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THE SOVEREIGN'S REACH INTO OUR/MY LAND.

An Analysis of the Limits of Eminent Domain in Modern India.

AUTHORED BY – GANITHA

Abstract:

Eminent domain is the State's inherent sovereign power to compulsorily acquire private property for public use, regardless of the owner's consent, subject to payment of compensation. In India it is more commonly called "compulsory acquisition." Its power is rooted in sovereign authority and exercised with conspicuous frequency in post-liberalisation India, rests on a foundation that is, at best, unstable. This paper looks to solve a deceptively straightforward question: does the Indian State's exercise of compulsory acquisition, as presently structured under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, adequately protect the constitutional and statutory rights of affected persons, or does the framework, taken in its totality, constitute an architecture of legitimised dispossession?

The central question of law arises at the intersection of Section 3(za) of the RFCTLARR Act, 2013, which defines 'public purpose' in expansive and under-constrained terms, Section 17, which grants the State a sweeping urgency power to bypass Social Impact Assessments the mandate to assess the net harm caused to the local communities due to such land acquisition, and Article 300A of the Constitution, which replaced the formerly justiciable Article 31 following the 44th Amendment. The Supreme Court's foundational holding in *Somawanti v. State of Punjab*, AIR 1963 SC 151, that judicial review of the State's determination of public purpose is narrow and submissive, has calcified into a jurisprudential shield that insulates State overreach from meaningful scrutiny. When read alongside the documented failure to rehabilitate displaced communities, particularly tribal peoples whose relationship with land transcends the economic, the resulting picture is one of a constitutional right rendered largely illusory.

Keywords: Eminent Domain, RFCTLARR Act 2013, Public Purpose, Article 300A, Social Impact Assessment.

Hypothesis:

The existing legal framework governing eminent domain in India, characterised by an indeterminate 'public purpose' standard, weakened constitutional protection under Article 300A, judicial deference entrenched in *Somawanti*, and the systemic misuse of the urgency clause under Section 17 of the RFCTLARR Act, 2013, fails to adequately protect private and communal property rights, and disproportionately harms tribal and marginalised communities whose dispossession is structurally enabled by the current framework.

Research Questions:

1. How has the judiciary's inconsistent and progressively deferential interpretation of 'public purpose,' from the Land Acquisition Act, 1894 through to the RFCTLARR Act, 2013, created a constitutional vacancy that enables the State to pursue private commercial interests under the cover of public benefit, and what doctrinal correctives does the existing constitutional framework permit?
2. Does the substitution of the fundamental right to property under Article 31 with the legal right under Article 300A, affected by the 44th Constitutional Amendment, represent a constitutionally defensible development in light of India's redistributive social justice commitments, or does it, in practice, expose landowners to a degree of State arbitrariness that a fundamental right would have constrained?
3. In what manner does the systematic invocation of the urgency clause under Section 17 of the RFCTLARR Act, 2013 to bypass Social Impact Assessments intersect with the inadequate recognition of tribal land rights under the Forest Rights Act, 2006, to produce an outcome that is structurally discriminatory against indigenous communities?

Scope of research:

This research is limited to the Indian constitutional and statutory framework governing compulsory acquisition of land. We examine the constitutional provisions relevant to property rights, namely the Articles 19(1)(f) and 31(now repealed), and the current Article 300A, within the context of the 44th Constitutional Amendment. The primary legislative focus is the RFCTLARR Act, 2013, with particular attention to Sections 2(1), 3(za), 17, 26, and 96, as well as the abortive 2015 Amendment Ordinance. The paper also engages with the Forest Rights Act, 2006, strictly insofar as it bears upon the acquisition of scheduled and tribal lands.

The judicial scope spans Supreme Court decisions from *Somawanti v. State of Punjab* (1963) through to contemporary pronouncements on displacement and rehabilitation. A section on a brief comparative reference to *Kelo v. City of New London* (2005), will be made directly illustrative of the Indian position. No empirical fieldwork or primary data collection forms part of this study.

Methodology:

This research takes on a qualitative and doctrinal methodology. The doctrinal approach involves a systematic analysis of primary legal sources, including constitutional text, parliamentary debates, the RFCTLARR Act, the Forest Rights Act, and judicial decisions of the Supreme Court. Secondary sources comprise academic commentary, law review articles, policy briefs. No empirical surveys or interviews are conducted. The analysis proceeds by isolating doctrinal tensions, testing their internal coherence, and mapping them against constitutional first principles to arrive at normative conclusions regarding the adequacy of the current framework.

Introduction:

The doctrine of eminent domain grants the sovereign an inherent power to compulsorily acquire private land. In modern India, this power is regulated by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013. A core statutory anchor of this framework is Section 3(za), which defines "public purpose" through an expansive, multi-layered definition encompassing infrastructure, industrial corridors, and Public-Private Partnership (PPP) projects. To mitigate arbitrary state action, the Act mandates a Social Impact Assessment (SIA) under Chapter II—a participatory mechanism designed to evaluate the net harm inflicted upon local communities, determine project feasibility, and map livelihood displacement.

However, Section 17 vests the State with sweeping urgency powers, allowing the executive to entirely bypass the SIA and public consultation processes under the pretext of expedited developmental or security exigencies. Bypassing the SIA effectively eliminates democratic oversight and strips affected persons of their primary procedural shield. This structural vulnerability exposes a deep systemic tension: the state's transition from a welfare facilitator to an aggressive intermediary for private capital. By examining these provisions, this paper

interrogates whether the current legislative and constitutional framework genuinely protects property rights or merely constructs a mechanism of legitimised dispossession, transforming a sovereign prerogative into an instrument of asymmetric state overreach.

1. The Elasticity of 'Public Purpose' and the Jurisprudence of Deference

The elasticity of "public purpose" under Section 3(z) creates a structural vacancy where private commercial interests masquerade as public benefits. This doctrinal dilution stems from a legacy of judicial deference, crystallized in *Somawanti v. State of Punjab* (1963). The case involved a challenge to land acquisition for a private paper mill, where landowners argued the acquisition served private profit, not public utility. The Supreme Court's *ratio decidendi* established that the executive's declaration of a "public purpose" is conclusive evidence, and courts cannot substitute their judgment for executive satisfaction unless there is patent fraud or a colorable exercise of power.

For this paper, *Somawanti* matters because it calcified a jurisprudential shield that insulates state overreach from rigorous judicial review, a submissive posture that persists under the 2013 Act. To correct this, the judiciary must adopt a proportionality-based strict scrutiny test:

1. Legitimacy: Does the project genuinely benefit the collective public, or primarily enrich private entities?
2. Necessity: Is the acquisition of this specific tract strictly necessary, with no alternative sites available?
3. Proportionality: Does the public benefit outweigh the net social, environmental, and human cost of displacement?

2. The Constitutional Downgrade: Article 31 versus Article 300A

The 44th Constitutional Amendment (1978) deleted the fundamental right to property under Articles 19(1)(f) and 31, relegating it to a legal right under Article 300A. Intended to facilitate redistributive land reforms, this shift stripped landowners of Part III protections, exposing them to state arbitrariness. Unlike a fundamental right, Article 300A merely requires that deprivation be authorized by law, lowering the barrier for state expropriation.

A comparative glance at the US Fifth Amendment highlights this precarity. Even with a fundamental right, the US Supreme Court in *Kelo v. City of New London* (2005) ruled that

economic development by private entities constitutes a valid "public use."

Feature	Indian Framework (Art. 300A / RFCTLARR)	American Framework (5th Amendment / Kelo)
Status	Legal Right (Part XII)	Fundamental Right (Bill of Rights)
Review	Deferential to statutory mandates.	Historically deferential to "public use."
Backlash	Weak constitutional leverage.	State-level statutes restricted takings.

While *Kelo* provoked immediate state-level legislative backlash in the US to narrow "public use," India's downgrade to Article 300A leaves citizens with minimal leverage, normalizing an environment where majoritarian legislation easily overrides individual property guarantees.

3. Structural Discrimination: Section 17, Social Impact Assessments, and Tribal Dispossession

The operational failure of the RFCTLARR Act, 2013 culminates in Section 17, which grants the state sweeping "urgency powers" to entirely bypass the mandatory Social Impact Assessment (SIA). By eliminating the SIA, the state discards the singular democratic mechanism designed to quantify community harm and livelihood destruction. This systematic invocation of exceptionalism intersects destructively with the Forest Rights Act, 2006 (FRA).

The FRA mandates the explicit, prior informed consent of the Gram Sabha before any tribal or scheduled land is alienated, recognizing that indigenous relationships with land transcend market economics. When the state invokes Section 17, it structurally overrides these participatory protections. Because the SIA is bypassed, the non-monetizable communal rights of tribal communities such as dependencies on sacred groves and minor forest produce are completely ignored.

The current framework thus operates as a tool of structural discrimination. By calculating compensation under Section 26 through an atomized market-value lens, the state translates holistic, generational livelihoods into inadequate cash payouts. This enables the legitimate dispossession of marginalized communities, transferring resource wealth from indigenous enclaves to corporate entities under a legal veneer.

Conclusion:

The contemporary landscape of eminent domain in India reveals a profound systemic imbalance. The promises of equity and comprehensive rehabilitation heralded by the RFCTLARR Act, 2013 have been largely neutralized by the regular weaponization of the urgency clause under Section 17, an expansive interpretation of Section 3(za), and the constitutional vulnerability left by the demise of Article 31. The current legal architecture functions as an instrument of asymmetric power, converting the sovereign duty of public welfare into a mechanism of structural dispossession that disproportionately burdens India's agrarian and tribal communities.

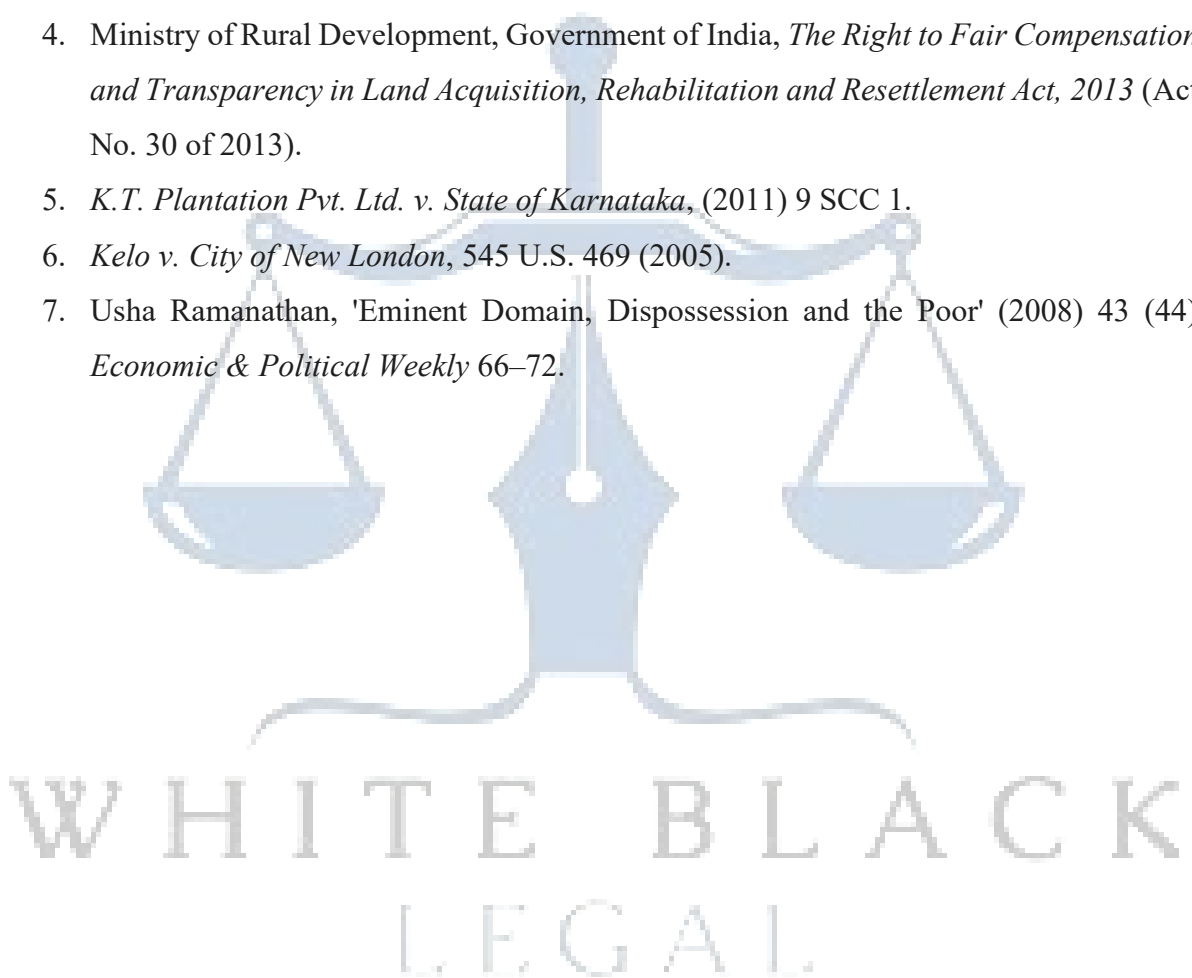
To rescue the constitutional promise of property rights and prevent the total erosion of livelihood security, India must pursue definitive doctrinal and statutory correctives:

- **Judicial Reorientation and Proportionality:** The judiciary must abandon the antiquated doctrine of absolute deference established in *Somawanti*. The Supreme Court must explicitly read the doctrine of proportionality into Article 300A, subjecting every land acquisition to strict judicial scrutiny to ensure the state uses the least restrictive means necessary.
- **Statutory Narrowing of Urgency Powers:** Section 17 must be legislatively amended to strictly delimit the definition of "urgency." The executive must be barred from invoking urgency for commercial, industrial, or infrastructure projects executed via PPP models, restricting the waiver of the SIA exclusively to cases of sovereign defense or acute natural disasters.
- **Harmonization with Indigenous Rights and Veto Power:** The acquisition of land in Scheduled Areas must be made unconditionally contingent upon the prior, informed, and un-coerced veto-conferring consent of the Gram Sabha, as contemplated under the FRA, 2006. Compensation paradigms must shift from purely individualistic market-value payouts to long-term equity-sharing models, transforming displaced communities into perpetual stakeholders.

Only by shifting its foundational paradigm from executive expediency to rigorous constitutional accountability can the Indian state ensure that the sovereign's reach into private and communal land remains a rare, justified exception rather than an arbitrary tool of dispossession.

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