SOCIO ECONOMIC JUSTICE AND RECORD OF RIGHTS: CRITICAL ANALYSIS OF LAND LEGISLATIONS

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I. INTRODUCTION

For centuries, India persisted with a social order which was marked with elaborate hierarchies. Basically Indian society was organized on the principle of inequality of caste, creed & economic position. However modern India i.e. in post independence period it has to be different and importantly based on the principle of equality and justice for all. Indian constitution in its every part promotes the principle of Justice. The constitution of India, in its preamble refers to a justice in its various forms i.e. social, economic & political.

The term “Social Justice” is very vast term and mainly includes three aspects

- Removal of economic inequalities
- Provision of a decent standard of living to the working people and
- Protection of the interests of the weaker sections of the society.

Part IV of the Indian Constitution, containing Directive Principles of state policy, includes provisions aimed at removing economic inequalities. Art. 38 (2) directs the state “to strive to minimize the inequalities in income. Art. 39 ( C ) says that “the operation of the economic system should not result in the concentration of the wealth and the means of production to the common detriment.”

The Constitution of India had carved out the contours of proprietary rights within the framework of Arts (19)1 (f), 19 (5) and Art 31 at the same time imposing a negative obligation on the state in Art 13 (2) not to make any law in violation of fundamental rights. The Right to Property received its seal of approval on 26-1-1950 with welfare state as the Goals. While setting the contours of right to property the founding fathers never intended that such rights could not be touched even if they come in the way of achievement of social objectives as laid down in the Directive principles.

II. DEVELOPMENTS IN POST-INDEPENDENCE PERIOD

In post independence period, after adopting Indian Constitution there were many challenges before the State. India was expecting social reforms, particularly in the matters of removal on inequalities in social, political & economical areas. However the presence of Right to Property as Fundamental Right through Art. 31 was main impediment because Government was in need of Land to achieve the object of welfare state. Therefore at that time, removal of Right to Property as fundamental right through constitutional amendment was appropriate decision. However, entire scenario changed after 1978, and due to industrialization many people were in need of lands and due to that Land got utmost importance and so many faulty transactions took place which ultimately effected into maintenance of incorrect Record of Rights.

This article mainly focus on three issues first, present system & laws dealing with record of rights, lacunas in present system and flaws in present law which ultimately affect right to property of a person. Secondly, the role of state in providing clear title over the land and thirdly, how various land transactions are getting affected due to present system. The record of right is the register giving first in a diary form particulars of all private rights over land. It is necessarily studied in a way so that there won’t be any confusion regarding title of property at the time of preparation of document. Here it is necessary to study the role of the state to ensure clear title over the land so that land holder can enjoy the property without any disturbance.
In present era, it is required that state is assuring clear title over the land, due to this all transactions & procedures for transfer of property are easy, hassle free and without any problem. Presently system is such that prospective purchaser has to spend lots of money to get assurance about clear title over the property. Register of mutation is very time consuming and complicated process. It is necessary to register mutation at the time of transfer of property from land owner to the receiver without any delay. Due to all these problems & complicated process, ultimately person is deprived of his Right to property (though it is a statutory right).

Here it is pertinent to note that if Government possesses a right to acquire property of an individual through land acquisition then government is duty bound to provide and assure clear title over the property through their system & machinery. Why prospective purchaser gets suffered due to lack of good system, in spite of paying money to the government for land transactions. Through this research, researcher has made an attempt to find out answers for all these problems

III. SOCIO-ECONOMIC JUSTICE & RIGHT TO PROPERTY

In all societies “Socio-economic” justice is prominently seen in governmental actions, infused and inspired by constitutional provisions. Special legislations, court verdicts and state initiated programs for the general well being of the weaker vulnerable section of the society. The concept of social justice in a welfare state like India to maximize the aggregate happiness by often dealing with unequally. It also justifies unequal allotment of benefits to those who have been the least advantaged. The social justice agenda has been considered a ‘just character’ for state action to provide fair equality of opportunity to the worst section of society. The fair equality of opportunity underlying the “difference principles” has been taken as a means to secure the ends of distributive justice. Kant Says “every man has a worth and dignity, which forbids his exploitation by any purpose whatever”

Ever since the birth of society, the concept of justice has been one of the most important features of human society. “Justice Means giving one what is due to him” the concept of distributive justice embraces the whole economic dimension of social justice, the entire question of distribution of goods and services within the society. It demands the equality in the distribution or allotment of advantages or burdens. The aim of distributive justice is to strike the balance in the socio-economic structure of the society and bring equipoise between the conflicting interests of individual citizens. To implement the concept of distributive justice, society needs public system of rules. The distributive justice essentially is the function of just society.

Idea of Distributive justice in Indian society, we need to understand that problems in Indian society are complex. There are so many provisions in the Indian Constitution which talks about the idea of justice. It does not merely envisage a system of corrective justice in which rights and obligations arising out of the present social structure are enforced but it requires that existing structure was unjust and needed to be changed. This is called as distributive justice.

Once Right to property was considered as Fundamental Right of an individual in India. The notion of property as it was developed over the centuries and it has embodied in our legal codes, has become so much a part of system 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.

Every Government has 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. However essentials of this doctrine are

1. Property is taken for public good.

2. Appropriate compensation is paid for the property taken.

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 of Government is also subject to restriction. Today, the times have changed radically. Now India is no more seen through the eyes of only political leaders with socialist bias but it is also seen through the corporate lenses of financial giants like the Tata’s and Ambani’s with an unfathomable zeal of capitalism, money and market. There is another angle added to Right to Property. There is a scuttle by industrialist and developers for land all over the country for establishment of Special Economic Zones.
We have witnessed violent protest by agriculturists to defend their meager land holdings against compulsory acquisition by the state. Especially riots & killings in Singur.

Due to this, socialism has become a bad word and right to Property has become necessity to assure the feelings of poor more than those of the rich. Today we feel the need of restoring Right to Property as fundamental right for protecting basic and essential rights related to Land. Land provides basic necessities like food, clothing and shelter to human being. Land has always been an important locus for the economic activity necessary for human life. Any developmental activity is nearly impossible to conceive without taking land into consideration. The ability of land to provide space for production is limited by its physical and locational properties. Unlike goods, which can be moved around to where they are needed, land is immovable and cannot be physically passed by hand.

In India's rural population still makes their living primarily from agriculture, depending directly on the land for their income, status, and security. There is strong relationship between land, power and people. Human being cannot produce land and therefore the value of land is ever increasing.

Maintenance of land records and the availability of easily accessible land information is one of the most important issue annoying common men today. Ownership and use of a particular parcel of land can be ascertained and guaranteed, if the land records are kept and the laws governing land relationships are published. The land records are ascertaining the state of ownership and property rights. In land deals investigation of the land records is essential to ascertain who the actual owner is.

After independence rapid development in industry and commerce took place, area under urbanization is also increased. With the result prices of land soared. People found real estate a reliable place for investment. Record of Right became one of the most important documents for investigation of title. In today’s Era of globalization, holding a piece of land in our name seems to be a difficult task. Ordinary person puts all his earnings at stake and wish to purchase a land. However it is observed that, there are lots many transactions take place on one single piece of land, like mortgage, Gift deed, transferring property by will. In all these circumstances it becomes difficult to identify who is actual owner of the property who can sell the property. Lots of cheating cases were noted in land transactions.

Here the question comes, what machinery & system Government possesses to ensure that “Land” which is a subject matter of transaction is free from any encumbrances and possesses clear title? Government levy heavy tax in any land transaction and collecting revenue. Ordinary citizen is also paying money to the government. However unfortunately, government is just doing the work of maintaining records of the property. Entire process is carried out mechanically and property is transferred from one person to another. Once the transaction is completed, later purchaser realizes that title of the property is not free & clear and the person who sold it is not competent to do the transaction related to that property.

Legal Remedy which can be availed by the plaintiff is available i.e. suit for compensation, injunction, specific performance of the contract or complaint on the ground of cheating or Fraud. Still the question remains, being a State, what is the role of Government to ensure clear title over the property to avoid further complications & litigations. Land, which is a scarce natural resource, has been regarded as a measure of wealth, status and power from time immemorial. Any developmental activity is nearly impossible to conceive without taking land into consideration. Now it is being widely regarded that the efficiency in land management is one of the indices of a Nations Developmental status. Hence it can be said that the land plays the role of the most crucial role of society’s progress anywhere in the world.

It can also be said that the rights of the citizens to own private holdings and enjoy the wealth generated from the same and constitute a very important facet of public administration, this is particularly true for India which is predominantly an agricultural economy. As India is rapidly transforming into industrialized economy and consequentially suffers from maladies like urban overcrowding, unlimited exploitation of precious natural resources like land are being put to enormous strain, screaming got proper land Management facing governance today. "Land Records” itself is a generic expression and can include records such as, the register of lands, Records of Rights, tenancy and crop inspection register, mutation register, disputed cases register, etc. It can also include geological information regarding the shape, size, soil-type of the land; and economic information related to irrigation and crops.
“Human Rights & Property”

The right to property is primarily a right in civil law. It is however a basic human right that one’s property should not be confiscated or subjected to controls or limitations except with good reasons and with procedural safeguards. The right to dispose assets is a traditional fundamental element in the right to property. The concept of Justice, Distributive Justice & how the concept of justice in interlinked with Record of Rights. In this context one important case, Kalu Gopya Banjari v. State of Maharashtra and another is mentioned, where it was held that “Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: ‘From each according to his capacity, to each according to his needs.’ Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one too many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring other. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements.”

Once Justice Krishna Iyer observed that “Power, material power, is the key to socio-economic salvation and the state being the riders of power, the framers of constitution have made provisions for representation of these weaker sections both in legislation and the executive. Basically, though this chapter, researcher intends to communicate that, State in its every action, policy making decisions, legislation should bear in the mind, the rider of socio-economic justice put by The Indian Constitution. There are many decisions of the Supreme Court which are reminders to the state about the concept of distributive justice while making laws & policies.

IV. CONCLUSION

Lastly, at the end, after studying and analyzing all the aspects of Record of Rights in India, researcher is of view that due to various developments in right to property of an individual and India being developing country, in post independence period the subject of land had got tremendous importance. For development purpose lands are acquired by the state through proper legislation and various transactions took place related to that. Cumulative effect of all these things is that land records are not maintained properly. And it directly affects the Right to property of a person. Though right to property is not the constitutional right still it should be looked at from socio-economic justice point of view.