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LAND ACQUISITION LAWS IN INDIA

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Introduction:

Land Acquisition in India refers to the process of land acquisition by the central or state government of India for various infrastructure and economic growth initiatives.¹ Time and again there have been several disputes relating to inadequate compensation received by the landowners. The legislation governing Land acquisition in India is The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which was proposed to be amended by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015. The Land Acquisition Act of 1894 was the precursor to existing legislation and was generally regarded as the anti-farmer colonial law having unfair provisions for the Landowners. Eminent Domain² being the heart and soul of Land acquisitions in India has done more harm than good, with over 21.6 million people being displaced in the name of “development-related displacement”.



¹ Mohd Kalimullah and Md Waquar Siddiqui, *Land Acquisition in India: A Comparative Analysis*, 22 ALJ (2014-15) 242

² The power to take private property for public use by State.

Land Acquisition Act of 1894 and its Drawbacks:

Land acquisition laws in India have evolved for over 200 years, The Bengal Resolution I of 1824 being the first ever legislation dealing with this subject matter. Similar legislations were brought up by different provinces, in 1857 an act was passed for the entirety of India which was amended in 1861 and 1870. The Act of 1894 was brought to fill in the inadequacies in the previous laws. The 1894 Act provided the legal framework for the acquisition of parcels of land, by virtue of the principle of 'eminent domain', i.e., power to acquire land for public purposes.³ The major drawbacks of this Act are:

- i. An inclusive definition of 'public purpose', resulting in unfair acquisition by private entities in the name of public purpose,
- ii. Acquisition of vast stretches of farmland for establishing SEZ in the guise of 'public purpose' was in turn used to satisfy huge corporate entities. The controversies of Nandigram (West Bengal) in 2007⁴, the Maha-Mumbai SEZ struggle⁵ and Anti-SEZ protests in Goa in 2007⁶ provide evidence of misuse of the Land Acquisition Act, 1894.
- iii. One of the major fallouts of the Act of 1894 was the absence of provisions for Rehabilitation and Resettlement because the loss due to displacement could not be measured in monetary terms.
- iv. Another drawback of this act is that it does not provide a fair and just provision to measure adequate compensation.

The 1894 Act was amended in 1984 to include provisions for the rehabilitation and resettlement of affected communities.⁷ The uproar by citizens and pressure from international organisations, opposition parties and CSOs resulted in the draft of the Land Acquisition Resettlement and Rehabilitation Bill, 2011 which was finally adopted on January 1, 2014, as The Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013.

³ Abhijeet Rawat & Udit Narayan, *Land Acquisition Issues in India: Overview, Critique and Pragmatic Suggestions*, 9 NUALS L.J. 56 (2015)

⁴ Forcible acquisition of land for SEZ, where police firing led to 14 deaths and the army had to be deployed.

⁵ 2006, in Raigad (Maharashtra).

⁶ Protesters alleged that the policy would not create the number of jobs it promised.

⁷ Suman, Anushree Nagpal, Neeraj, *Land Acquisition Acts: A Long History of Injustice*, 7 Quest Journals 33, 35 (2019).

The Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013:

This act was passed to provide for the shortcomings of the Act of 1894 and to give fair compensation to the owners of the acquired land. The provisions of this act are applied retrospectively to the instances of land acquisition (up to 5 years before 2015) where no compensation or resettlement was offered to the people. This act poses R&R as an inseparable and mandatory requirement of any acquisition projects taken up for public purposes. To resolve the age-old issue of compensation, the 2013 Act provides that compensation for the owners of the acquired land shall be four times the market value in the case of rural areas and twice in case of urban areas. This is a crucial change, given the inaccurate nature of the market value of land.⁸

This act makes 5 special categories- Defence, Rural infrastructure, Affordable housing, Industrial corridors, and Infrastructure projects to restrict the scope of the Emergency clause. Except for these categories, there is a mandatory requirement of consent from 80% of landowners for private projects and 70% of landowners for PPP projects. In addition to this any project that does not fall under these 5 categories, needs to have a mandatory Social Impact Assessment to determine the families that will be affected by the acquisition. This act ensures food security by stating that fertile land must be acquired only as a last resort and if acquired the government shall provide an equal wasteland for agriculture.

Like any other legislation, this act also had some critiques and drawbacks, leading to *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015* being introduced in Lok Sabha. The Act of 2013 made the acquisition process very tedious and discouraged a lot of development activities, which is a requirement for any developing country. The Consent clause also made the majority of the acquisition projects impractical. Furthermore, the menace of Naxalism in India was also fuelled by the flexible 1894 Act.⁹

The amendment bill of 2015 proposed to exclude the 5 categories¹⁰ from the following provisions:

- i. No special consent of landowners is required

⁸ Abhijeet Rawat & Udit Narayan, *Land Acquisition Issues in India: Overview, Critique and Pragmatic Suggestions*, 9 NUALS L.J. 56 (2015)

⁹ Abhijeet Rawat & Udit Narayan, *Land Acquisition Issues in India: Overview, Critique and Pragmatic Suggestions*, 9 NUALS L.J. 56 (2015)

¹⁰ (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors set up by the government/government undertakings, up to one km on either side of the road/railway of the corridor, and (v) infrastructure including PPP projects where the government owns the land.

- ii. No Social Impact Assessment
- iii. Irrigated multi-cropped land can be acquired

The bill proposed a minor change in the minimum time required to complete the acquisition process from 50 weeks to 42 weeks. The bill deletes the provision of accountability of government employees. This bill was passed in the Lok Sabha but did not attain a majority in the Rajya Sabha and was referred to the Joint Parliamentary Committee.

Conclusion:

Making laws for Land Acquisition was and will never be a cakewalk for any government because of a difficult trade-off between human rights and the country's developmental goals. Therefore, even though the 2015 Amendment bill was aimed at fostering a culture of rapid growth by making the land acquisition process easier, it was criticised to be anti-farmer. The Act of 2013 which is the prevailing legislation for land acquisitions protects the rights of farmers and landowners while the need of the hour for a developing country like India is ease of land acquisition process for development and technological projects.