

Land Ownership and Land Acquisition Regime in India

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Abstract:

The problem of land ownership at present cannot be resolved without understanding the land ownership structure of the past. The past plays an important role in shaping our perceptions and ordering our priorities. Naturally, the solutions we find for the contemporary crisis are affected by our past. Hence, it is important to see how our ancestors understood land ownership. This article highlights the development of land History, Ownership of Land and Acquisition of land from private ownership. Land Acquisition Laws of any age are but links in the long chain of institutional arrangements and conveniences, to address the specific issues of the day.

Keywords: Land, land ownership, land acquisition, history, India,

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I. Introduction:

God creates the land, it lies in between two rivers *Saraswati* and *Drishadvathi*, the two celestial rivers, is called *Brahmavarta*¹. Since ancient time in India land is always a symbol of status, the person who owns more land gets more respect from society as he is having more worth than others.² During the modern time, power, which was previously vested in King, is vested in government and its various authorities who are constituted under the constitution or substantial law for the development of society and facilitated to the common civilians, but after passing a time this machinery, which should work, for public benefit become difficult association day by day. Justice is a core value of any judicial system. It is the ultimate aim in the decision making process. In post-traditional liberal democratic theories of justice, the background assumption is that all humans have equal value and should therefore, be treated as equal, as well as by equal laws.³

II. Land ownership:

The much debated issue from the past is: Is state liable to pay compensation to the owner of the land in case of compulsory acquisition of property for public purpose? The answer depends on the understanding Who is the real owner of the land? To understand this issue one need to understand the structure of ownership from the past:

A. Vedic Period:

During this period every male member of a tribe had to work in the collective activity of hunting. When the disintegrating tribal society of hunters, took up agriculture to be its prime occupation, land was collectively owned to begin with. Every member of the tribe had an equal right to whatever the tribe produced collectively.

During this period the ownership of the land lies in the community and the individual ownership of land was not in existence. The question of land ownership came into existence in the post-vedic era because during the *Rig vedic* era, the Aryans were pastorals and cattle was the main index of wealth. Land ownership was not prevalent at that time.

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¹ CH-II-17 of Manu Smriti.

² Henry Maine, Ancient Law, (J.M. Dent and Sons Ltd., London) introduced by Prof. J.H. Morgan <http://www.loyalbooks.com/download/text/Ancient-Law-by-Sir-Henry-Sumner-Maine.txt>.

³ Bhagat Y.P, Kumar Keshav&Ranjeeta Singh, 'Commentary on The right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', Vinod Publications (P.), Ltd., 2022 p. xiii

In the post-vedic era, due to use of iron implements in agriculture, people started staying in one place. One can find reference to land ownership in the post-vedic book *Aitareya Brahman* in which it is written that when *Vishwakarma Bhuvan* donated land to the purohitas for performing yagna, Prithvi protested. This suggests that it was not possible to donate land without the consent of the community. In other words, land ownership was based on community and there was no concept of individual ownership of land.

B. Dharmashastra:

According to *Dharmashastra* expert of Mahajanpad period, Gautam, any property that was the means of livelihood, could not be divided, and this, most probably, also included land. With the development of villages inhabited by a wide spectrum of communities and professionals, the question of ownership of land that was not attached to an identifiable property became equally perplexing. The fact that there was common ownership of land can also be verified in *Rishi Jaimini's Mimamsa sutras*. Under this arrangement, no king can give away all the land of his kingdom since the earth belongs to all.

C. Manusmriti on Rights to Land Ownership

According to an ancient text, the *Manusmriti*,

*"Land belonged to him who first cleared the timber and
a deer to him who first wounded it."*

This couplet makes it clear that, the title to property of land was allied to the labour put into making it cultivable. Land grants as well as purchase and sale of land would have seemed strange when vast tracts of virgin land was freely available which could be cleared and claimed by any person. But when society established itself on the Gangetic plains and the shortage of arable land began to be felt due to population increase, frequent transfer in the ownership of land became common. Transfer of land apart from being a sign of settled agriculture also indicates a shortage of land. When virgin land is abundant, the motive to transfer land or to get it transferred is naturally weak.⁴

D. Kautilya's Arthashastra:

In *Arthashastra*, the king was the sole proprietor of the land. During the Maurya era, political philosopher Kautilya was in favour of the king's control over all agricultural land, but he did not sponsor the notion that the king should be the owner of all the land. Possibly, Manu was the first person to have talked about king's first right of ownership of the land. According to Manu, the king owns half of all that comes out of mines, because he is lord of the earth and protects it. The concept of king's ownership over all land was first propounded in the post-Gupta period by *Sage Katyayan* who said that the king is the owner of all land and therefore, he has right to one fourth of all the products of land. At the same time, he also accepts that one who lives on land, should be the man acknowledged as its owner. A similar sentiment is expressed in *Narad Smriti*. Contrary to this, the *Narsingh Puran* clearly says that the land belongs to the king and not to the farmer. One can say that *Narsingh Puran* is the first text which gives the king the total ownership of land.⁵

According to Gautam and Manu, if a plot of land stays under possession of a person for 10 years or more, then it becomes his property. Yagyavallabh extended this period to 20 years, but none of them talked about land in this context. Vishnu, Narad, Brihaspati and Katyayan increased this period to three generations that is 60 years and also included land under this. With the 11th century Mitakshara law, the time period was increased to a 100 years and in the 13th century under *Smriti Chandrika* it was increased to 105 years. This makes it clear that the concept of individual ownership of land could not be challenged any further.⁶ So, we see that during the beginning of the ancient period, there was community ownership of land; by the end of the ancient period the stress was on the king's and individual ownership of land, even though it appears that these two rights are in conflict with one another. Due to king's ownership of land, the king could grant land to temple priests, powerful nobles and employees in return of services rendered to the king. And under the concept of individual ownership of land, the person who received a grant of land from the king could hand it over to farmers on patta. From the above it appears that since the early middle ages, there were more than one claimant for land and each had legal backing for it. A similar situation was prevalent in feudal Europe at that time, though there were some fundamental differences.⁷

⁴ Puja Mondal, System of Land Tenure in Pre-Independent India, (November 8, 2018, 4:30 PM), <http://www.yourarticlelibrary.com/india-2/system-of-land-tenure-in-pre-independent-india/4821>

⁵ *Supra note: 4*

⁶ *Ibid*

⁷ *Supra note: 4*

E. Mughals Period:

During 1200s, when the Muslim sultanates were established in north India, there was a change in the pattern of land ownership. The Mughals divided land for the purpose of determination of amount of tax and collection of tax. The land under the Sultanate was divided into three parts:

I. 'khalsa' land: This kind of land was directly under the Centre

II. 'Ekta' Land: This kind of land was given to the officers in lieu of their salary. The officers were expected to take their salary from the revenue generated from the land and return the remaining to the Centre.

III. Donated Lands: Which were donated to scholars and priests. Since land was in plenty, the question of ownership was relatively less intimidating. *Khoot*, *Mukaddam* and *Choudhary* were the intermediate land owning class. This intermediate land owning class used to collect tax from the farmers and deposit it in the Central treasury. But, during the era of Allauddin Khilji, the powers of the intermediate class were taken away and the State's employees were given the task of collecting tax directly from the farmers.

During the rule of Sher Shah Suri, the 'Jabt' system was introduced and the tax was based on the size of the holding. All cultivable land was measured and each farmer was given a title deed in which the tax to be levied was also mentioned. The direct relation with the state saved the farmer from exploitation by the zamindars and other intermediaries. It is possible that the state and other sections had right over the same plot of land, but there was no concept of total ownership of land. During this period the influence of the zamindars increased and they amassed enormous social clout. Akbar divided the land under him into 'Khalsa' and 'Jagir'. Along with them there was a large class of Zamindars, who, in turn, were divided into three categories. The farmers were of two types - the 'Khudkashta' and 'Pahikashta'. The former were farmers who tilled their own lands and the latter were landless peasants who tilled other people's land.⁸

F. British Period:

The British rulers inherited a well-laid-out land system from the Mughals. The question of land ownership once again came to the forefront during the British. It was in Bengal that the British rule first tried to solve this problem. In the beginning, all the land was considered to be that of the ruler and revenue collection was based on contract. The highest bidder of a tract of land was given the right to collect the revenue. The British administration modified or transformed the prevailing land tenures in such a manner as to secure the maximum revenue for the government from land tax. These changes resulted in the development of three types of land tenure systems viz., *Zamindari*, *Mahalwari*, *Ryotwari systems*.⁹

The **Zamindari system** was introduced by Lord Cornwallis in 1793 with a view to increasing the revenue of the East India Company. Under this settlement, the landlords were recognized as the full proprietors of the land. In return for this honour, the task of collecting rent from the farmers was entrusted to them. The Zamindars became the intermediaries between the cultivators and the State. But with the passage of time, the Zamindari settlements made these intermediaries the owners of land thereby creating a permanent interest in land.

The **Mahalwari system** was introduced by British to control the acquiring of land by people in India. This kind of tenancy was introduced during the British rule. It was first introduced in Agra and Oudh and later on in Punjab. Muslim tradition was instrumental in the emergence of the Mahalwari system. So far as the Mahalwari tenure was concerned, the village lands were held jointly by the village communities. The ruralites were jointly and severally responsible for the payment of land revenue. The lands held by the village communities were either cultivated by the members of the village communities themselves, or were leased out to others on rent.

The third, **Ryotwari system** was introduced by an East India Company member was known as *Ryotwari system*. The Ryotwari system was introduced by Sir Thomas Munro in 1792. Under this system, the responsibility of paying land revenue to the government was of the individual *ryot* himself. There was no intermediary between him and the state. The *ryot* or the farmer had full rights on land regarding sale, transfer, sub-let or lease as long as he paid land revenue to the government. The first Ryotwari settlement was made in Madras in 1792. It was later extended to Maharashtra, Assam, Punjab etc. The system was the product of Hindu tradition. There were many consequences of British tenure system. The major difference which occurs was that land becomes a property. Before British private ownership of the land did not exist but these three systems introduced private ownership of land. Earlier the land belonged to the village community but because of these systems the village got divided into landlords, tenants and labourers who either have control on land or work on land of another holder. Before British rule over land, it was never treated as the property of the kings, despotic, Hindu, Muslims or Buddhists but during British rule this changing of land into property profound social, economic, political, cultural and psychological change in India. These changes in land holding also deplete the prestige of Panchayats in villages. Before the British all the land matters and civil disputes were adjudicated by panchayats

⁸Supra Note-3

⁹*Ibid*

but during British rule farmer had to approach British courts for matters related to Revenue, property attachment, debt- mortgage etc.¹⁰

G. Period after Constitution of India:

After independence, the question of land was discussed in detail at the Constituent Assembly and Parliament. Since India had decided to become a democratic republic, it was decided that a land distribution should be more just and equitable. Egged on by the Centre, the State governments passed the Zamindariabolition act and other similar acts to bring about some regularity in the ownership pattern of land.

After zamindari was abolished, the zamindars were given compensation of their land and it was distributed among those who had been tilling them. In most of the States, the zamindari system was abolished by 1956. According to a rough estimate, due to abolition of zamindari system, two crore sharecroppers got land.

III. Beginning of legislative process on Land Acquisition by British India:

Few hundred years old and first used when an English king needed *salt petre*¹¹ to make gun powder and when he was not able to find any land, he grabbed hold of a private mine. The owner of the private mine approached the House of Lords, the House of Lords held that, **the sovereign can do anything, if the act of sovereign involves public interest.**¹²

A. Bengal Regulation I of 1824:

The first law in India for acquisition of immovable property for public works and purposes was contained in Bengal Regulation I of 1824 because the law applied “to the whole of Bengal province subject to the presidency of Fort William”. The rules empowered the government to acquire immovable property at a fair and reasonable price for construction of roads, canals or other public purposes “at a fair valuation”.

B Building Act XXVIII of 1839:

In the Bombay Presidency, Building Act XXVIII of 1839 provided for acquiring of land for public purposes in Bombay and Colaba and the compensation therefore to be determined by a jury of twelve. That Act was extended by Act XVII for taking land for railway purposes in the presidency.

C. Act XX of 1852 (Madras):

This Act has provided for acquisition of land for public works generally in Madras Presidency, the compensation as per the Act was to be settled by the Collector or if the parties disputed it, by arbitration. Simultaneously Act XLII of 1850 (Bengal) was extended to the Presidency. Both these Acts were extended by Act I of 1854 for acquisition of land in Madras town.

D. Act VI of 1857: This Act has repealed all the above enactments which enacted one general law for the acquisition of land for public purpose in all the territories under the East India Company. By this Act the valuation of land was required to be made by the Collector or by the parties disputed it, by arbitration and the apportionment of share might be made by arbitrator or left to suits in civil courts.

The Britishers have Amended The Act VI of 1857 owing to unsatisfactory settlement, incompetence and corruption and was replaced by Act II of 1861 dealing mainly with temporary occupation of land.

E. Act XXII of 1863:

This Act has provided for acquisition for private individuals and companies and applied to works of public utility viz. bridge, road, railroad, transport, tram road, canals, for irrigation and navigation, works of improvement of a river or harbour, dock, quay, jetty, drainage work or electric, telegraph and also all works subsidiary to any such work. At the same time Act VI of 1857 was in force which provided for acquisition of land for public purposes.

F. Act X of 1870:

This Act has repealed both Acts VI of 1857 and XXII of 1863 and made a consolidated Act providing for acquisition of land for public purposes and for companies and incorporated Part VII (acquisition for companies) for the first time.

This, Act was finally repealed in 1894 by the present Act. The Act allows the government to forcible acquire land from private land holders for projects of public purpose. The price of the land was determined by the government.¹⁶ Facts Leading to Act I of 1894- before the last enactment of 1870 valuation and compensation of acquired land on immovable property were made by the Collector by agreement, if possible. If there was no agreement the dispute had to be referred to arbitrators and there was no appeal against their decisions. The decisions could be impeached only on the grounds of corruption and misconduct of arbitrators. As those laws did not lay down any instruction for their guidance in performing their tasks and the arbitrators were sometimes

¹⁰Simran Arora, ‘Land Acquisition in India’, University of Petroleum & Energy Studies, Dehradun (U.K.), available at <https://ssrn.com/abstract=2906856>

¹¹form of *Potassium Nitrate*, used in the manufacturing of fire work)

¹²Supra Note 4

incompetent and corrupt, Act X of 1870 was introduced abolishing the system. Thereby the arbitrators who were generally Collectors were required, in case of dispute with the land holder to refer the difference to the court of the District Judge who aided by assessors disposed of the case. Therein appeal lied to the High Court in case of disagreement between the Judge and the assessor. But Act X of 1870 was not found entirely ineffective because infrequent reference to the court by the collector as per the Act rendered the landowners of small pieces of land to pay court cost exceeding the value of the land itself. The amended Act of 1894 made the Collector's award final, unless altered by the decree in a regular suit and interested person could refer disputes to an authority quite independent of the Collector and further right to appeal to appellate courts.¹³

The Act of 1870 was found to be unsatisfactory, which leads to the government passing the Land Acquisition Act, 1894. Thus, the amended Bill of Land Acquisition 1870 was introduced in India-in-Council in 1892 and referred it to a select committee on whose final report, the assent of the Governor General of India-in-Council was received and it came into force on 1st March 1894.¹⁴

Reasons for Act 1 of 1894: To enable the government for the acquisition of land needed for public purposes and for companies and for determining the compensation to be made on account of such acquisition.

Object of the Act: the objects of the Act are to provide for elaborate provisions relating to the acquisition of land for public purpose, for assessing the amount of compensation and it is for avoiding the necessity repeating such provisions in subsequent Acts dealing with similar or such acquisitions as well as for ensuring uniformity of the provisions that the sections of Land Acquisition Act are introduced in subsequent Acts of employing and incorporating words of the legislation in the subsequent Acts. The Land Acquisition Act 1894 (Act I of 1894) was amended in different years to make it more effective and to meet the demanding of the changing circumstances.

The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, adopts the Land Acquisition Act, 1894 after replacing the words "the whole of British India" with "All the provisions of India".

Further by passing Indian Independence (Adaptation of Central Acts and Ordinances) Order 1948 provided for continuation of the Land Acquisition Act 1894. The Order, 1950 which was published in the Gazette of India Extraordinary on 26th January, 1950 issued under Article 372 of the Constitution of India, provides that "*all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a Competent Legislature or other Competent Authority*".¹⁵

After independence when India was lead by the Prime Ministership of Pandit Jawaharalal Nehru, much stress was made on the economic development of the nation. As a part of it India has flagged off five-year plan, establishment of new factories, dams, mega projects, mining etc. Such a development model has resulted in large-scale of displacement of people. Most pre 1980 projects did not have a clear-cut resettlement plan. Resettlement was undertaken on case-to-case basis. Only National Thermal Power Corporation (NTPC) and Coal India Limited (CIL), two government undertaking formulated R & R policy and constituted R & R departments to administer it.¹⁶

In the first four decades since independence 40 per cent of the people who lost land to state sponsored activities like mining, dam building and other infrastructure projects have been tribal only 25% of them have been resettled and rehabilitated. Increasingly people threatened by development are refusing to sacrifice their interest for the larger common good. The resistance is largely due to states failure to provide adequate compensation to land holders and fail to ensure resettlement and rehabilitation of ousters.¹⁷

Land for land and jobs to new projects have been rationale solutions these do not work anywhere. There is not always sufficient suitable land elsewhere to make land for lands scheme work. Modern manufactory and other activities are skill based rather than labor intensive therefore these kind of projects can absorb only limited numbers of unskilled labor.

¹³ Sudheer Birodkar, '*A Hindu History: A Search for our Present History*'. Available at http://www.hindupedia.com/en/Development_of_Land_rights

¹⁴ *Ibid*

¹⁵ Vyshnavi Neelakantapillai, '*Right to Property under the Indian Constitution*', available at <http://www.lawyersclubindia.com/articles/Right-to-Property-under-the-Indian-Constitution-3515>.

¹⁶ Dr. Shwetha Deshpande, '*Resettlement and Rehabilitation of the Displaced and the Project Affected Families in India-An Analysis*', KLE Law Journal, pp.130-135

¹⁷ Janhavi S S, '*An Overview of Land Acquisition Act and Human Rights Issues*', International Journal of Humanities and Social Science Invention, www.ijhssi.org Volume 2 Issue 9 | September. 2013, PP.44-49

The concept of Rehabilitation and Resettlement:

At the national level, the first policy draft was prepared in 1985, by a committee appointed by the department of tribal welfare and it found that over 40% of the displaced people and project affected families in 1951 to 1980 were tribals.

The next draft was made by the ministry of rural development in 1993 and in 1994. Another draft was made in 1998 suggesting amendments to the Land Acquisition Act, 1894. At the state level as early as in 1985, Madhya Pradesh enacted a law for resettlement and rehabilitation applicable to state irrigation and power projects leaving central government projects. The Karnataka State enacted a rehabilitation law in 1987 in the same mode as of Madhya Pradesh state. In 1986 Maharashtra enacted Rehabilitation Act in 1986 which has received President Assent in 1989. Four other states of India issued government orders/resolutions on the rehabilitation of families affected by displacement are Andhra Pradesh, Orissa, Tamil Nadu and Gujarat.¹⁸

Mere payment of monetary compensation would create imbalance in the protection of social interest and individual interest unless the project affected people are provided with proper rehabilitation measures. Rehabilitation means restoration and improvement of the living conditions of the Project Affected Families and not just giving up money, which in most cases is spent on towards loan repayment and sheer domestic consumption.¹⁹

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

Finally to put an end to all these the Central Government repealed the old British Land Acquisition Act, 1894 and replaced it with new legislation Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The legislation has answered the most of the issues like determination of amount of compensation including *solatium*, provision for Social Impact Assessment, rehabilitation and resettlement and also made provision for the protection of the tribal and food security.

In *B.D. Sharma v. Union of India*,²⁰ the court held that: 'The overarching projected benefits from the dam should not be counted as an excuse to deprive the fundamental rights of oustees. They should be rehabilitated as soon as they are uprooted'. Further, the court provided a time frame by which the rehabilitation must be complete, before six months of submergence.

IV. Conclusion:

The pattern of land ownership changed from community ownership to individual ownership and then to king's ruler's ownership. In the middle ages the king/sultan and zamindar-farmer had concurrent rights over the same plot of land. In the British era, due to excessive land revenue extracted from farmers, land became a saleable product. In independent India, to implement the prime objectives of the Constitution the laws of land ownership were framed to ensure that each farmer had a minimum amount of land with him. It is intuitively obvious that an alternative livelihood source must be established through strategies such as the offer of alternative land, or of a lump sum of cash for alternative land purchase, and/or through guaranteed access to employment for the economically uprooted families in the new enterprise being built. The land, clothes and food are the fundamental needs of the human beings. The human beings struggle to own and fight to protect and hold exclusively. The state exercising its eminent domain power must ensure effective provisions of law to protect the interest of the individual. The balance is to be maintained between societal interest and an individual interest.

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¹⁸Rajesh Kumar, 'Historical Analysis of land ownership', available at <https://mkgandhi.org>

¹⁹Supra Note 3 p.132

²⁰ 1992 Supp. (3) S.C.C. 93.

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