



# ANALYSIS OF LAND RIGHTS IN ASSAM -IN REFERENCE TO EVICTION DRIVE

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## **SYNOPSIS: -**

### **RESEARCH OBJECTIVE: -**

<sup>1</sup>The main purpose of this research paper is that as it is the primary responsibility of the government to give shelter to the people where eviction is done but it is not happening and in the state of Assam Eviction drive that turned violent is it about land and livelihood or it is religious intolerance because many of them who are evicted are Bengali Muslims.

### **KEY WORDS: -**

Eviction drive in Assam, Constitutional fairness, Concept of natural justice, right to property, National registration of citizens.

### **RESEARCH QUESTIONS: -**

1. does this eviction drive violating principle of law and going against the concept of natural justice? If yes give reason.
2. There should be primary notice given to people as it is the responsibility of the government and the authorities who should be concerned to protect the rights of the people and they should be provided with proper Rehabilitation. Elaborate and analyse this statement about eviction drive?
3. Is the Assam eviction drive being about land and livelihood or else is religious intolerance?
4. The eviction drive mainly in dholpur why did it became national sensation?

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<sup>1</sup> Eviction drive on railway lands in Digboi leaves several families homeless in Assam

<https://www.landconflictwatch.org/conflicts/eviction-drive-on-railway-lands-in-digboi-leaves-several-families-homeless-in-assam>,

18<sup>th</sup> May, 2023

**STATEMENT OF PROBLEM: -**

<sup>2</sup>The main issues in this research paper are “eviction drive” by the government in many districts of Assam which was done against those who are illegally occupying government land, waterbodies, and forests. Most of the people who are evicted by government are Bengali-speaking Muslims. The primary responsibility of the government to give shelter to the people where eviction is done but it is not happening and in the state of Assam Eviction drive that turned violent is it about land and livelihood or it is religious intolerance because many of them who are evicted are Bengali Muslims. The main issues of the research paper are by evicting Over 7,200 Muslims were evicted from 7,000 bighas of land at the Gorukhuti area in Dholpur in Darrang district and other incidents like two persons and a 12-years boy was dead in police firing and 10 others were injured for this all the government has been criticized and then issues from both side and what measures should the government take to tackle this problem.

**RESEARCH METHODOLOGY: -**

<sup>3</sup>The research is mostly Analytical research where there is Inductive reasoning for the issues related to eviction drive in Assam. The research paper comprises of Firstly Article 300-A and how it is violated due to eviction drive-in north-east states mostly in assam and what are the incidents that took place because of this eviction drive. There are proven facts where the eviction drive had led to many people homeless and violation of Article 300-A this all form the basis of this research paper. The critical examination on the constitutional validity of Article 300-A in reference to the recent issue that is eviction drives in Assam is Analysed in this research paper.

**ABSTRACT: -**

The term “Eviction” is defined as the process of legal expulsion, evicting tenants out of the rented property as prescribed by the law of the land. The State laws support a property owner to evict their registered tenant only if there is a valid and justifiable reason for such a step. The eviction drive by the government in many districts of Assam which was done against those who are illegally occupying government land, waterbodies, and forests. Most of the people who are evicted by government are Bengali-speaking Muslims. (sharma, 2023)The eviction drive in Assam started in since 2016, when BJP formed its first government in the state. The claim made by Chief minister of Assam on this process of eviction drive is that the people who are illegally occupying the land which belongs to government the evicted people do not have their names registered in National register of citizens (NRC). <sup>4</sup>Then there was an aim for “Process of Rehabilitation” Although there was an affidavit

<sup>2</sup> Violence In Assam During Eviction Drive... Read more at: <https://www.studyiq.com/articles/violence-assam-eviction-drive-free-pdf-download/> , 18<sup>th</sup> May, 2023

<sup>3</sup> Right to property as a Constitutional right, “Property” means “any sort of property, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.” <https://blog.ipleaders.in/right-property-constitutional-right/>, 18<sup>th</sup> May, 2023.

<sup>4</sup> Violence In Assam During Eviction Drive at: <https://www.studyiq.com/articles/violence-assam-eviction-drive-free-pdf-download/> , 17<sup>th</sup> May 2013

submitted in the Guhathi high court by a revenue officer in Darang district he submitted that Rehabilitation of those evicted from government land in districts of Assam would depend on several conditions, including their citizenship status.

The process of Rehabilitation is that where when the people who are living in the government land since long time and when their houses are demolished by government orders then that government should provide them shelter and house facilities to live and provide them new land for their surveillance. (publications, 2016), <sup>5</sup>As the public claim occupancy rights based on since long years of living at the same location, they stress for rehabilitation measures.

At last, this Eviction drive in reference to Assam turned violent because many of them who were evicted belong to Islamic religion and this problem is not only about the land and livelihood but this became about no religious tolerance as they only targeted one religion and other main issue is about Eviction without rehabilitation is flawed, coercive and immoral and no one can support it under any circumstance, especially in case of marginalised groups like Bengali Muslim speaking.

## INTRODUCTION: -

Right to property which is given under <sup>6</sup>Article 300-A of The Indian constitution, In this Article the expression “Property” not only refer to land alone this includes corporal and incorporeal property rights also (**Dwarkadas Shrinivas Of Bombay vs The Sholapur Spinning & Weaving, December 18th, 1953**). When the constitution came into force Right to property was a fundamental right which was given under <sup>7</sup>Article 19(1)(f) and <sup>8</sup>Article (31) of the Indian constitution it mentioned that everyone has right to property and if any persons right against his property in violated it is protected under constitution and it provides freedom to citizens to acquire land and no one can restrict someone to do it.

However, right to property is not a fundamental right anymore, it was removed from fundamental right by 44 amendment act, which made right to property a constitutional right that it was removed from fundamental rights

<sup>5</sup> A timely halt – SC must lay down rehabilitation norms for eviction from public spaces mandatory rehabilitation may prove to be an incentive for encroachment. Further, India does not have a good record on the rehabilitation of evicted people from public spaces. <https://blog.forumias.com/a-timely-halt-sc-must-lay-down-rehabilitation-norms-for-eviction-from-public-spaces/>

<sup>6</sup> Article 300-A of the Indian constitution - If at the commencement of this Constitution  
(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and  
(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings CHAPTER IV RIGHT TO PROPERTY  
<https://indiankanoon.org/doc/1415462/>, 17<sup>th</sup> May, 2023

<sup>7</sup> Article 19(1)(f) It guaranteed to the Indian citizens a right to acquire, hold and dispose of property which was not possible due to economic differences. (This article was omitted by the 44th amendment of the Indian Constitution)  
[https://www.jagranjosh.com/general-knowledge/article-19-1-of-the-constitution-of-india-explained-1632744644-1#:~:text=Article%2019%20\(1\)%20\(f\)%3A&text=It%20guaranteed%20to%20the%20Indian,possible%20due%20to%20economic%20differences.](https://www.jagranjosh.com/general-knowledge/article-19-1-of-the-constitution-of-india-explained-1632744644-1#:~:text=Article%2019%20(1)%20(f)%3A&text=It%20guaranteed%20to%20the%20Indian,possible%20due%20to%20economic%20differences.) 17<sup>th</sup> May 2023

<sup>8</sup>Article 31 of the Indian constitution- No person shall be deprived of his property save by authority of law  
<https://www.constitutionofindia.net/articles/article-31-compulsory-acquisition-of-property/#:~:text=Article%2031%2C%20Constitution%20of%20India,save%20by%20authority%20of%20law.>  
17<sup>th</sup> May, 2023.

and mentioned under Article 300-A where a new chapter was added chapter IV this was added in part XII of the Indian constitution. Then it was held that right to property is not a basic structure of the Indian constitution and it was only a constitutional right (**Jilubhai Nanbhai Khachar v. State of Gujrat, 20 July 1994**).

There are two views of right to property which are socialist and liberal views respectively. Socialist view was distribution of land that is everyone should have equal amount of land. Coming to the Liberal view this is if a person puts effort for that land no one can deprive him to have right over that land this view was interpreted before in Article 19(1)(f) of the Indian constitution which is now removed. The main aim of government to remove Article 19(1)(f) which was done by Jawaharlal Nehru to eradicate poverty. He had referred a doctrine which is doctrine of Eminent Domain which allow the sovereign to purchase the private land for public use. This gave supreme power to sovereign for compulsory acquisition of property. By this 42<sup>nd</sup> amendment they added 9<sup>th</sup> schedule which had curtailed the power of review made by court. They curtailed judicial opinions and by this there were many acquisitions made by the government that is any private property can be taken by government.

By this all then came the question about Article 13 and Article 368 of the Indian constitution which gives power to the parliament to amend the law in the constitution. “Does this law constitutional law or is it only talking about ordinary legislation this question was raised in (**Shankari Prasad v. Union of India, 1951**) then came many cases which questioned the power of legislation and how it can curtail the judicial power was restricted. At last, in the case of (**Kesavananda Bharati vs State Of Kerala, 1973**)<sup>9</sup> – this is longest bench case that is 13 judges where the ratio is 7:6, In this case the omission of Article 19(1)(f) was upheld they said this amendment can be done but, they said basic structure cannot be amended. By this the right to property has become only a constitutional right.

### **Eviction drive in Assam: -**

The eviction drive in Assam which was started in 2016 By Bharatiya Janata Party (BJP). As India is part of 10<sup>th</sup> G20 summit which is an international summit and, in this year, it is India hosting it, as it is prestigious and international summit the ruling party that is BJP government repairing roads, pavements and clearing all the slums and other areas to make everything perfect, As India holds presidency over G20 from 1<sup>st</sup> December 2022 – 30<sup>th</sup> November 2023.

This eviction drive is carried out since 2016 where when the BJP party came into power. More than 7000 Muslims were evicted from their houses from more than 7000 land area which is of 1 acre each (bighas) at the Gorukhuti area in Dholpur in Darrang district of Assam.

The biggest issue here is the “problem of erosion” The displacement of the people from that land and the victims of that eviction where they should find other land to live and to take shelter but then again, they are forced to

<sup>9</sup> **Kesavananda Bharati vs State Of Kerala** on 24 April, 1973 <https://indiankanoon.org/doc/257876/>, 18<sup>th</sup> May, 2023.

<sup>10</sup> The Group of Twenty (G20) is the premier forum for international economic cooperation. It plays an important role in shaping and strengthening global architecture and governance on all major international economic issues. India holds the Presidency of the G20 from 1 December 2022 to 30 November 2023. [https://www.g20.org/en/about-g20/#:~:text=The%20Group%20of%20Twenty%20\(G20,2022%20to%2030%20November%202023.,](https://www.g20.org/en/about-g20/#:~:text=The%20Group%20of%20Twenty%20(G20,2022%20to%2030%20November%202023.,) 18<sup>th</sup> May 2023.



live in the river edge and again the eviction process takes place there and again they should move to some other place. They do not have a proper shelter and security of land whenever the encroachers come, they are forced to move from there again, this way the cycle goes on. As there is no due care taken by the government i.e., lack of settlement procedure this eviction made violation of fundamental and constitutional rights. This eviction affected many people as more than 5000 families had become homeless this makes them difficult for livelihood, health, education, their working place everything is affected and they only depend on the aid given by the NGOs, and eviction also affects the right to education of each evicted child.

The government had power of this eviction under “<sup>11</sup>rule 18 of the Assam Land Revenue Regulation Acts” This was made illegal afterwards in the case of **(Bandhana Goala v/s Assam Board Of Revenue & Others, June 4th 1971)** There was writ petition filed by appellant, it is contented that Rule 18 of the Assam Land Revenue Regulation Act is violating Article 14 of the Indian constitution which is a fundamental right, violating the principle of equality before the law or the equal protection of the law. In this they had referred to the case **(Northern India Caterers (Private) Ltd. v. State of Punjab)** where it was a similar case, the Court struck down Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, as the same was held to be discriminatory and violative of Article 14 of the Constitution. Same was done in this case. However, the state government of Assam had bypassed the court's decision and inserted Article 154-A of the act, which gives govt immunity against this arbitrary eviction So that no one can question them for the process of eviction.

With this we can clearly understand that these eviction drives are going against the due procedure of law and it is violating the natural justice of the evicted people because this eviction drives without proper rehabilitation and no prior notice was given to them and they force people to miserable life devoid of dignity, and security, violating fundamental and constitutional rights of people. By this we can say that these evictions are arbitrary, against the rule of law, and goes against constitutional fairness.

The claims made by the state government of Assam on Eviction are as follows: -

- 1) The first claim made by the government is that the people who were evicted their names were not registered Under <sup>12</sup>National Register of citizens (NRC) so they were known as illegal migrants from neighbouring countries like Bangladesh and although High court had ordered to resettle the evicted families, they had contended that the state government had said they relocate them only when if they prove that they are citizens of India.

<sup>11</sup> Rule 18 of the Assam Land Revenue Regulation Acts states that the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement holder. <http://bareactslive.com/ASS/ass352.htm>, 18<sup>th</sup> May 2023.

<sup>12</sup> Eviction of encroachers from Government Land The Assam Land Records Manual provides the mechanism to keep the record of Government land and encroachment thereon <https://landrevenue.assam.gov.in/information-services/eviction-of-encroachers-from-government-land> , 18<sup>th</sup> may 2023

- 2) The second claim they made was it is not religious intolerance and it was essential for them to demolish as they had to develop that area for better state and they had contended that they had given them notice to evict from there but they did not listen to it and this action made the encroachers to force them to move from that place and that is the reason for demolition.
- 3) The final contention was about Citizenship amendment act, 2019 (CAA) According to this act if they had arrived before 2015 and started living, they are known as citizen of India by this Act had excluded Muslims from it. As, the main purpose of this amendment act was to provide citizenship based on religion who are minority in that particular countries and the act was passed for 6 different minority religious groups they are Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians and these religions only from Pakistan, Bangladesh, and Afghanistan because they are minority in those countries. So, Muslims are not eligible to get citizenship under this act.
- 4) The last contention was on the process of rehabilitation of those evicted from government land would depend on several conditions, including their citizenship status. But the incident which had happened in dholpur in darang district where the two persons including a 12-year-old boy died in police firing and 10 others were injured. They had said that police had to open fire because they had attacked the police officers and government officials.

**Case Laws** Following are the two important case laws in regards of eviction: -

**(Ravi Shankar Joshi vs Union Of India And Others, 2022)**<sup>13</sup> This case is also known as Haldwani case where 4,000 families who were directed to be evicted from their homes within a week in Haldwani in Uttarakhand for occupying land belonging to the railways. The court held that people living there for 40-50 years cannot be “uprooted overnight” and some practical way had to be found including their rehabilitation. The court had directed them to take away their railway lands and demolish them but before that they should provide shelter and other land for those people who are evicted they cannot leave them like that they should take the procedure of rehabilitation also into consideration. The court then issued notice to the railways and the state government seeking their response on how to resolve the issue.

**(Ajay Maken & Ors. vs Union Of India & Ors., 2019)**<sup>14</sup> In this case slum dwellers who possessed the land and right to housing which shall be protected and as the administration did not give them a prior notice about the eviction i.e., they were unannounced. In this case they had questioned the legality of demolition of Shakur basthi in Delhi. The land was owned by Indian railways, over 5000 residents, including women and children, (Idiculla, 2022) were simply rendered homeless. Coming to the judgment of this case it mandates equal rights for slum dwellers and access to the principles of natural justice for slum dwellers. They assert that slum dwellers rights to rehabilitation or to prior notice must be determined as per the law of the land. Here they had interpreted the sentence “Right to city” which implies right of all inhabitants to occupy, use and produce just, inclusive and

<sup>13</sup> Ravi Shankar Joshi vs Union Of India And Others on 20 December, 2022 <https://indiankanoon.org/doc/176036831/>, 19<sup>th</sup> May 2023.

<sup>14</sup> Ajay Maken & Ors. vs Union Of India & Ors. on 18 March, 2019 <https://indiankanoon.org/doc/159570569/>, 19<sup>th</sup> May 2023

sustainable cities which are common good essential to the quality of life. Therefore, it implies responsibility on the government and people to claim, defend, and promote this right.

## Research Answers: -

### 1) Does this eviction drive violating principle of law and going against the concept of natural justice? If yes give reason.

The eviction drives which took place in Assam are absolutely violating some parts of fundamental and constitutional right. As they did not give prior notice to the people and over more than 5000 Muslims speaking Bengali were evicted where they come under minority. The issues of land loss due to river erosion and rehabilitation of displaced communities have never been addressed by the government which is completely against natural justice. Although most of them were citizens of India and they are living there from generations but they were called as illegal migrants by administrators. They have their voter Id and they were participating in voting in elections some of there Ids were missing suddenly. Though there is a provision for the rehabilitation of the people who are affected by floods or land loss due to erosion, the government has not taken any concrete steps to address the issue.

### 2) There should be primary notice given to people as it is the responsibility of the government and the authorities who should be concerned to protect the rights of the people and they should be provided with proper Rehabilitation. Elaborate and analyse this statement about eviction drive?

Yes, there should be primary notice given by administrators and encroachment officials before the demolition of the place. They should also provide them with shelter and livelihood and right to good health conditions and right to education for the evicted kids so that they do not have any future difficulties. Unfortunately, the Assam government had failed to do so. They had failed to protect the fundamental and constitutional rights of the people. As the result has been millions of homeless people have moved around the state in search of lands.

### 3) Is the Assam eviction drive being about land and livelihood or else is religious intolerance?

The Assam eviction drive was also seen as religious intolerance for many people who are evicted. As last year the Hindu Nationalist government that is BJP the ruling party in assam state has targeted more than a dozen Muslims that is more than 7000 families who were Muslims were evicted. The Incident which had taken place in dholpur in darang district of assam where two persons including a 12-year-old boy died in police firing and 10 others were injured. They also violated right to life which is a fundamental right of our constitution and near the incident which took place there was a Hindu community living there but they were not said to evict, Inly the Muslim villages were evicted that is this eviction drive had removed and made 6% of the Assam population homeless that is 1.5 million people were made homeless and they had alleged them as immigrants who came from bangladesh. <sup>15</sup>This is the reason why the eviction drive in dholpur becam sensational.

<sup>15</sup> Question number 4 in the research paper "The eviction drive mainly in dholpur why did it became national sensation" is also mentioned in 3<sup>rd</sup> answer. 19<sup>th</sup> May 2023.

**Conclusion: -**

Eviction is the activity and action of the expulsion of someone from his or her property. The govt across India is taking eviction drives in a routine manner which ultimately becomes a center of controversy in India. It is being criticized for violating the rule of law, going against constitutional fairness, going against the concept of natural justice. There should be proper measures taken by the government to relocate the evicted people and provide them all with good living facilities in regards of food, health, education, job opportunities etc. There is need to display greater commitment to moral values.

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