
CRITICAL ANALYSIS OF THE LAND ACQUISITION IN INDIA

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ABSTRACT

The genesis of the ownership and rights over a land and things attached are a part of the concept of land tenure. This concept revolves around the principle that all land is owned by the sovereign and he/ she has the right to take ownership over it whenever it is deemed necessary. The Doctrine of Eminent domain works on this principle. According to this doctrine, the government has the power to take up privately owned land/property for the purpose of public use. Land acquisition laws are a part of this doctrine.

The doctrine of Eminent Domain provides the State with power to take up land for public use and this power can be delegated to private and public companies to build projects. The Doctrine of eminent domain works on two principles; welfare of the people is the most important thing for the government and the needs of the public are always to be kept over private needs.¹ In India, the Doctrine of Eminent domain is enforced under Entry 42 of the concurrent list, thus giving both the central and state government's authority to make laws with respect to acquisition of land. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (R.F.C.T.L.A.R.R) Act, 2013 regulates land acquisition in India since its enactment in 2013, before which the Land Acquisition Act, 1894 was followed.

The nature of Indian governance since its independence back in 1947 has focused on the public benefit and balance in usage of resources. The Constitution which was enforced in 1950 further brought in terms like 'Socialist' and 'Well-fair State' which have cemented these values into the Indian policy making. Over the years, courts in India have interpreted the doctrine of eminent domain. In the case of *State of West Bengal v. UOI*², the concept of eminent domain was explained as the power of sovereign to acquire privately owned land for public purpose by giving fair compensation without the need of actual consent. In the case of *Kameshwar Singh v. State*

¹ Arthur Lenhoff, *Development of the Concept of Eminent Domain*, 42 COLUMBIA LAW REVIEW, pg. 596–638 (1942).

² AIR 1964 SC 1241.

of Bihar³, the Supreme Court held acquiring land for public purpose after providing fair compensation is the power of the governments under doctrine of eminent domain. Further, in *Chiranajit Lal Choudary v. UOI & Ors*⁴, the acquisition of land under eminent domain was a constitutional power of the government wherein private land could be used for public purposes without consent of the owner after giving compensation.

Doctrine of eminent domain as followed under the Land acquisition Act, causes for the government to negotiate with landowners to provide fair compensation (market value) of land and things attached to it. The district collector is responsible for overlooking the process of land acquisition and providing awards. Land can be taken permanently or temporarily and proper notice is to be provided when land is acquired, except in cases of emergency, where the government has to prove that the urgency was actually present. The 2013 act also calls for rehabilitation and resettlement of displaced persons. There is an actual liability on the government to prove that there is public use of land in case of acquisition and fair value is provided to the land owners.

LAND ACQUISITION ACT, 1894

The original Land Acquisition Act, 1894 was a law passed during the British rule in India which was enacted to overlook the process of land acquisition in India.⁵ The act was passed by the British government to acquire land in India to make factories and other projects to fulfil their needs and to make projects like railways in their captured territory. After independence, this act was used as a tool to acquire land for projects of public interest. In 2013, the Indian government finally enacted, The R.F.C.T.L.A.R.R Act, which replaced this archaic law and aimed to provide for safeguards and measures to protect the rights of property owners.

The Act provided for compensation for the land acquired but had certain shortcomings which the 2013 Act tried to remedy. The 1893 Act was a British legislation wherein basic intention was to acquire the land as quickly as possible and to keep the costs to be paid for such acquisition at a minimum and thus the compensation paid was arbitrary and very less when compared to the market value of property which made people raise their voice against such misuse of power by government. Further, the older act was silent on welfare mechanisms and

³ AIR 1952 SC 252.

⁴ (1950) 1 SCR 869.

⁵ Atul M Setalvad, *A Study into Certain Aspects of the Land Acquisition Act, 1894*, 13 JOURNAL OF THE INDIAN LAW INSTITUTE, pg. 1–69 (1971).

safeguards to keep to protect the rights of property owners and dwellers and thus the new Act of 2013 brought in to rectify the problems the older enactment had.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (R.F.C.T.L.A.R.R.), 2013 was the new legislation enacted by the Indian government to regulate the process of land acquisition in India but to also keep safeguards to keep the rights of property holders.⁶ The new act was a stepping stone towards inculcating the essence of the Indian democracy into land acquisition and brings in various changes including transparency to the process of acquisition of land and assures rehabilitation of those affected.

The Act defines terms like Public Purpose, Land Owner, Just compensation, market value etc. Further it has provisions for Rehabilitation and resettlement for land owners which was missing in the previous act. With the enactment of this Act, the amount of compensation payable when land is acquired has increased as the Act clearly provides for compensation to payable per the market value and also provides for provisions for rehabilitation and resettlement to protect the livelihood of persons whose land is taken away. The Act also provides for compensation for parties other than the land owners and includes compensation as well as other safeguards for sharecroppers and other persons dependent on land for their livelihood.⁷

The new act has provisions that look into the concerns with respect to consent of property owners when property is being acquired. The 2013 Act tries to go about the process of acquisition in a systematic and organized manner with the help of mechanisms like social impact assessment and protects the agriculture sector and the livelihood of farmers by putting restrictions on the use of agricultural land.

1. Right to Livelihood

Article 21 of the Constitution of India guarantees right to life and personal liberty. This right has been further interpreted by the Supreme Court to include the right to livelihood. in the case

⁶ Usha Ramanathan, *Land Acquisition, Eminent Domain and the 2011 Bill*, 46 ECONOMIC AND POLITICAL WEEKLY, pg. 10–14 (2011).

⁷ Santosh Verma, *Subverting the Land Acquisition Act, 2013*, 50 ECONOMIC AND POLITICAL WEEKLY, pg. 18–21 (2015).

of *Olga Tellis & Ors. vs Bombay Municipal Corporation & Ors.*⁸, the Supreme Court discussed the importance of livelihood in sustenance of life as a part of Article 21 but highlighted the proviso of Article 21 wherein there is an exception to procedure established by law.

The LARR act has such a procedure under the law to take away land from the owners for public purposes. Due to the socialistic nature of Indian governance, the R.F.C.T.L.A.R.R Act enacted in 2013 has been introduced. Under the act, the government taking the land has to provide for rehabilitation and resettlement for persons attaining livelihood out of the land being acquired.

2. Social Impact Assessment in land acquisition

Social Impact Assessment was a measure brought into the R.F.C.T.L.A.R.R Act, 2013 to address the arbitrary or unjustified state action by engaging the community in the decision-making process. *SIA can be defined as a study conducted by an independent agency to examine the 'public purpose' of the project and provide justification for the extent of land sought to be acquired and nature and degree of potentially adverse social and economic consequences*⁹.

This assessment brings out information about the parties that shall be affected by said acquisition which can be used to determine the actual need of the project and the loss of rights of people. Further, under SIA, a calculus of entitlement for cash compensation and rehabilitation and resettlement benefits is prepared for benefit-cost analysis of the economic feasibility of a project.¹⁰ The involvement of local authorities and the community in the SIA thus brings out the ground reality and can act as a safe-guard for the right to livelihood guaranteed under Article 21 of the Constitution.

Therefore, SIA can be called a preventive mechanism that is in place to scrutinize the process of land acquisition and to ensure that land is acquired after careful consideration in a transparent and participatory manner. SIA's importance can be seen with respect to the Sardar Sarovar Dam project which was launched in the 1980s and inaugurated in 2017. There was no proper analysis of the actual number of people being affected by the project and thus the rehabilitation award never reached a major number of persons affected by the project after such a long period of time has passed. Thus, it can be concluded that with SIA, the actual situation and benefit of

⁸ 1985 SCC (3) 545.

⁹The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 4, Act no. 30 of 2013, Acts of Parliament, 2013 (India).

¹⁰ Dhanmanjiri Sathe, *Land Acquisition Act and the Ordinance: Some Issues*, 50 ECONOMIC AND POLITICAL WEEKLY, pg. 90–95 (2015).

the project can be assessed and thus the government can figure a plan as to making the project as well as compensating the affected landowners/dwellers.

3. Deciding of Market Value and Just Compensation Under LARR Act, 2013

Land Acquisition is the process through which the government can acquire a piece of land from its original owner for the greater public interest. Compensation has to be paid to the owner of land and in some cases rehabilitation and resettlement has to be provided. The R.F.C.T.L.A.R.R Act of 2013 has provisions that provide fair compensation to property owners whose land is acquired under the Act. This Act further aims to bring transparency to the process of acquisition of land to set up various projects but assure rehabilitation of those affected.

Section 26 of the TRTF CAT in LARR Act 2013 talks about the Collector being responsible for deciding the Market Value of the Land by analyzing previous sales and to decide a price that is agreeable by the owner of the land. This provision of the act highlights the aim of the Act to balance both sides and to not undermine the interests and rights of landowners whilst working towards public interest.

The Act of 2013 is a socialistic legislation and aims at creating a systematic relation with the local authorities when Acquisition is done. Further a justified value of the land has to be given to the owner and the rehabilitation and resettlement of affected persons has to be done under the Act.

The Collector has been given powers to decide matters and the Act also appoints appellate authorities and an appeal to the high court if still the grievance isn't solved. The definitions under the act talk about various terms which are material to the Land Acquisition process.

'Market Value' of a land has been highlighted in the case of *Maj. Gen. Kapil Mehra v. Union of India (UOI)*¹¹ where the Supreme court laid down the criteria to be followed whilst deciding the market value of a Land. Further the 2013 Act also accounts for the things attached to the land and the total compensation amount is to include the value of such attachments with the Market value payable within 12 months of the declaration of acquisition.

Further the Supreme Court through various judgements has interpreted the meaning of Market Value and what is just and fair Compensation both before and after the implementation of the

¹¹ 2014 (145) DRJ 497.

2013 Act. For e.g., *In Haridwar Development Authority v. Raghubir Singh and Others*¹², the S.C. determined the difference in value of two different types of land as to the things attached to the land, the area in which the land is and the use and development that can be possible on the land.

4. Rehabilitation and Resettlement Award¹³

Sections 31-42 talk about the Rehabilitation and Resettlement Award under the LARR Act, 2013. Section 31 gives the collector power to pass Rehabilitation and Resettlement Awards for each affected family as per the second schedule of the act. The essentials that need to be there in the award are also mentioned under section 31. Section 32 gives the collector the duty to ensure that there is proper infrastructure in case of resettlement. Section 33 allows the collector to make corrections to the award given to him/her within 6 months from passing of such award with immediate notice of such correction to all interested parties. Sections 34-36 give powers to the Collector with respect to passing of award. Section 37 talks about the finality of the awards of the collector. Section 38 allows for possession of land after compensation is provided and the Rehabilitation and Resettlement has to be completed under the supervision of the Collector. Section 39 talks about not displacing a family multiple times and providing them with additional compensation if it is necessary. Section 40 gives the Collector power to take possession without compensation paid with a notice on the orders of appropriate government, in case of urgency. Further, the criteria and conditions as to such exceptional acquisition which are to be followed by the appropriate government and the Collector are also provided under this section. Section 41 determines special provisions as to land acquisition in Scheduled areas. Section 42 talks about the continuance of benefits including reservation of scheduled castes and tribes in the resettlement areas that were there in the acquired areas.

5. Procedure & manner of rehabilitation and resettlement

Sections 43-47 talk about the procedure and manner of rehabilitation and resettlement under the LARR Act, 2013. Under Section 43, the Act gives the State Government the power to appoint an officer not below the rank of Joint Collector or Additional Collector or Deputy Collector or equivalent official of Revenue Department to be the Administrator for Rehabilitation and Resettlement with respect to a project where there is involuntary

¹² (2010)11 SCC 581.

¹³ Michael Levien, *Rationalising Dispossession: The Land Acquisition and Resettlement Bills*, 46 ECONOMIC AND POLITICAL WEEKLY, pg. 66-71 (2011).

displacement. Under section 44, the State Government has to appoint a Commissioner for rehabilitation and resettlement who is to supervise the formulation and implementation of such schemes and plans. Section 45 says that in projects Acquisition of more than 100 acres, R&R Committee shall be established to monitor the implementation of the scheme at the project level and National Monitoring Committee is appointed at the central level. Section 46 talks about procedures to be applied in case of private purchases of land over a certain amount and the application of Rehabilitation and Resettlement Scheme on the satisfaction of the Commission. Section 47 allows the quantification of rehabilitation and resettlement into monetary value if it fulfils all obligations of the displaced party.

COMPARISON OF LAA 1894, RFCTLARR 2013 AND RFCTLARR 2015

Parameters	LAA, 1894	RFCTLARR, 2013	RFCTLARR, 2015
<i>Public Purpose</i>	Includes acquisition for use by projects for public use.	Includes acquisition for use by projects for public use.	Includes acquisition for use by projects for public use.
<i>Consent of affected purpose</i>	No provision in the Act and thus process of acquisition is less time consuming.	Under this act, it is mandated to take consent of at least 80% affected persons and thus the process of land acquisition is more time consuming.	Same effect as 2013 Act.

Compensation	Compensation paid is way less when compared to the 2013 and 2015 Act even though cash compensation along with the interest was paid to the affected people.	Twice the market value is provided as compensation under this Act, if land is in urban area and Four times the market value is provided as compensation under this Act, if the land is in rural area, which increases the cost for acquisition.	Same effect as 2013 Act.
Market Value	The market price is calculated by checking recent sale deeds in that area, instead of calculation as per land use under the Act which increased the value of land.	Market price is to be calculated as higher of: 1. Value in Stamp Duty papers or 2. Average of top 50% of sale deed value in that area. Thus, market value would be higher.	Same effect as 2013 Act.
Solatum	Only 30% of market value is provided that is lesser than 2013 and 2015 Act.	100% solatum is provided making the compensation even more though increasing the cost of the project.	Same effect as 2013 Act.

<p>Rehabilitation and Resettlement</p>	<p>Though no such provision is there under this Act and so there were a lot of objections against projects during the time this Act was enacted.</p>	<p>This Act has obligated the government to provide the affected persons with similar conditions of livelihood as before and take steps to help them with job security and livelihood to help reduce the effect of the acquisition to them.</p>	<p>Same effect as 2013 Act.</p>
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CONCLUSION

Land Acquisition has always been a controversial process which is greatly opposed by property owners as they lose land which is a limited resource. This acquisition has to be done for public purpose and so private rights are compromised for the greater good of the public. The 1894 Act was an English legislation which only focused on the benefit of the government by keeping the costs of compensation as low as possible. After independence, with the freedom given to the people and the importance given to the voice of people, there was a lot of opposition to the procedure of land acquisition as per the 1894 legislation. Therefore, the LARR Act of 2013 was enacted.

The R.F.C.T.L.A.R.R. Act, 2013 has led to a great increase in the transparency and justness in the land acquisition process in India. The Land owners are being given justified value of their land and get a say as to the acquisition which coincides with the principles of natural justice. There is still a lot that can be done to make this process smoother and transparent. The paper talks about Rehabilitation and resettlement provisions and how they make a lot of difference to the previous act in terms of preserving the rights of the land owners and also elucidates other benefits of the new act over the old one.

There are still concerns regarding the impact that the newly introduced processes of social impact assessment and prior consent would have on the building of infrastructure and on industrialization and urbanization. The paper concludes on the note that though land acquisition has become a justified process with proper measures to keep in mind rights of all involved parties, there is still a lot of improvement and innovation that can be brought to preserve the rights of the land owners and to provide for the loss caused due to the acquiring of land.