

RIGHT TO FAIR COMPENSATION FOR LAND ACQUISITION AND OTHER LAND SCHEMES IN INTERNATIONAL SCENARIO

International Land Policy – Acquisition and Development

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ABSTRACT

Land, Sustainable development, Rights and Liabilities of individual in case of acquisition are inter-related with each other. In the day to day development projects we can see that how the need of the land is increasing in the rampant manner. The paper completely explain the Mechanism to be followed for acquiring the land constituting Concerned authorities, consent clause , sectors, Purpose, time- limitation, Land Acquisition, Rehabilitation and Resettlement and many more. However the issues regarding right to fair compensation of stakeholder have been always a matter of debate among us. The word “fair” is nowhere defined in the concerned legislation and thus it is subject to Interpretation as per the circumstances. The recent land acquisition 2015 is very well discussed in the paper. The issue of land scheme is not restricted to the walls of India only as we need to adopt new modes to inculcate a sustainable environment. Moreover, the report issued by the World Bank regarding the land acquisition has also been analyzed in the paper. Apart from India, the paper also establishes the popular land schemes prevailing in USA, China, Kenya and Zimbabwe. In perspective of USA estimation of Value, Allocation and explanation of damages has been widely discussed and the paper also assesses the potential consequences of a land-reform scheme that draws on proposals from Zimbabwe’s government in 1998 and 1999. The open- door policy of 1978 which laid the foundation of Urbanization and Land acquisition in China is carried out according to the provisions of the People’s Republic of China Land Administration Law. At present, the law does not address the issue of just compensation to the affected people, and has caused great discontent. This paper attempts to identify the problems and suggests recommendations for improvement. Although land acquisition has represented a financial boon to governments of all the nations , the socioeconomic inequity, increasing tension between farmers and the local governments, and excessive farmland consumption associated with the practice of public land has somewhat deteriorated the conditions which is against the interest of the society and system.

Keywords- Sustainable development, Acquisition, Fair Compensation, International Land Policy.

INTRODUCTION

Development is inevitable and mandatory in every system and it is a process which constitutes undertaking of innumerable processes like formulating Policies, Clearance from the concerned department, Acquiring land and building mega structures. Since the inception of the human civilization we have seen that farmers and peasants were suppressed and dominated and were coerced to surrender their land at the expense of petty amount. In simplest form land acquisition means taking the land for carrying out the development process and in lieu of land, adequate money is given to the stakeholders. The word adequate and fair is very subjective so a proper legislation has been enacted to determine how the acquisition, rehabilitation, resettlement and compensation will take place. If we will trace the historical aspect of land acquisition in India for Public Purpose it may be taken to commence with Regulation I of 1824 of the Bengal Code. The another enactment which was declared to operate throughout the whole of British India and which repealed all the existing laws was Act VI of 1857 and the object enumerated in the act clearly states – “to make Provisions for the acquisition of land needed for Public Purpose within the territories in the possession and determination of amount of compensation to be made for the same”.¹ While Urbanization, Industrialization, building of Institutions has become inevitable, Promotion of Public purpose has to be balanced with the rights of Individuals, whose land is acquired, thereby often depriving him of his means of livelihood. It became necessary, therefore to re-structure the legislative frame-work for acquisition of land so that it is more adequately informed by this objective of serving the interest of the community in the harmony with the rights of the individuals. The basic feature of land acquisition act, the state can exercise its right

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¹ Land Acquisition Act: A Historical Perspective ,Chapter 2
Available at http://shodhganga.inflibnet.ac.in/bitstream/10603/15136/9/09_chapter%202.pdf

of eminent domain wherein it is the ultimate owner of the land, which it can acquire for Public purpose after paying full Compensation calculated on the basis of Market value. Despite several amendments in the land acquisition act, the two basic purposes remain unchanged: (1) Public Purpose (2) Compensation on market value remains unchanged.² The process of land acquisition under 1894 act constitutes Notification, Filing of Objections, declaration; Notice to Interested parties, Enquiry and Award, Possession and last but not the least Compensation. The land acquisition of 1894 suffered from Major drawbacks like Rights of the land owners, hazy definition of the word “Public Purpose” and there were no specific guidelines to calculate the amount of Compensation.³

Land Acquisition in India

In a 2011 case⁴ the Supreme Court observed that *".....the provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the land owners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected ...To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A of the Constitution. We expect the law making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay*

A SHORT GLANCE INTO THE PREVIOUS ACTS

As the focus of this paper is to highlight about the fair compensation rewarded to the land owners on their land acquisition, the provisions important from this point of view have only been discussed.

² Vikas Nandal “Land Acquisition law in India: A Historical Perspective” International Journal of Innovative Research and Studies” Vol III Issue 5 ,ISSN 2319- 9725 available at : http://www.ijirs.com/vol3_issue-5/33.pdf

³ Saxena , K.B. (2011) , Rehabilitation and Resettlement of displaced persons , Routledge Contemporary South Asia.

⁴ Ramji Veerji Patel and Ors. Vs. Revenue Divisional Officer and Ors., MANU/SC/1288/2011

The 1894 Land Act

- This Act was undemocratic as acquisition was not dependent on land owner's consent at all. Although the 1894 Act provided for a hearing, it was not a negotiation. Moreover, in cases of urgency, the land acquisition authority enjoyed special powers.⁵
- Payment for the land acquired used to be made as per the prevailing circle rates⁶ which were outdated. As a result, the compensation given to landowners used to be substantially less than the actual market value of the land.
- There were absolutely no provisions in the law regarding the resettlement and rehabilitation of those displaced by the acquisition.

The 2013 Act

- According to this new Act , the consent of landowners was made the prerequisite for acquisition unlike the older act . Under the new law, in cases where PPP ⁷projects are involved or acquisition is taking place for private companies, consent of 70% and 80% respectively of the landowners is required. This ensures that no forcible acquisition can take place.
- A Social Impact Assessment study should take place in order to find out whether the proposed acquisition serves public purpose, estimation of affected and likely to be displaced families, the nature and costs of addressing them, and the impact of these costs on the overall costs of the project vis-à-vis the benefits of the project.
- The law provides for payment of compensation up to four times the market value in rural areas and up to twice the market value in urban areas. This ensures fairer payment to the landowners. It also provides for Resettlement and Rehabilitation ("**R&R**") of all project affected persons, including the landless people.

⁵ Under Section 17 of the 1894 Act.

⁶ The official area-wise rates of land determined by the government.

⁷ A public-private partnership (**PPP**) is a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies. These schemes are sometimes referred to as **PPP**, P3 or P³.

SCOPE OF MARKET VALUE?

The market value of the proposed land to be acquired shall be set as the higher of:⁸

- the minimum land value, if any, specified in the Indian Stamp Act, 1899⁹ for the registration of sale deeds in the area, where the land is situated; or
- the average of the sale price for similar type of land being acquired, ascertained from the highest fifty per cent of the sale deeds registered during the preceding three years in the nearest village or nearest vicinity of the land being acquired.; or
- The consented amount in case the land is acquired for private companies or public-private partnership projects.

The market value would be multiplied by a factor of, at least one to two times the market value for land acquired in rural areas and at least one times the market value for land acquired in urban areas. The Act stipulates that the minimum compensation to be a multiple of the total of above ascertained market value, value to assets attached to the property, plus a solatium equal to 100 percent of the market value of the property including value of assets. The land acquisition act 1894 does not mandate Compensation and rehabilitation of the people affected by Acquisition of their land and then Government announce the National Policy on Resettlement and Rehabilitation in 2003. Though several steps were taken to overcome the lacunae in the act but the latest one is the Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 which was passed in Lok Sabha to replace an ordinance. The act allows the Government to exempt five categories of Projects from:

- Social Impact Assessment
- Limits on Acquisition of irrigated multi-cropped land , through a notification, and
- Consent Provisions.

These five Categories are: (i) defence, (ii) Rural Infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) Infrastructure. The LARR Act, 2013 requires that the consent of 80% of land owners is obtained for Private projects and that the consent of 70% of land owners

⁸ "THE LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2011 – FULL TEXT OF BILL" (PDF). Ministry of Rural Development, Government of India.

⁹ "Indian Stamp Act, 1899" (PDF). Government of Punjab, India

be obtained for PPP¹⁰ projects. The topical act exempts the five categories mentioned above from the provision of the act.

LACUANE IN INDIAN LAND ACT

The basic question revolves around that how many Projects will become exempt by this clause? Some of these key terms could be interpreted very broadly: Evoking National security could involve land taken for expanding police outposts, and firing ranges; rural infrastructure could involve coal mines, affordable housing could easily be expanded to mean housing for the middle class, following the trend in cities of 'investments' in second (more affordable) homes in the distant suburbs; and infrastructure projects can include highways and expressways that may well run through farm land. Moreover UN Basic Principles and Guidelines on Development-based Evictions and Displacement, and principles related to large-scale land acquisition mandate comprehensive impact assessments to be undertaken in advance. The amendment in the Bill to prohibit the acquisition of multi-cropped land is a dangerous step, and would result. in dependence on food imports and economic instability which will endanger the food security. The Bills states that land for industrial corridors can be acquired up to one kilometer on both sides – a provision that could displace and destroy the livelihoods of thousands of small farmers across India.

INSTANCES OF FORCED ACQUISITION

1. The land acquisition by the UP government of areas in Greater Noida. The epicenter of the event was *Bhatta Parsaul* where all the activities Ttook place. The actual problem of the land acquired by the Mayawati Government lied in the fact that the land was acquired

¹⁰ A public-private partnership (PPP) is a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies. These schemes are sometimes referred to as PPP, P3 or P³.

at much lower rates and the farmers were not properly compensated. This was due to non existence of land law which provided for fair compensation in 2011 when this case had arisen.

2. In 2014, the Gujarat farmers Protest against the land acquisition for Maruti Plant. The reports issued by the Investigation team clearly stated that State Government sought to acquire nearly 51,000 hectares of land, including pastoral and wasteland, in and around 44 villages of Ahmedabad, Surendranagar and Mehsana districts for the proposed SIR. This includes the proposed Maruti Suzuki plant at Hansalpur on Becharaji-Viramgam Highway for which the State Government had allotted 700 acres last year.¹¹ Moreover, there are cases of forced land acquisition in the states of Maharashtra (Jaitapur nuclear power plant case), Orissa (POSCO Plant), West Bengal (TATA Nano – Singur Plant) and many more. In all the above cases the common factor is that despite having the stringent laws the Indian system fails in the execution part. The farmers were denied adequate Compensation and were subjected to brutality by the state forces In India laws are established appropriately in paper but when it comes to the implementation they hold no water. The need of the hour is taking care of the implementation agencies and Supervising Authorities to curb the menace of unfair compensation prevailing in the Indian Scenario.

Land Acquisition in China

Land Acquisition in China is carried out according to the provisions of the People's Republic of China Land Administrative Law. China has made a significant progress in all aspects since the

¹¹ Bureau Report, Gujarat farmers protest against land acquisition for Maruti plant : available at <http://www.thehindubusinessline.com/news/states/gujarat-farmers-protest-against-land-acquisition-for-maruti-plant/article4827095.ece> last accessed on 1/06/2015

Introduction of its “Open door” policy¹². The Government of China has adopted a Compulsory mode of Acquisition. Compulsory land acquisition means where the Government doesn’t have land and the government acquires it for a Public purpose. It is also known as “Public purchase” In China it is known as “*Zhengdi*” Article 10¹³ of Chinese Constitution Validates the Land acquisition in china. Acquisition of land in China can be bifurcated in 2 parts Acquisition of farmland- Farmland may be compulsorily acquired for construction proposes under s. 43 of the PRCLAL. Before any Acquisition approval for converting farmland to construction land has to be obtained first.

- Acquisition of Urban Land – Building on land covered by a city plan may be compulsorily acquired under the urban Building demolition Relocation administration regulation of 2001. Under Reg. 6, no action of demolition and relocation can be undertaken unless a permit has been obtained from the administrative department.

Compensation Standards in China contains the following items:

- i. Land Compensation – for arable land, the compensation payment is based on 6-10 times, its average production value in the past three years prior to acquisition. Compensation standards for other land are to be determined by the respective people’s government of province, autonomous region, and Municipality directly under the central government with regards to compensation for agricultural lands.
- ii. Settlement Subsidy payment - The amount of payment is to be calculated by dividing the amount of land acquired by the average arable land per person in the dispossessed land unit. The standard payment to each person who needs to be resettled is based on 4–6 times the average production value of the land taken in the past three years prior to acquisition.

Lacunae in the Compensation Principles

¹² Open door Policy was introduced in 1978 and the policy he policy proposed to keep China open to trade with all countries on an equal basis, keeping any one power from total control of the country, and calling upon all powers, within their spheres of influence to refrain from interfering with any treaty port or any vested interest, to permit Chinese authorities to collect tariffs on an equal basis, and to show no favors to their own nationals in the matter of harbor dues or railroad charges.

¹³ State may, in the Public interest requisition of its land for its use in accordance with the law.

1. **Just Terms Compensation principles not in place** – The Principle was highlighted in the famous English case *Horn V Sunderland Corporation*¹⁴ in which Scott LJ held that a dispossessed person is entitled to Compensation and to be put, “ as far as money can do it, in the same position as if his land had not taken from him. In China neither the principle of just compensation nor the value to the owner is mentioned in the compensation laws. The compensation value is biased for rural areas and urban areas are subjected to comparatively fair compensation.
2. **Interest in land undefined** – In China, these concepts are not at defined and at present, the laws only provide for the payment of compensation to property owners and tenants. The lack of a definition or reference for an interest in land effectively excludes people with a minor interest in the land, or who do not have a legal title from getting compensation.
3. **Right to Claim Compensation not available** – In the current laws the dispossessed have no legal right to initiate claims for compensation and in most of the cases have to take what has given to them.

There are also problems associated with the Market Value Assessment, Non- uniform compensation standards and lack of transparency.

COMPARATIVE ANALYSIS BETWEEN INDIA AND CHINA

- The Process of land acquisition in India has been felicitated through the Liberalization policy of 1991 and the same was in China through the open door policy of 1978.
- In India the compensation price as directed by the supreme court ruled in April 2012 that the government shall increase this value to the highest market price of the land, on the basis that someone who is forced to sell his land should be able to claim a higher compensation than what a similar land owner would receive if he was willing to sell his property whereas in China for the acquisition of urban properties, the UBDRAR allows eligible dispossessed people to elect to have market value compensation (Reg.

¹⁴ 1941 1 All ER 480

23).However, there is no definition of market value in the law. On the other hand, the law allows the relevant people's government to determine the methods of assessing market value. This provision gives the authorities unlimited flexibility and often leads to a miscarriage of justice.

- In India there is a provision for safeguard against displacement which provides that no one shall be dispossessed until and unless all payments are made and alternatives sites for the resettlement and rehabilitation have been prepared. The Third Schedule even lists the infrastructural amenities that have to be provided to those that have been displaced whereas in China even right to claim compensation is not available and they have no legal right to initiate a compensation claim, and in most cases, have to take what is given to them. For those affected people who are not part of the compensation agreement, they have no right to submit a compensation claim at all.
- In India the act exempts from income tax and stamp duty which means that no income tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provision of the new law but there is no such exemption clause in the china's land act.

Land Acquisition in USA

"Eminent Domain" is the power of local, state or federal government agencies to take private property for "public use" so long as the government pays "just compensation." "Condemnation" is the formal act of the exercise of the power of eminent domain to transfer title to the property from its private owner to the government. James Madison, who wrote the Fifth Amendment to

the United States Constitution, used the term "public use" rather than "public purpose," "public interest", or "public benefit".¹⁵ The Fifth Amendment says, in part: "...nor shall private property be taken for public use, without just compensation." This part of the Fifth Amendment is known as the "takings" clause.¹⁶

The "takings" clause includes two elements, which are:

- 1) Any taking by a government must be for a "public use" to be valid; and
- 2) Any government that does take property, even for a public use, must fully compensate the owner of the property for the taking.

When discussing the takings clause, two issues that must be discussed:

- 1) what is considered a public use?
- 2) What is considered fair compensation?

PUBLIC USE

The "public use" requirement does not mean that the government must actually allow the public to use the property (it does not have to be for a park or a road etc.). Rather, the government can seize land and appropriate it for a private person or entity or even sell the property to a private person, so long as the purpose behind the seizure is public in nature.

JUST COMPENSATION

As Right to Fair compensation is the crux of this paper, it will be discussed in detail in reference to America.

The general rule is that "just compensation" means that the government must pay fair market value for the property that was taken. Fair market value is not the same thing as the value that the owner places on the property or the amount that the property is actually worth to the owner. For example: Jane's house is worth \$250,000 on the open market. However, Jane runs a business that produces revenue of \$500,000 per year. For whatever reason, Jane cannot transfer her business to

¹⁵ http://www.independent.org/pdf/tir/tir_12_03_04_benson.pdf

¹⁶ Statutes & Constitution :View Statutes : Online Sunshine

a different location. Nevertheless, if the government takes the house, its liability will be limited to \$250,000.

Just compensation is such which puts the injured party in a good condition as s/he would have been, if the injury had not been inflicted. It includes the value of the land, or the amount to which the value of the property from which it is taken has depreciated. Generally, the property owner is not entitled to compensation before the government takes possession of his/her land.

The constitution does not require that compensation be actually paid in advance of the occupancy of the land. However, the owner is entitled to reasonable, certain, and adequate provision for obtaining compensation before his/her occupancy is disturbed.¹⁷ The U.S. exercising power of eminent domain can acquire property in two ways:

- the government can enter into physical possession of property without authority of a court order; or
- the government can institute condemnation proceedings.

In physical seizure, the property owner is provided a remedy under the Tucker Act to recover just compensation. In condemnation proceedings, compensation is given through court.

In an eminent domain proceeding, an interlocutory judgment fixing the compensation payable to a condemned can be awarded. Such an order has the characteristics of a money judgment in an ordinary civil action. When property is taken under eminent domain, the measure of just compensation is the fair market value of the property to be ascertained as of the date of taking. It is determined by assessing a price a willing buyer and a willing seller would agree to. Fair market value is that value assigned by parties freely negotiating under normal market conditions based on all surrounding circumstances at the time of the taking.¹⁸ When a delay in payment

¹⁷ Stringer v. United States, 471 F.2d 381 (5th Cir. Miss. 1973) - See more at: <http://eminentdomain.uslegal.com/compensation-for-land/#sthash.TT3YjwFe.dpuf>

¹⁸ Stringer v. United States, 471 F.2d 381 (5th Cir. Miss. 1973) - See more at: <http://eminentdomain.uslegal.com/compensation-for-land/#sthash.TT3YjwFe.dpuf>

occurs, something more than damages is to be awarded. This additional element of compensation is reasonable interest. Just compensation in the constitutional sense is fair market value at the time of taking plus interest from that date to the date of payment.

EMINENT DOMAIN: BEING ABUSED?

Eminent domain abuse has become a growing concern U.S.A where a property developer convinces the city take private property for the purpose of redevelopment for profit. Although the 5th Amendment, which protects the eminent domain clause, states that property can only be appropriated for a "public use," the Supreme Court has consistently ruled that eminent domain can be applied if the disputed land will be used for some "public purpose". The linguistic distinction between public "purpose" and public "use" is crucial in the interpretation of the doctrine of eminent domain because the term "purpose" is much vaguer than "use" and consequently leads to a greater abuse of the doctrine. The slippery slope of government abuse of power, and the incorrect conclusion that the term "public purpose" satisfies the "public use" clause, was displayed in the 2005 Supreme Court case of *Kelo v. City of New London*.¹⁹ In 2000, the SC gave NLDC the permission to exercise eminent domain to seize 115 properties in the Fort Trumbell area.

In dissent to the Kelo majority ruling, Justice Sandra Day O'Connor wrote, with some apparent disgust, "For who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property. Nothing is to prevent the state from replacing any Motel 6 with a Ritz Carlton, any home with a shopping mall, or any farm with a factory."²⁰

COMPARATIVE ANALYSIS BETWEEN INDIA AND USA

The Indian Law on acquisition of land by government is more appropriate than America. Some of the reasons are:

¹⁹ Supreme Court. *Kelo v. City of New London*. 2005. Cornell Legal Information Institute. Cornell University Law School. 11 Apr. 2008 <http://www.law.cornell.edu/supct/html/04-108.ZS.html>.

²⁰ Rackove, Jack N. *The Beginning of National Politics: An Interpretive History of the Continental Congress*. Dictionary of American History (New York: 1979)

- American Law has the provision of compulsory acquisition of land by government which is not the case with India where the consent of 80 per cent of land owners to be obtained for private projects and that of 70 per cent of land owners for PPP projects.(except in few cases as per "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013")
- Land owners are only provided just compensation on acquisition of their land in America whereas in India, Rehabilitation and Resettlement along with fair compensation is also provided.
- The meaning of Public purpose in Land Bill of India is clearer than America's Law where the term often leads to abuse of power of Eminent Domain.

CONCLUSION

Democratization and transparency are key for land acquisition reform to help keep check on Corruption, collusion between officials and business and abuse of political and police power. In the Process of the Land Acquisition of in India, China and USA as established in the paper, it is important to strike a balance between the need for land for developmental activities and the need to protect the interest of those impacted by the acquisition of the land- landowners, tenants,, landless labourers, and other those whose livelihood depends on the land. And this can be done only y exercising the political will. The compensation level should be increased to market price level to fairly compensate farmers and make their lives sustainable. The compensation methods should be diverse, taking the farmers' age, skill level and employability into consideration. Finally apart from the changes mechanism described above, being a budding lawyer we strongly believe that there should be sufficient number of lawyers and valuers to assist dispossessed people in assessing their compensation entitlements and the reasonable compensation payments.

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