

HISTORICAL PERSPECTIVE OF CONCEPT OF RIGHT TO PROPERTY UNDER CONSTITUTION OF INDIA

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ABSTRACT

The concept of right to property under the Constitution of India underwent great changes over the period of time. The right to property and land acquisition are also inter related concepts. The fundamental right to property established a barrier between the government and those who are landless because the government was unable to obtain sufficient revenue from the land while the latter group is unable to cultivate and earn their living in a suitable manner. The status of the right to property was elevated from a fundamental right to a constitutional one in order to address this problem. This paper depicts the constitutional amendments as the status of right to property under Indian Constitution from past to present time. This paper provides the legal framework for right to property and concept of eminent domain in Indian legislation. The objective of this paper is to study the legislative history of concept of right to property in Indian.

Key words: *Right to property, land acquisition, public purpose, Constitution, eminent domain.*

INTRODUCTION

Since the governments passed numerous laws to regulate the right to property, the right to property has caused a great deal of controversy and disagreements between the government and the people in terms of litigation after independence. According to the Indian Constitution, the main goal is to create a socialist state. To achieve this goal, the government must implement a number of legislative measures, starting with the abolition of the zaminadari system, tenants' security, the fixing of personal holding ceiling limits, the redistribution of surplus land, and the granting of the right to property. Second, they have to provide housing, remove slums, manage rent, buy property, and impose ceilings with regard to urban property. Thirdly, the government was supposed to nationalise businesses in order to control private enterprise.

¹ Due to the basic right to property and the protections provided by Article 31, these

land changes were not possible. As a result, the following discussion outlines the constitutional development of the right to property from Article 19 (1) (f), 31 to Article 300 A:

Right to Property under the Indian Constitution

Under Article 19 (1) (f) of the Indian Constitution, the right to property was declared a "fundamental right" and has since been the subject of numerous judicial interpretations and legislative changes. The phrasing of Article 31, which is at the centre of the debate over protecting the basic right to property, was the main topic of discussion. Due to the inclusion of "Acquisition and Requisition of Property" in the concurrent list, both the Union Parliament and State legislatures have the authority to pass laws on this topic.² The fundamental freedoms are outlined in Article 19 of the Indian Constitution, and one of those freedoms is based on the right to property. Article 19 (1) (f)³ stated that every citizen shall have the right to purchase, possess, and dispose of property. This right was subject to the reasonable limitations set forth in Article 19(5) as the state had the power to enact laws that are in the best interests of the general populace, hence it was not absolute. Since neither broad purpose nor public had been given a clear definition, the terms almost had the same meaning. The text of Article 31 was taken from Article 299 of the Government of India Act, 1935, and it offered protection against the government's forced acquisition of property. It argues that only legislation may acquire land for a public purpose by paying compensation for the acquisition of property.⁴

As a result, the court received multiple cases requesting compensation for land acquisition. However, the term "compensation" lacked the adjectival qualifiers "reasonable" and "just," which ultimately allowed the government to argue that compensation need not be sufficient or equitable in light of the acquired property.⁵ The legal dispute was caused by two issues: "public purpose" and "compensation."⁶ Therefore, the ability of the government to acquire property under Article 31 and the individual's right to property were at odds. The Bihar Land Reform Act of 1950 was declared

¹Sushanth Salain, History of removal of fundamental right to property, 233, Centre for civil Society, Available at: https://ccs.in/internship_papers/2002/25.pdf (last visited on August 2, 2019)

²Constitution of India 1950, Entry 42, List III, Schedule VII.

³*Ibid*, Article 19 (1) (f)

⁴*Id* Article 19(1) (f) & 31

⁵ Jain M.P., "Indian Constitutional Law," 1380 (Lexis Nexis, Haryana, 8thedn., 2018)

⁶*State of Bihar vs. Maharajadhiraja Sir Kameshwar* 1952 SCR 889

unconstitutional in a number of decisions because it discriminates against zamindars when it comes to the payment of compensation. This is because the judiciary has a limited view of the state's power to acquire property and is more inclined to protect individual property rights by providing adequate compensation. Alternately, fearing that the programme to abolish the zamindari system would be in jeopardy, Parliament started with a series of modifications to nullify the influence of judicial judgements against the arbitrary powers of the state. The central legislature changed the contradictory article of the constitution to address this issue. In the case of *Kameshwar Singh vs. State of Bihar*⁷ The Bihar Land Reforms Act of 1950's constitutionality was contested on the grounds that the basic right guaranteed by Article 19 (1) (f) could not be violated. The Patna High Court's decision that the government cannot violate a person's fundamental right to property caused lawmakers to support socioeconomic growth. Following that, the Indian Constitution underwent a number of revisions to clarify the position of the right to property, acquisition, and compensation from 1951 to the present. Through these revisions, the researcher seeks to ascertain the current state of the rights to property, public purpose, consent, and compensation.

1) First Amendment Act, 1951:

*State of West Bengal vs. Bela Banerjee*⁸, the case that gave rise to the First Amendment Act of 1951, involved a dispute over the legality of the West Bengal Land Development and Planning Act of 1948 and whether or not the compensation based on market value on December 31, 1946, was sufficient. Invoking Article 31(2) read with Entry 42 of List III of the Constitution, the state claimed they had the option to choose the amount of compensation. This argument is rejected by the Supreme Court, which ruled that although while the state legislature has discretion to choose how much money to pay them, such discretion should be used sensibly and that the money must be fair and just. In order to protect zamindari abolition laws through the application of fundamental rights, the First Amendment to the Constitution of India was established, inserting Articles 31-A, 31-B, and the 9th Schedule. In the event that the laws passed by the parliament to acquire estates conflict with Articles 14 and 19 of the Constitution's fundamental rights, they are

⁷AIR 1952 SC 252

⁸AIR 1954 SC 170

protected by Article 31-A.⁹ To be reimbursed at market value, however, is personal cultivated land that is below the ceiling limit. The purpose of this provision is to safeguard agriculturalists' interests. By inserting Article 31-B, these laws were exempt from judicial review, therefore if any property acquisitions are listed in the 9th schedule, they cannot be contested on the grounds that they violate basic rights. The various land reform measures passed by the Center and the States were safeguarded by this clause.¹⁰ It constrained the extent of the right to property. In *Shankari Prasad Deo v. Union of India*¹¹, the zamindars contested the constitutionality of the First Amendment Act of 1951 on the grounds that Parliament lacks the authority to amend fundamental rights because they are already established by law and that any law that conflicts with a fundamental right is invalid under Article 13 of the Constitution. The court ruled that all land reform measures under the ninth schedule are upheld and that parliament has the authority to change basic rights in order to eliminate socioeconomic inequities. Therefore, the idea of a public purpose and consent is not included in this amendment, but it did provide provisions for agriculturalists' compensation, which must be at market value, and it also safeguarded the laws relating to judicial review of land acquisition.

2) 4th Amendment Act, 1955:

The Fourth Amendment Act of 1955 amended Article 31 (2), which stated that the creation of any legislation for regulating the acquisition of land and determining the compensation guaranteed by the government could not be questioned in any court of law on the grounds that it was insufficient. This was done for the purpose of clarifying the interpretation of Articles 31-A and 31-B. The state acquisitions, according to the administration, were required for economic growth.¹² The Fourth Amendment Act of 1955 expanded the scope of governmental purchases, and this was done without payment. It added clause 2A to Article 31 which led to the addition of the condition that only the needs of public purpose and compensation

⁹ Article 31-A of *Constitution of India, 1950*

¹⁰ *Ibid*, Article-31-B

¹¹ AIR 1951 SC 458

¹² See *Fourth Amendment Act, 1955*

was applied when the State seized ownership of the property. It was envisaged by these revisions that no land acquisition statute could be challenged in court on the grounds of inadequate compensation or unreasonableness.¹³ However, it was determined in *R.C. Cooper v. Union of India*¹⁴ that the legislative powers could not be exercised in a manner that would lead to the payment of an illusory compensation when deciding the amount of compensation. As a result, the judiciary adopted a strong stance regarding the payment of adequate compensation while acquiring land. The Kerala Agrarian Relations Act, 1961 was also declared illegal in the case of *KarimilKunhikoman v. The State of Kerala*¹⁵ because it discriminated against various landowners and compensated huge tracts of landholders much less compensation than tiny landholdings. Similar to this, Article 31-A was contested in *VajraveluMudliar v. Special Deputy Collector*¹⁶ on the grounds that it contravened Articles 14, 19, and 31 of the Constitution. It was determined that this act was discriminatory because its goal was to acquire land specifically for housing schemes for little money. The fundamental goal of this amendment was to limit the courts' capacity to contest the reasonableness and sufficiency of compensation.

3) Seventeenth Amendment Act of 1964:

In order to shield courts from certain state legislation pertaining to land reform, the Seventeenth Amendment was enacted in 1964. By changing the meaning of "estate" and expanding its definition to include land held under ryotwari settlement or any other lands owned under land reform laws, the 17th Amendment Act of 1964 altered Article 31-A and the 9th schedule. The word "estate" had diverse meanings in different states, therefore it was necessary to describe it in a limited sense to make the transfer of estate from one state to another easier. This was accomplished by changing the definition of the word to give it a precise meaning. Thus, the State Legislature made it easier to acquire any "estate" and did not remove it from the judiciary's purview.¹⁷ In order to dispel any

¹³Supera note-25

¹⁴ AIR 1970 SC1461

¹⁵ 1962 (1) SCR 829

¹⁶ AIR 1965 SC 1017

¹⁷ Statement of Objects and Reasons of *Seventeenth Amendment Act, 1964*

uncertainty regarding the legality of some land reform laws, the 9th schedule was amended to incorporate them. *Sajjan Singh v. State of Rajasthan*¹⁸ involved a challenge to the constitutionality of the 17th Amendment Act. The goal of the 17th Amendment was to protect certain acts by including them in the 9th Schedule under Article 31 B in the event that they were inconsistent with Articles 14, 19, and 31 of the Indian Constitution, which was contested on the grounds that Article 226 was violated, the procedure under Article 368 was not followed, and the issue of whether fundamental rights could be amended again raised in this case. The Constitution's 9th Schedule provided for the creation of some property laws, which were not also subject to judicial review. The legitimacy of the said change was affirmed by the court. *Golaknath versus State of Punjab*¹⁹ The petition was brought on the grounds that it violated Article 19 (1) (f) of the Constitution and Article 14, which is the right to equality, by denying the ability to acquire and hold property. The 17th Amendment, which was sought to be challenged, placed the Punjab Act within the 9th Schedule. The first, fourth, and seventeenth amendments' constitutionality was ultimately contested, and the Supreme Court declared them to be ultra vires and void. In actuality, this verdict had no effect on the continued legitimacy of the legislation passed as a result of these revisions. This verdict ruled that the state does not have the legislative or constitutional authority to violate basic rights when exercising its ability to make laws. In the *RustomCavasjee Cooper v. UOI*²⁰, also known as the *Bank Nationalization case*, a writ petition was filed on the grounds that the procedure used to determine the compensation was invalid, in violation of articles 19 (1) (g) and 31 (2) of the Constitution. The Supreme Court ruled that the factors used to determine the amount of compensation should be justifiable and that the compensation should be adequate. According to the Constitution's provisions, it is guaranteed that the right to compensation must equal the value of the property that was acquired forcibly in monetary terms. The court determined that it has the authority to entertain arguments regarding the reasonableness of compensation. The court ruled that when obtaining and

¹⁸ AIR 1965 SC 845

¹⁹ AIR 1967 SC 1643

²⁰ 1970 3 SCR 530

requisitioning the land, the laws should comply with Article 19(1)(f) criteria. Therefore, as a result of this modification, the term "estate" was given a wider definition, so shielding any land reform legislation from judicial review. However, the judiciary has repeatedly ruled that they have the authority to determine whether compensation is enough and reasonable.

4) **The Constitution Twenty-Fifth Amendment Act of 1971**

It provided that the laws governing the forcible acquisition of property, which established the guidelines for determining the amount of compensation, were subject to judicial review. As a result of the Bank Nationalization Case ruling, which made it difficult for lawmakers to implement land reforms, they made the 25th Amendment to the Constitution in 1971, changing the word "compensation" to "amount" in an effort to make things easier for themselves. This amendment states that no law relating to the purchase or requisition of property for public purposes shall be subject to Article 19(1)(f). This modification included Article 31C, changing the previous language that said that directive principles of state policy could not supersede fundamental rights and that only laws adopted in accordance with Article 39(b) and (c) were subject to judicial review.²¹ The legislative authority of the legislature in relation to property acquisition was expanded by this amendment. Therefore, Article 31C had a harsh nature since it established immunity particularly for Article 39(b) and (c), and it also gives the legislature broad authority to choose to shield from court review any issue that is related to these Articles. As a result, the topics covered in this article were virtually endless. In *Keshavananda Bharti v. Union of India*²², the legitimacy of this change was ultimately contested before the SC. The Supreme Court ruled by a majority that laws that override fundamental rights in order to advance state policy directives are lawful, but that such laws cannot be subject to judicial scrutiny. As a result, the legislature must show a clear connection between the objective of legislation and paragraphs (b) and (c) of Article 39, and that connection must be genuine rather than fictitious or unrelated to the goal of the law. If the law's legitimacy extends beyond the DPSP's parameters, the judiciary has the authority to conduct a judicial

²¹ 25th Amendment Act, 1971

²² AIR 1973 SC 1461

review of the matter and declare the law null and void. Therefore, this amendment stipulated that Article 19 (1)(f) shall not apply in the acquisition and requisition of property and also made the DPSP contained under Article 39(b) and (c) to supersede the fundamental rights and make them out of judicial scrutiny while again reiterating the judiciary's power of judicial review in these legislative actions.

5) 42nd Amendment Act of 1976:

The Keshavnanda Bharti case judgement caused issues for the lawmakers, which ultimately resulted in the passage of the 42nd Amendment Act in 1976. The purpose of this change was to make Article 31 C more inclusive and to render the effects of this case irrelevant, allowing for the implementation of any law without concern for judicial review.²³ As in 1976, Article 31C was altered, making it more stringent by expanding the previous provision's ambit to include all directive principles of state policy and shielding them from conflict with the fundamental rights guaranteed by Articles 14 and 19. Additionally, clauses (4) and further were added (5) which declared that judicial review is not applicable to constitutional amendments adopted in accordance with Article 368. Therefore, all DPSP under Part IV now have priority over the fundamental rights to equality and freedom as a result of this alteration.²⁴ In the case of *Minerva Mills Ltd. v. UOI*²⁵, the petitioner contested the legality of section 55 of the 42nd Amendment Act, 1976, which amended Article 368 to expand the Parliament's constitutional amendment authority from the case of Keshavnanda Bharti, which had previously been limited, to an unlimited one. The SC unanimously overturned the enlarged version of Article 31 C on the grounds that this power exceeds the amending authority of Parliament granted under Article 368 and that the judicial review, a fundamental component of Indian law, has been eliminated. In *Waman Rao v. UOI*²⁶, the constitutionality of Articles 31 A, 31 B, and 31 C was contested on the grounds that they attacked specific clauses in the Indian Constitution and went against its fundamental design, which was developed in Keshavnanda Bharti's case. According to SC, Article 31 C's previous position, which existed before to its 42nd

²³RachitGarg, "Minerva Mills v Union of India: a significant case that India has forgotten," Available at : <https://blog.ipleaders.in/minerva-mills-vs-union-india-significant-case-india-forgotten/> (visited on December 26, 2021)

²⁴42nd Amendment Act, 1976

²⁵ AIR 1980 SC 1789

²⁶ AIR 1981 SC 271

amendment, was lawful. The SC declared the purported laws to be constitutionally lawful. For the sake of the nation's development, Parliament sought to close the economic and racial gaps in society. In *Waman Rao v. UOI*, the constitutionality of Articles 31 A, 31 B, and 31 C was contested on the grounds that they attacked specific clauses in the Indian Constitution and went against its fundamental design, which was developed in *Keshavnanda Bharti's* case. According to SC, Article 31 C's previous position, which existed before to its 42nd amendment, was lawful. The SC declared the purported laws to be constitutionally lawful. For the sake of the nation's development, Parliament sought to close the economic and racial gaps in society. The 44th amendment to the Constitution, which was ratified in 1978 and clarified the status of private property as a basic right while also controlling land acquisition rules, was made possible by these amendments.

6) 44th Amendment Act, 1978:

The internal emergency imposed by the then-prime minister Indira Gandhi in 1975 was dissolved by the *Bhartiya Janta Party* after they had built a coalition to become the government in 1977. Following that, they passed the 44th Amendment Act, 1978, which made significant modifications by removing the status of a basic right to property and converting it into a legal and constitutional right. It substituted Article 300 A for Article 31 and deleted Article 19 (1) (f) from the Indian Constitution. However, as this change just moved Article 31 to the other Chapter IV of Part XII under Article 300A, it wasn't completely eliminated from the Constitution.²⁷ The fundamental nature of the right to property underwent a significant alteration when it became a legal right, meaning that if the right to property is violated, the only available remedy is to file a lawsuit in high court rather than going immediately to the SC with writ authority. This acknowledges the legislative branch's eminent domain authority. After this modification, there was confusion about the status and importance of the right to property because it was possible for the government to seize property without paying just compensation. In *Basantibai v. State of Maharashtra*²⁸, it was determined that the 1976 Maharashtra Housing and Area Development Act violated Article 14 of the Constitution because it discriminated against landowners in rural and municipal areas without a

²⁷ *Supera* note-52

²⁸ AIR 1984 Bom. 366.

justifiable basis. The court makes it clear that the purpose of deleting Article 31 was to free parliament from the constitutional requirement to pay compensation when acquiring property. The court also holds that the constitutional right established by Article 300A of the constitution was not upheld by the contested act because it requires two key elements: "**public purpose**" and "**compensation**." In another case, *JilubhaiNanbhaiKhachar v. State of Gujarat*²⁹, the court ruled that Article 14 of the Indian Constitution's basic structure does not include the right to property, and that instead, under Article 300A, the term "property" refers to the government's sovereign power of eminent domain, which allows it to take private property from individuals whenever necessary for a public purpose in exchange for payment of compensation. The court could not address whether the compensation provided was adequate under the law, but it could affirm that the standards used to calculate the compensation were fair, reasonable, and not deceptive. If a person's private property is needed for a public purpose, the government may take it without the owner's consent using the eminent domain power. However, it is the responsibility of the court to conduct a judicial examination of the public purpose that the government has established for any land acquisition. Even though everyone has the inherent right to own property, it can still be taken by the government using the doctrine of eminent domain, provided that two requirements are met: a public purpose and fair compensation. If these requirements are not met, the entire idea of the rule of law is rendered useless.³⁰ Therefore, even with the addition of the right to property under Article 300A, it is still required under the constitution to exclusively purchase land for public use and to compensate the owner fairly. In addition, three sources—Articles 14, 19, and 21—were used to develop the idea of non-arbitrariness and fairness.³¹ Which made Article 21 inapplicable in cases involving the purchase of property. Since then, the 44th constitutional amendment has repealed Article 19(1)(f). Therefore, any clause that seeks to invalidate as arbitrary any statute that does not provide for payment of compensation must only apply to

²⁹ (1995) Supp. 1 SCC 596

³⁰ Umamaheswari.R&Dr.A.SreeLatha, "Doctrine of Eminent Domain In India" 120 *International Journal of Pure and Applied Mathematics*, 1776 (2018)

³¹ *Supera* note-84

Article 14.³²The key element of Article 14 in the *Maneka Gandhi v. UOI*³³ case is that equality is the exact opposite of arbitrary conduct, and whenever an act is arbitrary, it is assumed that it is unequal. Additionally, Article 14 prevents state action from being arbitrarily, maintains justice, and guarantees equal treatment for all parties, although there is no denial of treatment when recompense is withheld from all owners whose property is acquired by the applicable law. Therefore, the phrase "authority of law" found in Article 300A suggested that the law must fall inside the purview of Article 14 and be "just, fair, and reasonable."Therefore, if an individual's property is acquired or requisitioned by the government and that action is unlawful, the individual may seek redress on the grounds that the government's actions were arbitrary and infringed upon his constitutional rights as guaranteed by Article 300A of the Constitution.³⁴

The Doctrine of Eminent Domain and Article 300 A:

The change of the right to property from a fundamental right under Article 19(1)(f) to a legal and constitutional right under Article 300A of the Indian Constitution marks the beginning of the constitutional history. The word "property" as used in Article 300A must be understood in the context of the State's eminent domain power. Only for purposes of the public good and in line with the procedures set by the law passed by the State or Central Legislature may land be acquired or taken into possession under the terms of Article 300A. Every sovereign state has the right to take someone else's private property without that person's permission thanks to the eminent domain law.³⁵The State must first make a decision regarding the public purpose. The goal will be open to court scrutiny, thus it cannot be decided by one judge alone. Therefore, it is crucial for the judiciary to decide whether or not a specific goal is for the public good.³⁶ The SC has repeatedly reaffirmed the two prerequisites of "public purpose" and "compensation" in order to constitute Article 300A. When a person's rights under Article 300 A are being violated, such as when his land is being purchased for a private purpose

³²BasuDurga Das, "Shorter Constitution of India," 880 (Wadhwa& Co. New Delhi, 1999)

³³ AIR 1978 SC 597

³⁴M.L. Singhal, "Right to Property and Compensation Under Indian Constitution", Available at: <http://www.ijtr.nic.in/articles/art41.pdf> (last visited on August 2, 2019)

³⁵ Chairman Indore VikasPradhikaran v. Pure Industrialisation Coke & Chemicals Ltd. (2007) 8 SCC 705

³⁶ Supera note- 90, p.48

without paying fair market value, the court decided that, in accordance with the rule of law, courts have the authority to review the requirements of Article 300A.³⁷The Latin phrase "Eminenes Dominium," which meaning the ability of government to appropriate private property for the use of the public with or without the consent of the landowner, is the source of the doctrine of eminent domain, which may be dated back to the 17th century. It was developed in the West and used in India as well. According to this idea, the federal or state governments have the authority to buy private land from individuals for public use. Entry 42 List III of the 7th Schedule of the Indian Constitution establishes this authority. This power is unrestricted and is outlined in Article 300A, which states that the government may take away a person's private property through legislation. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which was passed by the legislature, addresses these issues.³⁸***Daulat Singh Surana & Ors. Vs. First Land Acquisition Collector & Ors.***³⁹It was determined that the power of eminent domain may be used in situations where the interest and welfare of the general people are at risk. The idea of a public purpose encompasses a wide range of objectives and is founded on the idea that the public interest is more important than the private interest.***Hindustan Petroleum Cor. Ltd. Vs. Darius Shahpur Chennai & Ors.***⁴⁰According to the ruling, Article 300A of the Constitution grants the State the right to use eminent domain, which allows it to interfere with a person's private rights by completing the requirements of a public purpose and compensation. First, public welfare must exist in order to acquire the property (Salus Populi Supreme Lex Esto), and second, public interest must outweigh private interest (Necessita Public Major Est Quan). As a result, it was determined that if either of the required elements is missing, land cannot be acquired through the use of eminent domain.⁴¹As a result, it may be deduced that the acquisition can only be made for the benefit of the public, and that the public

³⁷ KT Plantation Private Ltd v State of Karnataka 2002 (6) KarLJ 27

³⁸ Doctrine of Eminent Domain, Available at : https://www.wallcliffslawfirm.com/uploads/newsletter-files/2020123017210961066-Legal_Angle_-_December_2020_-_Issue_05.pdf (Visited on September 10, 2021)

³⁹ 2007 SCC 1 641

⁴⁰ 2005 SCC 7 627

⁴¹ *T. Chakrapani v. Union Of India*, 2011 MLJ 7 858

purpose is referred to as the public interest while formulating the theory of eminent domain, which is presently placed under Article 300 A of the Indian Constitution.

Conclusion:

It is clear from the analysis of the constitutional right to property and acquisition compensation that was done above that changes to the Indian Constitution were made to clarify the position on the right to property. The legislature and judiciary have been at odds over this, with the legislature wanting the development and the judiciary defending the liberties protected by the Indian Constitution. The judiciary's application of the right to property rendered a number of measures that sought socioeconomic reforms unconstitutional, which ultimately compelled the government to alter the fundamental right to property and make it a legal or constitutional right. These revisions have also addressed the conflict between the DPSP and fundamental rights. The overriding impact of DPSP over the fundamental rights to freedom and equality has been made in two ways: first, under the 25th Amendment Act, only some DPSP are overridden; second, under the 42nd Amendment Act, all DPSP are overridden. However, the judiciary used a harmonious architecture to strike a balance between the two. Over the course of multiple revisions, the judiciary's function demonstrated a constructive method for enforcing the right to property by providing adequate compensation, especially for public purposes.