



**THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION
REHABILITATION AND RESETTLEMENT AT, 2013 – A NEW IMPETUS TO REACH NEW
SOCIO-ECONOMIC CHALLENGES THROUGH LAND ACQUISITION**

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Abstract

The Land Acquisition Law in India has gained a momentum with the introduction of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 - an overview.

In an agricultural based country like India, land rights entails every aspect of human livelihood like occupations, emotions, value system, relationship, culture etc. simultaneously India as a developing country needs mobilization of Socio-economic advancement and land acquisition has a boosting effect on it. The theory of Eminent Domain which is the basic pillar of land acquisition process clearly directs a balancing interest between the Government of a welfare State and an individual owner of land. The 1894 Act was well equipped without having any fair and sympathetic attitude towards the land owners whereas the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 has a keen insight to solve the land acquisition matters in a humane, participative, fair and transparent process. This statute is aimed to fulfill the true intention of the Doctrine of Eminent Domain. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 is definitely a better equipment to achieve the infrastructural goal of industrialisation. Now proper implementation of this comprehensive Act is the need of the moment.

The Notion of land rights and its historical perspective in India:

Land Rights is as old a concept as human civilization. From the very inception, when people became aware of their social existence, the concept of land rights took place. During those days, land rights basically entailed the major portion of the notion of 'Right to Property' because other valuables like currency or gold had no such place in their lives. Gradually society began to consider land as a marked emblem of one's livelihood, his socio-economic status and identity. With the passing of time 'ownership of land' got deeply attached to human emotions, thoughts, relationships, culture, religious

beliefs and practices etc. Thus, 'Right to Property', specially 'Right to Land' gradually embraced every aspect of human livelihood, like occupation, emotions, value system, relationship etc.

With the evolution of human civilization, social needs exceeded the glory of personal asserts, social welfare began to check the feelings and emotions of having land of one's own. The 'Rule of Eminent Domain' had been emerged as one of the basic elements or welfare state. The concept of acquisition of land for public purposes, after giving fair compensation, had become a key factor in the journey of socio economic development. It was truly realized that sustainability should definitely be maintained between individual interest and social interest. Even sometimes social interest or public interest may overlap the importance of individual interest, for the greater sake of the society.

Setting apart the notion of land rights from individual point of view, it can be said that the collective interests in land rights arise out from the Doctrine of 'Eminent Domain'. 'Eminent Domain' is a famous doctrine of land acquisition for public purpose was for the first time explained by Hugo Grotius, a seventeenth century legal scholar, a renowned personality in the area of international law¹. He explained the concept in a very prospective manner. The idea of land acquisition for public welfare, in lieu of fair and adequate compensation was actually originated from the Australian Principle, termed as 'terra nullius' and the term denotes nobody's land². Before the conventions of ILO and UN on indigenous people, nobody's lands were the lands occupied by those people who had no such socio-political identity, but the evolution of the doctrine of 'Eminent Domain' and its acceptance by different countries had given it a socio-economic significance.

Etimologically 'Matti' expresses strong connotation. It is truly identical with the peasant community as well as involves a sentimental vision of life. Personal land and property glorifies one's social dignity, social security and many more emotions. Even to die in the ancestral property is a matter of highest spiritual satisfaction³. Displacement of someone's own land is a painful as anything. Different aspects of land have also been discussed in the religious scriptures like 'Shiva Vandana'⁴.

An elaborate explanation of the doctrine emphasis the inherent and discretionary power of the sovereign body to acquire individual's property for social welfare on the payment of reasonable compensation. The doctrine entails several other human rights such as – right to land and immovable property, occupation, social identify, socio-economic status and security, dignity, livelihood and religious belief also. All those aspects are embedded in a single root i.e. Right to Life – the supreme of all human rights. When confrontation arises between individual right and duty of a welfare state to

¹ Black's Law Dictionary, Thomson West, USA 8th Edition 2004.

² Fernandes Walter, 2009 'Displacement and Alienation from Common Property Resources', in Lyla Mehta (ed), Displaced by Development- Confronting Merginalization and Gender Injustice (pp.105-131). New Delhi: Saga Publication.

³ Devalle Susana B.C. 1992 Discourses of Ethnicity Culture and Protest in Jharkhand, New Delhi; sage.

⁴ Claus, Martina and Sebastian Hartig, 2012, the Koel Karo Hydel Project and Empirical Study of the Resistance Movement of the Adivast in Jharkhand India.

acquire land for public purpose – the latter persists in most of the cases for the benefit of the society at large.

Now if we analyze the basic ingredients of the Doctrine of Eminent Domain – it has two essential elements in it. First one is, the State has the inherent right to confiscate private property for social welfare and development and secondly, the State can only pursue with the process by paying adequate compensation to the landless owner. So, the Doctrine ensures any one of the basic right, either the right of land or the Right to be compensated with fair amount and the right to be rehabilitated and resettled, and furthermore, the whole process should be gone through a fair and clear procedure.

To explain the actual nature of the land rights in India, we have to look over the Constitutional history of it. The Constitution of India did not ignore the ‘Right to Property’ in its inception. It had its existence in Article 19(1)(f) as other fundamental rights⁵. Article 31⁶ was also there as a supportive provision to protect the Right to Property. Gradually, innumerable litigations started to take place between the Government and the citizens as the consequence of its implementation. As an obvious outcome, the Right to Property had been curtailed from the pages of the Chapter-III of the Constitution of India. Repeal of fundamental right became a matter of great concern. In *Shankari Prasad v/s U.O.I.*⁷ the Supreme Court held that the legislature had ultimate power to amend the Constitution, thereby altering the basic structure. This verdict was upheld in the matter of *Sajjan Singh v/s State of Rajasthan*⁸. Then in *Golaknath v/s State of Punjab*⁹, the Apex Court passed a bit contradictory decision, i. e. the Parliament did not have any power to amend the Constitution and Article 368 of the Constitution only provided the procedure for amendment. All dilemmas were cleared with the decision of the *Keshavananda Bharati Case*¹⁰. In that landmark decision the Court was of opinion that the Parliament definitely has the power to amend the Constitution but not by changing the basic structure of the Constitution. The forty-fourth Amendment Act thus shifted the Right to Property from the fundamental rights chapter to Article 300-A. Insertion of Article 300-A has given it a status of legal right. So, it was just a transformation of fundamental right into legal right. The Right to Property had changed its place from the area of fundamental right to Article 300-A as a mere legal right. Article 300-A is definitely a protection for Right to Property but without a shield of fundamental right.

It is crystal clear from a keen observation that the idea of property is not static. So changes should be made in a very flexible and dynamic manner. With the flow of social development, a broader interpretation of public purpose has changed the activities of the State power and this change has enough

⁵ Omitted by the constitution (forty- fourth Amendment) Act, 1978- read (to acquire, hold and dispose of property).

⁶ Omitted by the Constitution (Forty Fourth Amendment) Act, 1978- compulsory acquisition of property.

⁷ A.I.R. 1951 SC 458.

⁸ A.I.R. 1965 SC 845.

⁹ A.I.R. 1967 SC 1643.

¹⁰ Keshavananda Bharti –Vs- State of Kerala (A.I.R. 1973 SC 1461).

effect on the jurisprudence of land rights. When the whole nation is on dynamic motion and land is an essential ingredient of social dynamism, amendments in land right were just unavoidable.

The law of land acquisition has undergone a change mainly due to socio-economic development. Urbanization, industrialization – various other welfare measures initiated by the State – all those are inseparable elements to these changes. The policy-makers are to play dual role. They are the savior of the society as well as they should not overlook the prospect of the nation. Article 300-A, as a legal right is now the main weapon in their hands¹¹. The objectives and values of a Welfare State are different from that of a democratic State. A welfare State should always be careful in providing rights to its citizens and these rights are subject to reasonable restrictions, for the greater interest of the community as a whole. Emphasis has been put on ‘reasonable restriction’ rather than ‘fundamental right’ when it accelerates the socio-economic growth of the society¹².

In a developing country like India, striving for better economy should be the mainstream motto. Emphasizing individual interest is a hindrance, obstructing socio-economic advancement. Human rights approach cannot always raise a hue and cry against violation of land rights for the national progress. Socio- economic advancement of the nation will serve the citizen better to enjoy their basic human rights. Now the only appropriate balancing element is adequate compensation and proper rehabilitation and resettlement. Simple monetary compensation is not adequate, it must be a just and fair amount and accompanies with rehabilitation procedure.

The New Statute of 2013 has modified the old land acquisition procedure in an overwhelming manner:

The Land Acquisition Act, 1894 failed to keep pace with the compensation process in a transparent manner. It failed to pay compensation as per the up-to-date market value of the property acquired. Economic sufferance, on the part of the land owners, indirectly demoralizes the prospect of economic growth. Till now, India is basically an agriculture based nation. 70% of the population lives in rural areas and depends on the primary sector i.e. agriculture¹³. The 1894 Act had some drawbacks due to which it failed to meet the actual social needs. The first and foremost defect was its section 17, that signified the ‘Urgency clause’, which was the most, criticized and misused section of 1894 Act. It can be termed as a draconian law, because the landowner whose land is proposed to be acquired could not seek injunction against it. He could only file an objection against the proposed land acquisition¹⁴. Sometimes

¹¹ Article 300A – person not to be deprived of property saved by the authority of law.

¹² Government of India Report: Report of the Land Acquisition Review Committee on land.

¹³ An Article published in Manupatra, by Prop. Kahkashan Y Danyal- Land Acquisition in India, Past and present.

¹⁴ Ibid.

Section 17 used to demolish the scope of filing objection which resulted into violation of the principles of Natural Justice.

With regard to this tussle, the Supreme Court in *Radhey Shyam (D) through LRs and others v/s State of U.P. and others*¹⁵ decided that Section 5A represents the statutory embodiment of the rule of audi alteram partem and the urgency provisions under Section 17(1) should not be invoked unless there is a substantive urgency.

Moreover, other two major setbacks are – low rates of compensation and absence of any provision for rehabilitation and resettlement. It means the 1894 Act failed to follow the actual motto of the Doctrine of Eminent Domain – i.e. utilization of State’s right to confiscate private property for social welfare and development by paying adequate compensation along with rehabilitation. Economic sufferance on the part of the land owners, indirectly demoralizes the prospect of economic growth.

At this juncture, the new Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with measure to mitigate the lacunas created by the Land Acquisition Act, 1894. With such a new weapon India could get rid of the poor, unscientific, arbitrary, land acquisition procedure. Unfair valuation of land is nothing but a grave violation of human rights.

Apart from highlighting the provision for adequate compensation and resettlement, another overwhelming contribution of this new statute is to provide an inclusive definition of ‘Public Purpose’. Basically, land acquisition is of two types, i.e. acquisition of land for public purpose and acquisition of land for companies. For the first kind of acquisition a very precise definition cannot be framed as the ambit of public purpose is widening day by day with the expanded explanation given by various High Courts and the Apex Court while deciding for various land acquisition matters. Laying of road, widening of existing road, construction of houses for weaker section of the society, construction of bridge, educational institutions, housing projects, construction of parks, irrigation project, establishment of public offices, construction of railway and metro routes – all are simple examples of ‘public purposes’.

The concept of public purpose is not static; it is as dynamic as socio-economic development. Furthermore, it can not be analyzed from a fixed angle. The expression ‘public purpose, according to the decision passed by the Hon’ble Court in the matters of *Sanmukhbhai Bhikhabhai Patel v/s State of Gujrat*¹⁶ has not been statutorily defined but it varies in its shades and colours of its “different meaning in different contexts” and the concept of public purpose changes with the change in social values and interests and from time to time, depending upon the changed circumstances as well as requirements of the members of the society. It has been rightly said nothing is static except the concept of change.

¹⁵ C.A. 4283/2013 decided on January 12, 2015.

¹⁶ Sanmukhbhai Bhikhabhai Patel -Vs- State of Gujrat AIR 2005 NOC 364 Guj 2005 AIHC, 2005 LAC (Guj) 461.

If we apply the theory of 'Stare Decisis', the concept of 'public purpose' has already been widened with the flexible outlook of various courts. Some examples are cited here:

- (i) Construction of a sugar factory by a co-operative society with a view to encourage local cane-growers and to increase the production of sugar etc.¹⁷
- (ii) A housing scheme for a limited number of persons¹⁸;
- (iii) Expansion of school and its playground to meet growing educational need¹⁹;
- (iv) Construction of Public Library²⁰;
- (v) Construction of maternity home and child welfare centre²¹;
- (vi) Acquisition of land for garbage treatment plant or land fill sites²².

The Social Impact Assessment (SIA) is another significant part of the new statute to feel the social impulse before the acquisition of the land. Social Impact Report and Social Impact Management Plan are the newly added effective mechanism to avoid misuse of Governmental power and to acquire land in a considerate manner. Whether the proposed acquisition of a land will be legitimate or bonafide is to be measured with public feedback through the process of Social Impact Assessment.

Moreover, the new statute did not neglect the sensitive issue of food security. Chapter III²³ supplies special provision to safeguard food security. Acquisition of multi-cropped irrigated land can be done only in exceptional cases and if acquired must be compensated with equivalent area of cultivable waste land. Only exception to this provision are the projects relating to railway, highways, major district roads, irrigation canals, power lines etc. which are linear in nature²⁴.

The 2013 statute also provide for an option of temporary acquisition.

Chapter 11 has given the opportunity of temporary acquisition to the appropriate Government for a particular public purpose and the maximum limitation period of returning back the property to the owner is three years.

Determination of Compensation according to the market value of the land is another focal point of the newly introduced statute. Payment of fair compensation along with rehabilitation and resettlement can only remunerate the dissatisfied minds of the owners.

¹⁷ Tirunuru Subhareddi and other –Vs- State of Andhra Pradesh and others AIR 1979 AP 127.

¹⁸ Ratilal Shakrabhai and others –Vs- State of Gujrat and others (AIR 1970 SC 984).

¹⁹ The Forane Church –Vs- U.P. Govt. and other (AIR 1972 Ker 193).

²⁰ Brij Nath Sarin –Vs- U.P. Govt. and others (AIR 1953 All 182).

²¹ Nader Chand Mallick –Vs- State of West Bengal and others (AIR 1952 Cal 67).

²² Dada Fire Works Pvt. Ltd. –Vs- State of Maharashtra (2005 LAC 186) P-193.

²³ Chapter-II, Section 10 of the Right to Fair Compensation and Transparency in law Acquisition, Rehabilitation and Resettlement Act, 2013.

²⁴ R. Chakraborty- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, Page- 68.

Sections 26 to 30²⁵ of Chapter IV of the new statute provide clear instructions to the State to be just and fair in determining the value of the land. Even section 25 has fixed the period within which an award shall be made²⁶.

Accordingly to Black's Law Dictionary the term 'Fair Market Value' means the price that a seller is willing to accept and a buyer is willing to pay in the open market. It should be in an arm's length transaction, the point at which supply and demand intersect. 'Fair Market Value' is also termed as 'actual value', 'just value', 'salable value', 'true value' etc. Fair Value of salable assets does not mean what they would sell for in the slow process of the debtor's trade as if the debtors were continuing their business unhampered. The normal idea of fair value is the amount of money, which the debtor could raise from its property in a short period of time, but not so short as to approximate a forced sale. Here the debtor must be a reasonable prudent and diligent businessman who has interest in his mind and well concerned for the payment of his debt.

In the matter of *Viluben Jhalejar Contractor v/s State of Gujarat*²⁷ has explicitly explained the positive and negative factors for determination of market value for compensation. The positive and negative factors are mentioned below:

Positive Factors		Negative Factors	
1.	Smallness of size	1.	Largeness of size.
2.	Proximity to a road.	2.	Situation in the interior distance from the road.
3.	Frontage on the road.	3.	Narrow strip of land with small frontage compared to depth.
4.	Nearness to developed area.	4.	Lower level requiring the depressed portion to be filled up.
5.	Regular shape.	5.	Remoteness from developed locality.
6.	Level vis-à-vis land under acquisition	6.	Some special dis-advantageous factors which would deter a purchaser.
7.	Special value for an owner of an adjoining property to whom it may have some very special advantage.	7.	

The Apex Court also opined whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces,

²⁵ Section 26 to 30: the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

²⁶ Section 25: Ibid.

²⁷ AIR 2005 SC 2214.

plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price²⁸.

The Market Value of any acquired land can be modified at any stage. It does not matter whether it attains finality. The Appellate Court can take additional evidence and if it is required to pronounce a judgment to sub serve the ends of justice can change the market value and amend the Award²⁹. Furthermore, it was opined by the Court in this matter that – Any award passed by LAO³⁰ or by Reference Court, once it attains finality amounts to an admission on the part of the State as to the market value of the lands under acquisition. Section 27 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 while determining the market value of the land, the Collector will include all assets attached to that land. Section 26 has prescribed certain criteria's for that purpose³¹.

Even under Section 64(1) of the 2013 Act, the affected family who has not accepted the award money may give an objection to the Collector in writing, which will be forwarded before the Authority within thirty days by making it as a reference petition³².

Most of the time it happens that land acquisition is taking place in a remote village and the affected owners of the lands are mostly illiterate and not well aware with regard to their interest. Even sometimes they are not aware about the date, time or other legal technicalities. If they seem unable to file an objection to express their grievances even after receiving notice under Section 21, then Section 21 of the new statute has a remedy for them. Section 73 is giving them opportunity to file their objection within a prescribed time for re-determination of his award.

The property to be acquired may belong to any religious community. A property owned by any religious community may be acquired by the State for public purpose, following the same process. With regard to this matter, the notice for acquiring land should be issued to the community head or head of the trust property. All necessary communication is to be made to such authority and that authority can file objection regarding compensation, resettlement etc. The compensation paid will further be used in common purpose or to create the same infrastructure elsewhere³³.

According to Section 10-A of Chapter-III A, which has been inserted by the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement (Amendment)

²⁸ Ibid.

²⁹ K. Ramachandra and others v LAO Spl. Dy. Collector SLBC, Nalgonda, 2013 (6) ALT731.

³⁰ Land Acquisition Officer.

³¹ Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

³² Section 64 Clause 1 of the 2013 Act.

³³ Dr. Poonam Saxena and S.K. Kaushik, Habburys Laws of India: Trusts and Charities page- 423, Para 290, 465, Volume 29 (2) (Butterworths Lexis Nexis Publications, New Delhi 2000).

Ordinance 2014, the Government has been empowered with the power to exempt certain projects from the purview of the Chapter-II and Chapter-III of the new statute. Those projects are –

- (a) Such projects vital to national security or defence of India and every part thereof, including preparation for defence, or defence production;
- (b) Rural infrastructure including electrification;
- (c) Affordable housing and housing for the poor people;
- (d) Industrial corridors and
- (e) Infrastructure and social infrastructure projects including projects under public private partnership where the ownership of land continued to vest with the Government³⁴.

Another significant change in the new Act is the exclusion of Civil Court's jurisdiction under Section 63. The term jurisdiction actually means 'the right of administering justice'. Court's jurisdiction denotes the power of the Court to enquire into the facts, application of law, to pronounce a judgment, and to carry it into execution. Any limitation on the jurisdiction of the Court can be imposed by the statute, charter or commission under which the Court is constituted.

When the existence of a particular state of affairs is the main parameter for fixing up the jurisdiction of the Court, then the Court is free to decide its power to adjudge the matter by us in its inherent jurisdiction.

Section 63 of the 2013 Act clearly says that – No Civil Court (other than High Court under Article 226 or Article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any Court in respect of any such matter. Likewise the new statute is full of enthusiasm to achieve socio-economic development through a just and fair land acquisition process.

Displacement in any form, from one's own land is out and out a violation of basic human right, but whenever it is for public need, is definitely imposes some reasonableness on it. So, from this aspect this Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is a well-constructed bridge to correlate individual right and social need. Section 39 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 ensures some additional amount of compensation to the affected family whose land has already been acquired by the appropriate Government. This provision for sufficient amount of Compensation or the option for recompensating a family is a mandatory treatment for human rights violation. The urgency

³⁴ Sec.10-A of the Right to Fair Compensations and Transparency in laws Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2014.

clause under section 40 of the Act is just a mandatory compliance as the reasonable restriction (Article 19) of the Chapter III of the Indian Constitution.

If we explore the Doctrine of Eminent Domain theoretically and if we try to relate this theory with the present global economy, the increasing trend of liberalisation, privatisation and globalisation are the main steps to meet the developmental criteria. From this aspect social needs overrides individual interest and it is evident from the whole discussion that a transparent process of providing compensation, Rehabilitation, and Resettlement can proliferate acquired land for public purpose. If the appropriate Government can ensure the farmers or land owners the fair process of land acquisition and can make them realised that they are provided with adequate amount according to fair market price, advancement of the country could be achieved in a smooth manner.

Thus from all aspect the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act is a fully furnished device for acquisition of land by the Government in a fair and Comprehensive manner. It is itself a revolutionary step forwarding the country to reach new goals and challenges of industrialization and urbanization by ensuring a well chalked out procedure of land acquisition. Now the only need of the moment is to implement the laws in a trustworthy manner and the Government should be strict about that.
