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Review of Land Acquisition Policies Based on Past Experiences in India

Mr. Nitish Kumar¹, Mr. Lakshman R²

¹Assistant Professor, ²Student, Bachelor of Planning

Amity School of Architecture and Planning, Amity University Haryana

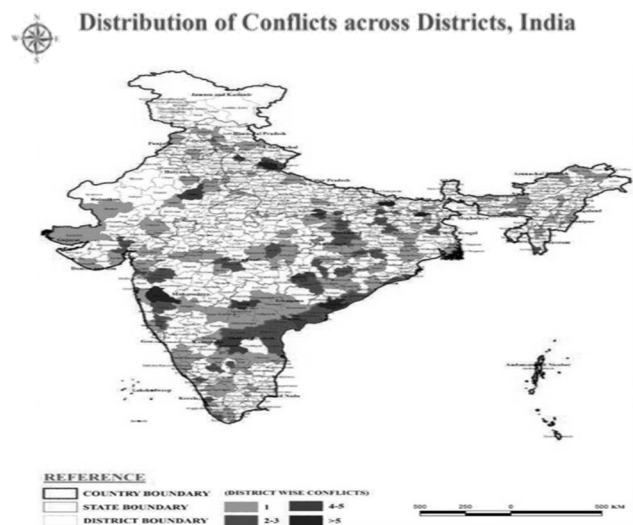
Abstract: Land acquisition law in India is one of the most controversial laws that have resulted in nationwide resistance and litigation. Land is a scarce but indispensable factor of production and development, its procurement for public purposes by the government is becoming increasingly difficult. As per urbanization trends, by 2030, India will have 50% of its population living in cities indicating a massive amount of land to be procured in the coming years for various public purposes.

The state of land acquisition law is in state of worry. The land acquisition ordinance has been left to die its own death as the states have been asked to go ahead with their amendments to the LARR act as the Joint parliamentary committee has missed its eighth deadline as of December 2016.

Land acquisition free of conflicts and litigation is of prime importance in the present times as India's new government pursues a fast track development agenda, which cannot happen without a good acquisition law. This paper is a review of the land acquisition policies based on experiences of the government's attempts to solve the issue of litigation and conflicts over compulsory acquisition, seek a way out.

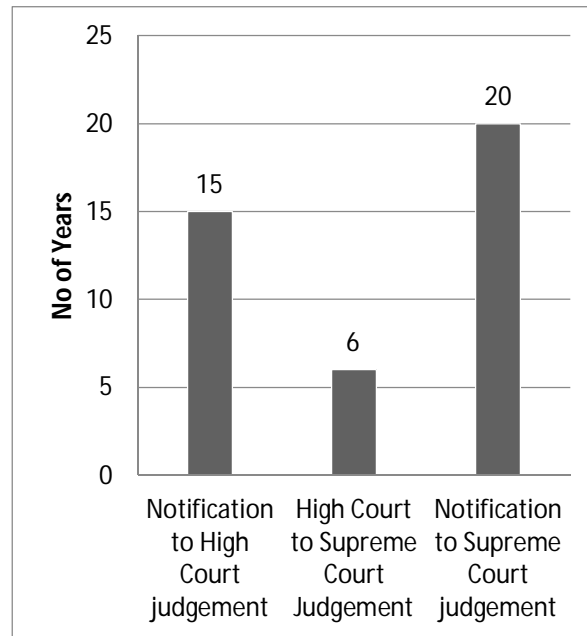
I. INTRODUCTION

Opposition and conflicts are inevitable in forced land acquisition but real cause for concern is the volume of litigation, its nature and life. A land acquisition map of conflicts (litigation, resistance to acquisition, protests etc.) prepared by the Society for Promotion of Wasteland Development (SPWD) and the Rights and Resources Initiative (RRI) indicates 289 conflicts in 185 of India's 664 districts. These projects span close to 12 lakhs hectares in the land, affecting almost 32 lakhs people. One fourth of the Indian districts are conflict ridden as shown below (Paliwal, 2016). This paints a grim picture of the state of land acquisition in the country. Researchers forecast considerable civil unrest in response to major projects planned for the next 15 years, which require over 11 million hectares of land and will affect the livelihoods and welfare of tens of millions of people (Business standard, 2014).



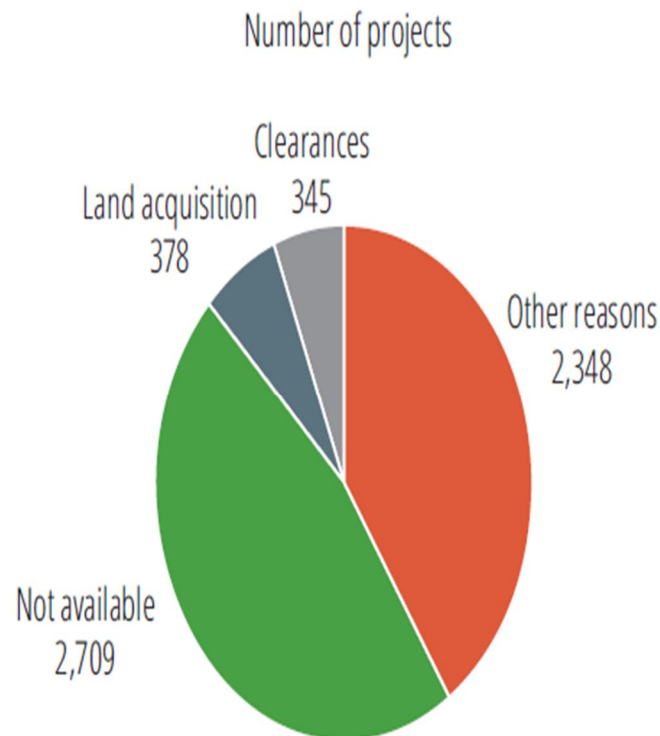
Land conflict map (Paliwal, 2016)

A recent study by Centre for Public Policy and Research (CPR) on the Supreme Court cases on land acquisition since 1950 reveals that the average judgment period for the cases on land acquisition are extremely long as shown below.



Duration of litigation (Wahi, 2016)

The long life of the cases simply indicates a major delay in the acquisition of land, development and denied justice, which directly affect the economy and the people.



Another study by RRI reveals that land acquisition is a major cause of stalling of projects (infrastructure, power, mining projects etc.). The study utilized the CapEX data (Projects since 2000-2016), which provides the status of 40000 such projects announced since 2000 all over India. It revealed that 5780 projects were stalled out of which land acquisition was the prime cause for 378 projects carrying a value of 692,000 (six ninety two thousand crores. (Land Disputes and Stalled Investments in India, 2016)



These developments raise important questions regarding India's ability to address complex social problems at home while its new government pursues a fast-track development agenda (Business standard, 2014). Thus it is clear that future legal reform or policy reform must seek to reduce the extent of disputes and litigation in the land acquisition process (Wahi, 2016).

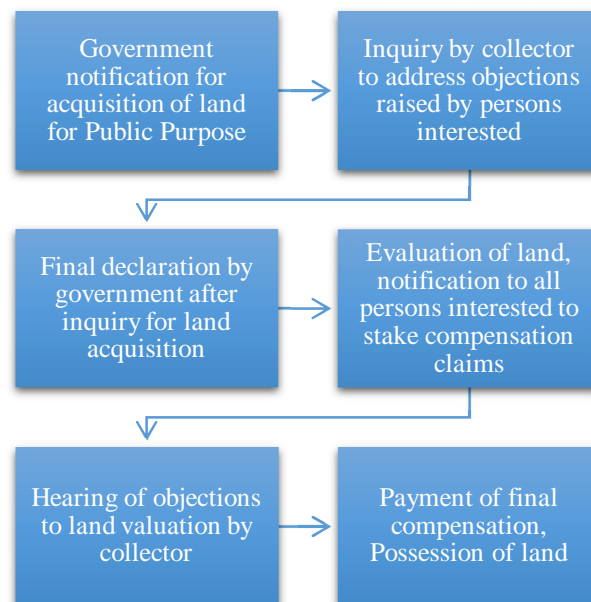
II. LAND ACQUISITION LAW IN INDIA

The state's power of 'eminent domain' enables the state to compulsory acquisition of privately owned land as per the land acquisition law only for a public purpose upon payment of compensation to the land owners. Land acquisition act 1894, a British colonial state adopted law had remained in force for almost 120 years for land acquisition until 2013. The law witnessed numerous amendments throughout the 20th century and was replaced by the LARR act in 2013.

III. EVOLUTION OF LAND ACQUISITION ACT

The Constitution created a federal political structure with a unitary bias. Land is a state subject i.e. it falls within the legislative domain of states within India's federal system. As a result, there exist widely differentiated legal regimes governing land rights of various categories of individuals and groups across states. However, the "acquisition and requisitioning of property" is a subject in the Concurrent List (Wahi, 2016).

A. Process of Land Acquisition under Land Acquisition Act, 1894



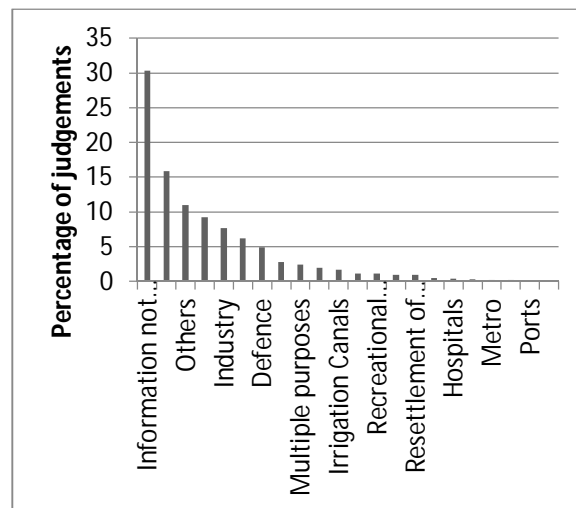
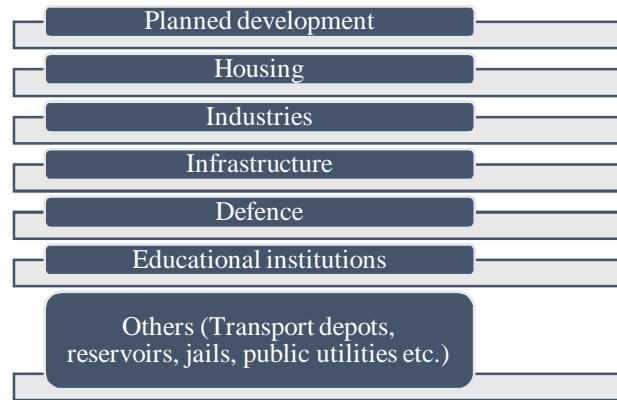
Land could be acquired only for a specified public purpose i.e. the use of the land acquired must be beneficial to the public viz. educational use, housing, health or slum clearance schemes, premises for public offices etc. as mentioned in the definition of public purpose

The Act prescribed that the compensation for land acquisitions be computed at the market value of the land acquired. The act also provided an urgency clause, which gave the collector the power to take possession of the land with or without compensation when declared by the state/central government as urgent.

The Land Acquisition Act 1894 went through a series of amendments in different years but failed to solve the problems associated with the land acquisition.

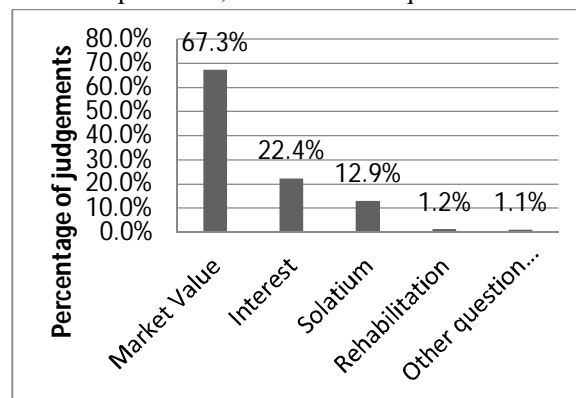
IV. VOLUME, NATURE AND PERIOD OF LITIGATION

A recent study by Centre for Public Policy and Research (CPR) on the Supreme Court cases on land acquisition since 1950 reveals that the largest number of contested acquisitions (all cases reviewed by CPR) was for six major purposes as given:



This graph shows the purpose wise distribution of judgments for all the cases reviewed by CPR.

Litigation was majorly on three grounds i.e. Compensation, Procedure of acquisition and the urgency clause.



The most common challenge to the law was from the collector's use of circle rates as opposed to registered sale deeds as the basis for calculating the compensations prescribed by the law. Circle rates were much lower than the prevailing market value of the land thus resulting in lower compensation packages offered to the persons interested. (Wahi, 2016)

A. Distribution of Challenges to Procedural Irregularities

34% of the cases involved petitioners who challenged the procedure of land acquisition. Most of the cases alleged procedural noncompliance and improper exercise of the authority.

B. Urgency Clause

16% of the cases involved challenge to misuse of the urgency clause in bypassing the acquisition procedures stipulated in the statute.

C. Compensation

The CPR study revealed that 63% of the cases involved claims for fair compensation. The claims were not only to contest the market value of land but also the award of solatium and the interest of 12% per annum to be paid when the case is referred to a civil court.

V. COMPENSATION

The Act prescribed that the compensation for land acquisitions must be computed at the market value of the land acquired. The market value is based on the stamp duty paid, average sale price for similar type of land in a nearby village, and consented amount agreed upon in case the acquisition has been done previously. The price of the land may not reflect the true value as people, to avoid the stamp duty, do not show the real value of land and take a large share in cash. Therefore, the price of land on paper is much less than what it actually is in reality. Therefore, more often than not, the government would pay less than the market value of the land on a willing buyer, willing seller basis, as reported in the newspapers. Moreover, the Government has typically used circle rates to calculate compensation under the Land Acquisition Act, which do not reflect the market value.

However, in any case the land markets in India being so underdeveloped, arriving at an acceptable market price is not simple. Further, there is a problem even if one were to arrive at a correct market price: the future appreciation of the land is not included in this market price. It can be observed that many anti-acquisition agitations in peri-urban areas have been with respect to not getting a share in the future appreciation of the land. To mention a well-known case, in Bhatta- Parsaul in Uttar Pradesh, the farmers were happy with the price of land that they got in the first phase. However, as the acquisition moved on to the second phase, they could see that the value of their land had increased exponentially and what they are getting was not commensurate with that amount. (8) (Sathe, Land Acquisition Act and the Ordinance, Some Issues, 2015)

A. Trends in Compensation Awards

The CPR study shows that in 86.5% of cases there is a positive change in compensation at the reference courts, 45% at the high court and 31% at the Supreme Court.

The average change in compensation the courts is 4 times the compensation at reference courts, 6 times at the Supreme Court.

Descriptive statistics for change in compensation from original award to Reference court, High Court, and Supreme Court respectively

	Original Award to Reference Court	Reference Court to High Court	High Court to Supreme Court	Original Award to Supreme Court
Number of cases	547	593	589	445
Negative change	12	154	79	7
No change	62	167	325	46
Positive change	473	272	185	392
Minimum (in %)	-89.3	-95.9	-91.3	-85.7
Maximum (in %)	10830.0	7145.1	14585.7	15677.2
Median (in %)	158.1	0.0	0.0	180.4
Mean (in %)	433.2	100.7	117.6	602.6
Standard deviation (in %)	909.2	486.7	1100.9	1397.9

This trend clearly shows that the probability of an increase in compensation is high when moved to courts, also means that the law itself recognized that the compensation awarded by the collector did not represent a just compensation, and sought to remedy this through the courts. The Act envisioned the civil court as routinely intervening to secure just compensation to the land losers. (Wahi, 2016)

The Act only recognized the rights and interests of landowners, it failed to recognize the people dependent on the lands for their livelihoods. Litigation involving claims of this sort is not very prevalent as it was missing from the act and they did not have any guarantee of a gain upon litigation in the interest of livelihood losers, but it was one of the main causes of protests and agitation of people against acquisition of land.

VI. PEOPLE'S PARTICIPATION AND INVOLVEMENT

The lack of people's consent and participation in the deprivation of their lands, assess the often-devastating social impact of land acquisition projects. Moreover, the protracted procedural delays and the misuse of the urgency clause in the implementation of acquisition proceedings demonstrated lack of government accountability in conducting acquisitions according to the rule of law.(Wahi, 2016)

Empirical work by researchers increasingly finds that farmers are willing to sell their land if the price-compensation package is "acceptable." With farmers wanting to move out of agriculture in a big way and looking for alternatives, there is a need to accept the farmers' willingness to be partners in the developmental processes.(Sathe, Land Acquisition, Need for a Shift in Discourse?, 2016)

VII. ABSENCE OF A UNIFORM LAW

The Tenth Law Commission Report noted that there existed wide variation in the provisions for acquisition in various state laws, including on the definition of public purpose, the relevant date for determination of the market value of the land, the principles for determining compensation. This created a situation whereby the central and state governments could apply differential principles of compensation for acquisition of land situated in the same state according to the object of acquisition.(Wahi, 2016) The absence of a uniform law was emphasized in 1958 itself but there was no change as the state laws to acquire lands for different purposes such as railways continued to exist.

VIII. IMPROPER EXECUTIVE IMPLEMENTATION OF THE LAW

Lack of basic skills of the collector's staff in carrying out functions stipulated under the act was also an issue on the ground, reflected by the 34% of all cases involving petitioners alleging that the stipulated procedures were not followed. The judgment of cases involving such claims shows that both the High Court (approximately 53% of the cases) and the Supreme Court (approximately 57.3% of the cases) upheld petitioners' claims. This again confirms the petitioners' incentive to litigate these cases. Making amendments to the existing cannot bring about necessary changes in executive behavior that would decrease litigation. Instead, administrative capacity building, effective transparency and a will to carry out a just procedure may make a big difference. The UPA government was successful in replacing the Land acquisition act of 1894 with the LARR act 2013. It took seven years of parliamentary discussions to finally get majority for the bill in both the houses of the parliament. The act made numerous changes in its attempt at a fair law for land acquisition that would possibly decrease litigation, conflicts regarding the forceful acquisition of land.

IX. CONCLUSION

Land Acquisition policies came into existence in year 1894 in India where we have adopted the British colonial land acquisition act. It's been 123 years and still we are finding a solution for proper land acquisition in India. Different amendments were enacted to solve out the issues but doesn't fulfill the need of the individuals whose lands were acquired. Moreover the land acquisition act in 2013 was enacted as LARR guarding the proper compensation for land acquisition. But still it lags in some cases. Therefore land acquisition is not an easy process, it promotes development and other side it may hamper the development.

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