EVOLUTION OF PROPERTY RIGHTS: ARTICLE 300A

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There is nothing which strikes the imagination and engages the attention of mankind as the right of property. "It is that sole dominion in which one man claims and exercises over the external things of the world", wrote William Blackstone.[1] Yet in the constitutional framework of India, this sole dominion has undergone a radical structural change. Property is defined not just as a physical object but as a bundle of sticks that encompasses the rights to use, exclude, alienate and even destroy. When the state enforces an acquisition then it executes a structural paradox: it incinerates the entire collective bundle of the sticks while returning a single fragile stick that is the monetary compensation. This operates under the doctrine holding that the Sovereign maintains an ultimate and an original title over all territory within its borders. Thus, the state operates under the pretense that it is not stealing land but simply reclaiming its own original property. Eminent socialist like Karl Marx[2] have observed that the power of eminent domain is nothing but the legal mask worn by state to forcefully commodify ancestral space for the expansion of capital. India has thus shifted to protect corporate interest.

Nor has this relationship between the Indian and his soil always been so fragile. Ancient India knew no such concept of land. The laws put forth by Sage Manu in Manusmriti[3] firmly stated that sovereignty over land was never solely that of the King. Rather the untilled forest legally belonged to the person who first cleared it for agriculture. The King's share was only a small portion of the agricultural produce which was deemed Bali and given in return for military protection. The genealogy of India's land acquisition began with the forcible acquisition of land by the East India Company. Colonial Bengal Regulation I of 1824[4] was passed with the motive to acquire land for establishing salt manufacturing houses. This Regulation was expanded upon and introduced into the Land Acquisition Act of 1894.[5] The Act served as a tool for extractive exploitation as it allowed for no provisions of R&R of displaced persons. Instead it made a

[1] William Blackstone, *Commentaries on the Laws of England* (first published 1765-1769, Clarendon Press) vol 2, 2
[2] Karl Marx, *Capital: A Critique of Political Economy* (Samuel Moore and Edward Aveling trs, first published 1867, Progress Publishers 1887) vol 1, 712-715
[3] Manu, *Manusmriti* (Ganganath Jha tr, Motilal Banarsidass 1920) ch 8, verse 239-243
[4] Bengal Regulation I of 1824
[5] Land Acquisition Act 1894

vague exception by empowering the "Urgency Clause" under Section 17. This Clause allowed the decision of the Collector to obtain possession of any civilian land within a period of 15 days, in which a notice had been published to the general public, thereby overruling any objection that the civilians may have raised against the acquisition and leaving families suddenly homeless.

The country was now caught in an unprecedented battle between the Judiciary and the Legislature. The first conflict happened in Kameshwar Singh v. State of Bihar [1951] ILR 30 Patna 45[6]] where the Patna High court ruled against the Bihar Land Reforms Act[7], stating that any inadequate compensation for acquired Zamindari estates would violate Article 14. Jawaharlal Nehru soon introduced the First Constitutional Amendment Act 1951[8] adding Articles 31A and 31B and the Ninth Schedule[9] to protect land reform laws from continuous judicial review. The Supreme Court returned with State of West Bengal v. Bela Banerjee [1954] SCR 558[10] by stating that compensation mentioned in Article 31(2) must be of full market value. Parliament reacted back with the Fourth Constitutional Amendment Act 1955[11] which stated compensation once awarded could not be challenged in any court of law. However, in R. C. Cooper v. Union of India [1970] SCR (3)530 [12], an eleven judge bench restored the Bela Banerjee principle by effectively overruling it itself while holding that State cannot give false consideration when acquiring any private property or company. In Kesavananda Bharati v. State of Kerala [1973] 4 SCC 225.[12] It also raised concerns over confiscatory takings where property belonging to a religious place was forcefully acquired by the government which belonged to the Edneer Mutt. Mahatma Gandhi himself had opined: Principle of Trusteeship is holy and where the state takes away the land from the cultivator and hands it over to the industrialist, it commits sin." The Janata Party led by Morarji Desai passed the Forty-Fourth Constitutional Amendment Act 1978.[13] Articles 19(1)(f) and 31 were removed from Part III. This change was implemented and took effect on 20 June 1979 thereby deleting the Right to Property from Part III which hosts the Fundamental Rights. It also took advantage of shifting the new Article 300A that added Right to Property over to Part XII which

[6] *Kameshwar Singh v State of Bihar* [1951] ILR 30 Patna 454, 462-468
[7] Bihar Land Reforms Act 1950
[8] Constitution (First Amendment) Act 1951
[9] Constitution of India 1950, arts 31A, 31B, sch 9
[10] *State of West Bengal v Bela Banerjee* [1954] SCR 558, 562-565
[11] Constitution (Fourth Amendment) Act 1955
[12] *RC Cooper v Union of India* [1970] SCR (3) 530, 545-552
[13] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225, 301-309

talks about Finance, Property, Contracts and Suits to show directly its secondary nature. This article is written in the negative “No person shall be deprived...", places a mandatory restriction on both the Executive as well legislative branches of government. It secures the right of a Person rather than a Citizen thereby allowing the protection to be enjoyed by foreigners, non-citizens and also corporations. The "Law of the Land" mentioned in the text clearly implies an Act which shall be drafted, passed and introduced by a competent legislature and shall not divest a citizen of his property. Additionally, Property no longer refers to just land but also includes intangible given aforesaid shares, codified copyright and the bank deposits.

In order to overturn 119 years of colonial best practices, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 Act (LARR Act[14]became enforceable on 1st January 2014. LARR Act tried to set strict democratic guardrails like an SIA under Section 4, to map the human cost of displacement projects and ensure the legitimacy of the intended "public purpose." Section 2(2) required prior consent of at least 70% of affected families for Public-Private Partnership projects and a stringent threshold of consent at 80% if land is acquired for private commercial entities. Correcting economics skimming through Section 26 which specifies a geographical multiplier of land cost between 1x to 2x times for rural areas and Section 30(1) imposed a Solatium of 100% as statutory mental trauma that is caused by displacement. Section 96 exempts all awards from income tax and stamp duty and Section 101 which directed unused land to be returned to the owner from whom it was acquired or to the State Land Bank if not used within 5 years. Section 24(2) states all proceedings under 1894 Act legally lapses if award was given 5 years before 2014 but compensation was neither paid nor the aforesaid possession was actually taken.

Seeking to undo 119 years of colonial exploitation, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR)[15] was notified on 1 January 2014. The Act attempted to establish strict democratic guardrails by conducting a Social Impact Assessment (SIA) under Section 4 to map humanitarian displacement impact and confirm the validity of the intended "public purpose." Mandating minimal government responsibility to national food security under Section 10, acquisition of multi-crop irrigated land was highly restricted and scaled down. Section 2(2) established democratic consent guards, which require prior consent of at least 70% of affected families for

[14] Constitution (Forty-Fourth Amendment) Act 1978
[15] Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013

Public-Private Partnership (PPP) projects and a de facto 80% limit if land was acquired for private/commercial use. Section 26 tried to ensure the replacement benefits corrected for economic skimming by introducing a graded multiplier of 1x to 2x for designated rural areas only. Section 30(1) requires before physical possession, payment of 100% Solatium (comfort money) as a governmental confession of culpa for causing mass dislocation. Section 96 exempted awardees from income tax and stamp duty on awards in their entirety, while Section 101 required unculturable waste and fallow land acquired in excess to be timely returned back to the owners if they signed a relief from liability agreement else become the property of the State Land Bank. All vested land that remained unused for 5 years would be returned to the original owners as governed under Section 24(2). Any proceedings under the Archaic 1894 Act lapse legally if an award was made anytime within 5 years prior to 2014 but neither possession was taken nor compensation paid. In short, these stringent preconditions stood in stark contrast to global norms. In the United States, the Fifth Amendment[16] recognizes property as a constitutional right that cannot be withdrawn: "...nor shall private property be taken for public use, without just compensation." But the U. S. Supreme Court ruling in Kelo v. City of New London, 545 U. S. 469 (2005)[17] paved the way for the taking of private land should some retrospectively identified public use arise which is shaped by private economic redevelopment promising future tax benefits thereby whitewashing India's corporate land antagonism. Across the pond, in the United Kingdom based on the Principle of Legality, the State seizes land through Compulsory Purchase Orders (CPOs) with the burden of satisfying the Equivalence Principle in which a set of guidelines which legally binds government compensation to ensure the displaced landowner is made neither better nor worse off than before. In continental Europe, Article 1 of Protocol 1 of the European Convention on Human Rights[18] protects property rights and ensures equality.

On the other hand, socialist systems have created a facade of ownership rights. According to article 10 of Constitution of China[19], urban land cannot be owned by anyone but the State and rural land cannot be owned by anyone but the collectives. Chinese only buy “Land Use Rights” or LURs. Vietnam’ Law on Land 2024[20] similarly provides for a system of “entire-people

[16] US Constitution, amend V
[17] *Kelo v City of New London* 545 US 469, 478-485 (2005)
[18] European Convention on Human Rights (opened for signature 4 November 1950, entered into force 3 September 1953) Protocol 1, art 1
[19] Constitution of the People's Republic of China 1982, art 10
[20] Law on Land 2024 (Vietnam)

ownership of land represented by the State." Section 25 of the Constitution of South Africa[21] walks a more radical tightrope by expressly allowing for state expropriation without compensation in limited circumstances to redress past racial dispossession. Australia Section 51(xxiii)[22] requires acquisitions made by the Commonwealth only be made on "just terms". Acquisition-valuations by government taxation departments are based on circle rates which are changed only every few years, usually between 3-5 years behind real market value. So compensation based on these undervalued registers mean already inadequate compensation amounts fall well below replacement costs. Cash compensation also leads to what can be described as financially-poverty traps. One-off payments made to families are frivolously spent in rural areas because there is often no sustainable source of income to replace what they lost. Valuations also do not take into account common property resources like pastures (Gauchar land) or village ponds, taking away the only safety net of poor farmers with no cash compensation. In the process of acquisition, families who are dependent on land for agriculture are forcefully pushed into urban settings with their only asset being the skill of farming. They take up unemployment or labour only to survive in congested city slums. The government uses entry level legislation like the National Highways Act 1956[23]], the Metro Railways Act 1978[24] or the Petroleum and Minerals Pipelines (Materials Acquisition) Act of 1962[25] that overrides LARR Act and does not mandatorily require consent from affected families nor does it follow SIAs. With such a framework in place, tenants, small holders and farm workers who are already renting land to cultivate crops, or migrant workers who find work on the same parcel of land seasonally are excluded from the process as they do not have legally registered rights over the land. Human costs are unequally affected too. According to data by the Ministry of Tribal Affairs, Scheduled Tribes (Adivasis) make up nearly 8% of the country's population and yet comprise over 40% of total oustees. Their forced ouster from Scheduled Areas is in clear violation of their cultural rights under Article 29 and as laid out in Samatha v. State of Andhra Pradesh (1997) 8 SCC 661[26]], the government cannot lease or mortgage the forest land to any of the private property to protect interests.

To that end, India has seen significant movements toward digitalisation and technology-

[21] Constitution of the Republic of South Africa 1996, s 25
[22] Australian Constitution, s 51(xxxi)
[23] National Highways Act 1956
[24] Metro Railways (Construction of Works) Act 1978
[25] Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962
[26] *Samatha v State of Andhra Pradesh* (1997) 8 SCC 661, 680-689

enabled solutions. The SVAMITVA scheme[27]], rolled out nationwide on 24 April 2021 for example, employs Continuously Operating Reference Stations along with high-resolution drone imagery to provide rural residential (abadi) households with the first officially sanctioned, legally acceptable map/plat of their property, and thereby issued over 2.2 crore property cards (aktas) to villagers who previously owned no legal title whatsoever. This has been complemented by Bhu- Aadhaar or Unique Land Parcel Identification Number (ULPIN), which gives everysurveyplot anewpermanentidentification number in the form of a 14-digit alphanumeric code (generated from their exact geo coordinates)that can never allow sale of the same plot under a different identification number. Similarly, in Real Estate Regulatory Authority (RERA)'s aggressive overriders parliamentary supremacy is allowed to trump contract in certain respects, giving administrators the power to attach bank accounts of defaulting builders and confiscate stalled projects, to be assigned instead to homeowners' associations. RERA stands in statutory addition to archaic land laws like Section 118 of Himachal Pradesh Tenancy and Land Reforms Act of 1972[28] (which prohibits non-Himachalis from purchasing the agricultural land in Himachal Pradesh) and aforesaid Article 371F of the Constitution. [29]

As India digitised its titles, the courts paradoxically began to self-correct. In Indore Development Authority v. Manoharlal (2020) 8 SCC 129[30] the five-judge bench took government authorities' side by deciding that statute-barred under Section 24(2) does not apply to land acquisition suits filed after the State deposited compensation with the treasury, effectively reading the words "if the landowner does not accept the awarded amount" out of Section 24(2), thus holding it to be "paid" once the state custody. However, the Supreme Court sensed the draconian scope for executive misuse and began constructing rule of law fences. In National Highways Authority of India v. Tarsem Singh (2019) 9 SCC 304[31], compensation was denied to the plaintiff as the State of Haryana had not accepted his claim. The Supreme Court invalidated Section 3J of the National Highways Act, stating that the government cannot classify land losers differently on grounds of public utility project and hold that solatium and interest aren't an essential part of rehabilitation/compensation under Article 300A. The Court

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[27] Ministry of Panchayati Raj, *Survey of Villages and Mapping with Improvised Technology in Village Areas (SVAMITVA) Scheme Guidelines* (Government of India 2021) 12-15
[28] Himachal Pradesh Tenancy and Land Reforms Act 1972, s 118
[29] Constitution of India 1950, art 371F
[30] *Indore Development Authority v Manoharlal* (2020) 8 SCC 129, 145-156
[31] *National Highways Authority of India v Tarsem Singh* (2019) 9 SCC 304, 318-324

went even further in Vidya Devi v. State of Himachal Pradesh (2020)2 SCC 569[32] Where illegal acquisition of land from an illiterate woman happened without following procedures, the Supreme Court refused to grant the deposes on order claiming adverse possession by the State, thereby famously and analytically stating "The Right to Property can by no stretch of imagination become an inalienable human right. But in a democratic welfare state like India, the State cannot enter like a predatory trespasser on the property of its own citizens". The Court later reiterated this position in Sukh Dutt Ratra v. State of Himachal Pradesh (2022) 7 SCC 508[33] with a change in judgment stating that there is never a statute of limitations on providing justice if a constitutional right is being infringed upon continuously. Also in Manubhai Sendhabhai Bharwad v. ONGC (2023)[34] the court stated that agricultural lands being kept under the hammer of "temporary acquisition" for 23 years, amounted to a constructive permanent acquisition in violation of Article 300Arecently, in Brihanmumbai Municipal Corporation v. Vijay Nagar Apartments (2025)[35]], the bench squarely held that bureaucratic limitations or BMC's lack of funds can never be grounds to condone or delay payments owed by law.

"To deprive a man of his house and his land by an administrative order which is not subject to judicial review makes of him a citizen in name only" - Justice H. R. Khanna. Integrating Indian jurisprudence with these seven pillars sub-rights Indian Judiciary has entrenched Article 14 and Article 21, cementing the reality that an arbitrary deprivation of a person's home is a direct assaulton their right to live with human dignity.

History of development of right to property in India clearly indicates that State can have power of eminent domain but cannot deprive a person of his means of subsistence. Thus, through the empowerment of Article 300A, Indian judiciary has upheld that citizens home is not a commodity to barter away but a necessary foundation of human dignity that no state can take away from them.

[32] *Vidya Devi v State of Himachal Pradesh* (2020) 2 SCC 569, 572-575
[33] *Sukh Dutt Ratra v State of Himachal Pradesh* (2022) 7 SCC 508, 512-516.
[34] *Manubhai Sendhabhai Bharwad v Oil and Natural Gas Corporation Ltd* (2023) Civil Appeal No 3814/2023 (SC) paras 14-18
[35] *Brihanmumbai Municipal Corporation v Vijay Nagar Apartments and Ors* 2026 LiveLaw (SC) 523 / (2025) Civil Appeal No 6701/2025 (SC) paras 8-12