LAND LAWS

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Subject: Land Laws **L4 C4**

Objective: The object of this paper is to focus on land reforms besides land acquisition procedures enunciated in the Act of 1894and the rent laws.

Unit – I: Land Reforms

a. Constitutional Provisions on Agrarian Reform Legislation

b. Abolition of private landlordism

c. Land Ceiling Legislation

d. State enactments prohibiting alienation of land by tribals to non-tribals

e. Consolidation of holdings

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b. Settlement of rent disputes

UNIT 1: LAND REFORMS

a. Constitutional Provisions on Agrarian Reform Legislation
b. Abolition of private landlordism
c. Land Ceiling Legislation
d. State enactments prohibiting alienation of land by tribals to non-tribals
e. Consolidation of holdings

a. CONSTITUTIONAL PROVISIONS ON AGRARIAN REFORM LEGISLATIONS

The Indian Constitution does not recognize property right as a fundamental right. In the year 1977, the 44th amendment eliminated the right to **acquire, hold and dispose of property** as a fundamental right. However, in another part of the Constitution, Article 300 (A) was inserted to affirm that no person shall be deprived of his property save by authority of law. The result is that the right to property as a fundamental right is now substituted as a statutory right. The amendment expanded the power of the state to appropriate property for social welfare purposes. In other words, the amendment bestowed upon the Indian socialist state a licence to indulge in what Fredric Bastiat termed legal plunder. This is one of the classic examples when the law has been perverted in order to make plunder look just and sacred to many consciences.

Indian experiences and conception of property and wealth have a very different historical basis than that of western countries. The fact the present system of property as we know arises out of the peculiar developments in Europe in the 17th to 18thcentury and therefore its experiences were universally not applicable. A still more economic area in which the answer is both difficult and important is the definition of property rights. The notion of property as it has developed over centuries and it has embodies in our legal codes, has become so much a part of us that we tend to take it for granted, and fail to recognize the extent to which just what constitutes property and what rights the ownership of property confers are complex social creations rather than self evident propositions.This also seems to be the hidden reason why the right to property is suddenly much contested throughout

India today and why the state is coming up unexpectedly against huge resistance from unexpected quarters in attempting to acquire land in India. The action of the state to assert the Eminent Domain over subsidiary claims on property and the clash which resulted there from Singur, Nandigram and other parts of India is precisely a manifestation of a clash of cultures. To put in Samuel Huntingtons words, the ideas of the west of development and liberalization propagated by the present ruling elite and the old Indic ideas which shape the views of the majority of the people.

The right to property under the Indian constitution tried to approach the question of how to handle property and pressures relating to it by trying to **balance the right to property with the right to compensation for its acquisition through an absolute fundamental right to property and then balancing the same with reasonable restrictions and adding a further fundamental right o compensation in case the properties are acquired by the state**. This was exemplified by Article 19(1)(f) balanced by Article 19(5) and the compensation article in Article 31. This was an interesting development influenced by the British of the idea Eminent Domain but overall it struck an interesting balance whereby it recognized the power of the state to acquire property, but for the first time in the history of India for a thousand years or more, it recognized the individuals right to property against the state.

However, when the state realized that an absolute property and the aspirations of the people were not the same the legislature was subsequently forced to make the said right to property subject to social welfare amid amendments to the constitution. Articles 31-A, 31-B and 31-C are the indicators of the change and the counter pressure of the state when it realized the inherent problems in granting a clear western style absolute fundamental right to property (even though it was balanced by reasonable restrictions in the interest of the public), specially Article 31-C, which for the first time brought out the social nature of property. It is another matter that the said provisions were misused, and what we are discussing today, but the abuse of the socialist state in India is not the scope of the present article and the articles are considered on their face value only.

Doctrine of Eminent Domain

v HISTORY

Few hundred years old and first used when an English king needed salt petre (form of Potassium Nitrate, used in the manufacturing of fire work) 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.**

WHAT IS THE POWER BESTOWED BY THE DOCTRINE TO THE STATE???

Basically this doctrine entitles sovereign to acquire private land for a public use, provided the public-ness of the usage can be demonstrated beyond doubt.

PRESENTLY THE DOCTRINE DOES THE DUTY OF:

In the present context this doctrine raises the classic debate of powers of State v. Individual Rights. Here comes the DIDDevelopment Induced Displacement which means, **The forcing of communities even out of their homes, often from their home lands for the purpose of economic development**, which is viewed as a Human Right violation in the International level.

ESSENTIAL INGREDIENTS OF THIS DOCTRINE

1. Property is taken for public use
2. Compensation is paid for the property taken.

The above said are the two **limitations** imposed on the power of Eminent Domain by the repealed A.31 .

Whereas the new **A.300** A imposes only one limitation on this power (i.e.,)**Authority of Law**

MAXIMS

The doctrine is based on the following two Latin maxims

i. Salus Populi est Suprema Lex Welfare Of The People Of The Public Is The Paramount Law;

ii. Necessita Public Major est Quam Public Necessity Is Greater Than Private Necessity.

Every government has an inherent right to take and appropriate the private property belonging to individual citizen for public use.This power is known as Eminent Domain. It is the offspring of political necessity. This right rests upon the above said two maxims. Thus property may be needed and acquired under this power for government office, libraries, slum clearance projects, public schools, parks, hospitals, highways, telephone lines, colleges , universities, dams, drainages etc. The exercise of such power has been recognized in the jurisprudence of all civilized countries as conditioned by public necessity and payment of compensation. But this power is subject to restrictions provided in the constitution. In the United States of America, there are limitations on the power of Eminent Domain---

1. There must be a law authorizing the taking of property
2. Property is taken for public use
3. Compensation should be paid for the property taken.

Meaning of Property

The word property as used in Article 31 the Supreme Court has said should be given liberal meaning and should be extended to all those well recognized types of interest which have the insignia or characteristic of property right. It includes both corporeal and incorporeal right. It includes money, Contract, interest in property e.g., interest of an allottee, licensees, mortgages or lessees of property. The Mahantship of a Hindu

Temple, and shareholders of Interests in the company are recognizable interest in property. The right to receive pension is property.

Supreme Court Approach to the Right to Property

The Supreme Courts approach to the right to property can be divided into two phases:-

THE TIME TILL THE RIGHT TO PROPERTY WAS A FUNDAMENTAL RIGHT (PRE 1978)

THE TIME AFTER THE CONVERSION OF RIGHT TO PROPERTY AS A CONSTITUTIONAL RIGHT (POST 1978)

Pre 1978 The Fundamental Right to Property

The Ninth Schedule was inserted in the constitution by the Constitution (First Amendment) Act, 1951 along with two new Articles 31 A & 31 B so as to make laws acquiring zamindaris unchallengeable in the courts. Thirteen State Acts named in this schedule were put beyond any challenge in courts for contravention of fundamental rights. These steps were felt necessary to carry out land reforms in accordance with the economic philosophy of the state to distribute the land among the land workers, after taking away such land from the land lords.

By the Fourth Amendment Act, 1955, Art 31 relating to right to property was amended in several respects. The purpose of these amendments related to the power of the state o compulsory acquisition and requisitioning of private property. The amount of compensation payable for this purpose was made unjustifiable to overcome the effect of the Supreme Court judgement in the decision of State of West Bengal v. Bella Banerjee. By the constitution (Seventeenth Amendment) Act, 1964, article 31 A was amended with respect to meaning of expression estate and the Ninth Schedule was amended by including therein certain state enactments.

During this period the Supreme Court was generally of the view that land reforms need to be upheld even if they did strictly clash against the right to property, though the Supreme Court was itself skeptical about the way the government went about exercising its administrative power in this regard. The Supreme Court was insistent that the

administrative discretion to appropriate or infringe property rights should be in accordance with law and cannot be by mere fact. The court however really clashed with the socialist executive during the period of nationalization, when the court admirably stood up for the right to property in however a limited manner against the over reaches of the socialist state.

Recent Approach by the Supreme Court

In a very recent PIL filed in the Supreme Court which was still pending in the Honble Court, it was held that the very purpose for which the right to property relegated to a mere statutory right in the late 1970s is not no longer relevant. It was argued by Harish Salve, the learned counsel for the petitioners that:

The right to property is made a statutory right in 1978 to abolish large land holdings with zamindars and rich and their distribution among landless peasants;

Having achieved the very purpose behind the legislative action in the late 1970s, the government should now initiate fresh measures to put right to property back in the fundamental rights.

Earlier, the apex court in its famous Keshavanandan Bharti case of 1973 had first termed some basic and unalterable parameters and features of the Indian state and its constitution like the country's democratic form of government, as its basic structure, which could not be changed at all even by constitutional amendment. But, in the judgement of the case, Justice H.R. Khanna had made a passing observation to the effect that fundamental rights accorded to the citizens' might not be a basic structure of the Constitution. This had left the scope open for changing or diluting the fundamental right of the citizens. Though later in 1975, while adjudicating another famous lawsuit between erstwhile Prime Minister Indira Gandhi and prominent political leader of his times Raj Narain, Justice Khanna had tried to clarify that his observation had been misconstrued. Despite that clarification, the Janata Party government, under the advice of then law minister Shanti Bhushan, had changed the Constitution, removing the right to property from the list of fundamental rights.

Judiciary vs Legislature: The Tussle Begins

The saga of legislative manipulation of the right to property began with the First Amendment Act, 1951 by which the Articles 31-A and 31-B were inserted into the Constitution. Article 31-A was introduced by the Constitution First Amendment Act, 1951 wherein the Parliament defined ″Estate″ and continued by further amendments to extend its meaning so as to comprehend practically the entire agricultural land in the rural area including waste lands, forest lands, lands for pasture or sites of buildings. Under the said amendment, no law providing for acquisition by the state of an estate so defined or any rights therein of the extinguishment or modification of such rights could be questioned on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Articles 14, 19 or 31. Article 31-B and Schedule Nine introduced by the subsequent amendments was another attempt to usurp judicial power. It was an innovation introduced in our Constitution unheard of in any other part of democratic world. The legislature made void laws offending fundamental rights and they were included in Schedule Nine and later on the list was extended from time to time. Article 31-B declared that none of the acts or regulations specified in neither the Ninth Schedule nor any of the provisions thereof shall be deemed to be void on the ground that they are inconsistent with Part III, notwithstanding any judgments, decree or order of any court or tribunal to the contrary. By further amendment, the list was extended. This amendment discloses a cynical attitude to the rule of law and the philosophy underlying our Constitution. Autocratic power was sustained by democratic processes. The amendments in the realm of property substituted the Constitutional philosophy by totalitarian ideology. This totalitarian ideology is articulated by the deliberate use of amendments to add more and more laws to the Ninth Schedule. Originally 64 laws were added to the Ninth Schedule and more acts were added by the 4th, 17th and 29th Amendment Acts; 34th Amendment added 17 more Acts; 39thAmendment added 38 Acts; 42nd Amendment added 64 Acts; the 47th Amendment added 14 more Acts and by the end of this amendment the number of Acts in the Ninth Schedule had risen to 202; The 66th Amendment added 55 Acts raising the total to 257. The 75th Amendment Act, 1994 has been passed by the parliament, which includes Tamil Nadu Act providing for 69 percent reservation for backward classes under the Ninth Schedule. This is a clear misuse of the Ninth Schedule for political gains as the object of the Ninth Schedule of the Constitution

is to protect only land reform laws from being challenged in court. After the addition of 27 more Acts to the Schedule by the 78th Amendment Act of 1995 the total number of Acts protected by the Schedule has risen to 284. The saga did not end here, the hornets nest had been stirred up already, the state made a consistent attempt by the process of amendment to the Constitution to remove the judicial check on the exercise of its power in a large area, and to clothe itself with arbitrary power in that regard. The history of the amendments of Article 31(1) and (2) and the adding of Articles 31(A) and (B) and the Ninth Schedule reveal the pattern. Article 31 in its first two clauses deals with the deprivation of property and acquisition of property. The Supreme Court held in a series of decisions viz. State of West Bengal v. Mrs. Bella Banerjee , State of W.B v. Subodh Gopal , State of Madras v. Namasivaya Muralidar, that Article 31, clauses (1) and (2) provided for the doctrine of eminent domain and under clause (2) a person must be deemed to be deprived of his property if he was substantially dispossessed or his right to use and enjoy the property was seriously impaired by the impugned law. According to this interpretation, the two clauses of Article 31 dealt only with acquisition of property in the sense explained by the court, and that under Article 31(1) the state could not make a law depriving a person of his property without complying with the provisions of Article 31(2). It is worth mentioning in this context that it was the decision in the Bella Banerjees case that actually induced the government to resort to the Fourth Amendment. In this case the Apex court through this landmark decision had insisted for payment of compensation in every case of compulsory deprivation of property by the state. It was held that clause (1) and (2) of Article 31 deal with the same subject, that is, deprivation of private property. Further the court held that the word compensation meant just compensation i.e. just equivalent of what the owner had been deprived of. It is also worthwhile to note here that this amendment also amended Article 305 and empowered the state to nationalize any trade. The Parliament instead of accepting the decision, by its Fourth Amendment Act, 1955 amended clause (2) and inserted clause (2-A) to Article 31. The effect of the amendment is that clause (2) deals with acquisition or requisition as defined in clause (2-A) and clause (1) covers deprivation of a person′s property by the state otherwise than by acquisition or requisition. This amendment enables the state to deprive a person of his property in an appropriate case by a law. This places an arbitrary power in the hands of

the state to confiscate a citizen′s property. This is a deviation from the ideals of the rule of law envisaged in the Constitution. The amendment to clause (2) of Article 31 was an attempt to usurp the judicial power. Under amended clause (2), the property of a citizen could be acquired or requisitioned by law which provides for compensation for the property so acquired or requisitioned, and either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined. It was further provided that no such law could be called in question in any court on the ground that the compensation provided by that law is not adequate. This amendment made the state the final arbiter on the question of compensation. This amendment conferred an arbitrary power on the state to fix at its discretion the amount of compensation for the property acquired or requisitioned. The non-justiciability of compensation enables the state to fix any compensation it chooses and the result is, by abuse of power, confiscation may be effected in the form of acquisition.

To these questions the Statement of Objects and Reasons gives no answer-it is doubtful whether those who framed the property amendments were even aware of their effect on other fundamental rights retained in Article 19(1)(f)(1), and on the political unity of India which Article 19(1)(f)(1)(d), (e), (f) and (g) was intended, inter alia, to subserve, along with other provisions of our Constitution. At any rate, the framers on these amendments have provided no solutions for the problem, which the property amendments inevitably raise. One further complication must be noted here. Although Article 19(1)(f) and Article 31(2) had been made mutually exclusive by Article 31(2-B), there was no such mutual exclusiveness between Article 31(2) and the right to practise a profession or to carry on any occupation, trade or business conferred by Article 19(1)(g). This right was subject to restrictions mentioned in Article 19(1)(f)(6). But trade and business is capable of being acquired, as Section 299(2) of the Government of India Act, 1935, clearly showed. By what test is the validity of the law acquiring property, and a law acquiring trade or business, including industrial and commercial undertakings, to be judged? The 25th Amendment inserted in Article 31 a new sub clause (2) with the following proviso:

Provided that in making any law for the compulsory acquisition of any property of an educational institution established and administered by minority, referred to in clause (1) of Article 30, the State shall insure that e amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

'Property' as understood in Article 300A:

The obvious first question is as to whether or not 'intellectual property' such as 'clinical trial data' would fall within the definition of 'property' as understood in Article 300A. There seems to be enough authority to support the proposition that 'property' as understood in Article 300A is wider than just 'immovable property'. One such authority in the context of 'intellectual property rights' is the judgment of the Supreme Court in the case of Entertainment Network India Ltd. (ENIL) v. Super Cassette Industries Ltd. (SCIL)[45]. In pertinent part the Court held the following: The ownership of any copyright like ownership of any other property must be considered having regard to the principles contained in Article 19(1) (g) read with Article 300A of the Constitution, besides, the human rights on property; The judgment goes on further to say that; But the right of property is no longer a fundamental right. It will be subject to reasonable restrictions. In terms of Article 300A of the Constitution, it may be subject to the conditions laid down therein, namely, it may be wholly or in part acquired in public interest and on payment of reasonable compensation. The fact that the Supreme Court recognizes 'copyright' to fall within Article 300A is indicative that even 'clinical trial data', collected after extensive experimenting, should in all likelihood fall within the definition of 'property' as understood in Article 300A.

'Authority by law' as understood in Article 300A: The term 'law' as defined in Article 300A is understood to mean only legislation or a statutory rule or order. The term 'law' as understood by Article 300A will not include executive fiats. The source of the 'law' depriving a person of his property has to be necessarily traced, through a statute, to the legislature.

While summarizing the entire concept of Right to Property..

Once upon a time, it was thought that the so called personal rights like the right to vote, right to freedom of speech or personal liberty occupied a higher status in the hierarchy of values than property right. As a result the courts were more astute to strike down legislations, which impinged upon these rights, than upon property rights. But Learned Hand, a great judge, felt that the distinction between the two was unreal and said that nobody seems to have bestowed any thought on the question why property rights are not personal rights. The Supreme Court of America which once gave hospitable quarter to the distinction between personal rights and property rights and accorded a preferred position to the former, has given a decent burial both to the distinction and the preferred status of the so called personal rights or liberties in 1972 by saying the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, not less than the right to speak or the right to travel is in truth a personal right, whether the property in question be a welfare cheque, a home or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other.

b. ABOLITION OF PRIVATE LANDLORDISM

One of the most ticklish questions in Indian economy has been the nature and relevance of land reforms. Advocated and implemented for decades as a major instrument of state-mediated and progressive socio-economic change, the very utility of land reforms has increasingly been questioned in the post-1991 reform era. Comprehensive land reforms were among the first priorities of the Government of India immediately after Independence. For this the manifold imbalances of the colonial legacy of two centuries had to be dismantled, and a new beginning made. It was a semi-feudal system that was inherited from British rule. A handful of intermediaries rack-rented a large mass of hapless tenantry. A widespread system of subletting, often several rungs deep, worsened the situation by reducing the holdings to uneconomic proportions. In this system, neither

the intermediaries had any interest nor the tenants any incentive or resources for introducing land improvements or for using HYVs or other costly inputs likely to yield higher returns.

With the twin objectives of achieving social equity and ensuring economic growth, the land reforms programme was built around three major issues:

1. Abolition of intermediaries.
2. Settlement and regulation of tenancy.
3. Regulation of size of holdings.

The central thesis behind the abolition of intermediaries, underlined by the first as well as the Second Five Year Plan, was that owners themselves should operate and manage farm business, and so the tenant-landlord nexus should be put to an end. The intermediary's privileges were conceived as having an adverse impact on agricultural productivity as well as denying the tiller of the soil his rightful place in the economy. 'Between 1947 and 1954 … a law for the abolition of the *zamindari* system was adopted [passed] by the state legislature and then ratified by the President of India. However, these acts of agrarian reform did not affect landownership in the *ryotwari* areas where system was in existence, i.e. 57 per cent of the country's occupied land.

Tenancy reforms were launched to confirm the rights of occupancy by tenants, regulate rents on leased land and to secure their possession of tenanted land. It was argued, especially in the context of the spread of modern technology, that the tenants lacking a security of tenure and paying excessive rents suffer a relative decline in inputs compared to the owners. To this end the following recommendations were made by the Chief Ministers' Conference in 1967:

1. The rate of interest should not be more, preferably less, than 1/4 or 1/5 of the gross produce.
2. Records of tenancy should be prepared and maintained.
3. Tenants in cultivating position of land should be given complete security of tenancy by: i) staying all evictions; ii) suspending rights of resumption where

such rights had been given to landowners; and iii) regulating voluntary surrenders in such a way landowners do not get an advantage by persuading tenants to surrender their tenancy.

The third major land reform plank was regulating the size of land holdings through ceiling as well as consolidation to correct the extremely skewed distribution of agricultural land. It was designed to (i) to meet land hunger of working cultivators, (ii) to reduce the disparities in agricultural income, ownership, and use of land, and (iii) to increase rural employment in the sector. At the same time, consolidation of holdings was also advocated to group together the numerous tiny and scattered holdings of poor cultivators in order to form bigger tracts, susceptible to more efficient management. Cooperative farming on these would increase productivity and employment through economies of scale. The large, economical units of consolidated land, it was opined, would mitigate the problem of poor yield and enhance productivity through economies of scale and also increase employment.

Of all these laws only the abolition of intermediaries was achieved successfully. The bulk of the *zamindars'* lands were alienated: 87% in Uttar Pradesh and 84% in Bihar for instance; and the landlord class lost close to 60% of the land it had owned previously. However, it was achieved at a great cost to the Exchequer as the compensation to the intermediaries came to be some 7,000 million rupees. The source from which these compensation payments were drawn was the land-revenue paid to the state by the ex-tenant farmers now farming on the land alienated from former *zamindars'* estates. In most cases the tenant farmers continued to pay the same land-rent as before, but now to the state direct.

As to the implementation of the two other sets of reforms, namely tenancy and regulation of land holdings, legal, administrative, and other factors became principal bottlenecks. In most cases and for a long time, the factual evidence and administrative machinery for enforcement of the laws just did not exist. For instance, land policy in the First Five Year Plan was formulated without sufficient knowledge about the size and distribution of agrarian land holdings. It was in the 8th round of the National Sample Survey in 1954 that

a considerable volume of data was collected for the first time; this too was submitted to the Union Government only in 1960, a full six years later.

On tenancy reforms, from a lifetime of study, P. S. Appu has concluded that the laws have not put an end to absentee ownership of land, nor has it led to the disappearance of tenancies. Being a state subject, there have been striking differences in the track records between the various States in the formulation and enforcement of the reform measures. It was not before the Operation Barga in 1978, for instance, that tenancy reforms met with any noticeable success in West Bengal, and then overtook the rest of the country in a most spectacular manner. If political will is taken as the main reason behind the success of tenancy reforms there, the absence of such a will must be held responsible for its failure elsewhere. Taking the country as a whole, by 1992, ownership rights over 14.4 million acres of land have been conferred on some 11 million tenants. That constitutes, however, no more than 4% of operated area. The seven States of Assam, Gujarat, Himachal Pradesh, Karnataka, Kerala, Maharashtra, and West Bengal account for 97% of the beneficiaries. Practically no benefits accrued to the tenants in the other states.

An ambitious movement to achieve redistribution of land, called Bhoodan, was launched by a prominent Gandhian Vinoba Bhave in the early fifties. 'The essential feature of this movement was the voluntary requisition of land which was subsequently redistributed among peasants who owned little or no land at all.' Launched in the Telangana region to counter the militant peasant struggle there, the Bhoodan movement made some notable headway in Bihar and Uttar Pradesh, where, by 1955, the landlords voluntarily relinquished over 4.3 million acres. However, most of this land 'proved unfit for cultivation' whenever it was not disputed property. The second phase of the movement was Gramdan, the giving away of the whole villages, which would belong to the village community as a whole. The movement was virtually non-existent beyond a handful of tribal pockets where private property in land did not matter in any case.

It is in the field of redistribution and consolidation of land holdings that the reforms have met with the least success, mainly because they met with a most determined resistance

from the very substantial and politically influential landed interests, quite unlike the handful of politically isolated intermediaries. It was not before mid-1960s that ceiling laws could be passed in the majority of states. Even then enough loopholes remained which enabled landlords to circumvent legislation 'while in the remainder they had still to pass through the various readings in the legislatures'. Even after the law, 'the landlords succeeded with little difficulty in circumventing the new laws making full use of the numerous loopholes in them.' For instance, the law allowed division among the members of a joint family, by taking recourse to which the total holdings of landlord family remained several times over the legal limit. 'As experience was to show, after the "ceiling" acts had been applied in Andhra Pradesh and Bengal, hardly any surpluses were revealed.' By 1992, only about two million hectares of surplus land, amounting to less than 2% of the operated area on a pan-Indian scale with very wide regional differences, could be distributed to some 4.76 million beneficiaries.

As the land reforms reach an impasse, a series of considerations have raised serious doubts about their continuing relevance as to whether they are really the best way for achieving growth with general well-being and whether they are in harmony with the ongoing liberalisation of Indian economy. Demographic and economic forces have proved more effective than legislation in bringing about a redistribution of land in favour of medium and, and even more, marginal farmers. The latter, it is said, now dominate the agrarian landscape in most of India outside Panjab and Haryana. Inequality among landowners is no longer a key issue, as landholdings are not very skewed any more, except in certain small pockets.

On the other hand, widespread poverty and hunger remain. In particular, the plight of the landless or near landless, whose number has steadily grown over the decades and is estimated to constitute almost half the agricultural population, requires urgent attention. Above all, agricultural growth has, in general, been sluggish in India, and the Green Revolution has failed to spread beyond a handful of states led by Panjab and Haryana, which are now in fact producing food surpluses to feed the rest of them.

Many critics such as V. M. Dandekar argue that the ceiling and tenancy laws not only do not have much relevance in this sorry state of affairs but also must share part of the blame at least for perpetuating them. The most critical long-term impact of the ceiling law has been, as pointed out by Hanumantha Rao, that it killed the land market, and thereby the scope for investment in land, by preventing an increasing concentration in landholding through depeasantisation. 'The same is true', Dandekar says, 'of the present tenancy laws which have practically abolished lease market in land'.

Among the alternative policy prescriptions that have been put forward, those of Dandekar constitute the most radical departure from the prevailing policies. Dandekar advocates exposing agriculture to the full play of market forces through either an outright abolition or gradual relaxation of the ceiling and tenancy laws. His is essentially a plea for unrestrained growth through modernisation of agriculture that will bring benefit to all, if differentially.

From a similar perspective, another prescription is to encourage corporate sector to enter agriculture for commercial production of high-value and processed agricultural products, and earn thereby valuable foreign exchange. The corporations should set up agro-processing units in the rural areas and help in diversifying agriculture, encourage contract farming, and also develop infrastructural support in the area of their operation.

Once the market forces are fully unleashed and business people from outside begin to invest in the agricultural sector, it would also become necessary to impose agricultural income tax and agricultural holding tax. These taxes then could be used, among other things, to build up infrastructure and provide employment in the countryside.

Such prescriptions however cannot be assessed in terms of their economic soundness alone. One must also take into account their implications for employment as well as recognise the social, political, and cultural milieu in which they have to operate.

Expert opinion is divided on the question of employment. Some fear that modern technology being generally labour saving and capital intensive, its introduction will

aggravate further the unemployment problem. In support, studies by S. K. Ray and others are cited showing that the employment elasticity of output in agriculture has fallen sharply in the post-new technology agriculture. However it does not necessarily imply an aggravation of the problem; it just means that a growth in productivity does not lead to *a proportionate increase* in employment. On the contrary, data show a threefold increase in the number of agricultural labourers in Panjab between 1961 and 1981, the increase in demand having to be met by large-scale migrations from eastern UP and Bihar. Fears of increasing unemployment due to mechanization have not materialised so far. The victims of tractorization, it has been well said, were bullocks, not labour.

In the end, the social and political costs of the policy prescriptions will need to be carefully examined. By all reckonings, while poverty and hunger may become a thing of the past, the distribution of income would tend to be more skewed. This may become a cause of serious concern through the social friction that it would intensify. Ultimately, the success or even the initiative for such policy measures would depend on the extent to which our decision-makers believe them to be compatible with the politics of competitive populism.

b. **LAND CEILING LEGISLATION**

The Urban Land (Ceiling and Regulation) Act, 1976 (Act no. 33 of 1976) being the Central Governments legislation was enacted by the Parliament of India with the view to make provisions as to imposition of a ceiling on vacant land in urban agglomerations, also to acquiring such land in excess of the ceiling limit, for regulating the construction of buildings thereon. The Act make further provisions for preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein, as such the Act sought to provide for equitable distribution of land in urban agglomerations in common good. The subject matter of this legislation is ‘Land’ and the same comes under the authority of State legislature, however, with the view to ensure the uniformity in approach, the Government of India has took initiative and certain states passed resolutions under Article 252(1) of the Constitution of India, wherein the Parliament was

empowered to enact this Act. So far as the applicability of this legislation is concerned, the Act under its first section says that the States of Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal and all the Union territories are subjected to this Act and other States can also adopt this Act by passing resolutions as aforesaid.

The provisions of section 3 of the Act provides that in respect of the territories concerned under this Act for which the ceiling limit is provided, no persons should be entitled to hold any vacant land in excess of that ceiling limit. Section 4 deals with such ceiling limit for every person. Further, the section 5 of the Act says that the transferred vacant land either by way of sale, mortgage, gift, etc. by the persons in the State to which this Act is applicable should also be considered while calculating the extend of vacant land held by him. And as per section 6, all persons holding such excess vacant land should file a statement within the prescribed period before the Competent authority. Such statement should specify the location, extent, value, etc. of such vacant land and also land over which any building is erected. As per section 8 of the Act, the Competent authority is required to prepare a draft statement in respect of such persons, based on the Statements filed by them. And all such draft statements are required to serve upon the person along with notice wherein any objection thereto should be invited and the period for making of such objection is thirty days. And such Objections to be dealt with by the Competent authority and pass appropriate orders thereon. As such, the Competent authority is required to proceed for making final Statement wherein the determined vacant land held by the person concerned in excess of the ceiling limit should be stated. After complying all such procedure, the next move is to acquire the vacant land in excess of ceiling limit by publishing a notification by the Competent authority. Such notification is to contain that the concerned land will be acquired by the concerned State Government; and also claims of interested persons can be made by them. On determination of such claims, the Competent authority to declare by notification that the concerned land is acquired by the State Government.

Further, section 11 being important makes provisions as to making of payments by the State Government concerned for acquiring such vacant land, to the persons interested therein. And for determining the disputes as to such acquisition, the persons being aggrieved can approach to the Urban Land Tribunal with his appeal. The said Tribunal is to be constituted by the State Government and while deciding such appeals the Tribunal are conferred with all powers and procedure of the Civil Court dealing with the appeals within the Code of Civil Procedure, 1908. Provisions as to second appeal have also been provided under the Act, which should lie before the concerned High Court.

Besides all these most relevant provisions, the Act also provides for several other provisions including, the provision empowered the competent authority to enter in the Vacant land or land consisting building thereof for making survey and doing measurements for the purposes of this Act. However, if any particulars respecting the concerned land, is being concealed, etc. then persons liable thereof will be held responsible to pay penalty.

All such lands so acquired under this Act are required to be disposed of as per provisions of section 23 of the Act, where the State Government can allot such lands to the persons for industrial purpose or for providing residential accommodation of approved type to the employees of any industry. Besides this, the further provisions are also made being relevant to the purpose of the Act, and some of those are explained. The Competent authority is having certain other powers under the Act, which are provided under section 31 and are similar to that of certain powers of civil Court provided under provisions of the Code of Civil Procedure, 1908. The State Government can issue necessary directions to the Competent authority and the Central Government can give necessary directions to the State Governments. The Competent authority is required to furnish relevant returns and reports to the State Government concerned.

Section 38 of the Act describes certain offences under this Act and also provides for punishment in relation thereto. Section 39 provides for offences by companies under this Act and person liable thereof. Further, the Court taking cognizance of offences under this

Act, should proceed with, only after there is a written complaint made by the Competent authority or authorised officer thereof and such Court should not be inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the first class. All officers who are acting under this Act, Rules, etc. under this Act, should be treated as Public servant. The Central Government under this Act is empowered to provide for Rules, for carrying on the provisions of this Act and such rules to provide on matters enlisted under section 46. Lastly, the said Government is also empowered to provide for orders removing difficulties which can arise while giving effect to the provisions of this Act. The present Act is, however, now repealed by the provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act no. 15 of 1999).

STATE ENACTMENTs PROHIBIING ALIEATION OF LAND BY TRIBALS TO NON-TRIBALS

The tribes in I n d i a h a v e c o m e t o b e c o n c e p t u a l i z e d primarily in relation to their geographical and social isolation from the larger Indian society and not in relation to the stage of their social formation. This is why a wide range of groups and communities at different levels of the social formation have all come to be categorized as tribes. By virtue of the fact that tribes lived in isolation from the larger Indian society, they enjoyed autonomy of governance over the territory they inhabited. They held control over the land, forest and other resources and governed themselves in terms of their own laws, traditions and customs. It was the advent of colonial rule that brought tribes and non-tribes into one single political and administrative structure by means of war, conquest and annexation. This was followed by introduction of new and uniform civil and criminal laws as well as setting up of administrative structures that were alien to tribal tradition and ethos. All these developments led to largescale alienation of land from tribes to non-tribes through such processes and means as fraud, deceit, mortgage, etc. This being the case, the nationalist Constitutional Provisions, Laws and Tribes tribal rights Virginius Xaxa legal view T The author is a Professor and Deputy Director at Tata Institute of Social Sciences, Guwahati Campus. He is a member of the Advisory Committee, Tribal Development in the Ministry of Rural Development, Government of India, UPE

(University with Potential for Excellence Phase II), Central University of Hyderabad, Hyderabad. He has also authored book's like Economic Dualism and Structure of Class: A Study in Plantation and Peasant Settings in North Bengal (1997) and State, Society and Tribes: Issues in Post- Colonial India (2008). He is also the co-author of Plantation Labour in India (1996) and co-editor of Social Exclusion and Adverse Inclusion: Adivasis in India (2012). leadership showed special concern for tribes in the post-independent India. This is reflected in the provisions enshrined for them in the constitution. Tribes as citizens of free India were extended civil, political and social rights in equal measure as others. Civil and political rights have been enshrined within the purview of the Fundamental Rights of the Indian Constitution while social rights have been envisaged in the Directive Principles of the Indian Constitution. Besides the ones stated above, tribes were also extended certain special rights as being members of a distinct community. Such rights, among other things, include provisions for statutory recognition (article 342); proportionate representation in Parliament and state legislatures (articles 330 and 332); restriction on the right of the ordinary citizen to move freely or settle in particular areas or acquire property in them (article19(5)); conservation of one's language, dialects and culture, etc (article 29). The Constitution also has a clause that enables the State to make provision for reservation in general (article 14(4)) and in particular, in jobs and appointments in favour It is ironical that despite a large number of well meaning constitutional provisions and laws aimed at protecting and safeguarding the welfare and interest of the tribal communities, the process of marginalization of the tribals has gone on unabated. Paradoxically, at the root of such marginalization are the laws themselves of tribal communities (article 16(4)). There is also the Directive Principle of the Constitution that requires that the educational and economic interest of the weaker sections of society, including tribes, is especially promoted (article 46). Besides these, there are provisions in the 5th or 6th schedule of the Constitution (Articles 244 and 244(a) that empower the state to bring the area inhabited by the tribes under special treatment of administration. The provisions in the Constitution range from creation of the scheduled and tribal areas, to providing representation in Parliament and State legislatures including special privileges in the form of reservation of a certain per centage of posts in government services and seats in educational institutions. In short, the

Constitution aimed at safeguarding, protecting and promoting the interest of tribal people. Of all the provisions, protective discrimination has been seen as one of the most important rights given to tribal people. The government evolved specific measures with a view to executing rights conferred on tribal people in the Constitution. It earmarked 7.5 per cent of the jobs in government, semi-government and also educational institutions for people hailing from the scheduled tribe category. Protective discrimination in favour of the group is also evident in relaxation granted to candidates from the scheduled tribe category. Despite these provisions, the result is far from satisfactory, more so in the case of scheduled tribes than scheduled castes. Nevertheless, the inability of the State to fill up the quota is not considered as a violation of the rights enshrined in the Constitution. This is so, because in the first place, necessary measures have been taken in pursuit of the rights enshrined in the Constitution. Secondly, the extensions of reservation to candidates from the category are not automatic. Rather, it is contingent upon certain conditions stipulated in the Constitution itself. Article 335, for example, stipulates that the claims of the scheduled castes and scheduled tribes can be taken into consideration, consistent with maintenance of efficiency of administration in making appointments to services and posts. Thirdly, though such rights have been given to tribes, they can avail of them only as members of the tribal community. It is an individual's right to secure access to these provisions on equal terms with others. The right is also individual in the sense that the individual is required to take some action to ensure that he gets it. In view of issues such as these, there is an inbuilt difficulty in challenging the negligence or indifference of the state in the court of law. Only specific cases of discrimination or denials can be taken to court, but these could be defended by taking recourse to article 335 of the Constitution. In short, the provision of protective discrimination is not sufficient in itself. To become effective, the provision must be supplemented by what may be called substantive equality i.e. ability, resources and actual opportunity must be created to make the formal equality or in the case of tribes, even protective discrimination, effective. This means there was a need for making provisions for economic and social rights for the tribes not only through legislation or constitutional provision but also through effective legal, administrative, infrastructure and financial support. In respect of provisions for which, certain support systems were made available, for example, the provision of protective discrimination.

such arrangements did lead to some results, no matter how inadequate they might have been. However, where such measures were non-existent or largely ineffective, the provisions made in the Constitution have hardly led to any desirable results in favour of tribes. It is not only that effective social and economic rights were not evolved and extended to tribes, but even rights that they enjoyed, such as rights over land and forest were taken away from them by the colonial state to begin with and later by the post-independent Indian state. It is a well-established fact that tribes live mainly off land and forest. Yet, the process of land alienation that began during British rule has gone on unabated in the post-independence period. This has already been referred to earlier. In order to deal with the problem of land alienation to non-tribals, laws have been enacted in almost all states where there are tribal populations. In some parts, such acts have been in existence since the British period like, Chotanagpur Tenancy Act 1908 and The Santhal Pargana Tenancy Act 1940. The British initiated such measures not Of all the provisions, protective discrimination has been seen as one of the most important rights given to tribal people. The government evolved specific measures with a view to executing rights conferred on tribal people in the Constitution. It earmarked 7.5 per cent of the jobs in government, semigovernment and also educational institutions for people hailing from the scheduled tribe category. It is not only that effective social and economic rights were not evolved and extended to tribes, but even rights that they enjoyed, such as rights over land and forest were taken away from them by the colonial state to begin with so much out of concern for the tribes but for reasons of administrative and political expediency. These were more in the direction of protection from land alienation of the tribes and restriction of the movement of the non-tribal population into tribal areas. In the post-independence period, all states with tribal population enacted legislation, not only for prevention of alienation of lands from tribes to nontribes, but also for its restoration. In some states, acts have even been amended with a view to protecting the interest of non-tribes. The Andhra Pradesh (Selected Areas) Land Transfer Regulation, 1959, was amended in 1970, in an attempt to accommodate the interest of non-tribes. The Kerala Scheduled Tribes (Regulation of Transfer of Land and Restoration of Alienated Land) Act, 1975 has even been repealed to give effect to concessions made to nontribes (Verma 1990; Rao 1996; Bijoy 1999). As a recent of such acts, tribal land continued to pass from

tribes to non-tribes. To reinforce the constitutional provisions for protection of the tribals, two important laws have been enacted in more recent years. One was the Provisions of the Panchayat (Extension to the Scheduled Areas), Act, 1996. The act empowers the scheduled tribes to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and customary mode of dispute resolution through the gram sabha. Interestingly, the provisions of the Panchayat Act hardly find its due place in letter and spirit, for example, in provisions on the pattern of the sixth schedule, in the acts enacted by the different states. Further, though no enactment has been made to extend part IX A (The Municipalities) to the scheduled areas, the same is steadily being pushed in all states having scheduled areas. The other act in the direction has been the 'The Scheduled Tribe and Other Traditional Forest Dwellers Act, 2006. The act is aimed at undoing the age old injustice done to tribals by restoring and recognizing their pre-existing rights. The recognition and restoration has been, however passing through rough weather in respect of its implementation. Under the Constitutional provisions of Directive Principles, the State's major concern for tribes has been their welfare and development. This was to be pursued under a kind of constitutional provision, the letter and spirit of which was the most evident in the five principles (panch shila), Nehru is credited to have enunciated in a foreword to a book entitled, 'A Philosophy of NEFA' by Verier Elwin. Since then, those principles have been taken as the ethos of tribal development in postindependence India. The principles entailed development along the lines of their own genius, respect of tribals' right in land and forest, training and building up a team of their own people to do the work of administration and development, not over- administering the areas with a multiplicity of schemes, working through, and not in rivalry, to their social and cultural institutions. Yet the approach adopted towards tribes was quite to the contrary. This was mainly due to the imperatives of national development. The issue of tribal development could not be pursued outside of the issues of national development. In fact, measures undertaken for bringing about rapid national development were seen as a kind of important mechanism whereby integration of tribal society could be achieved. In fact, the national objective to build up a productive structure for future growth and resource mobilization was far more important than issues concerning the welfare and interest of the tribes. So, tribal interest and welfare were invariably sacrificed in the name

of national development. Tribes have been unable to safeguard and promote their language, culture and religion; even though Article 19(5) of the Constitution states that a cultural or linguistic minority has the right to conserve its language and culture. This means that tribes as individuals and groups have right to use their own language, to practise their own religion, to study their own history, culture, tradition, heritage, etc. The state cannot, by law, enforce upon In some states, Acts have even been amended with a view to protecting the interest of non-tribes. The Andhra Pradesh (Selected Areas) Land Transfer Regulation, 1959, was amended in 1970, in an attempt to accommodate the interest of non-tribes. The Kerala Scheduled Tribes (Regulation of Transfer of Land and Restoration of Alienated Land) Act, 1975 has even been repealed to give effect to concessions made to non-tribes. The issue of tribal development could not be pursued outside of the issues of national development. In fact, measures undertaken for bringing about rapid national development were seen as a kind of important mechanism whereby integration of tribal society could be achieved. In fact, the national objective to build up a productive structure for future growth and resource mobilization was far more important than issues concerning the welfare and interest of the tribes. YOJANA January 2014 7 them any other culture or language. While the state may not have enforced any language or culture on them, neither has it taken any positive steps worth the name towards meeting this provision of the Constitution. Rather, the steps taken are far from being in consonance with the provisions laid down in the Constitution. The posture they have adopted has invariably been in the direction of assimilation into the language and culture of the major community, rather than protection and promotion of the distinct language and culture of the tribes. Schooling extended to tribes, for example, has invariably been made in the language of the dominant regional community of the respective States. The result is that tribes are increasingly losing knowledge of their own language and culture. Indeed the promotion of language and culture has been left to tribals themselves. Yet, because of lack of control over human, organizational and financial resources, the tribes have not been able to take effective measures in this direction. Only where such support has been made available in some form or the other have tribes been able to protect and safeguard their culture. This explains why in western, northern and southern India, there has been much more erosion of the tribal language and culture. In eastern India,

especially the northeast, the scenario is somewhat better. This has been mainly due to the fact that in north- east India, there was a kind of institutionalized arrangement that facilitated such development. This has received a major boost with the creation of tribal states and autonomous districts. This shows that a collective right such as this can be better realized only where tribes see themselves as a nationality or nation, to govern themselves. It is ironical that despite a large number of well meaning constitutional provisions and laws aimed at protecting and safeguarding the welfare and interest of the tribal communities, the process of marginalization of the tribals has gone on unabated. Paradoxically, at the root of such marginalization are the laws themselves. Tribes had no tradition of reading and writing and had, hence, no tradition of record keeping and dealing with such laws. The court language and practice had been alien to them. In the absence of such tradition, the nontribes have taken advantage of such laws and have been depriving tribals of their lands through variety of ways and means. The local administration, which is generally manned by the nontribals, has been working hand in hand with their ethnic kinsmen to ensure smooth transfer of land from tribes to non-tribes. Tied up with the above have also been laws that protect tribes and the laws that are meant for general citizenry and human beings. The latter is articulated in terms of citizenship and human rights. Indeed, rights meant for tribes have invariably been pitied against citizenship rights and more importantly human rights. In the process, specific laws meant for a group, even though marginalized, have invariably come to be subjected to general laws. On the same vein are the laws aimed at protecting tribes and those aimed at public interest such as land acquisition act, conservation act, forest act, wildlife sanctuary act, etc. The latter have invariably held sway over the former under the garb of public interest and purpose. Tribal rights have come to be sacrificed to the greater cause of the nation and public interest. In short, those who are in charge of tribal rights are in general insensitive to the constitutional provision and legal entitlements of the tribal communities

UNIT II: LAND ACQUISITION

a. Purpose

b. Procedure

a. Compensation

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

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a. **PURPOSE**

Section 2(1) of the Act defines the following as public purpose for land acquisition within India:

- For strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or
- For infrastructure projects, which includes the following, namely:

All activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated 27 March 2012, excluding private hospitals, private educational institutions and private hotels;

Projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

Project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

Project for water harvesting and water conservation structures, sanitation;

Project for Government administered, Government aided educational and research schemes or institutions;

Project for sports, health care, tourism, transportation of space programme;

Any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

Project for project affected families;

Project for housing, or such income groups, as may be specified from time to time by the appropriate Government;

Project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

Project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

When government declares public purpose and shall control the land directly, consent of the land owner shall not be required. However, when the government acquires the land for private companies, the consent of at least 80% of the project affected families shall be obtained through a prior informed process before government uses its power under the Act to acquire the remaining land for public good, and in case of a public-private project at least 70% of the affected families should consent to the acquisition process.[14]

The Act includes an urgency clause for expedited land acquisition. The urgency clause may only be invoked for national defense, security and in the event of rehabilitation of affected people from natural disasters or emergencies.

Section 27 of the Act defines the method by which market value of the land shall be computed under the proposed law. Schedule I outlines the proposed minimum compensation based on a multiple of market value. Schedule II through VI outline the resettlement and rehabilitation entitlements to land owners and livelihood losers, which shall be in addition to the minimum compensation per Schedule I.

b. PROCEDURE

The 2013 Act marked a paradigm shift in the land acquisition process and contains many provisions to protect the interests of not only the land owners but also landless project affected persons such as farm labour and slum dwellers. Under the new law, in cases

where PPP projects are involved or acquisition is taking place for private companies, consent of 70% and 80% respectively of the landowners is required. This ensures that no forcible acquisition can take place. Given the inaccurate nature of circle rates, the law provides for payment of compensation up to four times the market value in rural areas and up to twice the market value in urban areas. This ensures fairer payment to the landowners. The new law links land acquisition with the accompanying obligation for Resettlement and Rehabilitation ("**R&R**") of all project affected persons, including the landless people. The law contains elaborate processes and entitlements for R&R. It outlines the benefits (such as land for land, housing, employment and annuities) that shall accrue in addition to the one-time cash payments. The new law even has retrospective application in certain cases. It applies retrospectively to land acquisitions under the 1894 Act, where no land acquisition award has been made. Also in cases where the land was acquired over five years ago but no compensation has been paid or no possession has been taken, the land acquisition process must be started afresh in accordance with the provisions of the 2013 Act. In case land remains unutilized after acquisition, the 2013 Act empowers states to return the land either to the owner or to the state land bank. The law provides that no income tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the new law. In cases where the acquired land is sold to a third party for a higher price, 40% of the appreciated land value (or profit) is required to be shared with the original owners. In cases where the land is acquired for urbanization, 20% of the developed land has to be reserved and offered to the landowners, in proportion to the area of their land acquired and at a price equal to the cost of acquisition, plus the cost of development. All affected families are entitled to a house, provided they have been residing in the area for five years or more and have been displaced. If they choose not to accept the house, they are offered a one-time financial grant in lieu of the same. Finally, under the new law, R&R provisions are applicable even to acquisitions by private parties, subject to size thresholds to be determined by state governments. If a private investor buys land directly from farmers and if the size of acquisition exceeds the set threshold, the private purchaser must also bear the R&R costs.

c. **COMPENSATION**

The market value of the proposed land to be acquired, shall be set as the higher of:

the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds in the area, where the land is situated; or

the average of the sale price for similar type of land being acquired, ascertained from the highest fifty per cent of the sale deeds registered during the preceding three years in the nearest village or nearest vicinity of the land being acquired.; or

the consented amount in case the land is acquired for private companies or public-private partnership projects.

The market value would be multiplied by a factor of, at least one to two times the market value for land acquired in rural areas and at least one times the market value for land acquired in urban areas. The Act stipulates that the minimum compensation to be a multiple of the total of above ascertained market value, value to assets attached to the property, plus a solatium equal to 100 percent of the market value of the property including value of assets.

In addition to above compensation, the Act proposes a wide range of rehabilitation and resettlement entitlements to land owners and livelihood losers from the land acquirer.

UNIT III: RENT LAW: CONCEPTS, TERMS AND PROCESSES

a. Rent Legislation in India
b. Definitions, Land Lord, Tenant, Land and Fair Rent.
c. Fixation of fair rent

All transactions in Indian real estate sector are governed by various laws enacted by the Central Government of India and respective State governments. One such law is the **RENTAL LAWS**. These laws govern the rental of commercial and residential property and are necessary to enforce individual civil rights of both landlord and tenant and prevention of any kind of deceit.

Rent Control Act was an attempt by the Government of India to eliminate the exploitation of tenants by landlords. Rent legislation tends to providing payment of fair rent to landlords and protection of tenants against eviction. But the allowances have been very

generous and hence tenants residing in rental properties in India since 1947 continue to pay rents fixed then, irrespective of inflation and the realty boom.

The Rent Control Act has led to several adverse situations like languishing investment in rental housing, withdrawing of existing housing stock from the rental market, stagnating municipal property tax revenue. The rent control along with security of tenure has not given any encouragement to house owners to renovation their houses and most houses as a result have a worn out look.

Repeal of the Rent Control Act would lead to construction boom and meet the growing need for housing and aid employment generation. There will be more rational use of prime locations and will set off a continuous process of urban renewal.

In 1992, the Central Government proposed a **model rent control legislation**, which was meant for and circulated to all states. The model Act proposed modification of some of the existing provisions on inheritance of tenancy and also prescribed a rent level beyond which rent control could not apply. The New Delhi Rent Control Act that was passed in 1997 was based on this but failed to be notified due to resistance from traders who are sitting tenants. Very few states have introduced the model Act.

The new **Maharashtra Rent Control Act, Delhi Rent Control Act, Tamil Nadu Rent Control Act, Karnataka Rent Control Act** all has provisions for the dispute among the landlords and tenants. Each of the State Rent Act provides for fixation of Standard Rent as well decree for possession and provisions that lay down the satisfaction of the Court.

Rental Agreement is an integral part of rental law

Rent or lease of a residential or commercial property in India is subject to strict Indian laws. A mutual agreement on the terms and conditions of the rented property by the landlord and the tenant is required. In the present times, leasing a commercial space in India as opposed to owning commercial real estate is turning out to be a brilliant move**.**

Professional legal advice becomes a necessity as there are fewer tenant-friendly laws in the area of commercial leases, and no standard lease agreements. A lawyer's help will be

useful for making an informed decision in negotiating the best deal on a commercial lease as he/she can research zoning laws and local ordinances and inform you about local real estate market conditions and customs.

A **rental agreement** refers to a relationship between the landlord and the tenant. It is legally binding upon the parties. It may be brief, or it may have extra conditions or obligations. However, any changes or additions to a rental agreement should be maintained in writing. The rental agreement is a 'Legal Form' which has to be completed, signed and dated by the tenant and landlord. There are leases and rental forms for renting, leasing and managing residential rental properties. Both the parties must have access to the document once it is signed.

The landlord should get the agreement registered. The landlord must give the tenant a duplicate copy of the rental agreement, failing which the tenant is not obligated to pay rent until the tenant receives a copy of the rental agreement.

For a lease agreement, the terms of the **lessee (tenant)** and the **lessor (landlord)** when they enter into a lease agreement would include terms like the term of lease, deposit amount and monthly rentals. The lessor or the landlord should ensure the premises come back in the right shape in repossession.

- There has been no damage to the tiling, plumbing, flooring or electrification and the premises are in the proper condition.
- No major changes have been incorporated in the premises. If the lessee has made some changes, which are not acceptable to the lessor, the latter may ask him to undo the changes.
- In the case of leasing of furnished premises, the condition of the furnishings is in proper condition.
- All the electricity and telephone charges have been taken care of till the specified date by the lessee or tenant at the time of repossession.

On satisfactory fulfillment of all these aspects, the lessor should offer the refund the security deposit (if given) to the lessee offering vacant and peaceful possession of the premises.

In a Tenancy Agreement there is a transfer of interest and it establishes the non-eviction of the tenant by the owner except on the grounds of eviction mentioned under the Rent Act.

Under the Leave and License Agreement transfer of interest takes place on permission and the same can be terminated as per the terms of the agreement. The possession can be demanded back from the licensee. The label to the agreement could be Leave & License or Tenancy Agreement, but it is the intention of the party that counts. Documentation of the commercial lease is also an important rental law procedure.

The rental laws in India need to be revised to protect the owner and his/her property from the tenant.

- Special areas of focus should be on terminating old tenancies, removing constraints on increase of rentals and empowering owners in the sense of being able to reclaim their properties without any court proceedings.

- The market forces should be allowed to determine the rental amounts and the owner must have full protection for his/her property. This will go a long way in providing security to the landlord and also reduce the deposit amount required with the lease agreements.

If these laws are enacted and strictly enforced, there is every chance that more investors will want to enter the real estate market to utilize the rental fees as income. This is especially true for the commercial sector. The tax laws also need to be revised so that renting of properties becomes a financially viable option. Amendments in the Rent Acts of several states are a progressive move.

THE DELHI RENT CONTROL ACT, 1958

UNIT IV: EVICTION AND DISPUTE SETTLEMENT MECHANISM

a. Grounds of eviction : Non-payment of Rent, Sub-letting, Change of user, Material, alterations, Non-occupancy, Nuisance, Dilapidation, Bonafide requirement of the landlord, Alternative accommodation, Building and re-construction and Limited Tenancy

b. Settlement of rent disputes

a. GROUNDS OF EVICTION

Almost all state Acts specify certain grounds for evicting the tenant which include non-payment of rent, misuse or non-use of premises requirement for major repair or reconstruction, bonafide need of the owner and acquisition of a house by the tenant. It is suggested that the following grounds may be added to the above:- a). refusal to pay revised standard rent; b). sub-letting of premises (without the permission of the landlord); c). Failure of tenant to deliver possession after giving notice to quit; d). Denial by the tenant of title of landlord; e). Deliberate misuse or damage of premises, and other reasons cited in a number of State laws. These have been included as the statutory grounds for eviction in various states. In the current Acts, summary procedure is available for evicting the tenant in case of bonafide requirement of the landlord for certain category of owners. In Delhi, Summary procedure is available for eviction on bonafide grounds to all owners. With this a special category of persons like Government servants, widows, armed forces, etc. has been created who is to be provided immediate possession incase of bonafide requirement. It is suggested that to this special category we add the aged (65 years and above) and the handicapped. The State Government may include some other groups (like scientists etc.) for special treatment depending upon the special requirement of these in each state. In eviction proceedings, compromise between landlord and tenant should be permitted at any stage. The landlords should be penalized heavily for not occupying or relating the premises within three years of getting possession on grounds of bonafide need. This

offense can be taken cognizance suo moto by the Rent controller who can also charge the fine on a continuing basis. In case the landlord demolishes and reconstructs the house after acquiring possession, the period of three years is to be counted from the day of his occupying the house. The penalties may be provided for n State laws. Acquisition or building of a house by the tenant his spouse or dependent children will be a ground for eviction of the tenant. The tenant is to be given a period of one year to move to the newly acquired house from the time it is ready for occupation so long as he does not let out the house whereafter the landlord can move the rent controller for eviction of the tenant by summary procedure. Resumption of possession for own use should be provided for controlled non-residential premises. The grounds for eviction should be specified. Under the RCA, special rules should be framed for non-residential premises. Most of the premises should be brought within the purview of contractual tenancy as far as possible. The law can provide for penalty for both landlords and tenants for the violation of obligations listed in the Model Law.

The present civil courts are over burdened with cases under the Rent Control Act over and above other cases, and it takes many years for disputes to be settled or for landlords to get possession even in genuine cases. In Delhi, 10,000 cases are filed each year in contrast to the maximum disposal of 4000 cases, and there are three tiers apart from the SLP to the Supreme Court. Court has recognized this in a number of cases and has advocated a system of adjudication by Tribunal and the exclusion of civil courts from hearing rent cases. A proposal for amendment to Article 323 B of the constitution to provide for the establishment of state level Rent Tribunals and exclusion of jurisdiction of High Court and other Courts has been approved by the Cabinet. Adjudication of rent control would be vested in rent controllers (excluding civil courts), with only one court of appeal to Tribunals at the State level. The State level Tribunals to be set up will not be governed by Civil procedure code and may be given powers to decide all issues (like that of ownership, title etc.) pertaining to resolving of tenancy disputes. Under Article 136 of the constitution, SLP will be only to the supreme Court against the orders of State level tribunals. Tribunals can also take up cases suo moto for revision. The constitutional amendment will ensure excluding the writ jurisdictions of High Court. Details of

composition, jurisdiction and procedure of the Rent Tribunals and Rent Controllers will be finalized in consultation with Min. of Law. The powers of rent controllers would include the power to accept affidavits as proofs. The controller should also have the power to record a lawful agreement or Compromise between the litigants and make an order accordingly. There should be heavy penalty for adjournment on frivolous grounds. It is open to State Governments to extend the jurisdiction of the proposed two tier system to properties or towns not falling under Rent Control Law if they can make the budget provision or strengthen the set up suitably. The procedure of litigation should be simplified. Summary procedure should be followed and decision should be given largely on the basis of written statements and plaints as suggested by the Supreme Court itself in one case. Oral evidence can be limited to minimum. Representation by Counsel allowed only when absolutely necessary. Code of civil procedure in all its details should not be applicable to the functioning of the Tribunals. There should be a time limitation of disposal of cases specially under the Summary procedure. This would be facilitated if day to day hearing is allowed for these cases. In case the Rent Controller fails to abide by the time limitation, the Tribunal will have suo moto powers to call for the papers of the case and decide the case itself. Prescribed standardized proformae for instituting appeal under various provisions to be prepared for use of landlords and tenants.

b. **SETTLEMENT OF DISPUTES**

As per the provisions of Section 35 of the Delhi Rent Control Act, 1958(1) The Central Government may, by notification in the Official Gazette, appoint as many Controllers as it thinks fit, and define the local limits within which, or the hotels and lodging houses in respect of which, each Controller shall exercise the powers conferred, and perform the duties imposed, on Controllers by or under the Act. The Central Government may also, by notification in the Official Gazette, appoint as many additional Controllers as it thinks fit and an additional Controller shall perform such of the functions of the Controller as may, subject to the control of the Central Government, be assigned to him in writing by the Controller and in the discharge of these functions, an additional Controller shall have and shall exercise the same powers and discharge the same duties as the Controller.A person not be qualified for appointment as a Controller or an additional Controller, unless

he has for at least five years held a judicial office in India or has for at least seven years been practicing as an advocate or a pleader in India.

According to Section 36, the Controller has the following powers :

The Controller may-(a) Transfer any proceeding pending before him for disposal to any additional Controller, or (b) Withdraw any proceeding pending before any additional Controller any dispose it of him or transfer the proceeding for disposal to any other additional Controller.The Controller shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-(a) Summoning and enforcing the attendance of any person and examining him on oath;(b) Requiring the discovery and production of documents;(c) Issuing commissions for the examination of witnesses;(d) Any other matter which may be prescribed.For the purposes of holding any inquiry or discharging any duty under the Act, the Controller may,-(a) After giving not less than twenty-four hours' notice in writing, enter and inspect or authorize any officer subordinate to him to enter and inspect any premises at any time between sunrise and sunset; or(b) By written order, require any person to produce for his inspection all such accounts, book or other documents relevant to the inquiry at such time and at such place as may be specified in the order.The Controller may, if he thinks fit, appoint one or more person having special knowledge of the matter under consideration as an assessor or assessors to advise him in the proceeding before him.

The Controller may exercise the following powers for the recovery of fine:

Any fine imposed by a Controller under this Act shall be paid by the person find witnessed such time as may be the Controller and the Controller may, for good and sufficient reason, extend the time, and in default of such payment, the amount shall be recoverable as a fine under the provisions of the Code of Criminal Procedure, 1898, and

the Controller shall be deemed to be a magistrate under the said code for the purposes of such recovery.

As per Section 42, an order made by the Controller or an order passed on appeal under this Act shall be executable by the Controller as a decree of a civil court and for this purpose, the Controller shall have all the powers of a civil court. Section 38 says that an appeal shall lie from every order of the Controller made under this Act [only on questions of law] to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette: [Provided that no appeal shall lie from an order of the Controller made under section 21.] An appeal under sub-section (1) of Section 42 shall be preferred within thirty days from the date of the order made by the Controller. The Tribunal may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. The Tribunal shall have all the power vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when hearing an appeal. The Tribunal may, on an application made to it or otherwise, by order transfer any proceeding pending before any Controller or additional Controller to another Controller or additional Controller and the Controller or additional Controller to whom the proceeding is so transferred may, subject to any special directions in the order of transfer, dispose of the proceeding. A person shall not be qualified for appointment to the Tribunal, unless he is, or has been a district judge or has for at least ten years held a judicial office in India.

As per Section 38A, for the expeditious disposal of appeals and applications under section 38, the Central Government may, by notification in the Official Gazette, constitute as many Additional Rent Control Tribunals as it deem fit and appoint to each such Additional Rent Control Tribunal (hereinafter referred to as the Additional Tribunal) on person qualified for appointment to the Tribunal in accordance with the provisions of sub-section (5) of Section 38. The Tribunal, may, by order in writing, -

(a) Specify the appeals or classes of appeals under sub-section (1) of that section which may be preferred to an disposed of by each Additional Tribunal and the classes of cases

in which each Additional Tribunal may exercise the powers of the Tribunal under sub-section (4) of Section 38;(b) Transfer any appeal or proceeding pending before it for disposal to, any Additional Tribunal; or(c) Withdraw any appeal or proceeding pending before any Additional Tribunal and dispose it of itself or transfer the appeal or proceeding for disposal to any other Additional Tribunal. The Provisions of sub-section (2) and (3) of section 38 shall apply in relation to an Additional Tribunal as they apply in relation to the Tribunal.

According to Section 38AThe High Court may also, on an application made to it or otherwise, by order, transfer-(a) any appeal or proceeding pending before the Tribunal to any Additional Tribunal; or(b) any appeal or proceeding pending before any Additional Tribunal to the Tribunal or in any other Additional Tribunal.

Text books:

1. Constitution of India – Mr. V.N. Shukla
2. Law of Acquisition of land in India – Mr. P.K. Sarkar
3. Delhi Rent Law – Jaspal Singh
4. Law of Rent Control in India – K.T.S. Tulsi