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## **LAND ACQUISITION: THE ONLY PROCEDURE OF DEVELOPMENT?**

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### **ABSTRACT**

The research principally emphasis on the brief functioning of laws of land acquisition. Studies on the above mentioned subjects have been formulated and have been tested empirically which indicates its credibility. The author has also discussed the political influence towards any projects by acquiring land. A hostile consequence has been dealt by the author in detail. This research paper will scrutinize the history of property rights and how gradually the property were acquired by the sovereign authority in the sake of public purpose. The author main objective is to make a clear distinction between the law in practicality and the law which are enforced in the current time. The author has limited her research by only discussing the cases of New Delhi and Noida only since most of the companies establishes in the capital.

## 1. INTRODUCTION

***“Whenever there is a conflict between human rights and property rights, human rights must prevail”- Abraham Lincoln.***

The above mentioned quote by the great Abraham Lincoln truly match the current scenario with respect to land acquisition. We all are so blessed to have land as a gift provided by the nature and at the same time it has an abundant function of sustenance for every creature in this planet. For a nation prosperity and development, land plays an eminent role by having a distinct yielding quality, its geographical factor, and its inherent valuation along with the extent of the territory. Land symbolizes one's personal status. India's population is proliferating massively and due to this urbanization is reaching at its peaks.<sup>1</sup> Due to this lands are acquired by the government. Land is considered as wealth and it has an amazing value because of development by building several projects. None of the land are ownerless either they are owned by some individual or else by the government. Hence like other subjects they are also governed by some legislations.<sup>2</sup> Many infrastructural development has bound the government to acquire more and more lands. India is not novel to this very concept, its being on platform since colonial era. Before the enforcement of Constitution of India i.e. pre constitutional era the lands were governed by the ordinary law of the land. During the British period the property laws were governed by ordinary laws i.e. Land Acquisition Act of 1870 and there was no constitutional guarantee in order to acquire one's land, hold it and enjoy it. As time passed and development arises several laws were enacted to meet the demands of the civilization and the Land Acquisition Act of 1894 is one of them which was responsible for the acquisition of private property for the sake of public purposes and in return demarcate the market value of compensation. Since no constitutional guarantee was given at that era any law could be amended anytime which was considered detrimental to the owner of the land. Endless suit were filed by the parties and innumerable judgments and orders were passed but without any constitutional guarantee the compensation which were granted to the aggrieved were generally inadequate and erroneous. The author in this said piece of research will briefly discuss

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<sup>1</sup> Srinivas, An Exclusive Commentary On The Right To Fair Compensation And Transparency In Land Acquisition Rehabilitation And Resettlement Act. 2013( By| Premier Publishing Company)

<sup>2</sup> Indra Deva, 'Property Relations in India and the Social Order: The Perspective of Social Change', (G.S. Sharm ed. 'Property of Relations Independent India: Constitutional and Legal Implication' Tripathi Publication, New Delhi, 1985), p 36.

the laws related to land acquisition and deal the cases which took place in New Delhi and Noida along with this she will discuss the lacunae and suggest some guidelines for the betterment and welfare of the aggrieved person.

Land acquisition is the procedure in which the government either central or state obtains private lands from a private person to increase industrialization, infrastructural accommodation for business and to reach the way of development by giving compensation to the private person from whom they took the lands also the government is liable to settle them back in some other place. But the main issue is whether the landowners get accurate compensation along with the settlement. Many cases reflected the devastating scenario of the said landowners. State has continuously failed to promote the social justice which is also mentioned under the preamble of Indian constitution, through land acquisition act on the sake of public justice. The main lacunae lies in the resettlement and compensation offered to the people in return to their land. The present research paper will discuss in detail the compensation and the settlement by the virtue of landmark cases. The Author has brush up the existing literature on the land acquisition law and its lacunae.

## **2. LAND ACQUISITION AND THEIR LAWS**

The procedure of acquiring private land by the government is called acquisition of land. The acquisition is done for the public purpose by moving towards the platform of development through building infrastructure, industrialization and urbanization. Government can literally do anything and at the same time hold authority to acquire your land because public welfare is the paramount also public necessity is greater than the individual necessity. The government acquire the land by the aid of several acts which are enacted by the parliament. Major laws concerning land acquisition are mentioned below-

### **A. Bengal Regulation of 1824**

By the virtue of this act the concept of land acquisition is initiated. Britishers for the very first time acquired the land for the public welfare. The said Act was enacted in those areas which were under the control of Fort Williams.

### **B. Building Act XVIII of 1839**

The same act was enacted in the state of Bombay but after few years the said act got amended in 1852. This was enforced mainly in the presidency towns. Public lands were acquired for making roads, canals, establishing companies and factories for the sake of public welfare.

### **C. Land Acquisition Act 1857**

This act abolished all the previous prevailing laws. The Britishers wanted to improvise the procedure for acquiring land and introduced the concept of compensation for the very first time under the act. Collector was given power to regulate the amount of compensation. Arbitrators has the jurisdiction to deal the cases of the said act.

### **D. Land Acquisition Act. 1894**

But as development arises the arbitrators were not considered compatible and in some cases they were also found to be corrupt. This act remained the primary source of legislation and tried to amend all the lacunae prevailing in the earlier acts. The Act does not enlightened any provision of concept and the landowners heavily criticized the said law. But it still continued for a long time. There was no transparency in determining the affected parties.

### **E. Right to fair Compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.**

This above-mentioned act brought a drastic change by replacing the Land Acquisition Act 1894. Even this act did not mentioned the concept of CONSENT for acquiring private land for public purpose. This act introduced the concept of SIA i.e. social impact assessment which is a mandatory provision before acquiring any private person land. SIA function is to determine whether the land which is acquired by government truly falls in the list of public welfare and whether the land is positioned in the least displacing area which necessitates the basic slightest amount of land. This act introduced the concept of rehabilitation along with compensation. The land prohibits the acquisition of lands which are multi crop irrigated. The land if not used by the government in the coming five years after the acquisition then it will reappearance to the proprietor of the land.

## F. Constitutional Provision

The Indian constitution is Quasi-Federal as stated by Dr. B.R. Ambedkar, as it has both unitary and federal feature. The seventh schedule of the Indian constitution deals with the 3 list i.e. Union, State and concurrent. The said schedule has distributed the powers between Union and States while demarcating the concurrent jurisdiction between union and states. 'Land' falls under the concurrent list. So the acquisition of land can either be done by state or central, they both have jurisdiction with respect to land.

Art. 300A<sup>3</sup> of Constitution of India which was inserted by the virtue of 44<sup>th</sup> Amendment which says that 'No person can be deprived from his land except by any prevailing statute'. Hence, land acquisition governs the law relating to land acquisition. Acquiring any one's land without any governing statute will be considered as illegal. Acquiring one's land without compensating them will violate Art. 14<sup>4</sup> of the Indian Constitution which is also considered as a basic structure in the case of **Keshavnanda Bharti v. UOI**.<sup>5</sup> So the said Act enumerates the provision of assessment and compensation.<sup>6</sup>

In addition to this Art. 31<sup>7</sup> of Indian Constitution protects the property of citizens and states that it can only be acquired by the virtue of legislation and acquired only for public purpose. The term

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<sup>3</sup> Art. 300A- No person shall be deprived of his property save by the authority of law.

<sup>4</sup> Art. 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

<sup>5</sup> AIR 1973 SC 1461.

<sup>6</sup> Ram Jiyaman v. State of Uttar Pradesh, AIR 1994 SC 38.

<sup>7</sup> Article 31, Constitution of India 1950

(1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(a) The provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(b) The provisions of any law which the State may hereafter make—

‘Compensation’ created a massive debate. Whenever land is acquired by the government, the aggrieved party immediately approach to constitutional courts in order to enforce their fundamental rights which was enshrined in Art. 19(1) (f). In order to overcome this problem the Art. 19(1)(f) was removed as a fundamental right by 44<sup>th</sup> amendment and the same right was transformed as constitutional right. There is a distinction between ‘buying and selling of a land’ and ‘acquiring a land’. In the case of acquiring, the owner has no right of choice, hence the fundamental right of property was removed.

In the case of **Bishamber v. State of U.P.**<sup>8</sup> the Hon’ble SC held that even though right to property has been removed from the fundamental right but it still a constitutional right. Also in the case of **Indian Handicrafts Emporium and Ors. v. UOI and Ors.**<sup>9</sup> the Hon’ble apex court declared that Art. 300A of Indian Constitution holds a significant role by not depriving a person from his land except with the procedures as established by law. Right to property is a human right.

### 3. SIGNIFICANCE OF NEW LAND ACQUISITION ACT

- A. The new land acquisition Act is getting applauded and at the same time it is being criticized. The new act has explained the comprehensive procedure of acquiring the land and claiming compensation from the authorities. The primary motive for the enactment of this act was adequate compensation to the aggrieved person by resettling and rehabilitating them with utmost transparency<sup>10</sup>

The new legislation was brought to remove all the difficulties from the older act some of them are

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(i) for the purpose of imposing or levying any tax penalty, or  
(ii) for the promotion of public health or the prevention of danger to life or property, or  
(iii) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification; and therefore, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

<sup>8</sup> AIR 1982 SC 33.

<sup>9</sup> Appeal no. 7533 of 1997.

<sup>10</sup> Y P Bhagat, Commentary on The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013 Edition 2022, Vinod Publication Pvt. Ltd.). 245

mentioned below-

- Old act contained the provision of forced acquisition. The new act stipulated a mandatory duty on the government for obtaining consent from the landowners before acquiring any land but when government need the land for public infrastructure it did not need consent.
- Old Act did not contained any appeal provision in order to discontinue the procedure of acquisition. But the new Act of 2013, contains the provision of appeal in sec.74 (1)<sup>11</sup> where any aggrieved person may file an appeal to High Court within 60 days from the date of order.
- The old act was silent on the concept of resettlement and rehabilitation of the displaced owners. But the new Act clearly provide the provision of resettlement and rehabilitation.
- The new Act of 2013 gave a significant provision which was felt necessary to be implemented since the colonial era. The act states that 70% of the land owners consent has to be obtained before acquiring any one land in the name of Public Private Partnership project and 80% of the land owners in the context of Private entities, whereas government obtain no consent when it has to be acquired by them.

#### **4. IMPACT OF LAND ACQUISITION**

##### **a. GLOBALISATION AND LIBERALISATION**

Land acquisition is not a novel concept of India. This practice was brought firstly by East India Company as soon as they establish their factories in India and this concept is still prevailing but now in broader sense. And the main reason behind acquiring land is globalization and

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<sup>11</sup> Section 74 of Land Acquisition Act 2013 "Appeal to High Court"(I) The Requiring Body or any person aggrieved by the Award passed by an Authority under section 69 may file an appeal to the High Court within sixty days from the date of Award:Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.(2) Every appeal referred to under sub-section (1) shall be heard as expeditiously as possible and endeavour shall be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court. Explanation.-For the purposes of this section. "High Court" means the High Court within the jurisdiction of which the land acquired or proposed to be acquired is situated.

liberalization. To comprehend the impact of land acquisition the researcher of this paper want to give a brief outline regarding Globalization and Liberalization.

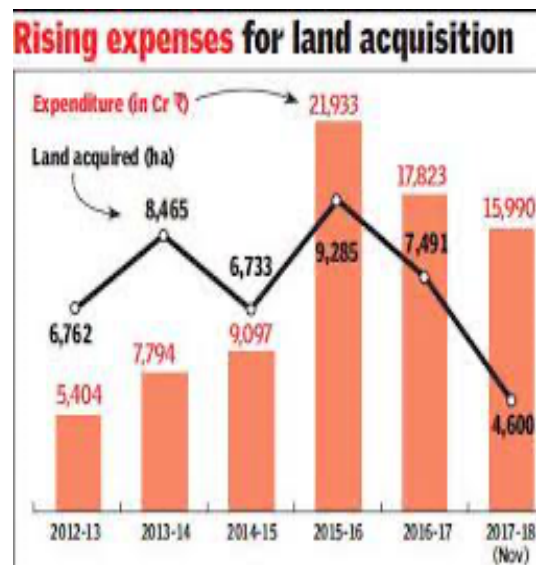
Liberalization is the procedure of exculpation of restriction from something. The term generally relates to the economic context. In order to protect the country's economy the government of India after independence shut the economy to the foreign countries in order to preserve the industries of India as they were not resilient enough to compete with the foreign affairs. The evolution of liberalization marked the culmination of the said era.<sup>12</sup> Subsequent to this India opened the economic borders with other nations by removing some constraints which permitted many foreign investor to set their companies by acquiring the land of the inhabitants. On the other hand Globalization plays an important role. Globalization is the procedure of incorporating the nation's economy with the world economy. In order to establish a borderless world where goods, services and people can travel independently through the borders. Several new multinational companies established by opening the boundaries of the nation and they provide opportunity of labour in developing countries. Since the countries plays an eminent role in globalization hence, political involvement plays a vital role.

As every coin has two sides, likewise the acquisition of land has greater also and massive disadvantages also. The researcher as per her research found certain disadvantages which are discussed further.

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<sup>12</sup> Sattwick Dey Biswas, Land Acquisition and compensation in India: Mysteries of valuation (Springer Publication, 2019)231.





Source: Times of India and report by NHRC

## **b. CONSEQUENCES OF LAND ACQUISITION**

The procedure of urbanization and industrialization accompanying with development has brought a devastating amendments through many infrastructural projects. Acquiring land by the government no doubt takes a country to the next level i.e. towards the way of development. Nevertheless it causes certain impact which are mentioned below in detail.

### **A. Displacement and Dispossession**

The owners of the land whose lands are acquired by the government lose their home and get an inadequate compensation in return. Also, they are anticipated to relocate to a new area which is known as rehabilitation. As per the research of IIT, almost 50 million inhabitants of India are displaced due to acquisition of land since past 50 years.

### **B. Deprivation of livelihood**

When the owner of land are dispossessed they are deprived from their livelihood on which they are dependent. This comprises of fisheries, agricultural, forestry and grazing the lands. This cause a severe impact on their livelihoods and affect their quality of lives. The research shows that there

is continuous declination of agriculture due to industrialization and modernization which has given a negative impact in the livelihood of inhabitants who are totally dependent on this.

### **C. Deforestation and pollution**

Constructing ports, dams, governmental infrastructure etc. has led to decline in forestation and has also increased the pollution level at its peak. This is one of the major problem which has been suffered after acquiring the land. Decline in forestation has degraded the air and water quality which has gave rise to many dreadful disease. Deforestation has also affected the wildlife species.

### **D. Delay in establishing Infrastructure projects**

Usually in order to complete all the procedures it takes almost an era. From acquiring a land to converting it into a infrastructural project the time duration not only affect the company or government but also the landowner whose lands are acquired by the company or the government. Every procedures i.e. getting compensation, rehabilitation every procedure are delayed due to not having any specific time limit.

### **E. National Food security**

Half of the India population depends upon the agrarian system. If the acquisition by government will continue it will give a sever impact on our livelihood as well as food security. Acquiring the irrigated land of the farmers will definitely leads to the shortage of food security which is a threat to a country for a long run. Sec 10<sup>13</sup> of the Land Acquisition Act, 2013 suggests a special provision

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<sup>13</sup> Section 10 of Land Acquisition Act 2013 "Special Provision to safeguard Food Security"

(1) Save as otherwise provided in sub-section (2), no irrigated multi-cropped land shall be acquired under this Act.

(2) Such land may be acquired subject to the condition that it is being done under exceptional circumstances, as a demonstrable last resort, where the acquisition of the land referred to in sub-section (1) shall, in aggregate for all projects in a district or State. in no case exceed such limits as may be notified by the appropriate Government considering the relevant State specific factors and circumstances.

(3) Whenever multi-crop irrigated land is acquired under sub-section (2), an equivalent area of culturable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture for enhancing food-security.

(4) In a case not falling under sub-section (1), the acquisition of the agricultural land in aggregate for all projects in a district or State. shall in no case exceed such limits of the total net sown area of that district or State, as may be notified by the appropriate Government:

Provided that the provisions of this section shall not apply in the case of projects that are linear in nature such as those relating to railways, highways, major district roads. Irrigation canals, power lines and the like.

in order to protect the food security except with certain conditions. Almost 20 crore people in India sleep without proper meal and more than 7000 people die every day for the shortage of food. Several declarations were signed almost each year but still this problem is existing. And the main reason behind this is land acquisition.

## **5. DETAILED CASE STUDY ON LAND ACQUISITION**

### **a. NEW DELHI**

New Delhi, capital of India known for its huge metropolitan character having a tremendous population comprising of 38 million and taking itself in a position of fifth most populated city in the world. The population is still growing rapidly with almost 2.73% per year. As the population will rise, development will rise hand in hand for the welfare of this huge population. The government has shown its urgency to settle 50-60 thousand acres of land for the public welfare by acquiring the lands of inhabitants such as by making roads, sewage, metro stations, airports and many more. In 2021 Delhi government made a revolutionary scheme and named it as 'Master Plan' which was lately renamed as 'Land Policy'. The said policy was designed by DDA to bring huge development in the region of NCR. The policy assists forced acquisition i.e. without consent of the owner which is in gross violation of the 2013 Act. DDA is facing difficulty in acquiring the land as there are multiple owner of a particular land. The policy does not have any fixed time limit for the completion of project. This project is considered as one of the massive project but at the same time it is facing a huge criticism as it has several flaws, inefficient and corrupt schemes which disrupt the inhabitants for the sake of development while demolishing their lands.

In the case of **Roshanara Begum v. Union of India**<sup>14</sup> several writ petitions were filed as petitioners land were acquired by the government of Delhi in order to change the state into more scientific and modern form with the course of development. Government of Delhi has introduced Master Plan to investigate the growth and development of Delhi in the name of public welfare. The DDA i.e. Delhi Development Authority accordingly acquired the land of 7000 inhabitants.

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<sup>14</sup> AIR 1996 Del 206.

The court in the said case held that while exercising the authority of 'eminent domain' state has the authority to acquire private land completely for the development and for public welfare.

The doctrine of Eminent Domain was originated by the Hugo Grotius in 1525 which states that government has the supreme authority by which anyone's property can be acquired by the government in the sake of public welfare without the consent of the owner of the land. But the acquisition of land can only be done after making a compensation to the aggrieved party. Hence the said doctrine gives a lucid clarification that government can take anyone's property in the name of public purpose. Such as building a highway, metro stations, etc.

Eminent domain is a sovereign inherent right to acquire the property for the inhabitants in order to comply for the public welfare. While exercising the sovereign power of eminent domain the authority can acquire the private property and if that private property belongs to economically weaker section of the society then the court is bound to investigate the arbitrary action by authorities.

In the case of **Neelawwa v. The State**<sup>15</sup> and **UOI & Ors. v. Mukesh Hans**<sup>16</sup> the two cases deals with the annual festival which is named as "Phool Walon ki Sair". This is a festival which was initiated by the Mughal regime and it's still being followed every year to promote the concept of Secularism. In 1987 the government in order to host the function wanted to acquire 400 sq. yards lands and accordingly made a representation to the Lieutenant Governor to pass the order for acquisition of land of Mehrauli by invoking the urgency clause mentioned in the Land Acquisition Act. The aggrieved person filed petition with respect to the land acquisition the court held that the provision of Urgency mentioned under the Sec. 17<sup>17</sup> depends upon the satisfaction of the government and court does not have any authority to investigate in the said matter.

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<sup>15</sup> AIR 1982 SCC 125.

<sup>16</sup> AIR 2013 SCC 478.

<sup>17</sup> 17.Special powers in cases of urgency:-

(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing

The urgency clause mentioned in the land acquisition Act, act as a medicine to avoid any kind of hurdles while acquiring any one's land. The researcher while making a detail research find out that whether the judiciary has the power of Judicial Review in context to this 'Urgency Clause'. The judiciary has restrictive authority while invoking the power of Judicial Review in deciding the validity of urgency. Judiciary can only decide whether the State has sufficient reason to make an acquisition of a land.<sup>18</sup>

Similarly in the case of **UOI & Ors. v. Praveen Gupta & Ors.**<sup>19</sup> the Hon'ble SC held that the provision of Urgency is administrative resolution as well as the satisfaction depend upon them.

Recently the Delhi Government has acquired the land of Sirsapur Farmers who are affected by the stormy weather for the purpose of building several infrastructure projects and gave them compensation accordingly. Almost 744 acres lands were acquired by the multinational companies. The data has been shown by the researcher in the form of pictorial graph.

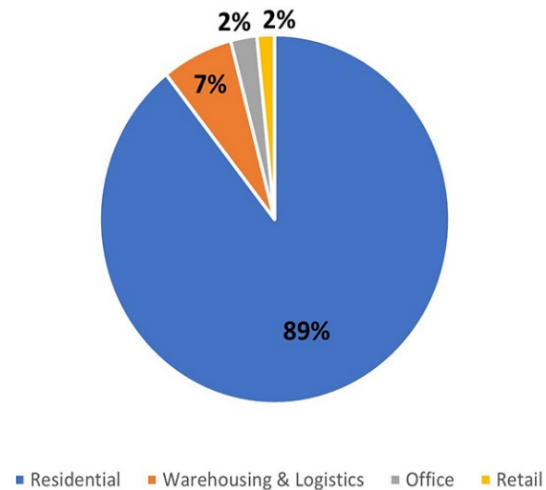
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convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances. Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hour's notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in cases, such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

<sup>18</sup> Anand Singh and Ors. v. State of U.P. and Ors.,(2010) 11 SCC 242.

<sup>19</sup> (1997) 9 SCC 78.



Source: JLL Research & REIS

Note: Total Land Area Acquired by Developers is 744 acres (Delhi NCR, 2022)

The Delhi government has acquired almost 8.5 acres of land from 22 landowners in order to build Barapullah elevated corridor in 2010. The revenue department cannot decide the compensation which has to be given to the landowners till 2022. Since 12 years the project remained constant with no developments so far as the landowners were demanding 3 crore per acre where the revenue department has fixed the land for 17 lakh per acre. 12 years isn't a short period of time, the landowners waited so long in order to get a compensation. The landowners were ready to give the property to the government for the infrastructural project. This is one of the lacunae which is till prevailing in the said act.

## b. NOIDA

In the case of **Nayan Tara v. Ritu Maheshwari**<sup>20</sup> the petitioner was illegally evacuated from his plot and his land was acquired without any land Acquisition proceedings. The SC on the said matter has ordered the Noida development authority to resettle the petitioner and at the same time compensate him with a reasonable amount.

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<sup>20</sup> Contempt Pet. (C) No. 316/2021.

In the case of **Bharat Tyagi v. State of U.P.**<sup>21</sup> the Hon'ble SC has set aside the order of land acquisition which was passed by Noida Development authority in the Shahberi Village of Uttar Pradesh and mostly the landowners were Farmers. The land was reverted back to the farmers who were evacuated from their own lands without giving them a chance of filing an objection. This has not only caused the farmers a great loss of time as well as money but it has also affected the buyers who bought the land for establishing companies. The authority acquired the land for 850 rupees per square meter from the owners and then resale to the companies at 10-12,000 rupees per square meter. The above mentioned case reflects the private interest of these authority despite of the public interest.

In the case of **Vitthal Rao Madhav Rao v. the collector**<sup>22</sup> 589 hectares was acquired in Patwari Village where Allahabad High court set aside the acquisition where a huge no. of flat buyers were affected after set aside of the order. The work has already initiated as supply of water, sewage, roads. After proper investigation it was found out that UP government formulated an agreement with an aggrieved person to provide them with rehabilitation in the residential plots in coming three months.

In the case of **Sher Singh & ors. v. State of U.P.**<sup>23</sup> the government has acquired 170 hectare of the land of Gulistanpur which is situated in Uttar Pradesh in order to build Yamuna Expressway via section 4 of land Acquisition Act of 2013. Almost 650 farmers lands was acquired in order to build the expressway and they were promised the compensation of Rs. 132 crore. The land was acquired for industrial purpose but after the acquisition it has been used as residential campuses. The Hon'ble court has asked the authority to pay a heavy compensation as they have been made a subject of fraud also the acquisition was held to be illegal and accordingly annulled the order made by the authority.

In the case of **Bahori Lal v. Land Acquisition officer and Ors.**<sup>24</sup> the Varanasi Development Authority has acquired 121 hectares land of Katesar district for the sake of establishing a project named as a cultural hub comprising of museum, universities, colleges, institutes for promoting the

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<sup>21</sup> Case no. 320 of 2022.

<sup>22</sup> Appeal Nos.25302 of 2012.

<sup>23</sup> AIR 1967 SCC 422.

<sup>24</sup> AIR 2014 SCC 123.

concept of art for public purpose, which has to be built on the border of Varanasi and Chandauli. The lands were as usual acquired by the farmers under section 4 of the Land Acquisition Act and that has affected almost 1100 farmers. The land was completely fertile as it was situated on the banks of Ganga. Several farmers protested for the same. The Hon'ble court in this said case held that since the land was completely fertile it cannot be acquitted by the Government and accordingly withdrew the acquisition made by them. The court also held that the emergency clause has to be scrutinized first carefully before its application.

As we all know majority of the Indian population depends upon the agrarian occupation and the farmers treat the land as their mother since land is the solitary source for them. And if their lands are acquired, the whole generation suffer and deprived from the basic amenities of life. They are even forced to leave their lands and shift to some different place like slums as they lose all source of alternative. Land acquisition also leads to crisis of food in a nation.

## **6. JUSTICE TOWARDS COMPENSATION**

The legislative enactments of Parliament with respect to land acquisition in India completely describe its behavioral procedure of prevailing exigencies. India does not have a distinct legislation for the displacement and removing people from their own land is a process done by acquisition. This is the sole reason why many cases of land acquisition does not gave any criteria of compensation which is also mentioned in the economic theory. The Bentham principle of Utilitarian theory plays a vital role in this. The utilitarian distributive justice gave implication of establishing an egalitarian civilization, ownership along with tenancy. The concept of democratic orientation are not at all complied by the authorities who acquires the land, it means that the authorities fail to compensate the owners also they acquire the property without the consent of other and that too forcefully. There is a Gandhian principle named as 'Din-Hin', this land acquisition authorities gradually failed to give attention to the said principle as it a matter of great concern that rejecting Gandhian humanitarian principle has been frustrated by acquisition machinery. Indeed there are numerous limitations and exceptions when it comes to compensation but if the buyers of the land are able to pay the accurate cost of the land to the landowners with respect to their volitional consent then land acquisition concept will be considered as welfare



boosting procedure. And if the authorities does not pay the adequate amount then the utility level will degrade for sure.

When an urban land is converted from the rural land then the value of the land increases depending upon the future usage of the land. The main query while granting compensation to the landowners are – at what proportion the compensation has to be given and who has the authority to increase the value of the property subsequent to its acquisition. The same question has not yet discussed clearly by the 2013 Act. This inadequate parameter are the reason behind injustice of compensation.

In the case of **Bridyadhar Mahalik v. land Acquisition Officer**<sup>25</sup> the Hon'ble court held that state government can acquire any land for public purpose but at the time of acquiring the government also has the duty to compensate them adequately which is constitutional right as well as human right too.

In the case of **Chakas v. State of Punjab & ors.**<sup>26</sup> the Hon'ble court held that the aggrieved person are authorized for reasonable and adequate compensation subsequent to the acquisition.

There are numerous cases where several land owners get inadequate compensation for their land. The authorities purchase the land from the real landowners at low rate and sell them with extremely high rate. These are generally done to conceal the stamp duty for a land. Even they are traumatized and harassed to give their land forcefully without obtaining their consent. Generally the rural land get undervalued. This it shows that how the authority works by violating the basic rights of a human.

Another issue with respect to compensation is deciding who the real owner is. Due to improper documentation it's difficult to identify the real owner and because of the compensation is delayed. Also owing to pending procedures of Partition, several heirs get harassed and the entire procedure of acquisition is gets complicated.

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<sup>25</sup> AIR 1970 ALL 414.

<sup>26</sup> CIVIL APPEAL NO. 7258 OF 2011.

In the case of **National Highway Authority of India v. Sri. P. Nagaraju**<sup>27</sup> the Hon'ble SC held that in order to fix the compensation the authorities has to consider all the other factors which are mandatory in determining the same and to maintain the transparency by the virtue of the said act.

Recently the village of Uppilipillayam situated in Coimbatore acquired a huge land for an establishment of airport. The lands were acquired with an inadequate compensation. The aggrieved person protested heavily for the same. And for the resettlement the aggrieved were resettled very far from their original plot.

In the case of **Kishore Gupta and Ors v. State of UP and Ors.**<sup>28</sup>, the large parcel of land was purchased by the Uttar Pradesh government in 2009 for the construction of the Yamuna Motorway and five communities beside the motorway, and it was later sold to the Jaypee Associate Group for the project's execution. The main argument is that the acquisition itself cannot be justified as serving a public purpose, as stated in Section 3(f) of the Land Acquisition Act, for which the land was acquired. Since this acquisition essentially amounts to the purchase of land for J.P. Infra Tech, a private company, it cannot be said that it falls under Part II of the Land Acquisition Act and must instead be viewed as falling under Part VII of the Act. Meanwhile the company is providing all of the compensation for the land acquisition rather than the government, it is not an acquisition for a public purpose. Instead, it is for the benefit of the company. The acquisition for the alleged transaction is by no means required and is instead a legitimate use of authority. The fact that the current company did not exist in 2001, when the project was conceived, was the primary factor used to refute the claim that the entire scheme was the result of questionable legislation.

Therefore, it is incorrect to assume that the project was planned with the company in mind. Instead, the project was built using the build, operate, and transfer (BOT) method, and the builder was given the right to collect tolls for 36 years after the start of commercial operation. Since there was no bestowing of land as there was when the acquisition was being carried out in accordance with part VII of the L.A. Act, state becomes the owner of the project assets after the end of the operation period. Motorway construction is a work of public importance that benefits the state as well as the

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<sup>27</sup> CIVIL APPEAL NO. 4671 OF 2022.

<sup>28</sup> CIVIL APPEAL NO. 7468 OF 2010.

general public through faster traffic, shorter travel times, and the transportation of goods. These benefits alone are sufficient to qualify the project as a "public purpose" project. The creation of five zones for housing, entertainment, business, etc. would support the building of the motorway as well as contribute to the economy, generate jobs, and ultimately benefit the general public. However, in the current scenario, the company has no ownership rights over the property and is required to return the assets to the government after a predetermined period of 36 years. This is in accordance with Part VII of the Los Angeles Act, which states that if all of the possessions owned by the company are acknowledged to be the source of the compensation. In light of this, it can be said that the Company served the Government only to implement its policy.

In the case of **Daulat Singh Surana and ors. v. First Land Acquisition Collector and Ors.**<sup>29</sup>

The need for the premises for public use was not seriously contested. In actuality, the State of West Bengal has been using the disputed property for more than 60 years as a Deputy Commissioner of Police (Security Control) office for the safety and security of the populace. Therefore, it is impossible to claim that the State Government did not need the properties for the benefit and wellbeing of the populace or that there was no public purpose associated with acquiring the aforementioned properties. Land acquisitions for public purposes should not have the definition of "public purpose" narrowed down or otherwise limited.

Public purpose is dynamic in nature; it evolves over time in response to community demands and needs. The term "public purpose" refers to the community's overall interests as opposed to individual interests. Eminent domain is a fundamental concept that every State must have. This is grounded on the central tenet that an individual's concentration and entitlement are continuously subordinate to the concern of the entire public. Eminent domain authority may only be used to further the general public's wellbeing and interests. The concept of public purpose should encompass issues like the community's or the public's overall safety, security, health, welfare, and prosperity. The legislature left it up to the State (Government) to determine what a public purpose is and to announce the requirement for a specific piece of land for the determination because "public purpose is bound to vary with times and prevailing conditions in the community or

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<sup>29</sup> Appeal (civil) 6756 of 2003.

locality." Regarding public purposes, the administration has given the government latitude. The Government is in complete and total control of the situation.

## **7. CONCLUSION AND SUGGESTIONS**

To give people rights, the prevailing 2013 Act appears liberal and strongly supports businesses, infrastructure development, and urbanization, undermining those rights. Eminent domain was used after independence to punish zamindars, redistribute land, and protect tillers' rights, as can be seen when we look at the history of the practice in India and how it grew out of the land reform legislation. Today, whether or not to use eminent domain is not one of whether it should be done so or not, but rather of whether it should be done so in the interest of the person who will be impacted or to make a lot of money.

It is widely accepted that when acquiring private property, the state must follow the rules of the law. Due to the lack of clarity and ambiguity surrounding the terms "public purpose" and "compensation," which are crucial for the use of the eminent domain power, the government acquires private property at its discretion. The L.A. Act gives the government the authority to purchase land for public use, but neither the Act nor the Indian Constitution clearly define what constitutes a "public purpose," leaving room for the government to construe the term as broadly as possible, even to include the purchase of land for private nonprofit organisations.

According to the review of the present study, the judiciary plays a vital part in describing the public purpose and ensuring that the state government refrains from misusing its power to acquire land for public purpose. For a public purpose or in the public interest, property must be taken away. The idea of eminent domain mandates that when someone's property is taken, the goal must be primarily public, not primarily of private interest and only incidentally beneficial to the public. Any law that deprives someone of their private property in order to further a private interest is unjust, unconstitutional, and threatens the rule of law. It may be contested in court.

The landowner might receive a good settlement from his perspective today, but once a private developer steps in and develops the property, the cost of the land will be much higher than it will be in a few years. As a result, there will be resentment over not receiving a fair market return from the ancestral land that is being taken away. Out of the 45,635.63 hectares of SEZ land allotted until

2014, the CAG reports that only 28,488.49 hectares have seen the start of construction. Land purchased for the SEZ through the declaration of a public purpose was later sold to businesses like Reliance Industries and Essar Steel, among others. The Yamuna Expressway's land acquisition has been used for limited-potential projects like a Formula One racecourse and golf courses without any further developments.

## SUGGESTIONS

The concept of land pooling entails landowners giving ownership to the state or a single organization. Additionally, this stops land from being sold without the owner's permission. In accordance with this policy, landowners turn over their holdings to the central pool and ultimately become stakeholders in relation to the development that is being considered for their land. Both the original landowner and the developing organization gain from land pooling. Because the original landowner in many acquisitions does not lose all of his land, there is less resistance to this mechanism. He gains access to better infrastructure and the land's value rises far above that of his initial holding.

The law ought to outline the specific steps involved in evaluating public purposes. A committee of independent experts should be established, and it should include members who are aware of the difficulties faced by those who have been uprooted as a result of the acquisition in addition to retired judges and experts from various fields.

Therefore, the government, which serves as the sole arbiter of what qualifies as a public purpose, should cooperate with the expert committee. Justices P. Sathasivam and B.S. Chauhan held in the case of **Sulochana Chandrakant Galande vs. Pune Municipal Transport & Ors**<sup>30</sup> that "Once the land is acquired, it vests in the State free from all encumbrances." The landowner is not concerned with how the land is used, whether it is for the intended use for which it was purchased or for another. Once the state owns the land, he is no longer welcome. He is entitled to receive payment only for the same.

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<sup>30</sup> Civil Appeal No. 492 of 2007.

Since the interested party can't assert the right to the land restoration on any grounds at all, the government should abide by the rule of only acquiring the bare minimum of land required for the project. Numerous instances show that the government often acquires more resources than necessary for ulterior misuse. State-sponsored initiatives should be the only public purposes allowed. It is best to remove the clauses pertaining to land acquisition for PPPs and private businesses. A comprehensive list of occupiers is included in the definition of an effected person, but the definition is weakened by the addition of overriding provisions like a three-year residency requirement. As a result, only owners with legal titles will be granted rights. Up until the 1990s, the number of people displaced by development reached the millions. The majority of them continue to be ineligible for rehabilitation benefits. Now that land acquisitions have become more widespread thanks to neoliberalism, more people could suffer the same, or even worse, effects. The public interest is served equilaterally by eminent domain of displacement. However, the public interest lost by not rehabilitating the displaced people does not balance it out equally.