

CONCEPT OF INDIVIDUAL RIGHTS IN THE LIGHT OF LAND ACQUISITION BILL 2015: A JURISPRUDENTIAL CRITIQUE

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Abstract

As Land plays a very pivotal role in the life of the common mass who are totally depended on it for their survival. Law acts as a tool for protecting the interest in it, so that individual rights of the mass can be protected. Every law which is made by the state should be made in conformity with the natural law in the manner that the individual rights can be served and protected. Land Acquisition in India refers to the process of land acquisition by the central or state government of India for various infrastructure and economic growth initiatives¹. The paper shall critically analyse how the present Land Acquisition Bill of 2015 is violating the individual rights and is contrary to the principle of natural law on the basis of different jurisprudential philosophies given by different Natural law thinkers. This paper shall highlight how this Act is transferring agriculture lands into the hands of capitalists. The author shall also discuss the clash of individual rights and public order in special reference to the Land Acquisition Bill, 2015.

Keywords: Individual Rights, Land Acquisition Bill, Social Impact Assessment, Jurisprudential philosophy, Make In Project.

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¹ Chetna Upadhyay, *Land Acquisition In India*, South Asia Journal of Multidisciplinary Studies (SAJMS), July Vol. 1, No.6,2015

INTRODUCTION

The concept of individual rights is very dynamic and has been ever-changing. There has always been tussle between individual rights and state order to claim superiority. From the very ancient time, the debate is going on this two complex topic. The question which arises here is that whether individual rights can be infringed by the state order, or state power is a subject of individual will. In various countries, it is said that individual rights cannot be infringed unless proper procedure has been followed, and India too following the same rationale.

But in recent years, the topic of individual rights has become a debated topic under the light of Land Acquisition Bill, 2015 and the ordinance passed by the National Democratic Alliance (NDA) government to amend the legislation of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARR Act) in order to remove consent clause from it. When we compare individual rights and state order, both have different dimensions to work, but they are related to each other for the development of the society. So, individual rights can be better understood by taking into consideration the power of the state, as they are related to each other. With regard to property, civil law can be divided into three clearly defined groups: the law of property, the law of obligation and the law of status. The first deals with proprietary rights *in rem*, second with proprietary rights *in personam* and the third deals with non-proprietary rights, whether *in rem* or *in personam*. With regard to individual right on land, Right *in rem* is important. As Rights *in rem* are characterized as those rights which bind the entire world, *i.e.*, rights which must be respected by all of the subjects of the legal system: “everybody must refrain from trespassing on my land.”²

Through this paper, author wants to analyze the jurisprudential intricacies that how individual rights are being easily undermined in the name of ‘public purpose’ without taking the consent of the people, and the result of the transformation of an agrarian economy to capitalist. The paper shall focus on the individual rights perspective on the basis of different theories given by Natural law thinkers. Individual rights are inseparable, as being human or not being human is usually considered as the unchallenged and undamageable truth of existence, not something which can be achieved or lost. Thus, individual rights are universal rights

² J.E Penner, *The Idea of Property in Law*, (Clarendon Press, Oxford), p. 23.

possessed universally by all human beings.³ And to understand that when our individual rights can be taken away or when they are subject to the control of state order, it is important to understand the relation between two.

HISTORY ABOUT THE LAND ACQUISITION ACT

Before understanding, what constitute individual rights, firstly we have to understand the reason and circumstances behind the enactment of Land Acquisition Act in India. Land Acquisition law whether in the year 1894 or 2013 was made to bring an institutional arrangement and conveniences to address the issues related to land. Amid colonial period, before 1894, the issues identified with area were administered by distinctive regulations of diverse august states like the Bengal Regulation I of 1824, the Act I of 1850, the Act XXII of 1863, the Act X of 1870, the Bombay Act No. XXVIII of 1839, the Bombay Act No. XVII of 1850, the Madras Act No. XX of 1852 Madras Act No. 1 of 1854 X of 1861, the Act VI of 1857 - all ordered by the frontier organizations, first in the Presidency towns and later spread the nation over, to encourage for the simple procurement of area and other resolute properties for streets, trenches and other 'open purposes' with remuneration to be dictated by particularly selected authority⁴. These enactments enabled the crown to re-establish there power in India after the battle of 1857 was the power of British East India Company was taken away by crown.

The main problem that lies with all the above legislations was that they did not allowed any opportunity to object the acquisition of land but nevertheless they allow only to object for the compensation which the people have been given for their land. The debate related to compensation is similar to the debate related to "public purpose" for acquiring the land in the 19th century. Even in the late 19th century, allegations of 'inadequacy, corruption and misconduct' were rife⁵. It all led to the enactment of Land Acquisition Act of 1894. It meant to bring down the uniformity in acquiring of the land. The preamble of the act states that, *it meant to 'amend the law for the acquisition of land for public purposes and for companies and to determine the amount of compensation to be made on account of such acquisition'*.⁶ It

³ Esmaeil Saghiri; Abasat Pourmohammad, *The Concept of Individual Rights from a Legal and Jurisprudence Approach*, NATIONALPARK-FORSCHUNG IN DER SCHWEIZ (Switzerland Research Park Journal), Vol. 102, No. 4; April 2013.

⁴ Radhey Shyam v State of Uttar Pradesh and others, decided on April 15, 2011; Bench comprising Justice GS Singhvi and Justice Ashok Kr. Gangly; see also PK Sarkar, 'Law of Acquisition of Land in India' (2nd Edition), Eastern Law House, 2007;

⁵ <http://iihs.co.in/>, Accessed on 14th July 2015.

⁶ <http://megrevenue.dm.gov.in/>, Accessed on 14th July 2015.

means single law to govern the administration related to land and also legitimise the activity of different empire.

It was only after the Non-Cooperation Movement that Indian leader entered into the administration through elections that lead to the amendment of Section 5A to the Act of 1894 was introduced, one that allowed the possibility of raising objections, albeit with a warning on its limitations. Even after independence the Act of 1894 continued to be in practise with some amendments⁷. It was only after 1991 when India adopted the policy of LPG, acquisition of land by private entity become rampant that lead to the exploitation of general people, even the government had now started acknowledging the private sector as it was thought that it would lead to the development of the economy on the cost of people of marginal sect of the society.

Land Acquisition Act (LAA) that has been supplanted by the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR) 2013, seven years after two different enactment, Land Acquisition (Amendment) Bill 2007 and Resettlement and Rehabilitation Bill 2007, were presented by the UPA in Parliament in wake of Nandigram, Singur, Kalinganagar and numerous other aggressor restriction to land procurement by ranchers⁸. The Act claims to better reflect the purpose for which the land was being acquired. The Land Acquisition Act, 2013 was prepared after a long discussion, keeping in mind the dependence of farmers on the land. So, consent and social impact assessment⁹ was given paramount importance so that individual rights to the land can be protected.

What was happening in 2013 Act was that land was being taken without the consent of the owner even if the land was being used for the public purpose. The term 'public purpose' has been not defined anywhere, but time to time it has been interpreted in different ways to suit the situation and facts. In the 2013 Act, the consent of 80% land owners in case of private projects and 70% land owners in case of government projects was made mandatory and

⁷ The LAA 1894 has been amended in 1919, 1921, 1923, 1933, 1962, 1967 and 1984. See <http://www.deccanherald.com/content/202342/replace-archaic-land-acquisition-law.html>. Accessed on 24th July 2015

⁸ <http://counterview.org/2013/11/21/new-land-acquisition-act-fails-to-deal-with-historic-injustices-committed-in-the-name-of-development-is-aimed-at-facilitating-corporates/>, Accessed on 24th July 2015

⁹ 'Social Impact Assessment (SIA) includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions. Its primary purpose is to bring about a more sustainable and equitable biophysical and human environment, available at, <http://www.socialimpactassessment.com/>

handsome amount of compensation was assured to the farmers by giving due notice to the rights of the farmers. Social impact assessment was being done to see if what will be the effect of the acquisition of the land on the community who has been using that land for their productive purpose. This was done keeping in mind that the individual rights do not get violated. It can be observed that the Act of 2013 is giving very much importance to the individual rights as it has been laid down in different theories by Natural Law thinkers.

Natural Law school gives emphasis on individual rights and explains the importance of individual rights in daily life. It explains that individual rights as nothing but basic rights which are essential for the survival. The 2013 Act emphasises that no land should be taken by force or compulsion from anyone, and thus we can say that the Act of 2013 was quite similar to the some of the point given by natural law theory. As Natural Law school propounds that law is nothing but the rights reason with nature, every individual rights should be protected and should not be infringed by anyone harshly. The school explains that rights is nothing but constitute morality in other words. Morality should be given due consideration before taking any action, for example, when land of someone is being acquired, he must be given proper and fair compensation. Under Land Acquisition Act of 2013, morality has been taken into consideration in the law directly or indirectly in the form of consent, social impact assessment and public purpose for which the land was being taken.

But the main problem arose after the amendment in Land Acquisition Act of 2013 by the process of ordinance passed by the present NDA government to acquire land. The scope of 'public purpose' was broadened, and land could be acquired without the consent of the owner. Some of the major amendments which were done by the government in regard to the Land Acquisition Act of 2013 were¹⁰:

- i. Evacuation of 'assent' provision: According to the 2013 demonstration, area could be procured just with support of 70% of area proprietors for PPP (Public Private Partnership) ventures and 80% for private elements. The correction brought up by the present Government evacuated this procurement of "assent" for getting terrains for five reasons – Industrial hallways, Public Private Partnership ventures, Rural Infrastructure, Affordable lodging and Defence. This has drawn a significant part of the feedback from political circle as well as from activists like Anna Hazare who has dispatched a mass dissent against the bill.

¹⁰ <http://www.newindianexpress.com/nation/Controversy-Over-Land-Acquisition-Bill-All-You-Need-to-Know/2015/03/07/article2701536.ece>. Accessed on 27th July 2015

- ii. Return of unutilized land: According to the Act 2013, if the land remains unutilised for five years, then it needs to be returned to the owner. But, according to the ordinance promulgated by the NDA government, the period after which unutilised land needs to be returned will be five years, or any period specified at the time of setting up the project.
- iii. According to the new law, if any administration authority confers an offense amid the procedure of procurement, he/she can't be arraigned without former assent from the legislature.
- iv. While the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 permits privately owned businesses to obtain land, the proposed revision permits any private element to procure land.
- v. The corrections propose is to incorporate 13 different legislations, which are at present exempted under the domain of this Act in the remuneration, recovery and resettlement procurements. This is, nonetheless, seen as a pro-agriculturist move as there was no uniform and proper approach of restoration and resettlement.

An argument which was given by the present government in bringing this reform was to boost the development process. As govt is very much focus on "Make in India" project as a result, lots of foreign company want to establish business in India but because of land dispute among people the aim is not getting fulfilled. Even they claim that the Act of 2013 which contain consent part which is necessary for acquiring land even for public purpose, results into the failure of acquiring of the land as majority of the population never comes to the same point. Results of that development process slow down. So it is necessary that in some field this type of clause should not be present.

When you are acquiring the land from any one without the consent of that man it is total violation of his natural rights or basic rights. It is another situation and question that you are acquiring the land for public purpose. Now the question arises is that when any one acquire the property of another without the consent of that another person, it is total violation of his legal or natural rights.

JURISPRUDENTIAL FRAMEWORK OF THE TERM 'INDIVIDUAL RIGHTS'

To understand the concept of individual rights in the light of land laws, we have to understand the meaning of individual rights first. Based on its common definition, individual rights are those rights which a person possesses, due to mere fact of him/her being a human. Hence, they are universal rights possessed universally by all human beings.

The second article of Universal Declaration of Human Rights says that the aim of each political society is to preserve human being's natural and unreviewable rights.¹¹

In this definition, what is important, is human being; society is formed to support his rights and liberties. These rights result from nature not society. The history of wisdom is replete with thoughts of humanism as well as search for happiness and liberty. Before the birth of Christ, Sophists and Epicure based the principle of their philosophies on human being's happiness and pleasure. Christ also did his best to edify and support mankind. The period of revitalizing old wisdom also shared these thoughts¹².

Descartes founded his philosophy based on individual's 'self' i.e. individual rights. However, in our era, it was John Locke who, for the first time, gave this theory and its legal affects a scientific basis he has focused on the individual rights. By announcing that "government does not create ownership, but it is built to support such rights or protect rights," he expressed everything. Because what he meant by "ownership" was not only the exclusive rights to external possessions but it also constitute of some rights which are internal. Human beings possess their own body and work and therefore have the rights to own the outcome of their forbearers' work. Government is created to defend this right; a right which is concomitant with 'liberty' and seems inseparable from it.¹³

The idea of individual rights developed from political theories of natural rights of the early new epoch. Such theories arose initially from the need to set limits to behave with others, especially the behavior of those who had political powers or in other words government right to interferes with the members of the society. It was necessary in the society as in order to maintain peace and harmony in the society. In the 17th century, John Locke defined the rights of life, property and liberty as natural rights.

A century later, Thomas Jefferson defined these rights as life, liberty and search for happiness. These rights were defined as natural because they were God-given and therefore were a part of human nature.

The condition of individual rights was clearly expressed in American Declaration of Independence by Jefferson¹⁴: "and we know these facts to be clear and unambiguous that all

¹¹ <http://www.newindianexpress.com/nation/Controversy-Over-Land-Acquisition-Bill-All-You-Need-to-Know/2015/03/07/article2701536.ece>, Accessed on 23th July 2012

¹² <http://www.newindianexpress.com/nation/Controversy-Over-Land-Acquisition-Bill-All-You-Need-to-Know/2015/03/07/article2701536.ece>, Accessed on 23th July 2012

¹³ *ibid.*

¹⁴ Thomas Jefferson was an American Founding Father, the principal author of the Declaration of Independence, and the third President of the United States, available at, <https://www.whitehouse.gov/1600/presidents/thomasjefferson>, Accessed on 1st August 2015

human beings have been created equal, that God has granted them certain inseparable rights” which cannot be infringed by any one. Many have said individual rights are inalienable rights meaning that they should be maintained in all times and under any conditions without any discrimination¹⁵.

PHILOSOPHICAL ANALYSIS OF RIGHT TO PROPERTY IN THE LIGHT OF VARIOUS JURISPRUDENTIAL THINKERS

Before comprehending what constitute individual rights, the inquiry emerges is that, whether people have any privilege to protest when state obtains the area for open reason? Acquisition of land, whether it has any ethical or moral impact on the general public? As Natural Law thinkers mainly talk about the rights of the individual on the basis that whether the law or any act has any social or moral effect on the society or not. Philosophers like Jean Jacques Rousseau, Aristotle, Thomas Aquinas, John Locke and David Hume held the view that property acquired by the person by putting the labour on it, is his property.

In a situation in which a poor farmer, who is putting his labour on the land to live a life with dignity with his family members, and his land gets acquired on the ground of it being used for public purpose and for the development of the country. Whether the prudence given in the above statement by the government sound appropriately for the society. In any way, the state shall defend its objective by quoting the general welfare of the society. For that, government has balanced out the ordinance by including thirteen so far excluded Acts under the Land Acquisition Act.¹⁶ To the knowledge of the author, nowhere in the world under any statute the term ‘public purpose’ has been defined, and the term is very ambiguous and broad in nature. Wherever the term has been used, it has been in some perspective or the other, without it being defined. In the State of Bombay v. R. S. Nanji¹⁷, Supreme Court observed, It is impossible to precisely define the expression ‘public purpose’. In each case, all the facts

¹⁵ Esmaeil Saghi; Abasat Pourmohammad, *The Concept of Individual Rights from a Legal and Jurisprudence Approach*, NATIONALPARK-FORSCHUNG IN DER SCHWEIZ (Switzerland Research Park Journal), Vol. 102, No. 4; April 2013.

¹⁶ <http://www.dnaindia.com/india/report-decoded-what-changes-has-the-narendra-modi-government-made-in-the-land-acquisition-ordinance-2048240>, Accessed on 5th August 2015

These Acts include the Coal Bearing Areas Acquisition and Development Act 1957, the National Highways Act 1956, Land Acquisition (Mines) Act 1885, Atomic Energy Act 1962, the Indian Tramways Act 1886, the Railways Act 1989, the Ancient Monuments and Archaeological Sites and Remains Act 1958, the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962 and the Damodar Valley Corporation Act, 1948. The Electricity Act 2003, Requisitioning and Acquisition of Immovable Property Act 1952, the Resettlement of Displaced Persons (Land Acquisition) Act 1948 and the Metro Railways (Construction of Works) Act 1978 are also brought under its purview to provide higher compensation, rehabilitation and resettlement benefits to farmers whose land is being acquired.

¹⁷ AIR1956 SC 294

and circumstances will require to be closely examined in order to determine whether a public purpose has been established. Prima facie, the government is the best judge as to whether public purpose is served by issuing a requisition order, but it is not the sole judge¹⁸.

With the enactment of the new Land Act, the government has gained capacity to take away any land on the ground 'public purpose', which may or may not be used for public purpose. The power of the state to acquire land, without the owners' consent, under any of the five conditions under the Bill can be questioned with regard to individual rights as stated by Natural Law thinkers. For example, Thomas Hobbes stated that whatever the power state has, has been given by the common mass of the society, in a way that every law should be in the conformity with the natural law. Natural Law thinkers believe that all the laws state enacts should made in conformity with natural law. Natural law is nothing but the rights and privileges which nature had granted, to live a peaceful and prosperous life. Taking away the land in the name of public purpose, in a way, is the violation of one's natural rights. The lands, on which people are depended for the welfare of the family, are now being acquired by the government without the consent of the owner and without making any social evaluation, without wondering the destiny impact on the circle of relatives whose sole earning is relied on the land.

In the light of the individual rights, the Labour theory, propounded by John Locke, requires special mention. "The Lockean labour theory is the justification of private property that is based on the natural right of one's ownership of one's own labour, and the right to nature's common property to the extent that one's labour can utilize it. Locke's theory is often used to analyze the natural rights of inventors, authors, and artists in their own creations."¹⁹

This theory clearly states that if any person engages his labour on a property, it becomes his property, which is also supported by the various theories of Natural Law. This property is property rights *in rem*, with no interference from the outside world. 'The state does not have any right to infringe into my property because of my labour.' But, under the Land Acquisition Bill, 2015, the idea of individual rights has totally been scrapped. There is no meaning of natural rights of the common individual under the Bill. The state is being changed over from majority rule government to a tyranny in the connection of Land Acquisition Bill. The manner in which the land acquisition Bill was passed. it clearly shows that individual rights is

¹⁸ G. Raghuram ,Simi Sunny, *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014: A Process Perspective, July 2015*. Indian Institute of Management India Research and Publications, Ahmedabad.

¹⁹ <http://definitions.uslegal.com/l/lockean-labor-theory/>, Accessed on 8th August 2015

now being controlled by the state which can be clearly evident from the five condition in which land can be acquired without the consent of the owner and without the social impact assessment.

This can be clearly evident from day to day protest which is taking place by poor farmers in different state against the amendment which had taken place in the Land Acquisition Bill of 2013. Farmers are very afraid that even though if they did not want to give their land, government will forcibly taking away their land in the name of development of our country. They are of opinion that government is trying to convert the agrarian society to capitalist society by forceful method of taking away of their land without having done any social assessments. This incident clearly shows that, individual rights have no meaning in modern world. It is right nothing other than the right which govt provides us.

CONCLUSION

After going through different intricacies related to Land Acquisition Bill of 2015, we can say that the present Land Acquisition Bill does not gives any scope to the importance of individual rights. The present act is like a command of state and no one can challenge it, even though if it violates our rights. Similarly as explained by different positivist philosopher, law is the command of sovereignty and no one can challenge it as has been well supported and articulated by the thinkers like Austin, Hegel, and Bentham etc. Government by adding the 13 legislation which was not included in the 2013 Act, it shows the clear intention on the part of government ,who want to done away with land in any condition by defending that it is being used for public purpose and violating the individual rights of the mass. As law is made by the government to suit their needs of the present time especially when it is related to land, so in any way government will be able defend his action.

As the matter of law, every law should be made in conformity with the natural law so that it does not violate individual basic rights. As poor farmers are of the believe that the government were protect their interest but when we see the present Bill, any one can say that society is getting transformed into the capitalist Society with having no individual will . Different leaders of the present government in any manner they are justifying the decision of their party by opposing the action of the opposite party. But no one is thinking about the individual rights which are directly or indirectly harming the people living in the society. As a matter of fact present land Acquisition bill, had exploited the common mass by forcibly acquiring the land without the consent. Further, the acquisition is not just a matter of displacement of a segment of population for development but it's a matter of providing the

citizens with the all means and help for development and not depriving them from mere means of survival. But government had failed in doing so. Recently in first week of August government had decided to done away with the ordinance in order serve the farmer interest but till now it has been in words only no further action had been taken in this regard.

Through this Paper, author would like to suggest that, the present land bill should be amended as soon as possible in order to protect the individual rights and to serve natural justice. Individual rights are of very paramount importance which cannot be negated in any changing society.

Along these lines, the assent of individuals of the nation is essential as this would affect their present and future. With the ramifications of this new bill, the distress and situation of the workers, ranchers and other dislodged ones is quieted out which negates the whole idea of Democracy.