CHAPTER VI
ACQUISITION FOR PUBLIC PURPOSE: INDIAN STATUTORY REGIME

The present law relating to land acquisition in India remains scattered. As seen in the previous chapter, the legal framework for land acquisition in India is provided under the Constitution which expressly accepts the concept of eminent domain. Consequently, State intervention for ‘public purpose’ has become a prerogative of the government. However, the most disturbing fact is that there is a lack of a comprehensive enactment in this regard: different statutes with different procedures exist despite a common goal – public purpose.

6.1 THE LAND ACQUISITION ACT, 1894: THE KINGPIN LEGISLATION

The Land Acquisition Act 1894, the kingpin legislation in India which deals with land acquisitions, gives effect to the power of eminent domain of the State. The main object is to amend and codify laws relating to land acquisition for public purpose and for companies and also to determine the compensation, which is required in cases of land acquisition. Anything that would promote the welfare of the people would constitute a public purpose. The power can be exercised not only for traditional governmental activities such as roads, post offices, police stations and for public utilities such as electricity, water supply and transport undertakings, but also for charitable objects such as schools, hospitals and libraries and for industries. Acquisition of land for a factory manufacturing air conditioners, housing facility to

the members of a co-operative society\(^4\), and large tracts of land suitable for industrial development\(^5\) are considered as acquisitions for a public purpose. The Act also authorizes the government to acquire land for planned developments, provisions for town or rural planning, provision for residential purpose to the poor or landless and for carrying out any education, housing or health scheme of the Government\(^6\).

In *Somawati v. State of Punjab*\(^7\), the Supreme Court observed that the object of the Land Acquisition Act is to empower Government to acquire land only for a public purpose or for a company. Where as if the acquisition is for a company the provisions of Part VII should be complied with and this part is confined only to cases where the Government is satisfied that the purpose of acquiring the land is to construct dwelling-houses for workmen employed by the company or for the provision of amenities directly connected therewith or for the construction of some work which is likely to prove directly useful to the public.

Payment of compensation is also an essential condition under the Act; and the payment must be as per market value of the property. Matters which are not taken into consideration for the purpose of land acquisition and compensation are:

i. The degree of urgency which has led to the acquisition.

ii. Any disinclination of the person interested to part with the land.

iii. Any increase in the land value likely to accrue from the use to which it will be put when acquired.


\(^6\) Section 3 (f) of the Land Acquisition Act, 1894; See also, *Girnar Traders v. State of Maharastra*, 2011 (3) SCC 1 (SC).

\(^7\) *Supra n.3*
6.1.1 Procedure for Acquisition of Land

The Land Acquisition Act contains an arena of provisions dealing with acquisition of property and payment of compensation to the persons whose land was acquired. The preliminary step in acquisition is the publication of preliminary notification in the official gazette and the issue of public notice by the Collector. After the publication of the notification, the Collector shall collect objections from the interested persons and pass a final declaration under Section 6 of the Act. The final declaration authorizes the Collector to enter into the property, demarcate the property and pass an award of compensation to the interested parties. Award shall be passed only after hearing objections and also after considering the rights of the interested parties in the property acquired by the Government. If any of the interested parties is dissatisfied with the award of the Collector, he can submit an application to the Collector. Then the Collector is bound to refer the matter to a civil court which is empowered to decide upon the matter. Those who are dissatisfied with the order of the Court may make an appeal to the High Court within the stipulated time. The Act also contains provisions for acquisition of property for companies. In the case of acquisition of property for companies, the Collector shall follow the same procedures as mentioned above.

The different stages of acquisition of land by the government can be discussed under the following heads:

6.1.1.1 Preliminary Notification

The first stage of an acquisition under the Act is the publication of preliminary notification in the official gazette and issue of public notice by the Collector under section 4. If the appropriate Government wants to acquire land for public purpose or

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8 Section 4 of the Land Acquisition Act, 1984 reads: “(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at
for a company, a preliminary notification shall be published in the official gazette and in two daily newspapers circulating in that locality; and one must be in the regional language. No property can be acquired without preliminary notification. In *Land Acquisition Officer v. Mohd. Amir Khan*\(^9\), the apex Court observed that if the Collector fails to issue a public notice under Section 4 of the Act then the notification would be invalid. Newspapers circulated in the locality means, newspapers having a regular and steady circulation in the locality. Even a newspaper having 2% to 3% market share out of the total circulation figures for regional newspapers sold in the locality\(^10\). If the notification is delayed by two or three months, simultaneously there may be a spurt or hike in value in view of the development contemplated in the proposed acquisition. Hence the land owner can legitimately expect the value at the date of publication of the notice in the official gazette\(^11\).

Notification in the official gazette is the bedrock of acquisition proceedings. Section 4 (1) clearly shows that a notification stating therein ‘the land which is needed or is likely to be needed for a public purpose’ has to be published in the Official Gazette\(^12\). It is only on publication of the notification that the authorized officer can enter into the land and take necessary steps to conduct a survey and mark the boundaries of the proposed land. A valid notification is a condition precedent to make a declaration under Section 6 (1) of the Act\(^13\). Notification under section 4 is a statutory necessity and applicable even if the acquisition is made for a company.

**6.1.1.2 Compensation for Damage**

Section 5 of the Act\(^14\) contains a provision related to payment of compensation by an authorized person or authority seeking acquisition. He shall pay compensation

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\(^10\) *State of West Bengal v. Gobinda Chandra Makal*, AIR 2011 SC 3834.


\(^12\) *Somavati Bai v. State of Punjab*, AIR 1963 SC 151.

\(^13\) Section 5 of the Land Acquisition Act, 1894: The officer so authorized shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and in case of dispute
for damages occurred at the time of entry and preliminary investigations. In the case of a dispute regarding insufficiency of the compensation, the Collector shall decide the matter after proper enquiry.

6.1.1.3 Hearing of Objections

After the preliminary notification, the Collector shall issue a general notice to the interested person. It is an essential procedural requirement under the Land Acquisition Rules passed by various State Governments in India. All monetary benefits in the name of compensation have to be paid only to ‘interested’ persons under the Act. So it is imperative to know: who an ‘interested person’ is?

Section 3(b) of the Act defines the term ‘person interested’ in an inclusive manner. Accordingly, all persons claiming an interest in the compensation payable on account of the acquisition of land under the Act are ‘persons interested’. Under this clause, a person shall be deemed to be interested in land if he is interested in an easement affecting such land. A beneficiary is also a person interested. The State is not a person interested; and hence State cannot make an application of reference.

Notice of personal hearing is a valuable right of the interested person under the Act. According to the rules framed by the State Governments, the absence of giving notice is a serious lapse on the part of the government and declaration under Section 6 is liable to be quashed. In Patel Gandalal Somnath v. State of Gujarat, the court held that the purpose of enquiry under Section 5A is twofold: Firstly, it is meant to act as a safeguard against any ill-informed action on the part of the Government; and secondly, it provides an opportunity to the persons interested in the land to put

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15 See Rule 7 of the Land Acquisition (Kerala) Rules, 1990; Rule 3 of the Karnataka Land Acquisition Rules, 1965.
16 Neyveli Lignite Corporation Ltd. v. Special Tahasildar (L.A), (1995) 1 SCC 221.
19 AIR 1963 Guj. 50.
forward their point of view, supported by such material as they like, stating that the land concerned is not needed for a public purpose or for a company\textsuperscript{20}. The decision once taken under Section 5-A cannot be cancelled or altered. After a decision has been taken by the State Government on the objection in favour of the objector, it is no longer possible to make a declaration to the contrary under Section 6 because that would amount to setting aside the decision taken under Section 5-A.

Objections can be filed by persons interested in land or in compensation\textsuperscript{21} within thirty days\textsuperscript{22} from the date of publication of the notification. The right to raise objections under Section 5A can be exercised after both the notification under Section 4 (1) and the declaration under Section 6\textsuperscript{23}. A land owner who is really aggrieved by the acquisition proceedings has to challenge the proceedings immediately after the declaration made under Section 6 of the Act\textsuperscript{24}. The objections will be valid only on one or more of the following grounds:

(i) That the purpose for which the land is proposed for acquisition is not a public purpose.

(ii) That the land is not or less suitable than another piece of land for the said purpose.

(iii) That the area under acquisition is excessive.

(iv) That the acquisition will destroy or impair historical or artistic monuments or will desecrate religious buildings, graveyards and the like.


\textsuperscript{21} Section 5A (3), Land Acquisition Act, 1894 reads : “For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act”.

\textsuperscript{22} See, Section 5A (1): Any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be. \textit{Ibid.}

\textsuperscript{23} \textit{Bahori Lal v. L.A Officer}, AIR 1970 All. 414 (FB).

\textsuperscript{24} \textit{A.P Industrial Infrastructure Corporation Ltd. v. Chinthamaneni Narasimha Rao}, (2012) 12 SCC 797.
6.1.1.4 Declaration of Intended Acquisition

After hearing objections from the interested persons, the Collector has to send a report along with his recommendations to the Government\(^{25}\). If the State Government feels that the land is required for a public purpose, a declaration shall be published in the Official Gazette under the signature of the Secretary to the State Government\(^{26}\); strictly in tune with the requirements of Section 6\(^{27}\). What is made under Section 6 is the satisfaction of the appropriate Government. Section 6 of the Act stipulates two conditions namely: (a) payment of compensation by the company or any funds managed or controlled by a local authority or from public revenue\(^{28}\) and (2) declaration shall be duly published in the Gazette\(^{29}\). Declaration with respect to the payment of cost of acquisition should precede the notification\(^{30}\). Non-publication of declaration under S.6 of the Act within the prescribed time limit will be a ground for quashing the entire acquisition proceedings initiated under Section 4 (1) of the Act\(^{31}\). First proviso to sub-section (1) of Section 6 of the Act provides a limitation of three years, from the date of notification under Section 4 of the Act, for making the declaration under Section 6\(^{32}\).

Prior to the 1984 amendment, the declaration under Section 6 of the Act could be made simultaneously with the publication of the notification under Section 4 (1) of the Act, but now it can be made only after the date of publication of the notification.

\(^{25}\) See Section 5A (2) of Land Acquisition Act, 1894.
\(^{26}\) Section 6 (1) reads: “when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders…”.\textit{Ibid.}
\(^{28}\) Second Proviso to Section 6 of the Land Acquisition Act 1894 says: “Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenue or some fund controlled or managed by a local authority”.
\(^{29}\) Section 6 (2): “Every declaration shall be published in the Official Gazette, and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language…” \textit{Ibid.}
\(^{31}\) \textit{Al Haz Amir Hasan Properties Ltd v. L.A Collector}, AIR 2011 Cal.222.
\(^{32}\) See Section 6 (1) of the Land Acquisition Act, 1984.
under Section 4 of the Act\textsuperscript{33}. The final declaration under Section 6 of the Act empowers the Collector to acquire\textsuperscript{34}, measure and mark out land\textsuperscript{35} and also to take steps for the passing of award under the Act.

6.1.1.5 Acquisition of Land

After the publication of the final declaration, the Government has to issue an order which authorizes the Collector to acquire the land included in the declaration under section 6. He has no power to acquire any land outside the boundaries specified in the declaration\textsuperscript{36}. Even though the term ‘acquisition’ has not been defined in the Act, it is mandatory that the Collector shall acquire the land needed for public purpose before passing an award under the Act. The decision whether to acquire or not lies with the government; and hence the Court cannot compel the government\textsuperscript{37}.

After the publication of the declaration under section 6, the Government has to issue an order to the Collector under section 7\textsuperscript{38} to acquire the land included in the declaration under section 6. Here, the Collector acts as the agent of the Government\textsuperscript{39}. His power is limited to the area specified in the declaration\textsuperscript{40}. After the order for the acquisition of land, the Collector has to mark out the land, if it has not been done previously under section 4 of the Act, and prepare a plan for the same\textsuperscript{41}. If the

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\item \textsuperscript{33} Land Acquisition Amendment Act, 1984 provides: “that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)...(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification”.
\item \textsuperscript{34} Section 7 of the Act says: “When any land shall have been so declared to be needed for a public purpose or for a company, the appropriate Government or some officer authorized by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of the land”.
\item \textsuperscript{35} Section 8 of the Act says: “The Collector shall thereupon cause the land (unless it has been already marked out under section 4), to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof), a plan to be made of the same”.
\item \textsuperscript{36} Collector of Chingleput v. Qadir Mohideen, AIR 1926 Mad. 732.
\item \textsuperscript{37} Jayamma v. Deputy Commissioner, Hassan Dist. Hassan, AIR 2013 SC 1972.
\item \textsuperscript{38} See, Section 7 of the Land Acquisition Act, 1894.
\item \textsuperscript{39} Ezra v. Secretary of State, ILR 30 Cal. 36.
\item \textsuperscript{40} Supra n. 36.
\item \textsuperscript{41} See, Section 8 of the Land Acquisition Act, 1894.
\end{itemize}
appropriate Government commits a mistake by giving an erroneous boundary, the Collector cannot rectify the mistake. The demarcation of the outer boundary includes marking the outer boundaries of the land to be acquired either by cutting trenches on the ground or by fixing posts as marks, at every bend and corner. After the acquisition and demarcation of the boundaries, the Collector has to pass an order of compensation in the form of an award with respect to the land acquired by him.

6.1.1.6 Award by Collector

Before making an award, Collector shall issue a public notice⁴². It shall contain particulars of the land acquired by the Government along with a request to all interested persons to appear before the Collector on a particular date⁴³. The notice is pasted on or near the land to be taken or sent by post to the interested persons. After hearing the parties, the Collector shall make an award⁴⁴ under his hand stating the true area of the land, the compensation allowed for the land and the apportionment of the compensation among all the persons known or believed to be interested in the land either as per the terms of an agreement, if any; or otherwise, if no agreement is in existence, as provided for in the Act⁴⁵.

Section 11 enables the Collector to conduct an enquiry into the measurement, value and claims and to pass the award. The enquiry as regards the person interested in land should be conducted personally by the Collector. Merely writing the word ‘approved’ in the order of award cannot be considered as valid⁴⁶. The award under Section 11 is only an offer to the claimants and therefore unless the award is accepted by the claimants, the same is not binding⁴⁷.

⁴² See, Section 9, Ibid.
⁴³ See, Section 10, Ibid
⁴⁴ See, Section 11, Ibid.
⁴⁵ Ibid.
⁴⁶ Jahangir Bomanji Wadia v. C.D Gaikwad, AIR 1954 Bom. 419.
⁴⁷ M.S Ramiah v. Special Land Acquisition Officer, AIR 1974 Kant. 122.
In *State of Maharashtra v. Sant Joginder Singh Kishan Singh*\(^48\), it was observed that Section 11A of the Land Acquisition Act is a procedural provision and does not stand on the same footing as Section 23 of the Act. Procedure is a mode in which the successive steps in litigation are taken. Section 11A not only provides a period in which the land acquisition proceedings are to be completed but also provides for consequences, namely, that if no award is made within the time stipulated, the entire proceedings for the acquisition of the land shall lapse. A lapse in the acquisition of the land results in the owner of the land retaining the ownership right in the property and it is a substantive right accrued to the owner of the land; and Section 11A of the Act is part of the law which creates and defines right, and not an adjective law which defines method of enforcing rights. It is a law that creates, defines and regulates the rights and powers of the party.

Though the Act vests the Government with the power of compulsory acquisition, it does not relieve the Government of the payment of compensation to the land owner. The acquisition proceedings remain incomplete without the payment of compensation. Generally there are five methods of making payment; i.e. *direct payment, by order of the treasury, by money order, by cheque, and by deposit in a treasury*. In the present day society, payment by cheque is a valid way of tendering the money\(^49\).

It is significant to note that nothing in the Act provides for a procedure whereby the owner can scrutinize the proposal for acquisition as he is not usually supplied with the details of the proposal and has no right to demand the same. Moreover, he has no right to cross-examine the exponents of the proposal. It is also noteworthy that the officer holding the inquiry is not competent to decide, he merely makes a report to the government\(^50\). In 1984, a major change was brought in the form of an Amendment Act: a new Section 11A was added which imposes an obligation upon the collector to make the award within a period of two years from the date of

\(^{48}\) (1995) SCC Supl. (2) 475.

\(^{49}\) *Damadila v. Parashram*, AIR 1976 SC 2229.

notification. One of the chief merits of the said amendment is that it hastened the acquisition proceedings.

The Collector or a Special Officer who passes an award under the Act is neither a judge nor does he act judicially. Consequently, he is not entitled to get protection either under Section 77 of the Indian Penal Code, 1860 or the Judges (Protection) Act, 1985.

The Collector shall fix the value of the land acquired. Until an award is announced or communicated to the parties concerned, it cannot be said to be legally made. The duty cast upon the Collector is to form an opinion as regards the compensation payable, but that does not mean that in every case he has to hold that some compensation is payable. If the Collector decides against awarding any compensation in respect of the easement claimed by the owner of the dominant tenement, it shall not be deemed a violation of the requirements of S.11; and hence the validity of the award cannot be challenged on the ground of such non-payment.

The award passed by the Collector shall be final unless it is objected to, and a reference to Court is sought by any person aggrieved by the award. After the notification, the owner is prohibited from selling his property or disposing of it; and he is prevented from carrying out any works of improvements for which no compensation will be paid if executed without prior permission from the Collector. Anybody claiming himself to be the owner seeking injunction against his dispossession shall have to prove that he was the owner of the property.

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51 See, Section 11A of the Land Acquisition Act, 1894.
52 Surendra Kumar v. Kanhaiyal, AIR 2009 S.C 1961. Section 77 of the Indian Penal Code reads: “nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law”.
The owner of the property or an interested person can invoke civil jurisdiction by reference under S.18, only after the award becomes final under Section 1256 of the Act.

6.1.1.7 Review of Award

The Collector cannot review the award passed by him. Under Section 13A57, the Collector is empowered only to correct any clerical or calculation error, within a particular time, in the award passed under Section 1258. In *Nirmal Chakraborty v. L.A Collector*59, the Court held that the power of the Collector under the section shall be exercised before the award is made final. A subsequent application for amendment by person interested in land in respect of which compensation is paid will not come under the category of mistakes.

6.1.1.8 Reference to Civil Court

No one can file a civil suit directly before the Civil Court to get compensation under the Act. Any interested person, who is aggrieved by the award passed by the Collector, may apply to the Collector for a reference to the Civil Court under Section 18 of the Act60. The Collector shall make a reference only after receiving an application from a person who is dissatisfied with the award. While making a reference under section 18, he acts as statutory authority who is bound to act. The Collector cannot *suo motu* refer the matter to the civil court. The right of a land holder

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56 Section 12 of the Land Acquisition Act reads: “Such award shall be filed in the Collector’s office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.”

57 Section 13A says: “(1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority: Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.” *Ibid.*


59 AIR 1953 Cal. 257.

60 Section 18 of the Land Acquisition Act, 1984: “(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.”
to obtain an order of reference would arise only when he has not accepted the award or received under protest. Once such an award is accepted without any protest in respect of the quantum of the amount, he has no legal right to claim a reference to the Civil Court. The application shall be given in writing by a person who is an interested person, and who has not accepted the award. Person interested includes a person for whose benefit the land is acquired. Such a person would, on the language of Section 18 be entitled to ask for a reference. No application shall be filed directly to the court and the court has no power to direct the Collector to make a reference.

While making the reference to the civil court, Collector has to inform in writing about the (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon, (b) the names of persons whom he has reason to think are interested in such land, (c) the amount awarded for damages and paid or tendered under Section 5 and 17 and the amount paid or deposited under sub-section 3-A and (d) if the objections relate to the amount of the compensation, the grounds on which the amount of compensation was determined.

6.1.1.9 Proceedings of Civil Court

Civil Court means a court as defined under section 3 (d) of the Act and it acts as a special tribunal having special jurisdiction to decide upon the matters referred to it. The first step towards the proceedings of the court is to issue a notice to the applicant and other interested persons stated in the report of the Collector. Any enquiry made by the court shall be limited to the consideration of the interests of the persons affected by measurement, the amount of compensation, the persons to whom the amount is payable and the apportionment of compensation. The reference court

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61 Proviso to Section 31 (2) reads: “Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18. Ibid.
63 See, Section 19 of the Land Acquisition Act, 1894.
64 Section 3 (d) of the Act says: “the expression “Court” means a principal Civil Court of original jurisdiction, unless the appropriate Government has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the court under this Act.”
cannot go into any question raised for the first time by any party to the reference case. Similarly, the reference court cannot allow an amendment petition which would have the effect of introducing a new matter which had not been referred to it\textsuperscript{65}. In \textit{B.I.S.N Co. v. Secretary of State}\textsuperscript{66}, the court observed that the scope of enquiry before a reference cannot be enlarged on the option of the parties. In the absence of a valid award, a civil court has no jurisdiction to take any proceedings or a reference made to it\textsuperscript{67}.

The Land Acquisition Amendment Act, 1984 made a substantial change in the payment of compensation by Civil Court\textsuperscript{68}. It removed all restrictions imposed on the payment of compensation under section 25. At present, Civil Courts are free to award any amount, within its jurisdiction, as compensation and it should not be less than the amount awarded by the Collector\textsuperscript{69}. In \textit{Krishi Utpadan Mandi Samiti v. Kanhaiya Lal}\textsuperscript{70}, the court held that Section 25 of Land Acquisition Act can be considered as substantial in nature and it could not be applicable to acquisitions prior to the Amendment Act, 1984. Proceedings before the reference court are the same as those of an ordinary civil court. All persons who are entitled to practice in any Civil Court shall be eligible to appear, plead and act in such proceedings.

\textbf{6.1.1.10 Determination of the Amount of Compensation}

The matters to be considered for determining the amount of compensation are discussed in detail in Section 23 and 24 of the Act\textsuperscript{71}. The market-value of the land at the date of the publication of the notification under section 4(1), the damage sustained by the person interested, the damage sustained due to taking of any standing crops

\textsuperscript{65} \textit{Province of Bengal v. P.L Nun K.C. Pal, AIR 1945 Cal.312.}
\textsuperscript{66} \textit{I.L.R 38 Cal.230.}
\textsuperscript{67} \textit{State of Mizoram v. Biakchhawna, 1995 LACC 79 (SC).}
\textsuperscript{68} See, Section 25 prior to the Amendment Act, 1984: (2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the judge) to make such claim, the amount awarded by the court shall in no case exceed the amount awarded by the Collector”.
\textsuperscript{69} See Section 25 of the Land Acquisition Act, 1984.
\textsuperscript{70} (2000) 7 SCC 756.
\textsuperscript{71} For details, see \textit{infra} Chapter VIII, pp. 198-221.
trees on the land, the severing of such land from his other land, the loss of earnings etc. are the factors to be taken into account in determining the amount of compensation to be awarded for land acquired. Though the Land Acquisition Amendment Act 1984 came into force on 30 April 1982, land owners could not claim additional benefits provided under Section 23 (1A) of the Amended Act, for awards passed before 30th April 1982.

6.1.1.11 Award by the Court

After hearing both parties in the Land Acquisition Reference case, the court shall pass an award under Section 26 of the Act. Thus there are two types of award under the Act i.e. the award of the Collector under Section 11 and the award of the Court under Section 26. The main difference between these two is that, the award passed by the court is in accordance with Section 23 and 24 of the Act. But the award passed by the Collector is based on a fair value on the basis of the market value of the property. In *State of Madhya Pradesh v. Seth Gowardhan*, it was held that the award passed by the Court is in the character of a ‘decree’ and hence appealable. On determination of compensation, the court shall pass an award under section 26 and in the form and manner specified therein. In *Gopalakrishnan v. Spl. Tahasildar*, the High Court of Kerala observed that the reference court does not have any power to amend the reference application or to adjudicate enhanced compensation in respect of land not covered by a reference application.

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73 Section 26 (2) of the Land Acquisition Act, 1894 reads: “Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908).”
74 AIR 1993 MP 70 (F.B).
75 2000 (2) KLT 711.
6.1.1.12 Appeal to High Court and Supreme Court

Subject to the provisions of Civil Procedure Code 1908, an appeal shall lie only to High Court from the award of civil court of original jurisdiction. Those who are aggrieved by the order of a High Court shall appeal to the Supreme Court subject to the provision of Section 110 of Code of Civil Procedure Code 76. Though the term ‘award’ is not defined in the Act, it is used throughout the Act as a ‘final order’ of the Collector or Judge of a Reference Court. Once a proper reference comes before the District Judge, his final order on it is an award whether he gives an additional amount or not or whether the Acquisition Officer’s award is upheld or not for some reason or other 77. Inordinate delay in filing a writ petition challenging the acquisition will not sustain according to the provisions of the Act 78.

In addition to the above mentioned procedural requirements, the Act contains provisions to protect the interest of poor persons. The Act provides specific provisions to provide equality among the displaced people by way of re-determination of compensation. It also provides for the payment of interest on compensation, apportionment of compensation and to settle disputes related to apportionment. Another peculiarity of the Act is that it protects the rights of incompetent persons. It is the duty of the court to invest the money awarded as compensation to persons who are incompetent to alienate.

76 Section 54 of the Land Acquisition Act, 1894 reads: “Subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLIV thereof”.
77 Muthu Verappa Pillai v. Revenue Divisional Officer, AIR 1931 Mad. 26.
78 Huchamma (D) v. State of Karnataka, AIR 2009 SC 1428.
6.2 Beneficial Provisions of the Act

6.2.1 Re-determination of Amount of Compensation

As observed by the apex Court in Union of India v. Pradeep Kumar, the Act is intended to remove inequality and to give relief to the poor people who are not able to take advantage of the right of reference to the Civil Court. If the court allows any amount of compensation in excess of that awarded by the Collector, any person interested in the land covered by the same notification or any person aggrieved by the award of the Collector may, give a written application to the Collector within three months from the date of the award of the Court. The Collector shall, on receipt of such an application, issue notice to all the persons interested, conduct proper enquiry; and after giving them a reasonable opportunity of being heard, re-determine the award passed to the applicants. The only restriction is that the aggrieved party has to make an application within 3 months from the date of the enhanced award of reference court. The benefit of this provision is applicable to all interested parties irrespective of whether he had received the compensation under protest or not.

6.2.2 Apportionment of Compensation

It is a basic principle of justice that if there are several persons interested in the same property and if they agree amongst themselves as to the manner of apportionment of the compensation, then the agreement shall be conclusive evidence of the correctness of the apportionment of award. In Purna Chandra v. Fakir

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80 See section 28A (1) of the Land Acquisition Act, 1894.
81 See section 28A (2), Ibid.
83 Section 29 of the Act reads: “Where are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment”.

114
Mohammad\textsuperscript{84}, it was held that a covenant in the lease deed directing the lessee not to claim any portion of the compensation which may be awarded if the property leased out, be compulsory acquired, is valid in law and enforceable.

But in the case of a dispute with respect to the apportionment of award, the Collector shall refer the matter to a Civil Court\textsuperscript{85}. In \textit{State of Madras v. Subramania Iyer}\textsuperscript{86}, Madras High Court observed that, “it is obvious that when the Government exercises its power of \textit{eminent domain} and acquires property, public funds have to be utilized for the payment of compensation to the true owner, and not merely to any claimant who cares to appear on the scene”. The Collector can even make a reference without an application from the party. If a property has been jointly inherited by brothers and sisters, then brothers together had no right to sell the entire property\textsuperscript{87}.

\textbf{6.2.3 Compensation and Investment of Money for Incompetent Persons}

It is the duty of the Collector to ensure the payment of the award in whose favour the award has been made. If the parties interested in acquisition of land do not consent to receive the amount or when there is a dispute as to the title or as to the apportionment of the compensation money or when the compensation money is payable to a person who is not competent to alienate the land, the Collector shall deposit the amount of compensation in the court to which a reference is made by him\textsuperscript{88}. For the purpose of this provision, ‘incompetency to alienate’ implies ‘personal incapacity, such a lunacy, idiocy, and minority’. As to the question whether a party has the power to alienate the land, and consequently entitled to receive payment, the Collector is not competent to give a decision. In such cases where he has a \textit{bonafide} doubt, it is his duty not to take upon himself the task of determining that question

\textsuperscript{84} AIR 1955 NOC 1541.
\textsuperscript{85} Section 30 of the Act states: “When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court”.
\textsuperscript{86} AIR 1962 Mad. 313.
\textsuperscript{87} Shanmuga Sundaran v. Diravia Nadar, AIR 2005 SC 1841.
\textsuperscript{88} See, Section 31 of the Land Acquisition Act, 1894.
himself but to send the matter to the court that would have jurisdiction to hear the reference\textsuperscript{89}.

6.2.4 Payment of Interest on the Amount of Compensation

The Land Acquisition Act provides for the payment of interest also. Interest is payable on excess compensation from the date of taking possession of land\textsuperscript{90}. It is a settled legal position that when a statute prescribes payment of interest to the claimants at a fixed rate, then the court has no power to award interest in a manner other than that prescribed in the statute. The provision is to be administered in the manner laid in the Act and in no other way\textsuperscript{91}. The Act empowers the reference court to enhance the compensation awarded by the Collector; and in the case of enhancement, the Collector shall pay interest on such excess amount at the rate of nine percent per annum from the date on which he took possession on the land to the date of payment of such excess into court\textsuperscript{92}.

If the Collector has not paid or deposited the compensation on or before taking possession of the land, then he shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of taking possession until compensation has been paid or deposited\textsuperscript{93}. The principle underlying this provision is that if the party is deprived of his profit or usufructs from the date he loses possession and if the Collector has not made payment before he takes possession, then the party is entitled to claim interest from the date of deprivation of his interest in the property\textsuperscript{94}. If the compensation or part thereof is not paid or deposited within a period of one year from the date on which possession is taken, then the Collector shall pay interest at the rate of fifteen per cent per annum from the date of expiry of one year on

\textsuperscript{89} Secretary of State v. Joynarain Chunder, ILR 63 Cal.525.
\textsuperscript{90} Raghbir Singh v. Union of India, AIR 1985 Del. 228.
\textsuperscript{92} See, Section 28 of the Land Acquisition Act, 1894.
\textsuperscript{93} See, Section 34, Ibid.
which the amount of compensation or part thereof which has not been paid or
deposited\textsuperscript{95}.

\textbf{6.2.5 Emergency Powers of the Collector}

Land Acquisition Act 1894 contains provisions for the acquisition of property,
in urgent situations, without complying with all the procedural requirements under the
Act. In the case of urgency, as per the direction of the appropriate Government, the
Collector shall take possession of the land acquired even though no amount has been
paid to the interested person\textsuperscript{96}. But the possession can only be taken after the expiry of
15 days from the date of the publication of the notice. This period has been prescribed
apparently to enable the occupier either to make a representation to the Government
or to have more time for delivery of possession. Section 17 deals with special
situations and exceptional circumstances covering cases of ‘urgency’ and unforeseen
emergency. However, even in such cases, a valid declaration should be made before
the acquisition\textsuperscript{97}. Planned development of residential, commercial, industrial or
institutional schemes will not be covered under the term ‘urgency’. In \textit{Anand Singh v.
State of Uttar Pradesh}\textsuperscript{98}, the Supreme Court held that the power under Section 17 shall
not be lightly invoked and that the Government has to produce sufficient material
evidence before the Court to the effect that it has applied its mind while invoking the
provision of ‘urgency clause’.

However, urgency is a matter of subjective satisfaction of the appropriate
Government; and it is not open to the courts to examine the propriety or correctness of

\textsuperscript{95} See proviso to Section 34 of the Land Acquisition Act, 1894.
\textsuperscript{96} Section 17 (1) says: “In cases of urgency whenever the appropriate Government so directs, the
Collector, though no such award has been made, may, on the expiration of fifteen days from the
publication of the notice mentioned in Section 9, sub-section (1) take possession of any land needed
for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all
encumbrances”. \textit{Ibid.}
\textsuperscript{97} Section 17 (4) reads: “In the case of any land to which, in the opinion of the appropriate
Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate
Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a
declaration may be made under Section 6 in respect of the land at any time after the date of the
publication of the notification”. \textit{Ibid.}
\textsuperscript{98} 2010 (6) SCJ 715.
the satisfaction on an objective consideration of the facts. Section 5A notice is mandatory and whenever the requirement as to such notice has been dispensed with on the basis of Section 17, it should be justified; and the reasons thereof shall be explained\textsuperscript{99}. The opinion of the appropriate Government can be challenged only if it can be shown that the Government never applied its mind\textsuperscript{100} or that the action of Government is \textit{malafide}\textsuperscript{101}.

The term “emergency” denotes a state of things which is not the result of a sudden occurrence; it is a condition of things causing a reasonable apprehension of the near approach of danger\textsuperscript{102}. In the case of emergency, special powers may be exercised by the appropriate government; but even in such cases, inquiry and hearing of objection under section 5-A cannot \textit{ipso facto} be dispensed with unless a notification under sub-section (4) of section 17 of the Act\textsuperscript{103} has been issued. Recently, in \textit{Har Karam Singh v. State of U.P}\textsuperscript{104}, the Supreme Court held that acquisition of land for public purpose for planned industrial purpose under ‘urgency clause’ and its subsequent allotment to private builders for housing complex to earn profit would render acquisition illegal and acceptance of compensation by the interested parties would not stop them from challenging acquisition.

\textbf{6.2.6 Acquisition of Land for Companies}

Acquisition of land for companies is one of the most controversial provisions in the Land Acquisition Act 1894. Most of the acquisition for companies raises hue and cry from the common man in India. In acquisition for companies, in the name of development, there is a clash between the \textit{haves} and the \textit{have nots}. The provision of acquisition of land for companies for the construction of works of public utility was first introduced in 1853 through a special legislation: Act XXII of 1863. Subsequently

\begin{itemize}
\item \textsuperscript{99} \textit{Ibid.} at 735.
\item \textsuperscript{100} Devendra Singh v. State of U.P, AIR 2011 SC 2582.
\item \textsuperscript{102} Arjun Singh v. State of Punjab, AIR 1959 Punj. 538.
\item \textsuperscript{103} Esso Fabs Pvt. Ltd. v. State of Haryana, AIR 2009 S.C 1552.
\item \textsuperscript{104} AIR 2012 (NOC) 97 (All.); See also, Delhi Airtech. Services Pvt. Ltd. v. State of U.P, AIR 2012 SC 573.
\end{itemize}
The first step to be taken by the company desiring to acquire land under Land Acquisition Act is to apply to the Collector giving particulars of the lands needed and the work which the company proposes to do on it. The application shall be accompanied with a copy of the plan showing survey numbers, the purpose of acquisition and the reason for the particular site to be chosen and the provision made for the cost of the acquisition. After the government has been fully satisfied with the purpose, the least area needed, and other relevant facts as provided under land acquisition rules, it will issue a preliminary notification under Section 4 of the Act and collect objections under section 5A of the Act. One of the revenue officers is appointed as the Collector to hold an inquiry under Section 5-A of the Act. In the case of acquisition of land for companies, there is no need of specific notice to the owners of land under section 4 of the Act\textsuperscript{106}.

The purpose of acquisition must be clearly stated in the agreement and the company cannot be permitted to divert the use of the land. Though agreement and conveyance contains provision with respect to that, its strict implementation is not possible in many cases. Land Acquisition Act 1894 makes it possible for any industrial concern ordinarily employing not less than one hundred workmen owned by an individual or an association of individuals and not being a company to acquire land for erecting dwelling house for workmen of the establishment\textsuperscript{107}. In \textit{State of West}

\begin{footnotesize}
\begin{enumerate}
\item See, Section 3 (e) of the Land Acquisition Act, 1894.
\item See Section 38A of the Land Acquisition Act, 1894.
\end{enumerate}
\end{footnotesize}
Bengal v. P.N. Talukdar\textsuperscript{108}, the Supreme Court held that a society registered under Societies Registration Act of 1860 can acquire land for the construction of (i) staff quarters, (ii) hostel buildings, and (iii) playground.

One of the main drawbacks of this provision of the Act is that even a joint venture of private persons can acquire land on flimsy grounds. There is no procedural difference with respect to the acquisition of land for companies under the Act. The only requirement is that Government will proceed only after subjective satisfaction of the purpose and deposit of full amount to be paid to the displaced owners of the land.

6.2.7 Temporary Occupation of Waste Land

The Act also contains provisions for temporary occupation of waste or arable land; power to enter into such lands and take possession, and the payment of compensation or restoration. Under section 35 (1), appropriate Government may direct the Collector to procure the occupation and use of such lands on such terms as it shall think fit for a period not exceeding three years. The Collector shall issue notice in writing to interested parties in such land for the purpose of occupation and use of the land in urgent situations. The notice shall be virtually the same as the declaration under Section 6 of the Act. In the case of temporary occupation also the Collector has to pay compensation either in gross or in periodical installments\textsuperscript{109}.

The Land Acquisition Act has been criticized as weak and ineffective. Many jurists consider the Act as draconian and a ‘fertile land’ for the lawyers\textsuperscript{110}. Those who

\textsuperscript{108} AIR 1965 SC 646.

\textsuperscript{109} Section 35 (2) provides: “The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof, for such term as aforesaid, and for the materials (if any) to be taken there from, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively”.

\textsuperscript{110} Dr. Padma T, “Why Land Acquisition in India is so Controversial?” 4 SCJ 17-31 (2011).
attack the Act as weak argue that the procedure followed is cumbersome and costly, which often result in inordinate delay in land acquisition. Some argue that the determination of ‘public purpose’ shall not be a matter of executive discretion; and it shall be subject to judicial scrutiny. The notion of fairness leads to accuracy in adjudication. The first theory of fair procedure may hold that individuals have a right to invoke all manners of procedures or are entitled to procedural rules under which they may advance their cause.\(^{111}\) It has also been argued that the property valuation techniques are flawed and that the land owners get to peg the value higher than the real value, based on ‘potential value’ and ‘opportunity value’ of their property; resulting in, what is claimed as, a heavy strain on public finances and restrictions on the scale of development and redevelopment projects. There is also opposition to the additional payment of solatium to landowners over the property value. A Bench of the apex Court consisting of G S Singhvi and H L Dattu JJ once cautioned:\(^{112}\) if remedial measures are not initiated within another five years, muscle men would take over the private land and utter chaos would prevail as the prices of land are shooting up everywhere. In all the cases, land being acquired in the name of emergency and public purpose, the poor farmer is being uprooted from his place and deprived of his only source of livelihood. The Land Acquisition Act ought to be scrapped as it is a "fraud" devised by some "sick people".\(^ {113}\)

As revealed by the empirical study, the lack of awareness about legal remedies is a major obstacle to claiming proper relief under the Land Acquisition Act. The majority of persons who are affected by the Act are unaware of the procedures of acquisition.


\(^{113}\) This recommendation received legislative recognition through the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 which repealed the Land Acquisition Act, 1894. A critical evaluation of the new legislation along with the comparative merits and demerits of the two legislations have been attempted under Chapter VII, *Infra*, pp.155-197.
The survey conducted by the researcher reveals that only 15% persons whose property was either fully or partially acquired by the government for public purpose, had sufficient knowledge of acquisition procedures under the Land Acquisition Act.

Another drawback of the Act is that the entire legislation is Collector-centric. The Collector has absolute power to make preliminary and final notifications\textsuperscript{114} and it may lead to bias. With regard to the questions: Are you satisfied with the present system of collector centric acquisition? If not, do you prefer alternative mechanism? The data is tabulated below:

\textsuperscript{114} See, Sections 4 and 6 of the Land Acquisition Act, 1894.
Out of the 610 respondents in the empirical study, 75% of the respondents opined that the entire process is left to the discretion of the government officials alone. There is no effective consultation and there is a lack of representation of various sections of persons likely to be affected by the acquisition of land; and therefore they stressed the need for an alternative mechanism.

Under the Act the Collector has a ‘dual’ role: the acquisition of land for the Government as well as the passing of the award. Naturally, it will affect the quantum of the award. Hence, it is suggested that the powers for acquisition of land and passing of award shall be separated. Activities integral to preparatory and ameliorative stages can be accomplished even without the active involvement of the Collector. In both these stages, the Collector can work as a staff agency rather than a line agency. For example, once the Collector receives an application for land acquisition from any requiring body, he can form a committee, comprising individuals with certain defined expertise, to study the questions and issues linked to that particular acquisition. Based on the recommendations of that committee, the actual acquisition proceedings can be initiated. Once the acquisition is over, the Collector can call in rehabilitation and resettlement specialists to initiate the ameliorative work. This may help in two ways: (1) the Collector gets an opportunity to seek expert advice
and (2) the actual involvement of the revenue department is limited to the expertise its officials possess.

6.3 OTHER MAJOR STATUTES

The enactments in India regarding land acquisition rehabilitation and resettlement includes: The Requisitioning and Acquisition of Immovable Property Act, 1952; The National Highways Act, 1956; The Railways Act, 1989; The Ancient Monuments and Archaeological Sites and Remains Act, 1958; The Atomic Energy Act, 1962; The Damodar Valley Corporation Act, 1948; The Indian Tramways Act, 1886; The Land Acquisition (Mines) Act, 1885; The Metro Railways (Construction of Works) Act, 1978; The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962; The Resettlement of Displaced Persons (Land Acquisition) Act, 1948; The Coal Bearing Areas Acquisition and Development Act, 1957; and The Electricity Act, 2003. However, for the purpose of the present study, the three major legislations viz., the Requisitioning and Acquisition of Immovable Property Act, 1952, the National Highways Act, 1956 and the Railways Act, 1989 are selected; considering its wider applicability and distinctive features that warrant a detailed discussion.

6.3.1 The Requisitioning and Acquisition of Immovable Property Act, 1952

The purpose of the Requisitioning and Acquisition of Immovable Property Act, 1952 is to acquire land for the Central Government and Union territories. In *Union of India v. Amar Singh*, the Gujarat High Court held that all requisitions made under the Defense of India Act, 1962 shall be administered under the Requisition and Acquisition Act. If the language of Section 25 of the Act is

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115 The object clause of the Act reads: “An Act to provide for the requisitioning and acquisition of immovable property for the purposes of the Union.”

116 AIR 1981 All. 121.

117 Section 25 of the Requisition and Acquisition of Immovable Property Act, 1952 reads: “Notwithstanding anything contained in this Act, any immovable property requisitioned by the Central Government or by any officer or authority to whom powers in this behalf have been
clear and unambiguous, courts have primarily to look at the language employed in the section and to give effect to it. Here the avowed object was to treat the requisitioning by the Defense of India Act to be one under the Requisitioning Act.

When land is needed for any public purpose of the Union Government, the person appointed to acquire the land could acquire the land after issuing show cause notice. The term ‘public purpose’ is defined as “purpose of the Central Government.” In Collector of Akola v. Ramchandra, the court interpreted the words "for any public purpose" so as including any purpose of whatsoever nature. Therefore, the law places no limitation on the competent authority as to what kind of public purpose it should be for the valid exercise of its power nor does it confine the exercise of that power to a purpose which, is only temporary. However, the State cannot acquire private interest of the individuals in the absence of ‘public interest’. Therefore, when the acquisition proceedings fail, requisition and acquisition for private purpose turn illegal.

One of the highlights of the Act is that, the Act specifically mandates that the authority shall use the land only for the purpose for which it was acquired. This is a major difference in the core area of acquisition under the Land Acquisition Act, 1894.
Apropos the amount of compensation, two options are available: (i) an agreement between the interested parties and the Union Government or (ii) the decision of a Judge appointed as arbitrator by the Central Government\textsuperscript{121}. Under the Act, the compensation shall be paid on the basis of fair market value of property which has to be obtained at date of acquisition\textsuperscript{122}. This provision is similar to that under the Land Acquisition Act, 1894. If the parties cannot fix the amount of compensation by an agreement, the same is required to be determined by an arbitrator. At the commencement of the proceedings before the arbitrator, the parties have to state a fair amount of compensation. After hearing the dispute, the amount of compensation which appears to be just is to be fixed and in making an award, the circumstances of each case have to be taken into consideration. If the property is leased, the amount of compensation payable for the requisitioning of the property is the sum equal to the rent. The words 'rent' and 'lease' are the key-notes and they are dominant for fixing the compensation\textsuperscript{123}. The compensation payable for the acquisition of any property under the Act shall be the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition\textsuperscript{124}.

\textsuperscript{121} Section 8 says : (l) Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be 'determined in the manner and in accordance' with the principles herein-after set out, that is to say, (a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement; (b) where no such agreement can be reached, the Central Government shall appoint as arbitrator a person who is, or has been, or is qualified for appointment, as a Judge of a High Court; (c) the Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired. To assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose; (d) at the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state’ what in their respective opinion is a fair amount of compensation; (e) the arbitrator shall, after hearing the dispute— make an award, determining the amount of compensation which appears to him to be just and specifying the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and ~e provisions of sub-sections (2) and (3), so far as they are applicable; (f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons; (g) nothing in the Arbitration Act, 1940 (X of 1940) shall apply to arbitrations under this section. \textit{Ibid.}

\textsuperscript{122} \textit{Mahesh Lall Seal  v. Union of India, AIR 2007 SC 357.}

\textsuperscript{123} \textit{Scindia Steam Navigation Co., Ltd. v. Union of India, AIR 1976 Bom 354.}

\textsuperscript{124} Section 8 (3), \textit{Supra} n. 115.
In *Union of India v. District Judge, Udhampur*\(^ {125}\), the apex court observed that the arbitrator has no power to award solatium and interest, and that the provisions of the Arbitration Act have no application to the proceeding before the Arbitrator and the Court had no jurisdiction to entertain, consider or dispose of such application\(^ {126}\).

**6.3.2 The National High Ways Act, 1956**

The Act is aimed to develop and maintain the national highways by the Central Government\(^ {127}\). If the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may declare its intention to acquire such land\(^ {128}\). Any person interested in the land may, within twenty one days from the date of publication of the notification shall make objection with respect to the use of the land\(^ {129}\). The compensation amount shall be determined by the authority appointed by the Central Government\(^ {130}\). While determining the amount, the competent authority or arbitrator shall take into consideration, the market value of the land on the date of publication of the notification, the damage, if any in connection with the taking of possession of the land that injuriously affect his other immovable property; and the expenses connected with the change of residence\(^ {131}\).

It is to be noted that the role of the judiciary has been minimised even in respect of payment of compensation. After naming the District Collector as the Arbitrator, the Act makes the award passed by the Collector, equivalent to that made under the Arbitration and Conciliation Act, 1996. Consequently, the award passed by the Collector can be challenged before the court only by way of a petition under Section 34 of the Arbitration and Conciliation Act, 1996. But the power of a Court under Section 34 to set aside an award is extremely circumscribed. Therefore, the National Highways Act, 1956 which is a post Constitutional enactment is more

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\(^{125}\) JT 1994 (3) SC 629; See also, *Union of India v. Harikrishna Khosla* (1993) Suppl. 2 SCC 149.

\(^{126}\) See also, *Gobinda Lal Daga v. State of West Bengal*, AIR 1977 Cal 182.

\(^{127}\) See the object clause, National Highways Act, 1956.

\(^{128}\) Section 3 A, *Ibid*.

\(^{129}\) Section 3C, *Ibid*.

\(^{130}\) Section 3G (1), *Ibid*.

\(^{131}\) Section 3G (5), *Ibid*. 

127
draconian than the colonial legislation viz., the Land Acquisition Act, 1894\textsuperscript{132}. Moreover, the provisions of the Land Acquisition Act, 1894 are exclusively exempted\textsuperscript{133}. Under Section 34 of the Land Acquisition Act, 1894, the Collector is obliged to pay interest at 9 percent per annum from the date of taking possession, if the amount is not paid or deposited on or before taking possession of the land. If the payment of deposit is delayed beyond a period of one year, the interest is payable at 15 percent per annum from the date of expiry of one year. Unfortunately, the National Highways Act does not contain a similar provision\textsuperscript{134}.

\subsection*{6.3.3 THE RAILWAYS ACT, 1989}

Prior to the amendment in 2008 to the Railways Act, 1989, acquisitions of land for railway were governed by the provisions of the Land Acquisition Act, 1894. The amendment added a new Chapter – Chapter IV A, consisting of Sections 20A to 20P to deal with acquisitions for the projects of railway. The amended provision specifically provides that “nothing in the Land Acquisition Act shall apply to an acquisition under this Act”\textsuperscript{135}. The Railways Act, 1989 confers blanket powers to the railway administration to execute any ‘necessary works’\textsuperscript{136}. The term ‘necessary works’ includes the making or construction in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railway, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes, oil-pipes, sewers, electric supply lines, or telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, aqueducts, bridges, roads, lines of rail, ways, passages, conduits, drains, piers, cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks will alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and

\begin{footnotesize}
\begin{enumerate}
\item A.Venkatachalapathy v. The Secretary, \url{http://indiankanoon.org/doc/173689500/}, (visited on October 18, 2012).
\item Section 31, Supra n. 127.
\item Section 20 N, the Railways Act, 1989. See also, Shafuraben Jaku Manjothi v. Union of India, \url{http://www.indiankanoon.org/doc/197741459/} (visited on December 10, 2013).
\item Section 11, Ibid.
\end{enumerate}
\end{footnotesize}
divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway; erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper; alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead; erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway; erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and do all other acts necessary for making, maintaining, altering or repairing and using the railway.\textsuperscript{137}

The legislation further empowers the authority to provide compensation; and in the event of any dispute, the railway administration has to make a reference within sixty days from the date of commencement of the dispute. If the railway administration fails to do so, the District Judge may, on an application made to him by the person concerned, direct the railway administration to refer the dispute for his decision\textsuperscript{138}. In addition, the authorities are empowered to enter into any property on the ground of “urgency”\textsuperscript{139}.

\textsuperscript{137} \textit{Ibid.}

\textsuperscript{138} Section 15 reads: “Payment of amount for damage or loss.- (1) No suit shall lie against a railway administration to recover any amount for any damage or loss caused in the exercise of the powers conferred by any of the foregoing provisions of this Chapter. (2) A railway administration shall pay or tender payment for any damage or loss caused in the exercise of the powers conferred by any of the foregoing provisions of this Chapter, and in case of a dispute as to the sufficiency of any amount so paid or tendered or as to the persons entitled to receive the amount, it shall immediately refer the dispute for the decision of the District Judge of the district and his decision thereon shall be final”. \textit{Ibid.}

\textsuperscript{139} Section 14 reads: Temporary entry, upon land to remove obstruction, to repair auction, to repair or to prevent accident: (1) Where in the opinion of a railway administration-- (a) there is imminent danger that any tree, post or structure may fall on the railway so as to obstruct the movement of rolling stock; or (b) any tree, post, structure or light obstructs the view of any signal provided for movement of rolling stock; or (c) any tree, post or structure obstructs any telephone or telegraph line maintained by it or to prevent accident.- (1) Where in the opinion of a railway administration-- (a) there is imminent danger that any tree, post or structure may fall on the railway so as to obstruct the movement of rolling stock; or (b) any tree, post, structure or light obstructs the view of any signal provided for movement of rolling stock; or (c) any tree, post or structure obstructs any telephone or telegraph line maintained by it, structure may fall on the railway so as to obstruct
In *Nayanaben Ratilal v. State of Gujarat*\(^{140}\), the Supreme Court cautioned:

“…the aspect of compensation should not be delayed and the authorities should not resort to the provisions of the Arbitration and Conciliation Act to fasten the liability on the persons whose lands have been acquired, which will be adding insult to the injury, as they would be made to shell out a portion of amount of compensation or less compensation, that is awarded towards such further cost to get the enhanced compensation that cannot be a purpose\(^{141}\).

The court further continued that the concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public obligation is an essential ingredient of good administration whether by the State or its instrumentalities.

Even though the Constitutional as well the statutory provisions attempt to reconcile the conflicting interests of the State and the individuals in the realm of land acquisitions, the present law is subjected to constant and vehement criticism from various quarters; especially on the ground of failure to address properly the private interest. Though the kingpin legislation, the Land Acquisition Act, 1894 has been repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013, the new legislation also remains highly controversial. Hence the next chapter is an enquiry into the possible protective measures that can be adopted by the State so that the grievances of everyone can be redressed.

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\(^{141}\) *Ibid.*