CHAPTER-VI

LAND ACQUISITION ACTS: ISSUES AND PERSPECTIVES

6.1 Introduction

Property guarantees freedom to individuals, when it is land, it embodies a bundle of rights. Land is one of the scarce natural resource in the world. It is not possible either to increase or to decrease the land. It is to be ensured that land is managed judiciously and in a suitable manner to the common good of people that can be ensured in a long run. Property is special because it allocates scarce resources and is fundamental for the exercise of other rights. In other words, property rights determine access to the basic means of subsistence, they are the prerequisite to the meaningful exercise of all other rights. In Waman Rao v. Union of India\textsuperscript{1} a constitutional bench had observed that India being a predominantly agricultural society, there is a “strong linkage between the land and the personal status in the social system.” The tip of land on which they till and live, assumes them equal justice and dignity of their person by providing to them a near decent means of livelihood.

Right to property is the natural and inherent right of individual. Hence, every individual has a right to own and possess the property. This right of the individual conflicts with the right of the State to acquire property under the doctrine of eminent domain. This conflicts of rights \textit{i.e.}, the right of the individual to protect his property and the right of the State to acquire property of the subjects has become a matter of debate in this decade. Eminent domain is the incidental exercise of sovereign power of the State to acquire private property for public purpose by providing just compensation. The power of eminent domain has been explained that when public need requires acquisition of property, the need is not to be denied because of an individual’s unwillingness to sell. When the need arises, individuals may be required to relinquish ownership of property, so long as they are given just compensation.

Eminent Domain means State sovereign power to take property for public cause without owner’s consent, coupled with the obligation to make good to the loss and it is the power of the State to appropriate any land from a private person for a public purpose. It is the ability to take privately owned property. Hence, Eminent Domain refers to “the power possessed by the sovereign or the State over all the

\textsuperscript{1} AIR 1981 SC 271
property within the jurisdiction of State”. Every government has an inherent power to take and appropriate the private property for public use. In justification of the eminent domain power, two maxims are often cited: Salus Populi Est Supreme Lex and necessitas publica major est quam private.

Salus Populi Est Supreme Lex means welfare of the people is only consideration may be said to be the corner stone of the law of the land. The maxim means that ‘regard for the public welfare is the highest law’. This phrase is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to the community; and that his property, liberty and life shall, under certain, circumstances, be placed in jeopardy or even sacrificed for the public good. necessitas publica major est quam private means public necessity is greater than private necessity, application of this doctrine in India gives immense powers to the State for acquiring land for public purpose. State can expropriate property rights through compulsory acquisition processes. Compulsory acquisition law, as a restraint on the property right of individual therefore, people cannot sell-off their property as per their wish. The exercise of such power has been recognized in the jurisprudence of all civilized countries as conditioned by public necessity and payment of compensation. On these two maxims whole law of Land Acquisition is based.

The importance of the power of eminent domain to the life of the state has been recognized by almost all the sovereign civilized countries. It is so often necessary for the proper performance of the governmental functions to take private property for public use. Thus property may be needed or acquired under the power of eminent domain for government offices, libraries, slum clearance projects, public schools, colleges and universities, public highways, public parks, railways and many other projects of public interests, conveniences and welfare. The power is inalienable founded upon the common necessity of appropriating the property of the individual. Interest of the whole of the community is greater than the individual interest.

Thus, eminent domain is an inseparable incidence of sovereignty. The U.S. Courts in U. S. v. Jones2 has observed that there is no need to confer this authority expressly by the Constitution it exists without any declaration to that effect. However

2 (1883)27 LED1015.
constitutional provisions provide safeguards subject to which the right may be exercised. Limitations (safeguards) are (i) valid law (ii) public purpose and (iii) compensation. Private property can be acquired through valid law only; secondly, property acquired only for public purpose and not for private purpose; and thirdly, compensation must be given for acquisition of property means property should not be condemned. The right of eminent domain is the right of State through its regular organization to reassert either temporarily or permanently, its domain over any portion of the soil of the State on account of public agency and for public good in time of war or insurrection. The proper authorization may possess and hold any part of the territory for common safety in time of peace for public purpose.3

After analyzing the constitutional framework of right to property it becomes important to get a sense of law which governs routine takeover of land by the State in India. Therefore counterpart to the law of Eminent Domain of America or the Law of Compensation of England is the Law of Land Acquisition and Compensation in India. The Land Acquisition Act, 1894 forms the parent Act in India and it is the basis of all control and State laws relating to compulsory acquisition and compensation4. Then again what the statute seeks to achieve is acquisition, not confiscation5 means, in every acquisition law there are two inbuilt conditions or safeguards subject to which State can acquire the property namely, right of the expropriated owner to receive compensation and secondly, no acquisition is permissible without public purpose.6 The Act was legislated during the colonial period to take over land needed for public purposes. The Act has been amended periodically with substantial amendments made in 1984. Though it is a central law, various States have made amendments to the Act in consonance with local conditions.

The preamble to the Act, States categorically that individuals whose property is taken over has a right to receive compensation. The bulk of the Act is devoted to creating a regime relating to the manner in which an acquisition is to be made, the compensation to be paid and the procedures are to be followed while pursuing the acquisition. In the twenty first century, everything looked from the perspective of

4 Ibid at 1.
5 Ibid at 3.
human right, as such this colonial Land Acquisition Act in many respects violated the human rights. For example under this Act no procedure was adopted for displacement of project affected families, therefore, when property was acquired, they are forcible displaced and displacement may be inhumane. There is no provision for Social Impact Assessment of any projects, there is no any additional protection for marginalized people like SCs and STs land losers except monetary compensation, moreover, it does not provide any kind of protection except monetary compensation to the land losers. As a result of which to have a unified legislation dealing with acquisition of land, just or fair compensation and to have rehabilitation and resettlement mechanisms for the project affected persons the new LARR Bill was drafted which was laid on the table of parliament in 2011, due to political unwillingness to bring out this legislation, it was lapsed. On 1st January 2014 the Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force and replaced the earlier colonial Land Acquisition Act, 1894. Therefore present chapter gives an overview of the Land Acquisition Act, 1894, its provisions, its deficiencies and the need of a reformation in land acquisition laws. Further, an attempt has been made to analyse, appraisal and critique the Land Acquisition Act, 1894 while comparing it with present Act.

6.2 Historical Background of Land Acquisition Act, 1894

The first piece of legislation in India in respect of acquisition of property was the Bengal Regulation 1 of 1824. It applied through the whole of the provinces immediately subject to the Presidency of Fort William. It provides rules for enabling the officers of government to obtain land, at a fair valuations or other immovable property required for roads, canals or other public purposes. Some lands were acquired in Calcutta for public purposes, even though there was no proper legislation to that effect. In order to remove the legal complications, Act 1 of 1850 was enacted with a view to confirm the title to the land acquired for public purpose. In the middle of the nineteenth century, when the railway were being developed, it was felt that legislation was needed for acquiring lands for them. Act XLII of 1850 declared that Railways were public works within the meaning of the regulation and thus enabled the provisions of Regulation 1 of 1824 to be used for acquiring lands for the construction of railways.

In Bombay, the building Act XXVIII of 1839 was the first piece of legislation whereby the machinery for acquisition of land for the purposes of widening or altering any existing public road, street or other thorough fare or drain or for making any new public road or thorough fare within the islands of Bombay and Colaba was provided. This Act was extended by the Act XVII of 1850 to taking lands for railway purposes within the presidency. In Madras Act XX of 1825 was passed for the purpose of facilitating the acquisition of land for public purpose in the presidency of Fort St. George. Generally in Madras presidency, the compensation as per the Act was to be settled by the collector or if the parties disputed it, by arbitration. Simultaneously Act 42 of 1850 (Bengal) was extended to the presidency. Both these Acts were extended by Act 1 of 1854 for acquisition of Land in Madras town.

For the purpose of making one general law for acquisition of land for public purpose all the earlier Acts were repealed. The first enactment on this subject for the whole India was Act VI of 1857. Its object, as Stated in its preamble was to make better provision for the acquisition of land needed for public purposes within the territories and under the governance of the East India Company and for the determination of the amount of compensation for the property acquired. Under this Act, the collector was empowered to fix the amount of compensation by agreement, if possible; but if there was no such agreement, the dispute had to be referred to arbitrators whose decision was to be final and arbitrator could not be impeached, except on the ground of corruption or misconduct. This Act was amended by Act 11 of 1861 and XXII of 1963. A few years’ experience of the working of the Act revealed that the method of settlement of compensation by arbitration was unsatisfactory as the arbitrators were found to be incompetent and sometimes even corrupt. There was no machinery (provision) provided in the Act to get their decision revised and there was no provision to appeal against award of arbitrators. The legislature had to intervene and Act X of 1870 was passed. This Act for the first time provided for reference to a civil Court for determination of the amount of compensation when the collector could not settle it by agreement. It laid down a detailed procedure for acquisition of land and also provides definite rules for

9 Supra note 1, at 5.
10 Kasturi Kannan, ‘Land Acquisition from Colonial Times to the Present’, (accessed on 30.08. 2011, 4:20 PM), http://www.ghadar.in/vol2 issue 1 pdf/v211 cover story pdf
determination of compensation. In 1885, a separate Act (XVIII of 1885) was passed with the object of making provision for the grant of compensation to the owners of mines under the land which was acquired by the government, where such mines were not required by the government but the owners were prevented from working on them\textsuperscript{11}.

Since, there were still loopholes in that Act, therefore the Act of 1894 was passed and it enabled to apply to the whole of British India.\textsuperscript{12} But some of the native states like Mysore, Travancore, Hyderabad etc., were having their own Acquisition Laws.\textsuperscript{13} Under the government of India Act, 1919 and the Government of India Act, 1935 (item 9 of list II of the VII Schedule) provinces had power to legislate with respect to compulsory acquisition of land. In exercise of this power, some of the provinces amended the provisions of the Act in certain respects. After the Independence Act, 1947 subsection (2) of section 1 of Land Acquisition Act was amended by substituting the words ‘all the provinces of India’ for the words ‘the whole of British India’. After the constitution, under the adaptation order of 1950 for the words ‘the provinces of India’ the words ‘the whole of India except part B States’ were substituted. The Part B States Laws Act, 1951 (III of 1951), did not extend the Land Acquisition Act to Part B State.\textsuperscript{14}

6.3 The Land Acquisition Act, 1894

The Land Acquisition Act was enacted with an intent to further governmental purposes like roads and railway, police stations etc. But later with time the need was felt that Act should also resort to public utilities such as water and electricity companies or transport undertakings (even when they were privately owned), or charitable institutions. Lands have also been acquired on large scale for building of big dams and irrigation projects. The Land Acquisition Act 1894 was passed in order to remove certain anomalies in the existing system of land acquisition as laid down by the previous legislation Act X of 1870.

\textsuperscript{11} Supra note 8, at 5 & 6.
\textsuperscript{12} Dr. N Maheshwara Swamy’s ‘Land Law’, (Asia Law House, Hyderabad, 1\textsuperscript{st} ed., 2009), p 5
\textsuperscript{13} Mysore Land Acquisition Act, 1894; the Travancore Land Acquisition Act, 1914 and Hyderabad Land Acquisition Act, 1909 etc.
\textsuperscript{14} Supra note 3, at 18
The Main Objectives of the Land Acquisition Act 1894:

a. To abolish the institution of arbitrators, who previously were entrusted with the duty of valuing the land. The 1870 Act laid down no rules for their functioning and as such the entire system could be said to be incomplete.

b. The 1894 Act was supposed to incorporate detailed instructions regarding compensation.

c. To avoid unnecessary delays, the position of the assessor was to be abolished. This would lend fluidity and more transparency system.

d. The 1870 Act ensured that Collector was to bear the costs of litigation of the final award was in excess of his tender. This led to ‘extravagant and speculative’ claims being made. The Land Acquisition Act made the award of the collector final unless by a decree in a civil suit.

e. Similarly, in the 1870 Act, interest was payable on the amount of the award arrived at from the date of the collector’s taking possession of the land. As the interest would continue to accumulate through a period of litigation, this prompted many land owners to go in for excessive litigation, thereby slowing down the entire process of acquisition as well as draining the State exchequer.

f. The previous rule of compulsory reference in cases where there was no agreement amongst the several claimants as regards apportionment amongst the claimants was also abolished. In the 1894 Act, the collector may make an apportionment against the claimants and if a person is aggrieved, he may within a period of time specified in section 18, apply to the collector for a reference to the Courts.\(^\text{15}\)

6.3.1 Constitution and the Act

The provisions of the Act are not hit by the constitution. Even when Articles 19(1)(f) and 31 were not deleted it was held that the Act is an existing Law. Article 31(5) laid down that nothing in clause (2) of Article 31 would affect the provision of any existing law other than a law to which the provisions of clause (6) of Article 31 would apply. The Act being law to which the provision of clause (6) did not apply was held to be constitutional even when article 31 was not deleted. Now position is different Article 31 has been deleted and Article 300A provides that no person shall be deprived of his property save by authority of law, therefore Land Acquisition Act,

1894 cannot be held to be hit by the Constitution. Moreover, the acquisition under the Land Acquisition Act is for public purpose, on payment of adequate compensation, though the Act provides for compulsory acquisition of property for public purpose, it cannot be held that such deprivation is not authorized by law.\textsuperscript{16}

6.3.2 Object of the Act

The object and intention of the Act is to comprise in one general Act sundry and elaborate provisions relating to acquisition of land for “public purpose”, for assessing the amount of compensation and it is for avoiding the necessity of repeating such provisions in subsequent Acts dealing with acquisitions. As well as for ensuring uniformity of the provisions the sections of the Land Acquisition Act with other Acts introduced subsequently, thus the Act 1 of 1894 came into existence.\textsuperscript{17} According to the entry 42 of the seventh schedule of the constitution both union and State government are competent to legislate on the subject, the principal enactment dealing with acquisition of property in the country is the Land Acquisition Act, 1894 which is a Central Act. Several States have amended certain provision of this Act under clause (2) of Article 254 of the Constitution. Some States, like Kerala and Rajasthan, have their own Land Acquisition Act, which are valid subject to the provisions of Article 254.\textsuperscript{18}

In \textit{Somawati v. State of Punjab} \textsuperscript{19} the Supreme Court held that object of the Land Acquisition Act was to empower the government to acquire land only for public purposes or for a company. Where it is for a company the provisions of part VII should be complied with, only after the government is satisfied that the purpose of the company is directly connected with or for the construction of some work which is likely to prove directly useful to the public land, could be acquired.

6.3.3 Town Development Acts vis-à-vis Land Acquisition Act, 1894

For proper development of urban areas certain State Acts, have been enacted, Ex. Delhi Development Act, Calcutta Metropolitan Act, etc. But it is to be borne in the mind that development is one thing and acquisition is another. Development in

\begin{itemize}
\item \textsuperscript{16} M.K. Mallick, ‘\textit{Land Acquisition Act, 1894}’,(Kamal Law House, Calcutta, 1990), p 3.
\item \textsuperscript{17} \textit{Supra} note 3, at 17.
\item \textsuperscript{18} Kamantha Raman,‘\textit{Acquisition of Land, Companies other than Government Companies}’, 87(32)Corporate Law Advisor 27 (Jan-March 1999).
\item \textsuperscript{19} AIR 1963 SC 151.
\end{itemize}
that city or town after the enforcement of the development Act has to be in conformity with the said Act, but it will not be correct to say that land could be acquired after the Development Act coming into force under the said Act only and once it could be acquired under Urban Development Act, same could not be acquired under the Land Acquisition Act.  

6.3.4 Legislative Competency of Land Acquisition Act

A law must be in conformity with the Constitution. It is therefore, necessary to examine the extent of the legislative power of the union and the States in respect of a law for acquisition and requisitioning of land. Before 1956, the legislative power in respect of acquisition and requisitioning of property was distributed between the Union and the States and the power to lay down the principles of compensation was included in the concurrent list (vide Entry 33 of the union List and entry 36 of the State List of the seventh schedule). This anomalous position was put to an end by the Constitution (Seventh Amendment) Act, 1956, by omitting all these entries in the Union List and the State List and substituting for Entry 42 in the concurrent List of the seventh schedule the words “acquisition and requisitioning of property. Union and State list are now empowered to enact laws relating to acquisition of property.  

6.3.5 Validity of the Act

Under Article 300A of the Constitution of India “no person can be deprived of his property save by authority of law”. In the view of this provision a citizen cannot be deprived of his property by an executive. There must be law for it, Land Acquisition Act is the law. This Act therefore, fulfils the constitutional obligations. In the absence of provisions in the Act for taking over possession of the notified or the acquired land the acquisition would been futile. Therefore, the Act provides for interference with possession and taking over possession of the notified or acquired land. Acquiring land without payment of compensation would have been arbitrary, violating the Article 14. Accordingly, the Act provides for assessment and payment of compensation.  

21 Supra note 3, at 17.
The experience of more than one century witnessed that the provisions of this Act have been found to be inadequate in addressing certain issues like rehabilitation and resettlement of project affected persons, social impact assessment of projects. Therefore, this Act replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Aim of the Act was to ensure a humane, participatory, informed consultative and transparent process of land acquisition with the least disturbance to the owner of the land and other affected families and to provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition. Make adequate provisions for such affected persons for their rehabilitation and resettlement thereof, and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition and social economic status and of matters connected therewith or incidental thereto. The scope of the Act extend to all over India except the State of Jammu and Kashmir. The Government of India requires a combined law, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow government acquisition of land for public purpose.

The Law is clear that States are free to enact their own legislations and policies on land acquisition, provided provisions on resettlement and rehabilitation shall not be less than what is provided in the Central Act (Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013). Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would apply when:

1. Government acquires land for its own use, hold and control.
2. Government acquires land with the ultimate purpose to transfer it for the use of private companies for States public purpose. The public purpose of Act includes public private partnership project, but excludes land acquired for stated national highways projects.
3. Government acquires land for immediate and declared use by private companies for public purpose.

**Need for the Act**

The government of India claims that there is lightened public concern on land acquisition issues in India. Despite of many amendments to the Land Acquisition
Act, 1894 over the years, there was absence of a cohesive national law that addresses to:

1. Fair compensation when private land is acquired for public use and
2. Fair rehabilitation of land owners, who are directly affected from loss of livelihood.

6.4 The Procedure to Theory

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provides compensation for expropriated land, houses and other immovable which are carried out under the Act. The Act is commonly used for acquisition of land for any public purpose. It is used at the individual State level with State amendments made to suit local requirements. In addition to this parent Act, there are other States legislation for land acquisition. Notwithstanding anything contained in this Act section 104 of the Act provides that the appropriate government shall, whenever possible, be free to exercise the option of taking the land on lease, instead of acquisition, for any public purpose. The Act deals with compulsory acquisition of private land for public purpose. The procedure set out include:

i) Preparation of Social Impact Assessment Study
ii) Preliminary notification (Section 11);
iii) Declaration of notification (Section 19);
iv) Notice to the persons interested (Section 21);
v) Enquiry and award (Section 23);
vi) Possession (Section 38);
vii) Reference of the Authority (Section 64);
viii) Acquisition of Land for Companies.

It is better to analyse the provisions of the present wherever it demands researcher meticulously observe the discrepancies in the two Acts. Since the sole objective of the Act is acquisition of land, it would be better to understand the term land within the meaning of the Act, definition of term land under section 3 (p) of the Act which is not conclusive but inclusive and reads as follows:
“The expression land includes benefits arising out of land acquired and things attached to the earth or permanently fastened to anything attached to the earth.”.  

For the purpose of land acquisition, proceeding are carried on by an officer appointed by the government known as Land Acquisition Collector. The proceedings carried out by the land acquisition collector is of an administrative nature and not judicial or quasi-judicial character. In Jayanti Lal Amrit Lal Shodhan V.F.N. Kana, Supreme Court inter alia, decided on this point and held that hearing as per section 5-A of Land Acquisition Act,1894 is not judicial or quasi-judicial it is only an administrative nature proceedings.

### 6.5 Social Impact Assessment

Preliminary step in land acquisition under the Act starts with preparation of Social Impact Assessment under section 4 of the Act. Whenever the appropriate government intends to acquire land it shall consult the concerned Panchayath, Municipality or Municipal Corporation as the case may be to carry out a social impact assessment study. Appropriate government (District collector, the sub divisional magistrate, Teshildar) issued notification for the commencement of the Social Impact Assessment in consultation with panchayat, municipality or municipal corporations as the case may be, and notification shall be available in local language to the panchayat, municipality or municipal corporation and as well as it is uploaded in the appropriate government website. As per section 5 of the Act, public hearing for social impact assessment to ascertain the views of the affected families and to be recorded in the social impact assessment report. Social impact assessment report includes the following matters, namely:

1. Whether the proposed acquisition serves public purpose;
2. For estimation of affected families and among them likely to be displaced.
3. Extent of lands, houses, settlement and other colony to be affected by the property likely to be affected by the proposed acquisition;

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23 Supra note12, at 10.
24 (1964)5 Section C.R. 294, 317.
25 Subba Rao and Wanchoo, j j., The Enquiry made by the Collector is not judicial or quasi-judicial enquiry and the report made by the collector under Section 5A of the Land Acquisition Act is administrative.
4. Whether the land acquisition at an alternative place has been considered and found not feasible; and

5. To study the overall cost investment and benefits of the project.

Social Impact Assessment along with Environmental Impact Assessment shall be carried out. After the completion of the assessment report, Social Impact Management Plan along with the social impact assessment report made available in the local language to the panchayat, municipality or municipal corporation as the case may be. Same should be published in the affected area and uploaded in the government website. Social Impact Assessment Study should be completed within the six months from the date of its commencement. Government shall ensure public hearing in the affected area during the course of social impact assessment.

Under section 7 of the Act an independent multi-disciplinary group shall evaluate the social impact assessment report. Multi-disciplinary group consists of two non-official social scientists, two representative from panchayat or grama sabha, municipality or municipal corporation as the case may be and two experts on rehabilitation and one technical expert. The expert group within two months from the date of its constitution should submit its opinion that whether the proposed project will serve the public purpose and whether the potential benefits outweigh the social cost and adverse social impact and, whether the extent of land proposed to be acquired is the absolute bare minimum and whether there is no other less displacing options available.

Under section 8(2) of the Act appropriate government after examining the report of the social impact assessment and report of the collector if any, recommended such area for acquisition provided it ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individual. Appropriate government will make sure that prior consent of the affected families in case of acquisition for private companies at least 80 per cent and at least 70 per cent in case of acquisition for private public partnership projects. Under section 9 of the Act appropriate government may exempt the land which is sought to be acquired by invoking the urgency clause (section 40 of the Act) from social impact assessment study.

If preliminary notification is not issued within 12 months from the date of appraisal of the social impact assessment report submitted, then such report shall be
deemed to have lapsed and a fresh social impact assessment shall be required to be undertaken prior to any acquisition.

6.6 Limitations on Acquisition

Section 10(1) of the Act provides that no irrigated-multi cropped land shall be acquired under this Act, if it is acquired only as a last resort and subjected to development of an equivalent wetland for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate government for investment in agriculture for enhancing food security. Provided that the provisions of this section shall not apply in case of projects which are those relating to railways, highways, major district roads, irrigation canals etc.

6.7 Rehabilitation and Resettlement

Under section 16 of the Act after issuing preliminary notification the administrator for rehabilitation and resettlement shall conduct survey and make census of the affected families. Based on the survey and census reports the administrative officer shall prepare a draft of rehabilitation and resettlement to provide rehabilitation and resettlement to each land owner and landless persons. For the purpose of the Act, ‘landless persons’ means whose livelihood primarily dependent on the land is being acquired. The draft of rehabilitation and resettlement scheme shall prescribe the time limit for implementing rehabilitation and resettlement scheme, and it shall be made known locally. In preparation of rehabilitation and resettlement scheme administrator shall give public, hearing opportunity to raise an objection against the acquisition and rehabilitation and resettlement scheme. After completion of public hearing administrative officer shall submit the draft scheme of rehabilitation and resettlement along with the report of the clients objections raised in the public hearing. After reviewing, collector submits his report along with suggestions to the commissioner of rehabilitation and resettlement for approval. Appropriate government or collector after being satisfied with the report that any particular land is needed for public purpose, a declaration shall be made and declaration shall be accompanied with summary of rehabilitation and resettlement
scheme. Unless, the compensation has been deposited either in full or part no declaration shall be made.\textsuperscript{26}

6.8 Preliminary notification (Section 11)

Under the repealed Land Acquisition Act the process of acquisition begins with a preliminary notification on signaling the need to acquire the land. When the government intends to occupy a land in any locality, it begins with issuing a notification under section 4 in the official gazette, and in two daily newspapers circulated in the concerned locality of which at least one shall be in the regional language.\textsuperscript{27} In \textit{State of Gujarat v. Panch of Nani Hamam’s pole}\textsuperscript{27 A} Supreme Court has made it clear that, personal service of notice is not contemplated by section 4(1) of the Land Acquisition Act 1894. Thereafter at least seven days a public notice may be given which entitles anyone \textsuperscript{28} on behalf of the government to enter the land for the purposes of digging, taking level, setout boundaries etc. The notification puts forward the intention of the government to acquire land and entitles the government officials to investigate and ascertain whether the land is suitable for the purposes. Owner or occupier of the land cannot obstruct the entry of such person. However, the law provides for payment of damages by the officer so authorized to enter upon the land who shall at the time of such entry, pay or tender payment for all necessary damages to be done as described in section 4(2) of the Act. In case of dispute as to the sufficiency of the amount and dispute shall at once refer to the decision of the Collector or other Chief Revenue officer of the District and such decision shall be final, no suit will lie to that effect in any Court. However, if the amount of damages is not accepted by the owner, the same will be included in the final award.\textsuperscript{29} Damages awarded under section 5 are different from those contemplated under section 17 for sudden dispossession under emergency condition.\textsuperscript{30}

But under section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, preliminary notification published in a local language of Panchayat, Municipality or Municipal Corporation,

\begin{itemize}
\item \textsuperscript{26} Section 4 of LAA 1894.
\item \textsuperscript{27} Supra note 12, at 11.
\item \textsuperscript{27 A} AIR 1986 SC 803.
\item \textsuperscript{28} Section 4(2) of LAA 1894.
\item \textsuperscript{29} Supra note 15, at 9.
\item \textsuperscript{30} Dr. J.C. Verma’s, \textit{Law of Ownership of Property and Investigation Title}, (Bharat Law House, New Delhi, 1995), p 260.
\end{itemize}
as the case may be in the Official Gazette and in daily newspapers circulated in the concerned local authority of which at least one shall be in regional language, and also uploaded in the appropriate government website. Preliminary notification issued under the section 11(1) of Act shall also contains summary of social impact assessment report and particulars of the administrator appointed for the purposes of rehabilitation and resettlement under section 43 of the Act. Damages awarded under section 13 are different from those contemplated under section 69 for sudden dispossession under emergency condition.

6.9 Interested Person

Under the section 15(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 any interested person can raise an objection within sixty days from the date of publication of preliminary notification in writing and in person. Whereas under section 5(A) of the Land Acquisition Act, any person interested in land which is notified under section 4(1) can raise an objection, within thirty days from the date of publication of notification in writing or in person.

Under the scheme of the Act [section 21(2)] compensation for acquisition of land for public purposes is payable only to the person interested. Thus, there is need to know who is the person interested. Section 3(1)(x) of the Act defines the term “person interested” is deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under the Act. In *Bhyrava Murthy v. M. Venkataraju* 31 Court held that the term “person interested” has to be given a broader meaning if a situation warrants it seeks to include a person having an interest in an easement and also a beneficiary.

In *A.P. Agricultural University v. Mohammunissa Begum* 32 full bench of Patna High Court relying on the several decisions of the Supreme Court held that the expression “person interested” does not require a person must have really an interest in the land sought to be acquired. It is enough if he claims an interest in the compensation, as distinguished from an interest in the property sought to be acquired. Court further held that a purchaser of land would not become a person interested on the ground that he was liable to pay the additional price in the event of enhancement

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31 2001(5) ALT 565 (LB).
32 AIR 1976 AP 134 (FB).
of compensation for the acquisition of land in terms of sale agreement.\textsuperscript{33} In \textit{Amar Singh Jadar v. Shanti Devi} \textsuperscript{34} a party who is in possession of is the prima facie evidence entitled to compensation, so he is a person interested. Whether he is in occupation in the capacity of a tenant or a licensee is immaterial.

6.10 Personal Hearing of Objections

Essence of the section 15(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act is that personal hearing of objections of the person concerned and absence of such hearing renders the acquisition invalid from the inception. The collector after making inquiry of such objections\textsuperscript{35} has to forward the report to the government whose decision in this respect would be final. The enquiry under the section 15(1) is of quasi judicial nature collector must give the objector an opportunity of being heard in person or by pleader. Under the section 15(3) decision of the appropriate government shall be final against objections of the interested person pertaining to acquisition.

Whereas section 5A of the Land Acquisition Act, 1894 provides for hearing of objections. The main advantages of the enquiry were assessed by the Gujarat High Court in \textit{Patel Gandalal Somnath v. State of Gujarat} \textsuperscript{36} the Government can decide whether any particular land is needed for a public purpose or for a company and the enquiry also enables persons interested to show how acquisition of land in question will not serve the public purpose at all involved in the manner. However decision once taken under section 5A cannot be cancelled or altered.\textsuperscript{37} In case the State government has taken the decision in favour of objector, it is no longer possible to make declaration under section 6 of the Land Acquisition Act and the land notified under section 4(1)\textsuperscript{38} cannot be acquired.

After considering such report made by the collector under section 15(2) of the present Act the government shall issue a declaration\textsuperscript{39} within twelve months from the date of the preliminary notification to acquire land for public purposes, PPPs or company. Declaration is a mandatory requirement for every acquisition. No such

\footnotesize{\textsuperscript{33} \textit{Hindu Kanya Mahavidyalaya v. Municipal Committee}, 1988 SCC 718.  
\textsuperscript{34} \textit{AIR 1987 Pat} 191(FB).  
\textsuperscript{35} See Section 5A of the Land Acquisition Act, 1894.  
\textsuperscript{36} \textit{AIR 1963 Guj.} 50.  
\textsuperscript{37} \textit{Supra} note 30, at 260.  
\textsuperscript{38} \textit{Bedenahat Fatensah Fakir v. State of Maharashtra} 1980 BOM CR 1791.  
\textsuperscript{39} See Section 6 of the Land Acquisition Act, 1894.}
declaration shall be made unless the Requiring Body deposits an amount of compensation, in full or part, as may be prescribed by the appropriate government towards the cost of acquisition of the land. Failure to give a personal hearing is fatal and renders the proceedings illegal.

A person having no right and interest in the land which is sought to be acquired, has no locus standi to file an objection and question the validity of the acquisition. There is no second opportunity for making representation after completion of enquiry under section 5A of the Act. Acquisition in case of urgency enquiry under section 5A is dispensed with. There is nothing in section 4(2) (1A) of the LA (Mysore extension and amendment) Act, 1961 to show that service of individual notice is mandatory. Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 urgency clause is invoked for limited purposes like national defence, security purposes and rehabilitation and resettlement needs in the event of emergencies or natural calamities only.

No specific grounds are mentioned in the section 5A of the Land Acquisition Act or even under the present Act, for raising an objections. Case laws that have been build up and executive instructions issued by various State governments reveal the following objections that can be raised:

a. that one’s land is not needed / suitable for the purposes
b. that is not a public purposes
c. that more land has been acquired than necessary
d. that the acquisition will destroy historic monuments or places of public interest or that it will desecrate religious buildings
e. without objecting the acquisition one can object to the omission of one’s name from the list of persons having an interest in a particular land
f. later, one can object to the low quantum of compensation.

The grounds mentioned in a, b, c and d are very difficult to invoke without knowing exactly how much of land is being acquired and exactly for which purposes.

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40 Supra note 12, at 118.
Acquisition of Land for Companies

Ashok Kumar Kesharwani v. State of Uttar Pradesh\textsuperscript{45}, in this case acquisition of land for the company, the land owner is entitled to an opportunity of being heard under Rule 4 of the Land Acquisition (companies) Rules, 1963 over and above an opportunity of hearing an objection under section 5A of the Act. Objections raised under Rule 4 cannot be raised in an enquiry under section 5A therefore, failure to hear the objection under Rule 4 will be fatal and enquiry under section 5A of the Act did not satisfy the requirement contained in Rule 4 of the Companies Acquisition Rules. The owners of the land are entitled to an opportunity of being heard in an enquiry under Rule 4 and enquiry under section 40 of the Act. When no such opportunity is given, the acquisition is vitiated.

Section 5A didn’t apply in the following cases viz. (1), for emergent acquisition of land sought under section 17; (2) temporary occupation of waste or arable lands under the Act; (3) acquisition of part of house or building under section 49 of the Act. However, above facts are required to be mentioned in the notification issued under section 4(1) of the Act.\textsuperscript{46}

Under the new Act there is no such kind of different procedure of acquisition of land for public purposes and for companies. Whereas under the new Act land acquired for the purposes mentioned under the section 2(1) of the Act rehabilitation, resettlement and compensation shall be applied and land acquired under section 2(2) of the Act consent, rehabilitation, resettlement and compensation shall be applied. Even if a private company purchase land or it request the appropriate government for acquisition of a part of an area so prescribed for a public purpose is above the trigger i.e., more than 50 acres in urban area and more than 100 acres in rural areas must comply with rehabilitation and resettlement provision in addition to compensation.

6.11 Declaration of notification (Section 19)

Power to acquire land is given by the Act. If the land is found suitable, a declaration containing the intention of the government to take over the land is issued. Before the declaration is issued under section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act it must

\textsuperscript{45} AIR 1981 SC 866; AIR 1984 AII 283 (FB)
\textsuperscript{46} Supra note 28, at 261.
appear to the appropriate government that the land in any locality is needed or is likely to be needed for any public purpose, then appropriate government after being satisfied with the report made under section 15(2) of the Act, a declaration shall be made to that effect, along with a declaration of an area identified as the “resettlement area” for the purpose of resettlement and rehabilitation of the affected families. Publication of summary of Rehabilitation and Resettlement Scheme is mandatory. Hence, present the Act provides more security to the land losers. The said declaration made under section 19 of the Act shall be conclusive evidence that the land is sought to be acquired.

Under the repealed Land Acquisition Act, 1894 in case of land acquisition for companies it is imperative compliance with the acquisition procedure under part VII of the Act and Rule 4 under the Land Acquisition Rules 1963. Unless the conditions enjoined by rule 4 are complied with, the notification issued under section 6 would be invalid. In the present Act acquisition of land for infrastructural development project by the private companies or for public-private partnership project prior informed consent of 80 per cent of the project affected persons are mandatory.

After making such declaration the local government may acquire the land through procedure. Section 19 comprise two parts (1) satisfaction of the government that particular land is needed for public purposes and (2) appropriate government only can make a declaration after considering the report. The declaration would be bad, if it is made by the appropriate government which is not appropriate and proceedings for acquisition founded on such bad declaration may be quashed through writ petition. However, particular land needed for a public purpose or for a company is subjected to satisfaction of the government. Subjective satisfaction of the government is not reviewed by the Court as an appellate form but grounds for arriving to such satisfaction could be reviewed by the Court. Declaration shall be made under the signature of the secretary or of duly authorized officer. No declaration under this section is to be made unless the requiring body deposits amount in full or in part which is to be paid by a company, or wholly or partly out of public revenue. When it is found that the notification has been issued under section 19 without taking into account the report of the collector made under section 15(2), then such notification could be invalid in Law.47

Under section 40 of the Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act urgency clause has also been limited for the purposes of national defence, security purposes and rehabilitation and resettlement in the event of emergencies or natural calamities. Appropriate government under the urgency clause may on expiration of thirty days from the date of publication of notice mentioned under section 21, take the possession of the land. Before taking possession of the land collector shall tender payment of 80 per cent of compensation to the interested persons.

In the repealed Land Acquisition Act, 1894 Government dispenses with the requirement of enquiry under section 5A when collector invokes emergency clause under section 17 of the Act. Before an amendment to the section 17(4) of the Act there is no irregularity in publishing preliminary notification and declaration that the land is needed for a public purpose simultaneously. After Amendment Act 68 of 1984, the notification under section 6 containing declaration that land was needed for public purpose should be issued and published subsequent to the notification issued under section 4(1) of the Act. Therefore, situation existed before repealing the Land Acquisition Act is that issuing of notification under section 6 and under section 4 simultaneously was invalid.

The proviso to the section 6(1) was inserted by 1967 Amendment Act it, provides the time limit within three years of time limit a declaration shall be made under section 6(1) from the date of notification issued under section 4(1) of the Act. This proviso has undergone further amendment, as per the Amended Act, 1984 the declaration shall be made under section 6(1) within one year from the date of publication of notification under section 4(1) of the Act, provided delay more than one year for which government is responsible, notification issued under section 4(1) deem to be annulled. Cancellation something different from withdrawal of notification. Cancellation of notification under section 6 does not amount to withdrawal of acquisition by the government under section 48. Suppose the notification under section 6 is invalid, notification under section 4 cannot be exhausted because its purpose could be fulfilled only by issue of a valid notification.

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50 Ibid at 107-109
under sections 6.\textsuperscript{52} Where as in case of a valid notification under section 6 was withdrawn, the notification under section 4 of the Act would get exhausted.\textsuperscript{53}

Under section 19(2) of the Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act declaration shall be made within twelve months from the date of the preliminary notification issued under section 11. If no declaration shall be made within twelve months from the date of publication of preliminary notification, it shall be deemed to have been rescinded. Additional advantage conferred under this Act is that if no declaration is made within the twelve months from the date of the preliminary notification appropriate government shall have the power to extend the period of twelve months, if is in the opinion of the government circumstances that exist which justify the situation.

6.11.1 Publication of Declaration( section 19)

Under section 19 of the Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, publication of declaration that the land is proposed to be acquired is for public purpose or for a public or public-private company, in the official gazette and in two daily newspaper circulated in the concerned locality of which at least one shall be in the regional language and in the local language of the panchayat, municipality or municipal corporation as the case may be, and also uploaded in the website of the appropriate government. Section 20(6) further lays down that the declaration should be the conclusive proof of the fact that land so acquired by the government is needed for public purpose or for a company, as the case may be.

Under section 6 of the colonial Land Acquisition Act, 1894 if the publication of declaration that the land is proposed to be acquired is for public purpose in the official gazette and in two daily newspapers circulated in the concerned locality of which at least one shall be in the regional language. If the acquisition of land for companies, declaration shall be published only after an agreement as specified under section 41 of the Act is executed and the government has consulted the committee is

\textsuperscript{52} Suresh Pahwa v. Union of India, (1994)55 DLJ 362.
set up under rule 3 of the Land Acquisition (companies) Rules, 1963 and considered the report made by the collector under rule 4.\textsuperscript{54}

\textbf{6.12 No Inconsistency between Sections 6 and 4 of the Act}

The difference between section 4 and section 6 of the land acquisition Act is that whereas the farmer section refers to land in a particular locality, the latter contemplates a particular land. Again, under section 4 it must only appear to the government that the land is needed or is likely to be needed for a public purpose under section 6 government must be finally satisfied that land is needed.\textsuperscript{55} The question arose before the Gujarat High Court in \textit{Gaundalal v. State of Gujarat} \textsuperscript{56} whether there is inconsistency between the provisions of sections 6 and 4?, because section 4 contemplates only issuing of a notification for proposed acquisition of land for public purposes whereas section 6 speaks of acquisition of land for a public purpose or far a company. It has, however been held that the acquisition for a company is also acquisition for public purpose in the restricted sense in accordance with the section 40 of the Act, therefore there is no inconsistency between these two sections.

In \textit{Union of India v. K.K. Chopa} \textsuperscript{57} under notification dated 13/11/1959 the Chief commissioner of Delhi acquired large tract of land in Delhi for planet development of Delhi. At that time land of respondents who were evacuated land was exempted from acquisition. But by a subsequent notification dated 1/7/1961 the Chief Commissioner decided to include the land of the respondents also for planned Development of Delhi. The Supreme Court on the prayer of the respondents upheld the notification under section 4(1).

In \textit{Angera Devi v. Land Acquisition Collector} \textsuperscript{58} Supreme Court held that the issue of a notification under section 4(1) is a condition precedent to the exercise of any further power under the Act. In \textit{B.S. Tolani v. Union of India} \textsuperscript{59} when notification under section 4 exempted the government land and evacuee land from acquisition, the

\textsuperscript{54} \textit{In R.L. Arora v. State of UP}, AIR 1962 SC 764, it was held that a notification under section 6 issued without complying with rule 4(4) of the land acquisition (companies) rules, 1963 is void. The requirement of a report under rule 4(4) is a requirement in addition to the requirement of a report under section 5A of the Act.


\textsuperscript{56} AIR 1963 Gaj. 50.

\textsuperscript{57} AIR 1988 SC 2036.

\textsuperscript{58} AIR 1986 BOM 140; AIR 1971 SC 306.

\textsuperscript{59} (1987)7 Reports (Del 55)
petitioner having acquired the evacuee land at a public auction on 7/6/1960 is entitled to challenge the acquisition because notification under section 6 was included the evacuee land even though section 4 notification exempted the evacuee land from acquiring. Notification under section 6 cannot be sustained, because there was no notification covering the land belonging to the petitioner under section 4 of the Act.

In Venkata Chalapat v. State of Tamil Nadu 60 Court held that, where land is acquired by the government for public purpose the question whether urgency exists or not for dispensing with requirement of section 5A of the Act by invoking section 17(4) is a matter of wholly for the determination of government and it is not a matter of judicial review. Same legal status continued under the present Act. Hence, there is no inconsistency between section 11 and section 19 of the Act.

6.13 Taking the order for the acquisition of Land

After the declaration under section 19, the next step in the process of acquisition is that the collector of the district in which the land is located is empowered by the Act to make the order for acquisition and is required to measure and mark out the land which is mentioned in the declaration. Under section 20 the Collector has to get the land to marked out, measured and appropriate plan to be made accurately, unless it is already marked out under section 12 of the Act. Whereas under the Land Acquisition Act, 1894 obstruction under section 8 61 and section 4 are offence punishable with an imprisonment not exceeding one year and with fine not exceeding fifty rupees. We could not find such kind of provisions under the present Act.

Section 21 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act requires the collector to cause a public notice on his website and at convenient places expressing government’s intention to take possession of the land. Under the clause (2) of the section 21 of the Act requires all persons 62 interested in the land to appear before him personally or by an agent or advocate not being less than thirty days and not more than six months after the date of publication of notice under section 21 of the Act. They shall State the

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60 AIR 1986 Mad 309.
61 Mysore (Karnataka)- Section 8 shall be deleted, Mysore Act 17 of 1961, section 11 (w.e.f. 24. 8.1961)
62 As per Section 10 of the Act all persons includes every other person possessing any interest in the land as co-proprietor, sub-proprietor, mortgage tenants.
nature of their respective interest in the land and make claims for compensation, their claims to rehabilitation and resettlement along with their objections, if any, to the measurement of land [section 20 of the Act]. This section requires the collector to issue two notices, one in the locality of acquisition and other to occupants or people interested in lands to be acquired, and it is a mandatory requirement.

The final step of collectors proceedings involve an enquiry under section 23 of the Act, collector shall conduct enquiry into the objections made (if any) by the interested persons in pursuant to a notice given under section 21, regarding measurements of land, value of the land at the date of publication of notification and making an award to persons claiming compensation and rehabilitation and resettlement. The enquiry involves hearing parties who appear with respect to the notices, investigate their claims, consider the objections and take all the information necessary to ascertain the value of the land, and such an enquiry can be adjourned from time to time as the collector thinks fit and award is to be made at the end of the enquiry. Compensation shall be determined under section 27 along with rehabilitation and resettlement award as determined under section 31 of the Act.

Section 23 makes it obligatory on the part of the collector to safeguard the interest of all person interested, even though they might not have appeared before him. In awarding compensation collector should estimate the value of the land, give due considerations to the other specific factors that can be used as criteria. The collector shall make an award within a period of twelve months from the date of publication of the declaration. If no award made within that period, the entire proceedings for the acquisition of the land shall be lapsed. Provided that appropriate government shall have the power to extend the period of twelve months if in its opinion, circumstances existed justified the same. Whereas in the Land acquisition Act, 1894 award shall be made within two years [section 11A] from the date of preliminary notification otherwise whole land acquisition proceedings will be lapsed.

Award means total compensation to be paid, determined by the collector. This final award includes “solatium” amount equivalent to one hundred per cent of the compensation amount and, twelve per cent of interest calculated on amount of compensation from the date of publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4 till the date of award of the collector or the date of taking possession of the land, whichever is earlier. Whereas in
the predecessor Act only thirty per cent of solatium calculated on amount of compensation and nine per cent of interest calculate from the date of preliminary notification to the date of possession of the acquired land and fifteen per cent of interest calculated on amount of compensation from the date of possession of the acquired land till the date final award.

6.14 Land Acquisition process shall be deemed to have lapsed

Under section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, if land acquisition proceedings initiated under the repealed Land Acquisition Act, 1894, if no award has been made, then all provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act relating to determination of compensation shall be applied. Where award has been made under the Land Acquisition Act, 1894 then such proceedings shall continue under same Act, as if the said Act has not been repealed. Under section 11 of the Land Acquisition Act, 1894 award has been made five years or more prior to the commencement of present Act, but physical possession of the land has not been taken or compensation has not been paid, then said proceedings shall be deemed to have lapsed and appropriate government shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the present Act.

6.15 Consequences Unaccepted Award

An award of a collector is an offer of compensation made on behalf of the government. Claimant may not accept the award or accept it with protest, an award does not represent the market value of the acquired land. Person who is not accepting the award or is accepting with protest has a right make an application to the collector to refer the matter to the Civil Court for determination of market value of the land acquired. Whereas under section 63 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, no Civil Court shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the collector has authority under the Act. Hence matter shall be

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63 Pratima Ghosh (Smt.) v. State of West Bengal, AIR 1973 Cal 283.
referred to “the Land Acquisition, Rehabilitation and Resettlement Authority” under section 64 of the Act.

6.16 Rehabilitation and Resettlement Award

Collector shall pass following minimum rehabilitation and resettlement entitlements to the Land Owners:

**Provision of Housing units in case of Displacement:** For the purposes mentioned under this Act if a house is lost in rural areas, a constructed house shall be provided as per the Indira Awas Yojana specifications, if a house is lost in urban areas, not less than 50 sq mts in plint area a constructed house shall be given. Provided that any such family in urban areas which opts not take the house offered, may get one lakh fifty thousand rupees as a one-time financial assistance. Provided further that if any affected family in rural areas so prefers, the equivalent cost of the house may be offered in lieu of the constructed house.

**Provision of Land for Land in case of Displacement:** In case of irrigation project as a consequence of the acquisition or loss of land, land loser have been reduced to the status of a marginal farmer or landless, shall be allotted a minimum of one acre of land in the command area of the project for which land is acquired. Provided if the land loser belonging to the Scheduled Cast or Scheduled Tribes will be provided the land equivalent to land acquired or two and a half acres, whichever is lower.

**Provision of offering Developed Land:** Where land is acquired for urbanization, 20% of the developed land will be reserved and offered to land owners, in proportion to their land acquired. Provided that if land loser wishes to avail of this offer, an equivalent amount will be deducted from compensation.

**Choice of Annuity or Subsistence grant:**

Land Loser may opt either for Choice of Annuity or Subsistence Grant.

In case of choice of annuity in rehabilitation package the appropriate government shall ensure employment to the affected families with the following options:

At least one member of the project affected family gets job in the project, where jobs are created through the project, after providing suitable training and skill development in the required field or one-time payment of five lakhs rupees to the
affected family or Rs 2000 per month per family as annuity for 20 years, with appropriate index for inflation for agricultural labourers.

**In case of subsistence allowance in rehabilitation package**

Subsistence allowance at Rs. 3000 per month per family for 12 months to the affected family from the date of award. In addition to this if the displaced persons are scheduled castes and scheduled tribes from scheduled areas shall receive fifty thousand rupees.

**Special Provisions for ST’s**

1. Payment of one third of the compensation amount at the very outset to ST families;
2. Preference in relocation and resettlement in area in same compact block;
3. Free land for community and social gatherings;
4. In case of displacement of Scheduled Cast or Scheduled Tribes families, a Tribal Displacement Plan is to be prepared:
   Detailing process to be followed for settling land rights and restoring titles on alienated land. Details of programme for development of alternate fuel, fodder and non-timber forest produce.

**Transportation cost for displaced families:**

1. Each affected family which is displaced shall get one time financial assistance of fifty thousand rupees as transportation cost for shifting the family.
2. Each affected family having cattle or a petty shop shall get one-time minimum twenty-five thousand rupees for construction of cattle shed or petty shop as the case may be.
3. Due to land acquisition each affected family of an artisan, small trader or self-employed person or an affected family which owned non-agricultural land or commercial, industrial or institutional structure in the affected area has been involuntarily displaced from the affected area, shall get minimum twenty five thousand rupees as a one-time financial assistance.
4. In case land acquisition for irrigation or hydrol projects, the affected families may be allowed fishing rights in the reservoirs.
5. Each affected family shall be given fifty thousand rupees as a one-time “resettlement allowance.” Provided land or house allotted to the affected families
shall not be borne by any stamp duty and other fees, which is paid by the Requiring Body.

**Infrastructural Amenities to be provided in the Resettlement area:**

i) Schools and playgrounds;
ii) Primary Health Centres and sub-health centre;
iii) Roads and electric connections;
iv) Assured sources of safe drinking water for each family;
v) Panchayat ghars;
vii) Anganwadi's providing child and mother supplemental nutritional services;
vii) Places of worship and burial and/or cremation ground;
ix) Village level post offices, as appropriate, with facilities for opening saving accounts;
x) Fair price shops and seed-cum-fertilizer storage facilities.
xi) Sanitation including individual toilet points.
xii) Community centre for every hundred families.
xiii) Separate land for traditional tribal institutions.

6.17 Completion of Acquisition is not Compulsory

Under section 93 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, the appropriate government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. Collector shall determine the amount of compensation due for the damage suffered by the owner as a consequence of notice or of any proceedings there under. Under section 48 of the Land Acquisition Act, government alone can withdraw from the proceedings of acquisition before the possession is taken or before the award is made, by issuing a notification [de-notification] of releasing the land from acquisition. After award withdrawal of acquisition proceedings is prohibited, whatever may be the circumstances, except when the proceedings are declared invalid by a Court’s decree of Civil Court.\(^{64}\)

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\(^{64}\) *Supra* note 8, at 478.
6.18 Overview of Section 11A of Land Acquisition Act, 1894

Section 11A was inserted in the Land Acquisition Act by the Land Acquisition (Amendment) Act, 1984. It makes it obligatory for the collector to declare an award within a period of two years from the date of publication of the declaration, otherwise acquisition proceedings will be lapsed. K.C. Jain Advocate of Supreme Court of India observes the legislative anomaly regarding section 11-A that while on one hand, despite dispossession of a land owner under the aspiration section 17 of the Act, there is no time frame to make a award, on the other hand, where there is no dispossession, the time frame operates. The dispossessed land owners need preferential treatment and more expeditions payment of compensation is yet to be taken. Acquisition proceedings are lapsed on account of collector’s failure to make an award, the person concerned is not entitled to receive damages, however acquisition proceedings are withdrawn voluntarily under section 40(1) of the Act concerned person entitled receive the damages, if any suffered by him as a consequence of the acquisition proceedings. K.C. Jain Supreme Court Advocate has observed that there is no rationale for discriminatory treatment.65

Section 11-A came up for construction by the Apex Court on several occasions. Notably in the first case, Satendra Prasad Jain v. State of U.P.66 Supreme Court held that when section 17(1) is applied by reason of urgency, government takes possession of land prior to making of the award under section 11. Section 11-A can have no application to the cases of acquisitions under section 17 because lands has already vested in the government.67 Land loser accepted the award made by the collector with protest then he has a right to apply for a reference of the matter to the Court under section 18 of the Act. Otherwise, what award was offered by the authority if accepted by the land loser, he has lost his right to invoke Civil Court jurisdiction.

In case of acquisition invoking urgency clause under section 17 of the Land Acquisition Act expeditious payment of compensation is mandatory. In Mudumekala Hanumanna v. District Collector, Ananthpur 68 Court held that, inordinate delay over 12 years in payment of compensation has violated the right to compensation hence,

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66 AIR 1993 SC 2517
67 Supra note 65 at 12.
68 AIR 1994 NOC 197 (A.P.).
violated the right to property under Article 300A. An award made without the approval of the appropriate government as required by the first proviso to sub section (1) of section 11 would be invalid. Until the award is announced or communicated to the parties concerned it cannot be said to be legally made in the absence of valid award a Civil Court has no jurisdiction to take any proceedings on a reference made it.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act put full stop to all these anomalies. Under section 25 of the Act within period of twelve months from the date of publication of the declaration award shall be made, appropriate government shall have the power to extend the period of twelve months if in its opinion circumstance that existed justified the same. Under section 40 of the Act urgency clause shall be restricted to the minimum area required for the defence of India or national security or for any emergencies requiring rehabilitation and resettlement needs in the event of natural calamities only. Under section 40 of the Act, the collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21 take the possession of the land provided before taking possession of such land, the collector shall tender payment of eight per cent. of compensation. Additional seventy-five per cent. of total compensation as determined under section 27 of the Act shall be paid to the land owner.

6.19 Taking Possession of the Land under Acquisition process (section 38)

The collector may take the possession of the land after ensuring the full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within the period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlements. Provided within the period of 18 months from the date of award components of the rehabilitation and resettlement package relates to infrastructural entitlement shall be provided. The collector shall held responsible for ensuring the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families, thereupon land shall vest absolutely in the government free from

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70 Section 18 of the Land Acquisition Act, 1894
71 Macdonald v. Secretary of State, 19 PLR 1909; 41C 914; 123 PR 908.
all encumbrances then State uses the land for what purpose it has been acquired. Under section 101 of the present Act if the land acquired remains unutilized for a period of five years from the date of taking over the possession, it may return it to the original land owner or their legal heirs, as the case may be, or to the land bank of the appropriate government.

Whereas under Land Acquisition Act, 1894 the land acquired for public purpose shall be used for the same. Nowhere in the Act places an obligation upon the State to return the land to the original land owner or to the land bank of the appropriate government, if it is not put to use for what purpose the land is acquired. When land acquired for a company, it first vests in the State and then transferred to the company on payment of amount or cost of acquisition in accordance with the agreement under section 41. If the acquired land is no longer required by the company it should not be offered back to the original owner or returned to land bank.

6.20 Special Powers in case of Urgency

Under section 40 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in case of urgency, whenever the appropriate Government so directs, the collector though no such award has been made, on the expiration of thirty days from the date of the notice mentioned in section 21, take possession of any land needed for public purpose. Under this Act urgency clause limited to the minimum area required for defence of India or national security or for any emergencies arising out of natural calamities.

Under Land Acquisition Act, 1894 collector has power to acquire the land, in cases of urgency for a period of three years from the date of preliminary notification without following the procedure accorded in the section 5-A of the Act. The Act also empowers the government to occupy temporarily waste or arable land for a period of three years after paying compensation to the persons interested either as a lump sum or in periodical payments, with the option to make the move more permanent by following requisite steps as set out by the Act. The State government has the power to resort to section 17(1) and dispensing with the compliance of section 5A on being satisfied that the land sought to be acquired was the arable land which was urgently

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72 Section 16 of the Land Acquisition Act, 1894.
required for public purpose. Amending Act 1984 has extended this emergency provision from arable land to any kind of land needed for a public purpose.\textsuperscript{73}

In \textit{Venkata Chalpati v. State of Tamil Nadu}\textsuperscript{74} a single judge of Madras High Court has held that question as to whether urgency exists or not to invoke section 17 and to dispense with the requirement of section 5A of the Act is a matter solely for the determination of the government and it is not a matter of judicial review.\textsuperscript{75} The question whether the enquiry under section 5A is necessary or not is a question of fact hence, it is normally, a matter of subjective satisfaction of the State government therefore the government is the best judge for determining the question of existence of urgency, it is only in case of malafide exercise of power High Court may interfere in writ jurisdiction.\textsuperscript{76}

In \textit{K.V.M. Samity Mujjaffarnagar v. Ratan Prakash}\textsuperscript{77} regarding 4(1) notification the enquiry was held and enquiry report submitted suggesting exemption of a plot from acquisition. The State government, ignoring the suggestion issued fresh notification under section 4 read with Section 17(4) dispensing with fresh enquiry under section 5A. It has been held by the Supreme Court that as necessity for acquisition became more acute due to passage of time the fresh notification under section 4 read with section 17(4) dispensing with fresh enquiry under section 5A is quite justified.

In case of urgency or emergency where the appropriate government so directs, the collector no such award has been made may take the possession of any land needed for a public purpose on the expiration of 15 days from the publication of the notice under section 9(1). Thereupon such land shall vest absolutely in the government free from all encumbrances.\textsuperscript{78} The question of urgency is primarily for government to decide and is not be weighted in the scales. The decision of the government as to whether urgency exists cannot be questioned in any Court, provided

\textsuperscript{73} \textit{Supra} note 49, at 1075.
\textsuperscript{74} AIR 1986 Mad 309.
\textsuperscript{75} It is for the appropriate government to apply its mind to the facts of the case and satisfy itself that there it an urgency. Though it is not open to the Court to consider the adequacy or otherwise of the material on the basis of which the appropriate government reaches its satisfaction but it is open to the Courts to ascertain whether appropriate government applied its mind to the considerable material and whether the conclusion or satisfaction was based on relevant consideration.
\textsuperscript{76} \textit{Satbir Singh v. State}, AIR 1988 All 177
\textsuperscript{77} AIR 1988 SC 1459; (1988)3 SCC 225.
\textsuperscript{78} \textit{Supra} note12, at 125.
the government applies its mind and act in good faith.\textsuperscript{79} Publication of notification under section 4 is a condition precedent for raising objections. The Government may in its discretion in cases coming under section 17(1) and section 17(2) dispenses with the requirement of section 5A.\textsuperscript{80} 

Delay in taking possession of the land nearly 3 years where urgency provision under section 17 has been invoked that would certainly be a factor leading to the conclusion that there was no real urgency and acquisition authorities acted mechanically.\textsuperscript{81} In Chandramani Sahu v. State of Orissa \textsuperscript{82} Court held that delay of one year, six months in making the declaration under section 6 after publication of notifications under section 4(1) defeated the pleas of urgency under section 17(4) of the Act. Under section 17(3A) of the Land Acquisition Act only 80% of the compensation, estimated by the collector is paid to the land owner before taking the possession of the property which is acquired.\textsuperscript{83} The amount paid or deposited under sub section 3(A) of section 17 shall be taken in to account in final compensation.

**Burden of Proving Urgency**

The initial burden of proof to show the existence of urgency is on the government. Power has been exercised arbitrarily lies on the person who alleges malafide exercise of power. Mere allegation that the power is exercised malafide would not be enough, but in support of the said allegation specific material should be placed before the Court. The burden of establishing malafide is very heavy on the person who alleges it.\textsuperscript{84}

**6.21 Special Powers for Scheduled Castes and Scheduled Tribes**

Under section 41 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act as far as possible, no acquisition of land shall be made in the scheduled area only as a last resort acquisition can be made. In case of acquisition or alienation of any land in the scheduled areas, prior consent of the concerned Gram Shabha or panchayats or the autonomous

\textsuperscript{79} Mudumekala Hanumunnar v. District Collector, Ananthapur, AIR 1994 NOC 197 (AP)

\textsuperscript{80} Supra note 8, at 574 & 575.

\textsuperscript{81} Supra note 8 at 600.

\textsuperscript{82} AIR 1991 Ori. 205.

\textsuperscript{83} Supra note 8, p.604.

\textsuperscript{84} Jamandas Devashibhai Bhate v. Commissioner, Nagpur, AIR 1976 BOM 129.
district councils as the case may be obtained. Where the affected families belonging to the scheduled castes and scheduled tribes are relocated outside the district, then they shall be paid an additional twenty-five per cent. rehabilitation and resettlement benefits to which they are entitled in monetary terms along with one time entitlement of fifty thousand rupees.

6.22 Reference to the Authority

Any person interested in the land which is sought to be acquired not accepted the award, can make an application to the collector to refer the matter, to the Land Acquisition, Rehabilitation and Resettlement Authority for determining the questions relating to: (1) the measurement of land; (2) the amount of compensation; (3) the person to whom it is payable; (4) the appointment of the compensation among the persons interested; (5) the rights of rehabilitation and resettlement. As a rule the jurisdiction of the Land Acquisition, Rehabilitation and Resettlement Authority is limited to the determination of all or any of these above matters. However the respondent may raise an objection to the validity of the application if the application for reference was not made within the time prescribed in the Act. 85

Within the period of thirty days from the date of receipt of application for reference, matter shall be referred to the Land Acquisition, Rehabilitation and Resettlement Authority. If collector fails to make such reference within the specified period, the applicant may apply to the authority, requesting it to direct the collector to refer the matter to it within a period of thirty days. At the time of making award applicant was present or represented before the collector, within six weeks from the date of the collector’s award made an application to the collector to make reference the matter to the Land Acquisition, Rehabilitation and Resettlement Authority. In other cases, within six weeks of the receipt of the notice from the collector under section 21, or within six months from the date of the collectors award, whichever period shall first expire. Collector may entertain the application which is made after the expiry of the specified period, within a further period of one year, if the collector is satisfied about the existence sufficient cause for not filing application within the specified period. Under section 69 of the Act every such award determined by the authority shall be deemed to be a decree within the meaning of Civil Procedure Code,

85 Supra note 49, at 120.
1908. Any person aggrieved by the award passed by the authority under section 69 may file an appeal to the High Court within sixty days from the date of award. Under section 74(2) of the Act, every such appeal shall be disposed within six months from the date on which the appeal was filed to the High Court.

In the colonial Land Acquisition Act, 1894, Civil Court not below the rank of district has jurisdiction over reference application. In *Satantra Land and Finance (P) Ltd. v. State of Haryana*, Court stated that following objections can be raised by the respondent, namely (1) the applicant had accepted the award and therefore, he had no right to apply for reference; or (2) that the application made by him to the collector for reference was beyond time; or (3) the applicant is not a person interested; or (4) that the application has been made not after the making of the award, but prior thereto; (5) some matters other than those specified in section 18(1) have been included in the application for adjudication.

A Land Acquisition reference case cannot be dismissed for default on non-appearance of the claimant and Court has to make an award even in the absence of any evidence. If the applicant plead the collector within the time limit required to refer the matter to the Court. Second proviso to section 31(2) of the Act creates a statutory bar to a person who has accepted the compensation without protest from making an application under section 18. Old Section 25 has been deleted and new section 25 inserted by the 1894 Amendment which declares that the amount of compensation awarded by the Court shall not be less than the amount awarded by the collector under section 11.

The Division Bench of Madhya Pradesh High Court held that under section 50(2) expressly bars the company or local authority at whose instance the acquisition is made from questioning the amount of compensation awarded by the collector under section 11. Therefore neither the company nor the local authority on whose behalf the acquisition is made shall demand for a reference to the civil Court. Hence, Section 25 expressly prohibits the Court from reducing the amount of compensation while

86 AIR 1975 Punj 52; 12 R (1974)2 Puj 75(FB)
89 *Bisan Das v. L.A.O. Vyas Dam protect, Talwara*, AIR 1987 HP 33 Court has got the jurisdiction to decide as to whether he has a right to make the application or not.
90 *Supra* note 49 at 120.
dealing with the matter referred under section 18. It clearly prohibits the company or local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to challenge the amount of compensation awarded by the collector to reduce it. 92 Claimant may bring a writ petition before High Court questioning the acquisition on the ground that acquisition itself is malafide and the burden of establishing malafide is on the person who alleges it. 93

In Adusumalli Parvathi and others v. the Special Tahsildar 94 and LAO v. Revanna Division, Collector, Vishakapatnam Andhra Pradesh High Court held that, the receipt of amount under protest is a condition precedent to make an application under section 18 within the specified period. The collector is enjoined to make a reference to the Civil Court. In Ajit Singh v. State of Punjab 95 Supreme Court held that, receipt of compensation by the person interested is not a ground to deny enhanced compensation. In spite of acceptance of compensation, when a reference is made to Civil Court, there is implied protest by the claimant for the compensation awarded by the LAO.

Reference made under section 18 cannot be dismissed by the Civil Court and the Court is bound to determine the objections raised by the claimant even though he was absent on the date of enquiry. Sections 20 and 26 of the Act pre-supposes that a fresh determination has to be made by the Court on the material available. 96 If the claimant accepted the compensation without any protest, the reference Court or Land Acquisition, Rehabilitation and Resettlement Authority may reject the reference application but the collector has no power to refuse to make reference, leaving the question open to be decided by the reference Court. 97 Application for reference to civil Court shall be made within the period of 6 weeks from the date of receipt of notice regarding award made, or within 6 months from the date of the collector’s award whichever period shall first expire. 98 If we compare section 18 of the repealed Land Acquisition Act with section 69 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, in the earlier

92 Supra note 49, at 231.
93 Jamnadas Devashibhai Bhate v. Commissioner, Nagpur, AIR 1976 BOM 129.
94 (1994)3 ALT 114 A.P.
95 1994 (4) SCC67.
96 Supra note 8, at 129.
98 Supra note 12, at 128.
Act reference shall be made to the civil Court and in the latter Act reference shall be made to the Land Acquisition, Rehabilitation and Resettlement Authority. Except this no change will be seen in between these two Acts.

**Land Acquisition, Rehabilitation and Resettlement Authority**

Under the present Act for the purpose of speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, refer the matter to “the Land Acquisition, Rehabilitation and Resettlement Authority”, which is constituted under it. One or more authorities constituted under the Act, for which areas of jurisdiction confirmed by the Act itself. The authority shall consist of one person only and he is appointed by the appropriate government in consultation with the Chief Justice of High Court. Presiding officer shall be a district judge or has been a district judge or he is a qualified legal practitioner for not less than seven years. For the purposes of its functions under the Act, the authority shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. All proceedings before the authority shall be deemed to be judicial proceedings and hence, section 63 of the Act bars the jurisdiction of Civil Courts. No Civil Court (other than High Court under article 226 or article 32 before the Supreme Court of the Constitution) shall have jurisdiction to entertain any dispute relating to land acquisition.

**6.22.1 Legal position of Land Acquisition, Rehabilitation and Resettlement Authority**

In *Nthumul Rajmal Baldata v. Special Land Acquisition officer,*²⁹⁹ Supreme Court observed the following factors. Observations made by the Supreme Court about the legal status of reference Court may be applicable to the Reference Authority. Hence, we can say the observations of the Supreme Court in following way:

1) A reference under section 18 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act is not an appeal against the award.

2) The Award of the Land Acquisition officer is not to be treated as a judgment of the trial Court. It is merely an offer made by the Land Acquisition officer as such it is not as an appellate Court.

²⁹⁹ AIR 1988 SC 1652
3) The Land Acquisition, Rehabilitation and Resettlement Authority has to treat
the reference as an original proceeding before it and determine the market
value afresh on the basis of the material proceeded before it.

4) The claimant comes to the status of plaintiff he has to prove that the price
offered for his land in the award is inadequate.

5) The market value of land which is acquired has to be determined. 100

6.23 Re-Determination of the Amount of Compensation

Section 28A of the repealed Land Acquisition Act is a complete code in itself
providing substantive right to an interested person who had received compensation
without protest for higher compensation. Section 28A is intended and meant for the
inarticulate and poor people who by reason of their poverty and ignorance have failed
to take advantage of the right of reference to the Civil Court made under section 18 of
the Land Acquisition Act, 1894. Persons who were not applied for reference under
section 18 of the Land Acquisition Act may be entitled under section 28A of the Act
to reopen the award made under section 11 of the Act, provided he filed an
application to the collector within the three months from the date of the judgment of
the reference Court where the amount award was enhanced on a reference made
under section 18 whose land also acquired under the same notification (section 4 of
LA Act). 101

For availing the remedy under section 28A conditions laid down therein are to
be fulfilled, the forum is collector and application has to be made to him within 90
days from the date of the judgment by the Civil Court. Redetermination of
compensation against the award of collector is a right restricted to the persons who
were not applied for reference the matter to Civil Court under section 18 of the Act,
whose land is also covered by the same notification. Later they may take advantage
under section 28A of the Act. 102 But section 28A does not apply to acquisition of
lands under the Requisitioning and Acquisition of Immovable property Act 1952. 103
In computing the period of three months from the date of judgment of civil Court
within which an application shall be made to the collector, the day on which the
award was pronounced and the time requested for obtaining a copy of the award shall

100 Supra note 12, at 129.
101 Supra note 8, at 979.
be excluded. On the receipt of application under sub section (2) of section 28A, the collector should conduct an enquiry after giving a notice to all the interested persons, for being given an opportunity to be heard make an award. Any person who has not accepted the award under sub section (2) of section 28A afore mentioned, may submit a written application to the collector, to refer the matter to the Court for determination of compensation, provisions of sections 18 to 28 shall so far as may be applied to such reference as they like applied under section 18 of the Act.  

Intent of the legislature in enacting the new section 28A is to give equal compensation to all persons whose lands are also have been acquired under the same notification (section 4). Purpose is to remove anomalies in determination of compensation by the collector and the Court in some cases, that is, to remove inequality of payment of compensation for the same or similar quality of land to the different interested person. It also provides for an additional remedy to inarticulate and poor aggrieved persons whose land has been acquired to call upon the collector to pay the compensation at the rate determined by the Court in other cases. Section 28A of the Act, it is a direction to the collector to re-determine the amount in accordance with the award of the Court. Under section 73 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act compensation re-determined on the basis of award of the Land Acquisition, Rehabilitation and Resettlement Authority. In this Act instead of Civil Court, reference shall be made to the Land Acquisition, Rehabilitation and Resettlement Authority. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act bars the jurisdiction of Civil Court.

6.24 The Issue of Compensation under the Act

Compensation means anything given to make the things equivalent; a thing given to or make good for loss. The term ‘compensation’ is used to indicate what constitutes or is regarded as equivalent or recompense for loss or privation. On the other hand, constitute sum of money claimed or adjudged to be paid as compensation for loss of injury sustained, the value estimated in money of something lost or with

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104 Supra note 12, at 139.
106 Ibid at 191.
held. The term ‘compensation’ etymologically suggests the image of balancing one thing against the other.\textsuperscript{108}

Acquisition is a right inherent in every sovereign State to take appropriate private property belonging to individual citizens for public use. The right which is described as eminent domain. Article 31(2) of the Constitution prescribes a twofold limit within which such superior right of the State should be exercised. One limitation imposed upon the acquisition or taking possession of private property is that such taking must be for public purpose. The other condition contains a provision for payment of compensation to the manner laid down in the clause.\textsuperscript{109}

After 44\textsuperscript{th} constitutional amendment, though the mass of citizens shall have no longer any guaranteed right to compensation for the property acquired or requisitioned and legislature shall have no constitutional obligation to pay any sum amount to the appropriated owner. Two exemptions to this general position allowed (a) if the property acquired belongs to an Educational Institutions established and administered by the members of the minority community, law of acquisition must provide for such acquisition, the compensation as would not abrogate the right of minority to establish and administered educational institution (b) if the State seeks to acquire the land which is within the statutory ceiling limit and personally cultivated by the owner, State must pay compensation which is full market value of the land acquired.

As regards the concession in favour of a minority educational institution it is somewhat inexplicable, why no such guarantee should be made in favour of educational institutions managed by members of a majority community. Secondly compensation as to the right of a small tiller of the land is equivalent to the market value of the land acquired. One fails to understand why similar right should not be guaranteed to a poor man who has not an inch of agricultural land but has a humble but to lay his head at night. He may be a day labour; a petty pensioner or a landless peasant who fills another mains land. Are they less deserving.\textsuperscript{110} In the view of the radical effects of the abolition of Articles 19(1)(f) and 31(2) the Supreme Court of India would come to the rescue of the expropriated owner by holding that

\textsuperscript{108} Supra note 107, at 15
\textsuperscript{109} Supra note 8, at 14.
\textsuperscript{110} Dr. Durga Das Basu, ‘Introduction to the constitution of India’ (Lexis Nexis Butler Worths Madhwa, Nagpur 20\textsuperscript{th} ed., 2012), p 130.
notwithstanding the omission of such constitutionally guaranteed right to compensation, the Court would derive such right from the legislative power contained in Entry 42 of List III\textsuperscript{111} of the Indian Constitution hence, ‘Acquisition and requisitioning of property’ read with the common law doctrine of ‘Eminent Domain’.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act empowers the government to acquire land for public purposes or for private companies or public private partnership projects where benefit accrue the general public. The Act is neither a tool in the hands of government to deprive any person from his property right without payment of compensation nor a bonanza to a land owner whose land has been acquired. The Act therefore provides a machinery to determine the market value (section 26) of the land as existing on the date of notification under section 11 of the Act. Section 27 of the Act mandates that in determining the amount of compensation, the collector shall be guided by the provision as contained in sections 28 and 29 in deciding the value of the compensation. The ultimate duty of the collector is not to conclude by his award but to fix the sum which in his best judgment is the value and which should be offered to the owner.\textsuperscript{112} The matters to be considered by the collector, in determining the market value of the land acquired, are the same as are to be considered by the Court, and these are laid down in sections 28 and 29 of the Act.\textsuperscript{113}

These provisions lay down the main principles of compensation for compulsory acquisition in India. The intention of the section 26 of the Act taken as a whole to provide a complete indemnity to a person whose land has been compulsorily acquired.\textsuperscript{114} There may be circumstances besides those mentioned in section 26

\textsuperscript{111} Supra note110, at 131.
\textsuperscript{112} Ezra v. Secretary of State, 9 CWN 55.
\textsuperscript{113} O.P. Agarwal, Compensation for Compulsory Acquisition of Land in India 88 (1989).
\textsuperscript{114} Section 28: parameters to be considered in determining compensation: In determining the amount of compensation to be awarded for land acquired under this Act, the collector or authority shall take into consideration - First, the market value of the land at the date of the publication of the notification under section 11, subjection (1); secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land
which may be very well taken into consideration in awarding compensation for the land acquired hence this provision is not exhaustive. Market value calculated as per sub-section (1) of section 26 for the land acquired in rural area multiplied by the factor one to two, it is based on the distance of the land from urban area. Market value calculated for the land acquired in urban area shall be multiplied by the factor one. Further, compensation accompanied with solatium equivalent to one hundred per cent of compensation and twelve per cent. of interest per annum on such compensation (market value of the land) from the date of publication of the notification of the social impact assessment study under section 4(2), till the date of award or from the date of taking possession of the land, whichever is earlier.

Under section 80 of the Act if the amount of compensation was not paid or deposited on or before taking possession of the land, collector shall pay nine per cent. interest with awarded amount from the date of taking the possession of land until it shall have been paid or deposited. Provided if such compensation or any part thereof is not paid or deposited within a period of one year from the date of taking possession of land, per annum fifteen per cent. of interest should be calculated from the date of expiry of the said one year. Under the colonial Land Acquisition Act 1894, although there is no mention of "reinstatement" in section 23(1), the Court in India have recognized this principle.

In Food Corporation of India v. Makhan Singh, it was observed that section 23 contains a list of positives to be taken into account by the Court in determining compensation. The first requirement is the Court must take into consideration the market value of the land on the date of publication of notification under sub-section (1) of section 4 of the Act. This is the reason why Courts have looked for comparable sales of lands at or close to the date of the notification. Somewhere in the process, where difficulties crop up, the Courts employ the rule of thumb, since compensation has to be assessed and arms cannot be raised in despair. It is the bounded duty of the Court while ascertaining compensation to see that it is just, not merely to the

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between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

115 Baroda Prasad Dey v. Secretary of State, 25 CWN 677.
116 1992 SCR (2) 615.
117 Ibid.
individual whose property is taken, but to the public which is to pay for it; even if it be a public corporation set up for public needs.

The Land Acquisition (Amendment Act) Act 1984, addressed the matter of compensation and delays in payment.\(^{118}\) As to the level of compensation, the rate of solatium was increased from 15% to 30%. For delays, the amendment provided that:

(i) A time of 1 year was fixed for completing all formalities in between sections 4(1) and 6(1) from preliminary notification to declaration; and

(ii) The compensation award must be determined within 2 years from the date of issuing notification under section 6. Interest is payable at the rate of 9% per year from the date of preliminary notification to the date of dispossession.

These changes apply to the cases pending before the civil Court.\(^{119}\) Market value is the price of property may fetch in the open market if sold by a willing seller. The methods of valuation of land acquired under the Act may be classified under three heads.\(^{120}\)

(i) The opinion of valuers or experts

(ii) The price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the land acquired and possessing similar advantages, and

(iii) A number of years’ purchase of the actual or immediate prospective profits from the land acquired.

It is generally necessary to take two or all of those methods in order to arrive at a fairly correct valuation.\(^{121}\) In Nagpur Improvement Trust and Anr. v. Vithal Rao and Ors\(^{122}\) the opinion of the Court was that the principles for the determination of compensation would be same, regardless of the motive of the acquisition. In Suresh

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\(^{118}\) Before amendment, compensation for land and houses was paid at the market value of the assets on the date of preliminary notification. The valuation was based on a detailed examination of land and structure section An additional 15% of the determined market value was paid as solatium to account for the compulsory nature of acquisition. Interest in case of delayed compensation was paid at a rate of 5% per year from the date of dispossession. The amount of the award was determined by a land acquisition officer, but could be appealed to a civil Court.


\(^{121}\) Harish Chandra Neogy v. Secretary of State, 11CWN 875.

\(^{122}\) 1973 SCR (3) 39.
Kumar v. Town Improvement Trust Bhopal 123 the Supreme Court has been observed that in determining the amount of compensation the Court should not only look at the present use to which the land has been put to, but also the probable uses of the land. The agreement between government and claimant cannot defeat the statutory right of compensation. Another interesting aspect with regard to the payment of compensation is whether the claimants are entitled for compensation under the provisions of the Act, when the assigned lands are resumed by the Government for a public purpose. There was a dichotomy of judicial opinion on this point, however the legal position was finally settled in the case of LAO-Cum-Revenue Divisional Officer, Chevella Division And Orsection v Mekala Panda And Orsection.124

The legal conundrum germinated due to the view expressed by the full bench of the Andhra High Court in State of A.P. v. P. Peda Chinnayya125, where it was held that:

“Where the Government resorts to the provisions of the Act for acquisition of the patta lands without resorting to the terms of the grant for resumption, it is liable to pay compensation under the Act, but such compensation will be only the market value of the interest of the owner or the assignee of the land, subject to the clog. In such cases, no solatium may be payable but interest may be claimed on the amount of compensation from the date of dispossession and till the date of payment of compensation.”

This matter again came up for consideration before a larger bench in State of A.P. v. Bondapalli Sanyasi126, wherein it was held that “……the Full Bench committed error insofar it held that where patta lands are resumed by the government, the assignee would be entitled to compensation which would be equal to the market value of their interest in the land subject to the clog. Quantum of damages has to be ascertained having regard to the fact situation of each case. The right of the State to resume land is conditional only to the extent referred to in D-Form patta. Once such conditions are fulfilled, which have been done in the instant case, no grant of compensation would be payable towards resumption of land. Compensation may,  

123 1989 SCR (1) 908.  
124 AIR 2004 AP 250.  
125 1997 (1) ALT 498.  
126 2002 (2) ALD I.
however, be payable if lands have not been resumed by following due process of law. The act of the State in such cases would be tortuous in nature."

Thus, according to the larger bench, where the assigned land is taken possession of by the State in accordance with the terms of the grant or patta the right of the assignee to any compensation will have to be determined in accordance with the conditions in patta itself and the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as an owner but as an interested person for the interest he held in the property. The Andhra High Court\textsuperscript{127} finally laid the controversy to rest by upholding the view expressed in the \textit{P. Peda Chinnayya case}\textsuperscript{128} the Court observed:

"\textit{We are unable to agree with the view taken that the assignee shall be entitled to compensation in terms of the Land Acquisition Act not as owner but as an interested person for the interest he held in the property.}"

Accordingly, overruled the Larger Bench judgment in Bondapalli Sanyasi”. The Court reasoned that the assignees are constitutional claimants and the constitutional claim cannot be subjected to governmental restrictions or sanctions except pursuant to the constitutionally valid rule or law. The Court further observed that the deprivation of the assignee’s right to payment of just compensation equivalent to the market value of the assigned land may amount to deprivation of right to livelihood. The denial of constitutional claim to receive just compensation after depriving the assignee of his land is impermissible except pursuant to a constitutionally valid rule or law.

\textbf{State Legislature may enact Law to confer Higher Compensation}

Section 107 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act provides that nothing in this Act shall prevent any State from enacting any law to enhance or add to the rehabilitation and resettlement entitlements for land loser and project affected families enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act.

\textsuperscript{127} \textit{LAO-cum Revenue Division Officer, Chevella Division & Others v. Mekale Panda and others}, AIR 2004 AP 250.

\textsuperscript{128} \textit{State of A. P. v. P Peda Chinnayya},1997 (1)ALT 498
6.25 Acquisition of Land for Companies

Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act State can acquire land for private companies for public use provided at least 80 per cent. of project affected families prior informed consent shall be obtained and in case of public private partnership projects, at least seventy per cent. of the project affected families prior informed consent shall be obtained. The riddle associated with the repealed Land Acquisition Act is that different acquisition process followed in acquisition and land for companies. Acquisition of lands for a company has always to be in the larger public interest and never for the private purposes of a company. When lands acquired for a company under the Land Acquisition Act, 1894 the acquisition has to be done under Part VII of the Act. If instead, the acquisition is made under Part II of the Act, purportedly for a public purpose then the entire proceedings are ultra vires, vitiated and a fraud upon the statute. Part VII consists of sections 38A to 44B and apply to acquisition of land for companies. But these provisions did not apply where compensation money is paid partly out of public revenue and some fund controlled and managed by a local authority.¹²⁹

Under section 43 of the Land Acquisition Act, provisions of Chapter VII do not apply to the cases of acquisition of land for a railway under the agreement between the Company and the Secretary of State of India by which Government of India is bound to provide land.¹³⁰ In case of acquisition of land for companies the company concerned is required to enter into an agreement with the appropriate government, which shall be published. Acquisition of land for companies consent of the government (section 41) is condition precedent.¹³¹ Consent implies that the government is satisfied as to the matters provided in section 40 and satisfaction of the government cannot be questioned in any Court of Law.¹³² Consent of government cannot be challenged after the proceeding is over.¹³³

¹²⁹ P.K. Sarkar, ‘Law of Acquisition of Land in India’, (Easter Law House, Kolkatta) 2002 p 1107
¹³⁰ Ibid at 1136.
¹³¹ Ibid at 1112.
¹³³ Ezra v. Sectionretary of State, IL 1230 Cal 36.
As per section 40 the collector submitted the report to the government if the government is satisfied that, the purpose is one which is sanctioned under the statute, it can require the company to execute an agreement with the government. Agreement made between government and a company shall be published in official gazette. The agreement shall contain the clauses relating to the payment to be made to the appropriate government, terms on which the land shall be held by the company, the time and conditions on which the object for which the land is required to be fulfilled. There should be clear provisions in the agreement ensuring the reimbursement to the government by the company all costs incurred by it as incidental to the acquisition. Omission of publication of agreement will affect the acquisition.

The process of acquisition shall not begin unless the appropriate government has approved the acquisition for the company and the agreement mentioned above has been executed. The consent of the government shall not be given unless the government on an enquiry is satisfied that the land is being acquired for any of the following purposes:

1. Erection of dwelling houses for the workmen;
2. Construction of some building or work for a company engaged in industry or work for a public purpose;
3. Construction of some work that is likely to prove useful to public.

The company shall not sell, mortgage, lease or gift etc., the land except with the prior sanction of the appropriate government. Prior to the amendment in 1984 the company itself was empowered to enter and survey the land to be acquired.

The scope of acquisitions for a public purpose or for a company received the closest legislative attention in the aftermath of the landmark judgment in the case of the first R.L. Arora case there could be no acquisition for a private company where it was held that land acquired for a company could be regarded as for a public purpose only if the public shall not only have right to a direct access and a direct participation in the work, but also that the products of the enterprise shall be directly useful to the public, the Hon’ble Supreme Court pointed out, the government will become a general

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135 Section 41 of the LA Act.
136 Supra note 129, at 1135.
agent for companies to acquire lands for them for their private profit, simply because the company might produce goods which were likely to prove to be useful to the public. The judgment in this case threatened to invalidate all acquisitions for public companies made through agency of the government under Part II of the Act and so various governments started acquiring land under Part II of the Act. Therefore, to prevent State governments to proceed under Part II and for relaxing the acquisition for companies under Part VII, changes were brought to the Act in 1962, findings of first Arora case was superseded by the Amending Act 31 of 1962, in so far as acquisition made prior to 20th July 1962 even for private companies for public purpose were validated with retrospective effect by virtue of newly inserted section 40(aa) in the principal Act. Following were the main changes brought up in the Land Acquisition Act by the 1961 amendment-

(i) Clause (aa) was introduced in section 40.\(^{139}\)

(ii) Sub-clause (4A) was inserted in clause (1) of section 40.\(^{140}\)

(iii) Sections 44A and 44B were inserted.\(^{141}\)

The essence of the amendments can be summarized as that it provided for acquisition of land for construction of any building or works for a company engaged or to be engaged in an industry, which is essential to the life of the community or is likely to promote economic development of the country. In addition to the definition of public purpose, sections 44A and 44B were also inserted in the principal Act. Section 44A restricts any unauthorised transfer of lands so acquired while 44B

\(^{139}\) Clause (aa) reads: ‘that such acquisition is needed for the construction of some building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose’.

\(^{140}\) Sub-clause 4A reads: “where the acquisition is for the construction of any building or work for a Company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed.” Section 44A reads: “No Company for which any land is acquired under this Part shall be entitled to transfer the said land or any part thereof by sale, mortgage, gift, lease or otherwise except with the previous sanction of the appropriate Government.” Section 44B reads: “Notwithstanding anything contained in the Act, no land shall be acquired under this Part, except for the purpose mentioned in clause (a) of sub-section (1) of section 40, for a private company which is not a Government company.” Explanation "Private company” and “Government company” shall have the meanings respectively assigned to them in the Companies Act, 1956 (I of 1956).

\(^{141}\) Here the usage of term private company must be construed in terms of meaning under section 3 (1) (iii) of the Companies Act, 1956.
prohibits acquisition of land for private company, that which is not a government company.\footnote{142 \textit{R.L. Arora v. State of Uttar Pradesh and others}, AIR 1964 SC 1230.}

The Constitutionality of amendments in 1962 was challenged in the second \textit{R.L. Arora case}.\footnote{143 \textit{Supra} note 129, at 1236.} The petitioners claimed that the amendments to section 40 and 41 are ultra vires the Constitution as they contravene Article 31(2) and Article 19(l)(f). The Court summarized the relevant argument in the following words:

It is contended on behalf of the petitioner that on a literal construction of this clause (which, it is urged, is the only possible construction) it requires that the company which is acquiring the land should be engaged or should be taking steps for engaging itself in any industry or work, which is for public purpose. If a company satisfies that requirement it can acquire land for the construction of some building or work, even though that building or work may not itself sub serve such public purpose. Therefore, the argument runs that clause (aa) permits compulsory acquisition of land for a purpose other than a public purpose and is hit by Article 31(2) of the Constitution, where under Article 31(2) Constitution land can be compulsorily acquired only for a public purpose. While deciding the said contention, the Supreme Court held that amendments are valid and constitutional. It was clarified by the Court that the public purpose requirement is needed to be fulfilled in case of acquisition under section 40(1)(aa).\footnote{144 \textit{Supra} note 149, at 1240.}

But at the same time the Court was of the opinion that while approaching the question of construction of this clause, it cannot be forgotten that the amendment was made in consequence of the decision in the first \textit{R. L. Arora's case}.\footnote{145 \textit{Supra} 1964 SC 1230} The Parliament intended to fill the lacuna, which was, according to that decision, existed in the Act in the matter of acquisitions for a company. The Parliament when enacted the Amendment Act was well aware of Article 31(2) of the Constitution which provided for the compulsory acquisition of land only for a public purpose. Therefore, the Court observed that the intention of Parliament could not be said to make a provision which would be in contravention of Article 31(2).

The Court also paid attention to specific usage of the words public purpose in clause (aa), which according to the Court, indicates that the company for which land

143 \textit{Supra} note 129, at 1236.
144 AIR 1964 SC 1230
145 \textit{Supra} note 149, at 1240
is required should be engaged or about to be engaged in some industry or work of a public purpose. The Court felt it to be reasonable to hold that the intention of Parliament could only have been that land should be acquired for such building or work for a company as would sub serve the public purpose considering the setting in which clause (aa) was introduced, and hence it could not have been intended that land could be acquired for a building or work which would not sub serve the public purpose of the company in such a setting.

Thus, turning its decision in first R.L. Arora's case, the Court stated that, it is also not in dispute that the purpose of the company was a public purpose, namely, manufacture of textile machinery parts and that the acquisition was also for the construction of works for that public purpose. The public purpose requirement which was emphasized till now both in the legislations and case laws was further strengthened through the notification of the Land Acquisition (Companies) Rules 1963. It did elaborate for what all purposes the acquisition of land would be permissible under part VII of the Act. It provided the procedure to acquire any land under part VII thereby limiting the purposes for which land could be acquired. It introduced a set of preconditions to be fulfilled by the companies who are willing to acquire land for their purpose. In regard to public purpose the next major amendment was in 1984.

Even after the Supreme Court's wide interpretation of public purpose under section 40(1)(aa) of the Act so as to include the manufacturing of textile machinery in 1964, the governments were continuing the acquisition for companies under part II of the Act. In order to prevent the misuse of the Land Acquisition Act, 1894, the Central Government proposed further amendments to the Act. The Land Acquisition (Amendment) Act, 1984 was passed by the parliament. Before this amendment, the definition under Section 3(e), may be noted that, the Land Acquisition Act, 1894 did not differentiate between the companies, registered societies and the co-operative societies that are government entities (i.e., over whom the government had a deep and pervasive control) and the companies, registered societies and co-operative societies which were private enterprises on which the government only had statutory and

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146 Rule 4 of the Land Acquisition (Companies) Rules, 1963.
147 Pandit Jandu Lai v. Union of India, AIR 1961 SC 343. In this case the Supreme Court by interpreting the proviso (2) to sub-section (1) of section 6 of the Land Acquisition Act, 1894 held that since a part of compensation amount was paid from public revenue, the acquisition is for a public purpose.
regulatory controls. Thus, Section 3(e) as it then defining Companies, was applicable both to government and non-government companies. The then sub-section read:

(e) the expression company' means a company registered under the Indian Companies Act, 1882, or under the (English) Companies Act, 1862 to 1890 or incorporated by an Act of Parliament of the United Kingdom or by an Indian Law, or by Royal Charter or Letters Patent and includes a society registered under the Societies Registration Act, 1860 and a registered society within the meaning of the Cooperative Societies Act, 1912 or any other law relating to cooperative societies for the time being in force in any State.

Prior to the Land Acquisition (Amendment) Act, 1984, section 3(f) as it originally stood read as under:

(f) The expression public purpose includes the provision of village sites in districts in which the appropriate government shall have declared by notification in the Official Gazette that it is customary for the government to make such provision.

The 1984 Amendment Act substituted the existing section 3(f) with a new clause. The new section did not exhaustively define public purpose, it is only an inclusive provision. However, it is significant to note that the section clearly in the end excludes the acquisition of land for the companies from the ambit of public purpose. As per the legislative history and parliamentary debates, it is clear that this part aims at providing a level playing field for the land owners. But practically after the decisions in Jhandu Lai case and in first R.L. Arora cases, the misuse of the provision of public purpose and of part II of the Act, was often done, by invoking the current second proviso to sub-section (1) of section 6 of the Land Acquisition Act, 1894. Thus, by purporting to contribute a part of the cost of acquisition and compensation to be paid from the public revenue, the acquisition was being made for a public purpose, and the acquisition have been made legal and valid under the provisions of part II of the Act. Even though, for all practical purposes the acquisition was for the purposes of a company, and when it should have been done under part VII of the Act.

148 AIR 1994 All 77.
149 AIR 1964 SC 1230
Even after the 1984 Amendment Act there was not any difference paying or contributing to the compensation or cost of acquisition out of public revenue is still used as a means for acquiring land for companies. In *Abdul Sattar v. State of Uttar Pradesh*\(^{150}\), which was decided after the 1984 amendment, the Allahabad High Court followed *Jandu Lai’s* interpretation\(^{151}\) of proviso to sub-section (1) of section 6 of the Act, while deciding a petition under Article 226 of the Constitution. Yet again in *Pratibha Nema v. State of M.P.*\(^{152}\), the Supreme Court laid emphasis on the source of funding to determine whether the acquisition is for public purpose. The Court observed that “Thus, the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether cost of acquisition comes out of public funds wholly or partly...” This line of reasoning adopted by the judiciary is very concerning when it is clearly deducible from the 1984 amendment that source of the funds cannot be a sole criterion to judge the nature of acquisition. This could be discussed in detail in the next chapter.

This dichotomy is addressed by the executive in the Land Acquisition Bill, 2007, wherein it proposes to omit the provisions for the acquisition of land for companies under the Act but not to omit the acquisition, as the Objects and Reasons of the Bill holds that in certain circumstances it is necessary to acquire land through State mechanism, in cases where only a limited portion of land is needed as the person has already bought the rest. The new Bill proposes to abolish acquisition of land for companies by the government. To facilitate the same, the Bill proposes to repeal part VII of the Land Acquisition Act, 1894\(^{153}\) while at the same time the government reserves its right to acquire certain lands for public purpose.

### 6.26 De-notification

Under the section 48 of the Land Acquisition Act, 1894 appropriate government may withdraw from the acquisition at any time before taking possession of the land and collector shall pay the amount of compensation due for the damage suffered by the owner in the consequence of the notice or of any proceedings

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\(^{150}\) AIR 1961 SC 343  
\(^{151}\) AIR 2003 SC 3140.  
thereunder including all cost reasonably incurred by him in the prosecution of the proceedings to the interested person. Either under this section or under section 93 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act completion of the acquisition as notified is not compulsory and it is left to the discretion of the appropriate government to withdraw from the acquisition of any land of which possession has not been taken.  

As long as possession remains with the owner and the possession of land has not been taken by government, the government can unilaterally exercise its power of withdrawal under section 48 Land Acquisition Act and it is not necessary that the order of withdrawal is to be backed by reasons or that any opportunity of hearing to the land owner has to be given before the order of withdrawal is passed. When the State government wants to withdraw the proceedings for acquisition of land initiated by it under the Act by exercising the powers under section 48 having found that the land in question had been over turn by slum dwellers to such an extent that it was no longer possible for the government to effect the intended purpose of acquisition and the State government decided to withdraw the notification, the owner of the land cannot insist that government should be decided to go ahead with the acquisition.

In the Land Acquisition Act 1894, section 36 is an exception to de-notification. The Power of withdrawal rests with the government whoever be the acquiring authority. Thus, where proceedings are taken on behalf of a Municipal Board, the Municipal Board has no power of withdrawal from acquisition it is the government alone that can withdraw. In Jethmal Bhojraj, Messrs v. State of Bihar petitioners challenged the vires of sub section (1) of section 48 of the Land Acquisition Act on the ground that the said provision is arbitrary and without any guidelines. Court held that power under section 48(1) exercised before taking the possession of the land in question, and in such case compensation is to be paid for any damage done to the property in question and for costs incurred by the owner in prosecuting the proceedings up to that stage.

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156 Secretary of State V. Qumar Ali, 51 I.C. 501; 16 A L.J. 669.
157 Ibid
159 AIR 1999 BOM, 71
In *Jai Narain v. Land Acquisition Officer N.I.T. Nagpur*\(^{160}\), Government may withdraw from the acquisition, again if the government consider it fit to acquire the land, it shall have to act in accordance with the provisions of sections 4 to 8 of the Act. It has no power to reissue a declaration without a fresh notification under Section 4 of the Act. The Land Acquisition Act does not permit the State government to deliver back the required land which has vest in the State free from all encumbrances after possession has already been taken by the State government. In *Abha Pramanick v. State of West Bengal*\(^{161}\) Court held that, there is no provision under the Act which empowered the government to return any portion of unused land to original owners. Section 48 does not lay down any particular procedure for withdrawing the land from acquisition. Withdrawal from acquisition of questioned land can be effected only by a formal gazette notification under section 48 of the Act. In *Deputy Commissioner, Dharwar v. Jeevan Navar*,\(^{162}\) Court held that it is settled view that a claim for compensation can be made only if it is the case of the claimant that has suffered damages in consequences of notice issued under section 9(1) or of any proceedings taken there under. Same procedure followed under section 93 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act.

### 6.27 Comparative Study with UK, USA and South Africa

Apart from studying the Indian land acquisition laws, it would also be useful to study the laws of other countries. For this purpose, England, the United States and South Africa have been chosen. These countries have been chosen because of their similarity with the Indian system. England and the US as the leading common law nations have been studied. South Africa has been chosen because of the recent increase in land acquisition and reform, after the end of apartheid and the new Constitution.

**Land Acquisition in US**

In order to encourage and expedite the acquisition of real property by agreements with owners, the following procedure is followed by the American federal

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\(^{160}\) AIR 2006 NOC 1086 (al.) 363  
\(^{161}\) 1979 Kar. L.J.374 pp-377 & 378  
government.\textsuperscript{163} Firstly, the head of the federal agency undertaking acquisition is supposed to make every reasonable effort to acquire the property through negotiation. For this purpose an appraisal of the property is conducted, before the initiation of negotiations, and the owner or his designated representative is usually allowed to accompany the appraiser during his inspection of the property.

Before the initiation of negotiations for real property, the head of the Federal agency concerned establishes an amount which he believes to be just compensation and the owner of the property is given an offer to sell the property at that price. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, is regarded in determining the compensation for the property. The head of the Federal agency concerned also provides the owner of the property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired for damages to remaining real property shall be separately stated.\textsuperscript{164} No owner is required to surrender possession of the property before the head of the federal agency concerned pays the agreed purchase price, or deposits with the Court.

The construction or development of a public improvement is so scheduled that, to the greatest extent practicable, no person occupying the property to be acquired to move from a dwelling (assuming a replacement dwelling as required is available), or to move his business or farm operation, without at least ninety days' written notice of the date by which such move is required. The owner or tenant of the property may also be allowed to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the government on short notice.

\textsuperscript{163} To provide uniform and equitable treatment for persons whose property is acquired for public use, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987. Henceforth The Uniform Act.

\textsuperscript{164} Section 46 of the Uniform Act.
The focus in American law is very much on the owner. In no event can the government (the head of the concerned federal agency) either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in Court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property. In case the doctrine of eminent domain is sought to be applied, the Federal agency concerned institutes formal condemnation proceedings. No Federal agency can intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property. Also, if the result of the acquisition of portion of a property leaves the owner with an uneconomic remnant, the government cannot just leave the owner to his own devices. An uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the Federal agency concerned has determined has little or no value or utility to the owner. Under American law, the Federal agency concerned has to offer to acquire that remnant as well.

**Land Acquisition in South Africa**

As part of the transitional arrangements to a new political dispensation in South Africa, the Interim Constitution in 1993 was introduced, succeeded by the present Constitution. The Interim Constitution provided for the restitution of land rights to dispossessed persons as a constitutional principle. The provisions for this are embodied in the Restitution of Land Rights Act, 1994. This Act provides for the establishment of an independent Commission and Land Claims Court to investigate and adjudicate on land claims. Whilst one of the objectives of the constitutional principle of restitution is the restoration of land lost by parties dispossessed by virtue of racial legislation, other forms of restitution such as monetary compensation and provision of alternative land arc possible. The Interim Constitution, the provisions of which are now embodied in the "final" Constitution, does provide that where land rights were expropriated in terms of the Expropriation Act of 1975 and it's predecessors, and full compensation was paid, then a claim for restitution would not succeed.

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165 Marion Clawson, Land system of the United States: An Introduction to the history & practice of land use and land tenure, 201 (University of Nebraska Publishing, Lincoln, 1968).
167 Section l(iii) and l(v) of the Restitution of Land Rights Act 1994.
The “Property Clause” of South Africa's new Constitution.\textsuperscript{168}

Section 25 reads as follows:

2. \textit{No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.}

3. \textit{Property may be expropriated only in terms of law of general application (a) for a public purpose or in the public interest; and (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a Court.}

3. \textit{The amount of compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including (a) the current use of the property; (b) the history of the acquisition and use of the property; (c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation.}

This clause introduces a new element to the existing principles of common law and those specific to South Africa through the use of the term "just and equitable" for compensation. This could extend the scope of compensation beyond that payable in terms of the Expropriation Act and it remains to be seen how the Courts will interpret the expression. Basically, the value to be paid for land is its real market value.\textsuperscript{169} Thus, there is no difference like in India, about the difference between paper and real price. The owner of the property gets the market price.

It should also be noted that restitution could well go far beyond the limits of compensation only for land rights lost. In terms of present day expropriation legislation, apart from compensation based on market value of any real interest, 


compensation may also be payable for actual (provable) financial loss. In addition, a further payment known as solatium is made to reflect the inconvenience and distress arising from the fact that the acquisition is compulsory. Loss of work opportunities, residence rights etc. could also now come into the equation. It again remains to be seen how the Courts will respond to such claims.

The Restitution of Land Rights Act, 1994 introduced a new dimension into South African real property law in that when defining a “right in land” it included “any right in land, whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question.” The issue of labour tenants' rights, quite apart from restitution, is now subject to separate legislation but the highlighted section referring to beneficial occupation is one which is posing problems of interpretation. Beneficial occupation is not defined in the legislation and legal opinion on its meaning is not, at this stage, unequivocal.

Until the introduction of this concept, compensation in expropriation cases was payable to those parties owning, or otherwise entitled to, an interest in land. Such interests included freehold (i.e. absolute ownership), including sectional title; leasehold, being long-term and registered contracts and short-term, unregistered, tenancy arrangements; beneficiaries of servitudes; mortgagees; etc. In other words, these recognised interests in land were generally supported by written documentation conferring the right on the owner of the interest.

**Land Acquisition in England**

The law relating to land acquisition in England is laid down by the Acquisition of Land Act, 1981 and the Land Compensation Act, 1961. Compulsory purchase powers are provided to enable acquiring authorities to compulsorily purchase land to carry out a function which Parliament has decided is in the public interest. Anyone whose land has been acquired is generally entitled to compensation. Many bodies with statutory powers have compulsory purchase powers although the use of the powers is limited by Acts of Parliament and requires the

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172 S.2 of the Acquisition of Land Act, 1981.
approval of the Government Minister specified in the particular Act (or the National Assembly in Wales). However, the major part of land acquisition is done under the Acquisition of Land Act 1981.\textsuperscript{173} In practice, the greatest users of compulsory purchase powers are Local Authorities and the Highways Agency.\textsuperscript{174}

Other statutory bodies that may make Compulsory Purchase orders (Henceforth CPOs) include Government Departments, Regional Development Agencies and major utilities such as water or electricity companies. The compulsory purchase process is made up of a number of stages. It is important to note that the acquiring authority does not have the powers to compulsorily acquire land until the appropriate Government Minister confirms the CPO. However, they can acquire by agreement at any time and an attempt is made to do so before acquiring by compulsion.\textsuperscript{175}

Compensation following a compulsory acquisition of land is based on the principle of equivalence.\textsuperscript{176} This means that the dispossessed should be no better or worse off in financial terms after the acquisition than they were before. Compensation is paid for all expenses incurred and losses sustained. However, it should be kept in mind that compensation is only for expenses and losses which occur as a direct and reasonable consequence of the acquisition of your property. The onus of looking after one's rights is shifted onto the owner. The owner is under a duty to “mitigate his loss.” This means that the owner has to take steps to minimise his losses. This is a factor that is taken into consideration before the quantum of compensation is fixed. Because the effects of the Compulsory Purchase Orders (CPO) on the value of a property are ignored when assessing compensation, it is necessary to value the land on the basis of its open market value without any increase or decrease attributable to the scheme of development which underlies the CPO.

\textsuperscript{175} In an Article entitled "The Law & Ethics of Compulsory Acquisition of Land", Richard C. Fitzgerald the English jurist has critically examined the principles laid down in the English Act. He points out that it is not the grant of compulsory power of acquisition which causes hardship but the exercise of such powers. The problem is how to confer power to act to the public advantage rights. This difficulty can be avoided to a considerable extent by framing the power in such a way that there is no room for doubt as to the precise purpose for which land can be compulsorily acquired; by giving the dispossessed owner a legal right to proper compensation & by devising reasonable safeguards for the exercise of such power.
Besides these general principles, a slightly different approach is taken depending on whether the dispossessed owner is a businessman, agriculturist or a dweller. This is done because in all three cases the nature of land use is different, therefore, their valuation is also slightly different. In all cases, the land is bought at market value, as if the seller was a “willing seller”.\(^{177}\) However, the law also provides for situations when there's no general market or demand (like a church). If the property to be acquired is one for which there is no general market or demand it is not possible to arrive at a value by adopting the market value approach. In these circumstances it may be appropriate to assess compensation on the basis of how much it would cost to reinstate the facility elsewhere.\(^{178}\) Both freeholders and leaseholders can claim on this basis although it is more difficult to justify if there is only a short-term lease. Thus, the focus, like India, is to compensate the dispossessed such that they are not economically ill-affected by the land acquisition.

### 6.28 A Comparative Approach between the Land Acquisition Act 1894 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

#### A. Scope of Legislation

After repealing the Land acquisition Act, 1894, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act governs the acquisition of land both by the Union and the States, and in particular, the procedure of such acquisition, payment of compensation and the adjudication of disputes. In addition to this, it also provides resettlement and rehabilitation entitlements to the displaced persons. The Act will be the first of its kind where resettlement, rehabilitation and acquisition are all covered in the same legislation. The Act would replace the predecessor Land Acquisition Act, 1894. Some legislation relating to land acquisition, however, is not superseded by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. Sixteen such enactments are listed including the National Highways Act, 1956, Special Economic Zones Act, 2005 and the Railways Act, 1989 etc.

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\(^{177}\) Harold Parrish, Cripps on Acquisition of Land 3-360(1962)

\(^{178}\) Michael Redman, “Compulsory Purchase Compensation” JPEL 315 (1999)
In terms of federal division of powers and responsibilities, land acquisition is a concurrent subject matter hence, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act provide for a common mechanism for land acquisition by the Centre and the States. With reference to resettlement and rehabilitation, while States are mandated to provide for the minimum entitlements under the present Act, they are free to legislate to provide for higher entitlements.

**B. Transfers Regulated by Legislation and ‘Public Purpose’**

Under the repealed Land Acquisition Act, land may be acquired by the government for public purpose and separately for companies. Some decisions have, however, held that the provisions for acquiring land for public purpose and for companies are not mutually exclusive and hence, land may also be acquired for companies for public purpose under the Act. Public purpose under the section 3(e) Land Acquisition Act includes the acquisition of land for village sites, town or rural planning, 'planned development', providing for the residence of poor or landless displaced by natural calamities or any government scheme, for carrying out any social welfare and slum clearing schemes, for any 'other scheme of development' locating a public office or for any corporation owned by the State. In contrast, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act recognises and regulates three modes of transfer of land. The first is compulsory sale of land to the State for uses that fall under the heads (i) to (v) of the definition of 'public purpose'.

The second is a partly-compulsory sale of land that requires the prior informed consent of at least 80% of the affected families. Such acquisitions may take place where the benefits accrue to the general public, or for the private corporation for the production of public goods or services or for a Public-Private Partnership project. The third is a private, voluntary sale of land of more than 100 acres in rural area and more than 50 acres in urban areas. The provisions relating to resettlement and rehabilitation apply uniformly, and indeed it is a pre-condition for all of these three transfers. Crucial to the first two modes of transfer is the contentious 'public purpose' clause.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act defines 'public purpose’ in a relatively narrow manner, specifying five heads: The first is for strategic purposes for use by the Union
or work vital to the State police or national security, the second is for constructing railways, highways, ports, power stations or irrigation projects, the third is for project affected people, the fourth is for development or improvement of rural or urban areas and land required thereby for residential purposes of the ‘weaker sections’ and also land for government administered education and health facilities or research projects and the fifth is for residential use by the communities affected by natural calamities and any governmental scheme or policy.

C. The Procedure Followed in Acquisition

As in the predecessor Land Acquisition Act, the procedure for acquisition involves notification by the District Collector and invitation of objections. It is after the adjudication of such objections that the acquisition is carried out. However, new Act adds a preliminary procedure and a bureaucratic framework to administer such procedure before the collector is involved. This procedure determines whether the land chosen should be acquired with regard to the social costs involved in such acquisition?

1. Social Impact Assessment

The preliminary procedure, only in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, which determines whether or not a particular area of land should be acquired, consists of three phases. First, the appropriate government must conduct a Social Impact Assessment ('SIA') ‘in consultation’ with the Gram Sabha or equivalent body in urban areas. The SIA must, inter alia, study the nature of public interest involves socio-economic impact on the families, whether the bare minimum area of land is being acquired, whether alternate sites have been considered and found feasible. The Social Impact Assessment (SIA) report is required to record the views of the affected families and to this end, the appropriate government must hold a public hearing with the affected families.

The second stage of this process is the evaluation of the social impact assessment (SIA) report by an 'expert group' under section 7 of the Act. The expert group will evaluate the social impact assessment report and examine whether the project serves the Stated public purpose, whether it is in the larger public interest and whether the costs and adverse impacts of the project outweigh the potential benefits.
On these grounds, individually, the expert group is required to express its opinion as to whether the project should be allowed to continue or not.

The third and final stage is the examination of the initial proposal to acquire the land by a committee appointed by the appropriate government. This committee consists of at least seven members of the executive and not more than three non-official experts nominated by the government. The task of the committee is to consider whether there is a legitimate and bona fide public purpose which justifies acquisition of land, whether the long-term benefits to the general public would justify the costs (in terms of social impact) identified by the social impact assessment (SIA), whether the minimum required area is to be acquired and whether the collector has considered possibility of acquisition of non-agricultural lands as opposed to agricultural and irrigated land. The committee, under section 8 of the Act, considers the recommendations of the expert group based on social impact assessment report and is the final authority to determine the viability of the project. This committee also verifies that the consent of the affected families is taken in accordance with the second mode of transfer (i.e. partially compulsory sale).

2. Preliminary Notification and Acquisition

Either under the repealed legislation or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, once the government determines that land is likely to be required for a public purpose, it must issue a preliminary notification. As per section 4, the Land Acquisition Act notification must be issued by the collector, and subsequently, objections regarding the acquisition may be raised. Section 5A provides that such objections shall be heard and finally decided by the collector. Subsequently, the government may issue a final notification that the land is required for a public purpose and the collector may acquire the land as provided under section 16 of the Act.

But under the present Act, the preliminary notification must contain a statement of the nature of public interest involved and a summary of the SIA report. The notification must be issued within a year of the expert committee report, otherwise the social impact assessment (SIA) will be lapsed and the procedure must be renewed. Further, the preliminary notification stands rescinded one year after it is issued, if no action is taken pursuant to it. At this stage, section 11 provides that any persons affected by the acquisition, may challenge the notification, objecting to the
area and suitability of the land for acquisition, the justification for public purpose or the findings of the social impact assessment (SIA) report. These objections are heard and recorded by the collector, who further makes recommendations as to the objections. The government finally decides the claims. Finally, after deciding these objections, under section 19(1), the appropriate government may issue a declaration that the land in question is required for a public purpose along with another notification that identifies the resettlement area and provides a summary of the resettlement and rehabilitation scheme for the affected persons. Section 19(4) states that such a declaration amounts to conclusive proof that the land is required for public purpose and the government may commence procedure for acquisition of land.

After this final declaration, the collector settles the compensation, rehabilitation and any disputes arising out of the two. Under section 21, the collector must issue a public notice to all persons interested in the land to be acquired and require their presence (and allow objections to be raised) to issue an award of compensation. Thereafter, the collector makes an award with regard to the compensation payable and rehabilitation and resettlement entitlements under the provisions. Section 38 provides that the collector must ensure that full compensation and monetary component of resettlement and rehabilitation entitlements are tendered to the affected families within three months and six months respectively from such award. Only after these conditions are fulfilled under section 38 of the Act the land shall be vested with the government.

3. Effect of the Urgency Clause

Under the Land Acquisition Act, land might be acquired by the government in cases of 'urgency' any time after fifteen days from the publication of the preliminary notice even if the collector has not passed any award. Before taking possession of such land, the collector must allow 48 hours notice to the affected persons and pay 80% of the estimated compensation. There is, however, no explanation as to in what circumstances this clause may be invoked. In contrast, as per section 40(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, the government may invoke the urgency clause only for acquiring the 'minimum area' necessary for the "defence of India or national security or for any emergencies arising out of natural calamities." When urgency clause is invoked, the government may exclude any or all of the
provisions of chapter II (relating to SIA) and chapter VI (relating to resettlement and rehabilitation provisions). Before taking possession of such land, the collector must allow 48 hours notice to the affected persons and pay 80% of the estimated compensation. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, additionally, provides another 75% of the market value of the property to be paid to a person who is displaced under urgency clause.

4. Calculation of Compensation

The Land Acquisition Act provides that compensation shall be made to the persons whose land has been acquired, which is to be based on the market value of the property and other quantifiable losses suffered in the course of the acquisition process. Similarly, market value is the basis for calculating compensation in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. Once market value of the property acquired is calculated to calculate the total amount of compensation together with 100 per cent. of compensation as solatium, plus the value of the assets fixed to the property in each case. In case of rural areas market value of the land multiplied by factor one to two based on the distance of the project area from the urban area, as may be notified by the appropriate government. Whereas under the Land Acquisition Act compensation only sum of the market value of the property acquired plus 30 per cent. of compensation shall be paid as solatium.

The market value of the land is calculated on the basis of the minimum value prescribed by law for registration of sale deeds or the average price of land in the surrounding areas (whichever is higher). If this information is not available, the State government will fix a minimum price of land based on the price in adjacent areas. Alternatively, the requiring body (which may be a private or State-owned corporation) is allowed to offer shares whose value does not exceed 25% of the market value of the land. Section 26(3) provides that where such shares are voluntarily accepted by the affected families, they are accepted in lieu of compensation and the market value is reduced by the value of the shares.
5. Rehabilitation and Resettlement

The Land Acquisition Act did not govern the rehabilitation and resettlement (‘R&R’) entitlement for displaced persons. In the present Act, resettlement and rehabilitation provisions, as discussed above, apply in three scenarios; when land is acquired by the government for its own use, hold and control, including public sector undertakings and for public purpose, and shall include the purposes mentioned in section 2(1)(a-f); when a private corporation or public private partnership project for the purposes mentioned in section 2(1)(a-f) acquires more than 100 acres in a rural area, and more than 50 acres in an urban area and; when a private corporation purchases land more than 100 acres in a rural area, and more than 50 acres in an urban area through private negotiation with the owner of the land. The extension of entitlements to persons affected beyond just title-holders is perhaps the most important provision of the Act. The definition of 'affected families' in the Act includes not just title holders of the land that is acquired, but also families whose livelihood is dependent on the agricultural use of the land (share-croppers, agricultural labourers, tenants) or on the other natural resources of the land (hunters, fisher folk, gatherers). It also recognises community property rights ('CPRs') by including those families who have traditional rights under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. In urban areas, families that have resided on that land for more than three years, and whose primary source of livelihood is affected by the acquisition are said to be affected families.

The first step in the process of rehabilitation and resettlement begins with the appointment of an administrator he is primarily in charge of the formulation and execution of the rehabilitation and resettlement scheme subject to the supervision of two authorities: the Commissioner of rehabilitation and resettlement and the Project-level Committee on rehabilitation and resettlement. The responsibility of the administrator begins with the publication of a preliminary notification (under section 11 of the Act) by the collector. At this point, the administrator must conduct a survey to document the extent of land that will be lost, connected livelihoods, as well as the government buildings, public utilities and the infrastructure that will be affected. After this survey, the administrator must draw up a draft rehabilitation and resettlement scheme, which specifies the entitlements of each affected family, the
government buildings and public infrastructure to be provided in the resettlement area. This draft is then put for a public hearing in the Gram Sabha or Municipality.

The administrator then sends the draft scheme to the collector along with a record of the claims and objections raised in the public hearing. The collector then shares the draft for comments and approval with two bodies created under the Act; the first is the Resettlement and Rehabilitation Committee and the second is the Commissioner for Resettlement and Rehabilitation. The Government must constitute the Resettlement and Rehabilitation Committee under the chairmanship of the collector, when the land to be acquired is more than 100 acres in rural area and more than 50 acres in urban area. The Committee is intended to serve as a forum for the participation of the affected people. It consists inter alia of one representative each of the women, Scheduled Castes and Scheduled Tribes, a voluntary organisation, member of parliament, member of legislative assembly and the requiring body. After the Committee considers the draft scheme, it is referred to the Commissioner for resettlement and rehabilitation. This Commissioner is appointed under section 44 of the Act and it supervises the draft of the scheme and is responsible for a post-implementation social audit.

6. Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act - A Critique

The Act is no doubt an attempt by the legislature to address vital issues like rehabilitation and resettlement and procedures such as social impact assessment. In spite of its plausible contents, the Act faces number of criticisms. It is a continuance of legislature’s attempt to widen the government’s power to acquire privately held property. It relies on arbitrary pricing, which will neither ensure that farmer’s are adequately compensated to their lost assets, nor guarantee that a scarce resource like land will be put to its most productive use.

The Act can be criticized as following:

1. The Public purpose clause which is a vague term enables the governments to take interpretive liberties while operationalising the concept of eminent domain.
2. The Act opens up several back doors for the State to favor companies at the expense of farmer’s rights. This has increased the chances of abuses that involve covertly diverting of the acquired land to companies, adoption of pick
and choose method during acquisition and the misuse of the de-notification clause to exempt land belonging to the powerful.

3. The section 99 of the Act allowed the states to change the purpose for which the acquired land is finally used i.e. the public purpose can be changed after acquisition.

4. Section 102 of the Act provide for unbridled power to transfer an already acquired land to any person for a consideration.

5. Clause 93 provides for midway de-notification. These provisions give the States untamed powers to acquire land in the name of some public purpose and transfer it to companies.

6. The land Acquisition laws have not focused on the communities affected that is the farmers and their psychological connection with the land.

   Thus the Act in reinforcing this broad sweep of power and interest, keeps the conflicts alive.

6.29 Conclusion

Nearly 120 years old Land Acquisition Act,1894 enacted during British period was repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Government of India believes that there was a heightened public concern on land acquisition issues in India, despite of many amendments, over the years, to India’s Land Acquisition Act of 1894, there was an absence of a cohesive national law that addresses fair compensation and rehabilitation and resettlement to the land owners and those directly affected from the loss of livelihoods. The Government of India proposed the necessity to have a combined law, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow land acquisition process. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act represents a change in the legislative approach to land acquisition. It introduces for the first time provisions for social impact assessment of the proposed projects, recognises non-owners as affected persons like agricultural labourers, tenants, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land. A mode of acquisition
requiring consent of the displaced persons and statutory rehabilitation and resettlement entitlements for the project affected families. In addition to this, it has restricted the grounds on which land may be acquired under the urgency clause. In doing so, it has recognised some of the problems arising out of land acquisition and shifted the baseline of debate and discussion on acquisition policy. The recognition of problems is, however, one thing and the provision of appropriate policy solutions is another. We have argued that the Act is still problematic in many aspects. In relation to the decision of acquisition, the SIA process still allows for arbitrary decision-making and does not meaningfully allow affected parties to participate in the process. The principle of social cost minimisation is recognised, but no meaningful way of implementing has been proposed. With respect to compensation the Act still continues to use the market value for determining compensation like the LAA. Moreover, it does not supersede other legislations governing acquisition and resettlement, leaving acquisition a legislatively fragmented and project-based process. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is clearly a long overdue attempt to address the inadequacies of the colonial Land Acquisition Act of 1894.