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Compulsory Land Acquisition and Constitutional Protection of Fair Compensation in India

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Compulsory Land Acquisition and Constitutional Protection of Fair Compensation in India

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Abstract

Compulsory land acquisition, the exercise of the State's sovereign power of eminent domain, sits at the intersection of developmental imperatives and constitutionally protected property rights. In India, this tension has assumed particular urgency given the scale of infrastructure development, industrialisation and urban expansion that have displaced millions of people, often without adequate compensation or meaningful rehabilitation.

This dissertation undertakes a critical doctrinal, comparative and qualitative analysis of India's compulsory land acquisition regime, with particular focus on whether the existing legal framework successfully reconciles public purpose with the right to fair and just compensation. The study traces the historical evolution of land acquisition law, from the colonial Land Acquisition Act, 1894, with its State-centric, broadly defined conception of public purpose and inadequate compensation mechanisms, to the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act), which represents a paradigmatic shift towards a rights-based, participatory and welfare-oriented approach.

The constitutional framework governing land acquisition is examined in depth, tracing the transformation of the right to property from a fundamental right under Articles 19(1)(f) and 31 to a constitutional legal right under Article 300A following the Forty-Fourth Amendment, 1978. The dissertation critically evaluates the four core pillars of the 2013 Act, the definition of public purpose, the mechanism of compensation (including market value, solatium and statutory multipliers), Social Impact Assessment (SIA), and rehabilitation and resettlement (R&R), assessing both their normative architecture and their practical effectiveness.

Through comparative analysis of land acquisition frameworks in the United States, United Kingdom, Australia, China, Japan and the Philippines, the study identifies international best practices, including negotiated acquisition models, the "value to the owner" compensation standard, and participatory resettlement planning, and evaluates their applicability in the Indian context. Landmark judicial decisions of the Supreme Court and High Courts are examined to assess the judiciary's evolving role in shaping compensation jurisprudence, upholding procedural safeguards and protecting the rights of displaced persons against arbitrary State action.

The research reveals a persistent implementation gap between the progressive legal framework established by the 2013 Act and ground-level realities, characterised by systemic undervaluation of land, ineffective SIA processes, uneven R&R delivery, information asymmetry and limited meaningful community participation. The dissertation argues that fair compensation cannot be reduced to a financial transaction; it must encompass livelihood restoration, social justice and recognition of the non-economic dimensions of displacement. It concludes with targeted legal, institutional and policy reforms, including a structured balancing test for public purpose, independent valuation bodies, binding R&R obligations and substantive participatory mechanisms, aimed at building a land acquisition regime that is not only legally sound but also socially legitimate and constitutionally just.

Keywords: *Eminent domain · land acquisition · fair compensation · public purpose · RFCTLARR Act 2013 · rehabilitation and resettlement · social impact assessment · Article 300A · displacement · property rights.*

Introduction

The subject of land acquisition has consistently proved itself to be one of the most complicated, contentious and sensitive domain of governance in India. With a country racing towards rapid development and infrastructural growth the requirement for land has become of paramount importance for diverse public uses such as, construction of roads, railways, industrial corridors, urban housing, etc. All this inevitably lead to confrontation between the rights of individuals over their property and that of the State's interest and obligation towards the socio-economic welfare of its people. The issue, therefore, in land acquisition is not only about acquiring land but about acquiring land in a manner that balances the exigency of development with concepts of equity, justice and constitutionality.¹

This conflict arises from the power to acquire land compulsory, i.e., eminent domain, the principle whereby the State acquires private property for public use. This power cannot be an unrestrained power as it has to be coupled with judicial and statutory checks and balances on the arbitrary deprivation of the property of an individual for the purposes of nation-building or economic development of the State. This power has been subject to various legislative amendments and judicial interpretations over the years reflecting a sustained endeavor to strike a balance between the conflicting interest of the State and the affected individual. Even though it is not a fundamental right anymore, right to property is still given immense constitutional sanctity under Article 300A of the Constitution of India. Article 300A explicitly States that no person shall be deprived of his property

¹ Walter Fernandes, "Development-Induced Displacement: A Human Rights Issue" (2008) 50 Journal of the Indian Law Institute 381.

save by authority of law. This is indeed an indispensable check against the arbitrary decision making of the State while acquiring the land of individuals, which in turn implies that the decision has to be made by due process of law. And by fair interpretation of this article, coupled with common sense and equity, it also implies fair compensation to the individuals concerned.²³⁴

The legal regime for land acquisition in India has evolved from State-centric to a rights-based approach. The Land Acquisition Act, 1894, was a colonial law that controlled the entire land acquisition process in India for over a century. It was essentially a State-driven law conferring broad and unfettered powers to the government to acquire land for broad and vaguely defined purposes - "public purposes." The 1894 Act did not contain a lot of protections for landowners being expropriated and compensations awarded were either very arbitrary or inadequate and did not reflect the socio-economic concerns of those whose lands were acquired. Nor did it consider the consequences for those who lose their land on their livelihood, social structures, community life, etc. Over time, increasing popular dissatisfaction, judicial interventions and social movements, exposed the discriminatory nature of the 1894 regime. Mass displacement due to developmental projects since independence - especially in post-independent India - has caused distress to millions and resulted in several studies being conducted which found gross misuses of the 1894 Act and lack of rehabilitation and resettlement plans. The anti-dam movements, in particular the Narmada Bachao Andolan, focused attention on the human cost of development-induced displacement and demanded a more just legal framework, culminating in the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The 2013 Act changed the paradigm of land acquisition in India. Instead of emphasizing state intervention, it tried to create an equitable balance between public purpose and private rights and, therefore, embedded in its fabric elements of fair compensation, transparency and social participation in land acquisition decisions. The 2013 Act also redefined "public purpose", to curb its misuse, and made the mechanism of compensation more responsive. Higher compensation to landholders in the form of money on the basis of market value as well as solatium and additional compensation for any movable or immovable property acquired along with the land are its most noteworthy features. Equally significant is the provision of Rehabilitation and Resettlement (R&R) in the Act, as it addresses the reality that the loss of land is not just to landowners but also to an entire community that depends on the land for its subsistence. Providing for alternative

² Shreya Atreya, "The Intersection of Eminent Domain and Human Rights" (2017) 9 NUJS Law Review 45.

³ Rajeev Bhargava, "Rethinking the Right to Property" (2009) 44(39) Economic and Political Weekly 25.

⁴ Namita Wahi, "Land Acquisition, Development and the Constitution" (2017) 52(18) Economic and Political Weekly 41.

accommodation, livelihood, and compensation, the law tries to cater to the socio-economic problems created by eviction. In addition, it also brought in the element of accountability by introducing the mandate of Social Impact Assessment (SIA).⁵⁶ Notwithstanding the commendable framework of the 2013 Act, the implementation has met with difficulties, mainly relating to procedural hassles, delay in land acquisition, market value disputes and disparity in implementation from State to State, leaving much to be desired on the aspect of actual provision of adequate compensation and rehabilitation to the affected persons. The efforts of some State Governments to circumvent the salient features of the 2013 Act are not unheard of and may seriously undermine its purpose.

Concept of Compulsory Acquisition / Eminent Domain

One of the most extensive powers of the contemporary state is the compulsory acquisition of property, the notion frequently encapsulated within the legal expression eminent domain. Eminent domain implies that a sovereign has the legal power or the right to seize private property for public use without the owner's consent. It symbolizes the problematic intersection of private property rights and the perceived demands of the public, where private ownership is sacrificed in favour of what are deemed the interests of the community. The idea, although generally acknowledged as a legitimate component of government required especially in development and infrastructure projects, has been persistently debated regarding its justness, validity and fairness in as much as it affects, primarily, disadvantaged people. The principle underpinning the concept of eminent domain is that the state, being the sovereign entity, has a supreme dominion over all the land in the state⁷; that this sovereignty over land is not granted by or based on statute, but that the power derived from it is merely recognized and regulated by statute. It rests on the notion that for the state to effect certain works that will benefit society - the building of roads, dams, industries, public utilities, etc. - it must acquire the land that belongs to a private owner. This can only be done provided that the works have been proposed for a public purpose and compensation is provided for the private land to be acquired.⁸ Compulsory acquisition in India has a rich colonial history; a legacy which dominates the landscape of land acquisition law for more than a century has been the Land Acquisition Act of 1894, introduced during British rule. This law served the purpose of acquisition of land for colonial administration and economic interests, with little regards for the interest and well-being of the local inhabitants

⁵ Sanjoy Chakravorty, "Land Acquisition in India: The Political Economy of Changing the Law" (2013) 48(7) Economic and Political Weekly 29.

⁶ Usha Ramanathan, "Eminent Domain, Protest and the Discourse on Development" (2011) 46(26) Economic and Political Weekly 10.

⁷ Michael Cernea, "Impoverishment Risks and Reconstruction Model for Resettling Displaced Populations" (2000) 25 World Development 1569.

⁸ H.W.R. Wade & C.F. Forsyth, Administrative Law 757 (11th edn., Oxford University Press, 2014).

and people.⁹ This law vested a wide scope of discretionary powers in the state, with extremely minimal procedural protection or remedy for the aggrieved persons. Concept of public purpose was interpreted very broadly in this act, so much so that the state could justify acquisition in any situation. Despite provision for compensation, the amount was very meager and not equivalent to the loss suffered by the aggrieved persons. After independence, the Indian state maintained the structure and scheme of colonial land acquisition, yet applied it to the agenda of development, wherein, land acquisition became a tool for implementing development projects,¹⁰ such as industrial development, development of infrastructure etc and agrarian reforms. Though initially property was a fundamental right, leading to a constitutional safeguard for the rights of the people from arbitrary acquisition, series of constitutional amendment followed which ultimately culminated into removing the right to property from the list of Fundamental Rights by 44th amendment in 1978. Article 300 A made property a legal right and hence lowered the level of judicial review by the judiciary, thus increasing state power for compulsory acquisition. With the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the modern statutory scheme relating to compulsory acquisition in India has witnessed sweeping reforms.¹¹ The Act is an endeavor to eliminate the drawbacks of the colonial Act by embodying concepts of fair compensation, transparency and accountability.¹² The law attempts to achieve a balance between the developmental needs and rights of affected persons by obliging the government to conduct a social impact assessment, securing consent in some cases, compensating at higher rates and rehabilitation and resettlement being facilitated. The obstacles to an effective implementation of the provisions continue to be a reality.¹³ The question of 'public purpose', the most fundamental justification for acquisition under eminent domain, remains a contentious issue. The term public purpose has consistently been left undefined and widely interpreted to enable the state broad latitude in the selection of projects. This broad construction of the concept to facilitate economic development often leads to abuse and litigation where private interests can be masqueraded as public purpose. The vague definition of public purpose remains a cause for both legal and ethical concerns.¹⁴

⁹ B.B. Pande, "Land Acquisition and Compensation in India: A Historical Perspective" (1994) 36 *Journal of the Indian Law Institute* 27.

¹⁰ V.G. Ramachandran, *Law of Land Acquisition and Compensation* 23 (Eastern Book Company, 2011).

¹¹ S. Chakravorty, "The Price of Land: Acquisition, Conflict, Consequence" (2013) 48(52) *Economic and Political Weekly* 49.

¹² K. Ghatak & P. Ghosh, "The Land Acquisition Bill: A Critique" (2011) 46(41) *Economic and Political Weekly* 65.

¹³ A. Mahalingam & A. Vyas, "Comparative Evaluation of Land Acquisition and Compensation Processes across the World" (2011) 46(32) *Economic and Political Weekly* 94.

¹⁴ P. Ramanathan, "Public Purpose and Land Acquisition in India" (2014) 56 *Journal of the Indian Law Institute* 112.

Compensation, which is prescribed to offset the disadvantages suffered by owners and occupants, has also been criticized for its inadequacy. Compensation is usually assessed on the basis of market value of the property and an additional amount for solatium given due to compulsory acquisition. This is neither the correct nor a comprehensive valuation of losses. Land is not only a source of economic utility but also a source of livelihood, social status and belonging. The eviction leads to loss of work, disintegration of social relationships and psychosocial trauma which the compensation can hardly address.¹⁵

Vulnerable groups such as tribal peoples, small peasants and landless laborers are greatly affected by forced acquisition; because their right to property, lacking formal recognition, often excludes them from entitlement to compensation. Moreover, their dependence on land and other resources for subsistence makes them particularly susceptible to the detrimental consequences of displacement. This is aggravated by the individualistic notion of rights emphasized by the law and neglect of community-based and collective rights. Eminent domain, as such, has been called unjust by several scholars and commentators for being a perpetuator of economic and social disparities.¹⁶

In India the judiciary has significantly interpreted and influenced the doctrine of eminent domain. In the initial stages the courts have been deferential to state authority, while highlighting the necessity of development and public purpose. However over time there has been a gradual shift towards more individual rights based protection¹⁷. The recognition of the right to life, under article 21 of the Constitution of India, as also encompassing right to livelihood, provided a strong constitutional ground for seeking relief against unjust acquisitions. Nevertheless judicial intervention was often limited by the ambit of law and reluctance to intrude upon policy matters undertaken by the state.¹⁸

¹⁵ L. Wadhwa, "Land Acquisition and Compensation: Problems and Perspectives" (2010) 52 *Journal of the Indian Law Institute* 234.

¹⁶ Shyam Divan, "Environmental Law and Land Acquisition" (2006) 1 *Indian Journal of Environmental Law* 45.

¹⁷ A. Chakrabarti & A. Dhar, "Dislocation and Resettlement in Development: From Third World to the World of the Third" (2012) 47(1) *Economic and Political Weekly* 41.

¹⁸ S.P. Sathe, "Judicial Activism in India: Transgressing Borders and Enforcing Limits" (2001) 18 *Oxford Journal of Legal Studies* 35.

Critiques of Government Acquisition Practices

Throughout India's history, government acquisition of private land has been a subject of extreme critique-academically, judicially and policy-wise-because the power of the State to acquire land is generally in conflict with the rights of private individuals over their property. One of the principal criticisms relates to the broadly-and vaguely-construed concept of "public purpose" that permitted the State to acquire land for various ends which not infrequently indirectly helped private companies. Critics assert that even during the colonial regime and after its termination under the Land Acquisition Act, 1894, the definition was not sufficiently clearly laid out. This afforded "wide and unfettered" power of discretion to the State. Consequently, the majority of acquisitions were of land belonging to the small farmer or the marginalized group. Despite the 2013 legislation, 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act', the wide nature of some categories, for instance infrastructure or PPP projects, still allows for misuse.

The other crucial critique is about the disproportionate power relationship between the State and landowners. The eminent domain clause, based on the premise that the public good supersedes individual rights, has at times been implemented by pushing the people displaced to the sidelines. Although modern legislation demands consent and has Social Impact Assessments (SIA), scholars and activists point out that such protections are not always as strong in practice. The emphasis is on compliance with procedures; even if the procedure is followed, the persons affected might not actually have been involved in the decision-making process and have been sidelined. This has also led to criticism that land acquisition is 'technocratic' and 'top-down' instead of participatory and democratic.

Compensation procedures also serve as a central pillar of criticism. Although the 2013 Act demands higher compensation (4 times market price in rural areas), there still remains an issue with how the "market price" will actually be determined. Studies show that the land market in India is often 'highly imperfect,' with cases of 'under-reporting of land transactions, lack of detailed and accurate records' leading to compensation that would probably not be adequate. Further, proponents of a holistic compensation approach emphasize that monetary compensation alone would not make up for the loss of livelihood and the cultural, spiritual, social and individual significance of land especially in rural and tribal India.

Concerns over displacement and rehabilitation deficiencies have also been raised by various actors. Large-scale acquisition projects, in particular in industry and infrastructure sector, have been known to displace vulnerable groups such as tribal people and agricultural laborers. The 2013 Act includes, for the first time,

rehabilitation and resettlement (R&R) as an intrinsic aspect of the acquisition process; however its effectiveness is inconsistent. According to some experts, the poor functioning of R&R due to various factors such as delays, bureaucratism, and lack of accountability has led to a lowering of the living standards of the displaced persons, thereby questioning the fairness and justice of acquisition.¹⁹

A major criticism is about the abuse of the urgency clause. According to the earlier laws, the state could claim that the acquisition was of urgency so as to dispense with the necessary precautions such as public hearings and objections. The argument is that, such a power has often been used in non-urgent matters, which denies land owners of due process. The 2013 Act makes the provision about the urgency clause limited to certain situations like national security and natural disasters, but there are still fears about its abuse under political and administrative pressures.

The analysis of the land acquisition problem also has another institutional dimension of governance issues. The centralized decision making in the hands of administrative officers like District collectors has been criticized as it causes obscurity and could possibly be corrupted. Furthermore the absence of an independent and efficient land valuation agency does not help these concerns as valuations could possibly be guided by local power circles and interest groups. Local self-government institutions such as the Gram Sabha have also failed in practice as is expected by the legislation and the critics believe such bodies should be empowered to promote effective participation from the bottom up.

The intersection of land acquisition policies and other socio-economic policies has also become an area of criticism. Critics maintain that the process of economic liberalization post-1990s has spurred demand for land on the part of various industries and urban developers in relation to agrarian uses and environmental protection concerns. It is perceived by many that in such processes the State is primarily assisting the corporate interests rather than playing the role of a neutral referee balancing various rights and interests. Several high-profile confrontations that took place in Singur, Nandigram and so on highlight the nature of social violence that occurs if the process of acquisition is perceived as unfair and coercive.

Despite an attempt at a holistic doctrine-and comparative examination of land acquisition and compensation systems in this dissertation, several avenues deserve further academic study. These areas are important not only for their intellectual contributions but also for laying the groundwork for improved and fairer policy intervention in the future.

¹⁹ Asian Development Bank, *Involuntary Resettlement Safeguards: Policy Principles*, Manila, 2007,

Firstly, empirical field-based research on the realities faced by displaced is urgently needed. A vast number of existing literature, including this dissertation, mainly rests on doctrines, statutes and secondary sources. Comparative studies could incorporate extensive surveys, ethnographical research and well-designed interviews with project affected communities to capture the socio-economic, psychological and otherwise multifaceted effects of land displacement. This would address the deficiency between legal adequacy and ground reality.

Secondly, inter-disciplinary study integrating law, economics and environment are needed more urgently. Land acquisition is intrinsically tied to ecological degradation, urban development and redistribution of economic resources. A more in-depth analysis on ecological cost of land acquisition and long term viability in rapidly urbanizing context need to be undertaken by studies focusing on interdisciplinary collaboration. Thirdly, comparative studies across various developing countries could identify applicable best practices suitable for the ground context of developing countries. While this study draws insights from few developed practices, in-depth comparative research exploring specific contexts in Africa, Latin America and Southeast Asia can contribute to policy learning.

Fourthly, there is scope for empirical research on adequacy of compensation and litigious outcomes using quantitative methodology. Studies with robust empirical evidence could shed light on the relation between adequate compensation and reduction in disputes, or procedural reforms to improve displaced communities satisfaction. Fifth, there could be research on technology interventions in land acquisition that enhance the transparency and efficiency. Use of land databases, title records based on block chain, GIS mapping for the acquisition processes can prevent disputes based on valuation and title ownership.

Last, there needs to be more normative studies that deal with the dilemma between the need for development and constitutionally guaranteed right to property, dignity and livelihood. It would also involve studies whether the legal regimes are in harmony with the constitution morality and human rights jurisprudence. In conclusion, future studies should attempt to depart from merely Doctrinal studies to more empirical, interdisciplinary and technology oriented approach for comprehensive study of land acquisition.

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