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International Protection in Context of Property

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ABSTRACT

This work explores the international legal framework for the protection of property rights, focusing on the intersection of state sovereignty and individual ownership. It delves into the concept of 'eminent domain,' which grants states the authority to acquire private property for public purposes, often justified by the legal maxim *salus populi est suprema lex* (the welfare of the people is the supreme law). Despite legal provisions mandating compensation, outdated valuation methods and ineffective implementation of resettlement and rehabilitation schemes have left many property owners vulnerable and inadequately compensated. The study also highlights the international legal protections for property rights as enshrined in various international instruments, including the Universal Declaration of Human Rights (UDHR) 1948 and the European Convention on Human Rights (ECHR) 1950. Additionally, it examines the guidelines issued by the Economic Commission for Europe (1996), international investment law, and other covenants such as the International Covenant on Civil and Political Rights (ICCPR) 1966, all of which seek to safeguard property rights against arbitrary state actions. A comparative analysis of property rights protection across different jurisdictions, such as the United States and the United Kingdom, is conducted to illustrate the diverse approaches adopted by states. The role of international bodies and conventions, such as the Rio Declaration (1992), Convention on Biological Diversity, and the Vienna Declaration (1993), in protecting the property rights of marginalized and indigenous peoples is also examined. The study concludes by exploring landmark cases like *Beyeler v. Italy* (1997) and *Sandu and Others v. The Republic of Moldova and Russia*, where international courts have addressed issues related to the expropriation and protection of property rights. It argues that while international legal frameworks provide significant protection, gaps remain, particularly in addressing issues related to fair compensation, the protection of indigenous lands, and the interplay between property rights and environmental sustainability.

Keywords: Property Rights; Eminent Domain; International Legal Framework; Human Rights Protection.

INTRODUCTION

It seems from jurisprudential viewpoint that the property is an institution to keep the social order well maintained in any society (Friedman, 1966). Distribution of property plays vital role in development and maintenance of society. Almost all the nations have provisions in their law for right to hold, possess, or own property either as a fundamental right or as a legal right. The right to hold property cannot curtail without following the procedure

established by constitutional law. Prior to the independence of Nigeria, many international organizations have played popular roles in order to enact the protection of property of individual or of any association (Hill, 2012). In present episode, researcher discusses the protections provided by the international bodies or fruits enjoyed by citizens because of availability of those safeguards. The International Law has four main sources of property

1. Regulations of the global commons;
2. Co-ordination of trans-boundaries property rights;
3. Adoption of global policies to protect against specific harms; and last
4. Protection of Human Rights, Right of holding, and developing, retaining, or protecting one's Property is covered under Human Rights. Here we discuss related international protection of property rights.

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

The father of modern Human Rights is John Peters Humphrey. He drafted first document of bill of the rights for UNO. In the draft, the property of individual and community are subject to personal control while State cannot interfere in that unless it is very urgent and only way of making public good. This was the massive step taken on an international level for protection of Human rights all over the planet. The UN General Assembly proclaims on 10 December 1948, these rights were framed with a view to achieve common goal for all people or world around (Lauren, 2011). On the declarative document, there was influence of The Great Britain as they include right to fair trial, right to life, and right to freedom of expression Under the UDHR, 1948; Article 17 clearly states that every person has right to own property and no one can stanch away without following the due process of law (Lauren, 2011).

Protection in United Kingdom

Even Human Rights in the U.K. after Brexit Article 1 also shows that the protection of property bestow to all human beings, the right of peacefully enjoying their possessions. This imposes an obligation on the State not to,

- Interfere with peaceful enjoyment of property;
- Deprive a person of their possessions; or
- Subject a person's possession to control.

If, State interferes with property rights for rendering the public services or by following the due process of law then such action should not consider as a violation (Shaw, 2020).

ECONOMIC COMMISSION FOR EUROPE GENEVA – 1996

The guidelines issued by the Commission for administration of land to managed effectively. Such guidelines are the need of the hour to curtail the arbitrary, vexatious, and illegal act of bureaucrat (Lai & Davies, 2017). These principals are solely based on statements

- Every human has admittance of right to Food and shelter ;
- Protection of residence is indispensable for an effectual accommodation policy;
- Firmness in the legal status of land is essential for efficient agricultural production;
- Investors in a market financial system require an official structure of land and chattels privileges;
- Sustainable development is dependent on the State having general liability for managing in order to the ownership, value and use of land, even though the private sector may be occupied at length ; and
- Both, land and information about land are resources and companion must keep them in the order to achieve an economic growth.

This commission was set up for a special administration of land of east and central European countries. In addition to it, the motive was to identify the need and problems related to land acquisition in those countries.

PROTECTION OF PROPERTY UNDER EUROPEAN CONVENTION OF 1950

Article 1 of Protocol No. 1 Everyone has the right to own property, possessions and can enjoy every type of benefit that one derives from the property. No one shall be underprivileged of his assets except public requirement so demands (Orebech, 2009). Even in such condition, the State must guarantee fair compensation. Existing as a privileged in 1789, but a cause of lengthy argument from the time of the French Revolution and even more throughout the following century, this right had excluded, after extensive debate, from the European Convention on Human Rights itself. There is a long political conflict as outset for right of ownership as individual right. It is considered as social function of every citizen. However, the State desired that State has full freedom to take action in economic matters which finally led to a compromise: insertion of a text that secured protection of property, not in the body of the European Convention on Human Rights but in the first Protocol there to be signed on 20 February 1952 (Arai, 2009).

INTERNATIONAL INVESTMENT LAW

The international investment law does not consider the property but as investment, under the investment law, every investment is property in itself. The object and purpose of the law is not only the protection but also jurisdictional requirement. Under International Investment Law the tribunals are established to decide the dispute that arises out of the investment directly or substantially. Property under the Human Right law and International Investment law has been treated differently from each other. It needs to note that a problem of one field is differing than other field (Bertrand, 2019).

AN OVER VIEW OF AMERICAN LAND POLICY

The United States of America has different land policy in each of it States as USA has federal constitution. Many of the researches are attempted in order to search the solutions on the subject of land acquisition in the United States, still every State has come across with some unresolved disputes. Under the shield of development, the state acquires public land and give to private persons. The Virginia State has surrendered its claim on western land in accordance to the article of confederation for the purpose of security of Mary land succession (Ablavsky, 2018). Constructing a land policy, the State of Virginia has put two conditions, namely land is a public wealth and it shall be utilized for the benefit of public of United States of America whosoever becomes a member of association and the Second is that, the land should be vested into union, divided into the State with the right of freedom and sovereignty. Later on, the policy of Virginia has been adopted by the congress. Hence, it is clear that the public land is property of The United States of America and every income generated from the same would be divided proportionately as per the representation of State and the congress equally.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

International covenant on civil and political rights is mainly on the right of common civilian's emphasis on social or political rights. With respect to common man, Article 17 provides the safeguard against the arbitrary attack on peaceful possession and enjoyment of private person's property (Assembly, 1966). The Articles not only provide safety against the private attack but also against State. It laid down the rule that State shall not act adversely to the right of persons with regard to the settled, peaceful and open possession, or ownership.

Rights of Indigenous people

The draft Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1 (1994) Under part V, Article 21, 23 and 24 which protect the rights regarding property and fair compensation in condition where adverse action taken by the State or State curtails their right to hold property, forest products, medicines or

animals. It shows that keenly care is taken by the United Nations for the rights belong to the people who are of marginal sections as there is always a chance of discrimination with them (Iorns, 1994). Following the proposal of UNO, many other nations have started working on its policy. Most of the States consider it as pious obligation therefore they enact legal provision, pass Acts to protect, or have approved the bills of rights.

American Declaration on the rights of indigenous people

In the year of 1994 Summit of America, it declares that the indigenous people or tribal people have all fundamental rights. Under the fundamental rights, the people belong to the community mentioned in the bill; also possess the rights against dispossession of themselves from land, territories, and resources utilized by them since ages and they have freedom to develop as per their culture and rituals (Macklem, 2017). During this summit, Article XVIII has supported special protection given to them with regard to the land, forest, and resources belong to them as they have respect and relation with forest and nature. They not only develop forest but they utilize forest and forest products in a manner that should not affect the nature adversely (Stone, 2017).

Rio Declaration on Environment and Development- 1992

The Rio Declaration held the view in order to achieve a new goal of global partnership among the States in cooperating the development of people and protection of natural resources and improvement of environment. To uplift the life style of all the people among the States, the state needs fair and equal treatment between them (Porras, 2014). The States need to ensure that such practice should abridge and create inequality or increase inequality of status or utilization of resources and such discriminatory type of patterns need to be terminated. Summit also focuses on the indigenous people and their rights with the view to express in document that they are the real heroes as they saved and developed the nature forest. The tradition, customs, and practice of indigenous people shall be recognized and protected under the law of State. Further, the State needs to recognize the occupation, dominations of people on land and resources in their interest. It is necessary to make changes in rules, laws, and regulations according to time and demand of society for the welfare but the State needs to have the concern about the international obligations and protect the nature and the rights of people who are from marginal class and living deprived since eras.

Convention on Bio Diversity

Concerned deeply about the loss of the resources and environment accure in the world presently. However, the State shall create fair environmental activities for achieving sustainable development globally. During those developing acts, at the same time, the international obligations of biodiversity need to keep in mind (Homer-Dixon, 1991). During the conference it was stated that indigenous people who always have their practice and principle to give and take from the nature, have everything from nature i.e. food, medicine, shelter, etc. They do care about nature greatly and show their gratitude towards nature. Such practice is pious which helps the world at large to keep the resources alive for long.

Vienna Declaration 1993

Under the Vienna declaration, the rights of indigenous people, women, and children are more particularly discussed and shown the apprehension. To protect their rights State needs to act just, fair and with the view that those who are poor or marginal should promote, protect and aid from the State made available to them more easily. Such financial assistance helps them to rise in economic, educational, social, and cultural sectors (Davis, 2007). Their development would help them walk along with other classes of people in the society. The conference concludes that without upliftment of the deprived class of people, the gap between the two classes of society cannot be filled up.

United Nations Declaration on the rights of indigenous Peoples

Indigenous people have all rights as any other individual has, individually or collectively in the contexts of freedom and the enjoyment of fundamental rights (Newman, 2006).

Right to protect culture and compulsory integration

It is a duty of State to ensure these rights of indigenous people. The State shall make effective means for preventions against exploitation and grievances redressal system.

1. State shall not take any action or prevent others from taking any action or doing any activity which has resulted or likely to have resulted as deprivation of indigenous people as their distinction from others or cultures or rituals or values.
2. State shall not take any action or prevent others from taking any action or doing any activity which has resulted or likely to have resulted as their dispossession from the land, forest or nature against their wish or will.
3. State shall not take any action or prevent others from taking any action or doing any activity, which has resulted, or likely to have resulted as to force them to relocate from their community living.
4. State shall not take any action or prevent others from taking any action or doing any activity which has resulted or likely to have resulted as an integration or an assimilation, such act affect their routine habits.
5. State shall not take any action or prevent others from taking any action or doing any activity which has resulted or likely to have resulted in discrimination from the other class of people.

Right to continue as a part of indigenous group of people or inhabitants

People of an indigenous class have inherent right to continue as part and parcel of their community or State from which they belong, and to protect such rights, State shall make sure that they are not discriminated in any manner.

Right to protest against forceful dispossession from land, or forest

The State needs to ensure and take necessary measures with regard to the dispossession or resettlement of indigenous people. Indigenous people should not be removed from their land or forest, without their free will and fair compensation, which are occupied, conserved, and developed by them. State also needs to make sure that even in the case where State has no option, the state needs to provide the people by giving them a new place or land where they can resettle.

Right to follow and regenerate way of life, ethnicity, and civilization

The Indigenous people also have rights, as other classes of people have i.e. to preserve their culture, the right to bring changes in accordance to the present time and to make it better for the next generation (Stavenhagen, 2019). So far, their literature, festivals, ideology, and vision are concerned; they also have the rights to continue their traditional practices in the matter of spiritual property and intellectuality without fear and consent of community at large.

Right to consult

Enacting any legislation, rules, or regulations, which directly or indirectly affect the community of indigenous people, the state shall not only consult them but discuss and obtain their free will and consent before enacting any legislation. In addition to it, after the due consultation, if State feels that it is necessary, and then changes need to be carried out in the good faith and preserve their rights, habits and culture.

Right to maintain and develop their institutes

Every person has the rights in accordance with the law to establish the institutions. People

also have the right to maintain the institutions and developed for the betterment of their culture, rituals, and traditions. They also have the right to create a system for just and fair redresses of problems.

Right to do improvement of social and economic affairs

These people, inter alia, have the rights to improve social, domestic, economic affairs under education, health, and social security. They also have a right to create an institution for generating livelihood in terms of fiscal issues.

Right to hold property and development.

The groups of indigenous people have a right to participate actively for developing and to consume, or to retain properties like house, land, etc. They also have the occurring rights with regard to economic and social programs, which make a positive effect to raise their standard of living.

Right to maintain practice related to health

It is a duty of the State to provide all modern medical facilities to the people of indigenous class. They also have a right of access to the forest conserve plants, minerals and all other products, which can utilize as medicine.

Right to have relations with land

Tribal people have special relations with the land and forest, in some communities; people treat the land as their mother soil, the divine association with land. They have the need to be promoted and protected by the State. It is their fondness and love for the land and nature that they conserve, preserve, and work to develop in a manner which becomes more fruitful and productive for the entire fraternity. The worthy emotions need to be appreciated which is beneficiary to all humans

Right of soil, province and resources of nature

Aboriginal people have the right to occupy lands, counties, and resources available from the land or counties or forest, which are generally occupied by them or their community (Anaya & Williams Jr, 2001). The community- acquires and uses the resources available since time immemorial and their occupations are continued. Therefore, it is an obligation of the State to recognize the rights. The State shall focus to develop a marginal class of people, and need to give certain special privileges to them.

Right of just lawful practice

The State shall establish an institute that take the course in a matter of rights of indigenous people. Certain just, fair and reasonable procedures and procedural rules need to be framed for them after the due consult to their community at large. State also needs to take pain to advance the mechanism for monitoring the system related to indigenous people or people of a weaker section to ensure that they have easy access to law or judicial bodies to get justice, for securing their customs, laws, traditions and values (Grossi, 2016). The State needs to secure that in a legal system there is full and effective participation of the indigenous community, so, if any difficulty arises, it can be resolved amicably.

Right to get just and fair compensation for property

The indigenous class of the people shall be treated with some specific privileges that give them benefits to redress their issues concerning the property, i.e. land, soil, forest, or natural resources, unless there is an extraordinary circumstance exists which forces the State to dispossess the indigenous people from their property for public purpose or to save the public interest at large. Even if there is no option left to the State except to acquire, the property belongs to such type of the group, just and fair compensation needs to be awarded

or certain special packages need to be given so they may resettle or rehabilitate. It will help them not to suffer a lot and they start their respective life in their ordinary habits.

Right to save or improve the land and its production

Every owner or occupier have inherent right to jam and advance the property or benefits attached with it. Before enacting any rules or regulations on the subject matter, State shall consult to all the people affected by upcoming policy. It is an obligation of the State to provide opportunity by way of giving education or environment to develop themselves. The State should secure that no one becomes the victim of policy or procedure established. The State also needs to constitute authority for monitoring, maintaining, and restoring programs run by the State for the benefit of indigenous people.

Every occupier have the right to get benefits of properties belong to him/her and those benefits should not be abridged or prohibited or curtailed without following the due process of law and prior intimation to all the beneficiaries. The State is duty bound to hear objections and suggestions for effective implementation of upcoming policy without hurdles and hindrances.

Right to protest against Activities of Armed Forces

The People who are living in the forest, or occupying land which is conserved and developed by them, have right to show their hesitation or peaceful protest against the activities carried out by armed forces which affect their culture, or tradition, or occupation or such activities are forced them to evacuate from the land. Democratic morality imposes a duty on the State to consult with concerned groups of people or affected people before implementing any rule or policy, which has resulted into the displacement of natives. There should be an appropriate procedure and a program of rehabilitation for those who will lose their land and livelihood.

Right relating to forest products, intellectual knowledge

The Marginal class of people who are living in the forest area has right to control the forest products as they have grown forests by taking care and efforts. They also have rights on plants, seeds and flora, fauna and other natural forest products, which are utilizes by them to make medicine. They also have the right to protect their traditional knowledge of science, technologies, culture including genetic resources. Forest products and their uses are considered property for them so they have inbuilt right to protect i.e. traditional athletic competition and sport, their arts, design and drawing.

Right to establish properties/ policy relating to the use of land

The homegrown people have the right to establish their own properties and make policies to retain it or to develop them further and use them for their benefits. They also have the right to occupy territory and resources and its fruits. Enacting any rule, regulation, law or policy that affects them, State shall consult such a group of people or natives of the land where such operation will going to be carried out. It is also desirable that their representatives are available in the office of State who will make policy or law related to them so they can explain properly the problems and difficulties of those kinds of people. State also needs to make sure that majority of them allow the project of State on their land or forest belongs to them with free will. State has to take pain for their rehabilitation and award them compensation with due diligence so that they can be settled at an appropriate place which is suitable for their habits of life (Wailoo, 2014).

Approximately 370 Million indigenous people are living in the world out of which 70% are living in Asia. Their total population is 5% of world's total human population and they are saving 80% of the biodiversity of the entire planet, out of their population 15% are extremely poor and marginal living in worst conditions, looking toward UNO with tremendous hope that UNO do something for their upliftment. Since the last 20 years, their

rights are increasingly a concern and it is recognized by many nations (Estrada, et al., 2022).

The appearance of global Property Law

The property right and protection under international law throw the light on the provisions and regulations. The International Property right is emerging new field of law as if 30 years ago and the Environment Law emerge. International Property law does not define in any book or material but the law related to property is the subject governing by the national law. Justice Marshal explains in the case *Johnson v. M'Inots* entirely on the law of the nation in which they lie" (Kades, et al., 2001). When any person holds property in a cross border that becomes a subject of international protection as both nations may have different laws in respect of property. So, the rights of owner is at risk.

International Settlement of Investment Dispute

Compania del desarrollo de santa elena, s.a. v. The republic of costa-rica case no. ARB/96/1 has present the case has uses the applicable law in a convention of ICSID Article 42(1), but the tribunal has applied the law of the Costa Rica as it has no defect in it and the tribunal also holds that conventional law or international law can only be applied at the time where lacuna in Costa Rica law (Figueres, 2019). In the present case, Costa Rican government acquires 15,210 hectors for a public purpose. It is not disputed that State has the right to acquire or expropriation of property belonging to a foreigner, State that acquire property has to pay fair, just, reasonable, and adequate compensation to the owner. Term just, fair, and reasonable compensation is not defined preciously in International Law as well as Costa Rican Law so the tribunal explains it as fair market value of the property, i.e., what a willing buyer would pay to a willing seller.

Tribunal also lays down that the market value of property should be assessed on the day of acquisition of it, in the case on hand 05.05.1978. Looking to the market value and usages as well as the benefits derived from it, the tribunal Award them to pay \$16,000,000 to Sant Elina in 21 days (Ooi, 2020).

Property Protected by International Court

Beyeler v Italy in the year of 1977, the applicant Ernst Beyeler, a wellknown Swiss art collector purchases a painting through his agent which is a very common practice in the art market (Polymenopoulou, 2023). However, as he is a foreigner, if he discloses the real identity then he has to pay more price than what he has paid at the time of buying the Van Gogh painting, "Portrait of a Young Peasant,". The sale takes place in Italy, which has laws protecting historical and artistic interest. The auction is reported to the authorities, the Italian agency of Cultural Heritage. The office shows interest in acquiring the painting. Nevertheless, the ministry allocates limited fiscal aid. So far, the law is concerned that the government has a right to pre-emption, the auction purchaser Mr. Beyeler challenges such acts. The auction purchaser loses all the legal challenges. Mr. Beyeler then files an appeal before the European Court of Human Rights arguing that there has been a violation of Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the peaceful enjoyment of ownership rights. The Court orders the State of Italy to pay 1,355,000 Euros to the appellant because the court considers such act of the State as a gross violation of the protocol (Szabados, 2022).

European Human Right Court and Right to property

Sandu and others v. The Republic of Moldova and Russia in present case The 1,646 applicants' natural persons who live in the villages of Dototcaia, Pirita, Molovata Noua, Pohrebea and Cocieri are situated on the left bank of the Dniester in the region of Dubasari (Bologan, 2022). These villages are under Moldovan control. Part of the land belonging to the applicants is situated in areas near these villages, across a road that links the northern and southern parts of the self-proclaimed "Moldovan Transdniestrian

Republic”. In the year of August 2004, MRT declares that all such land belongs to the state and occupiers could continue to work with conditions stipulated to pay rates to the local selfgovernance of MRT. As the owners are not contracted the agreement of the government of MRT, they block their accesses to the land, agriculture tools and even forest as well and thus about such, they protest before the Russian Embassy and then letter applicants move to the ECHR for violation of Article 1 Protocol 1 (Bologan, 2022). The court holds with a majority of six votes against one vote that Federation of Russia violates the Article 13 with Article 1 of the Convention as they block the usage of legal owner or tenant who pays their respective dues and taxes to the concern authorities. Hence, MRT has no legal right under their local laws to impose any taxes over the lands in dispute or they have no control over them, therefore their present act is contraband act which is resulted into violation. For previously mentioned reasons, court holds that federation of Russia has to pay € 1500 to each applicant or their legal heirs with taxes, also € 113500 to SLR Tiras within 3 months of the pronouncement of Judgment (Grgiæ, et al., 2007).

Rights about property discussed with protection available to those rights from various conventions, treaties, international regulations, or from the various international bodies like human rights commission, international Court, International Dispute Resolution Centre, European Council, and European Court of Human Rights. All these authorities, bodies, or concerned states are much conscious about the protection of property and against forceful dispossession. In case of acquisition just, fair, reasonable and value as per market compensation would be awarded to the victims or affected group of people, it takes special care and concern about the indigenous people who have less access to approach before the regulatory or court.

CONCLUSION

The international legal framework for the protection of property rights is complex and multifaceted, involving various conventions, declarations, and legal principles that aim to safeguard the rights of individuals and communities. While States hold considerable authority under the doctrine of eminent domain to acquire property for public purposes, international standards have established a set of guidelines to ensure that such power is exercised fairly and justly. The principle of compensation, as enshrined in both national and international laws, remains fundamental to balancing the needs of the State with the rights of property owners.

This research has highlighted the gaps in the legal frameworks of different jurisdictions, particularly in the context of valuation, compensation, and rehabilitation, as well as the challenges faced in the implementation of these provisions. While international bodies such as the United Nations and the European Convention on Human Rights have provided a strong foundation for the protection of property rights, there remain significant discrepancies in the application of these rights across regions and legal systems. Cases like *Beyeler v. Italy and Sandu and Others v. The Republic of Moldova and Russia* illustrate the complexities of enforcing property rights at the international level, especially when national interests and international obligations intersect.

Furthermore, this research has explored the special considerations afforded to indigenous peoples and marginalized communities under various international instruments such as the Rio Declaration on Environment and Development and the Vienna Declaration of 1993. These documents emphasize the need to respect the traditional practices and customs of indigenous communities and ensure that any development or land acquisition projects are conducted with their full participation and consent.

The evolution of international investment law and its interplay with human rights law has introduced additional layers to the discourse on property rights protection. The analysis of landmark cases and international covenants demonstrates that while substantial progress has been made, more work is needed to bridge the gap between legal principles and practical implementation. Ensuring that property rights are not only recognized but

also effectively protected remains a crucial objective for the international community.

In conclusion, the protection of property rights within the international legal framework must continue to evolve in response to emerging global challenges. States must align their national laws and practices with international standards to prevent arbitrary dispossession and ensure equitable treatment for all property owners. Only through a concerted effort by States, international bodies, and civil society can the fundamental right to property be fully realized, thus contributing to social stability, economic development, and the protection of human dignity.

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