

Foundations of land acquisition law

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1 Eminent domain and the constitutional basis of acquisition: Article 300A and the right to property

The State's power to take private land for public use (eminent domain) is inherent in sovereignty; in India it is limited by Article 300A ("no person shall be deprived of his property save by authority of law"), which since the 44th Amendment (1978) makes property a constitutional right, not a fundamental right.

Core facts

- **Eminent domain** (*dominium eminens*): the sovereign's power to take private property for public use.
- Term first used by **Hugo Grotius** in *De Jure Belli ac Pacis* (**1625**).
- Two maxims behind it:
 - ***Salus populi suprema lex*** — the welfare of the people is the supreme law.
 - ***Necessitas publica major est quam privata*** — public necessity is greater than private necessity.
- Two limits in modern law: the taking must be for a **public purpose** and must carry **compensation**.
- **44th Amendment Act, 1978** (in force **20 June 1979**):
 - deleted **Article 19(1)(f)** (right to acquire, hold and dispose of property);
 - deleted **Article 31** (compulsory acquisition);
 - inserted **Article 300A** in a new **Chapter IV of Part XII**, headed "Right to Property".
- **Article 300A**: "No person shall be deprived of his property save by authority of law."
- Property is now a **constitutional (legal) right**; its breach is remedied through **Article 226** (High Court), not Article 32.
- Seventh Schedule:
 - **Land — List II (State), Entry 18.**
 - **Acquisition and requisitioning of property — List III (Concurrent), Entry 42.**
- So both **Parliament** (RFCTLARR Act 2013) and **State legislatures** (for example, Maharashtra's 2018 amendments) can legislate on acquisition.

Explained

How the right to property changed

Period	Position	Key change
1950-1978	Fundamental right: Arts 19(1)(f) and 31	Courts tested "compensation" for adequacy

Period	Position	Key change
1955	4th Amendment	Adequacy of compensation made non-justiciable under Art 31(2)
1971	25th Amendment	"Compensation" in Art 31(2) replaced by " amount "
1978 onward	44th Amendment	Arts 19(1)(f) and 31 deleted; Art 300A inserted

What survived the 44th Amendment

- **Article 31A** (saving of laws for acquisition of estates, land reforms) stays in Part III.
- **Article 31B** and the **Ninth Schedule** stay.
- **Article 31C** stays.
- **Second proviso to Article 31A** (added by the **17th Amendment, 1964**): when the State acquires land under **personal cultivation** within the ceiling limit, it must pay compensation **not less than the market value**.

What Article 300A requires

- "**Authority of law**" means a **valid law made by a legislature**. An executive order alone cannot take property.
- The deprivation must follow the procedure that law lays down.
- Article 300A does not, in its words, mention public purpose or compensation. The courts read both in (see Deeper).

Why acquisition is "compulsory"

- The owner cannot refuse. This is why the law adds **solatium** — a payment for the compulsory nature of the taking (30% under the 1894 Act, **100%** under the 2013 Act).

Laws on acquisition

Law	Status
Land Acquisition Act, 1894	Repealed by s.114 of the 2013 Act
RFCTLARR Act, 2013 (Act 30 of 2013)	In force from 1 January 2014
MRTPL Act 1966, ss.125-129 (Maharashtra)	Acquisition of land reserved in plans; uses the 2013 Act for compulsory acquisition

Common traps

✗ "Right to property is a fundamental right under Article 31." ✓ Since the **44th Amendment (1978)** it is a **constitutional right under Article 300A**; Article 31 was deleted.

✗ "Article 300A is in Part III." ✓ It is in **Chapter IV of Part XII**.

✗ "Acquisition of property is a State List subject." ✓ **Land** is State List Entry 18; **acquisition and requisitioning of property** is **Concurrent List Entry 42**.

✗ "Eminent domain was coined by Bentham." ✓ **Hugo Grotius**, *De Jure Belli ac Pacis*, **1625**.

✗ "Article 31A was deleted with Article 31." ✓ **Articles 31A, 31B and 31C remain**; only 19(1)(f) and 31 went.

✗ "The 25th Amendment inserted Article 300A." ✓ The 25th Amendment (1971) replaced "compensation" with "amount"; Article 300A came with the **44th**.

Quick revision

- Eminent domain: Grotius, 1625; *salus populi suprema lex*.
- Limits: public purpose + compensation.
- 44th Amendment 1978: deleted Arts 19(1)(f) and 31; inserted Art 300A.
- Art 300A: no deprivation "save by authority of law".
- Property: constitutional right; remedy under Art 226.
- Land: List II Entry 18; acquisition: List III Entry 42.
- 31A second proviso: market value for land within ceiling under personal cultivation.
- *K.T. Plantation* (2011): public purpose is a precondition; law must be just, fair, reasonable.
- *Bimal Kumar Shah* (2024): seven procedural sub-rights under Art 300A.