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## A COMPREHENSIVE ANALYSIS OF THE LAND ACQUISITION LEGISLATION AND ITS' EVOLUTION

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### ABSTRACT

Land acquisition is a monumental issue that concerns the general public but it often goes under the radar due to it not affecting the majority on a daily ordinary life. The process of Land acquisition in refers to the ability and procedure by which the state is able to acquire private property for the purpose of public welfare and various other needs. The Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement act of 2013 provides the state the power to acquire land and makes the whole ordeal a fair and reasonable trial for the parties involved through the provisions involved and the procedures that are to be adhered to in order to make the land acquisition valid. The act was a necessary tool due to the Land acquisition act which was made by the British government which was very biased and unjust in the process by which it allowed the British government to acquire land without any proper compensation or reason, it was abused by the British and aided in their ruthless objective to expand and plunder India as much as they needed. Land acquisition act 2013 was not the first of its kind there were many which came before them and all were fragile and ineffective in many ways thus the need for a legislation which would be effective in what it wanted to achieve. After it's birth it provided a firmer more just solution to the land acquisition by the state.

The objective of this paper is to provide a comprehensive study and analysis of the of the land acquisition act 2013 and the important legal provisions which are provided by it and how they make the process of land acquisition which may seem controversial as fair and just to both state and individual involved. This paper also sheds light behind the history of the act and the formation of the act as we know it as now and to also draw comparisons and differences between the land acquisition act of 1894 and the Land Acquisition, Rehabilitation and Resettlement Bill of 2013.

**KEY WORDS:** 1. Land acquisition, 2. Land acquisition act 2013, 3. Rehabilitation and Resettlement, 4. public purpose, 5. Compensation.

### INTRODUCTION:

Land has been a very valuable resource from the dawn of mankind, Civilizations and empires have gone to war and have shed the blood of countless innocents with the purpose of acquiring more and more of it. Land has been acting as a provider of basic source of livelihood for many individuals they use it for various purposes from farming to settling down thus land has always played a vital role in the

lives of humans and will keep doing so. But the ownership aspect of the land is ever-evolving starting with only kings having absolute control over the land which was then followed by the colonizers the British who made us all believe that the land is owned by the British empire and no one else and then now in the modern times and with Independence we can own land as individuals. Land acquisition is the process by which the state that is the government can acquire the land of an individual or a private

entity by stating public welfare as the ground for acquisition and in return would offer a monetary compensation as consideration.

The idea of land acquisition was born from the Doctrine of Eminent domain which was fathered by Hugo Grotius in his work *Laws of war and peace (De iure belli ac pacis)* in 1625. This doctrine was based upon the maxim 'Necessity public major set quam private' which means that the public necessity is greater than the private necessity. The doctrine has been enshrined under Article 300A of the constitution, which states that the state cannot take the property of the individual except only through the authority of law. Legislations such as the Land Acquisition Act of 2013 for example provide the state with this power and also provide the provisions to make the process just and fair by providing the individual or the private entity whoever is the owner of the property with fair compensation for the land which was stripped away from them.

#### **EVOLUTION OF LAND ACQUISITION LEGISLATION:**

**Land acquisition Act, 1894:** The land acquisition act of 1894 was put together by the British government it was the first legislation to oversee the process of land acquisition by the British government it was in power for more than a century but the Act itself is far from perfect. To its credit the Act introduced and gave rights to the individual such as the right to voice their view and opinion regarding the acquisition once they are informed about it which made the trial fairer and just but it also had a lot of drawbacks to it such as the act's difficulty with lack of transparency when it comes to determining the affected parties as the definition given within it was vague and unclear. Also, the process of acquisition under the Act was an arduous process due to it taking up to 3 years to complete the process even when there are no disputes between the parties this was due the powers and discretion vested with the district and deputy collector which was met with resistance. Finally the act does not provide a definite way to calculate the

compensation which is to be paid as consideration for the acquisition, the amount of compensation calculated to be paid as consideration under the act was based on circle rate which in no way reflected the actual value of the land, This left the individuals who lost their land with barely any compensation to make up for it and in some cases the British government straight up provided no compensation for the acquisition, This issues of compensation will ultimately result in the government wanting to make changes and create a new legislation which will be more just.

The supreme court in the judgement on *Ramji Veerji Parel and Ors V. Revenue Divisional Officer (2011)* Made clear that "The provisions contained in the Act do not adequately protect the interest of the landowners or 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. The Act has become outdated and needs to be replaced at the earliest by a fair, reasonable and rational enactment in tune with constitutional provisions, particularly Article 300 A of the Constitution."

#### **The Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement act of 2013:**

The Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement act of 2013 which is the land acquisition act 2013 governs the process of land acquisition in India from January 1, 2014 when it came to power. The acts made significant changes in an effort to fill the cracks of the previous legislation and provide a fairer trial for both parties and the Act has provided various provisions in order to protect the interest of the individuals and affected parties and to make sure if they receive fair compensation for the acquisition, rehabilitation and relocation for population who have been displaced without anywhere to go. The most important issues which was addressed which was a drawback from the



previous legislation was the compensation which was to be provided for the acquisition. This act made changes to how the value of the land is calculated which made the compensation reflective of the value based on the area of the land such as the rural or urban area the legislation made this differentiation in order to ascertain the exact value of the land this change made the value go up by almost by 4 times from the previous legislation from this, we can learn how unfair the previous legislation was in calculation of the value. The act also makes sure that the affected parties are provided with R&R (Rehabilitation and Resettlement) packages as compensation for the lost assets and relocation etc and this has been made mandatory under the act. This act has been very clear on the term 'Affected party' as to not leave anyone out which was a major drawback with the previous legislations and it also widens the scope of the term affected party thus any individual whose livelihood is based on the land will come under the ambit of the Affected party. The Act mandates that a Social Impact Assessment to be conducted to identify the affected parties of the acquisition and it helps in calculation the social impact of acquired land and what use will it serve when it comes to the greater good of the public. The Acts also states that if the acquired land has not been put to use for which it was acquired for, for a period of 5 years the land will return to the owner or to the government land bank. The Act also specifically states that this would apply to cases where an award was made based on the Land Acquisition Act of 1894.

### **CRUCIAL PROVISIONS OF THE LAND ACQUISITION ACT, 2013:**

The efficacy of the new Land Acquisition Act of 1894 should be attributed to its provision which ensure that the legislation does not suffer from any of the drawbacks which was suffered by the previous legislation before it.

**Section 5:** Section 5 of the Act states that the government shall ensure a public hearing with all the individuals who are affected by the

acquisition in order for them to voice their views and concerns regarding it and this shall be recorded and included in the SIA (Social Impact Assessment) report.

**Section 12:** Section 12 of the act deals with enabling the Government through his officers to survey the land but it also places a restriction where no actions which are enabled by section 12 can be conducted without the owner of the land being present or a written statement from the owner himself but if the owner refuses to be reasonable and after the sixty-day notice period refuses to then the survey can be conducted regardless of the owner.

**Section 13:** Provides that if during the survey any damage if inflicted upon the property or the land of the owner by the officers who are conducting the survey the owner of the land will be eligible to claim compensation for the damages.

**Section 16:** The section 16 is a very important section within the act and it greatly distinguishes it from the previous legislations regarding land acquisition. Section 16 deals with Rehabilitation and Resettlement scheme which is mandatory under this act. The administrator has been bestowed with the duty and power to administer a Rehabilitation and Resettlement scheme which will benefit the affected individuals based on the SIA. Section 17 and 18 also pay a role in making the scheme available to the affected individuals.

**Section 23,26,27,28:** Fair compensation is one of the Critical aspects of this Act which was a drawback in the Legislations before this, the section 13,16,17 work together in order to provide Fair compensation to the affected individual. Section 23 enables the collector to assess the SIA report and objections raised by the affected individuals regarding the compensation, rehabilitation and resettlement and issue an award which will satisfy both the parties. Section 26 of the act deals with the market value determination for the land it ensures that

the value of the land is calculated as per this act and reflects the actual value.

**Section 25:** Section 25 of the acts determines the period of award; it states that the collector must provide an award within a year of issue of the declaration otherwise the whole acquisition would be considered abandoned.

**Section 30:** The award of solatium is a mandatory part of the transaction of the compensation for the consideration for the land acquisition. The act states that the collector must award a solatium to the affected individual on top of the compensation which is awarded for the acquisition, the act states that the solatium should be calculated at a 12% rate annually on the market rate beginning from the period of social impact assessment.

#### **CHALLENGES ARISING FROM THE LAND ACQUISITION ACT, 2013:**

The land acquisition act, 2013 is a monumental leap in the right direction for a very controversial issues such as land acquisition but even though it is better than the previous legislation and it bridges the cracks in them it comes with new challenges which the judiciary has to face and find a solution for. One of the various challenges that is faced regarding the new legislation is that the Act widens the scope of the term 'Public purpose' which has paved way to exploitation. The Act lacks a clear vision on the topic of SIA such as not having a clear guideline or regulations that are to be followed and by which authority which allows to the private corporations to prey on this fact and get approval with improper terms. The act provides rehabilitation and resettlement packages to the affected individuals which is a great effort by the act but it states that it should be calculated on the market value which makes things more difficult and complicated. Even though the compensation which is calculated and awarded is far better and fair than the previous legislations it still does not account the fact that land is an investment in modern times thus the value of land increases in a developing country

like India so it can be contended that the future value can never be calculated and awarded which may make the compensation awarded as unfair or undervalue in nature. Finally, the act only takes economic and financially loss into account when awarding the compensation but it does not take other values into consideration because it is near impossible to calculate values such as emotional distress etc, which maybe be suffered by the affected individuals but can never be compensated for.

#### **CONCLUSION:**

Land acquisition has evolved greatly over the years and so have the legislations regarding them yet it still remains a controversial topic due to the uncertainties which come with the new legislations and the evolving society. The land acquisition act, 2013 has brought various changes and critical provisions which lay down important values through which the trial of land acquisition has made fair and the affected individual has now been provided with various rights and remedies which he can claim in the even where he is not satisfied with the acquisition. It is a massive step in the right way but there are more issues which have to be addressed in order to completely make it a fair and just trail for the affected.

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