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Land Acquisition and National Security

WALEED NAZIR LATOO¹

ABSTRACT

Historically, land acquisition in India has been a contested subject. The reason being, the tussle between the state to acquire land for various kinds of public purposes and the rights of the individual to enjoy their private property. In such a state of affairs, the state has enjoyed the right to eminent domain which enables it to acquire land for a justified public purpose which covers a wide range of subjects. At the same time the corresponding deprivation of land can lead to various sort of hardships to the individuals. Land being an important human right, it, thus, becomes essential to examine this conflict in light of the evolving jurisprudence on the right to eminent domain if the state and the contours of public purpose for which land may be acquired by the state.

This paper seeks to examine the procedural framework for the acquisition of land under the colonial laws and the recent legislation which was passed in 2013 by the Parliament of India. It shall be argued that while there is set a definite procedure for the acquisition of land, it is imperative to strictly define the contours of terms like acquisition of land for “public purpose”, where “national security” is also enumerated as one of the public purposes. The paper shall make a case for mandatory requirement of Social Impact Assessment Study before any proposed land acquisition by the executive wing of the state.

I. INTRODUCTION

In a nascent democracy like India, there have always been continuous tussles between the rights of an individual and the interests of the larger community which is manifested through the actions of the state. At each juncture, there has been an active effort to move towards a more balanced system where there is a semblance of conciliation between the rights and aspirations of an individual and the actions of the state. There have always been attempts at providing the precise formulation of the personal space of an individual and determining the extent to which state can pave its way into it. Inherent in such an attempt is the effort to reflect the choices that are validly recognised by the society.² One such conflict is the process of land acquisition by the state for its various developmental and infrastructural projects which aim at serving the

¹ Author is a Student at National Law University Delhi, India.

² Wulf Gaertner, Prasanta K. Pattnaik and Kotaro Suzumura, *Individual Rights Revisited*, 59 Economic New Series 161 (1992).

larger public good and are motivated to serve maximum happiness to the maximum lot.

Historically, the process of land acquisition by government has been governed by the Land Acquisition Act of 1894³. Being a colonial legislation, it did not provide for adequate compensation and rehabilitation process. As such it was replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.⁴ This statute aims at ensuring a land acquisition process which is “humane, participative, informed and transparent”. The primary objective of the act is to make the affected persons partners in development leading to an improvement in their post-acquisition social and economic status.

This paper shall analyse the procedure established by the said statute to acquire land for companies with special reference to the defence sector. Given the importance of companies in fostering economic growth and development it becomes of vital importance to critically engage with their land acquisition process so that the interests of the ordinary land holders are not put it peril. In the course of this paper, it shall be argued that there is need for a very strict interpretation of the term “public purpose” so as to restrict the scope for any misuse by the executive as its definition is very vague and imprecise. While there are selective heads for public purpose, it also includes some very broad phrases like, “national security”, “defence of India”, “investment and manufacturing zones” and the like.

Secondly, it shall also be argued that the Social Impact Assessment study which is provided in the Act is a step in the right direction and needs adherence in letter and spirit so as to not make the Act vulnerable to challenges of constitutionality, as a non-dedicated study would contravene the principles of reasonable, just and fair procedure as has been held in the case of *Maneka Gandhi v Union of India*.⁵

II. LAND ACQUISITION IN INDIA

“Land is not a mere commodity, but an essential element for the realization of many human rights.”⁶In International law, land is considered to be an integral part of the human rights regime. It is so because, land does not merely depict an owned property rather it is a source of livelihood and earnings to many and at the same time is central to the economic rights of an individual or a group. In various parts of India itself, it is also related to peoples’ regional

³ The Land Acquisition Act, 1894, No. 1, Acts of Parliament, (1894) (India).

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

⁵ *Maneka Gandhi v. Union of India*, (1978) A.I.R. S.C. 597 (India).

⁶UNHR, *Land and Human Rights*, OHCHR <https://www.ohchr.org/EN/Issues/LandAndHR/Pages/LandandHumanRightsIndex.aspx>

identities and also forms a part of their socio-cultural rights and aspirations.⁷

In the industrial world of today, developmental projects by both governmental and private companies have led to “socio-economic polarisation” which has escalated the loss to land owners and environment at large.⁸ Unhindered ownership of land is essential to the realisation of a variety of basic individual rights which include housing and property rights, business rights and the like. It must be noted at the outset that improved security of tenure for land and property can make crucial and very critical contribution to ensuring social and economic progress in both rural as well as urban settings. It can very well help in alleviating poverty, reducing gender inequality and promoting peace and security.⁹ The Supreme Court of India has also held that, without right to hold property other rights become illusory.¹⁰

Conflicting with these rights is the aspiration of a developed economy harboured by every government that is at the helm of affairs. Right since independence, India has been on an upward spiral of developmental and infrastructural projects. There have been huge investments in such projects. The primary resource being used is land which is acquired from the ordinary citizens of the Indian household.¹¹ Since independence, the acquisition of land was governed by the colonial law i.e. the Land Acquisition Act of 1894. The next section shall discuss the operation of this act and the land acquisition process for companies specified therein.

(A) The Land Acquisition Act of 1894- Post Independence Functioning

Part VII of the now repealed Land Acquisition Act, 1894 provided for an illustrative scheme for the acquisition of land for companies. The need for the specific laws relating to the acquisition of land for companies was first felt in the 1860s. In 1863, a special legislation was introduced by the colonial government which provided for the provisions relating to “acquisition of land for companies for the construction of works of public utility.”¹² Section 41 of the 1894 Act provided for the acquisition of land by companies for public purpose.¹³ This foundational principle of land acquisition was motivated by the famous maxim *salus populi suprema lex* which means that the welfare of the general population is the supreme law. The individual right to land was considered ancillary to the general interests of the public.

⁷ *Id.*

⁸ *Id.*

⁹ UNO, *Land and Property* UNITED NATIONS <<https://www.un.org/ruleoflaw/thematic-areas/land-property-environment/land-and-property/>>

¹⁰ *Dev Sharan v. State of U.P.* (2011) 4 S.C.C. 769 (India).

¹¹ Alice Thorner, *Nehru, Albert Mayer and Origins of Community Projects*, 16 EPW 117 (1981).

¹² OM PRAKASH AGGARWALA, COMMENTARY ON THE LAND ACQUISITION ACT 1270 (8th ed. Universal Law Publishing 2007).

¹³ The Land Acquisition Act, 1894, No. 1, Acts of Parliament, s 41, (1894) (India).

Thus, a preliminary observation about the colonial laws reveals the fact that the aim of the process was not meant to be a mere mechanical process rather the acquisition of laws was aimed to serve a greater public good by recognising the right to non-interference in the enjoyment of land by the respective land owners. As has been noted by Hopkins, it is a “characteristic of land law that practically and socially significant problems are distilled into a paradigm of the acquisition of property rights and the priorities of competing claims.”¹⁴ It is the balancing of these competing claims which the law relating to land acquisition has been trying to address since its inception.

While public purpose has been held to be supreme, the courts in post-independent India have, at times, shown urgency in protecting the land rights of the affected families. A constitution bench of the Supreme Court ruled in the early 1960s held that the process of land acquisition for a company should be for a valid public purpose and should not be found to be a “colourable exercise of power by the government.”¹⁵ However, at the same time, the Act of 1894 being a colonial legislation, it did not truly aim to serve the greater public good. The decisions of the Supreme Court in the cases like *R.K. Agarwalla v State of W.B*¹⁶ reflect the vagueness associated with the jurisprudence of land acquisition in India. In this case, the constitution bench of the court while giving a very liberal interpretation to the term “public purpose” held that public purpose can be any generic purpose which can even be beneficial for a small group of people or community and the fact that the proposed acquisition is primarily for the company will not affect the validity of the acquisition.

As late as 2007, the Supreme Court having evolved its own jurisprudence in the law on land and land rights, held public purpose to be dynamic and not static. While emphasising the right to eminent domain of the state, it was held that, the concept of public purpose should be inclusive of eminent matters like health, welfare, prosperity, safety and security of the public or community at large and hence, should not be precisely defined and its ambit be restricted to the general interest of the community.¹⁷

(B) The Fault of the Colonial Legacy

Given the procedural lacuna in the statute of 1894, it is quite evident and is manifested by the imperial theory that the primary aim of the statute was to acquire land for the colonial purposes. The process of the acquisition of land depended upon the whims and fancies of the rulers and

¹⁴ NICHOLAS HOPKINS, HOME AS WEALTH (Nigel Gravells ed. *Landmark Cases in Land Law* Hart Publishing 2013).

¹⁵ *Valjibhai Muljibhai Soneji v. State of Bombay*, (1964) 3 S.C.R. 686 (India).

¹⁶ *R.K. Agarwalla v. State of W.B.*, A.I.R. 1965 S.C. 995 (India).

¹⁷ *Daulat Singh Surana v. Collector (LA)*, (2007) 1 S.C.C. 641 (India).

the concerns and legitimate voices of the Indian landowners could easily be ignored.¹⁸Hence, undemocratic character and forceful imposition was the essence of the '94 statute. Instead of addressing the “competing claims” in a more impactful and inclusive manner, the government in the post independent India did not bother itself to replace a colonial legislation. It rather used it as a means to further its infrastructural projects through such an orientation which favoured the government’s policies.¹⁹

With the growing Indian economy, the conflict over land and property has been achieving a dynamic position. In this light, the government’s privilege to eminent domain is to be, hence, understood in the spectrum of dispossession and disempowerment of the masses which had been perpetuated through a pre-constitutional colonial law.²⁰As noted above, the vague jurisprudence around the fundamentals of the land acquisition laws has only expanded the scope and ability of the state to contravene the fundamental provisions of governance²¹ and acquire land for a multiplicity of purposes which may not always be public in their character. Even the 2014 statute, as will be noted in the forthcoming sections, has not done much to cater to the aspects of dispossession by limiting and strictly defining the provisions enabling acquisition of land for public purposes.

The colonial continuity in laws which govern areas which are so fundamental to the rights and interests of an individual has juxtaposed the constitutional ideals with the laws modified to suit the group interests over the individual rights, which essentially are so dear to any democratic set up in the world.

III. PUBLIC PURPOSE UNDER THE 2013 ACT

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has an interpretation clause which tries to extensively define the heads for public purpose under the statute. However, at the same time, the vagueness of terms relating to national security makes it a very potent tool to justify the eviction of land holders. Given the fact that India is heading towards privatisation in defence sector, it becomes obligatory to understand and limit the scope of “public purpose” in such context as well as otherwise.

It is essential that the contours of public purpose are viewed from such an angle so that they are consistent with the welfare of the state. It is also very important to note the fact that the concept of public purpose draws its inspiration from a pre-constitutional colonial legislation.

¹⁸ Mohammad Asif, *Land Acquisition Act: Need for an Alternative Paradigm*, 34 EPW 1564 (1999).

¹⁹ *Id.*

²⁰ Preeti Sampat, *Limits to Absolute Power: Eminent Domain and the Right to Land in India*, 48 EPW 40 (2013).

²¹ INDIA CONST. pt. 4.

Hence, subservience to the constitutional ethos has to be the real essence of the public purpose. It shall aspire to the development and welfare of the state and shall be reflective of the Directive Principles of State Policy as are enshrined in Part IV of the Constitution.²² While there can be no definite definition of public purpose, it is essential that the elasticity²³ of terms like national security are strictly very restrictive.

(A) Acquisition of Land for Services

The promotion of the interests of defence is one of the most important aspects for policy makers in India. Also, implied is the fact that acquisition of land forms an important part of the policy process. The nodal agency for the acquisition of land for services and other Defence establishments i.e. Navy, Army, Air Force, DRDO etc is the Defence Estates Department.²⁴ For the initiation of any process of land acquisition, there is an internal process that goes within a coordinated system in the Ministry of Defence, after which the whole proposal is put forth before the competent authority so as to complete the procedural requirements of publication of notifications etc under the Act.²⁵ The question that needs to be asked next is that to what extent can there be acquisition of land for defence purposes. To put it in rather simpler words what is suggested is that are there any limits to the acquisition for defence purposes which can arguably come under the head “national security” as a public purpose. In answering these questions, the other primary legislation which needs to be taken into account is the Requisitioning and Acquisition of Immovable Property Act, 1952

(B) What is National Security?

While the Act of 2013 brings national security under the head of public purpose it does not strictly define as to what all constitutes (or what all are the aspects of) national security. In absence of any statutory definition of the same what is ought to be looked into is a varied spectrum of national security definitions so as to arrive at some sort of concrete understanding of an otherwise vague term.

National security involves the protection of a state from any kind of national crisis by means of a variety of power projections which may include economic power, military power, political power, diplomacy and any other thing of that sort.²⁶ It can be said to be the ability to protect

²² Bhim Singh v. Union of India, (2010) 5 S.C.C. 538 (India).

²³ Kedar Nath Yadav v. State of West Bengal, (2017) 11 S.C.C. 601 (India).

²⁴ DGDE, *Acquisition* < <https://www.dgde.gov.in/acquisition> >

²⁵ *Id.*

²⁶ Ogwezzy Michael C., Olugbenga Oke-Samuel & Ogwezzy Oluwatosin O, *Legal Challenges Arising from Environmental Insecurity Within the Broad Context of Human Rights and National Security in Nigeria and Other Jurisdictions*, 8 GJLDP 63 (2018).

and take care of a nation's physical territory and its integrity so as to maintain its economic relations on prudent, fair and reasonable terms and to preserve its institutions from extra territorial disruptions.²⁷ As Hobbes has said, "national security is one route to ensuring people's security; but there is ample evidence that national security is no guarantee for the security of all the people living in a country."²⁸

While interpreting the meaning of the term "national security", the Supreme Court of United States of America held that, "we think it clear from the statute as a whole that that term was intended to comprehend only those activities of the Government that are directly concerned with the protection of the Nation from internal subversion or foreign aggression, and not those which contribute to the strength of the Nation only through their impact on the general welfare."²⁹ The interpretation given by the U.S Supreme Court is essential to understand the fact that there can't be any generalising implications of national security. This term has to be understood in the limited scope of things with respect to protection from external aggression which might be an act of war or anything that affects the sovereignty and integrity of the nation and at the same time might stretch to any act of internal disturbance which is imminently potent to disturb the stability of the state³⁰.

National Security can, hence, said to be a function of a country's external environment and internal stability along with their interplay and interaction with each other. "National Security is an aggressive blend of political resilience and maturity, human resources, economic structure and capacity, technological competence, industrial ban and availability of natural resources and finally the military might."³¹ The Supreme Court of India while expressing limitations and inability in defining precisely national security has held that it is inclusive of socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace etc.³²

(C) National Security as a Public Purpose

Given the inconsistent approach of the judiciary in establishing a concrete law on "public purpose" and the right to eminent domain³³, there has been a thorough and very logical

²⁷ *Id.*

²⁸ Robin Coupland, *Security, Insecurity and Health*, 85 Bull World Health Organ 181 (2007).

²⁹ Kendrick M. Cole v. Philip Young, (1956) S.C.C. OnLine U.S. S.C. 83.

³⁰ Bradenburgh v. Ohio 395 U.S. 444 (1969).

³¹ Bhavya, *Evolving Facets of National Security*, LEGAL SERVICE INDIA < <http://www.legalservicesindia.com/article/683/Evolving-Facets-of-National-Security.html>>

³² Ex-Armymens's Protection Services (P) Ltd. v. Union of India, (2014) 5 S.C.C. 409 (India).

³³ Jayanta Bandhyopadhyay and Tapas Roy, *Political Challenge of an Intensifying Conflict Over Land*, 47 EPW 22 (2012).

approach of the land rights movements that there should be no right to eminent domain in case of acquisition of land for private corporations³⁴. The question that we face is that how much benefit will accrue to an ordinary citizen when land is acquired for purposes which are “vital to national security”. The aim in the following paragraphs is to reconcile the aspects of public purpose and national security.

In order that a reconciliation of the two aspects be possible it is important to balance the individual rights with the interests of the state. Ignoring this facet shall, without fail, lead to dispossession, violation of human rights, disempowerment of masses and poverty of a large section of people.

While it is not necessary that the land acquired must be available to the whole public at large so as to satisfy the test of public purpose³⁵, it is essential as part of a fair procedure that the strategic aspects of national security should be well defined and made logically comprehensible to the competent authority and the local population whose consent is necessary for the acquisition of land for private companies of any kind. Asymmetry in information would be violative of their rights and would amount to exploitation. It has also been held that an establishment of public purpose is required³⁶, mere speculations would not suffice. Hence, the need for symmetric information.

While the case law is minimal on such an aspect of land acquisition, it is important to deal with this issue given the expansions in the acquisitions of land for army in the north³⁷ and north-eastern³⁸ parts of the country. In addition to issues of dispossession, it also has severe effects on environmental degradation. Many a time, what is ignored is the long-term impact on the safety of the inhabitants of that land and the area around it. There are reports of ammunition residues exploding at various places³⁹ and hence, causing a safety concern for the people, which obviously does not serve any public purpose. In a dispute between a private party and the Army over acquisition of land (as per the old statute) in Arunachal Pradesh, the High Court directed

³⁴ *Id.*

³⁵ *Saddruddin Suleman Jhaveni v. J.H. Patwardan*, A.I.R. 1965 Bom. 224 (India).

³⁶ *State of Bombay v. Bhanji Munjhi* (1955) 1 S.C.R. 777 (India).

³⁷ *India's defences eat away at farmland along border with Pakistan*, AL JAZEERA (Oct. 30 2019), <<https://www.aljazeera.com/news/2019/10/india-defences-eat-farmland-border-pakistan-191030061758417.html>>; Athar Parvaiz, *Tribal Population of Jammu and Kashmir cries foul about non-implementation of Forest Rights Act*, MONGABAY (Jan. 16 2020), <<https://india.mongabay.com/2020/01/tribal-population-of-jammu-and-kashmir-cries-foul-about-the-non-implementation-of-the-forest-rights-act/>> 0

³⁸ *Rahul Karmakar, Army's Land Acquisition Makes all Householders in Arunachal Pradesh Village a Millionaire*, THE HINDU (Feb. 8 2018), <<https://www.thehindu.com/news/national/other-states/armys-land-acquisition-makes-every-household-in-this-arunachal-pradesh-village-a-millionaire/article22688747.ece>>.

³⁹ *Masood Hussain, Operation Falah: Army in Jammu and Kashmir Clears up Explosive Debris at Tosa Maidan*, ECONOMIC TIMES (Aug. 16 2014), <<https://economictimes.indiatimes.com/news/politics-and-nation/operation-falah-army-in-jammu-and-kashmir-clears-up-explosive-debris-at-tosa-maidan/articleshow/40312110.cms>>.

that there shall be due compliance with the procedure and requisite formalities shall be compulsorily followed.⁴⁰

Hence, what can be deduced from the above analysis is the fact that there has to be definite and overwhelming purpose so as to classify an act for national security as one for the public purpose. The long- and short-term impact of the land acquisition, the environmental effects and the alternative options available should all be taken into account first before moving ahead with the acquisition procedure.

IV. SOCIAL IMPACT ASSESSMENT STUDY

Having understood the dynamism of national security, it is of utmost importance to understand the concept of Social Impact Assessment Study as provided in the Act of 2013. The need to adhere to this programme is very intricately linked to the public purpose that is argued to be catered to by the acquisition of land. The Social Impact Assessment Study, provided by the legislature, is in furtherance of the aim to apply the principles of natural justice to cases of land acquisition.

Without prescribing for any exceptions section 4 of the Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as “Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them”⁴¹. The aim of the Social Impact Assessment Study is multi-pronged. It aims at analysing how proposals affect people and help manage change. Additionally, it aims at identifying and mitigating adverse impacts, if any, of the land acquisition process.

Social Impact Assessment is the “process of assessing, in advance, the social impacts likely to flow from a project proposal.” Quantification of these impacts and the potential consequences are identified and necessary steps are aimed to be initiated. The culmination of this process can even lead to the rejection of a proposed project of acquisition.⁴²

(A) Social Impact Assessment Study: The Right to Eminent Domain Prevails

In any case of land acquisition, be it for national security purposes or not, the question that first needs to be asked is that what essentially are the end-uses for which public interests will trump

⁴⁰ Shri Sojee Meyor v. State of Arunachal Pradesh W.P. (C) 235(A.P.) 2014 (India).

⁴¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 30, Acts of Parliament, s4, (2013) (India).

⁴² Hari Mohan Mathur, *Social Impact Assessment: A Tool for Planning Better Resettlement* <<http://iced.cag.gov.in/wp-content/uploads/HCM-presentation.pdf>>

private property rights, and justify acquisition of land from a person who is not willing to part from it.⁴³The role of the Social Impact Assessment is an instrument that enables assess and determine the implications of land acquisition on the affected community and people.⁴⁴ What is primarily worth taking note of the legislative intent which has developed the programme of SIA to minimise the risks that are involved in displacement, rehabilitation, compensation and resettlement. It also facilitates an informal mechanism of land acquiring strategy and, hence, saving both time as well as cost, in a process which is otherwise deemed to be tedious and brutally expensive.

Given the over-arching nature of the National Security Projects it is essential that the Social Impact Assessment concludes that such a project duly serves the public purpose and satisfies other conditions like, land acquired is bare minimum, alternative options have been considered, impact on inventory and the number of families that are likely to be displaced.⁴⁵ The Supreme Court of India has held that provisions like that of the SIA form part of natural justice and the affected parties should be given the right to hearing.⁴⁶It is a necessity to give a notice to the affected families as natural justice is a part of the administrative law jurisprudence.⁴⁷It has also been held in the case of *Sooraram Pratap Reddy v Collector*⁴⁸ that declaration of public purpose can be subjected to a limited judicial review and, hence, it is in the interest of the acquisition agencies as well to carry out a well-coordinated Assessment Study programme so as to avoid any judicial hassle. However, still the balance shifts towards the right to eminent domain of the state given that the very restricted nature of judicial review in cases of land acquisition by the state for a stated public purpose.⁴⁹

While SIA study is mandated to be conducted in consultation with the local bodies, the government is not bound by the opinion of the expert group to whom this study is forwarded under the provisions of the Act. Hence, what is significant to note is the fact that again the it is the state which gets an upper hand in the mentioned public purpose⁵⁰ with a limited scope for judicial review. Additionally, under urgent circumstances the government can even seek for an

⁴³ M R Madhavan, *Land Acquisition Process Can Take 50 Months*, PRS (Jun. 9 2013) <<https://prsindia.org/tags/social-impact-assessment>>.

⁴⁴ CENTRE FOR SCIENCE AND ENVIRONMENT, *SOCIAL IMPACT ASSESSMENT (SIA) AND SOCIAL IMPACT MANAGEMENT PLAN (SIMP)- AN INDICATIVE STRUCTURE 4* (2017).

⁴⁵ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 30, Acts of Parliament, s 4(4), (2013) (India).

⁴⁶ Chandrakanth Adinath Utture v. State of Maharashtra, (2016) 6 S.C.C. 150 (India).

⁴⁷ *Id.*

⁴⁸ *Sooraram Pratap Reddy v. Collector*, (2008) 9 S.C.C. 552 (India).

⁴⁹ Priya S. Gupta, *The Peculiar Circumstances of Eminent Domain in India*, 49 Osgoode Hall L.J. 455 (2012).

⁵⁰ Arjun Bhagi and Pranshu Chopra, *The New Land Acquisition Act: Analysing the Act, the 2014 Amending Ordinance and the Act's Impact on the Indian Infrastructure Sector*, 5 GJLDP 27 (2015).

exemption⁵¹ from the Social Impact Assessment Study which, otherwise, forms the core of a due procedure under the Act.

(B) Social Impact Assessment, Environmental Impact Assessment and National Security

Traditionally national security is considered to be the domain of the central government and the armed forces.⁵²In a militarily proactive country like ours, it is important to realise the fact that it is the people of a nation who constitute the basis and foundation of national security. If people are allowed to work in coordination and tandem with the institutions of the state without getting stuck in the nexus of bureaucracy, they will be the promoters of national as well as environmental security. They will also be the harbingers of mass empowerment of the populace.⁵³Hence, a strict adherence to the statutory requirements of assessment study and at the same time elasticising the scope of judicial review in cases of acquisition for defence purposes which are potentially going to increase in the future will enable a just procedural framework that will likely be more transparent and subject to scrutiny and critical engagement.⁵⁴

Except where specifically prescribed for, the adherence to SIA/EIA study is necessary as has been noted by the Bombay High Court.⁵⁵ In this case, the HC held that the applicability of sections 4 to 15 of the RFCTLARR is hardly necessary in MRTP Act, and the in cases under MRTP Act if the state legislature deems fit, it can do away with the assessment study. What can be deduced is that SIA should be followed as a matter of procedure as well as natural justice so as to, at least, create a semblance of conciliation between the competing interests.

The importance of SIA in matters of national security can hardly be undermined. Given the rapid growth and requirements of India's indigenous defence related developments, it becomes of utmost importance to not overlook the interests of the ordinary citizens who are a significant part of the nation building process and contribute through their sweat and blood for the security and integrity of the nation.⁵⁶ An extensive and elaborate Social Assessment Report should necessarily form a part of the land acquisition procedure for defence related activities. While

⁵¹ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, No. 30, Acts of Parliament, s 9, (2013) (India).

⁵² S.K. Sharma, *National Security and the People*, 37 EPW 268 (2002).

⁵³ *Id.*

⁵⁴ Arnold Wolfers, *National Security as an Ambiguous Symbol*, 67 Political Science Quarterly 481-502 (1952).

⁵⁵ Mehtab Laiq Ahmed Shaikh v. State of Maharashtra, (2017) S.C.C. OnLine Bom. 762 (India).

⁵⁶ Daniel Deudney, *The Case Against Linking Environmental Degradation and National Security*, 19 Millennium: Journal of International Studies 461(1990).

India faces strong security challenges⁵⁷, it is necessary that they do not overpower the ordinary people in India's urban and rural areas.

At this point it is important to note the ordinance⁵⁸ brought by the government after the passing of the 2013 Act so as to ease out the process of land acquisition in certain cases which included the military and defence projects as well. In this context, it is also pertinent to realise that till 2015 around 50 million acres of land was acquired by land for minimal compensation and without proper assessment studies.⁵⁹ Hence, there are many such and other related issues and problems relating to land acquisition, resettlement and rehabilitation in India, both in rural and urban areas. They need to be dealt with great care for future availability and use of land/properties.⁶⁰

V. CONCLUSION

The problem of land acquisition dates back to the pre-constitutional colonial era. In the aftermath of independence, the government of India continued the land acquisition process under the colonial Land Acquisition Act of 1894. Given the rampant developmental projects undertaken in both the public and private sector huge land masses were acquired for the vehemently argued public purpose. This led to the displacement, dispossession and disempowerment of a lot of people in both urban and rural areas. Interesting to note is the fact that the SC has limited the scope of judicial review in cases of land acquisition for a purpose leaving it for the state to decide what is the best for the public.

In a very important realisation, the government brought into a force a new land acquisition legislation in 2014 which enhanced the resettlement, rehabilitation and compensation programmes for the affected families. Given the various land movements in India⁶¹, the government tried to bring the principles of natural justice into the Act and make it more democratic and equitable. However, the vague notions of national security and the reluctance of the courts to adjudicate upon such issues leaves a potential lacuna in the Act which brings national security in the domain of public purpose. In such a case, public purpose should not be

⁵⁷ Harsh V. Pant and Kartik Bommakanti, *India's National Security: Challenges and Dilemmas*, 95 International Affairs 835 (2019).

⁵⁸ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2015

⁵⁹ Sanjoy Chakravorty, *Why is India Facing Growing Conflict Over Land?* BBC NEWS (Mar. 17 2015) <<https://www.bbc.com/news/world-asia-india-31705131>>.

⁶⁰ *Land Acquisition, Resettlement and Rehabilitation* <https://archive.india.gov.in/business/land/issues_problems.php>

⁶¹ Aseem Shrivastava, *The Multitudes Dispossessed by the 'Gujrat Model'* THE HINDU (Sept. 19 2019) <<https://www.thehindu.com/opinion/op-ed/the-multitudes-dispossessed-by-the-gujarat-model/article29451899.ece>>

determined by the extensive nature of public projects, rather a limited criteria of building infrastructure for combating internal instability and external aggression should be adhered to in letter and spirit.

Furthermore, the executive upper hand on the finality of the Social Impact Assessment Study inhibits the scope of a fair democratic process of land acquisition where the consent and concern of the affected families should be given due credence. Additionally, the exemption from such study in emergency situations needs to be carefully dealt with and there should always be executive and administrative urgency in rehabilitating the affected families.

Lastly, the recent adventure of the government to exempt military and defence related infrastructure from Social Impact Assessment Study should be not pursued further and the judiciary should take up the process of evolving a strict jurisprudence on public purpose and at the same time increase the scope and extent of judicial review in land acquisition processes by the government for private companies and otherwise.
