enacted in The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.²⁷ The legislators addressed the issues relating to fair compensation and rehabilitation in the 2013 act. However, the requirement of consent is still a significant issue that challenges the acceptability of this legislation. There must be an economic and a social balance drawn between industrialisation and land usage as a fundamental resource for a human. Development via industrialisation and urbanisation requires land resources. However, the State must also account for a fair acquisition of land involving consent and fair compensation principles.

²⁵ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, s.24(2).

²⁶ Setalvad, A. (1971). *A STUDY INTO CERTAIN ASPECTS OF THE LAND ACQUISITION ACT, 1894*. *Journal of the Indian Law Institute*, 13(1), 1-69. Retrieved March 15, 2021, from <http://www.jstor.org/stable/43950105>.

²⁷ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

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