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# Irregularities of the Land Acquisition Act in India: An Analysis

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## ABSTRACT

*Every Individual has a right to own or possess or enjoy his property absolutely without interruption from anyone, but due to some exceptions and irregularities under article 300 of the constitution which talks about eminent domain and some provisions in the land Acquisition act 1894, which raises like how compensation paid isn't enough as per to current market scenario and other issues regarding the owner of the land who has been evicted have not been rehabilitated to as per their satisfaction. This Research paper will further discuss infringement of individual rights may be justified as compared to the greater good of society. In this research paper, we'll look at the evolution of the law governing the land acquisition, a few provisions pertaining to compensation, and the adoption of the Indian right to property. I want to remind the readers once more that acquisition is a very broad topic and that numerous laws govern it from the outset. Because of this, I will confine myself to the goal of this research paper. There would be an analysis regarding areas where both the Land Acquisition Act 1894 would be related to LARR Act 2013. We would know whether there are any contradictory concepts like the right to property, principles of eminent domain, etc and how the concept of property and compensation was portrayed and whether the compensation under the acts is satisfying the people who come under this act and how the scheme of compensation was developed over the time period. We would analyze the reasoning behind striking of right to property as a fundamental right.*

**Keywords:** land acquisition, rehabilitation, eminent domain, infringement, resettlement.

## I. INTRODUCTION

In the current age land is something that is utilized to raise crops, build homes, and advance one's social status. Contrary to popular belief, property definitions have evolved with time. In the past. When human beings had property, there was a time when everything was owned by the king, including the animals, the people, and the land<sup>2</sup>. In the past, the value of a property was determined by the number of cows and bullocks it contained. The land property subsequently gained more significance. The very concept of the Land Acquisition act came into

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<sup>2</sup> Nakshatra Gujrati, Land Acquisition Act, Manupatra, Pg 1, September 20, 2022 <https://articles.manupatra.com/article-details/Land-Acquisition-Act-History-The-Need-to-Strike-Down-Right-to-Property>

the picture through one ideology and that is through the ideology of the British to acquire lands for public welfare purposes. During the time of 1850, there were special clauses put in some acts like Madras Act XX of 1852 and Building Act XVIII of 1839<sup>3</sup> which contained special provisions as those were the times when railways were introduced for the first time and due to this the govt needed land for widening the roads building canals, <sup>4</sup>building railway tracks, etc. whatever the Government wanted to acquire it would be put in the public welfare clause. Then there was a view of the East India Company to abolish all the laws and create them properly in the year 1857 which is when various terms like arbitration and compensation, civil proceedings were first introduced, this sounds too good in theory but in practicality, the arbitration was corrupted and unsatisfactory due to this the Land Acquisition Act of 1894 had to come in place.

## **II. LAND ACQUISITION ACT 1894**

The act of 1894 was developed in this way, and it afterward underwent a number of revisions. The most notable modification was made in 1923 when the idea of submitting objections to the purchase and having them heard by the appropriate authority was adopted. One of the most important things to bear in mind is that the Act of 1894 only pertained to British India, not the princely kingdoms. The princely governments created their own land purchase laws, such as the Travancore Land Acquisition Act of 1809 and the Hyderabad Land Acquisition Act of 1899. It was understood that One cannot discuss the subject of compensation in the absence of land. The Home Bill Rule, which came into effect in British India in 1895, provided for a number of specific rights, one of which was the inviolability of one's home. The right to property was first expressly articulated in the government of India act of 1935, which granted some rights to British subjects in India.

The Land Acquisition Act of 1894 was followed till 2013 and there were multiple issues regarding the act like how the compensation was paid to the people in the name of public purpose wasn't valid or justified, the vagueness of the term public welfare as it was only decided by an executive authority, rehabilitation of the evicted tenants wasn't exactly a procedure under the act and one of the most important issues of the act was that compensation paid to the evicted tenants wasn't adequate. With all these irregularities when the right to property was stricken down as well as the mechanism to claim compensation was weak in the Indian Constitution, It gave a boost to all the anomalies.

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<sup>3</sup> Madras Act XX, 1852

<sup>4</sup> Law Commission of India, Law of Acquisition & Requisition of Land (Law Com No 10, 1958) para 4.

### III. ISSUES WITH THE LAND ACQUISITION ACT 1894

Certain provisions of the Land Acquisition act 1894 such as sections 6 and 9 deal with compensation claims and land acquisition under public welfare and were problematic as they weren't running smoothly, this could also apply to section 54 of the act which talks about proceedings in court. Through certain cases like *Nabin Chunder Sarma v. The Deputy Commissioner of Sylhet*<sup>5</sup>, we can see how the primary issue, in this case, was that the new act of 1894 was passed and the old act of 1870 was repealed while the matter was still in court due to this the oddity of the scenario was that the petitioner unexpectedly hinted at dist while the case was in district court. Judge, although the unidentified collector of this plea upped the amount of compensation, he now doesn't want to litigate the matter against the collector any further. According to the district judge, the petitioner is no longer eligible for the increased compensation amount. The High Court of Calcutta was then petitioned by the petitioner Nabin Chunder for the award of higher compensation, and the high court ruled that based on Section 25 of Act No. 1 of 1894<sup>6</sup>, the applicant was not ineligible to receive the benefit of the enhanced sum determined by the Judge which was very vague in nature since the applicant or petitioner himself backed out from the case and is wanting to come back knowing just because of the higher compensation raised by the other party. Then in another case, the Sylhet government purchased 17.4 acres of the Baroora Tea Garden's property for the construction of the Assam-Bengal railways. The tea garden was split in half by the railroad. The proprietor of the tea estate received 1,675 rupees per acre from the deputy commissioner. The proprietor of the tea garden also requested an increase in compensation from the deputy commissioner, arguing that the cost of running his business had increased as a result of the land partition. The landowner filed a lawsuit in order to obtain compensation when the Deputy Commissioner denied his claim. The court said that it could be considered after computing or evaluating some factors which were strange again<sup>7</sup>. Then there is section 23 which talks about things to be considered while giving compensation under the Land Acquisition Act 1894<sup>8</sup>. According to the act, "the market value of the land at the time of publication of the notification, the injury suffered by the person interested or any standing crop got damaged by the act of acquisition, if the person is forced to change his place of residence, any diminution of profits during the publication under the said act's section 6<sup>9</sup> and the actual taking of the land by the collector, all of these factors must be

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<sup>5</sup> *Nabin Chunder Sarma v. Deputy Commissioner of Sylhet*, MANU/WB/0207/1896

<sup>6</sup> Land Acquisition Act § 25, 1894

<sup>7</sup> *Baraooora Tea Co. vs. The Secretary of State for India in Council*, MANU/WB/0103/1901.

<sup>8</sup> Land Acquisition Act § 23, 1894

<sup>9</sup> Land Acquisition Act § 6, 1894

considered.” And these weren’t complied with properly in the past.

#### **IV. VALIDITY OF LAND ACQUISITION RESPECT TO THE CONSTITUTION OF INDIA**

The freedom to possess and enjoy private property was first guaranteed by the Indian Constitution of 1949, however, it was subject to a variety of reasonable limits that had to be both just and legal. Moreover, there were provisions such as Article 31(1)<sup>10</sup> which read “No person shall be deprived of his property save by the authority of law”. Additionally, it ensured that no one's property could be taken away by an executive action, which is obviously incompatible with the colonial system as the collector had the authority to make acquisitions. But both acquisition and requisition had the same goal in mind: buying things for the good of the public.

Then we could see that the first mention of compensation was made in the land acquisition act of 1870 as well as some other statutes from the British Raj. It is significant to note that while compensation was stated in statutes during the British era, it was made a fundamental right by the 1949 Constitution in article 31(2)<sup>11</sup>. It indicates it became an enforceable provision against the state. So in this period, the fundamental right to compensation was the very crux of the contention in the administration but however, but the 4<sup>th</sup>, 17<sup>th</sup>, 25<sup>th</sup>, and 42<sup>nd</sup> amendments diluted or changed the very notion of compensation. The Fourth Amendment Act of 1955 changed the law so that while Parliament is required to pay the compensation, its adequacy cannot be challenged. However, the Supreme Court took a different stance and read "compensation" as meaning "whole sum." The Indian government then claimed that because the country had just recently gained independence, it might not be able to maintain its economic stability if it began paying compensation based on the full market worth of the asset acquired. The word "compensation" was changed to "amount" by the 25th (1971) amendment. Although the Supreme Court had once more left the question open to judicial intervention, it was ultimately established in the *Kesvananda Bharti* case that the legislature could not establish an arbitrary or false number. The government subsequently reacted by creating specific acquisition rules that fell outside the purview of article 31 by enshrining exclusions in Articles 31A-31D<sup>12</sup>. The *Kesavananda Bharti* case made Prime Minister Indira Gandhi apprehensive, therefore she passed the 42nd Amendment Act of 1976 to re-establish the authority of her government back then. The 42nd Amendment Act, which was passed in 1976, increased the scope of Article 31 C. As a result, no law adopting DPSPs can be deemed illegal on the grounds that it infringes

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<sup>10</sup> INDIA CONST. art. 31. Cl. 1.

<sup>11</sup> INDIA CONST. art. 31. Cl. 2.

<sup>12</sup> INDIA CONST. art. 31. Cl. A & D.

upon basic rights or that Article 14 or Article 19 questions its reasonableness. Although this extension was invalidated by the *Minerva Mills* case. So through these scenarios, we can see how slowly Article 191(f)<sup>13</sup> was diminished and its impact on society is that before the 44<sup>th</sup> amendment act the citizens could claim the right to property under the supreme court of India meaning that they could get speedy redressal but now they can't get speedy redressal under 32 and 226 because the right to property has been decreased to a mere constitutional right, it has been taken away from 31(1) and has been introduced as article 300 A<sup>14</sup> in the Indian Constitution.

## **V. LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT 2013**

Through constant analyzing and criticizing of the previous Land laws of India. The recent act which is called the LARR act<sup>15</sup> could solve some issues for example the act provides for measures such as adequate compensation, resettlement, and rehabilitation which the previous law didn't touch upon, the act was to be applied retrospectively for example if there was a suit in which the award of compensation wasn't given and is the acquisition happened 5 years ago then the entire acquisition was to be started fresh. Then were various formulas given for compensation stating that if it was land in an urban area the value of the land would be multiplied by two and the market value of the assets would be added as well in the case of urban areas the market value of the land and the assets would have to be added and given.

## **VI. CONCLUSION**

Although there are some issues that persist such as the most recent amendment does not require consent for government projects. due to which a large number of Landowners may be evicted as a result, without adequate plans in place for their rehabilitation and relocation. This paper sought to examine the history of land acquisition in India, the relationship between them, a comparison of the 1894 and 2013 land acquisition acts, and the justifications for the need to eliminate the right to property as a fundamental right in order to ascertain whether the concepts of land acquisition and the right to property are mutually exclusive. Resettlement and compensation have been a contentious issue since the colonial era, and when the constitution endeavored to ensure them by including Articles 19(f) and 31, and through this, it became clear that land was also a vital resource for the nation's development. Given that 500 acres of property were held privately according to the circumstances of the *IC Golakhnath* case<sup>16</sup>, we can easily picture the

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<sup>13</sup> INDIA CONST. art. 19. Cl. 1. f.

<sup>14</sup> INDIA CONST. art. 300A .

<sup>15</sup> Land Acquisition Act, Rehabilitation and Resettlement Act 2013

<sup>16</sup> *I.C Golakhnath and Ors. v. State of Punjab and Anrs.*, MANU/SC/0762/1967

outrageous imbalance in the allocation of land following the separation. Given the government's financial situation at the time, it was true that it couldn't compensate everyone for the extra land they owned, but the right also applied to small landowners and farmers, who undoubtedly suffered when the constitutional provisions were repealed. The principles of land acquisition and the right to property were not intrinsically at odds because the right to property mentioned acquisitions “except for the public objectives.” Injured parties cannot petition the supreme court or a high court for a rapid settlement of their issue, suggesting that the speedy redressal system has also been eliminated, even though the Land Acquisition Act of 2013 mandates a process and compensation. I also believe eminent domain which is article 300 of the constitution of India should be subjected to judicial review as it can be seen through some cases such as Project Director, NHAI V M. Hakeem<sup>17</sup> how the government officers were constantly providing measly compensation for Hakeem for his land as his land was being taken away for the reason of Public purpose which in this case is the building of Highways. Another issue with this Act I feel is that The Land Acquisition Act of 1894, which had no definition of public purpose at all, was replaced by the LARR Act, which does specify public purpose, but its expansive definition of what public purpose is leaves little room for interpretation meaning it is unimaginable as to what would count as activities for a public purpose. Even though the LARR allows for compensation disputes to be brought before the supreme court, the majority of people whose lands are confiscated are poor and unable to afford legal fees.<sup>18</sup> According to a review of 1660 decisions from the Punjab and Haryana High Court, the average compensation is just around one-fourth of the land's market worth. The NHAI<sup>19</sup> Act is worse, as it does not even allow for effectively challenging the compensation set by the government at all, with the arbitrator being a government employee himself and the court lacking the authority to enhance the arbitral award, given that meager compensation is the default in land acquisition cases. I feel that the definition of public purpose should be more elaborated and precise and the legitimacy of the govt to exercise its eminent domain powers in different scenarios should be limited as well as well defined.

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<sup>17</sup> Project Director, NHAI V M. Hakeem, 2021

<sup>18</sup> Divyanshu Dembi, Eminent Domain Doctrine in India and lack of due process, The Leaflet Constitution first, 9<sup>th</sup> November 2021

<sup>19</sup> National Highway Authority Of India Act, 1956s