Land is a finite resource with certain special qualities and characteristics. It is treated as one of the most important resource. In every society land adorns quadrilateral significance\(^1\). They are political, ecological, social and economical. Not only that, ultimate ownership of the land lies with state in every society. More over land signifies the economic power of state. But until the human settlement there were no specific notions regarding land use. The land use control referred here is all comprehensive.

Wetland is treated as a resource for protection of ecological balance avoiding all other aspirations of the society regarding the use of it. In ancient societies land use control was too little. Limited areas which had religious significance were protected and kept sacred\(^2\). Only during the agricultural era and the consequent need for settlement, states began to acquire more power on land. Partial rights of individual over land\(^3\) also were recognised. Individuals enjoyed inalienable property right over land. State exerted control over unprecedented development of land through planning and zoning laws. Later on state fixed ceiling for the extent of land a person or family can hold. There were common law


\(^3\) Keith Pezzoli, Human Settlement and Planning for Ecological Sustainability: The Case of Mexico City, Massachusetts Institute of Technology, United States of America (2000), p. 94.
controls for special areas and treasure troves. Certain other controls over land use were servitudes, easements and action for nuisance. All these aimed at the common good of the society. But conservation and protection of environment was not a concern of the community during that time.

During 1950’s concept of environment began to creep into the international arena. But the international law had nothing to do with land use controls of states. Sovereign states enacted their own legislations regarding their territories. Convenience of community was the sole concern of such regulations. It had no international colour. The call of Rachel Carson stating about the silent spring aroused the world consciousness about whole embracing environment. During this period transformation took place in the role played by states. States were gaining more and more powers based on their fundamental law to do more welfare activities to communities. Land use controls acquired greater thrust based on the understanding of ecological significance of land. This was a novel idea regarding land use. Protection of ecological interest coexists with all other interest of society regarding land. Earlier planning and zoning laws got strengthened. Land began to be treated as common property and as part of environment. Apart from the country based legislations reflections of controls exerted over land use could be seen in international arena also. The controls which were oriented to each society began to acquire international character. Formation of general norms for protection of resources of environment took place in the first stages. It was found that at the implementation level these general norms could not do much in this regard. Therefore the focus changed to special areas of interest. It was found that special areas are damaged irreparably. It was found that the best method to protect these areas is to restrict their use from all the four

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aspects such as political, ecological, social and economical. This approach gave more prominence to ecological aspect.

Although land is considered as part of man’s natural heritage, access to it is restricted and controlled by ownership pattern of land followed by particular society determines the extent of access. Along with this land is partitioned for administrative and economic purpose. It is used and transformed in myriad ways. Population growth, technological and social hazards and consequent environmental degradation are also to be taken into account to make decision about land. More recently, the need for thoughtful and careful stewardship of the land, together with the more intensive use and management of its resources, has emerged as a matter of major global concern. In India also various problems related to land has attracted the attention of policy makers.

Individuals value land more as property in economic terms than as a common resource to be protected and safeguarded for the future generations. Therefore property relations form the very basis of land management in every society. ‘Property’ is a very complicated term and it assumed altered meanings through various centuries. Real property always acquired an area of prime importance than other forms of property. There is always a conflicting question as to the ‘absolute’ and ‘ultimate’ ownership of land.

Industrialisation, globalisation and urbanisation changed the land under agriculture to other needs. There are various reasons for the same. This may be due to the falling prices of agricultural produce and increasing cost in production. Farmers were given lower status in the community. In spite of the various

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attempts by states to protect agriculture\textsuperscript{6}, the land areas undergoing agriculture showed a steep decline\textsuperscript{7}. These areas were converted to various other purposes, mainly for building houses and for commercial purposes. Most of the farmers converted their farm lands from food crops to cash crops. This switch over provided them money for luxurious life. These changes have affected ecologically important areas also. For the conversion of paddy fields or farm lands for other purposes they needed earth and laterites. This is collected from other hilly areas and river basins and mining of other planes. This has exerted severe wounds to the ecology of many states. Sand and rocks which have a great role in the eco-balance are being exhausted. Due to uncontrolled mining, water table of different areas declined and food security of the state as a whole is affected\textsuperscript{8}. Different parts of the country still face severe problem of drought and shortage of drinking water. This adds momentum to the market malpractices and food adulteration. Ecologically important areas such as wetlands including estuaries, river basins and command areas get affected due to the change of agricultural lands for many other purposes. As a result the ecology of the country is tilted.

Ensuring the availability of food crops at reasonable prices is an important state function. State has a function to protect the ecology and environment and to make the sustained availability of flora and fauna. The abnormal use of land is to be controlled for the common good of the society. The problems relating to the land use is grave because of the concentration of land property in the hands of individuals. Societal revolt against such social evil can also be seen. State has

\textsuperscript{6} Various legislations covering land reforms such as the Land Reforms Act, 1963 and the Land Utilisation Order, 1967 failed in achieving the aim of boosting agricultural production and assuring food security.

\textsuperscript{7} See the Kerala Conservation of Paddy Land and Wetland Act, 2008, background to the legislation.

adopted various measures to curb this menace. There are legislations to control such situation. But all these laws remain unenforced. The country has reached a stage where for sustenance of life, effective land use controls are necessary. But the main question which remains is how to achieve the better standard of land use management and how to bring in the sustainable management of available land resources by balancing the conflicting interests of society. The method available before the state machinery is to bring in effective land use controls for the sustainable management of resources, giving adequate emphasis to environmental protection. To understand the significance and need for sustainable land use regulations it is necessary to analyse the evolution of land use controls at international and national level.

**Evolution of Land Use Regulations: Ancient Period**

In the ancient period man was leading a nomadic life. He felt no necessity to control anything within his bounty. His main necessity was food. He took from nature what is necessary for him and left the rest for others. This state of affairs was described as ‘resnullis’ i.e. nothing belonged to any one and everything was considered to be common property of everyone. They possessed equal rights over the objects of nature. The same was the case of land also. The person who first obtained the possession of a thing from nature considered the thing to be his own. The ownership in its elementary form can be traced to this act of occupation.

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9 Concept of land reforms brought after the independence introduced new property relations. The land assignment and Bhoodan movement were some other legislation to bring in the concept of equality and equal distribution of wealth among citizens. Some orders were issued to make the land owners socially responsible to the needs of the society. See the Kerala Land Utilisation Order, 1967.

10 The Kerala Land Utilisation Order, 1967 was issued under the rule making power under the Essential Commodities Act, 1955. In spite of this Order conversion of paddy fields into either garden lands or living units continued unchecked in many areas. See Vinson Kurian, ‘Kerala Land Utilisation Order Irrelevant, Says Study’, Hindu Business Line, Thiruvananthapuram Edn., September 14, 2005, p.2, col. 6.

Therefore the ‘occupation’ became the foundation of property during that time\textsuperscript{12}. The theorists differ on whether the occupation was social or individual\textsuperscript{13}. Whatever may be the form, the main aim of occupation of the property was to acquire the means of subsistence. There was no specific land use restrictions imposed on man during that time. Self-restraint was the law and land was abundant due to low population.

By the passage of time man began to lead a settled life. The main change brought in was the cultivation of various food crops for his subsistence and the family or the community to which he belonged. This era came to be known as the ‘agricultural era’. There upon the notion of property from ‘things to eat’ switched on to the ‘immovable property of land’. Importance was attached to land because it provided him shelter as well as place to cultivate\textsuperscript{14}. Individual had the right to occupy land. He extended his labour for cultivation. Thereafter he utilized the products of his labour for his subsistence. Theorists argued that there was group occupation of land rather than the individual and the produce of labour was shared equally among them. Therefore it seems that the ownership was vested in groups. In the words of Seagal “the important question is not who occupies the soil, but what is done with the fruits of the soil”\textsuperscript{15}.

The important element of ‘ownership’ of a property is its exclusive use. In the agricultural era this exclusiveness was a community one and their concentration was common good of the community. States intervention against the form of ownership existed was justified mainly based on the common good of community. In this era


States are pictured in the elementary form of giving protection to the life and liberty of individual\(^{16}\).

It could be seen that at no point of time any kind of property rights was free from restrictions. It was restricted by the principle of “eminent domain\(^{17}\)”, or by legislation enacted by state. Even the power of alienation was regulated by the personal and general laws of the land by the principles of “rule against perpetuity” or by principles of vesting and divesting of estates\(^{18}\).

Industrial revolution and technological development which took place in the later centuries brought in drastic changes to the life style pursued by the communities or individuals\(^{19}\). This in turn led to the rethinking of property relations. Therefore community holding gave way to the individual\(^{20}\) one. Along with this the state’s power also underwent a number of changes. The concept of State as “Leviathan” which was created solely for the protection of life and liberty of individual\(^{21}\) changed to the concept of a welfare state. Along with this the functions of the state also became more complex one. Everyone expected the state to be more powerful than the Leviathan in the state of nature\(^{22}\). Thus protection of property acquired more individual colours than social. As the powers of state increased the duty of the state to ensure the social interest at par with individual


\(^{17}\) This term refers to the power of a state or a national government to take private property for public use.

\(^{18}\) Muslim law restricts the right to will beyond one third of total assets. Similarly series of rules like invalidity of transfer for immoral purposes and transfer to a minor even if it is his progeny. The doctrine of \textit{lispendens}, doctrine of \textit{spes succession} under the Transfer of Property Act are other rules based on public policy grounds.


\(^{20}\) \textit{Id.}, p.90.


interest made the state to make more and more controls over the individualistic property. This continued through centuries and still exists. The extent of controls more or less depends upon the political philosophy followed by the concerned state and this can be gathered from the basic law of the land. Property is not only an economic asset, a secure property right provides a sense of identity and human freedom. Historically, however, land rights evolved to give incentives for maintaining soil fertility, making land-related investments, and managing natural resources sustainably. Therefore, property rights are normally managed well in modern economies.

Land use regulations promulgated by states restrict the private property rights mainly to protect public health, safety, morals and general welfare of society. Hence land use regulations always involve a balance and often conflicts both between private and public property rights and among private rights itself. The questions to be answered in this context are: (1) How far the restrictions imposed on land use are feasible? (2) What is the most acceptable mechanism to be evolved for this purpose? (3) What are the most relevant concerns to be satisfied without doing much harm to the resource base of the individual countries? Therefore the satisfaction of the concept of “sustainable development” in all realms of life especially with reference to land use became the need of the hour.

During industrial revolution the production increased with less labour and the individual could lead a life without much dependence on group. Property began to be recognised in terms of economic value. This brought in changes in

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23 For every recognized territory having a constitution they will specify the property relations recognized and enforced by the state. For example the Constitution of India Arts.19(1)(f), Art.31 originally dealt with real property relations.


the mental attitude of man also. He became greedy and began to amass wealth for luxury and the concept of property lost its original notion. The original notion of property was in tune with the nature. Man had respect and love for the nature and its resources. From there onwards another notion of property began to attract significance i.e. the legal concept of property as including the ownership and its component elements like exclusiveness, possession and thing. It became an independent institution free from community control.

Some theorist like Hegel argues for protection of individual property rights and says that some control over the property is essential for the development of personality. He says that it is the control of property which makes a person free. He was an exponent of private property. He classified the gradual development of community holding of property to individual. He also said that community should give each member opportunity to toil, within his powers, acquire such property as is necessary for true self-realization. What is that extent of true self-realization is not made clear by him. It can ordinarily be the attribute the societal control or states control for the protection of social interest. Here also Hegel upheld the development of legal notion of property as the group holding gave way to the individual one.

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26 The original notion of institution of property considered property as an expression of self to control and use to fulfil the needs of individual got completely changed. Greek philosopher Aristotle observed “It would be ideal, for property ought to be generally and in the main private, but common in one respect namely in use. The renowned natural law theorist, Grotious, relying on Justinian observed that private property originated in a kind of agreement among men to respect the right of occupations at the time of agreement.


Land Use Controls through International Conventions and Treaties

Land use today at international level is not just a norm but an effective law accepted by most of the countries. It is formed as an answer to the fact of growing industrialisation and to environmental accidents. Now this has emerged as a specific legal regime.

International attempts mainly rely on customs, traditions, and precedents and on good faith and moral obligations. The first international treaty attempted to protect the migratory wild life, marine animals and fisheries. It was during the period 1872. But no institutional machinery was set up to carry on the objectives of the treaty. Thus the treaty proved to be not effective.

Again in 1902 a convention was held for the protection of birds which were useful for agriculture. After the convention on regulation of whaling it can be seen that the attitude of the world community changed from exploitation to conservation. A pioneering convention which reflected this approach was the African Convention on Conservation of Nature and Natural Resources, 1968. But these conventions failed to establish an administrative structure to oversee its supervision. By this time concept of environment protection began to acquire momentum in West.

The first international machinery for protection of environment was made by a group of private citizens. It was a nongovernmental congress for protection of nature. Thus a consultative commission was formed at Berne. It envisaged comprehensive protection of nature. The activity of commission was at a dormant stage during the First and Second World War. After the Second World War a Swiss League sponsored conference was organised at Brunnen for protection of

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nature. It was attended by 24 countries and 9 international organisations. This formed the basis for International Union for Conservation of Nature.

During 1970’s attention was focussed on bio-physical environment. The first ever convention which dealt with a particular ecosystem was the convention on wetlands of International importance especially as waterfowl habitat, 1971. This convention established a network of protected wetland areas in the territories of the member states.

The years 1972 to 1992 witnessed an increase in the international instruments to protect the environment. Stockholm Declaration on Human Environment in 1972 is treated as the Magna Carta of environment. It states that’ the protection, preservation and enhancement of the environment for the present and future generation is the responsibility of all states and they should ensure that activities within their jurisdiction or control do not cause damage to the environment. All states should co-operate in evolving natural laws, norms and regulations in the field of environment. Conventions convened during this period can be divided into three categories. They are conventions for nature conservation, protection of marine environment and regulation of transboundary environmental impacts. These conventions had impacts on land use of concerned areas.

In 1992, the Rio Declaration along with the Convention on Biological Diversity had direct bearing on land use. Over the last few decades the change in the attitude of the world community to address and balance the environmental

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31 Popularly known as the Ramsar Convention, 1971. For further discussion on the Ramsar Convention, 1971 see chapter 4.
problems though sustainable development principle can be seen. Thus to conclude, there is not only increase in the number of instruments but also in the implementation level.

**Land Use Regulation in the United Kingdom**

The history of land use legislations of the U.K. began at Roman times. Land was the dominant source of social wealth throughout the Dark ages\(^{34}\). The industrial revolution was the turning point from this concept. By the 19th century, political power of the landed nobility diminished. Modern legislation gave more social character to land. Land is now subject to extensive regulation necessary for the society.

English land law was formed by the policy adopted in the lower lord. Later it changed the shape to feudalism. It reflected the teutonic system in character. The main features of the teutonic system were enjoyment in common\(^{35}\). There was absence of private ownership also. King enjoyed ultimate right over property rights. But individuals could alienate the property rights by themselves.

i) *Norman Feudalism*

The Normans invaded England in 1066. After their occupation of land, the Norman Kings began to enforce the England's feudal rules\(^{36}\). The Norman Kings perpetuated the feudal tenures existed under the Anglo-Saxon and Danish period. Large acres of land were given as estates to upper classes. They divided these assigned estates to tenants. In return of the lands all of them were bound by many

\(^{34}\) Dark ages were under the Saxon monarchs.


duties towards king. The grant was purely to make certain allegiance to crown. But, all the farmers were bonded labourers. They could not leave the land without consent of their Lords. Therefore common men had limited chance to acquire property. The earlier enactments also reflected this approach. Legislations could not provide a free right on people to acquire and dispose of property.

The lands could be inherited only by the heirs of lords. King was the owner of every form of land under the feudal system. Karl Marx well explained this position in the following words,

“The German Ideology” that: “[t]he chief form of property during the feudal epoch consisted on the one hand of landed property with serf labour chained to it, and on the other of the labour of the individual with small capital commanding the labour of journeymen.”

Power in the feudal system vested in the institutional and legal structure that were put in place by the combined interests of landholders and the state: “…the collective power vested in the institutions of royal authority or ‘state’ would in theory function as a medium through which those holding property could acquire wide ranging influence and achieve high status…that collective power would be able to shape the institutional structures of society.”

**ii) Breakdown of Serfdom**

The feudal system faced critique from the lower strata of society. Peasants began to make revolt asking more wages. The Magna Carta of 1215 in England was revolutionary for the establishment of the right to not have one’s body or land

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37 Tenants and lords had various obligations like work, military service, and payment of taxation.
taken by the king without due process. This early document clearly shows the tension that existed between the rights of the individual and the crown or state with regard to property.

iii) Feudal Tenures

The Normans did not introduce any change in the existing structure of land-man relationship. They completed the association of territorial with personal dependence in society. But after the establishment of circuit courts the influence of local custom upon the land law diminished. The Circuit courts were King’s Court and these were established during the reign of Henry II. In 1392 jurisdiction over litigation concerning the freehold was taken away from the lord's courts. Reformation took place after the breakdown of feudalism. After this the lords and slaves became very scarce. Law made people free from landlords. Even though they were freed by law they could not actually enjoy the freedom because they had no property at their disposal. Property meant for common use was enclosed by the Lords and they were also burning the houses of tenants within their estates. But the adoption of common law and equity decisions made the land laws in tune with the needs of the present society.

iv) Private ownership

John Locke’s writings in the late 1600’s focus on the dichotomy between the concepts of owning property in common as well as on a private, individual basis. He considers how there can be private ownership even though:

“God gave the World to Adam and his Posterity in common…The Earth, and all that is therein, is given to men for the support and comfort of their being. And…all the Fruits it naturally produces, and
Beasts it feeds, belong to Mankind in common...he Earth and all inferior Creatures be common to all Men”.

Locke found that one of the justifications for individual ownership was that labour expended to “value-add” was sufficient justification to claim individual enjoyment of the fruits of the land. Locke also argues that unless money had been invented, there would have been no sense in accumulating more than could be use. Proudhon’s first proposition is that:

“Individual possession is the condition of social life and five thousand years of property demonstrate this. That distinction between possession and ownership is not dissimilar to the modern concept that the essence of property ownership is the control of access rather than the enjoyment of access.

v) Changes in Equity

Common law decisions created many difficulties to the people to access justice. Court of chancery mitigated the hardships created by the common law courts. During this period the social significance of land also changed. Legal developments in the property law revolved around the division between the common law courts and equity courts. The courts of common law took a strict approach to the rules of title to land, and how many people could have legal interests in land. But the King enjoyed appellate power over the decisions of the common law courts. King delegated appellate power to his Lord Chancellor this

43 The Court of Common Pleas and the Court of the King's Bench.
later developed into court of equity. The equity courts recognised, the elements of ownership could be divided between the users under different titles. This marked the beginning of trust law\textsuperscript{44}.

\textit{vi) Industrial Revolution}

Over the 18th century, the law of real property through legislation came to a standstill. But principles of land law continued to develop in the courts of equity. The national and global trade expanded and the economic and political importance of land diminished. There were significant land management changes\textsuperscript{45}. These led to improved productivity.\textsuperscript{46} This movement, when coupled with the move by landed aristocracy into industry introduced much more changes in the relationship with land\textsuperscript{47}. Rural land was put under pressure of increased production. Urban lands had to face, land markets, land administration and property law. This led to more administrative and legal reforms on property and land\textsuperscript{48}. Property rights began to acquire more wide arenas apart from land\textsuperscript{49}. Land use controls were introduced through statutes. The Statute of Uses\textsuperscript{50} made it

\textsuperscript{44} During the battles, landowners who went to fight would transfer title to a person they trusted so that feudal services could be performed and received. But some who survived had returned only to find that the people they entrusted were refusing to transfer title back. They approached Lord Chancellor for justice, and the Court of Chancery decided that the true "use" or "benefit" of the land did not belong to the person on the title. Unlike the common law judges, the Chancellor held the \textit{cestui que use} i.e. the owner in equity, could be a different person, based on the good conscience.

\textsuperscript{45} The Enclosure movements of 1700’s consolidated the tiny, inefficient parcels of feudal land into larger, more productive plots. These were made more productive by mixed agriculture and many other allied techniques.


\textsuperscript{47} \textit{Ibid}.


extremely difficult to convey land. There was lack of simple legal conveyance methods and the inherent feudal tendency towards creating interests in land into perpetuity\textsuperscript{51}. Between the late 17th and early 19th centuries, perpetual property ownership was controlled by the rules developed by the English courts\textsuperscript{52}. The Statute of Uses was repealed by legislative reforms\textsuperscript{53}. Later the property legislation was codified and simplified and the Law of Property Act 1925 got enacted\textsuperscript{54}.

A notable consequence of the industrial revolution was the growing realisation of a need for some state regulation of land use by private owners. The lessons on the impact on the local community and the wider environment emerged during that period. The Industrial Revolution led to the permanent conflict of capitalism versus socialism.

\textit{vii) Legislative Reforms on Land Use}

Liberal movement in the 19th century introduced three major changes. The first change was in mode of conveyance and registration of land. The Law of Property Act, 1925 relating to land was the second. The first planning law, the Housing and Town Planning Act, 1909 were the third landmark. Important element of planning was introduced in legislation. Earlier legislation on land use not attempted to regulate land use on the basis of amenity\textsuperscript{55}. It is a concept that links the most recent concerns for sustainable development with the first planning


\textsuperscript{52} This was a compromise between the landowners’ right to dispose of land at will and the need to prevent land being removed from the market indefinitely by way of will or grant.

\textsuperscript{53} See the U.K.Law of Property (Amendment) Act, 1924, s. 1 and Schedule 1.


legislation. The 1909 Act was followed by the Housing Town planning Act, 1919 and the Town and Country Planning Act, 1932. These legislations required that all borough and urban districts to prepare schemes to regulate general land use. The schemes led to the zoning of land for particular uses such as residential or industrial. Developers did not have to apply for planning permission but if the development fails to conform to the scheme, the planning authority could require that the owner remove or alter the development. Along with this nature conservation was made the bounden duty of citizens. The County side and Rights of Ways Act, 2000 conferred wider regulating power to the conservation bodies. This repositioned the public policy towards the partnership principle.

In Britain, the legal framework for land use planning is largely provided by the town and country planning legislation. This aims to secure the public interest through most efficient and effective use of land. It also tries to reconcile the competing needs of development and environmental protection. It has an important role to play in contributing to the Government's strategy for promoting sustainable development. Now most forms of development in the UK, including mineral extraction and related activities, require planning permission before development can take place.

The land uses planning decisions in England are made at the local level. It is the role of local planning authorities. The Department for Communities and Local Government is responsible for developing national planning policy guidance, including that for mineral development, within which local authorities are required to operate. Adoption of legislations for protection of wetlands took place in 1976 after the ratification of the wetland convention. Reforms were also

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56 Under the U.K. National Parks and Access to County Side Act, 1949 the land owners were encouraged to participate in nature conservation.
58 Ibid., ss. 4-8.
brought in the judiciary. The Supreme Court of Judicature Act, 1875 abolished the difference between common law and equity. The equity principle was given preference over common law. Thus the tug of war existed between common law courts and equity came to an end.

viii) Modern Land Law

After the World War the land acquired more of social character. Most of the regulation addresses the public good. Land use in general was subject to a comprehensive regulatory framework. The old common laws relating to easements, covenants, nuisance and trespass were largely eclipsed by locally and democratically determined planning law, environmental regulation, and a framework for use of agricultural resources. Wetland also comes under these regulatory frame works.

Land Use Laws: in the United States

It is an American story that a man can use his land any way he pleases without regard of his neighbours. In the United States land use controls have a long history. In fact, in spite of the abundance of land and a strong belief in independence, they found it necessary to impose various forms of regulation in both urban and rural areas.

The U.S. system of land use control was founded originally on English law precedents. The English system established strong private property rights. Initially it was limited and balanced by a few common law doctrines. These were


created and enforced principally by the courts. Steadily a system of regulating building construction and noxious, or incorrectly located, land uses evolved at the local administrative level. There was absence of national land use system in England at the time of the creation of the federal republic in the United States. States retained power to define and limit property rights. This power included right to use land and its natural resources. From there power was delegated to local governments to deal directly with the same. Gradually additional powers were granted to local governments to achieve proper development by mitigating adverse effects on natural resources and environment.

i) English Common Law Origins

Common law played a great role in developing land use regulations in the United States. The feudal system and holding of land for government and later developments of private property ownership etc. exerted influence on property rights of the United States. Unlimited private property rights was emphasised in the writings of William Blackstone. Controls could be made only through the legislations. Numerous trespass actions were filed in common law courts. Under this remedy even if there is no actual damage or injury resulting from trespass a person could get nominal damages from the wrong doer. This was the extension of strong private property rights enjoyed by the owner of land. This right of land owner was balanced by doctrine of nuisance. By this doctrine private land owners property use was limited, through the injurious use towards the neighbour. But this remedy was limited to offensive intrusions. All these rules developed slowly.62

When the cities began to develop individuals used their land in response to market needs. This gave rise to many problems in cities including diseases, traffic

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congestions and rapid spread of fire. Great fire of 1666 in London made the U.S. government to adopt land use laws to a limited degree.

Similarly legislations passed in the U.S. during this period reflected the approach as those in the U.K. The element of social responsibility of land owner was attempted to be inculcated through legislations. In 1631, the Virginia House of Burgesses passed a law requiring each white adult male over 16 to grow two acres of corn, or suffer the penalty by forfeiting an entire tobacco crop. In 1642, the Immigration Act required the growing of at least one pound of flax and hemp. An Act of 1656 required landowners to cultivate at least ten mulberry bushes per 100 acres in order to stimulate the production of silk. Regulations in urban areas resembled those in London. The cities enforced strict land use regulations designed to promote health and safety. In the aftermath of the great fire of Boston, restrictions were set up on how a property owner could build his home. A series of laws were enacted requiring the use of brick or stone in buildings. No dwelling house could be built otherwise, and the roof had to be of slate or tile. A penalty of a fine equal to double the value of the building was also prescribed.

The settlers in cities cherished their freedom to use their land. They also recognized the need to regulate the use of land for the good of the community as a whole. So far as the acquisition of land for public purposes was concerned, there were few problems. Land was in abundance so that questions of compensation hardly arose. Undeveloped land was perceived to be in such plentiful supply as to have no significant value. However, where developed, improved or enclosed land was physically acquired, compensation was payable. The power, eminent domain was accepted as an inherent power of government for which specific legislation was

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64 Ibid.
not required\textsuperscript{65}. The “taking issue” which became of such importance in the beginning stages, later received scant attention.

The Federal Republic of the U.S. was established in 1780. The Federal Government was vested with full powers, including police power to enact laws to protect public health, safety, welfare and morals. Principal power was given to the Federal Republic that affects private land use. It was mainly to regulate the interstate commerce. After the adoption of the Environmental Policy Act, 1969 many legislations were passed based on this power\textsuperscript{66}.

\textit{ii) Land Use Controls through Judicial Decisions}

The Supreme Court of the U.S. claimed the singular power to determine the constitutionality of legislation. The term “taking” was applied only to the physical acquisition of land by government. In the earlier period the policy adopted was “no taking without a touching”. Where the use of property was restricted by regulatory controls, no compensation was payable. This was so even if landowners were deprived of all use of their land. This could be observed in the decision, \textit{Brick Presbyterian Church v. The City of New York}.\textsuperscript{67} The case related to the restriction on the use of land for cemetery. This property was given for lease for cemetery purpose 60 years ago. The New York Court of Appeals held those sixty years ago, when the lease was made, the premises were beyond the inhabited part of the city. They were common; and bounded on one side by a


\textsuperscript{66} The Constitution of the U.S. Art. 1 s.8 allows congress to raise revenue by taxation and to spend on resources for the public good. Today these federal spending programmes are addressed towards the private land owners to achieve environmental objectives or general welfare of the nation. Art. VI states the power to enter into international treaties. Based on this power the U.S. government have entered in to a number of agreements to promote resource conservation and to prevent environmental pollution.

vineyard. When the defendants covenanted that the lessees might enjoy the premises for the purposes of burying their dead, it never entered into the contemplation of either party, that the health of the city might require the suspension, or the abolition of that right. Since it was generally believed at the time that burying the dead produced unhealthy vapours, the court held that it would be extremely unreasonable to endanger the public by the cemetery use, despite the terms of the lease. In such cases, since the physical property as distinct from the property rights had not been invaded and no compensation was appropriate.

In another famous case *Mugler v. Kansas*\(^\text{68}\), decided by the U.S. Supreme Court in 1887, Mugler’s brewery was made virtually worthless by a Kansas Act. The Kansas Act prohibited the manufacture and sale of intoxicating liquor\(^\text{69}\). Justice Harlan held

“There is no justification for holding that the State, under the guise merely of police regulations, is here aiming to deprive the citizen of his constitutional rights; for we cannot shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety, may be endangered by the general use of intoxicating drink. A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any sense be deemed a taking or an appropriation of property for the public benefit. Mugler still retained his premises and could use them for any legal purpose and that is excluding the formerly legal brewery use”.

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\(^{68}\) *Mugler v. Kansas* 123 U.S. 623 (1887).

\(^{69}\) The statute of the State of Kansas, 1885, s 13 (U.S.).
The Court while upholding the validity of legislation led to the idea that vested interest could not be asserted based on the conditions pre-existed.

This dictum was approved in *Hadacheck v. Sebastian*\(^{70}\). Hadacheck had owned and operated brickworks in the open countryside since 1902. In the following years, City of Los Angeles faced more development of residential colonies. The brickworks turned to be a nuisance to the local inhabitants. Thus the city passed an ordinance to prohibit the Hadacheck from continuing to operate his brickworks. The profit which could be obtained from other legal use was much less when compared to the activity carried on by him earlier. But the court held that “vested interests” could not be asserted against the ordinance because of conditions which previously existed. It asserted the community good when compared to the individual interest.

“To so hold would preclude development and fix a city forever in its primitive condition. There must be progress, and if in its march private interests are in the way they must yield to the good of the community.”

The court’s held that, the ordinance was a proper exercise of the police power.

Plethora of decisions upheld the police power of state to protect the common good of society\(^{71}\). Underlying these regulations was the English common law concept of nuisance which held that no property should be used in such a manner as to injure that of another owner.

\(^{70}\) *Hadacheck v. Sebastian* 239 U.S. 394 (1915).

\(^{71}\) The manufacture of bricks; the maintenance of a livery stable; a dairy; a public laundry; regulating billboards; a garage; the installation of sinks and water closets in tenement houses; the exclusion of certain business; a hay barn, wood yard or laundry; a stone crusher, machine shop or carpet beating establishment; the slaughter of animals; the disposition of garbage; registration of plumbers; prohibiting the erection of a billboard exceeding a certain height; regulating the height of buildings; compelling a street surface railroad corporation to change the location of its tracks; prohibiting the discharge of smoke; the storing of oil; and generally, any business, as well as the height and kind of building, may be regulated by a municipality under power conferred upon it by the legislature.
All these approaches were negative. Gradually land use controls developed into more positive tools of planning. In 1867 San Francisco passed an ordinance which prohibited the building of slaughterhouses, hog storage facilities, and hide curing plants in certain districts of the city. It was in the tradition of nuisance law. The ordinance was notable because it was curative rather than after the fact and restricted land uses by physical areas of the city.

This marked the stage for further evolution of land use zoning in the United States. Governmental interference in the private developmental activities was accepted by the Supreme Court in 1877. In *Munn v Illinois*, the court ruled that when one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created.

**Constitutional Amendments**

The U.S. constitution Fifth Amendment prohibits government from taking private property unless there is public purpose and only if just compensation is paid. Land use regulations that deny private property owners all use and enjoyment of their land or that fail to accomplish legitimate public purpose are considered as regulatory takings. Court requires governments that regulatory takings to compensate the land owners.

The Fourteenth Amendment limits governmental land use authority. It requires courts to strike down land use laws that are unreasonable and arbitrary and fail to accomplish a legitimate public purpose. Creation of land use categories

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72 *Munn v Illinois*, 94 U.S. 113(1877).

73 The relevant extract of the judgement reads, “When one becomes a member of society, he necessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain.
that discriminate between classes of land owners unless those categories serve a legitimate public purpose is also prohibited.

**Nineteenth Century Land Use Laws**

In 1800's urbanisation was becoming more prominent. This led to many problems in cities. Diseases and great fires in cities became common. This led to regulatory attempts on buildings. Municipalities were given power to regulate private activity to protect public health and safety. In 1866, the New York state adopted the Metropolitan Health Act. In 1916, comprehensive zoning ordinance was adopted. It divided city into multiple land use districts and zones. These allowed private land owners to use their land for the purposes permitted in the applicable district. The most controversial aspect of zoning was, it prohibited private land owners from using their land for activities of their own choosing. The Federal Government regulation started with the National Environmental Policy Act. The signature approach of these Federal laws is to create standards for pollution or protection that cannot be exceeded and to provide stiff criminal and civil penalties for violation. They have also adopted a number of initiatives that encourage and influence local governments to regulate private land use. They have also established land use policies for land development in coastal areas. Under The Telecommunication Act, 1996 land uses are regulated for public health. States also adopt laws that pre-empt local action. The Colorado Land Use Act lists twenty one area of state interests which includes mineral exploitation, wild life habitat and flood hazards.

The first legislative attempt with strict control on land use was the Clean Air Act, 1963. It was enacted to prevent air pollution. It interfered with local

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74 The U.S. Clean Air Act, 1963. It established a federal program within the U.S. Public Health Service and authorized research into techniques for monitoring and controlling air pollution.
development matters\textsuperscript{75}. This was considered as a threat to the power of states to control land use. Thus 1977 amendment was made to the Clean Air Act. It upheld the right of the existing states and cities to plan or control land use\textsuperscript{76}.

During the past 30 years local governments have developed a new body of local regulations designed to protect natural resources. Although the U.S. land use system is still fragmentary and uncoordinated in many respects it shows signs of consistency. In spite of the importance given to the local governments, there is a co-ordination that exists between Federal republic, state governments and municipalities. From the U.S. experience it is clear that only by enabling, encouraging, guiding and directing local government experimentation in land use matters the state can make liveable, affordable and environmentally sound communities.

Four vehicles on the path to equal services are identified. They are the imposition of a common right to access drawn from the doctrine of services essential to individual survival within the community. The duty to serve all equally, inferred from and recognized as an essential part of natural monopoly power. The duty to serve all parties alike, as a consequence of the grant of the privileged power of eminent domain; and finally, the duty to serve all equally, flowing from consent, expressed or implied\textsuperscript{77}.

\textsuperscript{75} The U.S. Air Quality Act was enacted in order to expand federal government activities. In accordance with this law, enforcement proceedings were initiated in areas subject to interstate air pollution transport. As part of these proceedings, the federal government for the first time conducted extensive ambient monitoring studies and stationary source inspections.


Land use Regulations in Canada

Prior to the turn of century, municipal regulations on land use were limited to a number of fairly specific nuisance, public health and building by laws. They generally applied to individual buildings. It did not regulate different land use categories. Land owners were virtually free to use their land.

Adoption and implementation of land use regulation occurred in Canada only after the turn of the century. In 1897\textsuperscript{78} revised statutes of certain big cities and public health legislations were the only statutes containing provisions relating to public regulation of urban development. The Municipal Act provided municipalities with two basic types of authority having some impact on urban development.\textsuperscript{79} They were 1) regulation of construction of new buildings and 2) control over certain specified public nuisances. The first allowed very specific and limited authority over the way the buildings were constructed. Municipal authorities could inspect and regulate the more oblivious public safety features of buildings and their construction. Municipal implementation of these measures was discretionary and not mandatory.\textsuperscript{80}

The second type of authority provided under the Municipal Act was control over certain specified public nuisances. This also provided a partial form of zoning authority to define districts within which certain specified trades could not be carried on. In 1897 this included slaughter houses, gas works, tanneries, distilleries, rag, bone and junk shops and other manufactories or trades which may prove to be nuisance\textsuperscript{81}. The rest of the provision simply regulated such potential nuisances and smoke, the keeping of certain animals, the ringing of bells or

\textsuperscript{78} The Ontario Municipal Act, Revised Statute, S.553 (1)(Canada).
\textsuperscript{80} The Ontario Public Health Act, 1897, Revised Statutes, s.65 (Canada).
\textsuperscript{81} See the Municipal Act, 1897 ss.63-80, 113,114(Canada).
causing other unusual noises calculated to disturb the inhabitants. Now this list of nuisances and authority to exclude certain uses from districts or city was also expanded.

Another Act which had direct implication on land use was the Public Health Act, 1873. This was enacted due to the periodic cholera outbreaks. This Act vested the Municipalities with some additional authority to regulate land uses to the extent any user presented a potential public health hazard.

The Act had a large section of nuisances. Thus this Act had impact on land use. By the 19th century the municipal bylaws relating to many aspects of land use tried to limit the interference. In the daily life the building bylaw had many potential impacts on urban form. Most of it regulated such things as excavations, foundations, walls, chimneys, wood beams, floor and roof loads. This law did not contain any significant measures affecting private land use and urban development decisions.

When Ontario City asked for authority relating to subdivisions it was rejected by the government. It was based on the reason that such an authority is a dangerous invasion of the rights of private property. In the first place land is treated as private property, because the land owes its value entirely to the presence of people in the neighbourhood.

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A new mile stone in the land use regulation was enactment of the City and Suburbs Plans Act. It came about before well organised town planning movement had developed in Canada. This legislation addressed a much focussed and very immediate problem. It justified the interference in private development rights on the grounds of general public good. It was a pragmatic reaction to the specific conditions prevailing in larger cities at that time.

By 1984 planning had emerged as an important function of provincial and local government. Since 1945 the institutional frame work had been developed into a complex system containing planning instruments, regulation and planning authorities. This brought about yearly incremental changes to the legislation. Now all the municipalities are required to have land use bylaws. Regional plans are required to be adopted by all regional planning commissions. Thus all provincial legislative requirements have ensured that municipalities prepared land use control decisions within a prescribed regulatory frame work.

The discretionary power of municipalities in the regulation of land uses have increased. The philosophic origin of the legislations governing land use planning 1945 revolves round the concerns as the prevention of nuisances and the preservation of natural beauty and protection of property values through zoning byelaws.

**Developments through Planning Laws**

The period of post World War II, environment and transportation began to acquire momentum in planning processes. The department of environment has gained a particularly prominent role in land use planning. It has a broad role in

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resource management and natural resource development. According to 1984 Alberta Municipal affairs report, the planners as a catalyst can encourage improvement of communities through the development of public facilities and encouragement of private public partnerships and the involvement of other levels of government in the local projects\textsuperscript{89}.

Several critical areas identified in planning are

i) Ares for accommodating growth

ii) Protection of regional significant land uses such as sovereignty and transportation facilities and corridors, environmentally sensitive areas, open space, recreation features and better agricultural land.

iii) Fringe areas around municipalities

iv) The establishment of separation distances between heavy industry and incompatible land uses.

Thus land use in Canada has become more and more complicated. It is now entering a new period as regulatory aspects are passed on to municipalities. Several legislations\textsuperscript{90} have relevance only to particular regions of the province. Most of the legislations aim to cub urban sprawl. The Planning Act, 1990, establishes the rules for land use planning and describes how land use may be controlled and who can control them.

\textsuperscript{89} Environment Canada Protected Areas Strategy, Environment Canada Inquiry Centre, Government of Canada (2011).

\textsuperscript{90} The Greenbelt Act, 2004 is a legislation that establishes a 240,000-hectare greenbelt in the GGH within which urban development will not be permitted.
Land Use Regulations in India

Indian administration has been a complex one due to the invasions of various cultures. Therefore the land use controls have varied from time to time according to the needs of the society. In India land tenure refers to the way in which land is held by an individual. It shows the relationship between the land holder and the State. The absolute ownership of land rests with the Government.\(^91\) The Government gives proprietary rights to individuals or communities. Thus, a land owner is the proprietor of that land and he has to pay land revenue for that\(^92\). Thus the ownership becomes a conditional affair. In principle the individual does not have absolute right over his land. He is a sort of a tenant whose occupation of his property is governed by powers from above and has to observe many regulations regarding the use of his land. In short, the so called private property is not that private at all. Such regulations are needed to ensure protection of nature and its resources.

Common Law Regulations

Common Law tried to curb the abnormal use of lands to protect the neighbour’s interests\(^93\) over the land. But the most notable thing under this development was that the concept of sovereign immunity available to the government. So no claims could be raised against government actions.


\(^{93}\) Decisions in cases like Rylands v. Fletcher, [1868] UKHL 1, Mayor of Bradford v. Pickles, [1895] AC 587 and the development of easementary rights from very earlier times shows that common law always tried to control the unreasonable interference with the peaceful enjoyment of neighbour’s property rights.
Land Use in Ancient India

The ancient religious works like the Vedas and the Brahmas and the Buddhist and Jain chronicles reveals about the ancient political theories. The Santiparva, Adiparva and Vanaparva specially deal with the duties and ideals of King and government. The state and the government were considered as the basic instruments for promotion of peaceful and civilised life. They concentrated on the art and science of statecraft. Kautiliya the author of Arthasastra dealt in detail the problems concerning the acquisition and retention of land. During this period one of the main duties of provincial administration was to collect revenues and construction of public utility services. Agriculture was the mainstay of the people. Therefore, majority of the people lived in villages, where they led an energetic economic life. Most of the villagers tilled own lands, although the King claimed ultimate ownership of lands. Moreover they owned large areas of lands which were cultivated by the serfs and the labours in return for a fixed payment. The State claimed a share of the produce of the land from the cultivator. The laws of Manu mention that one sixth of the gross produce as the legitimate share of the King. During the war and other emergencies, it was increased to one fourth. The percentage of taxation differed in different periods. During these periods systematic surveys of all lands were carried before determining the revenue. As the pressure on land increased people started the policy of colonisation, clearing of waste and development of new areas. Certain over populated villages cleared

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96 Ibid.
97 Kautilya, Arthasastra, pp.46 and 95.
98 Manu, Manusmrithi, Chapter VIII Versus237.
99 Institutes of Manu, chap. IX, p.44.
some parts of jungle for cultivation. Thus on the basis of ancient literature it can be said that King remained the owner of lands including the cultivable one. Certain other scholars have come to the conclusion that private ownership of land also existed\textsuperscript{100}. The idea of private ownership of land existed as long back as the \textit{Rig Veda} period\textsuperscript{101}. The right of ownership of land mainly depends on the right to gift, sale and mortgage of the land. The lands were mostly gifted. There are no references about the buying or selling of land\textsuperscript{102}. However the \textit{Arthasastra} has recorded an order of priority in choosing the buyer while selling a piece of land. There is hardly any record of the sale or transfer of the land for purposes other than for religious matters. Land was not contiguous and was intercepted by land owned by private individuals. This implies that certain other pieces of land were state owned and was known as ‘\textit{Rajyavastu}\textsuperscript{103}’. When these lands were actually transferred to the donee, it is not clear who actually cultivated it. Another problem connected with land ownership in ancient India was whether the people enjoyed occupancy right subject to the pleasure of king or it existed in the ordinary sense of the term. There is no consensus among the scholars regarding this matter. Manu says that king is the Adipati of the soil\textsuperscript{104}. Some scholars are of the opinion that private individual has never been given an absolute right in India\textsuperscript{105}. The state has always the last say in this matter whatever may have been the position in theory.

\textsuperscript{100} Sundararaj Iyangar, \textit{Land Tenures in Madras Presidency}, Modern Printing Works, Madras (1916), p. 3.

\textsuperscript{101} Upinder Singh, \textit{A History of Ancient and Early Medieval India: From Stone Age to the 12\textsuperscript{th} Century}, Dorling Kindersley Pvt.Ltd., Delhi(2008), p.191.


\textsuperscript{105} \textit{Ibid.}
Changes in Medieval Period

During medieval period there was a conflict between two religions and culture. There was no renaissance in that period. In the political sphere domination was of the *Muslim* rulers the country’s economy continued to be dominated by *Hindus*. Large jagirs were given to *Muslim Amirs*. But cultivation was entrusted to the *Hindu* peasants. No change was introduced in the land holding and relation. The only formal change was the control of land by *Muslim* jagirs. A conscious attempt was made to unify the spheres of economy, society and polity. Agriculture remained as the main occupation even during the medieval period. There was self-sufficiency in food production and the excess was exported. Village community remained as the most important economic unit and enjoyed the “harmonious co-ordination” of the specialised functions of its various component groups of workers. Selected areas were earmarked for industries.

Major share of produce was collected by state in the form of land tax. The reminder was distributed by peasants for various purposes. The state were least interested to protect the citizens affected by famine frequently. King often made tax free land grants to the officials. Apart from lands pastures, trees and water resources also were gifted to them. Timur attempted to change the states share in produce to money terms and it was followed by Sher Shah. Famous system

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109 Sher Shah had fixed the land revenue after getting the whole of the land measured through the agency of Raja Todar Mal. He got an accurate survey of all the agricultural land and fixed a definite revenue for each unit of land. See http://www.facts-about-india.com/sher-shah-suri-facts.php. visited on 11-01-2011.
called Todarmal\textsuperscript{110} was introduced by Akbar. Soils were classified in a scientific method. Under this system careful measurement and division based on the fertility of soil was made. There were four classes of land categorised in this way. Governments share was fixed as one third of gross produce. The land holding was vested with king abut at the same time private ownership of land could be seen. In the words of Prof. Lallanji Gopal, interpreted regarding the ownership of land,

"The King as the master of the soil and of the soil as belonging to the peasant, this does not mean to lay down the legal status of the King as the owner of all cultivable land in the state, but only points out the sovereignty of the King implying a general lordship of the King over all things in his kingdom."

Stray references in the literary works of the period also suggest individual ownership. During the decline of Mughal Empire, control over the revenue officials became weak. Therefore the income flow was not stable. Revenue farming\textsuperscript{111} was introduced to meet this situation\textsuperscript{112}. Under this system, the revenue farmer paid to the Government was nine-tenth of the whole collection and kept the rest as his collection charges.

The medieval history of India is dominated by land grants and the resultant feudalism. The actual cultivators of the land i.e. the peasants were obliged to live in their land lords’ land. They were given homage, labour and share of produce, notionally in exchange for protection.

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Chapter 2  Historical Evolution of Land Use Laws A Comparative Analysis

Land Tenures under British Rule:

British started the administration as tax collectors for the *Mughal* emperors. They were least interested in welfare of community. Their aim was acquisition of political power. They were keenly interested in revenue augmentation. In 1793, Cornwallis introduced the permanent settlement. They did not introduce many changes in the administration[^113]. The land grants in the medieval India created the landed aristocracy which did not exist in India earlier. Land tenures which were prevalent during that period were carried on by Britishers. Major systems supported by them were Zamindars[^114], Mahalwari[^115] and Rayatwari[^116]. The basic characteristic of each system was the attempt to incorporate elements of the preceding agrarian structure. The interaction of colonial policy and existing systems produced widely different local results and hybrid forms.

Sometimes the revenue collectors turned as land owners. This system was widely practised in many parts of the country. In this system, peasants were exploited by way of higher amount of rents. No incentives to augment cultivation were given to them. The system was full of evils. But it was perpetuated by


[^114]: Zamindari system was introduced by Lord Cornwallis in Bengal in 1793. Under this system, the lands of a village or few villages was held by one person or few joint owners who were responsible for payment of land revenue to the Government. There used to be number of intermediaries between the Zamindars and the actual tillers of the soil. The system took were various forms such as Zamindari, Jagirdari, and Inamdari.

[^115]: Under Mahalwari system, the village lands were held jointly by the village communities, the members of which were jointly and severally responsible for the payment of land revenue. Land revenue was fixed for the whole village and the village headman received five percent commission for the collection of revenue.

[^116]: Rayatwari was introduced first in Madras State and then in Bombay State. In this system, there was a direct relationship between government and the tenant or individual land holder. Every registered holder was recognised as its proprietor and he could sell or transfer the land. He was assured of permanent tenure as long as he paid the land revenue. The land holder was also allowed to sublet his land.
Britishers because it helped in regular collection of land revenue from a few persons. It created loyalist to Britishers\textsuperscript{117}. Rayatwari was a better system as compared to Zamindari, Mahalwari and similar other forms of tenure.

But there existed confusions in the three systems. There was no proper revenue record. This put the tenants into a very insecure position. The tax collectors were given the full freedom to extract from the tenants as much as they liked. It resulted in deprivation of peasantry from their lands. To summarise the property relations were strained during the ancient and medieval India. Policy was revenue oriented. Preservation of living resources and planned development of cities caused many problems in land management.

**Changes in Post-Independence Period:**

Independent India envisaged an egalitarian society. The framers of the Constitution thought of changes in the property relations. They took into consideration the conflicting interest involved and took a balanced approach\textsuperscript{118}. During the constitutional debates there was two sided argument for the type of philosophy to be followed in India regarding the property. Giving due weight to the individual interest in the property, they considered property as a fundamental right. At the same time they also gave due consideration to the needs of society and the ‘equal distribution of wealth’ concept was incorporated as a directive principles of state policy. This was a quite balanced approach and it was tilted due to the internal conflict of legislature and judiciary and at last the balance was lost.

The Constitution provided for the fundamental right of the individual to acquire, hold and dispose of property\textsuperscript{119}. Deprivation of this was restricted except


\textsuperscript{119} The Constitution of India, 1950, Art.19(1) (f).
by the authority of law. Problem arose with regard to the quantum of compensation to be paid when they are deprived of the property rights. The proponents of natural right\textsuperscript{120} argued for just compensation. While the socialists argued for no payment of compensation in case of compulsory acquisition for public good. Due to this conflicting approach Pandit Jawaharlal Nehru spelt out the policy to be followed, He said

“If we have to take away the individual property, we have to see that fair and equitable compensation to be given. But when we consider equity we always have to remember that the equity does not apply to the individual but to the community. No individual can override ultimately the rights of the community at large. No community should injure and invade the rights of the individual unless it be for the most urgent and important reasons”\textsuperscript{121}.

The above approach was also reflected in the Constitution\textsuperscript{122}. While at the presentation of the draft article, Nehru commented that the article was a just compromise and it does justice and equity not only to the individual but to the community\textsuperscript{123}. Thus the original of the Constitution guaranteed deprivation of property by law alone. It also guaranteed the payment of compensation as fixed by the legislature.

Legislative power over land vests with the state\textsuperscript{124} government even though the obligations to implement international conventions\textsuperscript{125} lies with the


\textsuperscript{122} The Constitution of India, 1950, Art.31.

\textsuperscript{123} Supra n. 120, p.210.

\textsuperscript{124} The Constitution of India, 1950, Schedule VII, list II Item 18.

\textsuperscript{125} Ibid ., Art.258.
Centre. The 74th amendment of the Constitution also provides for delegation of more powers to the state in relation to the land and constructions and developmental activities over the land. But it is not an absolute freedom. It is to be interpreted in tune with the policy laid down by the Centre and five year planning policy adopted by the government in accordance with the needs of each area.

The leaders had thought about the need for land reforms even prior to independence. For instance, the Agrarian Reforms Committee under Shri J.C.Kumarappa had given the guidelines for formulation of land reform policies in the independent India. The committee recommended that, all intermediary interest should be abolished and land should belong to the tiller. Leasing of land should be prohibited except in case of widows, minors and other disabled persons. All the tenants who had been cultivating land for a period of 6 years should be granted occupancy rights.

The tenants should have the right to purchase the holdings at reasonable price to be determined by the land tribunal. The agrarian economy should provide an opportunity for the development of farmers.

**Abolition of Zamindari and Intermediaries**

India’s First Five Year Plan had clearly mentioned the land policy and the specific land reform measures to be undertaken. Most of the states passed legislation for abolition of zamindari\(^\text{127}\) and exploitative land tenure systems. The

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\(^{126}\) See for details on 74th Amendment, [http://urbanindia.nic.in/theministry/ministry_page.htm](http://urbanindia.nic.in/theministry/ministry_page.htm) visited on 09-04-2012.

\(^{127}\) Legislations to abolish the Zamindari system were earmarked for special treatment. It was generally provided that by sub- clauses (4) and (6) of art. 31. To achieve the goal of treating an egalitarian society specific provisions were included in the Directive principles of the state policy for distribution of wealth. Accordingly Art 39(b) and (c) were included clearly stating that ownership and control of material resources should be distributed to sub serve the common good and that the operation of economic system should not result in the concentration of wealth. Thus the framers had approached the right to property from a socialistic perspective.
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Historical Evolution of Land Use Laws A Comparative Analysis

The first legislative attempt in this regard was made by Madras in 1948\textsuperscript{128}. Property relations got redefined according to the Constitutional dreams. Still the land use regulations tries to achieve the egalitarian society. As a result of abolition of Zamindari and intermediaries, about 26 lakh intermediaries and 20 lakh tenants got proprietary rights over lands. They became the land owners\textsuperscript{129}. This has resulted in improving their economic and social conditions. The land revenue income of the states also increased. Protection of tenants and regulation of rent are the major steps in the tenancy reforms. The ultimate object of the reform is "land to the tiller". The tenancy laws have moved in that direction.

These legislations could not achieve the expected result. This adversely affected the property relations ecology and environment of the state. Proper planning is lacking in the area of land use. Land being a state subject interference of centre in this are remains scant. Different aspects of the land use regulation are administered by various authorities under the state government. There is no co-ordination among them.

\textbf{Land Use Controls in Kerala}

Since the inception of the State of Kerala in 1957, the government made tireless efforts to protect and improve land for agricultural purpose. Numerous laws had been enacted with the objective. An analysis of the existing laws of Kerala bearing on land reveals that they can be classified into two: laws controlling the use and exploitation of privately owned lands\textsuperscript{130} and laws

\textsuperscript{128} See the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948.


\textsuperscript{130} See the Kerala Land Utilisation Order, 1967, the Land Development Act, 1964, the Land Acquisition Act, 1894, the Land Reforms Act 1963 and the Highways Act,1951.
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governing the preservation and protection of the government lands\textsuperscript{131}. There is no comprehensive legislation dealing with land use, land conservation and land development. A perusal of the existing legislations also reveals that there is multiplicity of authorities and agencies exercising powers and functions in relation to these activities\textsuperscript{132}. This starts from the state government represented by the minister-in-charge at the top, the Land Use Board\textsuperscript{133} and many other agencies and government departments. Each of them is working independently without proper co-ordination and consultation. Multiplicity of authorities created under different statutes cause considerable difficulties in evolving a comprehensive scheme for land use and land development in Kerala. The Land Use bill, 2002\textsuperscript{134} aimed protection of agriculture in state. This is yet to be become law.

The existing provisions governing land use are scattered in various enactments. The Kerala Land Development Act, 1964 is the principal law enacted for regulating land use and land development in Kerala. The objects of the Act as set out in its preamble are preparation and execution of land development schemes, conservation and development of soil resources, the control and prevention of soil erosion and reclamation of waste lands.

The land development schemes can regulate the land use\textsuperscript{135}. It may increase the productivity and enhance the land quality. The matters for which a scheme may provide for are enumerated in the Act\textsuperscript{136} in tune with the objectives

\textsuperscript{131} See the Kerala Land Conservation Act, 1964 and the Kerala Command Area Development Act. 1986.


\textsuperscript{133} The Kerala State Land Use Board was established in 1975 under the Department of Planning and Economic Affairs, Government of Kerala. The Board is assisting the State Government to frame policies for optimum land use and natural resource management in the State.


\textsuperscript{135} The Kerala Land Development Act, 1964, S.5 Functions of the Land Development Board.

\textsuperscript{136} *Ibid.*, S. 8. Provides: Matters for which a scheme may provide.
of the legislation. Control and prevention of soil erosion, conservation and improvement of soil, reclamation of waste lands, improvement in the methods of cultivation, construction works for the improvement of land, regulation on destruction of trees and regulation of water supply are the important matters that can be decided by such schemes.

Deterioration of land may be caused due to the poorly planned development projects and programs. Environmental degradation may happen due to the absence of long term assessment also. When a scheme is approved by the government, the district committee\textsuperscript{137} constituted under the Act can restrict, regulate or prohibit the land use within the area notified under the scheme\textsuperscript{138}. The committee is empowered to prevent clearing and breaking up of land. The nature of cultivation can be determined by the committee\textsuperscript{139}. Within the area of restrictions the erection of building is also regulated. It is the obligation of the owner of land situated within the notified area to execute any maintenance or repair work on the land on direction given by the collector\textsuperscript{140}. The failure on his part will empower the collector to undertake the work and recover the cost of the work\textsuperscript{141}.

**Land use legislation and Protection of Agriculture**

The development of agriculture is given due importance by state governments. Various schemes are set out under the rural development programs for agricultural activities. The regulation on conversion of agriculture lands to building sites suggests the enthusiasm to promote food crops. The Kerala Plant

\textsuperscript{137} *Ibid.*, s. 7 provides: Functions of the District Committee.
\textsuperscript{138} *Ibid.*, ss. 9 and 10.
\textsuperscript{139} *Id.*, s. 10(4) and (5).
\textsuperscript{140} *Id.*, s. 14(1).
\textsuperscript{141} *Id.*, s. 14(5).
Diseases and Pests Act, 1972\textsuperscript{142} is another legislation which seek to protect plants from the spread of various diseases. If any area is notified under this Act, the owner of land is bound to carry out the remedial measures set out under the scheme\textsuperscript{143}. But one could see that no mechanisms are there to control the use of pesticides\textsuperscript{144} and insecticides under the law. This has created a severe problem to the economy. As a result of serious objection from various streams of society\textsuperscript{145} now the government banned the uncontrolled use of life threatening pesticides and insecticides.

The use of land under the control of government is regulated by the Kerala Land Conservation Act, 1957. The purpose of the Act is to check the unauthorised use and occupation of government lands by private individuals. The Act provides for licensing, for occupation of government lands, removal of earth, laterite, metal and lime shell from the government lands. The use of land without such licence will lead to punishment. The term “conservancy” suggests conservation but provisions shows that it is only an enabling Act empowering the government to regulate the activities within the government land.

The Kerala Land Reforms Act, 1963, also some provisions for the regulation of land use. Excess land recovered from landlords can be assigned for public purpose. The use of such lands can be made either by the government or by the local authority. This provision enables authorities to set apart land for the community use. Open spaces, parks, play fields and community amenity centres can be opened in such places. Otherwise the future generation will have no open space to breathe in.

\textsuperscript{142} The Kerala Plants Diseases and Pests Act, 1972 preamble states that ,WHEREAS it is expedient to make provision for preventing the introduction, spread or re-appearance of plant diseases, pests, parasites and noxious weeds which are or may be destructive to plants, or are likely to contaminate water supply or are obstructive to waterways in the State of Kerala.

\textsuperscript{143} Id., s. 4.

\textsuperscript{144} The Gazette of India Extra Ordinary, part II section 3 Sub Section (I) Published by Authority, Ministry of Health and Family Welfare(Dept. of Health), 29\textsuperscript{th} September 2003 G.S.R 769(E).

\textsuperscript{145} Savvy Soumya Misra, “Pesticides Ban Land, Kerala in Court”, 7 Down to Earth (2011).
The Kerala Land Utilisation Order, 1967 was another bold attempt from the Government of Kerala to boost the food crops cultivation after the great famine India had to face. It was issued under the Central Statute, the Essential Commodities Act, 1955. But the machinery entrusted to implement this order did not show much enthusiasm. Under this order government is given wider power to direct the holder of land to grow particular crops in the land\(^{146}\). The collector can also order any holder to cultivate land with paddy or any other food crops for a specified period\(^{147}\). This was intended to prevent the non-use of agricultural fields and to increase the production of food crops in the state and also to prevent the conversion of agricultural lands for various other development purposes. The collector can order the sale of cultivation right\(^{148}\) in case of non-compliance with the order to cultivate by the owner himself. The ownership of the land is retained by the original owner. This is done with the aim of protection of interest of the society. But for the survival of every law, acceptance by the society is necessary. Here, working of this legislation shows that acceptance of the law by the society was lacking. This could be gathered from the information of large scale conversion which took place even after the enactment of the law. The corrupt bureaucracy and the lack of criminal provisions against the non-performance of duties and absence of proper checks and balances on the implementation led to failure of law\(^{149}\). The order was filled with a laudable measure providing for proper land use. But the aim appears to be conservation of agricultural land and no other criterion is stated.

\(^{146}\) See the Kerala Land Utilisation Order, 1967 clauses 3 and 4 require the holder of land to grow specified crops.

\(^{147}\) Ibid., clause 7 vest the collector the power to direct cultivation of land with the food crop which was being cultivated.

\(^{148}\) Id., clause 5 power of the collector to direct the sale of the right to cultivate.

The Local Authorities (Amendment) Act, 1989 empowers the municipal corporation to levy conversion cess\(^{150}\) in respect of conversion of land into garden land or building site. The provision applies only to land comprised within municipal areas. This nominal charge will not necessarily deter unnecessary conversion of land. These legislations can be modified with clear guidelines for the conversion and can be extended to areas other than municipalities with enhanced levy of conversion charges. The Travancore Cochin Fisheries Rules, 1951 also contains provisions prohibiting conversion of paddy fields for prawn cultivation. A licence from the fisheries department is required for filtration and cultivation of prawns in agricultural fields. Such a licence should be given only when the authority is satisfied that the agricultural production will not be hampered by such land use. Another notable legislation is the Command Area Development Act, 1986. This Act restricts and regulates the use of land within the specified areas\(^{151}\). The regulation here is mainly intended as part of the measures for development of command areas or for better planning control.

In addition to the Kerala laws, Central enactments like the Highways Act, 1956 also regulate land use to some extent. The legislation on land is an exclusive state subject and the land use regulations under the central enactments were only incidental to some other activity. For example, the prohibition on quarrying near highways is only to retain lateral support to highways.

The land use regulation in Kerala appears to be a piecemeal measure. Their aim is not to ensure scientific land use. It is either protection of government lands or conservation of food crops. The legislative scheme should attempt to ensure proper use of land considering the quality and location of land and the needs of

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\(^{150}\) Not exceeding Rs. 250/- per acre.

\(^{151}\) The Command Area Development Act, 1986 provides authority on farm development works with the aim of providing adequate, reliable and equitable distribution of water for securing optimum production from the field.
the community. The prohibition on mining and quarrying on government lands contained in the Land Conservation Act, 1957 is a measure to increase the revenue. Moreover it applies only to government lands. But considering the environmental impacts it is necessary to control mining and quarrying operation in every land. The removal of earth, stone, laterite and other materials from land can be and need to be regulated by law. At present the local authorities can prohibit operations on private lands only if it amounts to nuisance.

The Kerala Conservation of Paddy Land and Wetland Act, 2008 is a legislation made by the Kerala state to protect land under paddy cultivation and wetlands which serves numerous ecological functions to total land areas. This also aims at prevention of conversion of paddy land for any purpose. Only the government can convert the land in public interest. But the main concern is to protect the ecology and environment based on the principle of sustainable development. But the working of the Act shows no enthusiasm for the betterment of the existing pathetic conditions of paddy lands and wetlands. Still the conversions are rampant. The Land Development Act and planning acts envisage the preparation and final approval of the scheme before an action can be taken for controlling land use. The need for scientific land use cannot be achieved even with the help of this legislation. Comprehensive land use legislation with the necessary infrastructure for the assessment and determination of land use is required.

**Developmental Planning**

Planning for development is much connected with public health. So the state governments are well within their powers to enact laws on development planning. In Kerala different planning laws exist in different parts of the state. In

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Malabar area the Madras Town Planning Act, 1920 is in force. In Travancore area the Travancore Town and Country Planning Act, 1120 as well as the Town Planning Act, governs the planning matters. In addition to this, the Kerala Panchayathiraj Act, 1994, the Municipalities Act 1994 and the Municipal Corporation Act also contain provisions enabling the local authorities to exercise planning controls. Specialised agencies like the Travancore Town Planning Trust, the GCDA, the Calicut Town Planning Trust, and the Cochin Town Planning Trust also wield the powers in relation to planning.

**Administration of Planning Laws**

Due to multiplicity of legislations, the authorities for implementing planning laws are also large in number. Apart from the state department of planning, planning departments exist in local administration and in specialised bodies. There are also agencies for implementing land development laws. Practically there is no co-ordination between these agencies and each authority proceeds with their own ideas. Moreover law prevailing at different parts of the state are different. Absence of consolidated and codified law creating one line of authority for planning is a major detriment for environmentally sound planning proposals.

The Town and Country Planning Act,1120ME authorises preparation of schemes for the development of planning of land. Protection of public health and development of rural amenities also form part of the scheme. Under the Act development of land includes building and rebuilding operations. However the schemes will be applicable to controlled areas notified by the government. The contents of the scheme and the matter that can be provided under the scheme are also spelt out\(^\text{153}\). This includes the provisions for sanitary conditions, public

\(^{153}\) The Town and Country Planning Act,1120ME, General Guidelines.
amenities, public health and prevention of infectious disease. In the controlled areas erection or re-erection of buildings can be undertaken only in conformity with the rules made under the Act.

The Act also lays down the guidelines to be followed in respect of buildings. There can be regulation on the space, number of buildings, height, size, design and external appearance of the building. The authorities under the Act are empowered to enforce the provisions of the Act in the manner provided under the Act. There is provision for appeal to the Government from the orders of the authorities.

The Town Planning Act, 1108 is another important legislation regulating the development of towns. The object of the Act is to regulate the development of towns to secure better sanitary conditions, amenity and conveniences. The Town Planning scheme prepared under the Act can include water supply, drainage, zoning, preservation of archeologically and historically important objects and buildings.

The schemes have to be notified in the prescribed form. Opportunity for inspection should be given to the public. Persons affected by the scheme are allowed a hearing. The authorities are bound to hear the objections and give suggestions to the scheme. They can modify or amend the scheme. The scheme will get statutory force on being approved.

The planning controls envisaged under these legislations are insufficient to promote environmental quality. The legislations based on different strategy are required. Proper planning laws can control environmental hazards caused by

154 The Town and Country Planning Act, 1108, s. 3 provides the matters to be dealt under the Town Planning Scheme.

overcrowding, concentration of industries, insufficiency of roads and many other matters.

The planning for the entire state should be entrusted to a single authority. The function can be divided among different districts or local units. The industrial and agricultural requirements of the state as well as the environmental assets available in the state should be assessed properly. On the basis of such assessment and after considering the location and suitability of different existing industrial and agricultural projects allocation should be made to different regions.

**Conclusion**

Since the time man began to occupy land he considered it as his property. States control differed according to the nature of land. To avoid conflict among users and to maintain peace and tranquillity states controlled identical uses. Subsequently land use regulations oriented towards community interest. For the welfare of the community planning and zoning laws were introduced. They had set and accepted norms. People usually obeyed such norms for the greater community interest. Building rules also came along with zoning and planning. All these aimed at protection of health, safety and lateral support of neighbouring property. Legislations covering all these aspects had exerted land use regulations in varying mode.

The second half of the twentieth century witnessed the sprawl of urban centres. This again necessitated more land use regulations. Momentum to these regulations was added by the Stockholm Declaration, 1972. Consequent to this several legislative attempts tried to control land use.

The Ramsar Convention, 1971 and the Stockholm Declaration, 1972 began to treat land as resource from environmental perspective. These were international instruments which provided the skeleton for the countries to follow. This compelled the individual nations to enact legislations based on the requirements set under these instruments. Nations sovereignty is not encroached up on. In this context it could be conclude that property rights over land was and is always subject to community benefits.