

BOOKLET ON

# LAND ACQUISITION LAWS

# **EVOLUTION OF LAND ACQUISITION LAWS IN INDIA: AN IN-DEPTH ANALYSIS**

**By Bhatt & Joshi Associates**



# Preface

The history of land acquisition laws in India is a complex tapestry woven with threads of colonial legacy, post-independence aspirations, and the ongoing struggle to balance development imperatives with individual rights. This book aims to provide a comprehensive analysis of this intricate legal landscape, tracing its evolution from the colonial era to the present day.

The acquisition of land for public purposes has been a contentious issue throughout India's history. It touches upon fundamental questions of property rights, state power, and the delicate balance between public good and private interest. From the Land Acquisition Act of 1894, a colonial-era legislation that remained in force for over a century, to the landmark Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013, the journey of land acquisition laws reflects the changing socio-economic fabric of India.

This book delves into the historical development of these laws, examining the cultural, political, and economic factors that have shaped their evolution. We explore the transition from colonial governance to the post-independence era, analyzing how the legal framework adapted to the needs of a newly sovereign nation. The impact of economic liberalization in the 1990s and the subsequent push for rapid industrialization and urbanization are critically examined, highlighting the tensions between development goals and land rights.

A significant portion of this work is dedicated to the LARR Act of 2013, which marked a paradigm shift in India's approach to land acquisition. We dissect its key provisions, including enhanced compensation, mandatory social impact assessments, and the requirement for consent in certain cases. The subsequent amendments and ordinances are also scrutinized, providing insight into the ongoing debates surrounding this crucial legislation.

Throughout this book, we strive to present a balanced view, acknowledging the diverse perspectives of various stakeholders – from government agencies and corporate entities to

farmers, tribal communities, and civil society organizations. We examine landmark judicial decisions that have interpreted and shaped these laws, offering a nuanced understanding of how they have been applied in practice.

As India continues to grapple with the challenges of sustainable development, equitable growth, and social justice, the role of land acquisition laws remains pivotal. This book aims to contribute to this ongoing discourse by providing a thorough, analytical, and accessible account of the evolution of these laws.

It is our hope that this work will serve as a valuable resource for legal scholars, policymakers, students, and anyone interested in understanding the complex interplay between land rights, development, and social justice in India. By examining the past and present of land acquisition laws, we hope to illuminate potential paths forward, fostering a more equitable and sustainable approach to land use and development in India.

Sincerely,  
Bhatt and Joshi Associates

## TABLE OF CONTENTS

<b>CHAPTER I</b>	<b>24</b>
<b>HISTORICAL DEVELOPMENT OF LAND ACQUISITION LAWS IN INDIA</b>	<b>24</b>
1. Power to Enjoy, Deal, and Destroy	25
2. Possession with the Right to Exclude Others	25
3. Power to Alienate	25
4. Power to Charge Security	25
5. Power to Will Out the Thing	25
Agricultural arrangement	25
Land Laws during the Hindu Period	26
a. Sovereign's Non-Ownership and Entitlement to Usufruct	26
b. Narada's Articulation of Sovereign's Fees	26
c. Parashara's Rationale for Sovereign's Claim	27
d. Earth as Inalienable Common Resource	27
e. Cultivator's Ownership of Land	27
f. Emphasis on Cultivation and Penalties	28
g. Non-Alienability of Land and Heritability	28
h. Acquisition of Right by Adverse Possession	28
i. Hindu Revenue System	28
The Muslim Era	29
Transition to Muslim Rule and Legal Overlaps	29
Challenges of Governance and Legal Framework	29
Muslim Law and Indian Land System	29
Evolution of Revenue Collection	29

Cultivators' Rights and Revenue System	30
Principles Followed by Muslim Rulers in Land Taxation	30
Transition of Land Assessment and Ownership: Hindu to Muslim Periods	31
Evolution of Feudal Tenure in Medieval India	32
The British Period in India: Economic Shifts and East India Company's Ascendancy	33
Trade Dynamics and European Competition	33
Entry of European Maritime Powers	33
Expansion of British Presence	34
Firman from Furrukhsiyar and Rapid Growth	34
French Entry	34
British Zeal and Naval Strength	34
Dutch Decline and Anglo-Dutch Wars	35
Shift to Anglo-French Rivalry	35
Commercial Rivalry and Political Ambitions	35
French Rivalry and Carnatic Wars	35
Carnatic War Consequences and British Territorial Expansion	35
Buxar and its Far-reaching Consequences	36
Expansion beyond Bengal and Maratha Wars	36
Impact of the West on India	36
Evolution of Land Laws in British India	37
Impact and Limitations of Land Settlements in British India	38
Permanent Settlement in British India	39
The Mahalwari System in British India	40
The Ryotwari System in British India	40
1. Direct Settlement with Ryots	41

2. Limited Period	41
3. Measurement and Assessment	41
4. Free Tenure	41
5. No Enhancement during Fixed Term	41
Legislative Authority of the East India Company: A Historical Overview	41
Charter of 1600	42
Extension of Power (1623)	42
1661 Charter	42
Transfer of Bombay (1668)	42
Power Expansion (1676-1863)	42
Charter of 1726	42
Charter Act of 1753	43
Charter Act of 1753 (After Plassey)	43
The Act of Settlement, 1781: Legislative Implications	43
1. Regulations for Provincial Courts and Councils:	43
2. Dual Legislative Powers (Governor-General and Council):	43
3. Subsequent Charters and Acts (Until 1813):	44
The Charter Acts of 1813, 1833, and 1853: Legislative Changes	44
Charter Act of 1813	44
Charter Act of 1833	44
Charter Act of 1853	45
Indian Councils Act of 1861:	45
Developments in 1857	45
Land Acquisition Act of 1894	45
The Land Acquisition Act, 1894	46

Subsequent Amendments	46
Land Acquisition Act: Historical Overview and Legislative Changes	47
Introduction	47
The 2007 Amendment Bill	47
Lapse of the 2007 Bill	47
Introduction of LARR, 2011	47
The Act of 2013	47
NDA Government's Reforms in 2014	48
Exemptions and Amendments in the 2015 Land Acquisition Bill	48
National Security and Defence Production	48
Rural Infrastructure, Including Electrification	48
Affordable Housing for the Poor	48
Industrial Corridors	49
Public-Private Partnership (PPP) Projects with Central Government Ownership	49
<b>CHAPTER II</b>	<b>50</b>
<b>INTRODUCTION</b>	<b>50</b>
Unveiling the Transition Phase	50
The Pivotal Role of the Land Acquisition Act	50
Background of Land Acquisition Law in India: A Historical Overview	51
a. Lack of Compensation and Rehabilitation	51
b. Absence of Prior Consent	51
c. Swift and Unilateral Acquisition	52
d. Lack of Local Stake and Benefits	52
The Geographic Applicability	54
Empowering State Governments	54

Coordination with Special Acts	54
Relevance of Special Acts	56
Exemption from Section 5A	56
Public Purpose in Land Acquisition	56
Judicial Guidelines on Public Purpose	56
Benefit to a Section of the Public	57
Housing for Workmen in Small Concerns	57
Amenities for Public Utility	57
Construction of Benefit to a Section of the Public	57
Government Agreements for Public Utility	57
Challenges in Defining Public Purpose	58
Human Rights Perspective	58
The Right of Fair Compensation and Transparency Act, 2013	58
Unified Legislation and Social Impact Assessment	59
Compensation in Land Acquisition	59
Issues with the Land Acquisition Act, 1894	59
Modernizing Land Records	59
Approach of the New Law	60
Key Distinctions and Fair Compensation	60
Compensation Recipients and Rehabilitation: Ensuring Comprehensive Coverage	60
Inclusive Definition of Affected Families	60
● Landowners	61
● Livelihood-dependent Families	61
● Scheduled Tribes and Forest Dwellers	61
● Forest and Water-dependent Families	61



● Government-allotted Land Recipients	61
● Urban Area Residents	61
Land Acquisition Tied to Rehabilitation and Resettlement	61
The Crucial Role of 'Rehabilitation and Resettlement' in Land Acquisition	62
Historical Background	62
Pre-2003 Scenario	62
Post-2003 Policy	62
Challenges with Policy Approach	62
Soft Law Nature	62
Implementation Discretion	62
Necessity for Enacted Law	62
<b>CHAPTER III</b>	<b>64</b>
<b>RIGHT TO PROPERTY UNDER THE CONSTITUTION OF INDIA: AN ANALYSIS</b>	<b>64</b>
The Government of India Act, 1919:	64
Turn of Events: 1919-1935	66
The Government of India Act, 1935	67
Provincial Governance and Laws	68
Right of Property Under the Indian Constitution	69
Article 19	69
Article 31: Compulsory Acquisition of Property	69
Land Acquisition Under Constitutional Lists	70
List I - Union List	70
List II - State List	70
List III - Concurrent List	70
Analysis of Constitutional Provisions: Article 31	71

Constitutional Provisions and Problems of Interpretation	71
Relationship between Article 19(1)(f) and Article 31	72
Relationship between Article 31(1) and Article 31(2)	72
Extent of justifiability of compensation in expropriation cases	72
Authority of Law Requirement	72
Fundamental Right under Art. 19(1)(f)	72
Full-Fledged Fundamental Right	73
Conditions in Clause (5)	73
Distinction Between Citizen and Alien	73
Interpretation of Constitutional Provisions: A Focus on State of West Bengal v. Subodh Gopal	73
Art. 31(2) and Deprivation of Property: The American Doctrine of Eminent Domain	73
Debate on Clauses (1) and (2): Police Powers vs. Eminent Domain	74
Power to Impose Restrictions: Art. 19(5) and Citizenship Considerations	74
Foreigners and Property Rights: Exclusion from Fundamental Rights	74
Significance of State of Bombay v. Bhanji Munji: Mutual Exclusivity of Art. 19 (1) (f) and Art. 31 (1)	74
Compensation and the Fourth Amendment: Shaping the Landscape of Property Rights	75
First Amendment (1951): Safeguarding Agrarian Reform Legislation	75
Fourth Amendment's Impact on Interpretation: Dwarkadas Srinivas, Saghir Ahmed, Bela Banerjee, and Subodh Gopal Cases	75
Interplay Between Articles 19 and 21: A.K. Gopalan Case and Mutual Exclusivity	75
Seventeenth Amendment: Refinement of Estate Definition and Constitutional Challenge	
76	
Constitutional Challenges and Sankari Prasad Case: Validation of Amendments	76

The Protective Shield: Ninth Schedule and Agrarian Reforms	76
Shankari Prasad v. Union of India (AIR 1951 SC 458)	77
Sajjan Singh v. State of Rajasthan (AIR 1965 SC 845)	77
Golak Nath v. State of Punjab (AIR 1967 SC 1643)	77
Kesavananda Bharati v. State of Kerala (AIR 1973 SC 1461)	77
Woman Rao v. Union of India	77
I.R. Coelho Case	77
Land Acquisition and Judicial Trends: A Landmark Decision	77
Background to the Case	78
Judgment	78
Significance of the Judgment	78
Scope of the Pune Municipal Judgment and Unresolved Aspects	78
Limited Definition	79
Implicit Recognition	79
Future Clarifications	79
Second Set of Judgments: Reinforcing the Retrospective Clause	79
Bharat Kumar vs State of Haryana	80
Bimla Devi vs State of Haryana	80
Impact and Recognition	80
Three Judge Bench Decision: Shivraj vs Union of India	80
Return of Land to Original Owners	81
Significance of the Decision	81
Opening Doors for Justice	81
Enriching Jurisprudence on Retrospective Operation	81
Reliance on Solicitor General's Opinion	81



Retrospective Operation: Clarifications and Interpretations	81
a. Operability Commencement	82
b. Physical Possession Criteria	82
c. Interpretation of Five-Year Period	82
d. Limitation Clause	82
Impact of Supreme Court Decisions on Section 24(2)	82
Limitation Period Clarification	83
Interpretation of the Five-Year Period	83
Significant Role of Delhi High Court in Implementing the Act	83
<b>CHAPTER IV</b>	<b>85</b>
<b>LAND ACQUISITION ACT, 2013: ISSUES AND PERSPECTIVES</b>	<b>85</b>
Introduction to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013	85
Objectives of the Act	85
1. Humane and Transparent Acquisition Process	85
2. Just and Fair Compensation	85
3. Rehabilitation and Resettlement	85
4. Empowering Affected Persons in Development	85
Need for the New Land Acquisition Law	86
a. Absence of Rehabilitation and Resettlement Provision	86
b. Overly Broad Definition of 'Public Purpose'	86
c. State Intervention for Corporate Land Acquisition	86
d. Acquisition of Multi-Cropped Land and Food Security Concerns	86
e. Lack of Lease as an Acquisition Option	86
Territorial Extent of the LARR Act, 2013	87

Effective Date for Enforcement of LARR Act, 2013	87
Retrospective Applicability of LARR Act, 2013 to Proceedings Initiated Under the 1894 Act	
87	
a. No Award Made Under Section 11 of the 1894 Act	87
b. Award Made Within 5 Years Prior to the LARR Act's Commencement	87
c. Award Made 5 Years or More Prior to the LARR Act, But No Possession Taken or Compensation Paid	87
Provisions for Land Acquisitions Under Special Acts	88
Enactments Specified in the Fourth Schedule	88
Modification of Fourth Schedule	89
Applicability to Land Acquisitions under SEZ Act, 2005	89
Applicability to Land Acquisitions under Cantonments Act, 2006	89
Applicability to Land Acquisitions under Works of Defence Act, 1903	89
Land Bank	89
Option of the Appropriate Government to Take Land on Lease	89
Rehabilitation and Resettlement (R&R) Provisions	90
Mandatory Social Impact Assessment Study	90
No Change of Purpose	90
40% of Appreciation Shared with Original Land Owners	90
Option to Affect Families to Avail Better Compensation and R&R under State Law or Policy	90
Affected Family	91
Landowners or Property Owners	91
Landless Families Dependent on Agriculture	91
Scheduled Tribes and Traditional Forest Dwellers	91

Forest and Water-Dependent Families	91
Beneficiaries of State or Central Government Land Schemes	91
Urban Residents	92
Family	92
Agricultural Land	92
Cost of Acquisition	92
Amount of Compensation	92
Demurrage	93
Cost of Acquisition of Land and Building	93
Cost of Development of Infrastructure and Amenities	93
Cost of Rehabilitation and Resettlement	93
Administrative Cost	93
Appropriate Government	93
a. In relation to acquisition of land situated within the territory of a State:	93
b. In relation to acquisition of land situated within a Union territory (except Puducherry):	
94	
c. In relation to acquisition of land situated within the Union territory of Puducherry:	94
d. In relation to acquisition of land for public purpose in more than one State:	94
e. In relation to the acquisition of land for the purpose of the Union:	94
Comparison of "Appropriate Government" Definitions:	94
LARR Act, 2013 (Section 3(e))	94
1894 Act (Section 3(ee))	94
Comparison	95
Displaced Family	95
Affected Area	95

Resettlement Area	95
Company	95
Entitled to Act	96
Holding of Land	96
Infrastructure Project	96
Land	96
Landless	96
Land Owner	97
Patta	97
Local Authority	97
Marginal Farmer	97
Person Interested	97
Project	98
Public Purpose	98
Requiring Body	98
Small Farmer	98
Scheduled Areas	98
Appropriate Government acquires land for its own use and for public purpose	98
Appropriate Government acquires land for PPP projects/for private companies for public purpose	99
Purchases by private companies through private negotiations	99
Acquisition for Public Purpose	99
Applicability of the Act for Public Purpose	99
Definition of Public Purpose (Section 3(za))	99
Change from the 1894 Act	100

The application of provisions under the Right to Fair Compensation and Transparency	100
Applicability of the Act to PPP Projects	100
Consent Requirement for PPP Projects	100
Consent Requirement Clarification	101
Restriction in Scheduled Areas	101
Applicable Provisions of the Act for PPP Projects	101
Applicability of the Act in Partial Acquisition by Private Companies	101
Extent of Applicability	101
Provisions Not Applicable	101
Exclusive Applicability of R&R Provisions	102
Multi-Cropped Irrigated Land not to be Acquired Except as Last Resort	102
General Restriction on Acquisition	102
Exceptional Circumstances and Last Resort	102
Conditions for Acquisition	102
Limitation on Aggregate Acquisition	102
Development of Culturable Wasteland or Deposit Equivalent Value	102
Exemption for Linear Projects	103
Acquisition of multi-cropped irrigated land	103
● Limit on Acquisition	103
● Notification of Limits	103
● Exemption for Linear Projects	103
Acquisition of land in Scheduled Areas	103
General Principle	103
Demonstrable Last Resort	104
Considerations that the appropriate government must ensure while examining land	

acquisition proposals	104
Legitimate and Bona Fide Public Purpose	104
Balancing Benefits and Social Costs	104
Minimum Area of Land Acquisition	104
Absence of Unutilized Previously Acquired Land	104
Utilization of Previously Acquired Land	104
Provision for the return of unused land to the original owner, heirs, or the Land Bank of the appropriate government	105
Definition of Land Bank	105
Conditions for Return of Unused Land	105
Recipients of the Returned Land	105
Reversion Process	105
Applicability to Land Acquired under LARR Act	105
Non-Application to Previous Land Acquisition Laws	105
Process for determining social impact and public purpose	105
Relevant Sections	105
Chapters and Sections Involved	106
Applicability	106
Mandatory Consultation and Social Impact Assessment	106
Objective of the Act	106
Section 4(1) Requirements	106
Mandatory Nature of Consultation and SIA	107
Exclusion in Private Company Purchases	107
Exemption from SIA for Irrigation Projects	107
Exemption from SIA under Urgency Provisions	107

SIA Not a Substitute for EIA	107
EIA Not a Substitute for SIA Except in Specific Cases	108
Time-Bound Nature of SIA	108
Initiation of Consultation and SIA Study	108
Emphasis on Transparency and Participation	108
Mandatory Steps for Public Purpose Acquisition	108
Distinction in Applicability	108
Specifics of SIA: Exemptions and Relationship with EIA	109
SIA Not a Substitute for EIA	109
Time-Bound Nature of SIA	109
Publication of Notification for Transparency	109
Representation of Local Bodies in SIA Study	109
Public Hearing for SIA	110
Matters Inclusive in the Social Impact Assessment (SIA) Study	110
a. Assessment of Public Purpose	110
b. Estimation of Affected Families	110
c. Extent of Impact on Properties	110
d. Adequacy of Land Proposed for Acquisition	110
e. Consideration of Alternatives	110
f. Examination of Social Impacts	111
Comprehensive Impact Assessment Components in Social Impact Study	111
a. Livelihood of Affected Families	111
b. Impact on Public and Community Properties	111
c. Assets and Infrastructure	111
d. Impact on Public Utilities and Facilities	112

Output of the Social Impact Assessment (SIA) Exercise: SIA Study Report and Social Impact Management Plan (SIMP)	112
Social Impact Management Plan (SIMP)	112
Publication of SIA Study Report	113
Appraisal of SIA Report by an Expert Group	113
Establishment of Expert Group	113
Composition of the Expert Group	113
Nomination of Chairperson	113
Decision by Appropriate Government After Examination of Land Acquisition Proposal and Expert Group Report on SIA	114
Legitimate and Bona Fide Public Purpose	114
Balance of Benefits and Social Costs	114
Minimum Area Requirement	114
Utilization of Previously Acquired Land	114
Utilization of Land Acquired Earlier	114
Section 8 further delineates the procedural steps and considerations	114
Publication of Preliminary Notification	115
a. Sequence of Publication	115
b. Exclusion of "For a Company" Provision	115
c. Detailed Information in Preliminary Notification	116
d. Timeline for Publication	116
e. Power to Extend Timeline	116
Contents of Preliminary Notification	116
Manner of Publication of Preliminary Notification	117
a. In the Official Gazette	117

b. In Two Daily Newspapers	117
c. Local Language in Government Offices	117
d. Online Visibility	117
e. Prescribed Publication in Affected Areas	117
Informing Local Self-Government Institutions and Gram Sabhas	117
Restrictions on Land Transactions and Encumbrances	118
Updation of Land Records	118
Validity Period of Preliminary Notification	118
Preliminary Survey of Land and Power of Officers to Carry Out Survey	118
● Entry, Survey, and Leveling	119
● Sub-soil Examination	119
● Acts Necessary for Assessment	119
● Setting Boundaries and Lines	119
● Marking Levels, Boundaries, and Lines	119
Comparison with 1894 Act	119
Right of Persons Interested in any Land Covered Under Preliminary Notification	120
1. Objection Period	120
2. Submission of Objections	120
3. Collector's Role	120
4. Decision by the Appropriate Government	120
<b>Comparison with 1894 Act</b>	<b>120</b>
1. Extended Objection Period	120
2. Omission of "or for a company"	121
Rehabilitation and Resettlement Scheme (R&R Scheme)	121
1. Survey and Census by Administrator	121

2. Drafting the R&R Scheme	121
3. Local Awareness and Consultation	122
4. Public Hearing	122
5. Submission to the Collector	122
Review and Approval of Rehabilitation and Resettlement Scheme (R&R Scheme)	122
1. Review by the Collector	122
2. Submission to Commissioner (R&R)	122
3. Approval and Public Availability	123
Publication of Declaration and Summary of Rehabilitation and Resettlement (R&R) Scheme	123
Declaration and Publication Process Under LARR Act	123
Land Marking, Measurement, and Planning (Section 20)	124
Notice for Compensation and Rehabilitation Claims (Section 21)	124
Particulars in the Public Notice	125
Requirement of Written Statements	125
Ensuring Global Notification	125
Power to Require and Enforce Statements on Names and Interests (Section 22)	125
Collector's Authority to Require Statements	125
Contents of the Statement	126
Legal Obligation to Provide Statements	126
Enquiry and Land Acquisition Award by Collector (Sections 35, 34, 23)	126
Powers of the Collector for Enquiry (Section 35)	126
Adjournment of Enquiry (Section 34)	126
Objectives of the Enquiry (Section 23)	126
Award by the Collector	127

Period within which an Award Shall Be Made (Section 25)	127
1. Award Timeframe	127
2. Government's Power to Extend	127
3. Comparison with 1894 Act (Section 11A)	127
Corrections to Awards by Collector (Section 33)	128
1. Correction Timeframe	128
2. Initiation of Corrections	128
3. Opportunity for Representation	128
4. Notification of Corrections	128
5. Recovery of Excess Amount	128
Power to Call for Records (Section 36)	129
Finality of Awards (Section 37)	129
Power to Take Possession of Land to be Acquired (Section 38)	129
1. Payment of Compensation and Rehabilitation Entitlements	129
2. Taking Possession	129
3. Timeline for Infrastructural Entitlements	130
4. Special Provisions for Irrigation or Hydel Projects	130
5. Responsibility of the Collector	130
Comparison with the 1894 Act:	130
Magistrate to Enforce Surrender (Section 91)	130
Opposition or Impediment	130
Special Powers in Case of Urgency (Section 40)	131
1. Taking Possession in Urgency	131
2. Restrictions and Notices	131
3. Compensation and Additional Compensation	131

4. Exclusion of Certain Provisions	131
Completion of Acquisition Not Compulsory, but Compensation to be Awarded When Not Completed (Section 93)	131
1. Withdrawal from Acquisition	131
2. Compensation and Costs	132
Acquisition of Part of House or Building (Section 94)	132
1. Restriction on Acquiring Part Only	132
2. Consideration by LARR Authority	132
3. Additional Acquisition	132
Acquisition of Land at Cost of a Local Authority or Requiring Body (Section 95)	133
1. Cost Defrayment	133
2. Participation in Proceedings	133
No Change of Purpose Allowed (Section 99)	133
1. Original Purpose Retention	133
2. Exception for Unusable Land	133
Compensation Provisions (Sections 26-30, 39, 96, First Schedule)	133
The First Schedule Provisions as to Compensation	134
1. Market Value of Land	134
2. Value of Assets Attached to Land	134
3. Solatium	134
4. Final Award	134
Additional Note	134
Determination of Market Value of Land by Collector	135
1. Market Value as per Indian Stamp Act	135
2. Average Sale Price	135

3. Consented Amount of Compensation	135
Challenges in Determining Market Value	135
1. Restricted Transactions	135
2. Unavailable Sale Deeds or Agreements	136
3. Non-specification under Indian Stamp Act	136
Compensation with Shares and Determination of Value of Assets	136
1. Shares as Compensation	136
2. Determination of Value of Assets Attached to Land	136
Parameters Considered by Collector in Determining Award	137
1. Market Value	137
2. Damage to Standing Crops and Trees	137
3. Severance of Land	137
4. Impact on Other Property	137
5. Change of Residence or Business	137
6. Diminution of Profits	137
7. Other Grounds for Equity and Justice	138
Award of Solatium - Ensuring Fair Compensation	138
1. Solatium Addition	138
2. Individual Awards	138
Interest at 12% p.a. on Compensation Amount	138
Additional Compensation for Multiple Displacements	138
Exemption from Income Tax, Stamp Duty, and Fees: Promoting Fair Compensation	139
1. Income Tax Exemption	139
2. Stamp Duty Exemption	139
3. Fee Exemption for Copies	139

Minimum Rehabilitation and Resettlement (R&R) Entitlements for Land Owners and Livelihood Losers	139
For Land Owners	139
For Livelihood Losers (Including Landless)	140
Financial Assistance for Cattle Shed or Petty Shop and One-Time Grant for Artisans, Small Traders, and Others	140
For Families with Cattle or Petty Shop	141
One-Time Grant for Artisans, Small Traders, and Others	141
Fishing Rights and Compulsory Contents of R&R Award	141
1. Fishing Rights	141
2. Compulsory Contents of R&R Award (Section 31 of the Act)	141
Provision of Infrastructural Amenities in Resettlement Area (Section 32 of the Act)	142
1. Roads	143
2. Drainage and Sanitation	143
3. Safe Drinking Water	143
4. Grazing Land	143
5. Fair Price Shops	143
6. Community Facilities	143
7. Irrigation Facilities	143
8. Transport Facilities	143
9. Burial or Cremation Ground	143
10. Sanitation Facilities	143
11. Electricity	143
12. Social Infrastructure	144
13. Forest Rights	144

14. Security	144
15. Veterinary Services	144
Special Provisions for Scheduled Castes and Scheduled Tribes (Section 41 of the Act)	144
1. Consent and Development Plan	144
2. Development Plan	144
3. Compensation for SCs and STs	145
4. Resettlement of Scheduled Tribes	145
5. Land for Community and Social Gathering	145
6. Null and Void Alienation	145
7. Fishing Rights	145
8. Additional Benefits for Relocated Families	145
Reservation and Other Benefits (Section 42 of the Act)	145
1. Continuation of Benefits	146
2. Relocation Outside Scheduled Areas	146
3. Quantification of Community Rights	146
Appointment of Administrator by State Government (Section 43 of the Act)	146
Appointment of Commissioner for Rehabilitation and Resettlement (Section 44 of the Act)	146
Provisions Relating to R&R in Case of Certain Persons Other Than Specified Persons (Section 46)	147
Additional Points	147
Collector's Discretion on Monetary Obligations	148
Exemption from Income-Tax, Stamp Duty, and Fees (Section 96)	148
Impact of the Act on Private Sector Companies - Types of Land Acquisitions	148
1. Land Acquisitions for Public Private Partnership (PPP) Projects	148

2. Land Acquisitions for Private Companies for Public Purpose	148
3. Private Company Purchases Land Through Private Negotiations	148
4. Private Company Requests Acquisition of Part of an Area for Public Purpose	148
Implications on Project Timelines and Cost	149
LARR Authority - Establishment and Reference Process	149
Establishment of LARR Authority (Section 51)	149
Reference to LARR Authority (Section 64)	149
Time Limit for Making Application for Reference	149
Grounds for Objecting to the Award	150
Reference Process (Section 64)	150
Powers of the LARR Authority (Section 60)	150
Procedure Before the LARR Authority	151
1. Original Jurisdiction on Reference (Section 64)	151
2. Natural Justice and Regulation of Procedure (Section 60)	151
3. Notice, Hearing, and Disposal of Reference (Section 60(4))	151
4. Notice to Concerned Parties (Section 66)	151
Scope of Proceedings before the LARR Authority	151
1. Consideration of Interests (Section 67)	151
2. Public Proceedings (Section 68)	152
3. Award (Section 69)	152
Solatium @ 100% of Total Compensation (Section 69(3))	152
Interest on Excess Compensation (Section 72)	152
Form of Award (Section 70(1))	153
Award as a Decree and Grounds as a Judgment	153
Provision of Costs (Section 71(1))	153



Costs where Collector's Award Not Upheld (Section 71(2))	153
Copies of Award to Parties Concerned	153
Re-determination of Amount of Compensation (Section 73)	153
Jurisdiction of Civil Courts Barred (Section 63)	154
Appeal to High Court (Section 74)	154
Particulars of Apportionment to be Specified (Section 75)	154
Dispute as to Apportionment of Compensation (Section 76)	154
Payment of Compensation or Deposit of Same in Authority (Section 77)	155
Provisions of Interest (Section 80)	155
Investment of Money Deposited in the Authority (Sections 78-79)	155
Temporary Occupation of Land (Section 81)	155
Power to Enter and Take Possession and Compensation on Restoration (Section 82)	156
Difference as to Condition of Land (Section 83)	156
Income Tax Exemption (Section 96)	156
For income tax exemption, certain conditions must be met	156
Award under LARR Act (Sections 30, 96)	156
Collector's Award of R&R Entitlements (Section 31)	157
Award by LARR Authority on Reference (Section 69)	157
Form of Award (Section 70)	157
Agreement (Section 81)	157
Interest (Section 80)	158
Compensation for Urgent Land Acquisitions under Section 40	158
Service of Notice (Section 92)	158
<b>CHAPTER V</b>	<b>159</b>
<b>DIFFICULTIES ENCOUNTERED IN LAND ACQUISITION UNDER THE NEW ACT</b>	

Introduction	159
Preliminary Notification: Initiating the Land Acquisition Process	159
Updating Records and Survey: Ensuring Comprehensive Land Coverage	160
Publication Requirements: Ensuring Wide Dissemination	161
Immediate Communication to Representative Bodies: Enhancing Public Awareness	161
Transaction Prohibition: Safeguarding Against Exploitation	161
Time-Bound Issuance and Consequences of Delay: Accountability in Land Acquisition	161
Commencement of Rehabilitation and Resettlement Planning	161
Survey and Census Details	162
Drafting the Rehabilitation and Resettlement Scheme	162
Second Public Hearing: Avenues for Community Input	162
Special Considerations for Scheduled Areas	162
Administrator's Submission to the Collector	163
Review by Collector and Rehabilitation Committee	163
Approval Process	163
Declaration for Land Acquisition and Resettlement Area Identification	163
Accompanying Summary of Rehabilitation and Resettlement Scheme	163
Time Limit for Declaration and Lapse Provision	164
Publication Requirements	164
Essential Elements in the Declaration	164
Land Acquisition Award under Section 23	164
Comparison with Repealed Land Acquisition Act	165
Proceedings Post-Award	165
Overview of Rehabilitation and Resettlement Award	165

Authority Responsible and Key Elements of R&R Award	165
Government's Power and Corrective Measures	166
Government Inquiry and Public Accessibility	166
Significance of Possession Safeguard	166
Conditions for Possession (Section 38)	166
Specific Provisions for Certain Projects	167
Prohibition on Displacement Before Completion of R&R	167
Safeguard Against Double Displacement	167
One-Time Payment Option by Requiring Body	167
Background	167
Administrative Structure for Rehabilitation and Resettlement	167
Policy Influence	168
Office of the Administrator Rehabilitation and Resettlement	168
Appointment Criteria	168
Duties and Authority	168
Official Rank	168
Office of the Commissioner Rehabilitation and Resettlement	168
Appointment Authority	168
Duties	168
Note	169
Rehabilitation and Resettlement Committee	169
Formation Criteria	169
Duties	169
Composition	169
Note	170

National Monitoring Committee and State Monitoring Committee for Rehabilitation and Resettlement	170
Establishment	170
Scope	170
Composition	170
Information Sharing	170
Miscellaneous Clause	170
Private Purchase Regulation under Land Acquisition Law	171
Introduction	171
Initial Draft and State Concerns	171
State Discretion and Responsibilities	171
Regulation Provisions - Section 46	171
Compensation Sharing and Definitions	172
Balancing Private Transactions and Public Interests	172
Protection Against Abuse: Share to Original Owner	172
Background	172
Abuse Prevention Clause	172
Key Provisions	173
Purpose of the Clause	173
Withdrawal from Acquisitions	173
The compensation calculation includes	173
No Income Tax or Other Levies	174
Key points regarding taxation and levies	174
● Exemption Clause	174
● Private Purchase Exception	174

● Fee Exemption	174
Request for Acquisition by Landowner	174
Partial Acquisition	175
Determination Criteria	175
Unreasonable Claims	175
No Fresh Declaration	175
Expense of Acquisition	175
Funding Source	175
Role of Local Authority or Requiring Body	176
Prevention of Post-Acquisition Misuse of Land	176
Return of Unutilized Land	176
Condition for Return	176
Recipients of Return	176
Resale of Acquired Land	177
Condition for Profit Sharing	177
Profit Sharing Percentage	177
Time Limit	177
Limitation to the First Sale or Transfer	177
Lease Option for Public Purpose	178
Government's First Choice	178
Lease Option	178
Amendment to Schedules	178
States' Authority to Enhance Entitlements	179
Option for Higher Compensation under State Laws	179
Rules for Implementation	179



Power to Issue Clarifications	179
Resolution of Difficulties	180
Parliamentary Oversight	180
Non-Applicability of 2013 Act	180
Exempted Laws and Amendments	181
<b>CHAPTER VI</b>	<b>182</b>
<b>COMPENSATION UNDER LAND ACQUISITION ACT</b>	<b>182</b>
Introduction: Compensation in Land Acquisition	182
Paradigm Shift in Compensation: A Fundamental Departure	182
Origins of the New Approach: Collaborative Discussions	182
Embracing Foundational Principles: Defining Market Value	183
Legal Precedent: Premchand Burrall vs The Collector of Calcutta	183
Recognizing Discrepancies: Disparity in Land Values	183
Drafting Equitable Compensation: Rectifying Historical Undervaluation	183
Criticism of Compensation Model: Viability Concerns	183
Government Ministries' Opposition: Implications for Development Projects	184
Balancing Concerns: Revised Compensation Targets	184
Establishing Compensation Formula: Addressing Land Value Discrepancies	184
Formula Components: Multiplication and Solarium	184
Historical Precedent: Determining Market Value from Surrounding Areas	185
Safeguards and Adjustments: Preventing Inflation and Unscrupulous Practices	185
Compensation in the Form of Shares: Limitations and Cautionary Measures	185
Comprehensive Considerations in Compensation Calculation	185
Professional Expertise in Valuation	186
Evolution of Solatium in Land Acquisition	186

Enhanced Compensation and Interest Accrual	186
Multiplier Application for Compensation in Urban Areas	186
Determine Market Value (X)	186
Multiplier Application for Compensation in Rural Areas	187
Determine Market Value (X)	187
Criticism and Response of the Theory	188
Uniform Multiplier Critique	188
Opportunity for State Demonstration	188
Considerations for Market Value	188
Who Would Be Compensated?	188
The Importance of 'Rehabilitation and Resettlement'	189
Elements of Rehabilitation and Resettlement	190
1. House	190
2. Land	191
3. Offer for Developed Land	191
4. Choice of Annuity or Government Employment	191
5. Miscellaneous Financial Payments	191
6. Relocation and Miscellaneous	191
7. Infrastructural Amenities	191
1. Social Responsibility	192
2. Legal Precedent	192
3. Business Considerations	192
4. Implementation Challenges	192
Introduction to Section 24: The Retrospective Clause	193
Challenges of Retrospective Clauses	193

Legislative Intent Behind Section 24	193
Stakeholder Scrutiny and Review Process	193
Consensus and Adoption of the Retrospective Clause	193
Legal and Procedural Challenges	194
Debates and Judicial Interventions	194
Ensuring Justice for Historical Injustices	194
Ongoing Discussions on Section 24	194
Background of Widespread Unrest: Yamuna Expressway Project	194
Legal Battles and Limited Resolution: Supreme Court Intervention	194
Uttar Pradesh Government's Land Acquisition Policy	195
Catalyst for Drafting a New Law	195
Addressing Historical Injustices: Imperative for the New Law	195
Conditions under Section 24	195
Condition I: Award Passed Under the Land Acquisition Act, 1894	195
Condition II: Initiation Under Land Acquisition Act, 1894 (Section 4 Notification Issued)	196
Condition III: Lapsed Acquisition with Award Passed Five or More Years Ago	196
Condition IV: Award Passed, Compensation Not Accepted for Majority of Land Holdings	196
The Five-Year Qualifying Period: Rationale and Impact	196
Condition I: Conclusion of Proceedings with Section 11 Award	196
Condition II: New Law Application Before Award under 1894 Act	197
Condition III: Lapsed Proceedings After Five Years	197
Physical Possession Criterion: Deliberate Design	197
Condition IV: Compensation for Majority Non-Acceptance	197

<b>CHAPTER VII</b>	<b>198</b>
<b>CONCLUSION AND SUGGESTIONS</b>	<b>198</b>
Introduction	198
Critical Appraisal of the Present Land Acquisition Laws	199
Lack of Clarity in Defining Exempted Projects	200
Ambiguity in Terminology	200
Interpretational Challenges	200
Consent Provision Concerns	200
Background on Consent Requirement	200
Exemption of Consent in the Bill	201
Balancing Development Needs and Consent Rights	201
Challenges with Requiring Consent for Land Acquisition	201
Fundamental Distinction between Acquisition and Purchase	201
Impracticality of Consent in Unwilling Transactions	201
Justification for Consent in Specific Scenarios	201
Alternative Mechanism in Land Acquisition (Amendment) Bill, 2007	202
Rationale for Exemption of Consent Requirement in Certain Projects	202
Unclarity in Distinction Between Exempted and Non-Exempted Projects	202
Lack of Uniformity Across Land Acquisition Acts	202
Inconsistencies in Regulatory Approach	202
Transition Challenges in Compliance with 2013 Act	202
Impact on Consent Requirement Based on Governing Act	203
Consent Disparity Based on Project Ownership in the 2013 Act	203
Unclear Rationale for Varying Consent Levels Based on Project Ownership	203
Relevance of Ownership to Landowners	203

Uniformity of Consent Requirement Across Projects	203
Threshold for Consent in the 2013 Act	203
Diverse Perspectives on Consent Threshold	204
Comparison of Public Purpose Projects and Exempted Projects	204
Reduced Timeframe for Land Acquisition Process	204
Need for Amendments to the 2013 Act	204
Timeframe Modification in the Bill	204
Accountability of Government Employees	205
Modification in Accountability Standards	205
Requirement for Prior Sanction in Employee Offences	205
Comparison with the Lokpal and Lokayuktas Act, 2013	205
Impact on Accountability Standards	205
Retrospective Application of the Act	205
Provisions of the 2013 Act	205
Proviso Introduction in the Bill	206
Supreme Court Judgment and Substantive Rights	206
Limitation on Retrospective Application	206
Implications on Legal Proceedings	206
Private Land Purchase: Conditional Rehabilitation and Resettlement	206
Mandatory Application in Private Land Purchase	206
State-Defined Limits for Private Purchase	207
Conditional Nature of Rehabilitation and Resettlement	207
Origins of Prescribed Limits in Legislative Drafting	207
Adaptive Approach: Discretion of State Governments	207
Intense Debate and Standing Committee Deliberations	207

Operational Details in Rules: Ensuring Flexibility	208
Avoiding Over-Prescription	208
Self-Contained Design Philosophy	208
Historic Land Acquisition Law: Authors' Perspective	208
Nuanced Approach to Legal Framework	208
Land Records Modernization Programme	208
Enactment of Law for 'Conclusive' Land Titles	209
Land Acquisition Law: Beyond Economic Growth	209
Protecting Citizenry: Focus on Legal Protection Legacy	209
Addressing Concerns of Food Security	209
Ceilings on Agricultural Land Acquisition	209
States' Autonomy in Land Acquisition	209
Suggestions for Amendment and Improvement	210
Holistic Land Acquisition Policy	210
Protection of Tribal Culture and Heritage	210
Restriction on Fertile Land Acquisition	210
Urban Land Acquisition Restrictions	210
Promotion of Barren Land Development	210
Differentiated Policies for Tribal Areas	211
Preservation of Social Impact Assessment	211
Independent Multi-disciplinary Examination	211
Concrete Resettlement Policy	211
Individual-Based Compensation Approach	212
Recognition of Women in Rehabilitation	212
Integrated Development Programs for Tribal Areas	212

People-Centric Project Selection	212
Incorporate Corporate Social Responsibility (CSR)	212
Differentiation for Agricultural Land	213
Special Protection for Farmers	213
Uniform Maintenance of Land Records	213
Improved Price Reporting	213
Conclusive Land Titles	213
Clear Provisions for Offences	214
Clear Calculation of Time Period	214
Application of Resettlement Provisions to Private Purchases	214

## CHAPTER I

# HISTORICAL DEVELOPMENT OF LAND ACQUISITION LAWS IN INDIA

Understanding the origins of property is a complex task, and the historical development of land acquisition laws in India provides insights into the evolution of property concepts. In the earliest portion of the Rig Veda, terms like "pana" and "dhana" were used to denote prizes or stakes won through war or competition. Loot, or "loptr," represented the earliest source of property for the Rig Vedic people, reflecting the serious effort, including war, involved in property acquisition.

During the Rig Vedic period, property included items like livestock, sons, chariots, plants, and personal effects, but land and houses were not considered private property due to the migratory nature of the Rig Vedic people. However, in the post-Vedic period, with settled life emerging, individuals began to own small pieces of cultivable land. The importance of land increased with the use of iron ploughshares and assured water supply during the time of Buddha. Property now comprised land and precious metals like gold and silver.

Spoils of war, cattle, women slaves, horses, ornaments, and weapons were significant forms of property. As material culture progressed and industry and trade advanced, the notion of property underwent a change. Movable and immovable possessions obtained by inheritance or self-efforts constituted property in the modern sense.

In early law, there were no complicated differences between ownership and possession. The Roman law introduced a clear distinction between Dominium (absolute right to a thing) and Possessio (mere physical control). English law's distinction was less clear, with developments leading to the elevation of possession in ownership concepts. While Rome emphasized absolute rights (dominium), the Greeks shared a similar view with English law, asserting that better possession determined ownership.

The Common Law, recognizing only Seisin as the form of ownership, still reflects historical legal perspectives. The chapter delves into the historical journey that shaped property concepts, leading to the development of land acquisition laws in India. The evolution of property concepts saw changes in legal principles and the introduction of terms like "ejectment" to establish absolute possession. Despite these changes, the Roman concept of dominium, representing absolute ownership, remained intact. Acquisition of dominium was limited to prescribed ways, and the full rights of an owner can be summarized as follows:

#### **1. Power to Enjoy, Deal, and Destroy**

The owner has the authority to enjoy, deal with, and even destroy the property as deemed fit.

#### **2. Possession with the Right to Exclude Others**

Possession includes the right to exclude others from the property.

#### **3. Power to Alienate**

The owner can transfer or alienate the property to another party.

#### **4. Power to Charge Security**

The owner has the authority to use the property as security for financial transactions.

#### **5. Power to Will Out the Thing**

The owner can determine the future disposition of the property through a will.

It is rare for an owner to possess all these rights simultaneously, and very few owners achieve absolute ownership. Owners may choose to grant some of these rights to others while retaining their status as the ultimate owner. Dominium represents the ultimate right with no underlying rights, and its practical content may be limited. The complexities arising from the owner's ability to cede various rights pose practical difficulties in defining absolute ownership.

## **Agricultural arrangement**

Proprietary rights in land, based on the "Occupation Theory," indicate that persons get ownership of items not already under property rights when they are the initial occupants or cultivators. This hypothesis originates from Manu, a Sanskrit poet who flourished around the second century B.C.

Clearing and developing land or hunting game animals are ways to establish ownership. Manu's "Occupation Theory" in Hindu jurisprudence aligns with the idea of occupation that was dominant in Rome in the seventeenth and eighteenth centuries. This theory posits that ownership originates from being the initial possessor or occupant of land or resources.

There are varying interpretations of this notion among Muslim jurists. Abu Haneefa argues that cultivation by itself is not enough to establish ownership rights and that the State's authorization is necessary. Yet, his pupils, Aby Yusuf and Abu Mohammad, contend that the cultivator might become the proprietor without requiring authorization from the state. They consider barren lands as communal property that is acquired by the farmer through becoming the initial occupant. Blackstone, an English legal expert, proposes that the law of nature and reason states that the individual who first uses the land gains a temporary property title. Possession rights are viewed as being equal in length to the duration of possession. The concept of "permanent dominion" emerges with the growth of the human population. Maine states that occupancy entails taking actual possession, and the notion that this action grants ownership is a product of sophisticated legal reasoning. Maine argues that ownership is not necessarily preceded by occupation. He believes that possession might lead to ownership when items of enjoyment become owned since there is no better claimant (*res nullius*), under the assumption that all things are considered to be someone's property. The evolution of proprietary rights in land is examined individually for the Hindu Period, Muslim Period, and British Period.

## **Land Laws during the Hindu Period**

### **a. Sovereign's Non-Ownership and Entitlement to Usufruct**

In the nuanced legal landscape of ancient Hindu jurisprudence, a distinctive perspective emerged regarding the ownership of land. Contrary to conventional beliefs, Hindu sages and jurists posited that the sovereign, representing the state, did not hold the status of the proprietor of the soil. Instead, they conceptualized the sovereign's relationship with the

land as one of entitlement to a share of the usufruct. This entitlement was not rooted in ownership but derived from the idea that the state was due a portion of the produce as compensation for the protection it afforded to the fundamental aspects of life – life itself, liberty, and property.

**b. Narada's Articulation of Sovereign's Fees**

This unique perspective found expression in the writings of Narada, a prominent figure in Hindu legal thought. Narada explicitly stated that the sovereign's claim to one-sixth of the produce was akin to fees. This fraction of the agricultural yield was not construed as a form of rent or ownership right but as a compensation, a fee paid by the subjects for the overarching protection provided by the sovereign. This formulation marked a departure from the conventional notions of sovereign ownership and underscored a symbiotic relationship between the state and its subjects.

**c. Parashara's Rationale for Sovereign's Claim**

Parashara, a revered Smriti-writer, contributed to the discourse by articulating the rationale behind the sovereign's claim to a share of the produce. He emphasized the reciprocal nature of the relationship, asserting that the sovereign's right to receive taxes was intrinsically tied to the corresponding duty of protecting the subjects. In Parashara's view, the sovereign's role encompassed not only revenue collection but, more significantly, the safeguarding of the populace from external threats such as thieves and robbers. This perspective reinforced the idea that the sovereign's entitlement was not a manifestation of ownership but a contractual arrangement grounded in mutual obligations between the state and its citizens.

**d. Earth as Inalienable Common Resource**

In the ancient Hindu period, a profound principle was articulated through Jaimini's sutra, a textual wisdom that predates the Christian era. This principle held that "Earth cannot be

given away as it is common to all," drawing a parallel between Earth and the ubiquitous nature of air. This philosophical perspective asserted that the entire Earth, though portioned into individual territories, retained a collective essence, thereby challenging the notion of absolute ownership. Even the mighty kings, vested with authority, were circumscribed in their ability to bestow the entirety of the Earth, emphasizing its shared and inalienable character.

**e. Cultivator's Ownership of Land**

Contrary to the prevailing belief in the sovereign's ownership of land, Hindu legal scholars and jurists advanced a distinctive viewpoint during this period. They recognized and upheld the concept of individual ownership of arable land. The essence of this perspective was encapsulated in the understanding that the one who cleared and tilled a piece of land was deemed its rightful owner. Notably, there was a conspicuous absence of references to communal ownership or cultivation in the Vedic texts, reinforcing the sacred nature of individual land ownership. In the eyes of ancient Hindu kings, this right was considered sacred, seldom to be violated by even despotic rule.

**f. Emphasis on Cultivation and Penalties**

Agricultural productivity and the act of cultivation were paramount during the Hindu period. Texts, such as those authored by Manu, underscored the importance of active engagement with the land. To enforce this, penalties were prescribed for instances of neglect or delayed sowing. The legal and societal frameworks emphasized the symbiotic relationship between the cultivator and the land, prescribing fines that were not just punitive but aimed at ensuring the optimal use of the valuable resource.

**g. Non-Alienability of Land and Heritability**

While individual ownership prevailed, a nuanced discussion emerged regarding the alienability of land. In the early stages, the prevalent belief leaned towards the non-alienability of land, particularly when held by joint family members and considered

ancestral. Vijnaneshwar, in his *Mitakshara*, expounded upon this notion. However, an opposing idea gained traction, suggesting that under specific circumstances, such as distress or for religious activities, alienation could be permissible. This marked a transitional phase in the evolving understanding of land ownership.

#### **h. Acquisition of Right by Adverse Possession**

The concept of possession played a pivotal role in the acquisition of land rights during the Hindu period. The recognition of adverse possession, wherein one's rights could be superseded by another through continuous possession, found expression in various *Smritis*. Different texts specified periods ranging from thirty to twenty years for adverse possession to extinguish the original owner's rights. This acknowledgment reflected a nuanced understanding of the evolution of property rights through possession.

#### **i. Hindu Revenue System**

The Hindu revenue system operated at the village level, considering the village as the smallest unit. The pivotal figure in this system was the "Grammadhipati" or village headman. Tasked with collecting the king's share, the headman played a crucial role in redistributing it among individual cultivators. This process took into account factors such as the quality and area of land under cultivation. The revenue system, akin to the later *Zamindari* concept, reflected a joint responsibility among permanent cultivators for land revenue payments. The headman, resembling the *Zamindar* of later times, held a position of significance, responsible for both the financial dealings and the equitable distribution of the land's produce.

## **The Muslim Era**

### **Transition to Muslim Rule and Legal Overlaps**

The advent of the Muslim period in India marked a complex era with an intricate interplay of Hindu and Islamic influences. The initial incursions by the Arabs left scant historical traces, but

a substantial wave of invasion, commencing in the 11th century A.D., ushered in a transformative period. It's crucial to note that there isn't a precise demarcation between the Hindu and Muslim epochs, as these periods overlapped. While the Arabs initiated the incursions, the complete conquest of India was a gradual process, never fully realized despite intermittent periods of sole Muslim rule.

### **Challenges of Governance and Legal Framework**

Each conquest presented unique governance challenges, prompting conquerors to navigate existing systems rather than impose entirely new ones. Conquering rulers often preferred to govern through established agencies, opting for continuity in revenue collection methods. The conquerors faced the daunting task of integrating diverse regions and cultures, leading to a pragmatic approach that often retained local administrative structures.

### **Muslim Law and Indian Land System**

Muslim invaders, primarily of the Hanafi sect of the Sunni School, introduced legal frameworks applicable to conquered territories. The *Fatwai-i-Alamgiri*, alongside the *Hedaya* and other treatises, provided insights into the principles shaping the Muslim land system in conquered regions. The conquerors, recognizing the incomplete nature of their conquests in India, often allowed existing land possession to persist, provided tribute was paid.

### **Evolution of Revenue Collection**

As Muslim rule expanded, tributary princes faced displacement or were relegated to tax-collectors. This transition altered the status of local headmen, who saw a diminishing role in revenue collection. The emergence of intermediaries, distinct from their British-era counterparts, held a tenuous claim between cultivators and the State. Unlike later intermediaries, these figures were viewed as tax-gatherers or state officials, lacking an absolute right of property.

## Cultivators' Rights and Revenue System

Throughout this period, cultivators maintained a permanent, hereditary, and transferable right in the land. They were obligated to pay land revenue based on customary or pargana rates. The intricate dynamics between conquerors, tributary rulers, and local structures laid the foundation for the evolving land systems during the Muslim period in India.

## Principles Followed by Muslim Rulers in Land Taxation

The land taxation principles employed by Muslim rulers during their rule in India can be summarized as follows:

### a. *Division of Conquered Lands:*

- When a country was conquered through force of arms, the conquering Imam (leader) had the discretion to distribute it among the Muslims or his soldiers.
- Alternatively, the Imam could leave the land in the hands of its original proprietors, imposing a capitation-tax called "Jezya" and a tribute on their lands known as "Khiraj."

### b. *Evolution of Khiraj:*

- Originally, Khiraj was levied on non-Muslims only, but over time, it was imposed on Muslims as well.
- In India, conquered land was generally not distributed among Muslims; instead, small portions might be given to soldiers as jagirs, often comprising waste lands.

### c. *Muslim-Specific Land Tax - "Ooshr":*

- Muslims were subject to another form of land tax called "ooshr," which was lighter than Khiraj.
- Ooshr was imposed only on productive land and based on the actual produce, while Khiraj applied to all land capable of production, regardless of actual productivity.

### d. *Historical Context - Pre-Islamic Persian Influence:*

- A similar type of land tax had been levied under Persian (Iranian) rulers before the advent of Islam in the region.
- This Persian system involved dividing the produce between the sovereign and the cultivator.

**e. Ownership Theories and Changes in Assessment:**

- In Muslim theory, the sovereign was considered the original proprietor of the land as long as they received a share of the produce.
- Commutation of this share into a fixed money rate led to the cessation of sovereign proprietorship.
- There were two modes of assessment with different theoretical ownership implications: one in the sovereign, or jointly in the sovereign and cultivator, and the other solely in the cultivator.
- Changes in the mode of assessment, allowed by law, were viewed as involving a transfer of theoretical ownership.

**f. Resemblance to Hindu Taxation Practices:**

- The "wazifa khiraj," depending on the soil's capability and independent of actual cultivation, closely resembled the tax paid by Khudkasht cultivators under the Hindu system.

## Transition of Land Assessment and Ownership: Hindu to Muslim Periods

Land evaluation in Hindu and Muslim eras had commonalities and distinct elements. During the Hindu era, the Pyekashts, akin to the subsequent Pyadahs, were required to farm the land and pay the taxes. Nonetheless, the evaluation was not waived if they decided not to develop it, emphasising the enduring nature of land-related responsibilities.

According to the Mohammedan idea, the implementation of "wazifa khiraj" recognised a private right held by the grower or taxpayer. This right primarily concerned the soil's ability to produce, holding the cultivator responsible for khiraj. Wazifa khiraj lands barred the sovereign from

sharing in the produce, making the cultivator solely accountable for khiraj, regardless of whether the land was farmed. This acknowledgment of possession led to a more tolerant stance on transfer of ownership.

Wazifa land, which was subject to wazifa khiraj, could be transferred without needing approval from the ruler, indicating a stronger ownership right. On the other hand, mukassimah land may be inherited by the cultivator's successors but had restrictions on being sold or mortgaged without permission from the sovereign. The king also kept the authority to allocate land in particular instances.

One major distinction between Hindu and Muslim administrations was the collection of land revenue. During the Hindu period, the king received 1/6th of the produce, and Khiraj tax was set at 1/3rd of the gross produce. During Aurangzeb's reign, khiraj was enforced at 50% of the gross produce.

Todar Mai's income system implemented during Akbar's reign was a crucial development that laid the groundwork for future settlements. Todar Mai's raiyatwari settlement emphasised precise land measuring, evaluation according to actual capacity, and disregarded any rights above those of cultivators. Headmen and mediators were remunerated for their services or received hereditary dues that were free from revenue.

During the demise of the Mughal empire and the chaotic time before British conquest, semi-feudal interests were prominent. Villagers sought protection from powerful officials and chieftains, which resulted in violations of their rights. Under British administration, these intermediaries effectively gained ownership of communities, resulting in harm and financial losses for the farmers. This transitory period illustrates the changing dynamics of land ownership and tax systems in India.

## Evolution of Feudal Tenure in Medieval India

Mediaeval India operated under a feudal system with a hierarchical structure where the king bestowed titles and territories upon lords. Lords promised to pay tribute to the king, typically through taxes and military duty in times of war. The lords then allowed peasants to use these lands, establishing a system of feudal tenure.

Peasants in this feudal system maintained ownership of the land by meeting specific duties to the lord, including tax payments and potential military service in the king's army. Tenants had fewer privileges than landowners during that time. They were unable to freely utilise or transfer the land, as selling it necessitated the lord's approval. Tenants were unable to transfer the land through inheritance, and there were no succession rights for their families after their death. The only protection against losing their land was the lord's ethical and social responsibility towards the tenants.

Although the king maintained the ultimate ownership of the property, lords enjoyed substantial autonomy in overseeing the territories allocated to them. Lords had the option to either lease their fields to peasants or manage their cultivation themselves.

By the 13th century, nobles started leasing properties to peasants since it was more profitable to have tenants rather than farm the land themselves. Prior to the late 12th century, tenants depended on the lord's manorial court to safeguard their interests. Tenants could not anticipate fair treatment if the issue resulted in a judgement against the lord in a lawsuit.

During Henry II's reign, the involvement of royal courts in England signified a notable change. Writs, such as the "writ of right," were used to resolve conflicts between landlords and tenants. Tenants could use this legal option to contest lords attempting to take back land from tenants with inherited privileges. This action initiated the establishment of a common law system, offering peasants a legal recourse to address possible misuse of authority by lords. The

developing legal framework sought to maintain equilibrium between the rights and duties under the feudal system, progressively moulding the tenure system in Mediaeval India.

## **The British Period in India: Economic Shifts and East India Company's Ascendancy**

### **Trade Dynamics and European Competition**

During the British period, significant changes occurred in India's trade dynamics, spurred by the quest for new sea routes. The fall of Constantinople to the Seljuk Turks in 1453 necessitated Europeans to seek alternative routes, leading to the Portuguese pioneering new sea routes. In 1498, Vasco da Gama landed at Calicut, marking the discovery of the cape route to India. The Portuguese dominated Indian trade in the 16th century, later facing competition from the Dutch, English, and French.

### **Entry of European Maritime Powers**

The Dutch, English, and French successively entered the competition for dominance in the Indian Ocean trade. The Dutch established factories at various Indian locations, and the British East India Company, chartered in 1600 by Queen Elizabeth, began its operations. By 1613, the British East India Company received a firman from Emperor Jahangir, allowing them to establish a permanent factory at Surat. Bombay was later ceded to the company by Charles II in 1661.

### **Expansion of British Presence**

The British East India Company, under Sir Thomas Roe's efforts, secured permission to establish factories at Agra, Ahemdabad, and Broach. In 1688, Bombay was handed over to the East India Company by Charles II. The company further expanded its influence by acquiring Sutanuti from the Mughals in Bengal in 1690 and fortifying it in 1696. This settlement, along with additional acquisitions, became Fort William, setting the stage for the development of modern Calcutta.

### **Firman from Furrukhsiyar and Rapid Growth**

A pivotal moment occurred when the Mughal Emperor Furrukhsiyar issued a firman, granting the East India Company the right to trade duty-free in Bengal, Surat, and Madras. The company was also authorized to mint its own coins in Bombay. These privileges, coupled with the curing of Furrukhsiyar's ailment by an English doctor, propelled the East India Company's rapid growth, allowing it to surpass other European powers.

### **French Entry**

The French East India Company, founded in 1664, entered the competition later than the Dutch and English. The first French factory was established at Surat in 1688, and French settlements were later established at Pondicherry, Chandranagore, Mahe, Yannam, Masulipatnam, Calicut, and Karikal. The British period marked a transformative era in India's economic landscape, driven by the expansion and competition among European maritime powers, with the East India Company emerging as a dominant force.

### **British Zeal and Naval Strength**

Among the European powers in India, the British exhibited relentless zeal in pursuing their goals. Their naval strength became a crucial advantage, providing them with an upper hand against other European competitors. By the mid-17th century, Portuguese influence waned, and after 1739, only Goa, Dili, and Daman remained under their control.

### **Dutch Decline and Anglo-Dutch Wars**

The Dutch, another European power in India, faced challenges in competing with the British. The three Anglo-Dutch wars in Europe during the second half of the 17th century had weakened the Dutch significantly. They opted to monopolize the Indonesian trade, ceding the Indian trade to the British and the French.

## Shift to Anglo-French Rivalry

With the decline of Portuguese and Dutch influence, the British now primarily contended with the French in India. The British and French East India Companies, driven by trade interests, found themselves drawn into the political landscape of India. The weakening central authority of the Mughal Empire led to civil wars in various provinces, exposing trade interests to Maratha raids and extraction by local officials. The companies, having concealed their political ambitions, now began to employ military means to safeguard their interests and influence events.

## Commercial Rivalry and Political Ambitions

The traditional rivalry between France and England in Europe now extended to commercial competition in India. The proximity of Madras (British) and Pondicherry (French) on the East Coast intensified this rivalry. Both powers actively engaged in local Indian politics, reflecting a shift from passive trade interests to a more assertive involvement in shaping events.

## French Rivalry and Carnatic Wars

The initial struggle between the British and the French in India unfolded during the first Carnatic War (1746-48), where the French displayed military superiority, capturing prominent British figures like Robert Clive. The second Carnatic War (1749-54) remained inconclusive, but the British showcased superior generalship. The third Carnatic War (1758-63) proved decisive, marking the decline of French political influence in India.

## Carnatic War Consequences and British Territorial Expansion

The success in the Carnatic War set the British on a path of territorial expansion, starting from Bengal. The Battle of Plassey in 1757 marked a significant turning point, establishing British dominance in Bengal. Mir Jafar, made Nawab of Bengal, ceded Zamindari rights to the British East India Company. Subsequent conflicts, including the Battle of Buxar in 1764, solidified English power in Northern India, making them contenders for supremacy in the entire subcontinent.

### **Buxar and its Far-reaching Consequences**

The Battle of Buxar in 1764 had profound consequences, as it was not just a defeat of the Nawab of Bengal but also the Emperor of all India and his titular Prime Minister. This victory rendered English power in Northern India unchallengeable, positioning them as major players in the politics of the entire country.

### **Expansion beyond Bengal and Maratha Wars**

While Plassey made the English powerful in Bengal, Buxar elevated them to a great power in Northern India. The Marathas posed a formidable challenge, leading to three wars until 1818, resulting in the acquisition of all Maratha possessions. The British established control over Hyderabad, Oudh, Mysore, and Tanjore through subsidiary alliances. The "Doctrine of Lapse" was enforced to bring states like Satara, Udaipur, Jhansi, and Nagpur under direct Company control. Oudh was annexed in 1856 on grounds of misgovernment. The annexation of Sind occurred in 1843, followed by Punjab in 1849, consolidating British supremacy in India.

### **Impact of the West on India**

The influence of the West on India resulted in substantial and unexpected transformations, spurred by multiple forces that led to a reawakening. Although the British government was initially unsupportive, individual Englishmen, including educationists, orientalists, journalists, and missionaries, were instrumental in introducing Western culture to India. These efforts occasionally clashed with the government's policy, which initially did not endorse the expansion of modern English education. The increasing demand for clerks and lower-level employees in the government resulted in a slow adoption of English instruction.

India has greatly benefited from the English language and literature, which are considered the most significant contributions from the West. English literature had a significant impact on the

literary revival of Indian languages. This, along with a renewed interest in Indian history, led to an increase in nationalistic feelings.

The influence of the West accelerated social transformation in India, breaking down the conventional rigidity of Indian society and leading to a reassessment of established norms. Some enlightened Indians advocated reform movements like the Brahma-Samaj, Prarthana Samaj, Arya Samaj, and the Ramakrishna Mission to combat existing social problems due to internal disintegration. British authority in India achieved political union, bringing stability and putting an end to internal conflicts among native monarchs. Enhancements in transport and communication, such as the development of railway lines and major roadways, strengthened political cohesion. India's administrative and legal systems were significantly affected, as justice was dispensed based on consistent laws, and an impartial and contemporary administrative structure was put in place.

The West had a revolutionary impact on India, waking the country from a prolonged period of inactivity and injecting a new sense of vitality. It promoted critical thinking by emphasising reason and science above belief, questioning superstitions, and advocating for the critical analysis of traditional texts. Studying English education and European history fostered patriotism and a deep appreciation for the country and its culture, which played a role in the pursuit of independence.

## **Evolution of Land Laws in British India**

British political dominance in colonial India was intricately linked to commercial motives, leading them to prioritise economic benefits. Following the laissez-faire philosophy, the British inundated Indian markets with machine-made products and exported raw resources from India. The East India Company's capacity to produce significant revenue from customs duties was impeded by their industrial and mercantile pursuits. Therefore, the British government in India viewed land revenue as rent rather than a tax, using it as a source of financial profit. The British

viewed the state as the ultimate landlord and aimed to collect the maximum rent without causing damage. This viewpoint sparked a strong fascination with land revenue issues, resulting in the implementation of diverse land revenue schemes tailored to local conditions.

In Bengal, ryots chose to engage with Zamindars for land dealings, leading to the establishment of the Zamindari system. The ryotwari system was established in Madras and areas of Western India where settlements were made directly with the cultivators. In Uttar Pradesh (U.P.) and Punjab, settlements were established with village communities or distinct estates, referred to as the mahalwari system. The British acknowledged and accommodated the pre-existing systems in various places, adjusting their settlements accordingly. In 1765, after obtaining Diwani powers from the Mughal Emperor Shah Alam in Bengal, the British first delegated the task of collecting land income to the Nawab. The revenue collectors of the Nawab took advantage of cultivators, causing significant difficulties. To address the reported atrocities, the British East India Company assigned English revenue supervisors in 1769 to manage the situation. The peasants' plight deteriorated despite attempts, compounded by the severe famine of 1770. Warren Hastings, the Governor of Bengal, admitted the harshness in revenue collection and tried to improve the situation by removing oppressive tax collectors. After the initial attempt was unsuccessful, he implemented a system where income collecting rights were auctioned off to the highest bidder in each area for a period of five years. Hastings emphasised providing contracts to peasants to shield them from eviction and unreasonable demands, ultimately implementing a yearly settlement system.

## **Impact and Limitations of Land Settlements in British India**

While the Zamindar, Mahalwari, and Ryotwari settlements were designed based on prevalent practices in different regions, their implementation revealed certain limitations and challenges.

### **1. Permanent Settlement:**

- ***High Revenue Demands:*** The state's land revenue demand under the Permanent Settlement was excessively high, leading to financial strain on cultivators.

- **Ejection and Shifting of Tenants:** Cultivators did not enjoy continuity of tenancy, and ejection and shifting of tenants became common.
- **Over-Assessment:** The Permanent Settlement suffered from over-assessment, contributing to widespread oppression and agricultural distress.
- **Landlessness:** The selling of holdings for arrears of rent increased the number of landless individuals.
- **Transfer of Land:** Frequent transfer of land from cultivating to non-cultivating owners occurred.

## 2. Mahalwari System:

- **Economic Functions of Villages:** The Mahalwari system contributed to the decline of the village's agricultural and economic functions.
- **Land as a Commodity:** Introduction of private property in land turned land into a commodity in the market, subject to mortgage, sale, or purchase.
- **Judicial Power Shift:** Land disputes shifted to the courts, diminishing the village's judicial power, traditionally vested in village panchayats.

## 3. Ryotwari System:

- **Over-Assessment:** Initially, the Ryotwari system suffered from over-assessment, leading to oppression and agricultural distress.
- **Decreasing Tax Burden:** Over time, the land tax became a decreasing burden on agriculture, with estimates suggesting a decline from a third or more of the gross produce to a sixth or less.

## Permanent Settlement in British India

In 1786, Lord Cornwallis implemented a ten-year settlement under the direction of the Court of Directors. He supported the Permanent Settlement and advocated for the establishment of a class of landlords to serve as the foundation of the country. Cornwallis viewed zamindars as the legitimate proprietors of the land, often referred to as the 'lords of the soil'. Therefore, on March 22, 1793, the settlement was established permanently, transforming rent collectors into landlords.

The Permanent Settlement provided zamindars with ownership rights, allowing them to mortgage, gift, and sell the property. They were now accountable for the payment of land income, although the state maintained the authority to transfer it by public auction for unpaid revenue. The settlement failed to clearly outline the responsibilities on the farmers, which could potentially become a hardship for them. The Act contained a provision for government involvement to protect the rights and privileges of the ryots, but it was hardly used until 1822.

Peasants were subjected to growing exploitation and excessive pricing as time passed. The new evaluation was considered excessive for the current level of farming, resulting in repeated evictions of tenants from their customary lands. The zamindars exceeded the authority given to them in the 1793 settlement over the ryots. The Bengal Rent Act of 1859 was implemented to offer assistance to farmers. The Act provided growers with occupation rights if they could demonstrate possession for twelve years and restricted rent hikes. The Bengal Tenancy Act of 1885 enhanced the Bengal Rent Act by providing increased tenure security to ryots at judicial rentals. The regulations also limited the practice of random eviction and sought to equitably address the rights of property owners and tenants.

### **The Mahalwari System in British India**

The Mahalwari System was established in regions like U.P. (Uttar Pradesh), Delhi, and Punjab, which were brought under British administration at various points of time. This system dealt with two categories of holdings: estates owned by large landowners or taluqdars and those belonging to village communities. Lord William Bentinck pioneered the scientific settling of the entire region. Robert Bird and James Thomason spent ten years completing this method. Precise measurements were obtained before the evaluation. Settlements were founded for a thirty-year duration, either with village communities referred to as 'the body of co-sharers' or with distinct estates or mahals.

Originally, in communities with joint ownership, village elders or the group as a whole distributed the request among its members. After reaching a consensus on the total needs with the elders, they were allocated among the co-sharers according to the measurements obtained from the extensive survey. If any co-sharer deserted their property, it was assumed by the entire village community. The village community controlled the 'common land,' which included forest land and meadows. The Mahalwari System was expanded to the Central Provinces following the incorporation of Nagpur State in 1853. Settlements were established in the North-Western Provinces and Oudh with zamindars and farmers for a predetermined rent spanning three years. The charges were significantly high and collected with an unprecedented level of strictness in India.

### **The Ryotwari System in British India**

Upon succeeding the territories of the Nawab of Carnatic, the British encountered a distinct land revenue system. British officers had diverse opinions on the assessment system for the land revenue of the presidency. In response to the Court of Directors' instructions, the Madras government attempted to make settlements with the zamindars on a permanent basis, or in their absence, appoint substitutes from enterprising contractors. However, these efforts resulted in a disastrous failure in almost every case. Consequently, the Ryotwari system was introduced by Sir Thomas Munro after considerable discussion.

#### **Key features of the Ryotwari system included:**

##### **1. Direct Settlement with Ryots**

The settlement was made directly with the ryot or cultivator, eliminating the need for middlemen.

##### **2. Limited Period**

Unlike the Permanent Settlement, the Ryotwari settlement was not permanent; it was for a fixed period, typically thirty years.

### **3. Measurement and Assessment**

Holdings were measured, and assessment was based on the nature of the soil and crop.

### **4. Free Tenure**

Ryots enjoyed free tenure, with the condition of paying legal dues. They could sell or alienate their land, and failure to pay dues could result in selling off the land.

### **5. No Enhancement during Fixed Term**

There was no enhancement of rent during the fixed term of years. Ryots benefited from improvements made to their holdings and the upward movement of agricultural produce prices.

The Ryotwari system, with some local variations, was also introduced in Bombay. In Gujarat and the Deccan, the existing system gradually gave way to the Ryotwari principle. While the Munro system initially suffered from over-assessment, leading to widespread oppression and agricultural distress, over time, the land tax became a decreasing burden on agriculture. Estimates suggest that the demand declined from a third or more of the gross produce to a sixth or less. In 1925, it was observed that while prices had risen by 117% between 1903-24, the land tax had increased by not more than 20%. This fact was acknowledged by the Congress Committee of Inquiry in 1931.

## **Legislative Authority of the East India Company: A Historical Overview**

The East India Company's legislative authority evolved over time, reflecting changes in its nature, objectives, and the territories it controlled.

### **Charter of 1600**

- **Commercial Aims:** The company received a charter of incorporation from Queen Elizabeth I in 1600 with primarily commercial objectives.
- **Royal Prerogative:** The Royal Charter was issued based on the Crown's prerogative to regulate foreign trade and actions beyond the realm.

### **Extension of Power (1623)**

- Presidential Commissions: James I extended the company's power by allowing it to grant commissions for the punishment of offenses committed by its servants on land.
- Government of Servants: The company gained the authority to govern its servants effectively, both at sea and in India.

### **1661 Charter**

- Permanent Joint Stock Basis: The company transitioned to a regular permanent joint stock basis.
- Wider Judicial Powers: The governor and council of a factory were granted extensive judicial powers, applicable to all in the company's settlement, with authorization for various punishments, including death.

### **Transfer of Bombay (1668)**

- Island of Bombay: Charles II transferred control of Bombay to the company, granting it powers to make laws, exercise judicial authority, and govern the island.

### **Power Expansion (1676-1863)**

- Coining Money: The company gained the power to coin money at Bombay in 1676.
- Peace and War Authority: In 1863, the company received the authority to declare and make peace and war within the Charter limits, establishing a Court of Judicature.

### **Charter of 1726**

- Mayor's Courts: Mayor's courts were established in Madras, Bombay, and Calcutta, with testamentary jurisdiction recognized in English courts.
- Legislation Powers: Governors and Councils were given the authority to make by-laws, subject to confirmation by the court of directors.

## Charter Act of 1753

- Judicial System Improvement: Introduced improvements to the judiciary, addressing problems faced by the company in England.
- Power of Legislation: The company gained legislative powers corresponding to the Crown's authority in conquered or ceded colonies.

## Charter Act of 1753 (After Plassey)

- Unsatisfactory Justice System: The system of justice established by the Charter Act of 1753 was deemed unsatisfactory.
- Privileges after Plassey: Following the Battle of Plassey, a formal treaty with Mir Jafar confirmed the company's privileges and sovereignty over certain territories.

## The Act of Settlement, 1781: Legislative Implications

The Act of Settlement in 1781 was enacted with specific purposes outlined in its preamble. Its main objectives were to address uncertainties in the Regulating Act of 1773, support the lawful government of Bengal, Bihar, and Orissa, ensure the certainty of revenue collection, and protect the inhabitants' enjoyment of their ancient laws and privileges.

Key provisions and implications of the Act of Settlement, 1781:

### 1. **Regulations for Provincial Courts and Councils:**

- The Act granted the Governor-General and Council the authority to make regulations for provincial courts and councils.
- Copies of these regulations were to be sent to the directors and a secretary of state.

### 2. **Dual Legislative Powers (Governor-General and Council):**

- *Under the Regulating Act (1773):*
  - Legislative power for Calcutta, subject to the condition that regulations should not contravene English Law.

- Regulations required registration before the Supreme Court.
- ***Under Section 23 of the Act of Settlement (1781):***
  - Legislative power for Bengal, Bihar, and Orissa.
  - Regulations subject only to disallowance by the King-in-Council.
  - Limited to rules of practice and procedure for adalats (courts), not substantive law on general topics.
  - In practice, the government framed several regulations covering various subjects.

### **3. Subsequent Charters and Acts (Until 1813):**

- Did not substantially enhance the legislative power of the East India Company in India.

## **The Charter Acts of 1813, 1833, and 1853: Legislative Changes**

### **Charter Act of 1813**

#### ***a. Empowerment of the East India Company:***

- The company was authorized to make laws, regulations, and articles of war for Indian troops, including provisions for court martial.

#### ***b. Trade Monopoly Ended:***

- Monopoly of trade enjoyed by the company was abolished, opening it to all British subjects.
- Justices of the Peace were given jurisdiction over offenses committed by European British subjects on native Indians and small debts due to Indians.

### **Charter Act of 1833**

#### ***a. End of Trade Monopoly:***

- The company's trade monopoly was completely terminated.
- Indian possessions of the company were declared to be held in trust for the British Crown.

- Control of the British government was exercised through the Board of Control.

***b. Legislative Changes:***

- Significant changes in the legislative system aimed at simplifying and reforming legislative power.
- A fourth member, dedicated to legislation only, was added to the Governor-General's Council.
- This legislature could legislate for all British territories in India, repealing, amending, or altering any force in the Indian territories.

***c. Consolidation and Codification:***

- Proposal to consolidate and codify Indian legislation.
- Creation of an Indian Law Commission to report on ameliorative measures.

**Charter Act of 1853**

***a. Enhanced Legislative Powers:***

- The legislative member became a full member of the council with voting power in all business.
- Distinction made between the council as an executive and legislative body.

***b. Public Sittings:***

- Council sittings were made public, increasing transparency.
- Sittings and proceedings became unpopular with the government.

**Indian Councils Act of 1861:**

- Remedied the situation arising from the unpopularity of public proceedings.
- Brought changes to the functioning of the council in response to the evolving political situation in India, including the aftermath of the Sepoy Mutiny.

**Developments in 1857**

In 1857, the English Government introduced Act VI of 1857, which had a broad application across all of British India. The primary objective, as stated in its preamble, was to establish better

provisions for the acquisition of land required for public purposes within the territories controlled by the East India Company. The focus was also on determining the compensation amount for such acquisitions. However, due to various issues such as unsatisfactory settlements, incompetence, and corruption, this Act underwent amendments in 1861 and 1863. Subsequently, these modifications paved the way for a new Act, Act X of 1870.

### **Developments in 1870**

The 1870 Act marked a significant development as it introduced a mechanism for settling compensation disputes in a civil court if the collector, responsible for land acquisition, couldn't reach an agreement with the affected parties. This was a notable step toward ensuring fair compensation through judicial intervention. However, this Act was later replaced by the Land Acquisition Act of 1894.

### **Land Acquisition Act of 1894**

The Land Acquisition Act of 1894 continued the trajectory of establishing a comprehensive legal framework for land acquisition in British India. It aimed to provide a fair and just process for acquiring land for public purposes while addressing compensation concerns. Notably, this Act did not extend to princely states like Hyderabad, Mysore, and Travancore, as they had enacted their own land acquisition laws, highlighting the diverse legal landscape within the Indian subcontinent.

### **The Land Acquisition Act, 1894**

The Land Acquisition Act of 1894 was a crucial piece of legislation focused on the acquisition of land for public purposes. It remained in effect even after the adoption of the new constitution in 1950 and continued to govern land acquisition provisions until the introduction of the 2013 Act. Throughout its existence, the 1894 Act underwent several amendments to address evolving requirements and concerns raised by various governments.

## Subsequent Amendments

The Land Acquisition Act, 1894, underwent amendments through various Acts over the years.

Some of the key amendments included:

1. *The Decentralization Act, 1914*
2. *The Repealing and Amending Act, 1914*
3. *The Land Acquisition (Amendment) Act, 1919*
4. *The Devolution Act, 1920*
5. *The Land Acquisition (Amendment) Act, 1921*
6. *The Land Acquisition (Amendment) Act, 1923*
7. *The Land Acquisition (Amendment) Act, 1933*
8. *The Government of India (Adaptation of Indian Laws) Order, 1937*
9. *The Repealing Act, 1938*
10. *The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948*
11. *The Adaptation of Laws Order, 1950*
12. *The State Acquisition of Lands for Union Purposes (Validation) Act, 1954*
13. *The Adoption of Laws (No.2) Order, 1956*
14. *The Land Acquisition (Amendment) Ordinance, 1962*
15. *The Land Acquisition (Amendment) Act, 1962*
16. *The Land Acquisition (Amendment and Validation) Ordinance, 1967*
17. *The Land Acquisition (Amendment and Validation) Act, 1967*
18. *The Land Acquisition (Amendment) Act, 1984*

Among these amendments, The Land Acquisition (Amendment) Act, 1984, was a significant one, bringing notable changes to the original legislation.

## Land Acquisition Act: Historical Overview and Legislative Changes

### Introduction

After gaining independence in 1947, India grappled with the challenge of land acquisition, inheriting the "Land Acquisition Act of 1894" from the British colonial era. The need for reform became apparent, leading to significant legislative changes in subsequent decades.

### The 2007 Amendment Bill

In 2007, during the Congress-led United Progressive Alliance (UPA) government, the Land Acquisition (Amendment) Bill was introduced to address shortcomings in the existing legislation. The bill emphasized a mandatory social impact assessment (SIA) for large-scale displacements, ensuring the eligibility of various vulnerable groups, and introducing a fair compensation framework. Additionally, it proposed the establishment of dispute settlement authorities at both state and central levels.

### Lapse of the 2007 Bill

Despite passing the Lok Sabha as the Land Acquisition (Amendment) Act, 2009, the bill faced a setback with the dissolution of the 14th Lok Sabha. The government lacked the majority in the Rajya Sabha to push the bill forward, resulting in its lapse.

### Introduction of LARR, 2011

In 2011, the UPA government sought to revive the proposed amendments, presenting them as the Land Acquisition Rehabilitation and Resettlement Bill, 2011 (LARR, 2011). This bill aimed to address the concerns raised in the earlier legislation. It mandated higher approval percentages from affected families for private and public-private partnership (PPP) projects and outlined a comprehensive compensation structure based on market rates.

## **The Act of 2013**

The culmination of these efforts resulted in the passage of "The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013." This act, effective from January 1, 2014, represented a comprehensive framework for land acquisition, emphasizing fair compensation, transparent processes, and rehabilitation and resettlement of affected populations.

## **NDA Government's Reforms in 2014**

With the Bharatiya Janata Party-led National Democratic Alliance (NDA) assuming power in 2014, a renewed focus on economic development prompted the government to introduce further reforms. In December 2014, the Land Acquisition Amendment Ordinance was promulgated, signaling an intent to streamline land acquisition procedures and support ambitious economic initiatives such as the "Make in India" program and infrastructure development.

## **Exemptions and Amendments in the 2015 Land Acquisition Bill**

The 2015 Land Acquisition Bill introduced notable exemptions and amendments to streamline land acquisition processes. Five distinct categories were identified, exempting them from certain provisions of the previous Act, most notably the requirement for consent before acquisition. The exempt categories are as follows:

### **National Security and Defence Production**

The bill grants exemption to land acquisition for national security and defense production purposes. This recognizes the critical importance of securing land for activities crucial to the nation's defense.

## **Rural Infrastructure, Including Electrification**

The bill extends exemption to the acquisition of land for rural infrastructure projects, specifically emphasizing electrification. This exemption aims to facilitate the development of essential rural infrastructure.

## **Affordable Housing for the Poor**

Recognizing the urgency of addressing housing needs for the economically disadvantaged, the bill exempts land acquisition for affordable housing projects targeted at the poor.

## **Industrial Corridors**

The establishment of industrial corridors, vital for economic growth and industrial development, receives an exemption from certain provisions of the land acquisition process.

## **Public-Private Partnership (PPP) Projects with Central Government Ownership**

The bill provides an exemption for projects falling under public-private partnership models, where the land continues to be owned by the Central Government. This exemption streamlines the acquisition process for collaborative projects.

Additionally, these exempt categories are relieved from the Social Impact Assessment (SIA) provisions present in the 2013 Act. It's noteworthy that the 2013 Act facilitated land acquisition by private companies, a term revised in the 2015 bill to include a broader definition – "private entity," encompassing various non-governmental entities such as proprietorships, partnerships, companies, corporations, nonprofit organizations, or entities governed by other laws. This change expands the scope of entities eligible for land acquisition under the amended legislation.

## CHAPTER II

# INTRODUCTION

### **Unveiling the Transition Phase**

Seventy years have elapsed since India gained independence, marking a prolonged journey for its economy. While significant policy changes have unfolded across various economic sectors, the centrality of land in driving economic, political, and social activities remains unwavering. The nation has recently witnessed widespread protests against land acquisition, sparking a profound debate involving not only the general populace but also the Central Government, State Governments, political parties, and civil societies. This discourse is a result of the substantial modernization and industrialization efforts, signifying a shift from an agrarian to an industrial economy. It primarily revolves around the strategic placement of industries, compensation issues, and the employment fate of displaced individuals. This evolution prompts a critical examination of the intricate relationship between agriculture and industrialization. However, amidst this ongoing debate, a curious observation emerges. Neither the Government nor any political parties have given due consideration to the significance of the colonial-era legislation, the "Land Acquisition Act, 1894." This outdated legal framework persisted as a crucial instrument until the enactment of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013," even after more than 68 years of independence.

### **The Pivotal Role of the Land Acquisition Act**

The Land Acquisition Act holds unparalleled importance, influencing numerous legislations and playing a pivotal role in facilitating essential industrialization. It addresses critical concerns such as unemployment, socioeconomic disparities between urban and rural areas, environmental threats, and the perpetuation of disguised unemployment. The irony lies in the fact that this legislation, crafted by the British during a vastly different era and for different purposes, continued to shape India's land acquisition landscape. Despite the imperatives of Indian democracy, a comprehensive attempt to overhaul this archaic legislation was notably absent for a

considerable period. It wasn't until the first decade of the 21st century that a concerted effort was made to replace the Land Acquisition Act, 1894. This culminated in the passage of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013," signifying a monumental shift in the legal framework governing land acquisition in India.

## **Background of Land Acquisition Law in India: A Historical Overview**

The relentless pace of urbanization, escalating infrastructure demands, and rapid economic progress in India have exerted immense pressure on land resources. Both governmental and private projects frequently involve the acquisition of private land, necessitating a legal framework to regulate this process. Prior to the enactment of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013," compulsory land acquisition was governed by the archaic "Land Acquisition Act, 1894," a legislation that had endured for more than 129 years.

The Land Acquisition Act of 1894 was conceived in a vastly different economic, social, and political landscape. Despite the transformative changes that occurred after independence, the Indian government did not undertake substantial revisions to the acquisition policy to align it with contemporary needs and values. Consequently, the repercussions of the 1894 Land Acquisition Act manifested across social, legal, cultural, economic, and political dimensions, leading to numerous instances of public agitation, some of which escalated into violent conflicts resulting in loss of lives.

Several critical issues emerged as key points of contention against the Land Acquisition Act of 1894:

### **a. Lack of Compensation and Rehabilitation**

The Act failed to provide adequate compensation, either monetary or otherwise, to affected parties, primarily landowners (often farmers) and those whose livelihoods were linked to the acquired land (mostly agricultural laborers). Moreover, there was a glaring

absence of rehabilitation or resettlement measures for those adversely impacted by land acquisition.

**b. Absence of Prior Consent**

The Act did not mandate any prior consent from the affected parties for the construction of infrastructure projects. This absence of consent extended to individuals whose land, occupations, or living conditions would be adversely affected by pollution or environmental impacts associated with these projects.

**c. Swift and Unilateral Acquisition**

Land could be acquired swiftly and unilaterally, with a mere notice from the Collector, leaving those affected with minimal opportunity to legally challenge the acquisition or make alternative arrangements for their livelihoods. The government possessed unchecked authority to acquire land as deemed fit.

**d. Lack of Local Stake and Benefits**

While projects were undertaken in the name of India's development, local communities reaped minimal benefits, and their stake in the projects remained negligible. Insufficient compensation and rehabilitation measures left affected individuals without adequate support or opportunities for alternative employment.

The cumulative effect of these shortcomings fueled discontent and resistance, prompting the need for a comprehensive overhaul of the land acquisition framework, eventually culminating in the enactment of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

The ongoing difficulties and extensive demonstrations against different development projects like the Tehri Dam, Sardar Sarovar Dam, Singur, Nandigram, and others highlight the immediate requirement for a clear and responsible land acquisition procedure. Over time, protests driven by dissatisfaction and opposition have exposed flaws in the current system, resulting in an increasing need for changes from activists and, to a certain degree, from business organisations.

The collective outcry sought a mechanism that ensured fair compensation and appropriate rehabilitation for individuals impacted by land acquisition, while allowing corporate organisations to proceed with projects without being hindered by demonstrations. The "Land Acquisition (Amendment) Bill, 2007" and the "Rehabilitation and Resettlement Bill, 2007" were introduced to address these problems. The legislation aimed to revise the outdated "Land Acquisition Act, 1894." Nevertheless, despite increasing pressure and support from activists and corporate entities, these legislation expired when the Fourteenth Lok Sabha was dissolved.

The "Land Acquisition Act (2011)" was introduced to address the longstanding challenges related to land purchase. Regrettably, this legislative proposal met a similar end as it was unable to be enacted and expired due to the dissolution of the Fourteenth Lok Sabha. Despite obstacles, the legislative process persisted and culminated on August 29, 2013, with the Lok Sabha approving the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013." This legislation repealed the colonial-period "Land Acquisition Act, 1894" and introduced a new age of land acquisition focused on equity, openness, and a thorough approach to rehabilitation and resettlement. This act marked a substantial advancement in matching land acquisition methods with current demands, resolving the concerns of affected communities, and simplifying the process for corporate organisations.

The primary premise governing the State or Government's acquisition of land for public use is the notion of "Eminent Domain." The legal interpretations developed around the outdated "Land Acquisition Act, 1894" have subjected residents to the land purchase process, maintaining a colonial mentality that continued post-independence. At times, the judiciary has unintentionally supported this idea. Therefore, it is crucial to examine and evaluate this statute based on modern democratic values and the concepts of a welfare state. The implementation of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" was a notable shift from previous practices, aiming to achieve a harmonious relationship between the public interest and individual rights in land acquisition in India. The Act presents a

detailed and sophisticated perspective on the idea of eminent domain, taking into account aspects like public purpose, rehabilitation, relocation, compensation, and protections for Project Affected Persons (PAPs). The Act specifically deals with the inappropriate use of eminent domain authority by governments according to the "Land Acquisition Act, 1894" for obtaining land for public use.

The new Act focuses on defining "public purpose" comprehensively to limit its broad usage and prevent its exploitation for strategic reasons or essential state infrastructure projects. The Act's restrictions also apply to the acquisition of land for enterprises or public-private partnership initiatives that involve larger public benefits. The antiquated "Land Acquisition Act, 1894" permitted states to acquire property for public reasons, including benefiting private enterprises for economic growth, without sufficient regard for the rehabilitation and resettlement of impacted citizens. This inconsistency prompts questions about the appropriateness of governmental intervention, especially when private talks based on a "willing seller-willing buyer" approach could provide a more equitable and clear agreement for landowners. The proposal suggested repealing the "Land Acquisition Act, 1894" and introducing a new, all-encompassing law that addresses acquisition, rehabilitation, and resettlement concerns. This change attempted to simplify regulations, reducing difficulties for landowners and those reliant on the property while adhering to modern standards of equity and openness.

Under the outdated "Land Acquisition Act, 1894," governments had the authority to acquire land for various public purposes, but this was limited to permanent acquisitions. However, there arose instances where the need arose for acquiring land temporarily for specific public purposes. This practice, commonly known as the requisitioning of immovable property, prompted the enactment of the "Requisition and Acquisition of Immovable Property Act, 1952." This legislation was particularly relevant to the doctrine of eminent domain in India and addressed the acquisition of land for temporary periods to serve public interests.

## The Geographic Applicability

The "Requisition and Acquisition of Immovable Property Act, 1952" applies uniformly to the entire country, with the exception of the State of Jammu and Kashmir. As a central act, it not only establishes a framework for temporary land acquisition but also empowers state governments to make amendments to suit their specific regional needs. This legislative flexibility allows for a tailored approach to address diverse situations across different states.

## Empowering State Governments

A distinctive feature of the "Requisition and Acquisition of Immovable Property Act, 1952" is its empowerment of state governments. While being a central act, it grants states the authority to amend the legislation to better suit their local needs. This decentralization of legislative power allows for a more nuanced and responsive approach to land acquisition, acknowledging the diverse needs and circumstances of different states.

## Coordination with Special Acts

In India, the acquisition of land can occur under various acts, and the "Requisition and Acquisition of Immovable Property Act, 1952" is just one piece of this complex legal puzzle. The statute is applicable only to cases where land is acquired under its provisions. When there is a presence of other Special Acts governing land acquisition, the provisions of the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" need not be applied. This ensures that the legal procedures align with the specific requirements outlined in the relevant Special Act, streamlining the acquisition process. Several Special Acts have been enacted to address the unique requirements of different regions and sectors. Among them are:

1. *Calcutta Improvement Act, 1911*
2. *The City of Bombay Municipal Act of 1888*
3. *Calcutta Municipal Act, 1899*

4. *Calcutta Municipal Act, 1923*
5. *The City Rangoon Improvement Act, 1920*
6. *The United Provinces Town Improvement Act, 1939*
7. *The City of Bombay Improvement Trust (transfer) Act, 1925*
8. *Indian Telegraph Act, 1885*
9. *Indian Railways Act, 1890*
10. *Indian Electricity Act, 1910*
11. *Indian Tramways Act, 1886*
12. *The Defence of India Act, 1937 and the Defence of India Rules*
13. *The Government of India Act, 1935*
14. *The U.P. Municipalities Act, 1916*
15. *The Bihar and Orissa Municipal Act, 1922*
16. *The Punjab Municipal Act, 1911*
17. *The Bengal Municipal Act, 1932*
18. *The Bombay District Municipal Act, 1901*
19. *The Central Provinces Municipalities Act, 1922*
20. *The City of Lahore Corporation Act, 1941*
21. *The Madras District Municipalities Act, 1920*
22. *The Madras City Municipal Act, 1919*
23. *The City of Bombay Improvement Act, 1898*
24. *The City of Bombay Improvement Act, 1904*
25. *The Calcutta Improvement (Appeals) Act, 1911*
26. *The Punjab Town Improvement Act, 1922*
27. *The Madras Town Planning Act, 1920*
28. *The Bombay Town Planning Act, 1913*
29. *The Nagpur Improvement Trusts Act, 1936*
30. *The United Provinces Town Improvement Act, 1919 (including Delhi)*
31. *The United Provinces Town Improvement (Appeals) Act, 1919 (including Delhi)*

**32. Land Acquisition (Bengal Amendment) Act, 1934**

**33. Bombay Land Acquisition (Amendment) Act, 1948**

## **Relevance of Special Acts**

When a Special or Local Act is enacted before the repeal of the "Land Acquisition Act of 1894," any subsequent amendment to the repealed act does not apply to it. This principle ensures that the legal framework established by the Special Act remains intact, unaffected by subsequent changes. Similarly, under the current legal regime, the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013," any amendment post the commencement of a Special or Local Act is not applicable to the provisions of that act.

## **Exemption from Section 5A**

Section 5A of the "Land Acquisition Act" did not apply to acquisitions made under a Special or Local Act enacted before the Land Acquisition (Amendment) Act of 1923. This exemption underscores the autonomy and specificity granted to acquisitions governed by these specialized legislations.

## **Public Purpose in Land Acquisition**

At the heart of land acquisition in India lies the concept of "public purpose," a critical criterion that empowers the government to exercise eminent domain. The interpretation of this term has undergone significant scrutiny, particularly in the "Land Acquisition Act, 1894," where a broad and inclusive definition left the determination of public purpose to the discretion of the government. The judiciary, recognizing the need for clear guidelines, has articulated key principles to delineate the contours of public purpose.

## **Judicial Guidelines on Public Purpose**

The Supreme Court, in the case of *State of Gujarat v. Shantilal Mangaldar*, provided comprehensive guidelines on what constitutes public purpose:

## **Benefit to a Section of the Public**

A purpose is considered public if it is beneficial or useful to even a section of the public. This acknowledges the diverse needs and interests within society, recognizing that benefits need not be universal but should extend to a significant portion of the community.

## **Housing for Workmen in Small Concerns**

Land acquisition for housing workmen in small concerns with fewer than 100 workers is deemed to serve public purpose. This acknowledges the importance of providing accommodation for the workforce, contributing to their welfare and overall societal well-being.

## **Amenities for Public Utility**

Acquisition for the erection of dwelling houses for a company's workmen or for providing amenities, though not directly public purpose, can be deemed as such if it serves public utility. This highlights the broader societal benefits derived from amenities that contribute to public welfare.

## **Construction of Benefit to a Section of the Public**

Any construction work that proves to be of some benefit to even a section of the public falls under the ambit of public purpose. This recognizes the inherent connection between construction projects and their potential positive impact on the surrounding community.

## **Government Agreements for Public Utility**

When a government enters into agreements with companies to provide land for various public utility concerns such as railways, electricity supplies, and water supply corporations, it fulfills the criterion of public purpose. This underscores the role of agreements in ensuring alignment with broader public interests. The concept of public purpose, as delineated by judicial pronouncements, reflects a nuanced understanding of societal needs and welfare. By providing

clear guidelines, the judiciary aims to strike a balance between the government's authority to acquire land for development projects and the imperative to safeguard public interests. As land acquisition continues to be a crucial tool for national development, the definition of public purpose remains a dynamic and evolving aspect of India's legal landscape. The power of eminent domain vested in the government to acquire land for public purposes is a pivotal aspect of India's statutory framework. The absolute authority of the government to determine what constitutes public purpose, with limited judicial intervention, underscores the significance of this process. The term 'public purpose,' though not explicitly defined, encompasses any work beneficial to even a section of the public, especially if it involves construction.

### **Challenges in Defining Public Purpose**

The lack of a precise definition for public purpose poses challenges, particularly when acquiring land for industrial development under eminent domain. Striking a balance between a broad interpretation of public purpose and protecting individual property rights is crucial. The distinction between public and non-public purposes needs clarity to prevent potential abuse of power. The delicate equilibrium between citizens' claims and societal development necessitates careful consideration by both the executive and the judiciary.

### **Human Rights Perspective**

In the 21st century, viewed through the lens of human rights, the colonial Land Acquisition Act, 1894, faced scrutiny for violating human rights. The absence of procedures for the displacement of project-affected families and the lack of Social Impact Assessment (SIA) mechanisms made the act appear draconian. Monetarily compensating land losers without additional protections or social security measures raised ethical concerns. In response, the government proposed a unified legislation that not only addressed acquisition but also incorporated rehabilitation and resettlement mechanisms.

## **The Right of Fair Compensation and Transparency Act, 2013**

The advent of the "Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" marked a paradigm shift. Unlike its colonial predecessor, this act limits governmental intervention in acquisition to defense and specific development projects. A groundbreaking feature is the mandatory 80% consent requirement from project-affected families for acquisitions related to private companies or public-private partnerships. The urgency clause for acquisition is restricted to national defense, security, and emergencies.

## **Unified Legislation and Social Impact Assessment**

This unified legislation introduces Social Impact Assessment (SIA) as a crucial step before initiating the acquisition process. The participatory, informed, and transparent SIA process involves all stakeholders, ensuring a comprehensive understanding of project impacts. Moreover, provisions for rehabilitation and resettlement focus on enhancing income levels, rebuilding socio-cultural relationships, and providing public health and community services. The transition from the archaic Land Acquisition Act, 1894, to the modern and comprehensive Right of Fair Compensation and Transparency Act, 2013, reflects India's commitment to balancing development imperatives with respect for individual rights and human dignity. The new legislation exemplifies a proactive approach, emphasizing participatory processes and safeguards for vulnerable sections, heralding a more equitable era in land acquisition practices.

## **Compensation in Land Acquisition**

Compensation lies at the core of land acquisition, playing a crucial role in mitigating the involuntary nature of the process. The Land Acquisition Act, 1894, fell short in providing adequate and realistic compensation, leading to widespread injustices and legal disputes. This discussion delves into the inadequacies of the old law and examines the provisions and mechanisms introduced by the new law, "The Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013," in an attempt to achieve fairness in compensation.

### **Issues with the Land Acquisition Act, 1894**

Under the 1894 Act, compensation was to be paid at market value, a concept that, while sensible in theory, resulted in numerous problems. Land values, often underquoted in land records, contributed to injustices. The discrepancy between listed values and actual market rates, coupled with infrequent updates of land records, fueled legal disputes and challenges.

### **Modernizing Land Records**

While the opportunity presented itself with the enactment of a new land acquisition law, the option of incorporating a chapter mandating the modernization of land records was not on the table. The legal framework, primarily deriving from a single entry in the concurrent list of the Constitution, "Acquisition and Requisitioning of Property," navigates a fine line to avoid encroaching on the legislative domain of State Governments.

### **Approach of the New Law**

Recognizing the limitations in dictating terms to the States regarding land records, the new law focuses on devising an approach that adjusts final compensation, considering inherent shortcomings affecting land values. Rather than imposing fixed terms, the law addresses the flaws in the existing system, aiming for a fairer degree of financial restitution for affected parties.

### **Key Distinctions and Fair Compensation**

A significant departure from the repealed 1894 Act lies in the approach to achieving fair compensation. The new law acknowledges the deep-rooted flaws in the system and aims to establish measures that enhance fairness in compensation, if not absolute fairness. The very first issue addressed in its formulation was the inadequacy of existing values, prompting a collective exploration of what constitutes a fair value. The evolution from the Land Acquisition Act, 1894,

to the new legislation reflects a commitment to rectifying historical injustices. By addressing the inadequacies in compensation and navigating the complexities of land records, the new law endeavors to strike a balance between fairness and realism in land acquisition processes.

## **Compensation Recipients and Rehabilitation: Ensuring Comprehensive Coverage**

Determining who qualifies for compensation in land acquisition processes has been a crucial aspect of legislative reforms. Initially, the law primarily provided compensation to landowners, while those dependent on the land for their livelihood were entitled to rehabilitation and resettlement benefits. However, subsequent consultations with national political leaders led to an expanded scope, ensuring that all affected families receive compensation along with rehabilitation and resettlement benefits.

### **Inclusive Definition of Affected Families**

As per Section 3(c) of the Act, 2013, "affected families" now include various categories:

- **Landowners**

Families whose land or immovable property has been acquired.

- **Livelihood-dependent Families**

Families without land ownership but comprising agricultural laborers, tenants, share-croppers, artisans, or individuals working in the affected area for three years before land acquisition, whose primary livelihood is impacted.

- **Scheduled Tribes and Forest Dwellers**

Members of Scheduled Tribes and other traditional forest dwellers losing forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, due to land acquisition.

- **Forest and Water-dependent Families**

Families whose primary livelihood for three years before land acquisition depends on forests or water bodies, including gatherers, hunters, fisherfolk, boatmen, and those affected by land acquisition.

- **Government-allotted Land Recipients**

Individuals assigned land by the State or Central Government under any schemes, with the acquired land falling under this category.

- **Urban Area Residents**

Families residing in urban areas for three years preceding land acquisition or whose primary livelihood for three years before acquisition is affected.

## **Land Acquisition Tied to Rehabilitation and Resettlement**

A significant shift in legislative history occurred with the introduction of a law connecting land acquisition to mandatory rehabilitation and resettlement. The provisions regarding rehabilitation and resettlement are comprehensive, ensuring that certain benefits are non-negotiable. This research delves into the considerations guiding the identification of these non-negotiable benefits and the provision of infrastructural amenities in cases of displacement. The expanded definition of affected families, encompassing various socio-economic categories, reflects a commitment to inclusivity and fairness in compensation distribution. By linking land acquisition with robust rehabilitation and resettlement provisions, the legislation aims to address the multifaceted impact of land acquisition on individuals and communities, marking a significant milestone in India's legislative landscape.

## **The Crucial Role of 'Rehabilitation and Resettlement' in Land Acquisition**

'Rehabilitation and Resettlement' (R&R) emerge as pivotal considerations in the realm of land acquisition, marked by passionate debates over several decades in India. The magnitude of displacement due to coercive acquisitions, estimated at close to 60 million individuals post-independence, spurred movements advocating for effective R&R. This discussion

emphasizes the historical context, highlighting the government's acknowledgment of R&R as a policy priority in the "National Rehabilitation and Resettlement Policy" in 2003.

## **Historical Background**

### **Pre-2003 Scenario**

Prior to 2003, states had their own policies, exemplified by "The Maharashtra Resettlement of Project Displaced Persons Act, 1976," outlining amenities for affected individuals.

### **Post-2003 Policy**

The "National Rehabilitation and Resettlement Policy" of 2003 addressed the need for R&R, especially in the aftermath of widespread displacements, notably in the Narmada Valley project acquisitions.

## **Challenges with Policy Approach**

### **Soft Law Nature**

Despite its significance, a policy is inherently soft law, lacking the legal force that parliamentary approval provides. It can be dispensed with through Cabinet reference or waiver of approval requirements.

### **Implementation Discretion**

Policy recommendations are subject to the implementing authority's discretion, lacking a guaranteed legal mechanism for enforcement.

## **Necessity for Enacted Law**

Recognizing the limitations of policy, the government drafted the "National Rehabilitation and Resettlement Policy, 2007," linking ideas like Social Impact Assessment to proper implementation. However, the inherent weaknesses persisted, prompting the enactment of a new law to address the shortcomings and ensure comprehensive R&R mechanisms. The journey from

pre-2003 state-specific policies to the 2003 policy and subsequent 2007 policy underscored the evolving recognition of R&R as an integral aspect of land acquisition. However, the transition from policy to enacted law signifies a paradigm shift, providing a legal framework with enforceable provisions to safeguard the rights and well-being of displaced individuals. The enactment serves as a testament to the commitment to address the challenges posed by displacement through a robust and legally binding approach.

## CHAPTER III

### RIGHT TO PROPERTY UNDER THE CONSTITUTION OF INDIA: AN ANALYSIS

In dissecting the challenges and issues of land acquisition within the framework of the Indian Constitution, it is imperative to delve into the provisions and concerns related to "Land" in the "Government of India Act, 1919," and subsequently, the "1935 Act." These legislative foundations significantly influenced the shaping of the Indian Constitution.

#### **The Government of India Act, 1919:**

The Government of India Act, 1919, marked a significant step towards introducing responsible government in the provinces, ushering in the concept of 'Dyarchy.' This act initially divided administrative matters between the center and provinces, further classifying provincial subjects into 'transferred' and 'reserved' categories. 'Transferred' subjects were under the jurisdiction of the governor, aided by elected members in the legislative council, resembling responsible government to a limited extent. Meanwhile, 'reserved' subjects remained the governor's responsibility, not subject to legislative oversight, allowing the governor to override both ministers and the executive council.

However, no element of responsible government was incorporated at the center, with the Governor-General-in-Council maintaining accountability to the British parliament through the Secretary of State for India. The act introduced a bicameral system in the Indian Legislative Council, consisting of the Governor-General, the Council of State, and the Legislative Assembly.

In provinces administered by governors, a legislative council was established, with seventy percent of its members elected through direct elections. The majority of elected members were chosen through direct election. Voter qualifications, election methods, and constituency constitution were not prescribed by the act but were to be determined by rules made under it. The

franchise was generally based on residence and possession of property qualifications, such as land revenue, rent, or local rates.

Voter qualifications for the Council of State and the Legislative Assembly were higher than those for provincial councils, and women gained the right to vote for the provincial council of state. Legislative membership qualifications included age requirements, restrictions on insolvency and legal practice, and disqualification for criminal convictions or corrupt election practices. This marked a crucial period in laying the groundwork for the subsequent development of the right to property under the Indian Constitution.

The franchise system under the Government of India Act, 1919, was primarily based on residence and specific property qualifications. Eligibility for voting was tied to the payment of land revenue, rent, or local rates in rural areas, and municipal rates in urban areas. Income tax payments also served as a criterion. Notably, the qualifications for voters in the Council of State and the Legislative Assembly were more stringent compared to those for provincial councils. Additionally, this era marked a significant stride in women's rights, granting them the right to vote for the provincial council of state.

Membership qualifications for the legislatures were also clearly defined. Prospective members needed to be at least twenty-five years old and could not be an undischarged insolvent or a legal practitioner under discharge or suspension. Conviction of a crime or involvement in illegal corrupt practices related to an election could serve as a disqualification. The Act facilitated a relaxation of control by the Secretary of State and the Government of India. The substantial increase in the number of electors and elected members, coupled with a focus on direct elections, strengthened the members' responsibility to the electorate. This shift created a conducive environment for Parliament to expand the scope and responsibility of the legislatures in India.

The powers vested in the councils extended to legislating for peace and good governance in provinces. They had the authority to repeal or alter any law made for the province, both before and after the Act of 1919, by any authority in British India. However, this legislative power was subject to certain restrictions. Prior approval from the Governor-General was mandatory before the legislature could consider or enact laws related to:

- Imposing new taxation;
- Imposing public debt, customs duties, or any other tax duty;
- Affecting military, naval, or air forces;
- Affecting relations with foreign princes or states; and
- Regulating any central or provincial subject declared to be subject to central legislation.

The Government of India Act, 1919, bestowed significant powers upon the Governor-General, reinforcing the unitary form of government in British India. The Governor-General held the authority to prevent the introduction of any bill if he deemed it jeopardized the safety or tranquility of India. The Act retained the power, granted in the 1900 Act, allowing the Governor-General to issue ordinances in cases of emergencies. In matters of finance, the Indian legislature required a statement detailing the estimated expenditure and revenue, which was to be presented before both chambers. The legislative assembly held the power to vote on proposals from the Indian government, presented as demands for grants. However, certain aspects, such as interest and sinking fund charges, salaries of specific officials, and expenditures categorized as ecclesiastical, political, and defense, were exempt from the assembly's voting.

If the legislative assembly refused or reduced any grant, the Governor-General-in-Council could reinstate it, deeming it essential for fulfilling his responsibilities. This provision reinforced the executive's dominance, positioning the Governor-General-in-Council as the keystone of the unitary government system in British India. Importantly, the Act of 1919 marked a delegation of power to the provinces while ensuring the central government's competence to legislate on any matter across the nation. The authority to determine whether a particular topic fell under central

or provincial jurisdiction rested with the Governor-General-in-Council rather than the courts, consolidating the executive's supremacy in British India.

### **Turn of Events: 1919-1935**

The period between 1919 and 1935 witnessed pivotal events that significantly influenced British policy towards India. Key among these were the activities orchestrated by the Indian National Congress, including the Non-Cooperation Movement, Provincial Council elections, and the Civil Disobedience Movement. Alongside these developments, the arrival of the Simon Commission, formed under the provisions of the 1919 Act, and the outcomes of the three Round Table Conferences played crucial roles in shaping the political landscape.

In response to the dynamic socio-political scenario and the demands of the people, the British government enacted the "Government of India Act, 1935." This legislative measure marked a notable shift in the governance structure. The Act aimed to address the evolving political landscape and aspirations of the Indian populace. The developments during this period, marked by both cooperative and confrontational movements, culminated in the formulation and enactment of the 1935 Act, which laid the groundwork for a new phase in India's constitutional journey.

### **The Government of India Act, 1935**

The Government of India Act, 1935, marked a significant milestone in the constitutional evolution of British India. This legislation ushered in a substantial degree of autonomy for the provinces and laid the foundation for the establishment of responsible government. Notably, the concept of federalism was introduced for the first time, envisioning a framework that included both the provinces and Indian states. The central legislature envisaged by the Act was to be bicameral, consisting of the King (represented by the Governor-General), the Council of State, and the Federal Assembly. The Council of State was designed as a permanent body with staggered retirements, while the Federal Assembly had a maximum tenure of three years. The

Governor-General held discretionary powers to summon, prorogue, or dissolve either or both chambers.

The Council of States comprised 156 members for British India and up to 104 for the princely states. However, the successful realization of the federative structure hinged on the general accession of princely states, a goal that remained unmet due to their reluctance and the outbreak of the Second World War, leading to the non-establishment of the central legislature. British Indian members in the central legislature were not directly elected; instead, they were indirectly elected by provincial assemblies. Six members were nominated by the Governor-General to ensure adequate representation for scheduled classes, including depressed classes, women, and minority communities. Elective seats were categorized into General, Sikh, Muhammadan, and Reserved seats, which accommodated depressed classes, women, minorities, as well as representatives from commerce and industry, landholders, and labor.

The Act outlined the legislative process, allowing bills to originate in either chamber, except for financial bills, which had to originate in the assembly and required the Governor-General's recommendation. Veto power was vested in the Governor-General or the Crown. In the provinces, six of which had bicameral legislatures, communal representation persisted with certain concessions for Muslims and Sikhs. The Act abolished dyarchy in the provinces but introduced it at the central level.

## **Provincial Governance and Laws**

The Government of India Act, 1935, introduced a unique provincial administration system where the Governor's responsibilities closely mirrored those of the Governor-General. The Governor did not have any ministries reserved from ministerial supervision, which set him apart from the Governor-General. The Governor did not have the responsibility for the financial health of the province, while the Governor-General might enforce acts to protect federal finances. The executive authority in the province encompassed all legislative issues, with the Governor

receiving advice from a council of ministers appointed and removed at his own judgement. The Governor set their pay, which could not be changed while they held their positions. The legislative procedures were based on the federal system, enabling the Governor to approve, reject, or refer bills for the Governor-General's review. Ordinances may be issued in the absence of the legislature, pending later presentation.

With the Governor-General's approval, the Governor had the authority to enact legislation on particular issues either promptly or following consultation with the Assembly. The legislative authority was divided into the Federal Legislative List, Provincial Legislative List, and Concurrent Legislative List to delineate the powers of the federal and provincial governments. The Act placed limitations on legislative authority, necessitating approval from the Governor-General or Governor, in line with the overall pattern of legislative progress in India. The British Parliament maintained its authority over British India, and the Act was designed to avoid biased laws that could harm British trade interests in India. The Government of India Act, 1935, granted power to legislatures while included measures to protect executive authority, which served British interests in India by being accountable to the Secretary of State.

## **Right of Property Under the Indian Constitution**

The Indian Constitution delineates the right to property in Articles 19 and 31:

### **Article 19**

Article 19(1)(f), before its omission through the 42nd Amendment, acknowledged the citizens' right to acquire, hold, and dispose of property.

### **Article 31: Compulsory Acquisition of Property**

This article guarantees protection against deprivation of property without lawful authority. At the Constitution's commencement, Article 31 outlined the following key provisions:

1. **No Unlawful Deprivation:** No person shall be deprived of their property except by authority of law.
2. **Conditions for Acquisition:** Property, whether movable or immovable, including interests in commercial or industrial undertakings, cannot be taken possession of or acquired for public purposes unless the law provides for compensation. The law must specify the principles and manner for determining and granting compensation.
3. **State Legislature's Law:** Any law made by a State's legislature as mentioned in clause (2) must receive the President's assent after being reserved for consideration.
4. **Protection for Assented Law:** If a Bill, reserved for the President's consideration and receiving assent after being passed by a State Legislature, is pending at the Constitution's commencement, it cannot be challenged in any court.
5. **Exceptions:** Clause (2) does not affect existing laws or those made for specific purposes such as taxation, penalty imposition, public health, prevention of danger to life or property, or agreements with other countries.
6. **Certification for Pre-Constitution Laws:** Any State law enacted within eighteen months before the Constitution's commencement may be submitted to the President for certification within three months. Upon certification, it is immune from challenge based on contravention of specified provisions of the Government of India Act, 1935.

These constitutional provisions safeguard the right to property, ensuring that any acquisition is lawful, for public purposes, and accompanied by just compensation.

## Land Acquisition Under Constitutional Lists

Relevant entries in the constitutional lists provide a clear delineation of powers concerning land acquisition:

## **List I - Union List**

- ***Entry 33:*** Grants the Union government the authority for the "Acquisition or requisitioning of property for the purposes of the Union." This empowers the central government to acquire or requisition property as needed for Union-related objectives.

## **List II - State List**

- ***Entry 18:*** Pertains to "Land," encompassing rights in or over land, land tenures, landlord-tenant relationships, rent collection, transfer and alienation of agricultural land, land improvement, agricultural loans, and colonization. The State has authority over land-related matters, except for those falling under Entry 42 of List III.
- ***Entry 36:*** Provides States the power to acquire or requisition property, excluding purposes of the Union. However, it is subject to the provisions of Entry 42 in List III, indicating a concurrent jurisdiction.

## **List III - Concurrent List**

- ***Entry 42:*** Governs the "Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given." This entry outlines the shared legislative authority between the Union and States on the principles and mechanisms for determining compensation in land acquisition.

These constitutional provisions establish a comprehensive framework for land acquisition, ensuring a balance of powers between the Union and States and addressing compensation principles through the Concurrent List. The specific distribution of powers allows for effective governance and regulation of land-related matters at both central and state levels.

## Analysis of Constitutional Provisions: Article 31

Article 31, adapted from Section 299 of "The Government of India Act, 1935," serves to safeguard the interests of significant landowners like zamindars and taluqdars. The analysis of its clauses unfolds as follows:

1. **Clause (1):** Provides protection against state-driven deprivation of property. The state can only engage in such actions through the authority of law, prohibiting executive or administrative means for property deprivation.
2. **Clause (2):** Shields against the acquisition and requisitioning of private property. Requisitioning entails temporary use without transferring ownership to the state or any state-controlled entity. Acquisition, allowed only by authority of law, must be for public purposes and involves compensation to the affected party.
3. **Clause (3):** Requires State Legislature-passed acquisition legislation to be reserved for the President's assent, ensuring central scrutiny.
4. **Clause (4):** Safeguards enacted laws from court challenges on the grounds of inconsistency with Clause (2). This provision is intended to exempt laws from meeting public purpose and compensation requirements.
5. **Clause (5):** Shields existing and future laws for specified purposes, providing a protective umbrella for legislation enacted in the future.
6. **Clause (6):** Protects laws enacted 18 months before the Constitution's commencement if certified by the President within three months after that commencement. This provision shields laws enacted after May 26, 1948, and before January 26, 1950, against legal challenges if certified in time.

While Clauses (4) and (6) were aimed at safeguarding land reform legislation, it was later realized that their protection was limited to challenges against contravention of Article 31(2) and Section 299(2) of the 1935 Act, respectively. Additionally, Article 13, rendering laws void for inconsistency with fundamental rights, did not exempt laws covered by Article 31(4) and 31(6), leading to complexities in their application.

## **Constitutional Provisions and Problems of Interpretation**

The interpretation of constitutional provisions, especially concerning Article 31, has led to various challenges and complexities. The *Kachuniv v/s State of Madras & Kerala* case emphasized that the term "law" in Article 31(1) must be valid, not only meeting legislative procedures but also complying with Fundamental Rights in Part III, as mandated by Article 13. The reasonableness test under Article 19 was deemed applicable to the concept of law in Article 31(1). The term "property" in the Indian Constitution lacks a clear definition, leaving its interpretation subject to court decisions. The Supreme Court, in cases like *Saghir Ahmad v. State of U.P.*, has broadened the concept of property to include both corporeal and incorporeal forms. The dual guarantee of property rights under Article 19(1)(f) and Article 31 has resulted in confusion about the independence of these articles. Key problems in interpretation include:

### **Relationship between Article 19(1)(f) and Article 31**

Clarifying the interplay between the provisions of Article 19(1)(f) (right to property) and Article 31, addressing whether one provision takes precedence over the other.

### **Relationship between Article 31(1) and Article 31(2)**

Determining the relationship between the provisions of Article 31(1) (protection against deprivation of property) and Article 31(2) (protection against acquisition or requisitioning), examining how these clauses interact.

### **Extent of justifiability of compensation in expropriation cases**

Assessing the justifiability of the quantum of compensation that the state is obligated to pay in cases of property expropriation, addressing issues arising from the relationship between Article 31(1) and Article 31(2).

## **Authority of Law Requirement**

Article 31(1) implies that any governmental action depriving a person of their property requires the authority of law. Reflects the English principle of the rule of law in relation to property.

## **Fundamental Right under Art. 19(1)(f)**

Art. 19(1)(f) guaranteed the fundamental right to acquire, hold, and dispose of property, exclusive to Indian citizens. This right was subject to legislative power to impose reasonable restrictions in the public interest, as outlined in clause (5) of Art. 19.

## **Full-Fledged Fundamental Right**

The right under Art. 19(1)(f) was not limited to acquiring or disposing of property; it encompassed the complete spectrum of property rights. Restrictions, regardless of whether they amounted to the total deprivation of the right, had to satisfy the conditions of clause (5).

## **Conditions in Clause (5)**

The conditions in clause (5) needed to be satisfied when legislation sought to impose restrictions on the property rights of citizens, irrespective of whether these restrictions amounted to total deprivation or not.

## **Distinction Between Citizen and Alien**

The Constitution did not make a distinction between citizens and aliens in cases where restrictions on the right to property led to total deprivation or when the state acquired property or rights. Aliens could be prevented from acquiring property, as they had no fundamental right to do so. Their property rights were subject to legislative restrictions imposed by the state.

## **Interpretation of Constitutional Provisions: A Focus on State of West Bengal v. Subodh Gopal**

In the analysis of constitutional provisions related to property rights in India, the case of State of West Bengal v. Subodh Gopal underscores the importance of interpreting these provisions based on the text of the Constitution itself. Specifically, attention is drawn to the constitutional text, emphasizing the need to understand the provisions within the context of their wording.

### **Art. 31(2) and Deprivation of Property: The American Doctrine of Eminent Domain**

Art. 31(2) of the Indian Constitution is a focal point in this analysis, as it primarily deals with the "deprivation" of property, even though the term itself is not explicitly used. The actions described in clause (2), such as "acquisition," "requisition," and "taking possession," are considered forms of "deprivation" as envisioned in clause (1) of the same article. This interpretation aligns with the American doctrine of "eminent domain," where the state has the power to take private property for public use, subject to compensation.

### **Debate on Clauses (1) and (2): Police Powers vs. Eminent Domain**

A debate exists regarding whether clauses (1) and (2) of Art. 31 address two distinct subjects or form a unified concept. Some argue that clause (1) relates to the American doctrine of "police powers," granting the state the authority to legislate for public welfare. In contrast, clause (2) is seen as specifically addressing the doctrine of "eminent domain." The interpretation hinges on whether these clauses operate independently or together in shaping the state's power concerning property rights.

### **Power to Impose Restrictions: Art. 19(5) and Citizenship Considerations**

The distinction between the power to impose restrictions and the actions covered in clauses (1) and (2) of Art. 31 is crucial. While clause (1) does not explicitly grant the power to impose restrictions, this authority is detailed in clause (5) of Art. 19. It is noteworthy that Art. 19 is

applicable exclusively to citizens, highlighting the role of citizenship in property rights under this provision.

### **Foreigners and Property Rights: Exclusion from Fundamental Rights**

Foreigners, according to this analysis, are not granted fundamental rights concerning property similar to those enjoyed by citizens under Art. 19(1)(f). Art. 31 is specifically interpreted as dealing with the right of "eminent domain," focusing on cases involving state actions such as acquiring, requisitioning, or taking possession of property. The constitutional framework, therefore, emphasizes the concept of eminent domain and the state's role in specific interventions in property rights.

### **Significance of State of Bombay v. Bhanji Munji: Mutual Exclusivity of Art. 19 (1) (f) and Art. 31 (1)**

The case of State of Bombay v. Bhanji Munji established a crucial legal precedent, affirming the mutual exclusivity of Article 19 (1) (f) and Article 31 (1) in their application. The court's ruling clarified that when a restriction on the right to property did not result in total deprivation, Article 19 was applicable. Conversely, if the restriction led to complete deprivation, Article 31 alone governed the situation, highlighting the distinct roles of these constitutional provisions.

### **Compensation and the Fourth Amendment: Shaping the Landscape of Property Rights**

The Fourth Amendment to the Constitution marked a significant juncture in the interpretation of property rights in India. While emphasizing the necessity for legislatures to provide compensation in laws authorizing property acquisition, the amendment explicitly stated that such laws could not be challenged on the grounds of inadequate compensation. Despite this seemingly exhaustive provision, the case of Vajravelu v. Special Deputy Collector clarified that compensation under Article 31 (2) should be a "just equivalent" of the property acquired by the state. The court emphasized that if the legislature laid down principles for determining a just equivalent, the courts would not interfere based on allegations of inadequacy.

### **First Amendment (1951): Safeguarding Agrarian Reform Legislation**

In response to challenges against agrarian reform legislation, the First Amendment was introduced in 1951. It added Articles 31A and 31B to protect such legislation from fundamental rights challenges. The Ninth Schedule was also amended retrospectively to shield specific enactments related to agrarian reform from legal scrutiny. These amendments were designed to ensure the constitutional validity of agrarian reform measures and shield them from fundamental rights objections.

### **Fourth Amendment's Impact on Interpretation: Dwarkadas Srinivas, Saghir Ahmed, Bela Banerjee, and Subodh Gopal Cases**

The year 1954 witnessed four landmark judgments – Dwarkadas Srinivas v. Sholapur Spinning & Weaving Co., Saghir Ahmed v. State of U.P., State of West Bengal v. Mrs. Bela Banerjee, and State of West Bengal v. Subodh Gopal Bose. These cases collectively addressed the question of whether compensation, as outlined in Article 31 (2), applied to cases of property deprivation under Article 31 (1). The court held that compensation was applicable in cases of substantial loss due to deprivation, leading to the introduction of Clause (2A) in Article 31 through the Constitution (Fourth Amendment) Bill.

### **Interplay Between Articles 19 and 21: A.K. Gopalan Case and Mutual Exclusivity**

The relation between Article 19 and Article 21 sparked debates, especially concerning the applicability of Article 19(1)(f) in conjunction with Article 19(5) to certain legislation. The Supreme Court's decision in the A.K. Gopalan case resolved this by establishing that Articles 19 and 21 were mutually exclusive. This decision clarified that the two articles operated independently, providing a clear boundary between the rights enumerated under each.

## **Seventeenth Amendment: Refinement of Estate Definition and Constitutional Challenge**

The Seventeenth Amendment emerged in response to constitutional challenges raised after the court's ruling on the validity of certain acts protected by Article 31A. The pivotal case, *Purushothaman v. State of Kerala*, led to the declaration of the act as unconstitutional with respect to Articles 14, 19, and 31. The judgment emphasized the need to enlarge the definition of 'estate' within Article 31A(2)(a), prompting the Seventeenth Amendment. This amendment introduced crucial modifications, encompassing "any land held under ryotwari settlement" and, specifically in Kerala and Tamil Nadu, "any janmam right" within the estate definition. Furthermore, a new clause (iii) broadened the scope to include lands used for agriculture, ancillary purposes, waste land, forest land, pastures, and sites for building. The Seventeenth Amendment not only rectified the definition but also granted retrospective effect from January 26, 1950, and added numerous acts to the Ninth Schedule.

## **Constitutional Challenges and Sankari Prasad Case: Validation of Amendments**

The constitutional validity of the First Amendment was questioned and unanimously upheld by the Supreme Court in the *Sankari Prasad Singh Deo*'s case. Later, in 1964, a combined challenge against the validity of the Seventeenth Amendment, along with the First and Fourth Amendments, was brought before the Supreme Court by Sajjan Singh and others. The central contention focused on the alleged failure to obtain ratification from at least half of the states, as mandated by Article 368's proviso. Despite a plea for reconsideration of the *Sankari Prasad* case, the Court rejected this contention, solidifying the constitutional standing of these amendments.

## **The Protective Shield: Ninth Schedule and Agrarian Reforms**

The First Amendment Act of 1951 introduced the Ninth Schedule to the Indian Constitution, accompanied by Article 31-B, aiming to shield laws related to agrarian reforms from judicial scrutiny. This addition was a response to the Patna High Court's decision in "*Kameshwar Singh's*" case, emphasizing the need to safeguard agrarian reform laws. Subsequent amendments, including the 1st, 4th, 7th, 17th, 25th, 42nd, and 44th, significantly expanded the list of acts

included in the Ninth Schedule. Several legal challenges were mounted against the protective cover provided by the Ninth Schedule, with key cases shaping its judicial standing:

#### **Shankari Prasad v. Union of India (AIR 1951 SC 458)**

The court, in this early case, declined to question the validity of acts in the Ninth Schedule, establishing a precedent for non-interference.

#### **Sajjan Singh v. State of Rajasthan (AIR 1965 SC 845)**

The court, in a subsequent case, continued the trend of non-interference, reinforcing the protective nature of the Ninth Schedule.

#### **Golak Nath v. State of Punjab (AIR 1967 SC 1643)**

Despite the evolving legal landscape, the court, in this case, maintained its stance, emphasizing the immunity of acts in the Ninth Schedule from judicial review.

#### **Kesavananda Bharati v. State of Kerala (AIR 1973 SC 1461)**

In this landmark case, the court upheld the protection of acts in the Ninth Schedule, refusing to delve into their validity.

#### **Woman Rao v. Union of India**

While acknowledging the validity of acts in the Ninth Schedule until April 24, 1973, the court introduced a crucial nuance. Acts added after this date could be subject to challenge, asserting limitations on the amending power of the legislature.

#### **I.R. Coelho Case**

The court clarified that the Ninth Schedule is not immune to judicial review. If an act is found to be ultra vires or beyond legislative power, the protection afforded by the Ninth Schedule cannot be invoked.

## **Land Acquisition and Judicial Trends: A Landmark Decision**

In a landmark judgment on January 24, 2014, the Supreme Court of India addressed critical aspects of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The case, titled Pune Municipal Corporation vs Harakchand Solanki, carried significant implications, particularly concerning Section 24(2) — the 'retrospective clause.'

### **Background to the Case**

The case involved eighteen appeals before the Supreme Court, all seeking the application of the retrospective clause. Common among them was a period of five or more years since the land acquisition award under the Land Acquisition Act, 1894, and the refusal of the affected parties to accept the compensation. The new Land Acquisition Act provided an opportunity to review pending litigations retrospectively. The Pune Municipal Corporation, the acquiring authority, argued that they fulfilled their obligations by depositing the compensation amount in the government treasury, a common practice in most acquisitions.

### **Judgment**

The three-judge bench, comprising Justices Lodha, Mudan Lokur, and Kurian Joseph, delivered a significant judgment clarifying the interpretation of the retrospective clause. It held that compensation could only be deemed paid if it was deposited with the court and offered to the individual concerned. In this specific case, where compensation was only deposited in the treasury, the court deemed it not paid, leading to the acquisition lapsing under Section 24 of the 2013 Act.

## Significance of the Judgment

1. **Harmonious Interpretation:** The judgment interpreted the retrospective clause in a harmonious manner, serving the interests of those affected by arbitrary acquisition mechanisms.
2. **Avoidance of Artificial Limitations:** It rejected artificial limitations, refusing to subtract the period of litigation from the overall time elapsed. The court did not allow the government to claim satisfaction merely by depositing money in the treasury.
3. **Approval of Retrospective Clause:** By implementing and relying on the clause, the bench affirmed its validity, settling prior debates surrounding its passage.
4. **Reinforcement of Fair Compensation:** The decision reinforced the concept of fair compensation, highlighting the inadequacy of deposited compensation that did not include accruing interest.

## Scope of the Pune Municipal Judgment and Unresolved Aspects

While the Pune Municipal Judgment marked progress in interpreting Section 24(2) of the 2013 Land Acquisition Act, it had limitations and left several key aspects unaddressed. The judgment focused specifically on elucidating the term 'compensation has not been paid' within the context of Section 24(2).

## Limited Definition

1. **Confined Interpretation:** The judgment's scope was confined to defining the phrase in Section 24(2), offering clarity on when compensation could be deemed not paid.
2. **Omission of Key Definitions:** Notably, the judgment did not provide a definition for 'physical possession' or outline the requirements for invoking the condition of retaining physical possession under Section 24(2).
3. **Silence on Possession Averments:** The judgment did not delve into the parties' claims regarding possession, and there was no clarification on what constituted the fulfillment of the condition of 'physical possession not being taken.'

## Implicit Recognition

The Court implicitly acknowledged that the legal fiction under Section 24(2) would come into play as soon as the stated conditions were satisfied. This inference suggests that the law would apply even when the condition of 'physical possession not being taken' is met.

## Future Clarifications

Shri Balaji Nagar Residential Association Case: The Pune Municipal Judgment laid the groundwork for further clarifications. Subsequently, in the case of Shri Balaji Nagar Residential Association vs the State of Tamil Nadu, the Supreme Court addressed the issue of physical possession in a more comprehensive and harmonious manner, providing additional insights.

## Second Set of Judgments: Reinforcing the Retrospective Clause

The Supreme Court's judgments in Bharat Kumar vs State of Haryana and Bimla Devi vs State of Haryana, both rendered in 2014, further solidified the interpretation and application of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013. These judgments, focusing on the retrospective clause, extended beyond the question of compensation to address the issue of physical possession.

### Bharat Kumar vs State of Haryana

Overturning High Court Judgment: The two-judge bench overturned a 2004 judgment of the Punjab and Haryana High Court that had upheld a long-pending acquisition. The Supreme Court quashed the acquisition, restoring the land to its original owners.

*Application of Retrospective Clause:* The judgment, echoing the Pune Municipal case, delved into the retrospective operation of Section 24(2). It emphasized that the conditions set forth in the retrospective clause must be satisfied for the law to take effect.

### **Bimla Devi vs State of Haryana**

- ***Addressing Cases with Prolonged Litigation:*** This case involved an award passed in 1995, where the parties had neither accepted compensation nor relinquished physical possession for an extended period.
- ***Judicial Recognition of Retrospective Clause:*** The Supreme Court, relying on the retrospective clause, ordered the return of the land to the original owners. The Court's decision underscored the importance of both non-acceptance of compensation and retention of physical possession as triggers for the retrospective clause.

### **Impact and Recognition**

- ***Ministry for Rural Development's Response:*** The Ministry for Rural Development applauded these judgments, recognizing their significance in implementing a crucial clause of the law. The Ministry acknowledged the humane lines drawn by the Supreme Court in addressing historical grievances arising from arbitrary acquisitions.
- ***Comprehensive Acknowledgment:*** Unlike the Pune Municipal case, these judgments considered both compensation and physical possession, providing a comprehensive acknowledgment of the conditions triggering the retrospective clause.

### **Three Judge Bench Decision: Shivraj vs Union of India**

The Supreme Court, in the landmark judgment of Shivraj vs Union of India, delivered on 7 May 2014 by a three-judge bench comprising Justices B.S. Chouhan, J. Chelameshwat, and M.Y. Eqbal, provided further clarity on the retrospective clause of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013.

### **Return of Land to Original Owners**

The three-judge bench ordered the return of land to its original owners who had been entangled in litigation for more than two decades. By invoking the retrospective clause, the bench held that the acquisition had lapsed.

## **Significance of the Decision**

This judgment, published on 10 May 2014, marked a crucial development in achieving legislative clarity regarding the retrospective clause. The Supreme Court's constructive interventions, within a relatively short period, played a pivotal role in shaping the jurisprudence on this aspect of land acquisition.

## **Opening Doors for Justice**

The series of judgments, including Shivraj, opened avenues for a greater number of applicants seeking justice. These decisions became the foundation for subsequent rulings on the retrospective clause, contributing to the evolving landscape of land acquisition jurisprudence.

## **Enriching Jurisprudence on Retrospective Operation**

Shivraj's case enriched the existing legal framework by providing a comprehensive perspective on the retrospective operation of the new land acquisition law. The decision was aligned with prior judgments pronounced by the Supreme Court, contributing to the consistency of legal interpretations.

## **Reliance on Solicitor General's Opinion**

Notably, the judgment relied on and invoked the Opinion of the Solicitor General of India, sought by the Ministry of Rural Development on 28 December 2013. By doing so, it fortified as law the positions clarified in the Solicitor General's Opinion, adding weight to the legal interpretation of the retrospective clause.

## **Retrospective Operation: Clarifications and Interpretations**

The retrospective operation of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 is elucidated through the following key points:

#### **a. Operability Commencement**

The Act's retrospective operation, outlined in Section 24, is considered effective from the date of notification in the Official Gazette.

#### **b. Physical Possession Criteria**

Physical possession is deemed to have occurred when the acquired land has been physically demarcated, and effective, physical, and absolute control has been taken within five years of the award.

#### **c. Interpretation of Five-Year Period**

*For acquisitions initiated under the Land Acquisition Act, 1894:*

- If parties haven't accepted compensation or released physical possession but don't qualify for Section 24(2) benefits due to pending status for less than five years, the new law applies if the unchanged situation persists for a period equal to or exceeding five years.
- The five-year period, as per Section 24(2), applies from the date of commencement of the Act, and benefits are available to cases pending for over five years with unchanged circumstances of no physical possession or accepted compensation.

#### **d. Limitation Clause**

For cases where possession or compensation is pending due to legal challenges, the period spent in litigation is counted for determining the five-year threshold. This applies to awards under Section 11 of the Land Acquisition Act, 1894, passed five years or more before 01.01.2014, as specified in Section 24(2).

The Opinion of the Solicitor General of India, dated 28 December 2013, aligns with and upholds these interpretations, affirming the legislative intent behind these provisions. These clarifications provide a framework for understanding and applying the retrospective aspects of the land acquisition legislation.

## **Impact of Supreme Court Decisions on Section 24(2)**

The Supreme Court's interpretations, specifically regarding the 'limitation period' and the 'interpretation of the Five Year Period' under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013, have had significant implications.

### **Limitation Period Clarification**

Authorities are barred from excluding the time spent in litigation from the five-year qualifying period, ensuring that landowners are not unjustly denied benefits.

This ruling prevents authorities from manipulating the qualifying period by discounting litigation time, upholding the landowner's entitlement to rightful benefits.

### **Interpretation of the Five-Year Period**

The court's approval of the interpretation allows landowners who fall short of the five-year mark but meet other conditions to approach the court when the acquisition remains pending for five years. This assumes that compensation hasn't been paid and/or physical possession hasn't been taken. Landowners, under this interpretation, gain the opportunity to seek legal recourse once the mandatory five-year period is met, potentially expanding the scope of cases eligible for Section 24(2) benefits. In September 2014, the Supreme Court further affirmed the significance of Section 24(2) in the case of Shri Balaji Nagar Residential Association vs State of Tamil Nadu. The bench emphasized that the legislature intentionally omitted extending the five-year period, even in cases of delays due to court orders, citing legal precedent to support this stance.

### **Significant Role of Delhi High Court in Implementing the Act**

The Delhi High Court has played a commendable role in the effective implementation of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013. Notably, the court has delivered detailed and insightful judgments that have facilitated the release of land held up by bureaucratic delays.

In the landmark case of Jagjit Singh and Ors vs Union of India and Ors, Justices Badr Durrez Ahmed and Sidharth Mridul of the Delhi High Court quashed several pending acquisitions by the Delhi Development Authority (DDA). The court found that the parties involved had satisfied the conditions laid down in Section 24(2) of the 2013 Act. This decision set a significant precedent.

Subsequent judgments by the Delhi High Court, such as those in Surender Singh vs Union of India, Girish Chabra vs Lt. Governor of Delhi, Raman Grover vs Union of India, and Ashwal Vadera vs Union of India, continued to contribute to the growing jurisprudence on the interpretation and application of Section 24(2). These judgments reinforced the harmonious interpretations established in earlier rulings.

Similar judgments have been delivered by the High Courts of other states, collectively vindicating the legislative intent behind the insertion of Section 24(2). The consistency and consensus emerging from these judicial pronouncements underscore the robustness of the legislation under judicial review. The successful return of land to affected families further affirms the worthiness of the decision made by the members of the Cabinet involved in crafting this clause.

## CHAPTER IV

### LAND ACQUISITION ACT, 2013: ISSUES AND PERSPECTIVES

#### Introduction to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, abbreviated as the LARR Act, 2013, marks a significant departure from the outdated Land Acquisition Act, 1894. This legislative shift aims to streamline the process of compulsory land acquisition, addressing the challenges faced by landowners and those dependent on the land. Furthermore, the Act introduces provisions for the rehabilitation and resettlement of individuals affected by such acquisitions.

#### Objectives of the Act

The Act articulates its objectives through its long title, emphasizing several key aspects:

##### **1. Humane and Transparent Acquisition Process**

The Act seeks to ensure a humane, participative, informed, and transparent process for land acquisition, specifically for industrialization, the development of essential infrastructural facilities, and urbanization. Collaboration with local self-government institutions and Gram Sabhas is deemed crucial in achieving these objectives.

##### **2. Just and Fair Compensation**

A fundamental objective of the Act is to provide just and fair compensation to families affected by land acquisition. This applies to those whose land has already been acquired, is proposed for acquisition, or is otherwise affected by such acquisition.

##### **3. Rehabilitation and Resettlement**

The Act places a strong emphasis on making adequate provisions for the rehabilitation and resettlement of individuals adversely affected by land acquisition. This underscores the commitment to mitigating the impact on the lives of those affected.

#### **4. Empowering Affected Persons in Development**

A unique aspect of the Act's objectives is to ensure that the cumulative outcome of compulsory land acquisition transforms affected persons into active partners in development. The aim is not only compensation but an enhancement of the post-acquisition social and economic status of the individuals involved.

### **Need for the New Land Acquisition Law**

The rationale for the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013) is rooted in the inadequacies and shortcomings of the preceding Land Acquisition Act of 1894. The reasons prompting the introduction of a new legislation are outlined as follows:

#### **a. Absence of Rehabilitation and Resettlement Provision**

The Land Acquisition Act of 1894 lacked provisions addressing the critical issues of rehabilitation and resettlement for affected individuals and their families. Recognizing the need for a more comprehensive approach, the new law aims to rectify this deficiency.

#### **b. Overly Broad Definition of 'Public Purpose'**

The 1894 Act had an expansive definition of 'public purpose,' leading to concerns about its misuse for acquisitions not genuinely serving the broader public interest. The new law seeks to redefine and narrow the scope of 'public purpose,' particularly for acquisitions vital to the state and infrastructure projects benefiting the general public.

#### **c. State Intervention for Corporate Land Acquisition**

The older legislation was frequently employed for acquiring private lands for corporate entities, raising questions about the appropriateness of state intervention in such cases. The new law emphasizes the desirability of private negotiations between companies and landowners, promoting a willing seller-willing buyer basis.

**d. Acquisition of Multi-Cropped Land and Food Security Concerns**

Heightened public concern, especially regarding the acquisition of multi-cropped irrigated land, was noted. This became a significant issue due to its implications for food security. The new law addresses these concerns to ensure a more balanced approach.

**e. Lack of Lease as an Acquisition Option**

The absence of an option for the government to acquire land through lease, rather than outright purchase, was identified as a limitation. The psychological comfort afforded by a lease option, where the landowner retains a sense of ownership, is acknowledged in the new legislation.

### **Territorial Extent of the LARR Act, 2013**

The LARR Act, 2013 applies to the entire territory of India, with the notable exception of the State of Jammu & Kashmir. Section 1(2) explicitly states, "The LARR Act, 2013 shall extend to the whole of India except the State of Jammu & Kashmir."

### **Effective Date for Enforcement of LARR Act, 2013**

Unlike conventional practices that grant executive discretion in determining the effective date of a newly enacted law, Section 1(3) of the LARR Act, 2013 introduces a progressive approach. It imposes a time limit of 3 months from the date of presidential assent within which the executive must implement the law. This provision prevents delays in the implementation process, ensuring that the law comes into operation promptly. Consequently, the LARR Act, 2013 became effective from 1 January 2014, having received presidential assent on 26 September 2013.

### **Retrospective Applicability of LARR Act, 2013 to Proceedings Initiated Under the 1894 Act**

Section 24 of the LARR Act, 2013 delineates the retrospective applicability of its provisions to land acquisition proceedings initiated under the 1894 Act:

**a. No Award Made Under Section 11 of the 1894 Act**

All provisions of the LARR Act pertaining to the determination of compensation, rehabilitation, and resettlement apply to land acquisition proceedings initiated under the 1894 Act where no award under Section 11 has been made.

**b. Award Made Within 5 Years Prior to the LARR Act's Commencement**

If an award has been made under the 1894 Act within 5 years before the commencement of the LARR Act, its provisions do not apply. Proceedings under the 1894 Act continue as if it has not been repealed.

**c. Award Made 5 Years or More Prior to the LARR Act, But No Possession Taken or Compensation Paid**

In cases where an award under Section 11 of the 1894 Act has been made 5 years or more before the LARR Act's commencement, but physical possession is not taken or compensation is not paid, land acquisition proceedings are deemed to have lapsed. However, beneficiaries are entitled to compensation under the provisions of the LARR Act if the majority of land holdings' compensation has not been deposited in beneficiaries' accounts specified in the acquisition notification under Section 4 of the 1894 Act.

## **Provisions for Land Acquisitions Under Special Acts**

Section 105 of the LARR Act, 2013, outlines provisions concerning land acquisitions under special acts. According to this section:

The provisions of the LARR Act do not automatically apply to enactments related to land acquisition specified in the Fourth Schedule. However, the Central Government has the authority, through a notification issued within one year from the Act's commencement, to direct the application of certain provisions of the LARR Act to cases of land acquisition under the enactments specified in the Fourth Schedule. This direction can include exceptions or modifications, provided they do not reduce compensation or dilute the provisions related to rehabilitation and resettlement (R&R), as specified in the notification.

## **Enactments Specified in the Fourth Schedule**

The Fourth Schedule to the LARR Act, 2013, lists various enactments to which its provisions do not automatically apply. These include:

1. *The Ancient Monuments and Archaeological Sites and Remains Act, 1958.*
2. *The Atomic Energy Act, 1962.*
3. *The Damodar Valley Corporation Act, 1948.*
4. *The Indian Tramways Act, 1886.*
5. *The Land Acquisition (Mines) Act, 1885.*
6. *The Metro Railways (Construction of Works) Act, 1978.*
7. *The National Highways Act, 1956.*
8. *The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962.*
9. *The Requisitioning and Acquisition of Immovable Property Act, 1952.*
10. *The Resettlement of Displaced Persons (Land Acquisition) Act, 1948.*
11. *The Coal Bearing Areas Acquisition and Development Act, 1957.*
12. *The Electricity Act, 2003.*
13. *The Railways Act, 1989.*

## **Modification of Fourth Schedule**

Additionally, Section 105(2) of the Act empowers the Central Government to, through a notification, omit or add to any enactments specified in the Fourth Schedule.

## **Applicability to Land Acquisitions under SEZ Act, 2005**

The Special Economic Zones (SEZ) Act, 2005, initially specified in the Fourth Schedule of the LARR Bill, was later omitted during the Bill's passage in Parliament. Consequently, the provisions of the LARR Act, 2013, are applicable to land acquisitions under the SEZ Act, 2005.

### **Applicability to Land Acquisitions under Cantonments Act, 2006**

Similar to the SEZ Act, 2005, the Cantonments Act, 2006, which was initially part of the Fourth Schedule in the LARR Bill, was later omitted during the Bill's passage. Consequently, the provisions of the LARR Act, 2013, are applicable to land acquisitions under the Cantonments Act, 2006.

### **Applicability to Land Acquisitions under Works of Defence Act, 1903**

The Works of Defence Act, 1903, initially included in the Fourth Schedule of the LARR Bill, was subsequently omitted during the legislative process. Therefore, the provisions of the LARR Act, 2013, also apply to land acquisitions under the Works of Defence Act, 1903.

### **Land Bank**

The concept of a "Land Bank" is introduced in the LARR Act, 2013, defining it as a governmental entity focused on converting government-owned vacant, abandoned, unutilized acquired lands, and tax-delinquent properties into productive use. According to Section 101 of the Act, if any land acquired under this Act remains unutilized for five years, it shall be returned to the original owner, their legal heirs, or the Land Bank of the appropriate Government through reversion, as prescribed. This provision is specific to land acquired under the LARR Act, 2013, and excludes land acquired under the 1894 Act that remains unutilized.

### **Option of the Appropriate Government to Take Land on Lease**

Section 1047 of the Act grants the appropriate Government the option to take land on lease, rather than through acquisition, for any public purpose outlined in Section 2(1). This innovative provision, absent in the 1894 Act, recognizes that leasing provides a psychological comfort to landowners, as they still retain ownership. This inclusion of a lease option aims to reduce emotional resistance to compulsory acquisition compared to outright purchase, addressing a limitation in the previous legislation.

## **Rehabilitation and Resettlement (R&R) Provisions**

In contrast to the 1894 Act, the LARR Act, 2013, incorporates provisions for compensation not only to landowners but also for the rehabilitation and resettlement of those displaced, including landowners and livelihood losers. The details of the R&R package are outlined in the Second Schedule of the Act.

## **Mandatory Social Impact Assessment Study**

The LARR Act makes it mandatory to conduct a Social Impact Assessment Study before initiating any land acquisition. This ensures a comprehensive understanding of the social repercussions before implementing acquisition projects.

## **No Change of Purpose**

Section 99 of the Act stipulates that no change from the originally intended purpose of land acquisition is allowed. However, if unforeseen circumstances render the acquired land unusable for its intended purpose, the appropriate Government may repurpose it for another public purpose.

## **40% of Appreciation Shared with Original Land Owners**

Section 102 of the Act introduces a provision whereby if acquired land is sold without any development taking place on it within five years of acquisition, 40% of the appreciated land value must be shared with the original landowners or their heirs, proportionate to the value at which the lands were acquired.

## **Option to Affect Families to Avail Better Compensation and R&R under State Law or Policy**

Section 107 and 108 of the Act provide affected families with the option to opt for higher compensation or more beneficial rehabilitation and resettlement provisions offered by a State law

or policy, if it exceeds what is provided under the LARR Act, 2013. This empowers affected individuals to choose the more favorable compensation and rehabilitation options available.

## **Affected Family**

The term "Affected Family" is a novel inclusion in the LARR Act, 2013, and was absent from the 1894 Act, which lacked provisions for Rehabilitation and Resettlement (R&R). Section 3(c) of the Act provides an inclusive definition of "Affected Family," encompassing various scenarios. According to this section:

### **Landowners or Property Owners**

It includes a family whose land or other immovable property has been acquired.

### **Landless Families Dependent on Agriculture**

Families without land ownership but whose members may be agricultural laborers, tenants, share-croppers, or artisans, or have worked in the affected area for three years before land acquisition. Their primary source of livelihood is impacted by the land acquisition.

### **Scheduled Tribes and Traditional Forest Dwellers**

The definition includes Scheduled Tribes and other traditional forest dwellers who have lost their forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, due to land acquisition.

### **Forest and Water-Dependent Families**

Families whose primary source of livelihood for three years before land acquisition is dependent on forests or water bodies, including gatherers of forest produce, hunters, fisherfolk, boatmen, etc., and whose livelihood is affected by the land acquisition.

## **Beneficiaries of State or Central Government Land Schemes**

Members of families who have been assigned land by the State or Central Government under any of their schemes, and such land is under acquisition.

## **Urban Residents**

Families residing on any land in urban areas for the preceding three years or more before land acquisition or whose primary source of livelihood for three years before land acquisition is affected by the acquisition of such land.

## **Family**

In the context of the LARR Act, 2013, "family" is defined under Section 3(m) of the Act. The term "family" includes:

- A person.
- His or her spouse.
- Minor children.
- Minor brothers and minor sisters dependent on him.

Widows, divorcees, and women deserted by families are considered separate families. An adult of either gender, with or without a spouse, children, or dependents, is also considered a separate family for the purposes of this Act.

## **Agricultural Land**

The LARR Act, 2013 introduces a new definition for "agricultural land," a term not explicitly defined in the 1894 Act. According to Section 3(d) of the Act, agricultural land encompasses land used for the purpose of:

- Agriculture or horticulture.
- Dairy farming, poultry farming, pisciculture, sericulture, seed farming, breeding of livestock, or nursery growing medicinal herbs.
- Raising of crops, trees, grass, or garden produce.

- Land used for the grazing of cattle.

### **Cost of Acquisition**

In the LARR Act, 2013, "cost of acquisition" is a new term introduced, which was not defined in the 1894 Act. According to Section 3(t) of the Act, the "cost of acquisition" includes various components:

### **Amount of Compensation**

- Includes solatium.
- Any enhanced compensation ordered by the Land Acquisition and Rehabilitation and Resettlement Authority or the Court.
- Interest payable on compensation.
- Any other amount determined as payable to the affected families by such Authority or Court.

### **Demurrage**

Payment for damages caused to the land and standing crops in the process of acquisition.

### **Cost of Acquisition of Land and Building**

For the settlement of displaced or adversely affected families.

### **Cost of Development of Infrastructure and Amenities**

At the resettlement areas.

### **Cost of Rehabilitation and Resettlement**

As determined in accordance with the provisions of this Act.

## Administrative Cost

- For acquisition of land, including both in the project site and out of the project area lands.
- Not exceeding a specified percentage of the cost of compensation, as specified by the appropriate Government.
- For rehabilitation and resettlement of the owners of the land and other affected families.

## Appropriate Government

According to Section 3(e) of the LARR Act, 2013, "appropriate Government" is defined as follows:

**a. In relation to acquisition of land situated within the territory of a State:**

The State Government.

**b. In relation to acquisition of land situated within a Union territory (except Puducherry):**

The Central Government.

**c. In relation to acquisition of land situated within the Union territory of Puducherry:**

The Government of Union territory of Puducherry.

**d. In relation to acquisition of land for public purpose in more than one State:**

The Central Government in consultation with the concerned State Governments or Union territories.

**e. In relation to the acquisition of land for the purpose of the Union:**

As may be specified by the notification, the Central Government.

Additionally, "In respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government." This provision clarifies the designation of the appropriate Government based on the specific context and location of land acquisition.

## Comparison of "Appropriate Government" Definitions:

### LARR Act, 2013 (Section 3(e))

- In relation to land within a State: State Government.
- In relation to land within a Union territory (except Puducherry): Central Government.
- In relation to land within the Union territory of Puducherry: Government of Union territory of Puducherry.
- In relation to land for public purpose in multiple States: Central Government in consultation with concerned State Governments or Union territories.
- In relation to land for the purpose of the Union: As specified by notification, the Central Government.
- In specific cases (public purpose in a District for a notified area): The Collector of such District is deemed to be the appropriate Government.

### 1894 Act (Section 3(ee))

- In relation to land for the purpose of the Union: As specified by notification, the Central Government.
- For other purposes (not for the purpose of the Union): State Government.

### Comparison

The definitions are similar in the context of land for the purpose of the Union. However, the LARR Act introduces more detailed provisions for different scenarios, including specific provisions deeming the Collector as the appropriate Government for certain public purposes in a District. The 1894 Act did not have such deeming provisions for the Collector in similar cases.

### Displaced Family

In the context of the LARR Act, 2013, a "Displaced Family" is defined in Section 3(k) as any family that, due to the acquisition of land, has to be relocated and resettled from the affected area to the resettlement area.

## Affected Area

The term "Affected Area" is defined in Section 3(b) of the Act. It refers to an area notified by the appropriate Government for the purposes of land acquisition. This area is likely to witness changes and disturbances due to the land acquisition process.

## Resettlement Area

As per Section 3(zc) of the Act, a "Resettlement Area" is an area designated by the appropriate Government where the affected families, who have been displaced as a consequence of land acquisition, are resettled. The creation of resettlement areas is part of the rehabilitation and resettlement process to mitigate the impact of land acquisition on the affected families.

## Company

As per Section 30 of the LARR Act, 2013, the term "company" is defined to include:

- A company as defined in Section 3 of the Companies Act, 1956 (now refer to Section 2(20) of the Companies Act, 2013), excluding a Government company.
- A society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State.
- 

It's worth noting that the definition of "company" has undergone changes to align with the Companies Act, 2013.

## Entitled to Act

The expression "entitled to act" is explained in Section 3 of the Act. In relation to a person, it is deemed to include certain individuals:

- Trustees for other persons who are beneficially interested, to the same extent as the person beneficially interested could have acted if free from disability.

- Guardians of minors and the committees or managers of lunatics to the same extent as the minors, lunatics, or other persons of unsound mind themselves, if free from disability. The provisions of Order XXXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply mutatis mutandis in the case of persons interested appearing before a Collector or Authority by a next friend or by a guardian for the case in proceedings under this Act.

### **Holding of Land**

As per Section 3(n) of the LARR Act, 2013, "holding of land" is defined as the total land held by a person as an owner, occupant, tenant, or otherwise.

### **Infrastructure Project**

The term "infrastructure project" is defined in Section 3(o) of the Act, and it includes any one or more of the items specified in Section 2(1).

### **Land**

According to Section 3(p) of the LARR Act, 2013, the term "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. This definition is consistent with the definition provided in Section 3(a) of the Land Acquisition Act, 1894.

### **Landless**

As per Section 3(q) of the Act, "landless" refers to persons or classes of persons who may be considered or specified as such under any State law or, in the case of those not specified, as may be specified by the appropriate Government.

## **Land Owner**

The term "landowner" is defined in Section 3(r) of the Act and includes any person whose name is recorded as the owner of the land or building in the records of the concerned authority, someone granted forest rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or any other relevant law. It also encompasses those entitled to be granted Patta rights on the land under any state law, including assigned lands, or those declared as such by an order of the court or Authority.

## **Patta**

The term "patta" is defined in Section 3(w) and is given the same meaning as assigned to it in the relevant Central or State Acts or rules or regulations made thereunder.

## **Local Authority**

As per Section 3(s) of the LARR Act, 2013, "local authority" is defined inclusively and includes a town planning authority set up under any law, as well as a Panchayat and a Municipality as defined in the Constitution.

## **Marginal Farmer**

The term "marginal farmer" is defined in Section 3(t) of the Act. It refers to a cultivator with an unirrigated landholding of up to one hectare or an irrigated landholding of up to one-half hectare.

## **Person Interested**

According to Section 3(x) of the LARR Act, 2013, "person interested" is exhaustively defined. It includes all persons claiming an interest in compensation due to land acquisition under the Act. It also encompasses Scheduled Tribes and other traditional forest dwellers who have lost forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Additionally, it covers a person interested in an easement affecting the land, persons having tenancy rights under relevant state laws (including

share-croppers), and any person whose primary source of livelihood is likely to be adversely affected. This exhaustive definition aims to bring certainty and reduce litigation compared to the inclusive definition under the 1894 Act.

### **Project**

As per Section 3(z) of the LARR Act, 2013, "project" is a new definition. It refers to any project for which land is being acquired, irrespective of the number of persons affected.

### **Public Purpose**

According to Section 3(za), "public purpose" is defined as the activities specified under Section 2(1) of the Act.

### **Requiring Body**

The term "Requiring Body" is introduced in Section 3(zb) of the Act. It includes a company, body corporate, institution, or any other organization for whom land is to be acquired by the appropriate Government. This definition also covers the Appropriate Government if the land acquisition is for its own use or for subsequent transfer to another entity in the public interest.

### **Small Farmer**

Section 3(zd) defines a "small farmer" as a cultivator with an unirrigated landholding of up to two hectares or an irrigated landholding of up to one hectare, but more than the holding of a marginal farmer.

### **Scheduled Areas**

As per Section 3(ze), "Scheduled Areas" refers to the areas defined in Section 2 of the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.

The application of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is categorized based on the type of land acquisition. The Act classifies land acquisitions into three categories and provisions of the Act into four categories. Here's a summary of the applicability:

### **Appropriate Government acquires land for its own use and for public purpose**

#### ***Provisions applicable:***

- "Land acquisition" (Sections 4 to 25, 38, 40, 91, 93 to 95, 99)
- "Compensation" (Sections 26 to 30, 39, 96, First Schedule)
- "Rehabilitation and resettlement" (Sections 31, 32, 41, 42, 46, 47, 96, Second Schedule)

### **Appropriate Government acquires land for PPP projects/for private companies for public purpose**

#### ***Provisions applicable:***

- "Land acquisition" (Sections 4 to 25, 38, 40, 91, 93 to 95, 99)
- "Compensation" (Sections 26 to 30, 39, 96, First Schedule)
- "Consent" (Section 2(2))
- "Rehabilitation and resettlement" (Sections 31, 32, 41, 42, 46, 47, 96, Second Schedule)

### **Purchases by private companies through private negotiations**

#### ***Provisions applicable:***

- "Rehabilitation and resettlement" (Sections 31, 32, 41, 42, 46, 47, Second Schedule)

The Act specifies the applicable provisions based on the nature of the land acquisition, whether it is for the government's own use, public-private partnership projects, private companies for public purpose, or private purchases through negotiations. Each category of acquisition is subject to specific sections of the Act to ensure fair compensation, transparency, and rehabilitation and resettlement measures.

## Acquisition for Public Purpose

The provisions regarding the acquisition of land for public purpose under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are outlined in Section 2(1) and Section 3(za) of the Act. Here's a summary:

### Applicability of the Act for Public Purpose

When the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, the provisions of the Act relating to land acquisition, compensation, rehabilitation, and resettlement shall apply (Section 2(1)).

### Definition of Public Purpose (Section 3(za))

The definition of "public purpose" is exhaustive and includes activities specified under Section 2(1).

*The following purposes are considered as public purpose under Section 2(1):*

- For strategic purposes related to naval, military, air force, armed forces of the Union, or any work vital to national security or defense of India or State police, safety of the people.
- For infrastructure projects, including various activities and projects such as agro-processing, industrial corridors, mining activities, water harvesting, sanitation, sports, healthcare, tourism, transportation, and more.
- Projects for project-affected families, housing, planned development, improvement of village sites, provision of land for residential purposes for weaker sections, and other purposes specified by the Central Government.
- Projects for residential purposes for the poor or landless, persons affected by natural calamities, or persons displaced by government schemes, local authorities, or state-controlled corporations.

## **Change from the 1894 Act**

The Act replaces the inclusive definition of "public purpose" in the 1894 Act with an exhaustive definition. This change aims to restrict the scope of acquisition for strategic purposes vital to the state and infrastructure projects that benefit the general public. It addresses concerns related to the discretionary use of the term "public purpose" and emphasizes fair arrangements with landowners through private negotiations.

## **The application of provisions under the Right to Fair Compensation and Transparency**

### **Applicability of the Act to PPP Projects**

When the appropriate government acquires land for PPP projects for public purpose, where the ownership of the land continues to vest with the government, the provisions of the Act relating to land acquisition, consent, compensation, rehabilitation, and resettlement shall apply (Section 2(2)(a)).

### **Consent Requirement for PPP Projects**

In cases of acquisition for PPP projects, the Act mandates obtaining the prior consent of at least 70% of the affected families, as defined in sub-clauses (z) and (v) of clause (c) of Section 3. The process of obtaining consent should be carried out along with the Social Impact Assessment study (Section 4).

### **Consent Requirement Clarification**

The Secretary of the Department of Land Resources clarified that if the government is acquiring land for a government project (e.g., an airport), no consent is required. Consent becomes essential when acquiring land for PPP models or certain government acquisitions not falling under specific clauses, and it is for private companies. In such cases, at least 70% consent is necessary (Report of Parliamentary Standing Committee).

## **Restriction in Scheduled Areas**

No land shall be transferred by way of acquisition in Scheduled Areas in contravention of any law relating to land transfer prevailing in such Scheduled Areas.

## **Applicable Provisions of the Act for PPP Projects**

The following provisions of the Act shall apply to land acquisitions by the appropriate government for PPP projects:

- Land Acquisition Provisions (Sections 4 to 25, 38, 40, 91, 93 to 95, 99)
- Consent Provisions (Section 2(2))
- Compensation Provisions (Sections 26 to 30, 39, 96, First Schedule)
- Rehabilitation and Resettlement Provisions (Sections 31, 32, 41, 42, 46, 47, 96, Second Schedule)

## **Applicability of the Act in Partial Acquisition by Private Companies**

When a private company requests the appropriate government for the partial acquisition of land for a public purpose, only the rehabilitation and resettlement (R&R) provisions of the Act (Chapter 10) shall apply (Section 2(3)(b)).

## **Extent of Applicability**

The R&R entitlements specified in the Second Schedule shall be applicable for the entire area, which includes both the land purchased by the private company and the land acquired by the government for the project as a whole.

## **Provisions Not Applicable**

The following provisions of the Act shall not apply in cases where a private company requests the appropriate government for partial acquisition:

- Land Acquisition (LA) provisions: Sections 4 to 25, 38, 40, 91, 93 to 95, 99
- Consent provisions: Section 2(2)

- Compensation provisions: Sections 26 to 30, 39, 96, First Schedule

### **Exclusive Applicability of R&R Provisions**

Only the R&R provisions, including Sections 31, 32, 41, 42, 46, 47, 96, and the Second Schedule, shall be applicable in cases of partial acquisition by a private company upon the request of the appropriate government.

## **Multi-Cropped Irrigated Land not to be Acquired Except as Last Resort**

### **General Restriction on Acquisition**

- No irrigated multi-cropped land shall be acquired under the Act, except in specific circumstances and subject to certain conditions.

### **Exceptional Circumstances and Last Resort**

- Irrigated multi-cropped land can only be acquired in "exceptional circumstances" and as a "demonstrable last resort."

### **Conditions for Acquisition**

- The acquisition of such land is subject to certain conditions, including limitations on the aggregate acquisition for all projects in a district or state. The appropriate Government will notify limits, taking into account relevant state-specific factors and circumstances.

### **Limitation on Aggregate Acquisition**

- The aggregate acquisition of irrigated multi-cropped land for all projects in a district or state shall not exceed the limits specified by the appropriate Government.

### **Development of Culturable Wasteland or Deposit Equivalent Value**

- In cases of acquisition, an equivalent area of culturable wasteland must be developed for agricultural purposes.

- Alternatively, an amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture to enhance food security.

### **Exemption for Linear Projects**

- The provisions mentioned above do not apply to land acquisition for linear projects. Linear projects include those related to railways, highways, major district roads, irrigation canals, power lines, and similar projects.

### **Acquisition of multi-cropped irrigated land**

Section 10(4) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 addresses the acquisition of agricultural land other than multi-cropped irrigated land. Here's a summary:

- **Limit on Acquisition**

The acquisition of agricultural land (other than multi-cropped irrigated land) for all projects in a district or state shall not exceed the limits of the total net sown area of that district or state.

- **Notification of Limits**

The appropriate Government is empowered to notify specific limits based on the total net sown area of the district or state.

- **Exemption for Linear Projects**

The provisions mentioned above do not apply to land acquisition for linear projects. Linear projects include those related to railways, highways, major district roads, irrigation canals, power lines, and similar projects.

These provisions are designed to control the extent of land acquisition for various projects, particularly focusing on protecting agricultural land. By setting limits based on the net sown area, the law aims to strike a balance between development needs and preserving the agricultural potential of the land. Linear projects are exempted from these restrictions, recognizing their strategic importance and the necessity of acquiring land for such projects.

## **Acquisition of land in Scheduled Areas**

### **General Principle**

The section emphasizes that, as far as possible, no acquisition of land should be made in the Scheduled Areas.

### **Demonstrable Last Resort**

In cases where the acquisition is deemed necessary in the Scheduled Areas, it must be done only as a demonstrable last resort.

## **Considerations that the appropriate government must ensure while examining land acquisition proposals**

### **Legitimate and Bona Fide Public Purpose**

The appropriate government must ensure that there is a legitimate and bona fide public purpose for the proposed acquisition, justifying the need to acquire the identified land.

### **Balancing Benefits and Social Costs**

The potential benefits and the public purpose must outweigh the social costs and adverse social impacts. This evaluation is to be determined through a Social Impact Assessment (SIA) that has been carried out.

### **Minimum Area of Land Acquisition**

The government should ensure that only the minimum area of land required for the project is proposed to be acquired. This emphasizes the principle of proportionality, acquiring only what is necessary for the stated public purpose.

### **Absence of Unutilized Previously Acquired Land**

The government should confirm that there is no unutilized land that has been previously acquired in the area. This ensures that previously acquired land is put to use for the intended public purpose.

### **Utilization of Previously Acquired Land**

If there is any land acquired earlier that remained unutilized, the government must ensure that it is used for the designated public purpose.

## **Provision for the return of unused land to the original owner, heirs, or the Land Bank of the appropriate government**

### **Definition of Land Bank**

"Land Bank" is defined as a governmental entity with a focus on converting government-owned vacant, abandoned, unutilized acquired lands, and tax-delinquent properties into productive use.

### **Conditions for Return of Unused Land**

When any land acquired under the LARR Act remains unutilized for a period of 5 years from the date of taking over possession.

### **Recipients of the Returned Land**

The unused land shall be returned to the original owner or owners or their legal heirs.

Alternatively, the land may be returned to the Land Bank of the appropriate government.

### **Reversion Process**

The manner in which the land is to be returned (reversion) is to be prescribed by the appropriate government.

## **Applicability to Land Acquired under LARR Act**

Section 101 specifically applies to land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

## **Non-Application to Previous Land Acquisition Laws**

Section 101 explicitly states that it has no application to land acquired under the Land Acquisition Act, 1894, or any other land acquisition laws if they remain unutilized.

## **Process for determining social impact and public purpose**

### **Relevant Sections**

The provisions related to mandatory consultation and social impact assessment are primarily covered in Section 4 of the Act.

### **Chapters and Sections Involved**

- Sections 4 to 9 are part of the chapter titled "Determination of Social Impact and Public Purpose."
- Section 10, part of Chapter III, deals with "Special Provisions to Safeguard Food Security."
- Sections 11 to 30, forming Chapter IV, cover "Notification and Acquisition." Sections 26 to 30 specifically pertain to compensation.
- Sections 38, 40, 91, 93 to 95, 99 are also relevant to these provisions.

### **Applicability**

- These provisions apply in various scenarios, including when the appropriate government acquires land for its own use, hold and control (including for Public Sector Undertakings) and for public purposes.

- They are also applicable when the government acquires land for public-private partnership projects for public purposes, where the ownership of the land continues to vest with the government (Section 2(2)(a)).
- Additionally, these provisions apply when the government acquires land for private companies for public purposes, as defined in Section 2(2)(b).

### **Mandatory Consultation and Social Impact Assessment**

The provisions in Section 4 lay down the procedures for mandatory consultation with affected families and the conduct of a social impact assessment study before land acquisition.

### **Objective of the Act**

- a. The Act aims to ensure a humane, participative, informed, and transparent process for land acquisition.
- b. It emphasizes consultation with local self-government institutions and Gram Sabhas (village assemblies) during the land acquisition process.

### **Section 4(1) Requirements**

#### ***a. Consultation with Local Bodies:***

- The appropriate Government must consult the concerned Panchayat, Municipality, or Municipal Corporation at the village or ward level in the affected area.

#### ***b. Social Impact Assessment (SIA):***

- The Government must conduct a Social Impact Assessment (SIA) study in consultation with local bodies.
- The manner and commencement date of the SIA study are to be specified by the Government through notification.

## **Mandatory Nature of Consultation and SIA**

- a. Section 4(1) makes it clear that consultation with local bodies and the SIA study are mandatory whenever the appropriate Government intends to acquire land for a public purpose.
- b. These provisions apply to cases covered by sub-sections (1) and (2) of section 2. In other words, when the acquisition is for public purposes like government projects or public-private partnership projects.

## **Exclusion in Private Company Purchases**

- a. Provisions related to mandatory consultation and SIA, as outlined in section 4, do not apply in cases covered by section 2(3) of the Act.
- b. Section 2(3) specifies that in cases of private company purchases, only the provisions related to rehabilitation and resettlement (R&R) apply.

## **Exemption from SIA for Irrigation Projects**

Proviso to section 6 states that for irrigation projects where Environmental Impact Assessment (EIA) is required under another law, the provisions of the Act related to SIA will not apply.

## **Exemption from SIA under Urgency Provisions**

Section 9 allows the appropriate Government to exempt the undertaking of the Social Impact Assessment study when land acquisition is proposed under the urgency provisions outlined in section 40.

## **SIA Not a Substitute for EIA**

The passage emphasizes that SIA and EIA are distinct processes. The proviso to section 4(4) clarifies that the completion of the SIA study should not be contingent upon the Environmental Impact Assessment. Section 6(2) mandates that when an EIA is conducted, a copy of the SIA

report must be provided to the authorized Impact Assessment Agency for environmental impact assessment.

#### **EIA Not a Substitute for SIA Except in Specific Cases**

Proviso to section 6 specifies that in the case of irrigation projects where EIA is required under another law, the provisions of the Act related to SIA shall not apply.

#### **Time-Bound Nature of SIA**

The appropriate Government is obligated to ensure the completion of the Social Impact Assessment study within a period of 6 months from the date of its commencement.

#### **Initiation of Consultation and SIA Study**

Section 4(1) clarifies that the entire process of consultation and the SIA study is initiated through a notification issued by the appropriate Government.

#### **Emphasis on Transparency and Participation**

The Act places significant emphasis on ensuring a transparent and participative process for land acquisition, particularly through consultation and the conduct of Social Impact Assessment (SIA).

#### **Mandatory Steps for Public Purpose Acquisition**

Section 4(1) of the Act articulates the mandatory steps that the appropriate Government must take when intending to acquire land for a public purpose. These steps involve consulting the concerned Panchayat, Municipality, or Municipal Corporation at the village or ward level, as applicable, in the affected area. Concurrently, the Government is required to undertake a Social Impact Assessment study, with the manner and date specified through a government notification.

## **Distinction in Applicability**

Crucially, these provisions, as outlined in section 4(1), are applicable to cases falling under sub-sections (1) and (2) of section 2. However, it's important to note that these mandatory consultation and SIA requirements do not extend to cases covered by section 2(3) of the Act, pertaining to purchases by private companies. In such instances, only the Rehabilitation and Resettlement (R&R) provisions of the Act apply, as specified in section 2(3)(b).

## **Specifics of SIA: Exemptions and Relationship with EIA**

The Act further delineates the specifics of SIA, particularly in terms of exemptions and its relationship with Environmental Impact Assessment (EIA). Proviso to section 6 exempts irrigation projects requiring an Environmental Impact Assessment under another law from the provisions of the Act related to SIA. Additionally, section 9 allows the appropriate Government to exempt the undertaking of the SIA study when acquiring land under the urgency provisions of section 40.

## **SIA Not a Substitute for EIA**

Importantly, the Act clarifies that SIA is not a substitute for EIA. The proviso to section 6 underscores that, except in situations specified by the proviso itself, where EIA is required, it must be conducted simultaneously with SIA. This ensures a comprehensive evaluation of both social and environmental impacts in relevant cases.

## **Time-Bound Nature of SIA**

SIA, as mandated by the Act, is a time-bound exercise. Section 4(12.5) explicitly states that the appropriate Government must ensure the completion of the Social Impact Assessment study within six months from the date of its commencement. This time-bound nature reflects the Act's commitment to expeditious yet thorough evaluations.

## **Publication of Notification for Transparency**

The Act also outlines the publication of the notification for consultation and SIA, providing transparency and accessibility to affected parties. Section 4(2) specifies that the notification must be made available in the local language to the relevant local bodies and offices. Furthermore, it must be published in the affected areas as prescribed and uploaded on the official website of the appropriate Government.

## **Representation of Local Bodies in SIA Study**

To ensure the representation of local bodies in the SIA study, the first proviso to section 4(2) mandates adequate representation of the Panchayat, Gram Sabha, Municipality, or Municipal Corporation representatives during the Social Impact Assessment study stage.

## **Public Hearing for SIA**

Another critical component in the process is the public hearing for SIA, as outlined in section 5 of the Act. The Government is obligated to organize a public hearing in the affected area, providing adequate publicity regarding the date, time, and venue. The primary objective of the public hearing is to capture the views of affected families, which are then recorded and incorporated into the SIA Report.

## **Matters Inclusive in the Social Impact Assessment (SIA) Study**

Section 4(4) of the Act comprehensively outlines the matters that must be included in the SIA study, reflecting a holistic evaluation of the proposed land acquisition. The following key matters are explicitly specified:

### **a. Assessment of Public Purpose**

The SIA study is mandated to include an assessment of whether the proposed acquisition genuinely serves a public purpose. This ensures a critical examination of the overarching goal and societal benefits intended by the acquisition.

**b. Estimation of Affected Families**

An integral aspect involves estimating the number of affected families and, more specifically, identifying those likely to face displacement due to the proposed acquisition. This consideration highlights the human dimension and potential social implications.

**c. Extent of Impact on Properties**

The study is required to delineate the extent of impact on various properties, encompassing both public and private domains. This involves a comprehensive examination of lands, houses, settlements, and other common properties that stand to be affected by the acquisition.

**d. Adequacy of Land Proposed for Acquisition**

A crucial element involves evaluating whether the extent of land earmarked for acquisition represents the absolute minimum necessary for the project. This scrutiny aims to ensure that the land acquisition is judicious and minimally disruptive to existing communities and environments.

**e. Consideration of Alternatives**

The SIA study is mandated to investigate whether the possibility of land acquisition at an alternate location has been thoroughly considered and, if considered, found not feasible. This emphasizes a responsible exploration of alternative options before finalizing the acquisition site.

**f. Examination of Social Impacts**

An essential dimension involves a comprehensive study of the social impacts of the project. This includes an analysis of the potential effects on the social fabric, community dynamics, and individual well-being. Moreover, the nature and cost of addressing these social impacts are to be scrutinized, with an assessment of how these costs influence the overall project costs in comparison to the anticipated benefits.

## Comprehensive Impact Assessment Components in Social Impact Study

Section 4(5) of the Act delineates a comprehensive set of components that must be considered during the Social Impact Assessment (SIA) study. This inclusive approach ensures a thorough evaluation of the potential impacts that the project may have on various facets, encompassing both livelihood and communal infrastructure. The specified components include:

### **a. Livelihood of Affected Families**

The SIA study is mandated to diligently assess the potential impact on the livelihoods of the families directly affected by the proposed land acquisition. This involves an in-depth examination of how the project may influence the economic sustenance and well-being of these families.

### **b. Impact on Public and Community Properties**

An integral aspect involves considering the impact on public and community properties. This includes a detailed analysis of how the project might affect communal assets, both tangible and intangible, which play a crucial role in community life.

### **c. Assets and Infrastructure**

The SIA study is required to scrutinize the impact on various assets and infrastructure elements, particularly focusing on:

1. Roads
2. Public Transport
3. Drainage Systems
4. Sanitation Facilities
5. Sources of Drinking Water
6. Sources of Water for Cattle
7. Community Ponds
8. Grazing Land
9. Plantations

#### **d. Impact on Public Utilities and Facilities**

A comprehensive evaluation extends to the potential impact on public utilities and facilities, covering essential services and community amenities. This encompasses an analysis of how the project may influence:

1. Post Offices
2. Fair Price Shops
3. Food Storage Godowns
4. Electricity Supply
5. Healthcare Facilities
6. Schools and Educational/Training Facilities
7. Anganwadis
8. Children Parks
9. Places of Worship
10. Land for Traditional Tribal Institutions
11. Burial and Cremation Grounds

### **Output of the Social Impact Assessment (SIA) Exercise: SIA Study Report and Social Impact Management Plan (SIMP)**

Section 4(6) of the Act outlines the crucial step of generating comprehensive documentation as an outcome of the Social Impact Assessment (SIA) exercise. This involves the preparation of two key components: the SIA Study Report and the Social Impact Management Plan (SIMP). The provisions underscore the necessity for a meticulous approach in addressing the impact on various components.

#### **Social Impact Management Plan (SIMP)**

- The appropriate Government mandates the authority conducting the SIA study to formulate a Social Impact Management Plan (SIMP).

- The SIMP is designed to enumerate ameliorative measures specifically tailored to address the impact on distinct components identified during the SIA.
- These measures must align with or exceed the provisions of existing schemes or programs operated by the Central Government or the State Government in the affected area.

### **Publication of SIA Study Report**

- Section 6(1) of the Act emphasizes the need for transparency and accessibility in the dissemination of information derived from the SIA exercise.
- The appropriate Government ensures that the SIA Study Report and the SIMP are:
  1. Prepared and made available in the local language to the concerned local bodies such as Panchayats, Municipalities, or Municipal Corporations, along with district-level administrative offices.
  2. Published in the affected areas through prescribed means.
  3. Uploaded on the website of the appropriate Government for wider accessibility.

### **Appraisal of SIA Report by an Expert Group**

#### **Establishment of Expert Group**

- Section 7(1) underscores the importance of an unbiased evaluation of the SIA report, necessitating the constitution of an independent multi-disciplinary expert group.
- The appropriate Government takes the responsibility of forming this Expert Group.

#### **Composition of the Expert Group**

The Expert Group is mandated to include:

- Non-official social scientists.
- Representatives from local bodies such as Panchayats, Gram Sabhas, Municipalities, or Municipal Corporations.
- Experts specializing in rehabilitation.

- Technical experts with proficiency in the subject matter related to the project.

### **Nomination of Chairperson**

The appropriate Government retains the flexibility to nominate a Chairperson from within the Expert Group, entrusting them with the responsibility of leading the evaluation process.

## **Decision by Appropriate Government After Examination of Land Acquisition Proposal and Expert Group Report on SIA**

Section 8(1) of the Act lays down fundamental principles and considerations that guide the appropriate Government in making decisions concerning land acquisition. The examination of the land acquisition proposal and the report from the Expert Group on the Social Impact Assessment (SIA) is a crucial step in ensuring a balanced and informed decision-making process. The following key considerations are outlined in Section 8(1):

### **Legitimate and Bona Fide Public Purpose**

The proposed land acquisition should serve a legitimate and bona fide public purpose necessitating the identified land's acquisition.

### **Balance of Benefits and Social Costs**

The potential benefits and public purpose must outweigh the social costs and adverse social impacts, as determined by the SIA study.

### **Minimum Area Requirement**

Only the minimum area of land required for the project should be proposed for acquisition.

### **Utilization of Previously Acquired Land**

There should be no unutilized land previously acquired in the area.

## **Utilization of Land Acquired Earlier**

If any land acquired earlier remains unutilized, it should be used for the designated public purpose, with recommendations provided accordingly.

## **Section 8 further delineates the procedural steps and considerations**

- The appropriate Government examines the reports submitted by the Collector and the Expert Group on the SIA study.
- The decision-making process aims to recommend the acquisition of an area that ensures minimal displacement of people, minimal disturbance to infrastructure and ecology, and minimum adverse impacts on affected individuals.
- The decision of the appropriate Government is made available in the local language to local bodies such as Panchayats, Municipalities, or Municipal Corporations, along with district-level administrative offices.
- Publication in affected areas is mandated in a prescribed manner.
- The decision is uploaded on the website of the appropriate Government for wider accessibility.

Moreover, in cases where land is sought for specific purposes as specified in sub-section (2) of section 2, the appropriate Government must ascertain whether prior consent from affected families, as required under the proviso to sub-section (2) of section 2, has been obtained in the prescribed manner. This process emphasizes the importance of thorough examination, transparent communication, and community involvement in the decision-making framework for land acquisition, ensuring that public welfare remains at the forefront of the process.

## **Publication of Preliminary Notification**

Section 11(1) of the Land Acquisition, Rehabilitation, and Resettlement (LARR) Act, 2013 outlines the process for the publication of a preliminary notification when the appropriate Government deems that land in a particular area is required or likely to be required for a public

purpose. A detailed comparison with Section 4(1) of the 1894 Act reveals notable differences and progressive features under the LARR Act:

**a. Sequence of Publication**

Under the LARR Act, the publication of the preliminary notification follows a structured sequence involving the Social Impact Assessment (SIA) study, appraisal of the SIA study by an Expert Group, and examination of proposals of land acquisition, SIA Report, and Expert Group Appraisal by the Appropriate Government. This sequential approach ensures that the decision-making process is well-informed and considers the social impact before initiating land acquisition.

**b. Exclusion of "For a Company" Provision**

The LARR Act omits the provision present in the 1894 Act that allowed the Government to publish a preliminary notification "whenever it appears to the appropriate Government that land in any area is needed or likely to be needed for any public purpose or for a company." This omission aligns with the legislative intent that the Government should not be involved in assisting private companies in acquiring land for commercial or private purposes, emphasizing fair arrangements through private negotiations.

**c. Detailed Information in Preliminary Notification**

The LARR Act mandates that the preliminary notification should include details of the land to be acquired, the nature of the public purpose, reasons necessitating the displacement of affected persons, and a summary of the Social Impact Assessment report. Additionally, it requires the inclusion of the report and particulars of the Administrator appointed for rehabilitation and resettlement under Section 43. These detailed requirements enhance transparency and accountability in the land acquisition process.

**d. Timeline for Publication**

Section 14 of the Act imposes a timeline for the publication of the Preliminary Notification. It states that the notification should be published within 12 months from the date of the appraisal report of the Social Impact Assessment submitted by the Expert Group under Section 7. If not published within this timeframe, the Expert Group report is

deemed to have lapsed, necessitating the undertaking of a fresh Social Impact Assessment before initiating the preliminary notification.

**e. Power to Extend Timeline**

The appropriate Government is granted the power to extend the 12-month period if circumstances justify it. This extension decision is required to be recorded in writing, notified, and uploaded on the concerned authority's website, ensuring transparency in the decision-making process.

### **Contents of Preliminary Notification**

Section 11(1) of the Land Acquisition, Rehabilitation, and Resettlement (LARR) Act, 2013 outlines the essential elements to be included in the preliminary notification. It states that when the appropriate Government determines that land in a particular area is required or likely to be required for any public purpose, a notification to that effect must be published. The notification should include comprehensive details of the land to be acquired in both rural and urban areas. Moreover, Section 11(3) of the Act specifies additional information that must be incorporated into the preliminary notification. This includes a statement on the nature of the public purpose, reasons necessitating the displacement of affected persons, a summary of the Social Impact Assessment (SIA) Report, and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement under Section 43.

### **Manner of Publication of Preliminary Notification**

Section 11(1) further delineates the modes through which the preliminary notification is to be published, ensuring widespread awareness and transparency in the land acquisition process. The publication is to be carried out in the following manner:

**a. In the Official Gazette**

The preliminary notification is mandated to be published in the Official Gazette, which serves as a formal and authoritative channel for legal announcements.

**b. In Two Daily Newspapers**

The notification should be published in two daily newspapers circulating in the locality of the affected area. One of these newspapers must be in the regional language, ensuring accessibility and understanding among the local population.

**c. Local Language in Government Offices**

The notification is to be published in the local language in the offices of the Panchayat, Municipality, or Municipal Corporation, as well as in the offices of the District Collector, Sub-divisional Magistrate, and Tehsil. This facilitates communication in the languages understood by the local administration.

**d. Online Visibility**

To embrace the digital age, the preliminary notification is required to be uploaded on the website of the appropriate Government. This online presence enhances accessibility and transparency, catering to a broader audience.

**e. Prescribed Publication in Affected Areas**

The notification is to be published in the affected areas in a manner prescribed by the legislation. This ensures that the information reaches the communities directly impacted by the proposed land acquisition.

**Informing Local Self-Government Institutions and Gram Sabhas**

Section 11(2) of the LARR Act emphasizes the importance of engaging with local self-government institutions and Gram Sabhas in the land acquisition process. It mandates that immediately after issuing the preliminary notification, a meeting must be convened specifically to inform the concerned Gram Sabha or Sabhas at the village level, municipalities in municipal areas, and Autonomous Councils in areas covered by the Sixth Schedule to the Constitution. This proactive approach ensures that these institutions are kept informed and involved from the outset, fostering transparency and community participation.

## **Restrictions on Land Transactions and Encumbrances**

Section 11(4) imposes restrictions on land transactions and encumbrances following the publication of the preliminary notification. It explicitly prohibits any person from engaging in transactions involving the land specified in the notification or creating encumbrances on such land until the completion of proceedings under this chapter. However, the Collector may, under special circumstances recorded in writing, exempt landowners from this provision upon application. It is emphasized that any loss or injury resulting from willful violation of this provision shall not be compensated by the Collector, underscoring the seriousness of compliance.

## **Updation of Land Records**

After the issuance of the preliminary notification, Section 11(5) mandates the Collector to undertake and complete the exercise of updating land records within two months, before issuing a declaration under section 19. This timely updating of land records is crucial for ensuring accuracy and transparency in the land acquisition process, facilitating informed decision-making and minimizing disputes.

## **Validity Period of Preliminary Notification**

Section 19(7) sets a validity period of 12 months for the preliminary notification. If no declaration is made under section 19 within this timeframe, the notification is deemed rescinded. However, any period during which proceedings were held up due to court orders is excluded from this calculation. The appropriate Government is granted the authority to extend this period if justified by circumstances, with such decisions being documented in writing and made publicly available on the concerned authority's website. This provision ensures that the land acquisition process remains efficient and responsive to changing circumstances, while also upholding transparency and accountability.

## **Preliminary Survey of Land and Power of Officers to Carry Out Survey**

Section 12 of the LARR Act delineates the procedures and powers vested in officers authorized by the appropriate Government to conduct a preliminary survey of land for determining the extent of land to be acquired. The specified officers, along with their servants and workmen, are empowered to undertake various activities crucial for this purpose:

- **Entry, Survey, and Leveling**

The authorized officers are permitted to enter, survey, and take levels of any land in the designated locality, providing valuable insights into the topography and suitability for the intended purpose.

- **Sub-soil Examination**

They are authorized to dig or bore into the sub-soil, aiding in understanding the soil composition and characteristics.

- **Acts Necessary for Assessment**

The officers can perform any other acts necessary to ascertain whether the land is adapted for the intended purpose, ensuring a comprehensive understanding of the land's suitability.

- **Setting Boundaries and Lines**

The officers are entitled to set out the boundaries of the land proposed for acquisition and mark the intended line of the work, if any, to be undertaken.

- **Marking Levels, Boundaries, and Lines**

To execute the survey effectively, the officers can mark levels, boundaries, and lines by placing marks and cutting trenches. This may also involve cutting down and clearing away standing crops, fences, or jungle when necessary for completing the survey.

While these powers are extensive, Section 12 emphasizes the importance of respecting the rights of landowners. No such activities can be conducted in the absence of the owner or a person authorized in writing by the owner. However, if the owner has been given a reasonable

opportunity to be present during the survey, with a notice of at least 60 days prior to the survey, the specified activities may proceed even in the owner's absence.

### **Comparison with 1894 Act**

- Unlike the 1894 Act, the LARR Act doesn't explicitly tie the exercise of survey powers to the publication of the preliminary notification.
- The LARR Act introduces a requirement that the specified acts cannot be conducted in the absence of the owner unless the owner has been given a reasonable opportunity to be present during the survey with a 60-day notice.
- Section 13 of the Act mandates that the authorized officer pays or tenders payment for any damage caused during the survey, with dispute resolution mechanisms in place, ensuring fairness and accountability.

### **Right of Persons Interested in any Land Covered Under Preliminary Notification**

Section 15 of the LARR Act establishes the rights of individuals with an interest in the land that has been notified as required or likely to be required for a public purpose in the preliminary notification. Here are the key provisions:

#### **1. Objection Period**

- Individuals with an interest in the affected land have a period of 60 days from the date of publication of the preliminary notification to raise objections.
- Objections can pertain to the area and suitability of the land proposed for acquisition, the justification offered for public purpose, and the findings of the Social Impact Assessment report.

#### **2. Submission of Objections**

- Objections must be submitted in writing to the Collector.
- The Collector is mandated to provide the objector with an opportunity to be heard either in person, by an authorized representative, or through an advocate.

### **3. Collector's Role**

- After considering all objections and conducting necessary inquiries, the Collector prepares a report for the appropriate Government.
- The report may be specific to the entire notified land or different parcels, and it includes the Collector's recommendations on the objections.

### **4. Decision by the Appropriate Government**

- The appropriate Government makes the final decision based on the Collector's report and recommendations.
- The decision of the appropriate Government on the objections is deemed final.

## **Comparison with 1894 Act**

### **1. Extended Objection Period**

- The LARR Act extends the time limit for interested persons to submit objections from 30 days (under the 1894 Act) to 60 days. This extension provides more time for affected individuals to express their concerns and objections.

### **2. Omission of "or for a company"**

- The LARR Act omits the phrase "or for a company" from the corresponding section of the 1894 Act.
- This omission aligns with the legislative intent that the government should not assist private companies in acquiring land for commercial purposes. The focus is on public purposes rather than private interests.

In essence, Section 15 reinforces the participatory aspect of land acquisition, allowing affected individuals a meaningful opportunity to voice their concerns and objections during the crucial early stages of the acquisition process.

## **Rehabilitation and Resettlement Scheme (R&R Scheme)**

Section 16 of the LARR Act outlines the procedures and requirements for the Rehabilitation and Resettlement Scheme (R&R Scheme) following the publication of the preliminary notification. Here are the key provisions:

### **1. Survey and Census by Administrator**

- Upon the publication of the preliminary notification, the Administrator for Rehabilitation and Resettlement conducts a comprehensive survey and census of the affected families.
- The survey includes particulars of lands and immovable properties being acquired, details of livelihoods lost, lists of affected public utilities and government buildings, and information on common property resources.

### **2. Drafting the R&R Scheme**

- Based on the survey and census, the Administrator prepares a draft Rehabilitation and Resettlement Scheme as prescribed.
- The draft scheme includes particulars of entitlements for each landowner and landless individual primarily dependent on the acquired lands.
- For resettlement areas, it lists government buildings, public amenities, and infrastructural facilities to be provided.
- The time limit for implementing the Rehabilitation and Resettlement Scheme is also included in the draft.

### **3. Local Awareness and Consultation**

- The draft R&R Scheme is made known locally through wide publicity in the affected area.
- It is discussed in the concerned Gram Sabhas or Municipalities, ensuring local participation.

### **4. Public Hearing**

- A public hearing is conducted in the affected area following prescribed procedures.

- Adequate publicity is given about the date, time, and venue for the public hearing.
- In cases where the affected area involves more than one Gram Panchayat or Municipality, public hearings are held in each affected Gram Sabha or Municipality where more than 25% of the land is being acquired.
- Consultation with the Gram Sabha in Scheduled Areas follows the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.

## 5. Submission to the Collector

- After the public hearing, the Administrator submits the draft Rehabilitation and Resettlement Scheme, along with a specific report addressing claims and objections raised during the public hearing, to the Collector.

## Review and Approval of Rehabilitation and Resettlement Scheme (R&R Scheme)

Section 17 and Section 18 of the LARR Act outline the processes for reviewing and approving the Rehabilitation and Resettlement Scheme. Here are the key provisions:

### 1. Review by the Collector

- **Section 17(1):** The Collector, in consultation with the Rehabilitation and Resettlement Committee at the Project level, reviews the draft Rehabilitation and Resettlement Scheme submitted by the Administrator.

### 2. Submission to Commissioner (R&R)

- **Section 17(2):** Following the review, the Collector submits the draft Rehabilitation and Resettlement Scheme, along with his suggestions, to the Commissioner Rehabilitation and Resettlement for approval.

### 3. Approval and Public Availability

- **Section 18:** The Commissioner Rehabilitation and Resettlement approves the Rehabilitation and Resettlement Scheme.
- The approved scheme is made available in the local language to:
  - The Panchayat, Municipality, or Municipal Corporation.

- The offices of the District Collector, Sub-Divisional Magistrate, and Tehsil.
  - The approved scheme is published in the affected areas as prescribed.
  - It is uploaded on the website of the appropriate Government.

### **Publication of Declaration and Summary of Rehabilitation and Resettlement (R&R) Scheme**

In accordance with Section 19(1) of the LARR Act, once the appropriate Government is satisfied, after considering the report of the Collector regarding objections from interested persons, a declaration is made stating the need for a particular land for public purpose. This declaration, along with the identification of a 'resettlement area' for the rehabilitation and resettlement of affected families, is issued under the hand and seal of a Secretary to the Government or another duly authorized officer. Every such declaration, as specified in Section 19(5), includes details such as the territorial division, purpose of acquisition, approximate area, and the availability of the acquisition plan for public inspection.

Section 19(7) outlines that if no declaration is made within 12 months from the preliminary notification date, the notification is deemed rescinded. The appropriate Government holds the authority to extend this period, and such decisions are recorded in writing and made public on the concerned authority's website. Additionally, Section 19(2) mandates the Collector to publish a summary of the Rehabilitation and Resettlement Scheme alongside the draft declaration. No declaration can be made unless the summary of the R&R Scheme is published concurrently. The Requiring Body is also required to deposit a prescribed amount toward the acquisition cost before the declaration is made, ensuring prompt compliance to facilitate timely publication within the 12-month period from the preliminary notification.

## **Declaration and Publication Process Under LARR Act**

Section 19(3) of the LARR Act allows for the specification of different stages for rehabilitation and resettlement in projects where land acquisition occurs in stages. The application for acquisition can outline these stages, and subsequent declarations align with the specified stages. For public awareness and transparency, Section 19(4) outlines the mandatory publication of every declaration. This involves publication in the Official Gazette, two local newspapers (one in the regional language), the local language in the Panchayat, Municipality or Municipal Corporation, and the offices of relevant authorities. The declaration is also uploaded on the official website of the appropriate Government and disseminated in affected areas as prescribed. Section 19(6) emphasizes that the declaration is conclusive evidence of the land's requirement for a public purpose. After this declaration, the appropriate Government can proceed with land acquisition as specified under the LARR Act.

Comparatively, the LARR Act, in Section 19, omits the provision for land acquisition for a company, aligning with the legislative intent to discourage State intervention in acquiring land for private or commercial purposes. Additionally, the time limit for publication of the declaration is extended to 12 months from the date of the preliminary notification, providing flexibility for extension by the appropriate Government if justified, as recorded in writing and notified. The LARR Act introduces new requirements absent in the 1894 Act, emphasizing the need for the summary of the Rehabilitation and Resettlement Scheme to be published with the declaration. It mandates the deposit of a prescribed amount by the Requiring Body toward acquisition costs before the declaration, ensuring financial readiness. These changes enhance transparency, public participation, and ethical land acquisition practices.

## **Land Marking, Measurement, and Planning (Section 20)**

Section 20 of the LARR Act empowers the Collector to mark out and measure the land, ensuring that a plan is made if not already available. This step is crucial in the land acquisition process and aids in determining the exact area to be acquired.

## **Notice for Compensation and Rehabilitation Claims (Section 21)**

Section 21 focuses on the crucial step of notifying interested parties about the government's intention to take possession of the land. The Collector is mandated to publish a public notice on the website and at convenient locations near the land. This notice serves to invite claims for compensation and rehabilitation and resettlement (R&R) from all parties holding interests in the land.

### **Particulars in the Public Notice**

The public notice, as per Section 21, must include specific details about the land, including its particulars. It sets a timeframe (not less than 30 days and not more than 6 months) for interested parties to appear personally, through an agent or advocate, before the Collector. During this appearance, they are required to articulate the nature of their respective interests in the land and provide details of their claims for compensation and R&R. Additionally, objections to the measurements made can be stated during this period.

### **Requirement of Written Statements**

In some cases, the Collector may demand written statements signed by the concerned parties or their agents, reinforcing the need for a formal record of the claims and interests. Notices are also served to the occupier of the land and individuals known or believed to be interested in it, residing or having authorized agents within the revenue district.

### **Ensuring Global Notification**

To reach individuals residing outside the revenue district, Section 21 mandates that notices be sent by post to their last known residence, in addition to publication in at least two national daily newspapers and on the Collector's website. This ensures a comprehensive and widely accessible notification process.

## **Power to Require and Enforce Statements on Names and Interests (Section 22)**

Section 22 of the LARR Act grants the Collector the authority to compel individuals to provide statements detailing names and interests in the land subject to acquisition. This provision plays a crucial role in collecting comprehensive information about the various stakeholders involved.

### **Collector's Authority to Require Statements**

The Collector, as per Section 22, has the power to demand that any person associated with the land acquisition process submit a statement. This requirement must be communicated with a specified time and place for compliance, ensuring a reasonable timeframe of not less than thirty days from the date of the requisition.

### **Contents of the Statement**

The statement, as outlined in Section 22, must include essential details to the extent practicable. This includes:

- a. The names of all individuals possessing any interest in the land, serving as co-proprietors, sub-proprietors, mortgagees, tenants, or in any other capacity.
- b. The nature of the aforementioned interests, shedding light on the specifics of the rights held over the land.
- c. Information regarding rents and profits received or anticipated over the three years preceding the statement's date.

### **Legal Obligation to Provide Statements**

Any person summoned to provide a statement under Section 22 is deemed to be legally bound to comply. This legal obligation is referenced in sections 175 and 176 of the Indian Penal Code, reinforcing the seriousness and enforceability of the requirement.

## **Enquiry and Land Acquisition Award by Collector (Sections 35, 34, 23)**

### **Powers of the Collector for Enquiry (Section 35)**

Section 35 of the LARR Act empowers the Collector with specific authorities to conduct inquiries. These powers include:

- a. Summoning and enforcing the attendance of witnesses, including parties with vested interests.
- b. Compelling the production of documents, following procedures akin to a Civil Court under the Code of Civil Procedure, 1908.

### **Adjournment of Enquiry (Section 34)**

Section 34 grants the Collector the discretion to adjourn the enquiry to a future date for reasons he deems fit. This flexibility ensures a thorough and fair investigation process.

### **Objectives of the Enquiry (Section 23)**

Section 23 outlines the objectives of the enquiry, focusing on the objections raised by any person interested. These objections may pertain to:

- a. Disputes regarding measurements conducted under Section 20.
- b. Evaluation of the land's value at the date of the notification's publication.
- c. Determination of respective interests of individuals claiming compensation and rehabilitation and resettlement.

### **Award by the Collector**

Following the enquiry, the Collector is mandated by Section 23 to issue an award under his hand. This award includes:

- a. Determination of the accurate land area.
- b. Assessment of compensation, as per Section 27, alongside the Rehabilitation and Resettlement award under Section 31. This determination aligns with the Collector's judgment on what should be rightfully allowed for the acquired land.

c. Apportionment of the compensation among all individuals known or believed to have an interest in the land. This includes those who appeared before the Collector and those whose claims are known or documented.

## **Period within which an Award Shall Be Made (Section 25)**

Section 25 of the LARR Act establishes a timeline for the Collector to make an award following the publication of the declaration under section 19. Key provisions include:

### **1. Award Timeframe**

- The Collector is required to make an award within a period of 2 years from the date of the publication of the declaration under section 19.
- Failure to issue an award within this stipulated time frame results in the entire proceedings for land acquisition lapsing.

### **2. Government's Power to Extend**

- The appropriate Government holds the authority to extend the period by an additional 12 months if circumstances deemed justifying such an extension exist.
- Any decision to extend the period must be recorded in writing, notified, and uploaded on the website of the concerned authority.

### **3. Comparison with 1894 Act (Section 11A)**

- Section 25 of the LARR Act brings a reduction in the time limit from 2 years (under Section 11A of the 1894 Act) to 12 months for making an award after the publication of the declaration.
- Unlike the 1894 Act, the LARR Act omits the provision for excluding the time during which any action or proceeding in pursuance of the declaration was stayed for calculating the time limit.
- The LARR Act empowers the appropriate Government to extend the time limit, a provision absent in the 1894 Act.

## Corrections to Awards by Collector (Section 33)

Section 33 of the LARR Act empowers the Collector to rectify clerical or arithmetical mistakes and errors in awards, subject to specific conditions:

### 1. Correction Timeframe

- The Collector has the authority to correct any clerical or arithmetical mistakes or errors in awards.
- Corrections can be made at any time, but not later than 6 months from the date of the award.

### 2. Initiation of Corrections

- Corrections can be initiated by the Collector either on his own motion, on the application of any person interested, or on the application of a local authority.
- If a reference to the Authority under section 64 is required, the Collector may make corrections before making such a reference.

### 3. Opportunity for Representation

- No correction likely to affect any person adversely shall be made without providing that person with a reasonable opportunity to make representations on the matter.

### 4. Notification of Corrections

- The Collector is required to provide immediate notice of any correction made in the award to all persons interested.

### 5. Recovery of Excess Amount

- In cases where an excess amount has been mistakenly paid to any person as a result of the correction, the Collector has the authority to recover the excess amount.
- Default or refusal to pay the excess amount may lead to recovery measures as prescribed by the appropriate Government.

## **Power to Call for Records (Section 36)**

Section 36 of the LARR Act vests the appropriate Government with the authority to call for records at any time before the Collector makes an award. The purpose is to ensure legality, propriety, and regularity of proceedings. Key points include:

1. The appropriate Government may call for records to assess the legality or propriety of findings or orders and the regularity of proceedings.
2. It can issue orders or directions as deemed fit based on its evaluation.
3. No order or direction prejudicial to any person shall be passed without providing a reasonable opportunity for that person to be heard.

## **Finality of Awards (Section 37)**

Section 37 of the Act establishes the finality of awards made by the Collector. Key aspects are:

1. Awards made by the Collector are to be filed in the Collector's office.
2. These awards are considered final and conclusive evidence between the Collector and the persons interested.
3. They serve as evidence of the true area and market value of the land, attached assets, determined solatium, and the apportionment of compensation.
4. Immediate notice of awards is given to absent persons interested, and a summary of the proceedings, including compensation details, is publicly displayed on the designated website.

## **Power to Take Possession of Land to be Acquired (Section 38)**

Section 38 of the LARR Act delineates the procedure for taking possession of the land to be acquired by the Collector. Key provisions include:

### **1. Payment of Compensation and Rehabilitation Entitlements**

- The Collector must ensure full payment or tendering of compensation within three months.

- For the monetary part of rehabilitation and resettlement entitlements, payment or tender must be made within six months from the date of the award.

## **2. Taking Possession**

- The Collector is authorized to take possession of the land after ensuring full payment of compensation and rehabilitation entitlements.
- Possession is contingent upon completing the entire Rehabilitation and Resettlement (R&R) process.

## **3. Timeline for Infrastructural Entitlements**

- Infrastructural entitlements specified in the Second and Third Schedules of the R&R Package must be provided within 18 months from the date of the award.

## **4. Special Provisions for Irrigation or Hydel Projects**

- For land acquisition related to irrigation or hydel projects serving public purposes, the rehabilitation and resettlement must be completed six months before the proposed submergence of the acquired lands.

## **5. Responsibility of the Collector**

- The Collector holds the responsibility to ensure the completion of the entire R&R process before displacing affected families.

## **Comparison with the 1894 Act:**

- Unlike the 1894 Act, the LARR Act mandates the Collector to ensure full compensation and rehabilitation entitlements before taking possession.
- The provision in the 1894 Act regarding possession vesting the land in the government "absolutely" and "free from all encumbrances" is omitted in Section 38 of the LARR Act.

## **Magistrate to Enforce Surrender (Section 91)**

Section 91 of the LARR Act delineates the procedure in case the Collector faces opposition or impediment while taking possession of land. Key provisions include:

## Opposition or Impediment

- If the Collector encounters opposition or impediment in taking possession, and they are a Magistrate, they are authorized to enforce the surrender of the land to themselves.
- If the Collector is not a Magistrate, they must apply to a Magistrate or the Commissioner of Police, who will enforce the surrender of the land to the Collector.

## Special Powers in Case of Urgency (Section 40)

Section 40 of the Act addresses situations of urgency, providing the Collector with specific powers:

### 1. Taking Possession in Urgency

- In cases of urgency directed by the appropriate Government, the Collector, even without making an award, may take possession of needed land after 30 days from the publication of the notice mentioned in Section 21.
- The vested land is free from all encumbrances and absolutely owned by the Government.

### 2. Restrictions and Notices

- Powers of the appropriate Government are restricted to the minimum area required for defense, national security, or emergencies arising from natural calamities.
- The Collector must not take possession of any building without providing at least 48 hours notice to the occupier, allowing the removal of movable property.

### 3. Compensation and Additional Compensation

- Before taking possession, the Collector must tender payment of 80% of the estimated compensation.
- An additional compensation of 75% is payable for land and property under urgency, in addition to regular compensation, subject to specific conditions.

#### **4. Exclusion of Certain Provisions**

- The appropriate Government may direct that specific provisions from Chapter II to Chapter VI of the Act shall not apply in cases where urgency is invoked.

### **Completion of Acquisition Not Compulsory, but Compensation to be Awarded When Not Completed (Section 93)**

Section 93 of the LARR Act provides flexibility to the appropriate Government regarding land acquisition. Key points include:

#### **1. Withdrawal from Acquisition**

- The appropriate Government has the discretion to withdraw from the acquisition of any land for which possession has not been taken.
- When such withdrawal occurs, the Collector is responsible for determining the compensation amount due to the owner. This compensation covers damages suffered as a result of the notice or related proceedings.

#### **2. Compensation and Costs**

- The Collector must pay the determined compensation amount to the person interested.
- All costs reasonably incurred by the person interested in the prosecution of proceedings under this Act concerning the said land are also reimbursed.

### **Acquisition of Part of House or Building (Section 94)**

Section 94 of the Act addresses the acquisition of portions of houses, manufactories, or buildings:

#### **1. Restriction on Acquiring Part Only**

- The Act cannot be enforced for acquiring only a part of any house, manufactory, or building if the owner desires the acquisition of the entire property.

- If a question arises about whether the land to be taken is part of a house, manufactory, or building, the Collector must refer the determination of this question to the concerned Authority before taking possession.

## **2. Consideration by LARR Authority**

- The LARR Authority, in deciding the reference, considers whether the land proposed for acquisition is reasonably required for the full and unimpaired use of the house, manufactory, or building.

## **3. Additional Acquisition**

- If a claim for severing land is considered unreasonable or excessive, the appropriate Government can order the acquisition of the entire land to which the first sought-to-be-acquired land belongs.
- No fresh declaration or proceedings under sections 11 to 19 are necessary, but the Collector must promptly provide a copy of the order to the person interested and proceed to make the award.

## **Acquisition of Land at Cost of a Local Authority or Requiring Body (Section 95)**

Section 95 of the LARR Act outlines the procedures when acquiring land at the expense of a local authority or Requiring Body. Key points include:

### **1. Cost Defrayment**

- When land is acquired at the cost of a fund controlled or managed by a local authority or any Requiring Body, the charges related to land acquisition are covered by that fund or Requiring Body.

### **2. Participation in Proceedings**

- In any proceeding before a Collector or LARR Authority in such cases, the concerned local authority or Requiring Body has the right to appear and present evidence to determine the compensation amount.

- However, they are not entitled to demand a reference to the LARR Authority under section 64.

## **No Change of Purpose Allowed (Section 99)**

Section 99 of the Act emphasizes the restriction on changing the purpose for which the land is originally sought to be acquired. Key points include:

### **1. Original Purpose Retention**

- No change from the original purpose or related purposes for which the land was initially sought to be acquired is allowed.

### **2. Exception for Unusable Land**

- In the event that the acquired land becomes unusable for the original purpose due to unforeseen circumstances causing a fundamental change, the appropriate Government may repurpose the land for any other public purpose.

## **Compensation Provisions (Sections 26-30, 39, 96, First Schedule)**

The Act's compensation provisions, found in sections 26 to 30, 39, 96, and the First Schedule, apply under various circumstances, including:

- Acquisition for the Government's own use, hold, and control, including Public Sector Undertakings.
- Acquisition for public-private partnership projects for public purposes where land ownership remains with the Government.
- Acquisition for private companies for public purposes, as defined in section 2(2)(b).

These provisions do not apply when a private company purchases land under the conditions specified in section 2(3) of the Act.

## The First Schedule Provisions as to Compensation

A comprehensive compensation package outlined in the First Schedule includes the following components:

### 1. Market Value of Land

- Calculated as of the date of the preliminary notification under section 11.
- Multiplied by a factor:
  - 1.00 to 2.00 for urban land (as notified)
  - 1.00 for rural land

### 2. Value of Assets Attached to Land

- This includes the value of assets associated with the land.

### 3. Solatium

- Set at 100% of the total compensation (sum of market value and value of assets).

### 4. Final Award

- Calculated as the sum of the market value, value of assets, and solatium.

Effectively, a landowner in an urban area whose land is acquired receives four times the market value of their land as compensation. In contrast, a landowner in a rural area receives compensation equivalent to double the market value.

### Additional Note

When land is acquired for urbanization, 20% of the developed land is to be reserved and offered to project-affected families who own land. If any family accepts this offer, the value of the land is deducted from the compensation payable to them (Item 2A of the Second Schedule).

## Determination of Market Value of Land by Collector

According to Section 26(1) of the Act, the market value of the land is determined based on the highest of the following three values:

### **1. Market Value as per Indian Stamp Act**

- The market value specified in the Indian Stamp Act, 1899, for the registration of sale deeds or agreements to sell in the area where the land is situated.

### **2. Average Sale Price**

- The average sale price for a similar type of land situated in the nearest village or vicinity area.
- Determined based on sale deeds or agreements to sell registered during the immediately preceding three years of the year in which the land acquisition is proposed.

### **3. Consented Amount of Compensation**

- The agreed-upon compensation amount under subsection (2) of section 2 in the case of land acquisition for private companies or public-private partnership projects.

The date for determining the market value is the date on which the notification is issued under section 11. Before initiating land acquisition proceedings, the Collector is required to take necessary steps to revise and update the market value based on the prevalent market rate in that area. It is essential to note that any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be considered. Additionally, prices that are not indicative of the actual prevailing market value may be discounted for calculating the market value. Moreover, the appropriate Government ensures that the market value determined for the acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority does not restrict or abrogate the right to establish and administer educational institutions of their choice.

## **Challenges in Determining Market Value**

In situations where the market value cannot be easily determined, the Act provides guidelines for such scenarios:

## **1. Restricted Transactions**

- If the land is situated in an area where transactions in land are restricted by or under any other law, making it challenging to determine market value.

## **2. Unavailable Sale Deeds or Agreements**

- When registered sale deeds or agreements to sell for similar land are not available for the immediately preceding three years, making it difficult to establish market value through conventional means.

## **3. Non-specification under Indian Stamp Act**

- If the market value has not been specified under the Indian Stamp Act, 1899, by the appropriate authority, the concerned State Government shall specify the floor price or minimum price per unit area of the land.
- This specification is based on the price calculated for similar types of land situated in the immediate adjoining areas, utilizing the methods specified in the Act.

In these cases, the Act provides a structured approach to determining a fair and reasonable floor price or minimum price per unit area, ensuring that the lack of market data or restrictions in the area does not hinder the compensation process. The aim is to establish a just and equitable compensation for the land acquisition in situations where conventional methods may not be applicable.

## **Compensation with Shares and Determination of Value of Assets**

### **1. Shares as Compensation**

- The Act allows the Requiring Body to offer shares to the owners of the acquired lands as a part of compensation.
- The value of these shares, however, cannot exceed 25% of the market value of the land.
- Importantly, the Requiring Body cannot compel any landowner to accept its shares, and the decision to receive shares is at the option of the landowner.

- The value of shares is deductible in the overall market value of the land calculated through the specified methods.

## **2. Determination of Value of Assets Attached to Land**

- Section 27 of the Act emphasizes that the Collector, after determining the market value of the land, must calculate the total compensation by including all assets attached to the land.
- For determining the value of buildings, immovable property, or assets attached to the land, the Collector can enlist the services of a competent engineer or any other specialist in the relevant field.
- In the case of trees, plants, and standing crops, the Collector may seek the assistance of experienced individuals in agriculture, forestry, horticulture, sericulture, or related fields.

## **Parameters Considered by Collector in Determining Award**

In determining the amount of compensation to be awarded for land acquired under the Act, the Collector takes into consideration the following factors:

### **1. Market Value**

- The market value as determined under Section 26.
- The award amount in accordance with the First and Second Schedules.

### **2. Damage to Standing Crops and Trees**

- The damage sustained by the person interested due to the taking of any standing crops and trees on the land at the time of taking possession.

### **3. Severance of Land**

- The damage sustained by the person interested due to severing the acquired land from his other land at the time of taking possession.

#### **4. Impact on Other Property**

- The damage sustained by the person interested at the time of taking possession, resulting from the acquisition adversely affecting his other property, whether movable or immovable.

#### **5. Change of Residence or Business**

- If the person interested is compelled to change his residence or place of business due to the acquisition, the reasonable expenses incidental to such change.

#### **6. Diminution of Profits**

- The damage, if any, resulting from the bona fide diminution of the profits of the land between the declaration under Section 19 and the time of taking possession.

#### **7. Other Grounds for Equity and Justice**

- Any other ground that may be in the interest of equity, justice, and beneficial to the affected families.

### **Award of Solatium - Ensuring Fair Compensation**

Section 30 of the Act outlines the process for finalizing the compensation amount and includes the following provisions:

#### **1. Solatium Addition**

- The Collector, after determining the total compensation, adds a 'Solatium' amount equivalent to 100% of the compensation amount.

#### **2. Individual Awards**

- Individual awards are issued by the Collector, specifying the particulars of the compensation payable and the details of the payment, as outlined in the First Schedule.

This provision ensures that landowners receive not only the calculated compensation but also an additional amount (Solatium) to address the impact of land acquisition.

### **Interest at 12% p.a. on Compensation Amount**

Section 30(3) of the Act further specifies that in addition to the market value of the land (determined under Section 26), the Collector awards interest at the rate of 12% per annum. This interest is calculated from the date of the publication of the notification of the Social Impact Assessment (SIA) study until the date of the Collector's award or the date of taking possession, whichever comes earlier.

### **Additional Compensation for Multiple Displacements**

Section 39 emphasizes the Collector's responsibility to minimize displacements. In cases where families have been displaced more than once by the appropriate Government, the Collector is mandated to provide additional compensation equal to the compensation determined under the Act for the second or successive displacements.

## **Exemption from Income Tax, Stamp Duty, and Fees: Promoting Fair Compensation**

Section 96 of the Act outlines exemptions for income tax, stamp duty, and fees in the context of awards or agreements made under the Land Acquisition Act. The key points include:

### **1. Income Tax Exemption**

- No income tax shall be levied on any award or agreement made under the Land Acquisition Act. This exemption provides relief to individuals or entities receiving compensation, ensuring that the compensation received is not subject to income tax.

### **2. Stamp Duty Exemption**

- The provision also states that no stamp duty shall be levied on awards or agreements made under the Act. Stamp duty is a tax levied on legal documents, and its exemption in this context simplifies the compensation process, reducing financial burdens on the parties involved.

### 3. Fee Exemption for Copies

- Individuals or entities claiming under any such award or agreement are not liable to pay any fee for obtaining a copy of the award or agreement. This exemption from fees facilitates access to documentation related to land acquisition, promoting transparency and fairness.

## Minimum Rehabilitation and Resettlement (R&R) Entitlements for Land Owners and Livelihood Losers

As outlined in the Second Schedule, the Land Acquisition Act specifies minimum Rehabilitation and Resettlement (R&R) entitlements for both land owners and livelihood losers. The key provisions include:

### For Land Owners

#### 1. *Subsistence Allowance:*

- Rs. 3,000 per month per affected family for a duration of 1 year.

#### 2. *Options for Affected Families:*

- Each affected family may choose one of the following options:
  - (a) Job opportunity for one family member (if the project creates jobs).
  - (b) Rs. 5,00,000.
  - (c) Annuity of Rs. 3,000 per month.

#### 3. *Additional Entitlements:*

- 1 acre of land for each family owning agricultural land in the affected area (for irrigation projects).
- Rs. 50,000 for transportation cost and a one-time resettlement allowance.

#### 4. *Housing Benefit:*

- In rural areas: A constructed house as per Indira Awas Yojana specifications or the equivalent cost in lieu of the house.

- In urban areas: A constructed house not less than 50 sq mts plinth area, or a one-time financial assistance for house construction (not less than Rs. 1,50,000) for families opting not to take the offered house.

### **For Livelihood Losers (Including Landless)**

#### **1. *Subsistence Allowance:***

- Rs. 3,000 per month per affected family for a duration of 1 year.

#### **2. *Options for Affected Families:***

- Each affected family may choose one of the following options:
  - (a) Job opportunity for one family member (if the project creates jobs).
  - (b) Rs. 5,00,000.
  - (c) Annuity of Rs. 3,000 per month.

#### **3. *Additional Entitlements:***

- Rs. 50,000 for transportation cost and a one-time resettlement allowance.

#### **4. *Housing Benefit:***

- Similar to landowners, providing either a constructed house or financial assistance for construction in rural and urban areas.
- Special provision for families without homestead land but residing in the area for at least 3 years preceding the notification of the affected area.
- No family affected by acquisition shall be given more than one house.

### **Financial Assistance for Cattle Shed or Petty Shop and One-Time Grant for Artisans, Small Traders, and Others**

The Land Acquisition Act includes provisions for financial assistance to specific groups affected by land acquisition. These provisions are:

#### **For Families with Cattle or Petty Shop**

- Each affected family having cattle or a petty shop is entitled to one-time financial assistance. The amount is specified by the appropriate Government through notification.

- The financial assistance is subject to a minimum of Rs. 25,000.
- The purpose of the assistance is for the construction of a cattle shed or petty shop, as applicable.

### **One-Time Grant for Artisans, Small Traders, and Others**

- Artisans, small traders, self-employed persons, or affected families owning non-agricultural land or commercial, industrial, or institutional structures in the affected area are eligible.
- The appropriate Government specifies the one-time financial assistance amount through notification.
- The financial assistance is subject to a minimum of Rs. 25,000.
- This grant is provided to each affected family that has been involuntarily displaced due to land acquisition from the affected area.

## **Fishing Rights and Compulsory Contents of R&R Award**

### **1. Fishing Rights**

- In cases of irrigation or hydel projects, affected families may be granted fishing rights in the reservoirs.
- The manner in which fishing rights are allowed will be prescribed by the appropriate Government.
- This provision recognizes the importance of fishing rights for affected families whose livelihoods are connected to water bodies affected by irrigation or hydel projects.

### **2. Compulsory Contents of R&R Award (Section 31 of the Act)**

The Rehabilitation and Resettlement (R&R) Award under Section 31 of the Act must include the following compulsory contents:

- ***Rehabilitation and Resettlement Amount:***



- Rehabilitation and resettlement amount payable to the family.

- ***Bank Account Details:***

- Bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred.

- ***Details of House Allotment:***

- Particulars of house site and house to be allotted in the case of displaced families.

- ***Details of Land Allotment:***

- Particulars of land allotted to the displaced families.

- ***Subsistence and Transportation Allowance:***

- Particulars of one-time subsistence allowance and transportation allowance in case of displaced families.

- ***Payment for Cattle Shed and Petty Shops:***

- Particulars of payment for cattle sheds and petty shops.

- ***One-Time Amount to Artisans and Small Traders:***

- Particulars of one-time amount to artisans and small traders.

- ***Employment Details:***

- Details of mandatory employment to be provided to the members of the affected families.

- ***Fishing Rights:***

- Particulars of any fishing rights that may be involved.

- ***Annuity and Other Entitlements:***

- Particulars of annuity and other entitlements to be provided.

- ***Special Provisions for SCs and STs:***

- Particulars of special provisions for Scheduled Castes (SCs) and the Scheduled Tribes (STs) to be provided.

## Provision of Infrastructural Amenities in Resettlement Area (Section 32 of the Act)

Section 32 of the Act outlines the provisions for ensuring infrastructural and basic amenities in every resettlement area. The Collector is responsible for ensuring the provision of amenities specified in the Third Schedule. The key amenities include:

### 1. Roads

- Roads within the resettled villages and an all-weather road link to the nearest pucca road.
- Passages and easement rights for all resettled families.

### 2. Drainage and Sanitation

- Proper drainage and sanitation plans executed before physical resettlement.

### 3. Safe Drinking Water

- One or more assured sources of safe drinking water for each family as per Government of India norms.
- Provision of drinking water for cattle.

### 4. Grazing Land

- Grazing land as per the proportion acceptable in the State.

### 5. Fair Price Shops

- A reasonable number of Fair Price Shops.

### 6. Community Facilities

- Panchayat Ghars, as appropriate.
- Village-level Post Offices, as appropriate, with facilities for opening saving accounts.
- Appropriate seed-cum-fertilizer storage facility if needed.

### 7. Irrigation Facilities

- Efforts to provide basic irrigation facilities to the agricultural land allocated to resettled families.

## **8. Transport Facilities**

- Suitable transport facility, including public transport through local bus services.

## **9. Burial or Cremation Ground**

- Burial or cremation ground, depending on the caste communities at the site and their practices.

## **10. Sanitation Facilities**

- Facilities for sanitation, including individual toilet points.

## **11. Electricity**

- Individual single electric connections or connections through non-conventional sources of energy (e.g., solar energy) for each household.
- Public lighting.

## **12. Social Infrastructure**

- Anganwadi's providing child and mother supplemental nutritional services.
- School as per the provisions of the Right of Children to Free and Compulsory Education Act, 2009.
- Sub-health centre within a two-kilometer range.
- Primary Health Centre as prescribed by the Government of India.
- Playground for children.
- One community centre for every hundred families.
- Places of worship and chowpal/tree platform for every fifty families for community assembly.
- Separate land earmarked for traditional tribal institutions.

## **13. Forest Rights**

- Forest dweller families provided with forest rights on non-timber forest produce and common property resources if available.

## **14. Security**

- Appropriate security arrangements for the settlement if needed.

## 15. Veterinary Services

- Veterinary service centre as per norms.

## Special Provisions for Scheduled Castes and Scheduled Tribes (Section 41 of the Act)

Section 41 of the Act includes special provisions for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the context of land acquisition and resettlement. The key provisions are as follows:

### 1. Consent and Development Plan

- Acquisition in Scheduled Areas should be a demonstrable last resort.
- Prior consent of the concerned Gram Sabha, Panchayats, or Autonomous District Councils in Scheduled Areas must be obtained for any land acquisition.

### 2. Development Plan

- For projects involving land acquisition that leads to involuntary displacement of SCs or STs, a Development Plan must be prepared.
- The plan includes procedures for settling land rights and restoring titles of SCs and STs on alienated land.
- The plan should also outline a program for developing alternate fuel, fodder, and non-timber forest produce resources within 5 years.

### 3. Compensation for SCs and STs

- In case of land acquisition from SCs or STs, at least one-third of the compensation amount shall be paid initially as the first installment.
- The rest of the compensation shall be paid after taking over possession of the land.

### 4. Resettlement of Scheduled Tribes

- Resettlement of affected STs shall preferably be in the same Scheduled Area in a compact block to retain their ethnic, linguistic, and cultural identity.

## **5. Land for Community and Social Gathering**

- Resettlement areas predominantly inhabited by SCs and STs shall receive land free of cost for community and social gathering.

## **6. Null and Void Alienation**

- Any alienation of tribal lands or lands belonging to SCs in disregard of existing laws and regulations shall be treated as null and void.
- Rehabilitation and resettlement benefits will be provided to the original tribal landowners or landowners from SCs in case of acquisition.

## **7. Fishing Rights**

- Affected SCs, STs, and traditional forest dwellers with fishing rights in the affected area shall be given fishing rights in the reservoir area of irrigation or hydel projects.

## **8. Additional Benefits for Relocated Families**

- If affected SCs and STs are relocated outside the district, they shall receive an additional 25% of rehabilitation and resettlement benefits in monetary terms, along with a one-time entitlement of Rs. 50,000.

## **Reservation and Other Benefits (Section 42 of the Act)**

Section 42 of the Act addresses the continuation of benefits, including reservation benefits, for Scheduled Tribes (STs) and Scheduled Castes (SCs) in the context of land acquisition and resettlement. The key provisions are as follows:

### **1. Continuation of Benefits**

- All benefits, including reservation benefits, available to STs and SCs in the affected areas shall continue in the resettlement area.

### **2. Relocation Outside Scheduled Areas**

- When affected families belonging to STs residing in Scheduled Areas (Fifth Schedule) or tribal areas (Sixth Schedule) are relocated outside those areas,

statutory safeguards, entitlements, and benefits enjoyed by them under the Act shall be extended to the resettlement area.

### **3. Quantification of Community Rights**

- In cases where community rights have been settled under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, these rights shall be quantified in monetary amounts.
- The amount shall be paid to the individual concerned who has been displaced due to land acquisition, in proportion to their share in such community rights.

### **Appointment of Administrator by State Government (Section 43 of the Act)**

Section 43 of the Act empowers the State Government to appoint an Administrator for Rehabilitation and Resettlement in cases where involuntary displacement of persons is likely due to land acquisition. The key points include:

- The State Government, by notification, shall appoint an officer not below the rank of Joint Collector, Additional Collector, Deputy Collector, or an equivalent official from the Revenue Department to serve as the Administrator.

### **Appointment of Commissioner for Rehabilitation and Resettlement (Section 44 of the Act)**

Section 44 of the Act mandates the appointment of a Commissioner for Rehabilitation and Resettlement (Commissioner R&R) by the State Government. The Commissioner, typically an officer of the rank of Commissioner or Secretary, is responsible for supervising the formulation and implementation of rehabilitation and resettlement schemes or plans. The Commissioner also oversees post-implementation social audits in consultation with Gram Sabhas in rural areas and municipalities in urban areas.

### **Rehabilitation and Resettlement Committee at Project Level (Section 45):**

Section 45 of the Act outlines the formation of a Rehabilitation and Resettlement Committee at the project level, particularly for projects involving the acquisition of land equal to or exceeding 100 acres. Key points include:

- The appropriate Government shall constitute a Committee chaired by the Collector, referred to as the Rehabilitation and Resettlement Committee.
- This committee is responsible for monitoring and reviewing the progress of the Rehabilitation and Resettlement scheme, as well as conducting post-implementation social audits in consultation with Gram Sabhas in rural areas and municipalities in urban areas.

### **Provisions Relating to R&R in Case of Certain Persons Other Than Specified Persons (Section 46)**

Section 46 of the Act pertains to the application of rehabilitation and resettlement provisions in cases where individuals other than specified persons are purchasing land through private negotiations for an area equal to or exceeding specified limits. Key points include:

- Specified persons include appropriate Government, Government companies, and certain registered entities.
- Individuals not falling under the specified persons category must file an application with the District Collector, notifying them of the intent to purchase, the purpose of the purchase, and particulars of the land to be purchased.
- The Collector is responsible for referring the matter to the Commissioner for Rehabilitation and Resettlement (Commissioner R&R) to ensure compliance with relevant provisions.
- Individual awards covering rehabilitation and resettlement entitlements must be passed by the Collector based on the approved Rehabilitation and Resettlement Scheme.

## Additional Points

- Any purchase of land without complying with the provisions of the Rehabilitation and Resettlement Scheme is considered void ab initio.
- The appropriate Government may provide for rehabilitation and resettlement provisions on the sale or purchase of land and fix limits or ceilings for this purpose.
- Compensation paid for land acquired within three years of purchase by a person exceeding the specified limits will be shared with the original landowners.

## Collector's Discretion on Monetary Obligations

- The Collector has the authority to allow the payment of a quantified monetary amount in satisfaction of the obligations of the Requiring Body related to rehabilitation and resettlement.

## Exemption from Income-Tax, Stamp Duty, and Fees (Section 96)

Section 96 of the Act provides exemptions from income-tax, stamp duty, and fees in the context of awards or agreements made under the Act. Key points include:

- No income-tax or stamp duty shall be levied on any award or agreement made under this Act, except under Section 46.
- Persons claiming under such award or agreement are not liable to pay any fee for a copy of the same.

## Impact of the Act on Private Sector Companies - Types of Land Acquisitions

### 1. Land Acquisitions for Public Private Partnership (PPP) Projects

- In cases where the appropriate Government acquires land for PPP projects for public purposes, and the ownership of the land continues to vest with the Government.

## **2. Land Acquisitions for Private Companies for Public Purpose**

- In cases where the appropriate Government acquires land for private companies for public purposes, as defined in sub-section (1) of Section 2.

## **3. Private Company Purchases Land Through Private Negotiations**

- When a private company purchases land, meeting specified criteria, through private negotiations with the landowner.

## **4. Private Company Requests Acquisition of Part of an Area for Public Purpose**

- When a private company requests the appropriate Government for the acquisition of a part of an area prescribed for a public purpose.

## **Implications on Project Timelines and Cost**

- Provisions related to Rehabilitation and Resettlement (R&R) apply to land acquisitions through private negotiations and requests for acquisition, leading to additional financial burdens and increased acquisition costs.
- For cases involving public-private partnerships (PPP) or private companies for public purposes, the Act's provisions related to land acquisition, consent, and compensation also apply.
- The application of these provisions may lead to extended timelines in land acquisition processes, causing potential time and cost overruns in projects involving private sector participation.

## **LARR Authority - Establishment and Reference Process**

### **Establishment of LARR Authority (Section 51)**

- The appropriate Government is mandated to establish the Land Acquisition, Rehabilitation and Resettlement Authority (LARR Authority) through a notification.
- The notification should specify the areas within which the Authority can exercise jurisdiction for handling disputes related to land acquisition, compensation, rehabilitation, and resettlement.

## Reference to LARR Authority (Section 64)

- Section 64(1) of the Act allows any person interested, who has not accepted the award, to make a written application to the Collector for referring the matter to the LARR Authority.
- A person who has received the amount without protest is not entitled to make an application for reference to the Authority.
- The reference to the LARR Authority is made for the determination of disputes related to land acquisition and associated matters.

## Time Limit for Making Application for Reference

- Applications for reference to the Collector should be made within 6 weeks from the date of the Collector's award if the person was present or represented during the award.
- If the person was not present or represented, the application should be made within 6 weeks from the receipt of the notice from the Collector under section 21 or within six months from the date of the Collector's award, whichever comes first.
- The Collector may entertain an application after the initial 6-week period, but within a further period of 1 year, if there is sufficient cause for not filing it within the initial 6 weeks.

## Grounds for Objecting to the Award

- The application made to the Collector requesting a reference to the LARR Authority should clearly state the grounds on which objection to the award is taken.
- The acceptable grounds for objection include the measurement of the land, the amount of compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI, or the apportionment of the compensation among the persons interested.

## Reference Process (Section 64)

- The Collector is required to make a reference to the LARR Authority within 30 days from the receipt of the application.
- If the Collector fails to make the reference within the specified period, the applicant has the right to apply to the Authority, requesting it to direct the Collector to make the reference within the next 30 days.

## Powers of the LARR Authority (Section 60)

- The LARR Authority is empowered with the same powers as vested in a civil court under the Code of Civil Procedure, 1908. These powers include:
- Summoning and enforcing the attendance of any person and examining him on oath.
- Discovery and production of any document or other material object producible as evidence.
- Receiving evidence on affidavits.
- Requisitioning any public record.
- Issuing a commission for the examination of witnesses.
- Reviewing its decisions, directions, and orders.
- Handling any other matter as may be prescribed.

## Procedure Before the LARR Authority

### 1. Original Jurisdiction on Reference (Section 64)

- The LARR Authority has original jurisdiction to adjudicate upon every reference made to it under section 64.

### 2. Natural Justice and Regulation of Procedure (Section 60)

- The Authority is not bound by the procedure laid down in the Code of Civil Procedure, 1908.
- The Authority is guided by the principles of natural justice.
- It has the power to regulate its own procedure, subject to the other provisions of the Act and any rules made thereunder.

### **3. Notice, Hearing, and Disposal of Reference (Section 60(4))**

- Upon receiving a reference under section 64, the Authority:
  - Gives notice of the reference to all parties concerned.
  - Affords an opportunity of hearing to all parties.
  - Disposes of the reference within a period of 6 months from the date of receipt of the reference.
  - Delivers copies of the award to parties concerned within 15 days of the disposal.

### **4. Notice to Concerned Parties (Section 66)**

- Upon receiving a reference from the Collector, the Authority causes a notice to be served on the following persons:
  - The applicant.
  - All persons interested in the objection, except those who have consented without protest to receive payment of the compensation awarded.
  - The Collector, if the objection is in regard to the area of the land or the amount of compensation.

## **Scope of Proceedings before the LARR Authority**

### **1. Consideration of Interests (Section 67)**

- The scope of the inquiry in every proceeding before the LARR Authority is restricted to a consideration of the interests of the persons affected by the objection.

### **2. Public Proceedings (Section 68)**

- Every proceeding shall take place in public.
- All persons entitled to practice in any Civil Court in the State are entitled to appear, plead, and act in such proceedings.

### **3. Award (Section 69)**

- *Compensation (Market Value):*

- In determining the amount of compensation for the acquired land, including Rehabilitation and Resettlement (R&R) entitlements, the Authority considers whether the Collector followed the parameters set out in sections 26 to 30 and the provisions under Chapter V of the Act.
- ***Interest at 12% p.a.:***
  - In addition to the market value of the land, the Authority awards an amount calculated at the rate of 12% per annum on the market value.
  - The interest period starts from the date of the publication of the preliminary notification under section 11 to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.
  - The computation of this period excludes any period during which the proceedings for the acquisition of the land were held up due to stay or injunction by the order of any Court.

#### **Solatium @ 100% of Total Compensation (Section 69(3))**

In addition to the market value of the land, the Authority awards a solatium of 100% over the total compensation amount.

#### **Interest on Excess Compensation (Section 72)**

If the Authority believes that the sum the Collector should have awarded as compensation exceeds the sum awarded by the Collector, the Authority may direct the Collector to pay interest on such excess at the rate of 9% per annum. The interest is calculated from the date of taking possession of the land to the date of payment of the excess into the Authority.

#### **Form of Award (Section 70(1))**

Every award under this Chapter is in writing and signed by the Presiding Officer of the Authority. The award specifies the amount awarded under different clauses of section 23, along with the grounds for awarding each of the said amounts.

## **Award as a Decree and Grounds as a Judgment**

Every award is deemed to be a decree within the meaning of clause (2) of section 2 of the Code of Civil Procedure, 1908. The statement of the grounds of every award is considered a judgment within the meaning of clause (9) of section 2 of the Code of Civil Procedure, 1908.

## **Provision of Costs (Section 71(1))**

Every award under this chapter states the amount of costs incurred in the proceeding and specifies by what persons and in what proportions they are to be paid.

## **Costs where Collector's Award Not Upheld (Section 71(2))**

When the award of the Collector is not upheld, the costs are ordinarily paid by the Collector. However, the Authority may make deductions from the costs if the claim of the applicant was extravagant or if the applicant was negligent in presenting the case before the Collector.

## **Copies of Award to Parties Concerned**

The Authority arranges to deliver copies of the award to the parties concerned within 15 days from the date of the award.

## **Re-determination of Amount of Compensation (Section 73)**

- If the Authority allows the applicant any amount of compensation in excess of the amount awarded by the Collector under section 23, other persons interested in all the other land covered by the same preliminary notification under section 11, and who are aggrieved by the award of the Collector, may make a written application to the Collector within 3 months from the date of the Authority's award.
- The Collector, upon receiving the application, conducts an inquiry after giving notice to all interested persons and provides them with a reasonable opportunity to be heard.

- The Collector then makes an award determining the amount of compensation payable to the applicants.
- Any person who has not accepted the award of the Collector may, by a written application to the Collector, require that the matter be referred to the Authority for determination.

### **Jurisdiction of Civil Courts Barred (Section 63)**

Section 63 of the Act explicitly bars the jurisdiction of civil courts, excluding the High Court under Article 226 or Article 227 of the Constitution and the Supreme Court. Civil courts are not empowered to entertain any disputes related to land acquisition if the Collector or the Authority has jurisdiction under this Act. Furthermore, the section prohibits the granting of injunctions by any court in matters falling within the scope of this Act.

### **Appeal to High Court (Section 74)**

In case of dissatisfaction with an Award passed by an Authority under Section 69, the Requiring Body or any aggrieved person has the right to file an appeal to the High Court. The appeal must be filed within 60 days from the date of the Award, and the High Court may, under certain circumstances, allow an extension of up to an additional 60 days. The Act emphasizes the need for expeditious handling of such appeals, with an aim to dispose of them within six months of their presentation to the High Court.

### **Particulars of Apportionment to be Specified (Section 75)**

Section 75 pertains to cases where several persons are entitled to compensation. If these persons reach an agreement on the apportionment of compensation, the award shall specify the particulars of this apportionment. Importantly, such agreement among the parties involved is considered conclusive evidence of the correctness of the apportionment as stated in the award.

### **Dispute as to Apportionment of Compensation (Section 76)**

In situations where disputes arise concerning the apportionment of compensation or the rightful recipients of the compensation, the Collector is empowered to refer such disputes to the Authority. This provision ensures a mechanism for resolving disputes related to the distribution of compensation among multiple stakeholders.

### **Payment of Compensation or Deposit of Same in Authority (Section 77)**

Section 77 outlines the procedures for the payment of compensation. The Collector is obligated to tender the awarded compensation to the entitled parties. However, if certain contingencies prevent direct payment, such as the absence of consent from the recipient or disputes over title, the Collector is required to deposit the compensation amount with the Authority. Individuals admitted as interested parties can then receive the payment from the Authority under protest if necessary.

### **Provisions of Interest (Section 80)**

Section 80 delineates provisions related to interest on compensation. If the compensation amount is not paid or deposited before taking possession of the land, the Collector is liable to pay interest at the rate of 9% per annum from the time of possession until the payment is made. Additionally, if the compensation remains unpaid or undeposited one year after possession, the interest rate increases to 15% per annum. This provision aims to ensure timely and fair compensation to affected parties.

### **Investment of Money Deposited in the Authority (Sections 78-79)**

Section 78 outlines the provisions for the investment of money deposited in the Authority. When it is found that the land in question belonged to someone with no power to alienate it, the Authority directs the investment of the money in the purchase of other lands with similar title and conditions or in approved securities. The interest or proceeds from such investment are then directed to the parties entitled to the possession of the land. The costs associated with these

matters are to be borne by the Collector. In cases where money is deposited for reasons other than those specified in Section 78, Section 79 empowers the Authority to order its investment in government or approved securities, with the manner of payment designed to provide the same benefit as the original land. Parties interested can apply for such orders.

### **Temporary Occupation of Land (Section 81)**

Section 81 authorizes the appropriate Government to temporarily occupy waste or arable land for public purposes for a duration not exceeding three years. The Collector issues a written notice to the interested parties, specifying the purpose and compensation details. Compensation can be agreed upon in writing, either as a lump sum or through periodic payments. In case of disputes, the Collector can refer the matter to the Authority for resolution.

### **Power to Enter and Take Possession and Compensation on Restoration (Section 82)**

Upon payment of compensation or execution of an agreement, the Collector is granted the authority to enter and take possession of the land for temporary use. The Collector must adhere to the terms mentioned in the notice. At the end of the stipulated term, compensation for any additional damage not covered by the agreement is paid, and the land is restored to the interested parties. If the land becomes permanently unfit for its prior use, the appropriate Government may proceed to acquire it under this Act.

### **Difference as to Condition of Land (Section 83)**

Section 83 addresses situations where a disagreement arises between the Collector and the persons interested regarding the condition of the land at the expiration of the term or any matter related to the agreement for temporary occupation. In such cases, the Collector is mandated to refer the dispute to the decision of the relevant Authority, ensuring a fair resolution of differences.

## **Income Tax Exemption (Section 96)**

Section 96 of the Act outlines provisions for income tax exemption, stamp duty, and fees. Awards or agreements made under the LARR Act are granted exemption from income tax and stamp duty. Additionally, individuals claiming under such awards or agreements are not liable to pay any fees for obtaining a copy. However, it's essential to note that this exemption does not apply to agreements made through private negotiations under section 46 of the Act.

### **For income tax exemption, certain conditions must be met**

- The amount should be received under an award or agreement.
- The award or agreement should be made under the LARR Act.
- The agreement should not be a result of private negotiations under section 46 of the Act.

## **Award under LARR Act (Sections 30, 96)**

Section 30(2) of the Act directs the Collector to issue individual awards specifying the compensation details as per the First Schedule. The First Schedule outlines the components of the final award in rural and urban areas, including the market value of land, a factor specified by the appropriate Government, the value of assets attached to the land or building, and a solatium.

## **Collector's Award of R&R Entitlements (Section 31)**

Section 31(1) mandates the Collector to issue R&R awards for each affected family, outlining the entitlements specified in the Second Schedule. R&R entitlements received under this award are explicitly exempt from income tax, providing clarity on their tax-free status.

## **Award by LARR Authority on Reference (Section 69)**

Compensation (Market Value): Section 69(1) emphasizes that the Authority, while determining compensation, should consider whether the Collector adhered to the parameters outlined in sections 26 to 30 and the provisions of Chapter V of the Act.

- ***Interest @ 12% p.a.:*** Section 69(2) prescribes that in addition to the market value, the Authority should award interest at a rate of 12% p.a. The interest period spans from the date of the publication of the preliminary notification under section 11 to the earlier date of the Collector's award or possession of the land. Any delays due to court orders, such as stays or injunctions, are excluded from this period.
- ***Solatium @100% of Total Compensation:*** Section 69(3) mandates the Authority to award a solatium of 100% over the total compensation amount.
- ***Interest on Excess Compensation:*** Section 72 allows the Authority to direct the Collector to pay interest at a rate of 9% p.a. on any excess compensation amount determined by the Authority.

### **Form of Award (Section 70)**

Section 70(1) specifies the requirements for the form of the award. It should be in writing, signed by the Presiding Officer of the Authority, and detail the amounts awarded under different clauses of section 23, along with the grounds for each amount.

### **Agreement (Section 81)**

Section 81 covers situations where temporary occupation of land is needed. The compensation received under an agreement with the Collector for temporary occupation of waste or arable land is exempt from income tax under section 96 of the Act.

### **Interest (Section 80)**

Section 80 addresses interest on compensation. While the interest paid by the Collector on delayed compensation is not tax-free under section 96, it arises after the award is made and possession is taken.

## **Compensation for Urgent Land Acquisitions under Section 40**

Compensation paid for urgent land acquisitions under Section 40 raises questions about its tax-free status, as it is not explicitly mentioned in the section. The 75% additional compensation under section 40 may not enjoy tax-free status under section 96.

### **Service of Notice (Section 92)**

Section 92 outlines the procedures for serving notices under the Act. Notices are served by delivering or tendering a signed copy, and alternative methods are outlined in cases where the person named cannot be found. The use of postal services and publication in newspapers and on the website is allowed if directed by the Collector or Judge.

## CHAPTER V

# DIFFICULTIES ENCOUNTERED IN LAND ACQUISITION UNDER THE NEW ACT

### Introduction

This chapter outlines the procedural intricacies and challenges involved in the land acquisition process, presented in a chronological order reflective of its intended sequence. Despite the constraints of legal drafting, the researcher aims to present a coherent overview of the process as envisioned by the Act. The Act strives to establish a comprehensive and well-defined procedure, prioritizing the concerns of parties affected by land acquisition. Marked by specific deadlines and a meticulous system of checks and balances, this process is designed to prevent the arbitrary exercise of discretion by officials, ensuring transparency and fairness. The following analysis will delve into the details of this process as envisaged by the Act.

### Preliminary Notification: Initiating the Land Acquisition Process

The commencement of land acquisition proceedings follows the successful execution of pre-acquisition processes, as outlined in the preceding chapter. This phase is marked by the issuance of a 'Preliminary Notification' under Section 11 of the Act, 2013, serving as an initial notice to the public regarding the intent to acquire a specific parcel of land, complete with area details. Distinguishing itself from its 1894 counterpart, this notification requires a statement elucidating the "public purpose" behind the acquisition, along with reasons justifying the displacement of affected persons. Additionally, it mandates the inclusion of a summary of the "Social Impact Assessment Report" and particulars of the "Administrator appointed for the purposes of rehabilitation and resettlement."

While seemingly straightforward, experiences under the repealed Land Acquisition Act, 1894, necessitate caution. Farmers from various states expressed surprise and ignorance regarding

preliminary intimation during consultations. To address this, the Act emphasizes the need for transparency and wider dissemination of information. Publication requirements are explicitly outlined within the law, stipulating that the Preliminary Notification must be published in the Official Gazette, two local newspapers (one in the regional language), local governing bodies' offices, the district collector's, sub-divisional magistrate's, and tehsil offices, as well as on the appropriate government's website and in the affected areas through prescribed methods.

To mitigate potential exploitation, any transactions related to the land are prohibited from the publication date until the conclusion of proceedings. The Preliminary Notification must be shared promptly with concerned people's representative bodies, and no encumbrances on the land are allowed during this period. Issued within 12 months from the Social Impact Assessment report's appraisal, failure to meet this timeframe results in the lapse of the appraisal report, necessitating a fresh assessment for subsequent acquisition attempts.

### **Updating Records and Survey: Ensuring Comprehensive Land Coverage**

Subsequent to the issuance of the Preliminary Notification, the Collector assumes the responsibility of updating land records within two months. This crucial step ensures that all rightful beneficiaries are included in the legal framework before the final declaration for acquisition is made. During this period, the Collector is authorized to enter the premises, conduct surveys, and carry out necessary activities to assess whether the land is suitable for the envisaged public purpose. These activities may involve structural adjustments, such as boring holes, taking samples, and demarcating boundaries. This provision closely resembles its counterpart in the repealed Land Acquisition Act, 1894.

Section 20 of the new law supplements this by granting the Collector the authority to carry out measurements and make markings as deemed necessary. However, a significant departure lies in the notion that the declaration regarding the public purpose is not conclusive, as was the case under the Land Acquisition Act, 1894. The term 'conclusive' implied that the Collector's decision

was final, with no administrative appeal mechanism in place. The new law introduces a modified administrative mechanism that prioritizes the concerns of those bearing the ultimate cost. While there might be legitimate reasons for delays in issuing notifications, the Act allows for extensions with recorded justifications. Importantly, these justifications must be made available on the acquiring authority's website, promoting transparency, judicial review, and accountability for any extensions granted. This approach aims to prevent unwarranted and spurious extensions, ensuring a fair and accountable land acquisition process.

### **Publication Requirements: Ensuring Wide Dissemination**

To ensure transparency and prevent uninformed parties, the Preliminary Notification must be published through various channels. These include the Official Gazette, local newspapers in the regional language, Panchayat/Municipality/Municipal Corporation offices, and the official website of the appropriate Government. Additionally, the notification must be disseminated in affected areas as prescribed by the Central or State Government.

### **Immediate Communication to Representative Bodies: Enhancing Public Awareness**

Simultaneously, the Preliminary Notification should be promptly shared with concerned people's representative bodies, and a meeting must be convened to inform members proactively. This step aims to prioritize public awareness and involvement in the early stages of land acquisition.

### **Transaction Prohibition: Safeguarding Against Exploitation**

To prevent exploitation and safeguard the affected parties, the law prohibits any transactions related to the land (such as sale, lease, or mortgages) from the date of the Preliminary Notification until the conclusion of the acquisition proceedings. This restriction aims to prevent parties from creating encumbrances on the land during the acquisition process.

## **Time-Bound Issuance and Consequences of Delay: Accountability in Land Acquisition**

The Preliminary Notification must be issued within 12 months from the date of the Social Impact Assessment report's appraisal. Failure to adhere to this timeframe results in the lapse of the appraisal report. Legitimate justifications for delay can be considered, but these must be recorded in writing and made available on the acquiring authority's website, promoting accountability and facilitating judicial review.

## **Commencement of Rehabilitation and Resettlement Planning**

After the issuance of the Preliminary Notification, the focus shifts to planning for rehabilitation and resettlement. The Administrator for Rehabilitation and Resettlement takes charge, conducting a comprehensive survey and census of affected families. This survey encompasses various aspects, including particulars of lands and properties being acquired, livelihoods lost for land losers, impact on public utilities and government buildings, details of affected amenities and infrastructural facilities, and common property resources being acquired.

### **Survey and Census Details**

The survey and census conducted by the Administrator involve gathering specific information on the lands and properties to be acquired, the livelihoods of affected families, the impact on public utilities and government buildings, details of affected amenities and infrastructural facilities, and common property resources. This detailed data forms the basis for subsequent rehabilitation and resettlement planning.

### **Drafting the Rehabilitation and Resettlement Scheme**

Utilizing the gathered information, the Administrator prepares a comprehensive draft Rehabilitation and Resettlement Scheme. This document includes specific details about the entitlements of each landowner and landless individual whose livelihood is primarily dependent

on the acquired lands. For cases involving resettlement, the scheme outlines the government buildings, public amenities, and infrastructural facilities to be provided in the resettlement area.

## **Second Public Hearing: Avenues for Community Input**

Following the initial public hearing and the rehabilitation and resettlement planning, a second public hearing is mandated to provide affected communities with another opportunity to voice concerns. This marks the third occasion for community input in the acquisition process. Adequate publicity, including details about the date, time, and venue, precedes the hearing to ensure widespread awareness in the affected area.

## **Special Considerations for Scheduled Areas**

In Scheduled Areas, where consultation with the Gram Sabha is required, the process adheres to the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996. This ensures that the engagement with communities in these areas aligns with specific legal requirements, addressing historical concerns of exclusion.

## **Administrator's Submission to the Collector**

Following the second public hearing, the Administrator responsible for Rehabilitation and Resettlement submits two crucial documents to the Collector. These include the draft Scheme for Rehabilitation and Resettlement and a detailed report highlighting the claims and objections raised during the public hearing.

## **Review by Collector and Rehabilitation Committee**

The draft Rehabilitation and Resettlement Scheme undergoes a comprehensive review by both the Collector and the Rehabilitation and Resettlement Committee at the Project level. Notably, the constitution of this committee is stipulated under Section 45 of the Act, applicable if the acquisition area spans 100 acres or more. The Collector, along with this committee, evaluates the draft scheme and formulates suggestions.

## **Approval Process**

Upon the completion of the review process, the Collector, along with the Rehabilitation and Resettlement Committee, forwards the draft Rehabilitation and Resettlement Scheme with their recommendations to the Commissioner of Rehabilitation and Resettlement for final approval. This approval step ensures a thorough and collaborative approach to the rehabilitation and resettlement planning.

## **Declaration for Land Acquisition and Resettlement Area Identification**

Section 19 of the Act, 2013, outlines the issuance of the declaration for land acquisition when the appropriate Government is satisfied about the public purpose. This declaration, bearing the hand and seal of a designated Government official, also identifies the 'resettlement area' for the rehabilitation and resettlement of affected families. Multiple declarations may be issued for different parcels of land covered by the same preliminary notification.

## **Accompanying Summary of Rehabilitation and Resettlement Scheme**

The declaration must be accompanied by a summary of the Rehabilitation and Resettlement Scheme. Both documents, the declaration and the summary, are mandated to be published together. The declaration is conditional upon the Requiring Body's deposit toward the acquisition cost, either in full or part, as prescribed by the appropriate Government.

## **Time Limit for Declaration and Lapse Provision**

Notably, the Section 19 declaration must be issued within twelve months of the Preliminary Notification. Any period of delay due to court orders or injunctions is excluded from this calculation. The time constraint is essential to prevent prolonged delays and ensure procedural efficiency.

## Publication Requirements

Every declaration under Section 19 undergoes extensive publication, appearing in the Official Gazette, two local newspapers (one in the regional language), Panchayat, Municipality or Municipal Corporation offices, District Collector, Sub-Divisional Magistrate, Tehsil offices, and on the website of the appropriate Government. This broad dissemination ensures transparency and accessibility.

## Essential Elements in the Declaration

The Section 19 declaration includes critical details:

- District or territorial division of the land
- Purpose for which the land is needed and its approximate area
- Availability of a plan for the land, specifying the inspection location without any cost.

## Land Acquisition Award under Section 23

Section 23 of the Act governs the Land Acquisition Award, inclusive of a distinct Rehabilitation and Resettlement Award. The Collector, on a day fixed by them, is obligated to pass an award under their hand. The award incorporates crucial details:

- The accurate land area
- The determined compensation (refer to Chapter 4 for comprehensive compensation calculation)
- The Rehabilitation and Resettlement award, as assessed and deemed appropriate by the Collector
- The distribution of the compensation among all individuals with an interest in the land, irrespective of their appearance before the Collector or claims filed.

## Comparison with Repealed Land Acquisition Act

Contrasting with the repealed Land Acquisition Act, 1894, where Section 11 marked the culmination of land acquisition proceedings, the new law positions the Award as an intermediate

step. It signifies the mutual agreement between the acquiring authority and the affected party. Unlike its predecessor, the Award doesn't signal the conclusion of proceedings; further steps must be fulfilled before taking possession.

### **Proceedings Post-Award**

The Award initiates a series of subsequent processes that must be adhered to before actual possession can be taken. The Award, therefore, functions as a pivotal point in the larger framework of land acquisition, embodying the agreed terms between the acquiring authority and the affected individual.

### **Overview of Rehabilitation and Resettlement Award**

The Rehabilitation and Resettlement (R&R) award aims to delineate a just distribution of entitlements outlined in the Second Schedule of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013. Chapter 5 provides an in-depth exploration of the substantive aspects, while this section focuses on the procedural aspects of determining such an award.

### **Authority Responsible and Key Elements of R&R Award**

The Collector holds the responsibility of issuing Rehabilitation and Resettlement Awards, preparing a distinct award for each affected family. The R&R Award encompasses essential elements, including:

- Rehabilitation and resettlement amount for the family
- Bank account details for fund transfer
- Particulars of allotted house site and house for displaced families
- Details of allocated land for displaced families
- Specifics of one-time subsistence and transportation allowances
- Particulars of payment for cattle sheds and petty shops
- One-time amounts for artisans and small traders

- Mandatory employment details for affected family members
- Fishing rights particulars
- Annuitant and other entitlements details
- Special provisions for Scheduled Castes and Scheduled Tribes.

## **Government's Power and Corrective Measures**

The appropriate Government possesses the authority to increase the rehabilitation and resettlement amount, considering inflation. The Collector can rectify errors in the award, but a hearing is mandated if corrections may harm the affected party. Corrections are not permissible after six months from the award's passage.

## **Government Inquiry and Public Accessibility**

Before issuing the R&R award, the acquiring Government can scrutinize proceedings' records for legality and propriety. Any directions issued must afford affected parties a hearing if detrimental to their interests. The Collector is obligated to maintain a summary of the entire land acquisition proceedings, including compensation details, accessible to the public and published on a dedicated website.

## **Significance of Possession Safeguard**

Possession is a pivotal safeguard in the new land acquisition law, addressing historical injustices where possession occurred without adequate compensation or resettlement. The law now mandates full payment of compensation, including rehabilitation and resettlement entitlements, before possession is taken.

## **Conditions for Possession (Section 38)**

Section 38 establishes conditions for possession, emphasizing timely compensation and phased disbursement:

- Financial compensation for the land must be paid within three months of the Rehabilitation and Resettlement Award.
- Monetary components of the Rehabilitation and Resettlement package are to be disbursed within six months.
- Infrastructural entitlements and long-term arrangements must be provided within eighteen months from the award date.

## **Specific Provisions for Certain Projects**

In alignment with Supreme Court directions, the law includes a proviso for projects like irrigation or hydel, requiring completion of rehabilitation and resettlement six months prior to land submergence.

## **Prohibition on Displacement Before Completion of R&R**

The Collector is barred from displacing affected families until the entire rehabilitation and resettlement process is concluded. This ensures that families are not uprooted before suitable arrangements are in place.

## **Safeguard Against Double Displacement**

To prevent double displacement, a last-resort scenario, the law mandates additional compensation equivalent to the compensation determined for the second or successive displacements. This acts as a deterrent, requiring double compensation if an individual or family faces multiple displacements due to the same acquisition.

## **One-Time Payment Option by Requiring Body**

In cases where the requiring body (e.g., a company or Public-Sector Undertaking) can quantify its obligations to affected families, it has the option to make a one-time payment. Subject to the Collector's satisfaction, the entire amount, covering compensation and rehabilitation

responsibilities, can be deposited into an account. The Administrator for Rehabilitation and Resettlement then assumes responsibility for managing this account.

### **Background**

This provision addresses industry concerns about prolonged liabilities and potential litigation, offering a mechanism for a comprehensive, one-time settlement.

### **Administrative Structure for Rehabilitation and Resettlement**

Recognizing the need for a robust administrative framework to ensure efficient, fair, and transparent land acquisition, the Act empowers the Government to appoint key officers alongside the Collector. These include the:

- Administrator for Rehabilitation and Resettlement
- Commissioner, Rehabilitation and Resettlement

### **Policy Influence**

The creation of these roles is influenced by the National Rehabilitation and Resettlement Policy of 2007. While originating from this policy, their functions have been tailored to enhance the synergy between land acquisition and rehabilitation/resettlement procedures outlined in the new law.

### **Office of the Administrator Rehabilitation and Resettlement**

#### **Appointment Criteria**

An Administrator Rehabilitation and Resettlement are appointed when the appropriate Government foresees involuntary displacement due to land acquisition.

#### **Duties and Authority**

- Works under the superintendence, directions, and control of the appropriate Government and the Commissioner for Rehabilitation and Resettlement.

- Holds responsibility for formulating, executing, and monitoring the Rehabilitation and Resettlement Scheme.

### **Official Rank**

Officer not below the rank of Joint Collector, Additional Collector, Deputy Collector, or an equivalent official of the Revenue Department.

## **Office of the Commissioner Rehabilitation and Resettlement**

### **Appointment Authority**

The State Government, where the acquisition occurs, appoints an officer known as the Commissioner for Rehabilitation and Resettlement.

### **Duties**

- Supervises the formulation of rehabilitation and resettlement schemes or plans.
- Ensures proper implementation of these schemes or plans.
- Conducts post-implementation social audits in collaboration with representative bodies like Gram Sabha in rural areas and municipalities in urban areas.

### **Note**

These offices play pivotal roles in overseeing and implementing rehabilitation and resettlement measures, ensuring adherence to established schemes and plans. The Commissioner's post-implementation social audit contributes to accountability and transparency in the process.

## **Rehabilitation and Resettlement Committee**

### **Formation Criteria**

Constituted by the government overseeing acquisition when the acquisition area is a hundred acres or more, with the Collector serving as the Chair.

## Duties

- Monitors and reviews the progress of the Rehabilitation and Resettlement scheme's implementation.
- Conducts a post-implementation social audit in collaboration with representative bodies (Gram Sabha in rural areas and municipalities in urban areas).

## Composition

Apart from officers of the appropriate Government, the committee includes the following members:

- *Representative of Women Residing in the Affected Area*
- *Representative Each of the Scheduled Castes and the Scheduled Tribes Residing in the Affected Area*
- *Representative of a Voluntary Organization Working in the Area*
- *Representative of a Nationalized Bank*
- *Land Acquisition Officer of the Project*
- *Chairpersons of the Panchayats or Municipalities Located in the Affected Area or Their Nominees*
- *Chairperson of the District Planning Committee or His Nominee*
- *Member of Parliament and Member of the Legislative Assembly of the Concerned Area or Their Nominees*
- *Representative of the Requiring Body*
- *Administrator for Rehabilitation and Resettlement as the Member-Convenor*

## Note

This committee plays a crucial role in overseeing the effective implementation of rehabilitation and resettlement schemes, ensuring representation from diverse stakeholders, and conducting post-implementation social audits for accountability and transparency.

## **National Monitoring Committee and State Monitoring Committee for Rehabilitation and Resettlement**

### **Establishment**

Two standalone Committees, namely the National Monitoring Committee for Rehabilitation and Resettlement and the State Monitoring Committee for Rehabilitation and Resettlement, can be established by the respective Governments as needed.

### **Scope**

These Committees are not confined to a specific project but have the authority to review and monitor the implementation of any project across the country (National Monitoring Committee) or within the state (State Monitoring Committee).

### **Composition**

Comprising representatives from concerned Ministries and Departments of the Central and State Governments, as well as eminent experts from relevant fields, these Committees aim to bring diverse perspectives to the monitoring process.

### **Information Sharing**

States and Union territories are obligated to provide all relevant information on matters covered under the new law to the National Monitoring Committee regularly, in a timely manner, and as requested. This ensures the maintenance of a fair and accurate record of proceedings, guiding and aiding the implementation of future projects.

### **Miscellaneous Clause**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 includes various supporting provisions to supplement the laid-out procedures, ensuring the law serves the overarching theme of securing social justice. Some key aspects of these miscellaneous clauses are discussed in this chapter. While the focus has often

been on provisions related to retrospective operation, land release, consent, compensation, rehabilitation, resettlement prerequisites, and Social Impact Assessment, other provisions within the law also warrant attention and understanding.

## **Private Purchase Regulation under Land Acquisition Law**

### **Introduction**

The question of whether a law on land acquisition can include provisions regulating private sale and purchase of land between two individual parties is a complex one. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 addressed this issue, and its provisions are discussed below.

### **Initial Draft and State Concerns**

The initial draft of the law proposed limits on private purchases, beyond which Rehabilitation and Resettlement benefits would become mandatory. However, several State Governments objected to these limits, considering it an encroachment on the legislative domain of the States. State officials argued that land falls under the State List, granting States the power to enact laws related to land. The Standing Committee agreed with this sentiment and recommended allowing State Governments to determine the limits.

### **State Discretion and Responsibilities**

As passed by Parliament, the law allows States to set their own limits for private purchases, giving them the flexibility to tailor regulations based on local factors. However, States must ensure that once the purchase limit is exceeded, displaced individuals receive adequate support to prevent adverse impacts. Failure to provide support can lead to barriers in land use change applications and potential voiding of the transaction under the law.

## **Regulation Provisions - Section 46**

Under Section 46 of the Act, individuals purchasing land beyond the specified limits must notify the District Collector, providing details of the intent, purpose, and particulars of the land. The Collector refers the matter to the Commissioner, and based on the approved Rehabilitation and Resettlement Scheme, individual awards are issued. Land use change is prohibited if rehabilitation and resettlement conditions are not met. Any purchase without compliance is deemed void.

## **Compensation Sharing and Definitions**

If land purchased through private negotiations is subsequently acquired within three years, 40% of the compensation paid for the acquired land must be shared with the original landowners. The section defines terms like 'original landowner' and 'specified persons' to clarify its applicability.

## **Balancing Private Transactions and Public Interests**

While acknowledging that land purchase is a private matter, Section 46 addresses power imbalances in large-scale transactions between corporations and marginalized farmers. It ensures that rehabilitation and resettlement benefits are mandated for affected families, striking a balance between private transactions and public interests. The law acknowledges the private nature of land transactions but introduces regulatory provisions to safeguard the interests of affected individuals and ensure fair compensation and rehabilitation. The discretion given to State Governments allows for flexibility in implementing these regulations.

## **Protection Against Abuse: Share to Original Owner**

### **Background**

During the legislative process of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, concerns were raised about potential abuse of the law. The leader of the Opposition, Ms. Sushma Swaraj, highlighted the possibility of unscrupulous individuals taking advantage of the law's provisions by purchasing land from unsuspecting farmers or landowners in areas slated for acquisition. This scenario could lead to

these individuals gaining enhanced compensation benefits when the land was eventually acquired by the State.

### **Abuse Prevention Clause**

To address this potential abuse, a clause was introduced to ensure that individuals who sold their land after the law's introduction in Parliament (September 5, 2011) and before its passage to parties other than exempted entities would still receive a share of the total compensation if the land was acquired within the next three years. This provision is outlined in sub-clause (6) of Section 46 of the Act.

### **Key Provisions**

- ***Ownership Cut-off Date:*** The clause applies to individuals who owned the land on or after September 5, 2011.
- ***Sale to Other Parties:*** If these individuals subsequently sold their land to parties other than those exempted (specified persons, government entities, etc.), they would still be eligible for compensation sharing.
- ***Compensation Sharing:*** In case the land is acquired within three years from the law's commencement, the original landowners are entitled to a share not less than 40% of the total compensation package.
- ***Area Limitation:*** The eligibility for compensation sharing is subject to the condition that the land purchased by the subsequent owner exceeds the area limit specified by the State for private purchase.

### **Purpose of the Clause**

The clause aims to prevent opportunistic transactions where individuals may exploit the impending land acquisition law to secure a financial advantage. By ensuring that original landowners receive a share of the compensation, the law seeks to protect the interests of those who may have unknowingly sold their land during the legislative process. This provision reflects

a proactive approach to anticipate potential abuses and incorporates safeguards to protect the rights of original landowners, ensuring fair compensation even in cases of prior land transactions before the law's enactment.

## **Withdrawal from Acquisitions**

In cases where land acquisition has been initiated but possession of the land has not been taken, the government retains the option to withdraw from the acquisition process. However, the Collector is mandated to compensate the affected person for any losses incurred as a result.

### **The compensation calculation includes**

- ***Damage Suffered:*** The Collector assesses the compensation due for the damage suffered by the landowner due to the initiated acquisition process.
- ***Other Costs:*** Additionally, the compensation amount covers any other costs incurred by the landowner in relation to the acquisition proceedings initiated under the law.

This provision ensures that individuals affected by the initiation of land acquisition proceedings are adequately compensated for any losses or expenses incurred, even if the acquisition does not proceed to completion.

### **No Income Tax or Other Levies**

During discussions on the law, concerns were raised about imposing additional taxes or levies on individuals whose land is being acquired by the state for public purposes. Recognizing the burden already placed on affected individuals, the law exempts them from income tax or stamp duty on any awards or agreements made under the new law.

### **Key points regarding taxation and levies**

- **Exemption Clause**

No income tax or stamp duty shall be levied on any award or agreement made under the new law, acknowledging the state's compulsory acquisition of land for public purposes.

- **Private Purchase Exception**

This exemption does not apply when land is acquired for private purchase and exceeds the specified threshold set by the state.

- **Fee Exemption**

Individuals covered by the law to receive an award or enter into an agreement under its provisions are not required to pay any fees to receive copies of relevant documents.

This provision aims to alleviate the financial burden on affected individuals during the land acquisition process and ensures that they are not subjected to additional taxation or fees. It aligns with the principle of fair compensation and transparency in land acquisition.

#### **Request for Acquisition by Landowner**

If an individual or family is losing a part of their land, including a house, building, or manufacturing unit, to acquisition but retains the other half, they have the right to request the government to acquire the remaining portion as well. However, they must demonstrate that the initial acquisition has significantly impaired the use of the premises, rendering them redundant for their original purpose. Section 94 of the Act outlines the provisions for such cases:

#### **Partial Acquisition**

The Act cannot be enforced to acquire only a part of any house, manufactory, or other building if the owner desires the acquisition of the entire property.

**Proviso:** If there is a dispute about whether the land proposed for acquisition forms part of a house, manufactory, or building, the Collector must refer the matter to the relevant authority for determination before taking possession of the land.

## **Determination Criteria**

In deciding the reference made under the proviso, the relevant authority considers whether the land proposed for acquisition is reasonably required for the full and unimpaired use of the house, manufactory, or building.

## **Unreasonable Claims**

If, during any claim under the Act, the appropriate Government finds a claim for severing the land to be unreasonable or excessive, it has the authority to order the acquisition of the entire property before the Collector makes the award.

## **No Fresh Declaration**

In cases where the whole property is acquired, no fresh declaration or other proceedings under sections 11 to 19 are necessary. The Collector, without delay, provides a copy of the government's order to the affected individual and proceeds to make the award under Section 23.

## **Expense of Acquisition**

Section 95 of the Act addresses the expenses related to land acquisition:

## **Funding Source**

When the provisions of the Act are invoked for acquiring land at the cost of any fund controlled or managed by a local authority or a Requiring Body, the charges associated with the acquisition shall be covered by that fund or Requiring Body.

## **Role of Local Authority or Requiring Body**

- In any proceeding before a Collector or relevant authority, the local authority or Requiring Body involved can participate and present evidence to determine the compensation amount.

- **Proviso:** However, such local authority or Requiring Body is not entitled to demand a reference to the Authority concerned under Section 64.

This section ensures that the entity that initiates the land acquisition bears the financial responsibility for the associated costs. The local authority or Requiring Body cannot evade payment, and its participation in the proceedings is limited to providing evidence on compensation matters without the right to demand a reference to the Authority concerned.

## **Prevention of Post-Acquisition Misuse of Land**

Section 99 of the Act addresses the prevention of post-acquisition misuse of land:

- No Change in Purpose or Ownership: The section prohibits any change from the originally intended purpose for which the land was acquired. However, if the acquired land becomes unusable for the original purpose due to unforeseen circumstances, the appropriate Government may use the land for any other public purpose.
- **Proviso:** This provision prevents the arbitrary change of purpose or ownership of acquired land, ensuring that it continues to serve the intended public purpose without allowing for unauthorized diversions or reselling for unrelated activities.

## **Return of Unutilized Land**

Section 101 of the Act addresses the return of unutilized land:

### **Condition for Return**

When any land acquired under this Act remains unutilized for a period of five years from the date of taking over possession, the law mandates its return.

### **Recipients of Return**

The unutilized land shall be returned to the original owner or owners, or their legal heirs, as the case may be. Alternatively, the land may be returned to the Land Bank of the appropriate

Government. The term 'Land Bank' is defined as a governmental entity that focuses on converting government-owned vacant, abandoned, unutilized acquired lands, and tax-delinquent properties into productive use. This provision is introduced to prevent the abuse of land acquisition by ensuring that the acquired land is put to the intended public purpose. If the land remains unutilized for five years, it must be returned to the original owners or their legal heirs, or it may be directed to the Land Bank of the appropriate Government. The decision between these options is left to the discretion of the Central (in the case of Union Territories) and State Governments, allowing for flexibility based on sound policy considerations. Ideally, the preference is for the land to be returned to its original owners. However, the final decision is determined by the States, considering land as a state subject.

## **Resale of Acquired Land**

Section 102 of the Act introduces provisions related to the resale of acquired land:

### **Condition for Profit Sharing**

- If the ownership of any land acquired under this Act is transferred to any person for a consideration.
- This transfer must occur without any development having taken place on the land.

### **Profit Sharing Percentage**

- Forty percent of the appreciated land value shall be shared among the persons from whom the lands were acquired or their heirs.
- The sharing is proportionate to the value at which the lands were acquired.

### **Time Limit**

- This profit-sharing provision applies within a period of five years from the date of acquisition.

## **Limitation to the First Sale or Transfer**

- The benefit of profit-sharing shall accrue only on the first sale or transfer that occurs after the conclusion of the acquisition proceedings.

This provision aims to prevent the misuse of land acquisition by ensuring that the original landowners or their heirs receive a share of the profit if the acquired land is later resold without any development. The profit-sharing requirement is limited to the first sale or transfer within five years from the date of acquisition. This measure is designed to curb unjust enrichment by the State through speculative resale of acquired land.

## **Lease Option for Public Purpose**

Section 104 of the Act introduces provisions related to the option of leasing land instead of acquisition:

### **Government's First Choice**

The Act acknowledges that acquisition has become the first choice for governments and their agencies, and it suggests that alternatives with less absolute consequences should be explored.

### **Lease Option**

The appropriate Government shall, wherever possible, have the freedom to exercise the option of taking the land on lease instead of acquiring it for any public purpose referred to in sub-section (1) of Section 2. This section aims to discourage the automatic resort to land acquisition and encourages the consideration of leasing as a viable alternative. The decision to take land on lease instead of acquisition is left to the discretion of the appropriate Government. The interpretation of how this clause is applied is subject to legal interpretation by the courts.

## **Amendment to Schedules**

Schedules accompanying the Act, while easier to amend administratively, are subject to a safeguard against amendments that reduce compensation or provisions related to rehabilitation and resettlement. This prohibition was included in response to concerns raised by leaders of the Communist Party of India. Any proposed amendment that may reduce benefits must be laid in draft before each House of Parliament for a total period of 30 days. If both Houses agree in disapproving the amendment or agree on modifications, the amendment shall not be issued or shall be issued only in the modified form agreed upon by both Houses of Parliament. This mechanism ensures parliamentary oversight and prevents arbitrary reductions in compensation or benefits outlined in the Schedules.

## **States' Authority to Enhance Entitlements**

- The Act explicitly states that nothing within it prevents any state from enacting laws to enhance or add to the entitlements specified in the Act.
- States are empowered to provide higher compensation or formulate rehabilitation and resettlement provisions more beneficial than those outlined in the Act.
- States, however, are not allowed to reduce the entitlements or the quantum of compensation as specified in the Act.

## **Option for Higher Compensation under State Laws**

- If a state law or government policy provides for higher compensation or enhanced rehabilitation and resettlement benefits than those calculated under the Act, affected individuals or their families have the option to opt for the higher benefits offered by the state law or policy.
- This option is also available if a state offers increased rehabilitation and resettlement benefits.

## Rules for Implementation

- The Act allows for the formulation of rules by the government to facilitate the smooth functioning of the Act.
- While rules do not require parliamentary approval in the same manner as laws, every rule made by the Central Government must be laid before each House of Parliament for a total period of 30 days.
- If both Houses agree on any modification to the rule or agree that the rule should not be made, the rule will only have effect in the modified form or will not be made, respectively. Any modification or annulment does not affect the validity of actions taken under the original rule.

## Power to Issue Clarifications

The government holds the authority to issue orders aimed at facilitating the smooth functioning of the Act. This power is distinct from the rule-making authority and is designed to address any difficulties that may arise in the implementation of the law. Originally, this power had a specific time limit. It could only be exercised within two years from the commencement of the Act, expiring on 31 December 2015. However, a subsequent ordinance, effective from 31 December 2014, extended this period from two years to five years.

## Resolution of Difficulties

In instances where difficulties arise in giving effect to the provisions of the Act, the Central Government is empowered to issue orders to address and resolve these difficulties. These orders may include making necessary provisions or providing directions that align with the Act's framework. The power to issue orders to resolve difficulties was initially time-bound, subject to the two-year limit. However, the subsequent ordinance extended this period from two years to five years, allowing for a more extended timeframe.

## **Parliamentary Oversight**

Crucially, any order crafted to alleviate difficulties must undergo parliamentary scrutiny and oversight. It is required to be laid before each House of Parliament as soon as possible, ensuring transparency and accountability in the decision-making process. This parliamentary review allows for the assessment of the order's conformity with the Act's provisions.

## **Non-Applicability of 2013 Act**

The challenge of introducing a new land acquisition law with retrospective operation necessitated careful consideration of its impact on ongoing projects. Many acquisitions involve large tracts of land, often acquired in stages, especially in linear projects like road construction or laying of power lines. Retroactively applying the law to such projects could lead to widespread chaos, with varying compensations for individuals depending on when their land was acquired. Certain essential projects vital for economic and social growth were initially exempted from the new law's operation. These projects, crucial for national development, required special consideration due to their sensitive nature. Notably, the Ancient Monuments and Archaeological Sites and Remains Act, 1958; the Atomic Energy Act, 1962; the Damodar Valley Corporation Act, 1948; and others fell under this exemption.

However, with the introduction of a new ordinance, even these initially exempted laws became subject to the provisions of the 2013 Act concerning compensation, rehabilitation, and resettlement.

## **Exempted Laws and Amendments**

The Fourth Schedule of the Act initially listed enactments exempted from its provisions. These included laws related to defense, railways, electricity, and more. While these enactments were exempted, they were required to be amended within a year to align with the compensation, rehabilitation, and resettlement provisions of the 2013 Act. The Central Government retained the authority to modify the list of exempted enactments through notification. This approach struck a balance between addressing the immediate needs of ongoing projects and ensuring that the

exemptions were time-bound, pushing for amendments to align with the newer and more comprehensive provisions.

## CHAPTER VI

# COMPENSATION UNDER LAND ACQUISITION ACT

### Introduction: Compensation in Land Acquisition

Compensation lies at the core of land acquisition, aiming to alleviate the involuntary nature of the process. Courts recognize the payment of compensation as a vital condition for taking over land. However, determining a fair compensation amount has been a contentious issue, especially with the prevalent practice of undervalued land records. Under the Land Acquisition Act, 1894, compensation was based on market value, theoretically sound but fraught with injustices due to the undervaluation in land records. This undervaluation is a result of infrequent updates to land records, leading to significant discrepancies in listed values and actual market prices.

Despite the opportunity presented by a new land acquisition law, incorporating a chapter on modernizing land records wasn't a viable option. The law operates primarily under the entry 'Acquisition and Requisitioning of Property' in the concurrent list of the Constitution, which pertains to the central government's jurisdiction. Land, being a subject of governance, falls within the legislative domain of states, creating a delicate balance to avoid encroaching on state governments' legislative authority. While the drafters aimed to address the issues with land records, the law couldn't impose terms on the states. Instead, it focuses on devising an approach to compensate for the inherent shortcomings in land records and values, acknowledging the complexities involved in this intricate process.

### Paradigm Shift in Compensation: A Fundamental Departure

A significant departure from the Land Acquisition Act, 1894, is evident in the new law's approach to addressing compensation. This shift reflects a commitment to rectify the flaws deeply ingrained in the existing system, aiming for a higher standard of fairness in financial restitution to affected parties.

## **Origins of the New Approach: Collaborative Discussions**

The genesis of this evolved approach can be traced back to collaborative discussions involving the Minister for Rural Development, officers from the Department of Land Resources, and members of the National Advisory Council. These deliberations underscored the inadequacies of existing values and prompted a reevaluation of what constitutes fair compensation.

## **Embracing Foundational Principles: Defining Market Value**

In redefining compensation, the new law returns to foundational principles, with a particular focus on the market value. This value is determined by the price an ordinary private purchaser might pay, considering historical sale prices, the current rental capitalized at a specified rate, and the prices of similar land in the vicinity. These principles, established over a century ago, provide a robust basis for fair compensation.

## **Legal Precedent: Premchand Burrall vs The Collector of Calcutta**

A landmark legal case, Premchand Burrall vs The Collector of Calcutta, played a pivotal role in shaping the concept of fair compensation. The case emphasized that compensation should reflect the market value of the property, considering its most lucrative and advantageous potential use. The government's acquisition should warrant compensation based on the prices of similar properties in the neighborhood, regardless of current use or the price paid by the owners.

## **Recognizing Discrepancies: Disparity in Land Values**

Consultations in 2011 revealed a significant discrepancy in land values, particularly the average land value being one-sixth of the book value represented by the circle rate. This disparity was more pronounced in rural areas where land records remained stagnant for decades, highlighting the need for a comprehensive reevaluation of compensation practices.

## **Drafting Equitable Compensation: Rectifying Historical Undervaluation**

In response to the historical undervaluation of land, the original draft proposed a compensation model that accounted for these disparities. Compensation was set at three times the market value in urban areas and up to six times in rural areas, reflecting a conscientious effort to rectify the longstanding issue of undervaluation.

## **Criticism of Compensation Model: Viability Concerns**

The proposed compensation model faced criticism from various groups, particularly due to concerns about its fairness and viability. One key contention was that the cumulative entitlements included in the rehabilitation and resettlement package, such as job provisions or monthly payments spanning two decades, constituted a substantial and potentially unsustainable amount.

## **Government Ministries' Opposition: Implications for Development Projects**

Certain ministries within the Government of India, notably the Ministry of Urban Development, voiced opposition to the high compensation package, especially in urban areas. Their argument centered on the potential hindrance to municipal bodies undertaking development projects, such as public parks or low-cost housing. With many of these bodies operating on limited budgets and projects yielding minimal revenue, the fear was that the elevated compensation would force abandonment of crucial development initiatives.

## **Balancing Concerns: Revised Compensation Targets**

In response to these valid concerns, the compensation targets were revisited and adjusted. Recognizing the need to strike a balance, especially in urban areas, the revised compensation was effectively halved, amounting to twice the market value in urban areas and up to four times in rural areas. This adjustment aimed to address the concerns raised while maintaining a fair and equitable compensation framework.

## **Establishing Compensation Formula: Addressing Land Value Discrepancies**

The determination of the final compensation amount, either two or four times the market value, emerged from a comprehensive understanding of the widespread underreporting of land values. This realization gained further validation through consultations with district collectors, drawing on their practical experiences in land acquisition. The aim was to minimize discretion in the compensation process, emphasizing precision and alignment with actual land values.

## **Formula Components: Multiplication and Solarium**

At its core, the compensation formula aims to rectify market value deficiencies. It involves multiplying the given value by a fixed multiplier and subsequently applying a solarium to the resulting value. The collector utilizes diverse criteria, including the market value specified in the Indian Stamp Act, the average sale price for similar land in the nearest village, and the consented compensation for private companies or public-private partnership projects. The highest among these criteria serves as the base amount.

## **Historical Precedent: Determining Market Value from Surrounding Areas**

The practice of considering surrounding areas to determine fair market value predates the legislation by over a century. Historical cases, such as *The Collector of Poonah vs Kushinath Khasgiwala*, emphasized assessing the market value based on rates per square foot of similar building sites in the neighborhood. This principle continues to be endorsed by recent judicial interpretations.

## **Safeguards and Adjustments: Preventing Inflation and Unscrupulous Practices**

To prevent inflationary price spirals, the legislation prohibits considering any compensation paid for land acquired under the new Act as the base for subsequent acquisitions in the same area. Additionally, safeguards empower the collector to discount prices paid for properties that may not accurately reflect the prevailing market value. These provisions aim to curb unscrupulous practices and ensure a fair compensation framework.

## **Compensation in the Form of Shares: Limitations and Cautionary Measures**

When a Requiring Body opts to offer shares as partial compensation for acquired lands, the total shares extended should not exceed 25% of the calculated land value. The law explicitly prohibits any coercion or influence by the Requiring Body on landowners to accept shares. Should a landowner choose shares, their value is deducted from the land value determined under the Act, ensuring a transparent and voluntary process.

## **Comprehensive Considerations in Compensation Calculation**

After establishing the final market value, the Collector is mandated to calculate the total compensation by accounting for all assets connected to the land. This includes:

- Market value as determined under the Act and award amount according to Schedules.
- Damages incurred to standing crops and trees during possession by the Collector.
- Damages due to severance of land or injurious effects on other movable or immovable property.
- Reasonable expenses for changing residence or business due to land acquisition.
- Bona fide damages resulting from profit diminution between publication of final declaration and possession.
- Other considerations in the interest of equity, justice, and the affected families.

## **Professional Expertise in Valuation**

To determine the value of immovable property, assets, trees, plants, and standing crops, the Collector may engage the services of competent engineers or specialists in relevant fields, ensuring an accurate and fair assessment. This approach enhances the objectivity and reliability of compensation calculations in diverse situations.

## **Evolution of Solatium in Land Acquisition**

The concept of Solatium, an additional compensation to acknowledge the compulsory nature of land acquisition, was present in the now-repealed Land Acquisition Act, 1894. Initially set at 30% of the market value through a 1984 amendment, stakeholders, including civil society, government officials, and industry representatives, recognized its inadequacy. Consequently, this percentage was increased to 100%, aligning with a consensus that the previous figure did not adequately address the compulsory nature of land acquisition.

## **Enhanced Compensation and Interest Accrual**

Under the current law, the Solatium amount, equivalent to the market value, accrues interest at a rate of 12% per annum until the actual payment is made. This interest provision aims to safeguard against any erosion in the market value over time, ensuring that affected individuals receive fair compensation. The interest accrual period spans from the date of the publication of the notification of the Social Impact Assessment study (under Section 4(2) of the Act) until either the date of the Collector's award or the date of taking possession of the land, whichever occurs first. This approach guarantees that the affected individuals are compensated equitably and in acknowledgment of the compulsory nature of land acquisition.

## **Multiplier Application for Compensation in Urban Areas**

In urban areas, the compensation calculation involves the use of a multiplier specified in the first Schedule of the law, presently set at 'one.' The process begins with determining the market value, denoted as 'X,' which is then multiplied by the fixed multiplier. Additionally, a 'solatium' is added, equivalent to 100% of the calculated amount. The step-by-step illustration is as follows:

### **Determine Market Value (X)**

Let the market value be denoted as 'X.'

- ***Apply Multiplier (X x 1):*** Multiply the market value 'X' by the multiplier from the First Schedule (currently fixed at 1), resulting in 'X.'

- **Add Solatium ( $X + X$ ):** Include a solatium equal to 100% of the calculated amount, combining it with the principle amount.
- **Final Compensation ( $X + X = 2X$ ):** The ultimate compensation amount is obtained by summing the adjusted market value and solatium, resulting in a final compensation of  $2X$ .

## Multiplier Application for Compensation in Rural Areas

In rural areas, the compensation calculation involves variability based on the multiplier set by the State Government. The process begins with determining the market value, denoted as 'X,' which is then multiplied by the State-fixed multiplier from the First Schedule. Additionally, a 'solatium' is added, equivalent to 100% of the calculated amount. The step-by-step illustration is as follows:

### Determine Market Value (X)

Let the market value be denoted as 'X.'

- **Apply State Multiplier ( $X \times \text{State Multiplier}$ ):** Multiply the market value 'X' by the multiplier fixed by the State Government (assumed to be 2 in this example), resulting in ' $2X$ '.
- **Add Solatium ( $2X + 2X$ ):** Include a solatium equal to 100% of the calculated amount, combining it with the adjusted market value.
- **Final Compensation ( $2X + 2X = 4X$ ):** The ultimate compensation amount is obtained by summing the adjusted market value and solatium, resulting in a final compensation of  $4X$ . Therefore, the amount comes out to roughly four times the original market value.

(Using the above calculation, if the State fixes the multiplier at 1.5, then the final amount will be three times the market value.)

## Criticism and Response of the Theory

### Uniform Multiplier Critique

Critics argued that applying a uniform multiplier nationwide penalizes states with efficient land record maintenance. In states where land values closely align with market rates, providing compensation up to four times in rural areas could incentivize keeping circle rates low. To address this, a sliding scale was introduced, linking the multiplier (ranging from 1 to 2) to the radial distance from the urban center. While states have the flexibility to set multipliers, this approach received mixed reactions. Farmers' groups expressed skepticism, questioning the assumed generosity of state authorities.

### Opportunity for State Demonstration

The clause allowing states to determine multipliers provides an opportunity for states to showcase their commitment to residents. However, farmers' groups remain cautious, questioning whether states will genuinely act in the best interests of their residents.

### Considerations for Market Value

Determining market value also involves assessing the "building potential" of the area, a complex standard explained by the Supreme Court. Factors include the area's importance, suitability for various types of buildings, infrastructure availability, absence of legal impediments, proximity to existing developments, and the demand for building purposes. This concept prevents evaluating land based solely on past agricultural value, which is significantly lower than its commercial potential.

### Who Would Be Compensated?

When initially drafted, the law stipulated compensation solely for landowners, while those dependent on the land for livelihood received rehabilitation and resettlement benefits. After consultations, particularly with the Communist Party of India's suggestion, it was decided that all

individuals belonging to "affected families" should receive compensation, in addition to rehabilitation and resettlement benefits. This includes:

- *Families owning acquired land or immovable property*
- *Families without land ownership but whose livelihood is affected, including agricultural laborers, tenants, share-croppers, artisans, or those working in the area for three years prior to acquisition*
- *Members of Scheduled Tribes and other Traditional forest dwellers losing forest rights recognized under the Forest Rights Act, 2006*
- *Families dependent on forests or water bodies for livelihood, including gatherers, hunters, fisherfolk, and boatmen*
- *Individuals assigned land by the State or Central Government under any scheme, now under acquisition*
- *Urban area residents or those whose primary livelihood source is affected by land acquisition*

While landowners receive full compensation, others' compensation is proportionate to their claims and dependence on the land. The government has the authority to determine this proportion. As a permanent measure, the law mandates the Collector to update land records within two months of issuing the Preliminary Notification. This aims to accurately identify beneficiaries and ensure land values align with the current market price.

### Rehabilitation and Resettlement

For the first time in Indian legislative history, a law has intricately linked land acquisition with the imperative to conduct rehabilitation and resettlement. The provisions related to rehabilitation and resettlement are not only mandatory but also extensive. This section delves into the thought process behind identifying non-negotiable benefits and the essential infrastructural amenities in cases of displacement.

## **The Importance of 'Rehabilitation and Resettlement'**

The concept of 'Rehabilitation and Resettlement' has been a subject of fervent debate in India for nearly three decades. Movements advocating for effective rehabilitation and resettlement gained traction following coercive land acquisitions. While there's no comprehensive record of post-independence displaced individuals, credible studies estimate that close to 60 million people have been displaced, with only about a third undergoing resettlement and rehabilitation. Recognizing this, the Government of India formulated the National Rehabilitation and Resettlement Policy in 2003, marking the first acknowledgment of the need for rehabilitation and resettlement for families affected by land acquisition.

Before this policy, states had their own regulations, and public sector enterprises like Coal India and the National Thermal Power Corporation had their guidelines on rehabilitation and resettlement. The 2003 policy laid the groundwork for ideas like Social Impact Assessment, which were later incorporated into the legislative procedure. Subsequently, the National Rehabilitation and Resettlement Policy of 2007 expanded on these ideas and linked them to proper implementation.

However, policies are inherently soft law, requiring parliamentary approval but often treated as guidelines subject to discretion. In 2012, the Supreme Court elevated the National Forest Policy of 1988 to implementable status, illustrating a rare instance where policy transcended soft law boundaries. Amid rising public sentiment, a draft law on rehabilitation and resettlement was prepared and passed by the Lok Sabha in 2009 but lapsed with fresh elections. The law's initial principles appeared exclusionary, setting thresholds for the number of displaced families before crucial processes like Social Impact Assessment were triggered. Recognizing the inseparable link between land acquisition and rehabilitation, the law drew heavily from the 2007 policy, adapting and tweaking features to reflect a consensus-driven process. The Narmada Valley projects'

displacement, affecting tens of thousands of families across states, highlighted the peril of treating rehabilitation and resettlement as secondary concerns.

## **Elements of Rehabilitation and Resettlement**

The new law establishes clear and uniform entitlements for all affected families, irrespective of whether they are landowners or individuals whose livelihoods are primarily dependent on the acquired land. These entitlements are in addition to the compensation for the land itself.

### **1. House**

- In rural areas, if a family loses a house due to acquisition, a constructed house is provided based on the specifications of the Indira Awas Yojana scheme
- In urban areas, a constructed house of not less than 50 square meters in plinth area is provided
- Families not owning the acquired land but proving three years of continuous residence before acquisition can also receive a house or a financial package of one lakh fifty thousand rupees.

### **2. Land**

- For irrigation projects, each affected family losing agricultural land is allotted a minimum of one acre in the command area of the project.
- If land is acquired from Scheduled Castes or Scheduled Tribes, the land equivalent to what was acquired or two and a half acres (whichever is lower) will be given.
- Families affected by irrigation projects can choose either compensation or land but not both.

### **3. Offer for Developed Land**

- In urbanization projects, 20% of the developed land is reserved and offered to land-owning affected families at a price equal to the cost of acquisition and development. Compensation is adjusted if families opt for this developed land.

### **4. Choice of Annuity or Government Employment**

- Affected individuals can choose between employment, a one-time payment of five lakhs rupees per family, or annuity payments of not less than two thousand rupees per month for 20 years.

### **5. Miscellaneous Financial Payments**

- Monthly subsistence grant, transportation cost, financial assistance for cattle shed or petty shop, grants for artisans, small traders, or self-employed persons, and one-time resettlement allowance.

### **6. Relocation and Miscellaneous**

- Affected families in Scheduled Areas shall be relocated in a similar ecological zone to preserve cultural ties.
- Fishing rights provided in reservoirs created by irrigation or hydel projects.

### **7. Infrastructural Amenities**

- The law mandates the provision of various infrastructural facilities at the resettlement site, including roads, sanitation, drinking water, grazing land, Fair Price Shops, and more.

The question of whether the rehabilitation and resettlement entitlements outlined in the law are excessive is subjective and depends on various factors. Here are some points to consider:

## **1. Social Responsibility**

From a humanitarian perspective, ensuring that families displaced by land acquisition are adequately rehabilitated and resettled is a moral imperative. Displacement can have significant social and economic repercussions for affected families, and providing comprehensive support is a way to mitigate these impacts.

## **2. Legal Precedent**

The experiences from past large-scale projects, such as the Narmada Dam, where displaced families were not properly resettled despite court orders, highlight the need for statutory requirements to ensure compliance with rehabilitation and resettlement obligations. Failing to do so would not only be ethically questionable but could also lead to legal challenges and public outcry.

## **3. Business Considerations**

While some argue that the extensive rehabilitation and resettlement entitlements could hinder land acquisition projects, it's essential to balance economic interests with social welfare. Encouraging land acquisition as a last resort underscores the importance of considering alternative options and minimizing adverse impacts on affected communities.

## **4. Implementation Challenges**

While the intentions behind the law may be noble, implementing such comprehensive rehabilitation and resettlement measures can pose logistical and financial challenges. It requires careful planning, coordination, and sufficient resources to ensure that all affected families receive their entitlements in a timely manner.

In summary, while the rehabilitation and resettlement provisions may seem extensive, they reflect a recognition of the social and human costs associated with land acquisition. By

prioritizing the well-being of affected communities, the law aims to strike a balance between development objectives and social responsibility.

### **Introduction to Section 24: The Retrospective Clause**

Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013, commonly known as the "Retrospective Clause," is a pivotal provision that extends the application of the law to cases initiated under the now-repealed Land Acquisition Act, 1894. This retrospective aspect introduces complexities and has been a subject of intense debate due to its potential to alter pre-existing legal situations.

### **Challenges of Retrospective Clauses**

Retrospective clauses are inherently intricate, often becoming sources of litigation as they attempt to modify past situations based on legal principles that did not exist at the time of occurrence. Despite their challenges, there are instances where revisiting past legal decisions becomes essential to rectify egregious breaches of natural justice.

### **Legislative Intent Behind Section 24**

Examining the legislative intent behind Section 24 provides insights into the driving force that led to the inclusion of the retrospective clause. This understanding is crucial in light of the injustices that occurred under the outdated Land Acquisition Act, 1894. The impact of land acquisition, spanning years or even generations, necessitated a comprehensive approach to justice.

### **Stakeholder Scrutiny and Review Process**

The drafting and formulation of the retrospective clause underwent extensive scrutiny and review by stakeholders, including representatives in meetings of the Group of Ministers, All-Party Meetings, and farmers' rights organizations. This thorough review process aimed to address concerns and gather diverse perspectives on the clause's implications.

## **Consensus and Adoption of the Retrospective Clause**

The decision to adopt and retain the retrospective clause in the final draft of the law was not made lightly. The clause garnered support and consensus among stakeholders and was deemed necessary to rectify historical injustices related to land acquisition.

## **Legal and Procedural Challenges**

The implementation of the retrospective clause poses legal and procedural challenges, requiring careful interpretation and application. Courts play a crucial role in addressing these challenges, ensuring that justice is served while maintaining legal coherence.

## **Debates and Judicial Interventions**

Debates surrounding the retrospective clause continue, with ongoing discussions on its implications and effectiveness. Judicial interventions have played a significant role in shaping the understanding and application of Section 24 in various land acquisition cases.

## **Ensuring Justice for Historical Injustices**

The primary objective of the retrospective clause is to address historical injustices stemming from land acquisition practices under the old law. It seeks to provide justice to individuals and communities adversely affected by previous land acquisition processes.

## **Ongoing Discussions on Section 24**

Ongoing discussions revolve around the implications and outcomes of Section 24 in addressing historical land acquisition cases. Stakeholders, legal experts, and policymakers continue to engage in dialogue to refine and clarify the application of the retrospective clause in the context of evolving legal landscapes.

## **Background of Widespread Unrest: Yamuna Expressway Project**

Months prior to the initiation of a new land acquisition law, Western Uttar Pradesh witnessed widespread rioting and chaos linked directly to contentious land acquisition proceedings. The State Government had acquired land for the construction of the 'Yamuna Expressway,' eventually leading to protests by farmers. The contentious issue arose from the acquisition and subsequent sale of land to private entities at significantly higher prices than what was compensated to the affected farmers. This escalation resulted in violent protests, loss of lives, and the imposition of a curfew.

## **Legal Battles and Limited Resolution: Supreme Court Intervention**

In response to the turmoil, cases were filed before the Supreme Court of India and the State High Court at Allahabad. However, these legal avenues did not yield substantial results, and the matter remained pending before the courts. Meanwhile, despite ongoing legal challenges, the Yamuna Expressway project was completed, rendering some aspects of the legal proceedings ineffective.

## **Uttar Pradesh Government's Land Acquisition Policy**

The Uttar Pradesh Government introduced a new land acquisition policy, emphasizing consensual acquisition, enhanced compensation, and long-term annuity payments. However, this policy was prospective in nature and lacked the legal backing of a statute, falling into the category of soft law. The limitations of this policy became apparent in addressing the historical injustices faced by victims of previous land acquisition practices.

## **Catalyst for Drafting a New Law**

The incidents related to the Yamuna Expressway project underscored the glaring flaws in the existing land acquisition system. The unrest and injustices exposed the urgent need for a comprehensive legal framework to rectify historical wrongs. This turbulent episode acted as a catalyst for initiating the drafting of a new land acquisition law.

## **Addressing Historical Injustices: Imperative for the New Law**

The experiences with the Yamuna Expressway project highlighted the necessity for the new law to address historical injustices perpetuated under the outdated Land Acquisition Act, 1894. The imperative was to create a legal framework that not only prevented future atrocities but also rectified past wrongs and ensured justice for those adversely affected by land acquisition practices.

## **Conditions under Section 24**

### **Condition I: Award Passed Under the Land Acquisition Act, 1894**

The first condition of Section 24 stipulates that if an award has been passed under the Land Acquisition Act, 1894, the proceedings will fall outside the scope of the new law. In such cases, the land acquisition process will proceed in accordance with the provisions outlined in the outdated Land Acquisition Act, 1894.

### **Condition II: Initiation Under Land Acquisition Act, 1894 (Section 4 Notification Issued)**

Under the second condition, if the acquisition process has been initiated under the Land Acquisition Act, 1894 (signified by the issuance of a preliminary notification under Section 4 of that Act), and the award under Section 11 has not been passed, the affected party becomes entitled to the enhanced compensation provisions specified in the new law.

### **Condition III: Lapsed Acquisition with Award Passed Five or More Years Ago**

Condition III addresses situations where the award under Section 11 of the Land Acquisition Act, 1894, was passed five or more years ago, but either the compensation has not been accepted or physical possession of the land has not been taken by the acquiring authority. In such cases, the acquisition is considered lapsed, and if necessary, a fresh acquisition will be conducted under the new Act.

#### **Condition IV: Award Passed, Compensation Not Accepted for Majority of Land Holdings**

The fourth condition pertains to scenarios where an award has been made under Section 11 of the Land Acquisition Act, 1894, and compensation for the majority of land holdings has not been accepted. In such cases, all beneficiaries or individuals likely to be affected by the acquisition, as specified in the Section 4 notification, are entitled to compensation as per the provisions outlined in the new law.

#### **The Five-Year Qualifying Period: Rationale and Impact**

The choice of a five-year period as the threshold for considering the return of land under Section 24 is rooted in the practical timeline required for completing land acquisition proceedings. This duration allows the acquiring authority to fulfill legal requirements, obtain permits, and clearances necessary for the public purpose. The imposition of a time limit ensures that acquired land serves its intended public purpose, preventing prolonged vacancies and non-utilization.

#### **Condition I: Conclusion of Proceedings with Section 11 Award**

Condition I emphasizes the consensus that the logical conclusion of land acquisition proceedings is the issuance of a final award under Section 11 of the Land Acquisition Act, 1894. Reopening concluded awards would lead to extensive litigation, causing inconvenience to government bodies and litigants alike.

#### **Condition II: New Law Application Before Award under 1894 Act**

Under Condition II, if no award has been made but the acquisition has been initiated, the affected party is entitled to compensation at new rates under the new law. The original provision also included rehabilitation and resettlement benefits, but amendments were made to address concerns raised by state authorities.

### **Condition III: Lapsed Proceedings After Five Years**

Condition III stipulates that if an award was made five or more years before the new Act's commencement, and compensation acceptance or physical possession is pending, the acquisition proceedings lapse, and the new law applies.

### **Physical Possession Criterion: Deliberate Design**

The deliberate use of "physical" before "possession" in Condition III signifies a deliberate choice. Physical possession serves as a verifiable standard, ensuring tangible protest or the acquisition rendered moot, distinguishing it from deemed possession created by the acquiring authority.

### **Condition IV: Compensation for Majority Non-Acceptance**

Condition IV ensures that if an award has been passed, and a majority of landowners haven't accepted compensation, all parties, including those who accepted, receive compensation per the new law. This differentiation aligns with the doctrine of reasonable classification to prevent disparate rates for affected families in the same project. Rehabilitation and resettlement entitlements do not apply in such cases.

## **CHAPTER VII**

## **CONCLUSION AND SUGGESTIONS**

## Introduction

The realm of land laws and regulations is inherently contentious, marked by passionate debates and divergent opinions on the role and extent of state intervention. With India's substantial population confined to limited land resources, the subject has been a focal point for significant political movements since the nation's independence. The dichotomy between those advocating for minimal state interference in land transactions and those proposing extensive regulation to ensure equitable land distribution has fueled ongoing disputes. The scarcity of land emerges as a formidable challenge for policymakers, tasked with formulating legislation to address India's complex land-related issues. Despite the pressing need for solutions, the constitutional classification designates "Land" as a state subject, limiting the Union's authority to enforce directives on the matter. This quasi-federal structure vests legislative power solely in the hands of individual states, necessitating a collaborative approach to navigate the intricate landscape of land regulation.

However, recent legislative developments have introduced amendments to the 2013 Act, either through ordinances or bills, signaling a dynamic shift in the regulatory landscape. Land acquisition, a process compelling private landowners to relinquish their property involuntarily, involves overriding property rights for perceived public benefit. In India, land acquisition falls within the purview of both central and state laws, with the "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013" replacing the antiquated "Land Acquisition Act, 1894." Numerous states have also enacted laws to govern land acquisition, adding complexity to the regulatory framework. Diverging from its predecessor, the 2013 Act introduced pivotal changes, narrowing the definition of 'public purpose,' requiring landowner consent for public-private partnerships or private company projects. Compensation rates were revised to two to four times prevailing market rates, and minimum norms for rehabilitation and resettlement were established. The legislation mandated a Social Impact Assessment (SIA) to evaluate whether the potential benefits of a project outweighed its social costs. However, the landscape underwent further transformation with the promulgation of an

ordinance in December 2014, subsequently modified and re promulgated in April and May 2015. The introduction of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015, in Lok Sabha marked a significant development, referred to a Joint Parliamentary Committee for detailed scrutiny.

### **Critical Appraisal of the Present Land Acquisition Laws**

The 2013 Land Acquisition Act introduces a framework that emphasizes the necessity of a "public purpose" for land acquisition, meticulously defined within the legislation. A pivotal feature under this Act is the requirement for a Social Impact Assessment (SIA) for each project, assessing whether the anticipated benefits outweigh the social costs. When acquiring multi-cropped agricultural land, state governments must adhere to specified limits to safeguard agricultural interests. One of the noteworthy provisions is the mandatory consent for land acquisition in certain scenarios. For public-private projects (PPPs), a consent threshold of 70% is mandated, while private companies require the consent of 80% of landowners. This provision underscores the significance of community participation and agreement, aligning with principles of democratic decision-making in land-related matters.

However, the Act introduces a degree of flexibility through government discretion. The legislation allows for exemptions in specific categories of projects from the stringent requirements such as SIA, restrictions on acquiring multi-cropped land, and the need for consent in PPPs and private projects. The five exempted categories encompass defense, rural infrastructure, affordable housing, industrial corridors, and infrastructure projects with government land ownership. While these exemptions provide leeway for crucial projects, they simultaneously raise concerns about potential misuse or subjective application. The inclusion of categories like "industrial corridors" and "infrastructure" under government ownership may encompass a broad spectrum of projects, leaving room for interpretation and potential exploitation.

Moreover, the Act reflects a nuanced approach by acknowledging the distinct characteristics of agricultural land and imposing restrictions to prevent indiscriminate acquisition. By incorporating limitations on the total area of multi-cropped agricultural land that can be acquired, the legislation attempts to strike a balance between development needs and safeguarding agricultural productivity. In essence, the critical appraisal of the present land acquisition laws reveals a delicate equilibrium between promoting public welfare and protecting individual rights. The inclusion of consent requirements and social impact assessments underscores a democratic and participatory approach, but the exemptions necessitate careful scrutiny to prevent unintended consequences and ensure equitable development.

### **Lack of Clarity in Defining Exempted Projects**

The Bill introduces exemptions for certain categories of projects from provisions of the 2013 Act, namely defense, rural infrastructure, affordable housing, industrial corridors, and infrastructure (including Public-Private Partnerships or PPPs where the government owns the land). However, the lack of explicit definitions for terms such as rural infrastructure, affordable housing, poor people, and industrial corridors in both the 2013 Act and the Bill raises concerns about potential ambiguities and varied interpretations.

### **Ambiguity in Terminology**

The undefined terms in the legislation, such as rural infrastructure and affordable housing, create ambiguity and room for interpretation. Without clear definitions, stakeholders and implementing authorities may have differing understandings of the scope and applicability of these exemptions, leading to potential challenges in the implementation process.

### **Interpretational Challenges**

The term "including" in the category of "infrastructure projects including projects under PPPs where ownership of land continues to vest with the government" introduces interpretational challenges. The ambiguity lies in determining whether the exemption applies to all infrastructure

projects, with the term "including" serving as clarification, or if it exclusively pertains to PPP projects where the government retains land ownership.

## **Consent Provision Concerns**

### **Background on Consent Requirement**

Under the 2013 Act, obtaining the consent of landowners is a critical aspect, with different thresholds for PPP projects (70%) and private entities (80%). Government projects are exempted from the consent requirement.

### **Exemption of Consent in the Bill**

The Bill introduces exemptions for five specific project types from the mandatory consent of landowners. This raises questions about the implications of bypassing the consent requirement for these projects and the potential impact on the rights and interests of affected landowners.

### **Balancing Development Needs and Consent Rights**

While exemptions may expedite project implementation, it is essential to carefully balance the facilitation of development with the protection of landowners' consent rights. Striking this balance will be crucial in ensuring a fair and equitable approach to land acquisition, particularly in projects exempted from the consent provision.

## **Challenges with Requiring Consent for Land Acquisition**

### **Fundamental Distinction between Acquisition and Purchase**

The fundamental issue lies in distinguishing between land acquisition and land purchase. Unlike a transaction between a willing buyer and seller, where mutual agreement prevails, land acquisition involves the unwilling relinquishment of land by its owner. In such cases, expecting consent may be impractical and may not align with the essence of compulsory acquisition.

## **Imp practicality of Consent in Unwilling Transactions**

In scenarios where landowners are unwilling to part with their land, the practicality of obtaining their consent becomes questionable. The nature of acquisition, driven by necessity rather than mutual agreement, challenges the feasibility of securing consent from reluctant landowners.

## **Justification for Consent in Specific Scenarios**

While obtaining consent may seem impractical in certain situations, there is a potential justification for requiring consent when a majority of landowners are willing participants, and the project is hindered by a few dissenting landowners. Balancing the need for infrastructure development with the rights of minority landowners presents a complex challenge.

## **Alternative Mechanism in Land Acquisition (Amendment) Bill, 2007**

The Land Acquisition (Amendment) Bill, 2007, which ultimately lapsed, proposed an alternative mechanism. According to this proposal, if 70% of the required land was acquired through negotiations, the remaining portion could be compulsorily acquired. The compensation for the acquired land would be tied to market prices, determined through negotiations with willing landowners. This approach sought to align compensation with the prevailing market rates, providing a potential solution to the challenges associated with requiring consent in all land acquisition cases.

## **Rationale for Exemption of Consent Requirement in Certain Projects**

### **Uncertainty in Distinction Between Exempted and Non-Exempted Projects**

The Bill introduces exemptions from the consent requirement for specific projects, raising questions about the rationale behind this distinction. The criteria determining which projects necessitate landowner consent and which do not lack clarity, contributing to ambiguity in the regulatory framework.

## **Lack of Uniformity Across Land Acquisition Acts**

The absence of uniformity in the requirement for consent across various Acts governing land acquisition adds complexity to the regulatory landscape. The 2013 Act exempted 13 Acts, including the National Highways Act, 1956, Railways Act, 1989, Coal Bearing Areas Acquisition and Development Act, 1957, and Atomic Energy Act, 1962. These Acts, exempted from the provisions of the 2013 Act, do not mandate landowner consent for acquisition.

## **Inconsistencies in Regulatory Approach**

The disparate regulatory approaches across Acts create inconsistencies in the treatment of land acquisition. Depending on the governing Act, the need for landowner consent may vary, leading to potential disparities in the protection of landowner rights and interests.

## **Transition Challenges in Compliance with 2013 Act**

The 2013 Act imposed a requirement for the compensation and rehabilitation and resettlement provisions of the exempted Acts to align with its standards by January 1, 2015. This transitional phase introduces challenges in achieving uniformity and may result in variations in the treatment of land acquisition depending on the governing Act.

## **Impact on Consent Requirement Based on Governing Act**

The Bill's exemption of certain projects raises a critical concern: the acquisition of land for a specific project may necessitate landowner consent if conducted under the 2013 Act but may not require consent if conducted under one of the 13 exempt Acts. This disparity adds layers of complexity and inconsistency to the land acquisition process, impacting the rights and expectations of landowners involved in diverse projects.

## **Consent Disparity Based on Project Ownership in the 2013 Act**

### **Unclear Rationale for Varying Consent Levels Based on Project Ownership**

The 2013 Act introduces ambiguity by stipulating different levels of consent based on the ownership of the project—government, private, or public-private. From the landowner's perspective, the implementing entity's ownership is irrelevant in determining compensation and benefits. The lack of clarity on the uniformity of the consent requirement across projects raises questions about the rationale behind such distinctions.

### **Relevance of Ownership to Landowners**

Landowners, irrespective of the project owner, receive the same compensation and benefits. Therefore, the Act's lack of clarity on why consent requirements vary based on project ownership creates confusion and may impact the perceived fairness of the land acquisition process.

### **Uniformity of Consent Requirement Across Projects**

The Act fails to provide a clear justification for varying consent requirements, leaving uncertainty regarding the need for uniformity across different projects. A comprehensive examination is needed to understand why consent thresholds differ based on project ownership and to assess the implications for landowners involved in diverse projects.

### **Threshold for Consent in the 2013 Act**

The 2013 Act establishes two distinct thresholds for consent—70% for PPPs and 80% for private entities. However, it lacks a rationale for these specific thresholds, and the 2015 Bill does not offer clarity on the matter. The absence of a defined and reasonable threshold for consent raises concerns about the fairness and transparency of the land acquisition process.

### **Diverse Perspectives on Consent Threshold**

During the examination of the 2011 Bill, which later became the 2013 Act, diverse perspectives emerged on the appropriate threshold for consent. The Ministry of Power suggested 50%, the

government of Maharashtra proposed 51%, and another unidentified witness recommended 100%. The lack of consensus on a reasonable threshold underscores the need for clarity in determining an equitable requirement for landowner consent.

### **Comparison of Public Purpose Projects and Exempted Projects**

The Act outlines criteria for land acquisition for projects with a "public purpose" and introduces social impact assessments (SIA) for such projects. In contrast, the Bill proposes exemptions for specific categories of projects, including defense, rural infrastructure, affordable housing, industrial corridors, and infrastructure with government ownership. A comprehensive comparison between projects requiring SIA and those exempted from specific conditions is essential to evaluate the potential impact on land acquisition processes.

### **Reduced Timeframe for Land Acquisition Process**

#### **Need for Amendments to the 2013 Act**

The explanatory note accompanying the Bill highlights the necessity for changes in the 2013 Act, citing challenges faced by several states and ministries in its implementation. The focus is on expediting national security and development projects, necessitating the resolution of procedural difficulties in acquiring land for such ventures.

#### **Timeframe Modification in the Bill**

The proposed changes in the Bill aim to address implementation challenges by reducing the minimum time required to complete the land acquisition process. While the 2013 Act stipulates a 50-month timeframe, the Bill proposes a streamlined process with a reduced timeline of 42 months. This adjustment reflects the government's commitment to enhancing efficiency in executing critical projects.

## **Accountability of Government Employees**

### **Modification in Accountability Standards**

Under the 2013 Act, accountability for offences committed by a government department rested on the head of the department, mirroring corporate accountability principles. The Bill, however, removes this provision, altering the dynamics of accountability for departmental offences. The head of the department will no longer be automatically deemed guilty for an offence committed by the department.

### **Requirement for Prior Sanction in Employee Offences**

The Bill introduces a significant change by stipulating that if a government employee commits an offence under the 2013 Act, obtaining prior sanction from the government becomes a prerequisite before prosecuting the employee. This modification raises the threshold for holding government employees accountable for offences, creating a more rigorous process for legal action against them.

### **Comparison with the Lokpal and Lokayuktas Act, 2013**

The Bill's requirement for prior sanction contrasts with the Lokpal and Lokayuktas Act, 2013, which empowers the Lokpal, not the government, to grant sanction for prosecuting a government employee. This divergence emphasizes the nuanced approach taken by different legislations in handling accountability and prosecution procedures for government officials.

### **Impact on Accountability Standards**

Both changes implemented by the Bill collectively elevate the threshold for holding government employees accountable for offences committed under the Act. This alteration is noteworthy, especially when compared to the provisions outlined in the Lokpal and Lokayuktas Act, 2013, indicating variations in legal frameworks governing government employee accountability.

## **Retrospective Application of the Act**

### **Provisions of the 2013 Act**

The 2013 Act outlines that its provisions are applicable to any acquisition initiated under the Land Acquisition Act, 1894, under two specified conditions. These conditions include the existence of an award made under Section 11 of the 1894 Act, five years or more before the commencement of the 2013 Act, and the non-taking of physical possession or non-payment of compensation.

### **Proviso Introduction in the Bill**

The Bill introduces a crucial proviso to the retrospective applicability clause. According to this proviso, the computation of the five-year period should exclude any duration during which a court has granted a stay or when possession has been taken but compensation has been deposited in a court or a designated account.

### **Supreme Court Judgment and Substantive Rights**

In a notable Supreme Court judgment from January 2015, the Court emphasized that the substantive rights of a litigant are determined by the law in force on the date of the suit, not the law in force on the date of the judgment. The Court asserted that any changes made in a law are presumed to be prospective unless explicitly stated for retrospective operation.

### **Limitation on Retrospective Application**

The proviso incorporated by the Bill does not explicitly declare its retrospective application. Consequently, the provisions of the Ordinance, which mirrors the Bill's provisions, are not applicable to suits instituted prior to the commencement of the first Ordinance on January 1, 2015.

## Implications on Legal Proceedings

This nuanced stance on retrospective application places a limitation on the reach of the Bill's provisions, particularly in legal proceedings initiated before the commencement of the first Ordinance. The legislative intent, as inferred from the absence of an express provision for retrospective operation, reinforces a prospective orientation of the law.

## Private Land Purchase: Conditional Rehabilitation and Resettlement

### Mandatory Application in Private Land Purchase

In instances of private land transactions where one consenting party acquires land from another, the rehabilitation and resettlement provisions are extended. However, it's crucial to note that, unlike other scenarios, the application of rehabilitation and resettlement measures is conditional in this context.

### State-Defined Limits for Private Purchase

States are entrusted with the responsibility of establishing specific limits governing private land acquisitions. These limits serve as the threshold beyond which the rehabilitation and resettlement obligations become enforceable upon the purchaser.

### Conditional Nature of Rehabilitation and Resettlement

Once the stipulated limits for private land acquisition are surpassed, the buyer assumes the responsibility of ensuring rehabilitation and resettlement for all affected parties involved in the purchase. This conditionality introduces a tailored approach to address the unique circumstances of each private transaction.

### Origins of Prescribed Limits in Legislative Drafting

The initial legislative draft presented to Parliament proposed fixed limits for private land purchases, suggesting 50 acres in urban areas and 100 acres in rural areas. However, the deliberations within parliamentary sessions, coupled with in-depth discussions led by the Standing Committee, prompted a significant shift in approach.

## **Adaptive Approach: Discretion of State Governments**

Recognizing the complexity and diversity of land transactions, especially in varied urban and rural landscapes, it was collectively determined that the imposition of fixed limits might not be universally applicable. Consequently, the final decision rested on the discretion of State Governments, allowing them flexibility to set limits based on regional nuances and considerations.

## **Intense Debate and Standing Committee Deliberations**

The decision to leave the determination of limits to State Governments stemmed from rigorous debates and careful considerations within parliamentary sessions, particularly during the review by the Standing Committee. This adaptive and nuanced approach ensures a more context-sensitive application of rehabilitation and resettlement measures in private land acquisitions.

## **Operational Details in Rules: Ensuring Flexibility**

### **Avoiding Over-Prescription**

To prevent unnecessary rigidity and over-prescription, the legislation deliberately delegates operational details to the Rules. While the Rules prescribe specific operational procedures, the law itself remains independent, designed to function seamlessly without strict reliance on these Rules.

### **Self-Contained Design Philosophy**

The Act embodies a design philosophy focused on self-containment. It was crafted to operate smoothly without conflicts or the need for further detailed prescriptions. This approach aligns with the overarching goal of ensuring the Act's functionality upon enactment.

## **Historic Land Acquisition Law: Authors' Perspective**

The passage of a new land acquisition law by the Indian Parliament marked a historic moment. As authors of the law, the intent was to address key issues such as fair compensation, recognizing that achieving broader objectives required reconciling various challenges.

## **Nuanced Approach to Legal Framework**

Acknowledging the complexity of the issues, a nuanced approach was adopted in framing the legal framework. Amendments to existing laws, including the Indian Registration Act, 1908, were proposed to facilitate computerization of land records, making them accessible at the grassroots level.

## **Land Records Modernization Programme**

Recognizing the need for improvement in the Land Records Modernization Programme, suggestions were made to link land records upgrade to incentives such as faster grants release for infrastructure projects. The effectiveness of this approach and its potential impact on transparency were subjects of consideration.

## **Enactment of Law for 'Conclusive' Land Titles**

Proposals for a law making land titles 'conclusive' rather than 'presumptive' were discussed. The security and clarity of land titles were emphasized, with technology playing a crucial role in ensuring better protection for landowners.

## **Land Acquisition Law: Beyond Economic Growth**

While some view the new land acquisition law as a hurdle to economic growth, the authors argue for a broader perspective. Addressing the root issues of poorly maintained land records and weak land rights is seen as essential, and technology-enabled solutions are advocated for lasting change.

## **Protecting Citizenry: Focus on Legal Protection Legacy**

The new law is positioned as an attempt to protect citizens against unlawful state advances. The authors express hope that the legislation will contribute positively to the legacy of legal protection rather than impede its growth.

## **Addressing Concerns of Food Security**

Recognizing concerns related to food security, the law specifies that irrigated multi-cropped land acquisition should only occur under exceptional circumstances and as a last resort. Strict stipulations are in place, including developing an equivalent area of 'culturable wasteland' for agricultural purposes.

## **Ceilings on Agricultural Land Acquisition**

Stringent restrictions are imposed on acquiring other types of agricultural land, with limits tied to the total net sown area of the district or state. Exceptions exist for linear projects like railways, highways, and power lines.

## **States' Autonomy in Land Acquisition**

Acknowledging states as the best judges of their interests, the law was amended to grant state governments the authority to determine the ceiling for land acquisition, emphasizing the importance of allowing states to manage their land resources autonomously.

## **Suggestions for Amendment and Improvement**

### **Holistic Land Acquisition Policy**

Advocating for a comprehensive land acquisition policy is essential for addressing the complex landscape of India's diverse organizational structures of production. Instead of a simplistic rural-urban division, the policy should take into account the varied economic activities prevalent in different regions. This approach ensures that the land acquisition framework is flexible and

adaptable to the unique needs and aspirations of different communities, fostering a more inclusive and effective process.

### **Protection of Tribal Culture and Heritage**

Incorporating special provisions in the Act to safeguard the culture and heritage of tribal populations is paramount. Tribal communities hold significant importance in the plural democracy of India, and their distinct way of life should be preserved. Recognizing and protecting their cultural identity ensures not only their rights but also contributes to the rich tapestry of India's cultural diversity.

### **Restriction on Fertile Land Acquisition**

Putting restrictions on the acquisition of fertile land for industrial purposes is a critical consideration, particularly in a country where agriculture plays a pivotal role in sustaining the population. Preserving fertile land for agricultural activities helps maintain food security and ensures a sustainable balance between industrial development and the agricultural sector.

### **Urban Land Acquisition Restrictions**

Imposing restrictions on acquiring land within urban areas for institutions, mandis, government offices, and research centers is vital to prevent unbalanced growth. Unchecked urban expansion can lead to the depletion of fertile land, disrupting the delicate equilibrium between rural and urban spaces. Strategic limitations within urban areas can contribute to more sustainable and harmonious urban development.

### **Promotion of Barren Land Development**

Encouraging the acquisition of barren land in remote and backward areas for development is a strategic move to optimize the use of unused land resources. This approach not only facilitates development in neglected regions but also minimizes the impact on fertile land. Barren land

development aligns with the goal of comprehensive and equitable growth, addressing regional disparities.

### **Differentiated Policies for Tribal Areas**

Recognizing the need for distinct land acquisition policies in tribal areas is imperative. Tribal communities have unique systems and requirements that necessitate tailored approaches. Cash-for-land may not be effective in tribal systems, and providing land for cultivation becomes crucial. Differentiated policies ensure that land acquisition respects and aligns with the traditional practices and values of tribal communities.

### **Preservation of Social Impact Assessment**

Upholding the importance of Social Impact Assessment (SIA) as a crucial component of the Act is essential for responsible and informed decision-making. SIA serves as a tool to evaluate the potential social consequences of a project, ensuring that the benefits outweigh the costs. Disregarding or diluting SIA provisions can compromise the overall well-being of affected communities and undermine the integrity of the land acquisition process.

### **Independent Multi-disciplinary Examination**

Conducting Social Impact Assessment at the Pre-notification stage by the appropriate Government, examined by an independent multi-disciplinary expert group, is a procedural refinement that enhances the credibility of the assessment process. Including legal professionals in the examination ensures a comprehensive evaluation of the social implications, aligning with principles of transparency and accountability.

### **Concrete Resettlement Policy**

Establishing concrete Resettlement policies and administrative setups, moving beyond providing cash and focusing on actual resettlement, is crucial for the well-being of displaced communities. Resettlement should encompass not only financial compensation but also the provision of

sustainable livelihoods, housing, and social infrastructure. A well-defined policy ensures that the resettlement process is holistic and addresses the multifaceted needs of affected individuals and communities.

### **Individual-Based Compensation Approach**

Considering compensation for the loss of livelihood on an individual basis rather than a family basis is a nuanced approach. Different economic systems within families necessitate tailored compensation structures. Recognizing individual contributions ensures that compensation is fair and reflective of the diverse roles played by each family member.

### **Recognition of Women in Rehabilitation**

Recognizing and accepting women as the head of the household for receiving benefits in rehabilitation and resettlement acknowledges their crucial role in family survival. Women often bear the primary responsibility for the well-being of the family. Empowering them with recognition in benefit distribution ensures a more equitable and effective rehabilitation process.

### **Integrated Development Programs for Tribal Areas**

Adopting an integrated approach for developmental programs in violence-ridden tribal areas is a strategic move towards fostering sustainable growth. Integrating development programs ensures that tribal communities benefit from holistic initiatives rather than piecemeal interventions. This approach contributes to the overall stability and progress of tribal regions.

### **People-Centric Project Selection**

Involving local communities in selecting projects aligned with their needs and resources is a fundamental principle for sustainable development. People-centric project selection ensures that initiatives resonate with the local environment, promoting ownership and participation. This participatory approach fosters a sense of responsibility and belonging among the affected communities.

## **Incorporate Corporate Social Responsibility (CSR)**

Introducing a provision for Corporate Social Responsibility (CSR) in the Act is crucial for aligning corporate activities with community welfare. Companies acquiring land should contribute positively to the well-being of affected communities. Mandating CSR ensures that businesses consider their social and environmental impact, fostering a more responsible and ethical approach to land acquisition.

## **Differentiation for Agricultural Land**

Introducing a separate category for agricultural land, treated differently in the land acquisition process, recognizes the unique importance of agricultural activities. Agricultural land plays a vital role in sustaining livelihoods and ensuring food security. Tailoring policies for agricultural land acknowledges its distinct value and contribution to the overall well-being of communities.

## **Special Protection for Farmers**

Implementing special protection measures for farmers based on their category or caste, including SC, ST, OBC, or General, acknowledges historical disparities and ensures equitable treatment. Farmers from marginalized communities may face additional challenges, and specific protections can contribute to addressing these disparities, fostering a more inclusive land acquisition process.

## **Uniform Maintenance of Land Records**

Addressing the issue of poorly and non-uniformly maintained land records is crucial for transparency and accountability. Accurate and accessible land records are the foundation of a fair land acquisition process. Implementing uniform maintenance standards ensures that information is reliable and available to all stakeholders, preventing misuse and disputes.

## **Improved Price Reporting**

Enhancing the accuracy and frequency of price reporting, especially in rural areas, is essential for fair compensation. Reliable price reporting reflects current market rates, ensuring that affected individuals receive compensation reflective of the true value of their land. This transparency minimizes disputes and fosters trust in the land acquisition process.

## **Conclusive Land Titles**

Enacting a law making land titles 'conclusive' instead of 'presumptive' is a significant step toward securing property rights. Conclusive land titles provide certainty and legal protection, reducing the risk of legal challenges. This legal clarity is crucial for promoting investment, economic development, and overall stability in land transactions.

## **Clear Provisions for Offences**

Maintaining provisions holding heads of government departments accountable for offences committed ensures due diligence and accountability. Clear provisions for offences contribute to a culture of responsible governance and deter malpractices. These provisions are integral to the effective implementation of rehabilitation and resettlement programs, safeguarding the rights of affected communities.

## **Clear Calculation of Time Period**

Providing clarity on the calculation of the time period regarding the applicability of the Act to acquisitions initiated under the Land Acquisition Act, 1894, is crucial for legal certainty. Clear provisions ensure that the Act's retrospective applicability is applied judiciously, preventing ambiguity and legal disputes.

## **Application of Resettlement Provisions to Private Purchases**

Extending the rehabilitation and resettlement provisions to private land purchases, ensuring conditions apply to private transactions, is a measure to maintain consistency and fairness.

Private purchases should adhere to the same standards of rehabilitation and resettlement as public acquisitions, promoting equity in the treatment of affected individuals.

In conclusion, while the Act represents a positive step towards addressing concerns of affected families, there is a need for nuanced amendments and considerations tailored to the diverse realities of different regions and communities. The Act should strive to empower local communities and promote sustainable development practices.

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