

The Republic and property rights

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The Supreme Court pronounced last year on the 117-year-old compulsory Land Acquisition Act. The Bench of Justices G S Singhvi and Justice H L Dattu observed: "The Act has become a fraud. It seems to have been devised by people with a sick mind who had scant regard for the welfare of the common man. It is time the Act is scrapped".

Historically, the notion that the State is the ultimate possessor of all land derives from the right of conquest by the king. The progress of social change in England, since the Magna Carta (1215 AD), had allowed this concept to change, along with other related notions of freedom.

Unfortunately, these changes did not occur in India, and our social development, such as it was, was further complicated by the introduction of alien rule and concepts of law. The British resolved the asymmetry of strong individual property rights in England and none in India by enacting the Land Acquisition Act in 1894.

The Land Acquisition Act, at the time of its enactment, though a half-measure, was a great step forward in acknowledging rights of private property and, as a corollary, compensation for compulsory acquisition by the State.

Moreover, the colonial Acts of legislation with regard to property rights were used cautiously for fear of revolt by the landowners. But the legislation framed by the First Republic (which had no such fear), led to a rush of expropriations and acquisitions of property, almost all compulsory in nature.

The first set of laws introduced was the Evacuee Property Act, which allowed each of the two new States, India and Pakistan, to seize the property of those who had migrated to the other for the alleged purpose of redistribution to incoming refugees.

The ultimate logic of this Act is that foreigners (made so by their migration – voluntary or forcible) were not entitled to retain their own property. Otherwise there was no particular need for this Act, as residence and property rights do not necessarily have to go together.

The First Republic then went on to abolish jagirs and other feudal entities through various Jagir Abolition Acts and their imposed compensation. When the Courts ruled this to be illegal, the Constitution was amended to put these draconian laws beyond the scope of judicial review.

The ruling Princes had, however, been given their own compensation and rights ("Priy Purses") in lieu of merging their States with the new Indian Dominion. These rights and compensation were enshrined in the Constitution of the First Republic. Later, however, these were summarily abolished without compensation. This was done despite the Supreme Court striking this down as illegal and unconstitutional.

Even before this phase, nationalization of industries and businesses in India with compensations of a minimal order was carried out. This time it was also thought necessary to amend the Constitution to replace even the "fair and reasonable" value of compensation with the ambiguous word "amount".

This was not to be subject to judicial review. However, the decision by the Supreme Court in the bank nationalization case was another watershed in this process, which ultimately culminated in the Minerva Mills case leading to some relief in terms of compensation but the legitimacy of compulsory acquisition by the State remained.

The Land Tenancy Acts, Agricultural Land Ceiling Acts, Urban Ceiling Acts, etc, constituted part of the whole range of coercive legislation whereby the First Republic sought to regulate, alter and abolish traditional individual property rights. Even temple and wakf lands and properties were sought, the first openly and the second surreptitiously, to be “transferred” from their legitimate owners and “sold” or acquired by those in power. Even the divine were subject to appropriation in the Republic.

It is no wonder, then, that the notion of property as permanent, inheritable, and secure for future generations began to suffer and resulted in alteration in savings and investment behavior. It also generated considerable corruption, litigation and general disrespect and contempt for law. It was also so cumbersome that a land owner had to wait years before he was compensated even at the non-market prices for his property.

This whole perspective has changed due to the growth of the economy, the rise of the property-owning middle class and the crony capitalists of the new State and, lastly, to conform to the needs of multinational companies, international norms of property and other civil rights. For the first time in the First Republic’s history, defense of property rights has become a major issue.

In the early years of this Republic, State projects resulted in displacement and expropriation and the Land Acquisition Act was used indiscriminately to settle the matter as far as the project authorities were concerned. In recent decades, the policy of the First Republic has turned completely around. It is wholly oriented towards capitalism based on free markets.

Industrialists and real estate developers have connived with the First Republic to acquire agricultural lands of small farmers at throwaway prices. Their violent protests have led to a reappraisal of the law itself. In this context, the continuance of a century-old compulsory land acquisition procedure cannot be justified in ideological terms.

What the First Republic did in its youth in expropriating the old landed and propertied class is now no longer politically feasible in its old age due to a more alert democracy. The Second Republic would ban alienation of all land belonging to government and religious bodies at any price other than set by public auction.

The allocation of land to officials, MLAs, MPs, industrialists, or for any other purpose at throwaway prices has bred corruption and subservience to the ruling party. Sometimes the government has acquired valuable land at throwaway prices and sold it at market prices: the First Republic as a real estate operator!

In the Second Republic, abolition of the Land Acquisition Act will have to be the first step in a series of steps to ensure civil and other liberties of the people, thus ensuring their willing cooperation in solving problems created by developmental projects. We need to let “able buyers” negotiate with “willing sellers” at mutually agreed prices.

The only justification for any compulsory acquisition would be for integrated State infrastructure projects, such as highways, canals and pipelines, where one set of landowners hold up the entire project by refusing to sell their land. For these projects, the legislature will have to enact special legislation restricted to, and designed for, the specific project after due consultation, debate and discussion and setting the compensation at market prices with assistance for relocation and change in livelihoods where affected.

The idea that a set of officials and Ministers can exercise such compulsion should be firmly rejected. Only the will of the combined legislature can override these precious interests and then also be subject to judicial review.

Not only has the Land Acquisition Act been turned into a "fraud", as the Supreme Court says, but its maintenance and exercise has turned the First Republic into one too, for a Republic that preys on its citizens is an exploiter worse than any other. The Second Republic will have to ensure this never happens and that the property rights of all its citizens are protected both from the State and other predators.

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