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CONCEPTUAL AND HISTORICAL BACKGROUND OF LAND ACQUISITION LAWS IN INDIA IN PRE- INDEPENDENCE ERA

AUHTORED BY - DR SUMBUL FATIMA

Abstract¹

India's geographical region is primarily made up of agricultural land, with forests being the next largest occupier. A very small portion of land has been used by non-agricultural users, namely urban areas, industry, and infrastructure, although this portion is expected to grow quickly in the future as the country modernizes and urbanizes. A large portion of privately owned land in the country is used for agriculture and is classified as agricultural land. Landowners have the option of transferring land to other users, but changing the land use from agricultural to commercial, industrial, or any other purpose usually necessarily requires permission from the tax authorities, which is usually granted quickly in exchange for a fee. When large areas of land are required for the development of roads, railways, canals, or other basic infrastructure, urban housing, or for any other public purpose, the government acquires land compulsorily on payment of compensation in accordance with laws on land acquisition. These laws include a provision for the acquisition of property in order to develop private-sector industries. While changes in land use occur gradually over a period of time as a result of landowners' decisions and compulsory land acquisition by the government is the primary tool for implementing large-scale changes. Since the days of the British Empire, the Land Seizure Act of 1894 has served as the primary legal foundation for the forced acquisition of private land.

Key Words: Land Acquisition, Agricultural Land, British Empire, Land Seizure, Landowners

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1. Introduction

“Our land is more valuable than your money. This will last forever. It will not perish even in the flames of fire. As long as the sun shines and the waters flow, this land will be there to give life to people and animals. Compulsory land acquisition not only leads to the loss of economic assets and livelihoods, but also disrupts communities, cultural identity, local markets for goods and labor, putting displaced people in a "spiral of impoverishment".”²

The Food and Agricultural Organization of the United States in 1992, defines ‘Land’ as a delineable area, encompassing all attributes of the biosphere immediately above or below the earth surface, including the soil, terrain surface hydrology, the near-surface climate, sediments and associated groundwater reserve, the biological resources, as well as the human settlements pattern and infrastructure resulting from human activity.

The land is one of the five major elements (Fire, Water, Wind, Atmosphere, and Earth) across the world. It forms the identity, social association, and economic lifeline of the individuals and represents them in the communities. The land is regarded as a productive and social asset that provides substantive citizenship to the population in rural India. Land rights and access not only provides economic stability but also enhances the social status of individuals in society. Land Acquisition is referred to as the process in which the private land of an individual is acquired by the State or Central Government to fulfill public-oriented purposes such as industrialization and infrastructure. It includes paying compensation to the individual that has provided his/her land for the public purpose as directed by the law. The Land Acquisition aspects in India are governed by several Laws and Rulings in the form of Acts such as the National Highways Act, 1956, Land Acquisition Act of 1894, the Indian Tramways Act, 1886, and the Metro Railways (Construction of Works) Act, 1978. The Land Acquisition Act of 1894 forms the basis for Land Acquisition processes in India and facilitates the attainment of property/land from the private landowners for public development activity. In the case of *Somawati v. the State of Punjab*³, the Supreme Court held that as per the Land Acquisition Act of 1894, the land could only be attained by the private owner. It also specified that the acquired land is to be used for Public, Company, or Infrastructure

² Isapo Muxika or Blackfoot, 19th Century Chief of Siksika First Nation Tribe in Current Day, Canada. As Cited from Sharon O’ Brien, *American Indian Tribal Governments*, 70 (University of Oklahoma Press: Norman and London, 1993).as cited from Kakhkashan Y. Danyal, “Land Acquisition in India- Past and Present” *Jamia Law Jjournal*, vol.1, (2016), pp.01-10

³ 1963 AIR 151, 1963 SCR (3) 774

Development purposes.⁴ When the acquired land from the private owners is to be given to a company, the directives laid down under Part VII of the Land Acquisition Act of 1894 are essential to be implemented. It specifies that the land that is provided to the company is only to be used for a Public Purpose. It may be in the form of Public Construction Work that is beneficial to the large communities.⁵

2. Historical and conceptual background of Land acquisition

“The Land Acquisition Act was an important legal instrument of economic control, oppression and exploitation promulgated by the British imperialist government.”

- Anthony Dias⁶



Source: www.lawtool.net

2.1. Ancient concept about Land Acquisition

To comprehend the origins of property, as per R.S. Sharma⁷, the terms Pana, which later became Coin, and Dhana, which later came to mean Wealth, are used as Prizes, Wagers, or Stakes won because of either war or competition in the earliest portion of the Rig Veda. He explained that

⁴ Gonsalves C. “Judicial failure on land acquisition for corporations” *Economic and Political Weekly*. 2010 Aug 7:37-42).

⁵ Lakhia S. *Land Pooling as a Means of Mitigating Land Displacement in India* pp. 167-181. (In *Land Acquisition in Asia 2019*. Palgrave Macmillan, Singapore).

⁶Anthony Dias, *Development & its Human Cost: Land Acquisition, Displacement and Rehabilitation of Tribals*, (2012).

⁷ Ram sharan sharma, “historical development of land acquisition laws in India”, <https://www.lawtool.net/post/chapter-1-historical-development-of-land-acquisition-laws-in-india> last visited 9th August, 2021

https://en.wikipedia.org/wiki/Ram_Sharan_Sharma

acquiring property necessitates significant effort, including war. This appears to have been the oldest known origin of faith for the Rig Vedic people. Permanency objects such as Livestock, Sons, Chariots, Plants, Grain, and belongings such as Weapons, Pots, Vessels, Clothing, and sordid family articles were started as property throughout this period. Among the immovable assets, coast or residence were but in conformity with be regarded as much Non-Public worship between the Rig Vedic Period. However, in the Post-Vedic Era, the Grihyasutras suggest permanent houses when dealing with domestic resources. The land was under the full command of the ruling tribe, and the chief could grant it only with the king's permission.⁸ When the people started leading a settled life they started owning cultivable land and essential things. Sooner, they started understanding the importance of land and its agricultural production value and now they termed property as lands and precious metals like gold and silver. Later, the Land was used for Pillaging, Cattle, Horses, Ornaments, Weapons, Women slaves were the most widely accepted types of property⁹.

With the advancement of material culture, as well as the rapid progress in industry and trade, the concept of property changed, and whatever one possessed, whether by inheritance or self-effort, came to constitute property in the modern sense of the word. There were no complicated distinctions between property ownership and possession in the early law. At the time, only Roman law made a distinct distinction between the two, referring to two concepts:

1. *Dominium* - The absolute right towards something.
2. *Possessio* - It was merely physical attribute.

The difference was not always clear in English Law. Developments have taken place, and it reached the stage of ownership through the advancement of possession laws. The English highlighted possession, whereas the Romans emphasized absolute rights, i.e., *dominium*. It was much easier to establish title in Rome. The Greeks held a view similar to English law, and the writers believed that whoever could demonstrate superior possession was the owner. The situation changed, and concepts such as *ejectment* were introduced to demonstrate absolute possession. The Roman concept of *dominium* was still absolute. It could only be obtained in certain ways. The following are a summary of an owner's full rights:

⁸ Dhanmanjiri Sathe, *Political Economy of Land Acquisition in India: How a Village Stops Being One*, (Palgrave Macmillan, Singapore, 2017).

1. Possession with the ability to enjoy, deal with, and destroy the thing.
2. Possession with the ability to exclude others.
3. Alienation power
4. Security charge power
5. The ability to will something to happen, no single owner has all of these rights.

There are very few owners who have complete control. The owner may delegate many of his rights to some other person while still trying to remain the owner. Dominion is the ultimate right that has no rationalization. It could be utterly worthless. The owner's ability to surrender so many rights generates practical difficulties.

2.2. "Occupation Theory" of Land Acquisition

With the progress of material culture in Roman Law, combined with the rapid advancements in industry and trade, the concept of property brought a change, and whatever one possessed, whether by inheritance or self-effort, is defined as property in the modern sense of the term. The "Occupation Theory" is the origin of the proprietary right in land. According to this theory, things that are not currently the focus of the owner's property become the asset of the first occupant.

"A field is his who clears it of jungle," *Manu* says, "and game is his who first perceives it." *Manu* (who flourished in the second century B.C.) did not introduce this theory for the first time, but it was already in use when he wrote his *Smriti*. "Who belongs to wild animals?" asks the great Sanskrit poet *Bharavi*. He is the one who first pierces them." Our sages' legal conception, which individuals lived and thought during Rome's early life, was similar to the notions acknowledged in other nations later on. *Manu's* "Occupation Theory" of property corresponds to the doctrine of occupation" that prevailed in Rome during the seventeenth and eighteenth centuries.

According to *Maine*, Occupancy was the assumption of Physical Possession, and the idea that such an act confers a title is likely the development of a refined Jurisprudence. As a result, *Maine* disagrees with the thesis that occupation preceded ownership. He developed the Concept of Mere Possession of a thing followed by the fact of ownership when objects of enjoyment were brought into ownership. Occupancy becomes ownership when there is no other claimant to the object (*Res Nullius*) and everything is assumed to be "Somebody's Property."

2.3. Land under Muslim philosophical attitude



The Prophet ﷺ said:

“Whoever takes a piece of the land of others unjustly, he will sink down the seven earths on the Day of Resurrection.”

(Sahih al-Bukhari 2454)

The Muslim Scholar's explanations of Hadith subsequently contradicted the Occupational Theory of land. According to Abu Haneefa, simple cultivation of wasteland is insufficient to create a genuine right in the cultivator; State permission is necessary for the acquisition of Proprietary Rights. However, his disciples Abu Yusuf and Abu Mohammad, both of whom served as Judges under Khalifa Harun-al-Rashid, maintain that no State authorization is required to make the cultivator the Proprietor. Barren deserts were considered to be responsive supply chain that became the Cultivator's Property by virtue of his being the first possessor.

2.4. Land under Hindu Philosophical Attitude

Hindu philosophers and jurists held that the government was not the primary owner of the land. He was entitled to a portion of the Usufruct of the lands under his subject's occupation, not merely because he was the owner, but because a proportion was leviable to him as the cost for the protection of Life, Liberty, and Property. The Sovereign's Fees for subject protection accounted for roughly one-sixth of the harvest. According to Parashara, a renowned Smriti-Writer, "He (The Sovereign) receives taxes and thus should protect his subjects from Thieves, Robbers, and others. "Lately, multiple systems and reforms were updated on various bases when people started living in the village system and understanding the importance of Social Life, with this evolution initially kings use to make amendments as per their senses and later when invasions by different dynasties brought drastic changes in these reforms under Mughal, Rajputana, and British Rule Period.¹⁰

¹⁰ Jay Donald Jerde, "Learning to Sell Grandmother: Why City of Sherrill, New York v. Oneida Indian Nation of Page | 10

2.5. The Jurisprudential Grounds About Land Acquisition

The behavioural phenomena of land acquisition in India exclusively rests upon legal and jurisprudential grounds originating from legislative enactments as they are passed by the parliament out of existing contingencies. As far as peoples' displacement is concerned we do not have a separate law for it and consequential uprooting of people is implicit in the very concept of land acquisition itself. That is why most of the incidents of land acquisition fail to satisfy any criterion of compensatory justice as provided by the **Economic Theory. Utilitarian Distributive Justice** would imply a more Egalitarian ownership and tenancy pattern of land holdings hence selective discrimination against a few does not satisfy inadequacy of outcome equivalence for Land Acquisition and Displacement Affected (LADAPs). Democratic Orientation is also not followed by the Acquisition authorities in the sense that the gainers fail to compensate the losers to the extent of wilful consent; the Volition-Deficit being overcome by the force and threat of force of the state. Land Acquisition also fails to give heed to Gandhian *din-hin*- the humblest and poorest as they are usually the first victims of any Land Acquisition event. But it is matter of worry that like the rejection of Mahatma Gandhi's guidance all other humanitarian principles are also frustrated by the acquisition machinery¹¹.

A very important Principle of Welfare Economics is what is called *Pareto optimality* after **Vilfredo Pareto** (1848-1923)¹².

“According to this criterion any change that makes at least one individual better-off and no one worse-off is an improvement in social welfare. Conversely, a change that makes no one better-off and at least one worse-off is a decrease in social welfare”.¹³

According to *Koutsoyiannis*¹⁴, ‘The Resentment and Post-Acquisition decrease in Socio-Economic status of LADAPs is an indication that the outcome of Land Acquisition is largely welfare decreasing at least for the affected ones. It can somehow be avoided by the observance

New York Should Be Upheld to Preserve Tax-Free Status of Tribal Real Estate Transactions” 28 *Hamline Law Review* 342, 343 (2005).

¹¹ Dr. Mohammad Israr Khan, “Land Acquisition Compensation In India: A Thumb Rule”, *International Journal of Law and Legal Jurisprudence Studies*: ISSN:2348-8212 Volume 2 Issue 1

¹² Joseph A. Schumpeter, “Vilfredo Pareto (1848-1923)”, *The Quarterly Journal of Economics*, Vol. 63, No. 2 (May, 1949), pp. 147-173, Oxford University Press.

¹³ Vilfredo Pareto is an Italian Economist, Sociologist, and Philosopher.

¹⁴ Professor of Economics, University of Ottawa, Ontario

of what is called the *Kaldor-Hicks 'Compensation Criterion'*¹⁵. To bring the idea at home a passage from *Koutsoyiannis (1985: 529)* is produced here:

“Assume that a change in the economy is being considered, which will benefit some (‘gainers’) and hurt others (‘losers’). One can ask the ‘gainers’ how much money they would be prepared to pay in order to have the change, and the ‘losers’ how much money they would be prepared to pay in order to prevent the change. If the amount of money of the ‘gainers’ is greater than the amount of the ‘losers’, the change constitutes an improvement in social welfare, because the ‘gainers’ could compensate the losers and still have some ‘net gain’. Thus, the *Kaldor-Hicks* ‘compensation criterion’ states that a change constitutes an improvement in social welfare if those who benefit from it could compensate those who are hurt, and still be left with some ‘net gain’.”

2.5. The Land Acquisition under the British Government in India

The British rule in India initially enacted the advance land achievement law of 1824 which was once applied of the entire Bengal. The Government could then use this law to acquire land and other immovable property needed for roads, canals, or other public purposes "at a Fair Valuation". Later, such new modifications were added to the legislation that managed to bring all of British-ruled India under one uniform Land Acquisition Law in 1857 but during that time the unsatisfactory settlement raised its head due to incompetence and corruption by the private landlords, Zamindars, etc. Thus, the Act of 1870 due to its unsatisfactory disputes was amended by 1894 where this Act empowered the government to forcibly purchase land from private landowners for Public-Purpose Projects.

Since Independence, several transformations took place in the policy framework in different sectors of the Indian economy. However, the land remains a vital component in almost all economic activities.¹⁶ Considering the background of the land acquisition law in the Indian context, it includes different Regulations and Land systems such as *Zamindari System*, *Mahalwari System*, and *Ryotwari System*, the Bengal Regulation, 1824, the Bombay Building Act, 1839, the 1850 Act, the Land for Public Purposes Act, 1857, and others that were implemented in different states and Provinces.¹⁷

¹⁵ A. Koutsoyiannis, *A Modern Microeconomics, Second Edition*, The Macmillan Press Ltd.

¹⁶ S. Morris and Pandey, *Land markets in India: Distortions and issues*. (India Infrastructure Report. 2009 Jun 1).

¹⁷ Chakravorty S. *Inherited Land: The Evolution of Land Markets and Rights Before Independence* pp. 131-150. (In *Spatial Diversity and Dynamics in Resources and Urban Development 2015*. Springer, Dordrecht).

2.6. Zamindari System, Mahalwari System, and Ryotwari System

The Pre-Independence Land Regulations in India were dominated by three land tenure systems such as *Zamindari System*, *Mahalwari System*, and *Ryotwari System*. The Zamindari system came into form in the year 1793 in which land rights of the Zamindars were fixed without making provisions for occupancy rights. The system was introduced by *Lord Cornwallis* in which permanent settlement of the land was made without providing any fixed rent provision to the actual cultivators. As a result, under the *Zamindari system*, the *Zamindars* primarily focused on acquiring rents and did not care about improving land fertility or agricultural productivity. The system created a wide gap between the superior landlords and the laborers that were working on the lands. It led to an increase in the plight and injustice to the tenants leaving them impoverished, rack rented, and oppressed. Thus, to eliminate the degrading conditions of land workers and restore the crumbling land system, the Permanent Settlement Act, 1793 (*Zamindari system*) was replaced with a temporary settlement policy.¹⁸ As per Regulation VII of the 1822 Act, the Temporary Settlement was introduced as a periodic settlement in selected regions such as the United Provinces. On the other hand, in some provinces of regions such as Bombay and Madras, the Ryotwari system was prevalent. In this system, every *Ryot* was deemed to follow Regulations that were provided by the owner of the land. It included laws related to mortgage and transfer of land. In other provinces that were located in regions such as Punjab, *Mahalwari Settlement* was implemented under Regulation VII of 1822 Act and Regulation IX of 1833 Act. Under this system, each Peasant and Landowner had to contribute towards the total revenue charged with the village as per the size of their landholdings. However, all these laws and systems were not futile and led to the oppression of the tenants, land workers, peasants, and middle-lower income groups.

2.7. The Bengal Regulation, 1824

The Bengal Regulation, 1824 was introduced to reduce the suffering of the different segments of the society such as tenants, land workers, peasants, and middle-lower income groups. It was the first regulation in India to provide directives related to the acquisition of land of immovable properties that are to be used for public purposes. Through the Bengal Regulation, the governing body acquired the authority to attain land or immovable property from their owners for Public Purposes such as Constructing Roads, Canals, and others against payment of fair compensation.

¹⁸ S.A. Marwaha and Bhatt, "Social Justice In Land Acquisition: A Perspective On The New Bill", *Law Journal*, p.p.39.

Thus, through this Act, the concept of Acquiring Land/Immovable Property against payment of compensation was introduced for a public purpose. However, the major limitation of the Act was that it was limited to certain regions and did not cover the entire Country as a whole.

2.8. The Bombay Building Act, 1839

As follow up to the Bengal Regulation Act, the Bombay Building Act was introduced in the year 1839 to acquire land and use it for public purposes. Under this Act, the land was acquired in the Islands of Bombay and Colaba to widen or alter the prevailing roads or develop new roads for Public Transport. However, the major limitation of the Act was that it was limited to specific regions such as Bombay and did not cover the entire Indian frontiers.

2.9. The 1850 Act

There was an emergent need to expand the Railway structure all around the country for which land was required. As the Railway was not considered as a Public Work, the land that was acquired for public purpose use cannot be allocated for railway work. Moreover, as per Regulation, I of 1824, the land that has been acquired by the Governing Body cannot be allocated to a private party to execute the Development/Construction of the Public Property. Therefore, the 1850 Act was introduced under which the railways were designated as Public Work. As a result, the scope of Public Purpose widened, and Railway work was considered as a Public Utility Activity. Therefore, through this Act, the Railways were entitled to acquire land under Bengal Regulation Act and expand railway construction work in the country.

2.10. The Land for Public Purposes Act, 1857

The Land for Public Purposes Act, 1857 was the very First Land Acquisition Act that was enacted all over India as a whole. As per Section 1 of the Act, all the Codes and Rulings that were included in the previous Land Acquisitions Laws were included in this Act. Section 2 stated that the Representative or Authorized officer appointed by the Government of India has the authority to acquire any land or property in India to carry out Public Purposes. However, attainment of Land could only be done only after declaring the claim. Section 3 stated that once the Declaration has been made, the Collector has the authority to acquire the land by marking the Land, preparing a Plan, and Conducting the Survey. Section 4 stated that Notification is to be provided to the landowner regarding the attainment of Land at least 15 days before Confiscation. Section 5 stated that a meeting has to be organised between the landowner and the Collector to evaluate the Land

Value and compensation amount that is to be provided to the landowner against sacrificing the Land. Section 27 stated that the decided amount is to be paid to the landowner as per the Pre-decided Schedule and if there is any delay, the Collector is liable to pay the amount with an interest of 6% per annum. Section 6 stated that if the meeting was not attended by the party, the matter will be resolved by the Arbitrator. As per Section 8, once the Award is given to the Arbitrator, the Collector possesses the Right to Acquire the Land immediately. Section 9 stated that if any issue arises during the Possession of the land, the matter is to be resolved in Court. As per Section 14, the matter between the Arbitrator, Collector, and Landowner must be resolved with mutual understanding and allocation right in proportion of reward to each party. Thus, by laying down fundamental regulations, the major limitation of the Act was that it was limited to provide a foundational basis for the Acquisition of Land in India.

2.11. The Land for Public Purposes (Amendment) Act, 1861

The Acquisition of Land was a difficult task as even after the declaration, the landowners did not want to depart from their lands. As a result, the rulings that were specified under Section 3 regarding Declaration and Acquisition of Land became difficult to conduct. Therefore, the help of police was taken to get the land vacated from the landowners, and modifications were made in the Act to comply with Police intervention in the Land Acquisition Process under Section 2.

2.12. The Land for Public Purposes (Amendment) Act, 1863

The Land for Public Purposes (Amendment) Act, 1863 was passed to include the participation of private parties in the conduct of Public Purpose related work activities. As a result, due to amendments made in the previous Land for Purposes Act, private parties can be allocated public work-related tasks. However, after a few years of the implementation of the Land for Public Purposes (Amendment) Act, 1863, it was found that the settlement procedure for compensation was unsatisfactory and there was no provision to legally challenge the award made by the Arbitrator. Therefore, the Land Acquisition Act 1870 was introduced to eliminate the issues that were faced regarding award by Arbitrators.

2.13. The Land Acquisition Act, 1870

Through the Land Acquisition Act, 1870, the Governing Body acquired the authority to attain land in any locality on account of using the land for a Public Purpose. As per Section 4, the Governing Officer issued a Notification that was published in the Local Gazette in the locality of

the displaced people. Once the notification has been issued, the Governing Officer can survey, mark, clear, or fence the land that has to be acquired. However, the Governing Officer could not encroach any land if it is enclosed by the owner without providing notice at least 7 days in advance. Section 5 stated that any damage to the property while carrying out the acquisition process is to be paid by the government. If there is any issue related to compensation, it is to be discussed by the Collector and the decision given by him will be considered as the final verdict. Section 17 provides rulings related to the emergency Acquisition of Land, any waste or arable land can be acquired by the Government after 15 days of issuing a Public Notice. The Act also provided provisions for the Acquisition of Land for the establishment of an industry that is useful to promote Economic and Social growth in the Country.

2.14. The Bengal Tenancy Act 1885

To reduce the suffering of the landowners, the Bengal Tenancy Act was introduced in the year 1885. The main purpose of implementing the Act was to confer the Occupancy Rights of the individuals on *Ryots* that were under continuous Possession. As per the Act, if a tenant is in continuous possession of the land for 12 or more than 12 years, he/she could not be evicted from the land. The Provisions of the Act can only be averted by producing a decree of the Court. The law was mainly applied in the Bengal Province and another law such as the Rent Act of 1873 was introduced in Punjab, North-Western Provinces, and Oudh.¹⁹ The Rent Acts were introduced to safeguard the interests of the tenants and confine the subjections of the landowners. However, the major issue with the Rent Acts was that they were not efficient to meet the financial condition of the inhabitants and were restricted to providing occupancy rights to limited individuals. Moreover, no security was given against the ejection of the Lease resulting in the development of antagonism between landowners and tenants. It led to the constant shuffling of the tenants so that the occupancy rights of the landowners were maintained. There were unpredictable evacuations of the tenants, extreme control of rents, charging remuneration for any modifications made in the house at the time of occupancy. As a result, during 1872-1876, there was the emergence of hostile rights and agrarian disputes against landowners across India. The conditions of tenants and landowners were highly unpropitious in Bihar as in many regions in the province; groups of tenants opposed landowner's exactions and thoroughly defeated them by joint resistance.²⁰

¹⁹ Sarkar A. "Development and displacement: Land acquisition in West Bengal". *Economic and Political Weekly*. 2007 Apr 21:1435-42.

²⁰ Rampal KR. *Adversary v. Developmental Journalism: Indian Mass Media at the Crossroads*. (Gazette, Leiden, Page | 16

2.15. The Land Acquisition Act, 1894

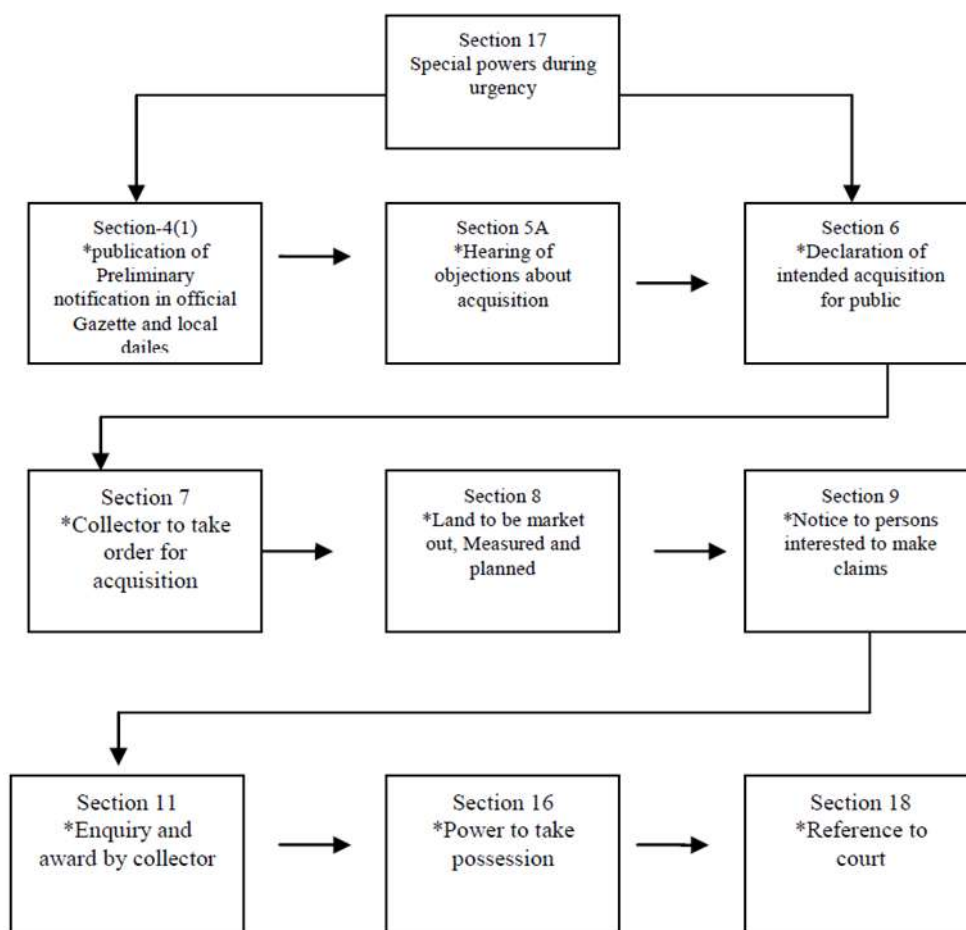
The provisions that were laid down under the Act of 1870 were not satisfactory which led to the introduction of the Land Acquisition Act, 1894. The Act was applied uniformly all over India except certain regions such as Hyderabad, Jammu & Kashmir, Madhya Bharat, Mysore, Patiala, Rajasthan, Saurashtra, and Travancore-Cochin that were regarded as Part B states. As per Section 5, if the land is to be acquired by the Governing Body, a notification is to be published in the Official Gazette and Public Place. After 15 days of notification, the Governing Officer can mark and take over the land by paying the damages. If any issue related to payment against damages occurs, it is to be resolved under the supervision of the Chief Revenue Officer and Collector. Section 6 stated that once compensation and award against the land are awarded, the declaration of the same has to be made and signed by the authorized officer. The declaration must provide information related to the Plan of land, area of Land Acquired, and proofs for using the land for a Public Purpose. Section 7 stated that once the declaration has been approved by the Governing Body, the Collector is liable to take possession of the land. Section 9 stated that before Acquiring the Land, the Collector has to issue specific notices to the individuals wherever required so that all the individuals associated with the land are well informed about the Acquisition of Land. If any individual has any query must reach the Collector for resolution at a Pre-decided time and place. Section 17 stated that in case of emergency, the Collector can acquire land after 15 days of issuing the notification. The major consideration under such a condition is that the land must be free from all encumbrances. If there is any standing crop or tree on the land, the Collector is liable to pay the cultivator damages.

As per Section 18, if the Compensation amount is not acceptable to the landowner, the conflict is to be resolved with the Collector by informing the landowner through an application. The application must mention the ground against which the reward is not acceptable and propose the interests of the landowners. The answer to the application is to be given back to the landowner within six weeks so that issue gets resolved. Section 23 stated that the amounts to be awarded to the landowners must be decided based on the market value, of the land. The compensation amount is to be fixed as per the common consent between the landowner and Collector. Additionally, the landowner is to be provided an award of 15% more than the market value of the land against the acquisition of land. If the reward is not paid within the specified time, an additional 6% interest rate is to be put on the compensation amount. Section 38 stated that if the

Netherlands. 1984 Aug;34 (1):3-20).

land is to be acquired by a company, it is mandatory to take a permit from the Government and form a contract before the execution of Land Acquisition activity. Section 40 stated that the land can only be acquired by the company if the Government is satisfied with the proposal given by the company. As per Section 42, the agreement that is made by the company is to be published in the Official Gazette and Local Gazette for display. Moreover, the Regulations that are mentioned under Section 4 regarding the Acquisition of Land are to be followed in which rulings related to Preliminary Notification, Declaration, Notification to concerned individuals, Inquiry and Compensation and Possession is to be executed as per relevant directions mentioned under Section 6, Section 9, Section 11, and Section 16.

Figure 2.1: Steps involved under the Land Acquisition Act, 1894



2.16. Amendments in the Land Acquisition Act, 1894

As we know that the Land Acquisition Act enacted was based on various Acts at the Presidency level as well as the Country level from the early nineteenth Century, it has undergone several

amendments both during the Colonial and Post-Colonial periods. 'so far, the Act has been amended 17 times. Various Sections of the Act have also been amended from time to time by the State Governments to meet their specific requirements'²¹. The amendments are as follows for both Colonial and Post-Colonial periods.

2.17. Colonial period

The Land Acquisition Act, 1894 has undergone several amendments during the Colonial period, i.e., Act of 1910, 1914, 1919, 1920, 1921, 1923, 1933 and adapted and modified by the Government of India (adaptation of Indian laws) Order, 1937.

2.18. The Indian Electricity Act, 1910

The Indian Electricity Act, 1910, has made a major Amendments in the Land Acquisition Act, 1894. This Act made provisions to acquire land by individuals at the State level with the same conditions as that for companies. The Indian Electricity Act, 1910 has made a provision to facilitate the individuals to acquire land for their undertakings at the State level. This is a First instance to engage the individuals to acquire land to develop their undertakings.

2.19. Land Acquisition (Amendment) Act, 1921

This Act has made Provisions in the 'Forms of Award' as well as to appeal in the Supreme Court based on the Code of Civil Procedure, 1908. In Section 26 'forms of award' the following sub-Section (26[2]) was inserted: every such award shall be considered a decree and a generalization of purposes for each such award, a judgement under Sections 2(2) and 9 of the 1908 Code of Civil Procedure (5 of 1908)'. Under Section 54, a Clause was inserted to facilitate the Provisions to Appeal in the Supreme Court regarding the Compensation.

2.20. Land Acquisition (Amendment) Act, 1923

As per the Original Act, there is no provision to object to the Acquisition but only provision to pay for damages. The Land Acquisition (Amendment) Act, 1923 has made provisions to object to the notification and also after hearing the objection by the Collector, he has to forward the same for the final decision of the Government. The amendment has provided opportunities for the landowners to present their viewpoint. At the same time, this amendment also made a provision to acquire the land on an emergency basis, for which there is no need to get the

²¹ Report of the Standing Committee on Rural Development, 2011-2012, 2012, p.1

viewpoint of the land owners. Further, this amendment also provided for consent from the government based on the report. Under Sections 40 and 41, there was an amendment to provide for more clarity on giving consent by the government either based on the report of the Collector or on the report of the Inquiring Officer. This amendment, on the one hand provided an opportunity to the owner to make objections at the time of notification and on the other hand it also introduced the emergency provisions which facilitates 'no hearing' objections options. However, this amendment seeks a detailed report by the government before giving consent for the Acquisition.

This amendment was made largely to facilitate the industries and residential purposes for the industrial workers viz., the company is authorized to survey and construct dwelling houses for workers. It held to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision to build amenities. Further, it also emphasized that the work should be completed within the stipulated time.

Over 50 years of Colonial period, there were several amendments in the Act such as facility to raise objections against the notification and to appeal in the Supreme Court for the award of compensation. Other amendments introduced were emergency provisions, provisions for a detailed report by the Government before giving consent for the acquisition of land and the provisions for the industries and residential purposes for the industrial workers.

3. Need for the passing of a Law on Land Acquisition

During Land acquisitions in the Colonial Era, there was a scarcity of laws related to safeguarding the interests of the landowners as there was no means to object to the Land Acquisition process or raise questions against payment of compensation. The same issues remained prevalent during the 19th Century and the late 19th Century with the increasing emergence of allegations related to corruption and misconduct.

The different rulings that were passed in India in the Pre-Independence Era were in the form of the *Zamindari System*, *Ryotwari System*, *Mahalwari System*, the Bengal Act 1855, The Rent Act 1873, and others. However, these rulings and Acts were not sufficient in eliminating the subjections that were suffered by the landowners. In the *Zamindari system*, the land rights of the landowners were impacted by the intermediaries and in the *Ryotwari system*, the ownership of

land was subjected if they could not pay the distributed revenue amount. As a result, there was the confiscation of the land without providing adequate compensation to the landowners. The condition of the farmers and agrarian peasant deteriorated, as they were not re-settled against the land acquired from them.

The major issue was that the Bengal Regulation I of 1824 was limited to the attainment of lands in Calcutta. The Land under this Act could only be acquired for Public Purposes such as the construction of roads, canals, and other public activities. Therefore, Act I of 1859 was passed to include the railway as public work and acquire land for the expansion of railway routes and stations. On the other hand, in the case of the Bombay Building Act, 1839, it was limited to two regions such as Bombay and Calcutta, and could not be applied all over India. In this Act, the compensation against the attainment of land was decided by a set of the Jury which comprised of 12 members. However, due to the limited application of the Act, it was extended in the 1850 Act so that the Land Acquisition Laws could be applied all over India. As a result, it led to the introduction of Act XX of 1852 (Madras) according to which Land Acquisition activity could be carried out in Madras. In case of any dispute at the time of the Land Acquisition, the matter is to be resolved by the Collector and in consultation with the disputing parties. Later in the year 1857, all the Acts were repealed through Act VI of 1857, and Common Law was framed to carry out Land Acquisition activity under the East India Company. However, under this Act, it was mandatory to validate the land before attainment which created disputes between the Collector, Arbitrator, and the Landowners. Therefore, the Act was amended by Act II of 1861 which permitted temporary attainment of land. Moreover, under Act XXII of 1863, private parties were permitted to carry out public works such as the construction of bridges, roads, railroad, transport, and others. Simultaneously, there was the implementation of Act VI of 1857 through which land was acquired for Public Purposes. However, Act X of 1870 contradicted the Rulings of Acts XXII of 1863 and Acts VI of 1857 which led to the Consolidation of both Acts.

Moreover, as per the 1870 Act, the valuation of the land and payment of compensation was to be done by the Collector through a contract. However, if there was a dispute between the landowner and the Collector over the contract, there was no law to appeal against the contract or refer to the Arbitrator. The decision that has been given by the Collector can only be impeached against the charges of corruption or misconduct. There was also a lack of Regulations to account for tasks as a genuine or corruptive activity. As a result, it created a difficult situation for the landowners

to appeal against the injustice caused to them. Additionally, if the case is moved to the Court Proceedings, it was hard to predict the consequences as the majority of decisions were taken based on the documents and award provided by the Collector. Thus, there were few chances that the landowners received more benefits in terms of compensation. Due to all these limitations, the Act 1870 was replaced by the Land Acquisition Act 1894. As per Act 1894, the land is to be acquired for a Public Purpose by providing the right compensation to the landowners.

The introduction of the Land Acquisition Act 1894 would provide relief to the landowners so that they could get adequate compensation for the land obtained from them. The Act would provide legal rights to the landowners to reach to Court and fight for their rights to acquire the right compensation and rehabilitation against the land acquired from them. It was responsible to carry out land attainment activities and provide rulings related to recompense, rehabilitation, and relocation of the individuals that have given their lands for a Public Purpose. The Act provides clear guidelines for the uniform and fair distribution of the compensation to the affected individuals and draws transparent rulings for the Acquisition of Land.²² It provides that the confiscated land is to be used for performing Public Purposes such as infrastructure projects, road construction, and setting up industries.²³

4. The passing of the Land Acquisition Act, 1894

The Land Acquisition-related activities in India are governed by the Land Acquisition Act 1894 in different stages which are the Preliminary Stage, the Publication of Notifications, Inquiry on Objection Petitions (if any), Survey, and Preparation of Sub-Division records. It also includes other stages such as preparation and Publication of Declaration, Determination of Compensation, awarding compensation, and taking possession and handing over to Regulatory Authority, and reference to Courts. In the Preliminary Stage, there is Requisition and Survey of the Land. It includes Joint Inspection and peg marking by the Governing Authorities. After that Publication of Notification is executed as per Section 4(1) and 6 (1). This is followed by a Survey and Sub-Division by the Collectorate. Once the Survey is over, there is preparation for the Draft Declaration. It includes taking approval and Publication of the Declaration. Another major aspect

²² Pal and Malabika. *Land Acquisition and "Fair Compensation" of the "Project Affected"*. (The Land Question in India: State, Dispossession, and Capitalist Transition, *Oxford University Press*, edited by Anthony P. D'Costa and Achin Chakraborty 2017: 151). <https://www.scribd.com/document/548177163/The-Land-Question-in-India-State-Dispossession-And-Capitalist-Transition-PDFDrive>

²³ Banerjee S. "Peasant Hares and Capitalist Hounds of Singur", *Economic and Political Weekly*. 2006 Dec 30:5296-8.

to be considered while implementing the Land Acquisition Act, 1894, is the determination of compensation. It includes estimating the market value of land by comparing the price paid for the same land, the price for the land in the vicinity, and the price paid in adjacent landholdings. The sale of the land must be during a reasonable period and in a bonafide manner so that the Land under acquisition and land selected as the basis must have similar advantages. Award compensation is another major process of implementing the Act in which under Section 9 Award Inquiry notice is provided. It included land measurement, value evaluation, and interest estimation is to be executed under Section 11(1). Then the Award is made under Section 23 (1) as per the market value of land, appropriation of compensation is made under Section 29. Finally, the land is acquired under Section 16²⁴ and 17²⁵ by providing notice to all the interested parties under Rule 15 (3).

5. Provisions of the Act

The main reason behind the introduction of the Act was to promote industrialization in terms of mining, railway lines, roadways, buildings, irrigation, and manufacturing units. All these activities were under the governance of the state and customary tenurial systems since the Pre-Colonial Period. The introduction of the Land Acquisition Act of 1894 empowered the governing body to acquire private as well as common land property to carry out Public Purpose activities.²⁶ The 1894 Act led to the replacement of earlier Acts that were implemented by different state Governing Bodies in the form of Bengal Regulation I of 1824, the Act I of 1850, the Act XXII of 1863, the Act X of 1870, the Bombay Act No. XXVIII of 1839, the Bombay Act No. XVII of 1850, the Madras Act No. XX of 1852, Madras Act No. 1 of 1854 X of 1861, the Act VI of 1857. These Acts were initially implemented in the Presidency Towns which later on spread to different parts of the country. It helped in the easy Acquisition of Land and conduction of work related to the establishment of canals, roads, and other public work by compensating the landowners against the land. It also included appointing an Arbitrator for the evaluation of the cost of land and compensation that was to be paid to the landowner. An **Urgency Clause** was included in the Act, through which any land can be acquired overnight without providing any prior notice to the landowner. Moreover, there were no provisions for the resettlement of the landowners that have

²⁴ Power to take Possession

²⁵ Special powers in cases of Urgency .

²⁶ Chakravorty S. "The price of land: Acquisition, conflict and consequence". *Indian Journal of Agricultural Economics*. 2014;69, 902-2016-68358:488-93.

sacrificed their lands to the governing agencies.²⁷

However, the Acquisition of Land and provision of compensation faced with certain problems such as imperfect markers, hold-out problems, and Eminent Domain or compulsory taking issue²⁸. For example, in the case of *Hamabai Framjee Petit v. Secretary of State*²⁹, the Government of Bombay provided certain land on Lease to a private party (Hamabai F. Petit) in Bombay and specified that the land would be confiscated as per requirement after paying compensation. However, after a point of time, notice was served on Hamabai but there were issues related to payment of compensation.

6. Limitations of the Act

However, the major issue with the law was that it did not provide adequate rulings related to resettlement and rehabilitation as this concept was not thought of to be implemented in the Land Acquisition Act. Moreover, if there was an urgent need to execute a project, the Urgency Clause was added through which immediate attainment of land was done without providing any prior notification or information to the landowner. While acquiring the land, the resettlement and rehabilitation needs of the landowners were pushed aside. Moreover, the land was acquired by the state whenever it was required by paying a fixed amount because land losses were faced by the landowners. Thus, the Land Acquisition Act, 1894 was known as *Dwarkian Law* as it was the first law that provided regulations against the attainment of the land for private and public purposes without considering the benefits of the individuals that sacrificed their lands to the governing agencies.³⁰

The Concept of Consultation and Consent was absent in the Land Acquisition Act 1894. The Land was obtained by the Governing Agency to meet the different infrastructure and industry requirements without consulting the landowners. The land was marked and a fixed amount was provided to the landowner against the confiscation of the land. The price of the land was fixed by the Governing Body which was less than the market price of the land. The landowner was given any right to reject the price offered by the governing agency and forced to reach Court to

²⁷ A.R. Majumder and Guha. "The Impact of Land Acquisition on Joint-Extended Family among the Peasants of Gokulpur, Paschim Medinipur". *Journal of the Indian Anthropological Society*. 2009;44(1):77-84.

²⁸ S. Morris and Pandey. "Towards reform of land acquisition framework in India" *Economic and Political Weekly*, 2007 Jun 2:2083-90).

²⁹ (1911) 13 BOMLR 1097.

³⁰ Bhaduri A. "Alternatives in industrialization", *Economic and Political Weekly*. 2007 May 5:1597-601.

fight against the injustice done to them. However, the provisions that were mentioned in the Act were so complicated that it took years to resolve the case. For example, in the case of *State of Bombay v. R. S. Nanji* ³¹, the Supreme Court observed that it is difficult to provide an exact definition of the expression ‘public purpose’.³² The Court determined that the Government Body is the best agency to serve the Public Purpose and can serve large communities by providing a Requisition Order.

Moreover, under this Act, there was reckless attainment of land which led to a shortage of land and limited access to common property. Most of the common people that do not have their land access for their survival and sustenance. However, due to reckless confiscation of the common lands such as forests lands, grazing lands, and agrarian lands, it became difficult for the landless common people to find a place for dwelling and settlement. It resulted in the widespread problem of joblessness as because of the attainment of land by the landowners, the owners could not perform their livelihood activities of farming, service workers, artisans that were based on land utilization. As a result, there was the prevalence of marginalization in the society owing to the financial and psychological downturn of the landowners. The main reason behind it was that the individuals were out of their lands and earning opportunities without any proper support, compensation, or rehabilitation given by the governing agency. There was the creation of extreme situations of homelessness and food insecurity as without home and financial security most of the landless individuals were undernourished and weak. It resulted in a high rate of morbidity among the displaced individuals as the landless people were forced to live in temporary sheds, unhygienic habitats with no food. Thus, it can be said that displacement led to social distraction and disarticulation that caused insecurity, poverty, and unrest in the community and country.³³

Land Acquisition Act, 1894 which has been introduced by the Governing Body of India did not comply with the principle (Fair Compensation) and terminology (Public Purpose).³⁴ The Colonial status associated with the Act emphasizes that Acquisition of Land is based on the market-value based monetary compensation that does not provide a rightful valuation of the land sacrificed by them.³⁵ The concept of market-value based monetary compensation works in favour of

³¹ 1956 AIR 294, 1956 SCR 18

³² Verghese L. “Do the Meek Inherit The Earth? A Study of Land Acquisition Litigation in Karnataka and Maharashtra. A Study of Land Acquisition Litigation in Karnataka and Maharashtra” (July 3, 2020). DAKSH (The DAKSH database consists of cases that have been scraped through e-Courts).

³³ Cernea MM. *Putting people first: Sociological variables in Rural Development*. (The World Bank; 1991 Aug 31).

³⁴ Jojan A, “Of Platitudes and Million-Dollar Promises-A Critique of the Land Acquisition, Rehabilitation and Resettlement Bill 2011”, *Journal of Indian Law & Society*, 2011; 3:29.

³⁵ Sarkar S. “The Impossibility of Just Land Acquisition”, *Economic and Political Weekly*. 2011 Oct 8:35-8.

landowners when they are willing to sell the land. However, when the land is confiscated from private owners, the valuation of land differs from the market-value estimations. It is because the owners evaluate the future benefits and profits associated with the land.³⁶

The displacements that occurred without any proper rehabilitation schemes or measures further degraded the condition of the displaced individuals as they had to suffer from marginalization and impoverishment. As a result, tribal communities, backward segments of the society, and CPR's (Common Property Resources) dependents such as children and women suffered from dislocation issues, loss of livelihood, and food insecurity. Due to displacement, women have to face issues related to the collection of firewood, availing drinking facilities, and acquiring better job opportunities in the new settlements. On the other, the children have to drop out of school and are forced to do labour activities to earn livelihoods for sustenance. It results in widespread poverty and misery that increases the practice of social evil activities such as prostitution, child labour, and criminal outbursts. For example, in the North-East communities of India, there was a rise in ethnic conflicts among the different tribal groups because of limited resources and increased displaced tribal communities. On the other hand, 60000 displaced tribes that belonged to the Hajong tribals and Chakma communities had to take shelter in Arunachal Pradesh as refugees as they were facing issues related to the sharing of resources in the *Kaptai Dam* region.³⁷

In India, resettlement, and rehabilitation facilities were provided to the displaced individuals only in those projects that were either initiated by the World Bank or highlighted displaced individual's resistance movement. For example, resettlement and rehabilitation facilities were provided to the displaced individuals in the *Indravati Dam*, *Rengali Dam*, *Farakka Super Thermal Plant*, and *Subarnarekha Dam* which were either supported by the World Bank or displaced individual confrontation movement. On the other hand, those Projects that are not supported by movements or World Bank were not provided with resettlement, and rehabilitation benefits and compensation issues remain unsettled for a long duration. For example, no resettlement and rehabilitation benefits have been provided to the displaced individuals whose lands have been confiscated for the establishment of the *Sardar Sarovar Dam*. The displaced individuals are still fighting for the right Compensation, Resettlement, and Rehabilitation

³⁶ Cernea M. "The risks and reconstruction model for resettling displaced populations". *World development*. 1997 Oct 1;25 (10):1569-87.

³⁷Chakraborty S. *Chakma and Hajong Refugees of Arunachal Pradesh: Still a 'No Where People. Dimensions of Displaced People in Northeast India*. (New Delhi: Regency Publications. 2002:159-78).

benefits by doing *Jal satyagraha* and *dharna* against Madhya Pradesh and Gujarat Governing Authorities.³⁸

7. Cases on this Act (Pre-Independence)

In the case of *State of Maharashtra v. Chandrabhan*³⁹, the Supreme Court held that as per the Forty-Fourth Constitutional Amendment Act of 1978, the Fundamental Right of the individual is considered to be a Legal Right and authorises the State or Central Authoritative Body to deprive the individual of the property.⁴⁰ In another case, *the State of West Bengal v. Vishnunarayan & Association*⁴¹, the Governing Body of West Bengal undertook the land from the tenants by force. The government transferred the undertaking of land to the Great Eastern Hotel Authority that was set up under Section 5 of the Act of 1980. The transfer took place as per the Forty-Fourth Constitutional Amendment Act of 1978, which specified that Land Ownership is a Constitutional Right.⁴²

In the case of *Kesavananda Bharati Sripadagalvaru & Ors v. State of Kerala & Anr*⁴³, *Swami Kesavananda Bharati* challenged the Governing Body of Kerala against the restrictions on the management of his property under two land reforms. The Court Summoned that the Parliament did not have any power to amend the laws that are rendered in the Constitution. The Court also specified that under Article 368 of the Constitution, it only specified the procedure to make the amendment and was not authorised to make the amendment. It was clearly stated by the Court that the fundamental rights of the individuals associated with land cannot be abrogated to meet public interest obligations. The Basic Structure Doctrine was emphasized in this case.⁴⁴

³⁸ Gogoi M. "Land Acquisition, Rehabilitation And Resettlement In Assam: Some Issues And Concerns", *GUINEIS Journal* ISSN 2347-2669 Vol. III, 2016 [https://jnu.academia.edu/MeenakshiGogoi/Vol-2-No-2-\(2014\)-Issue--June](https://jnu.academia.edu/MeenakshiGogoi/Vol-2-No-2-(2014)-Issue--June) last visited on june,2022

³⁹ 1983 AIR 803, 1983 SCR (3) 327

⁴⁰ R. Sharma and Singh, "Whether Prostitution Shall be Legalised and Regularised In Furtherance of Article 14, 19 and 21 of The Constitution of India", *International Journal of Research and Analytical Review*, Volume 5 I Issue 2 I April – June 2018.

⁴¹ AIR 2002 SC

⁴² Scarimbolo J. "On the Secretive Ustād: Pride among Musicians and Patrons in North India", *Indian Theatre Journal*, 2020 Aug 1;4(1):59-76.

⁴³ Writ Petition (Civil) 135 of 1970,

⁴⁴ Desai BH. "A Judge as a Philosopher", *Economic & Political Weekly*. 2017 Jul 15;52(28):35).

In the case of *Golak Nath v. State of Punjab*⁴⁵, the Court specified that the Parliament did not possess the authority to bring amendments in the Constitution as Article 368 only provided guidelines related to making provisions and did not authorised to execute the amendments. The case was filed by *Henry and William Golaknath* against the Governing Body in Punjab against the confiscation and distribution of land by the Governing Agency under Article 32 challenging the provisions of the Punjab Act 1965. The case was won by the *Golaknath* family as they argued that the Rulings of the Punjab Act 1965 counterfeited the rulings that were given in the Constitution of India. Thus, as per the Court judgment, the rights of the individual are to be protected from the absolute power of the Parliament.⁴⁶

8. Amendments in the Land Acquisition Act, 1894

The First Land attainment ruling was implemented at the time of the British Raj in the year 1824. It received several amendments and was replaced by the Land Acquisition Act of 1894 which came into form in the year 1894. It was formulated and approved by the Imperial Legislative Council which was the Governing Authority of India in those days. As per the Act, the Land is to be acquired by the Government Agencies for 'Public Purpose' from the individual or private

⁴⁵1967 AIR 1643, 1967 SCR (2) 762,

Also see some Latest Latest Supreme Court (SC) Judgements on Land Acquisition Act, 1894

- *Noida Industrial Development Authority v. Ravindra Kumar & Ors.* latest Caselaw 398 SC;
- *Delhi Development Authority v. Godfrey Phillips (I) Ltd. & Ors.* 2022 Latest Caselaw 395 SC
- *Muzaffar Husain v. State of Uttar Prades* 2022 Latest Caselaw 393 SC
- *Delhi Administration through Secretary, Land and Building Department & Ors. v. Pawan Kumar & Ors.* 2022 Latest Caselaw 391 SC
- *Bhag Singh Etc. v. Union of India & Anr.* 2022 Latest Caselaw 383 SC
- *Reddy Veerana v. State of Uttar Pradesh and Ors.* 2022 Latest Caselaw 382 SC
- *Kalyani (D) through LRS. v. The Sulthan Bathery Municipality,* 2022 Latest Caselaw 354 SC
- *Sh. Ram Chander (D) through LRS. v. Union of India,* 2022 Latest Caselaw 333 SC
- *Union of India v. M/s. Willowood Chemicals Pvt. Ltd.* 2022 Latest Caselaw 331 SC
- *Ramrao Shankar Tapase v. Maharashtra Industrial Development Corpn.* 2022 Latest Caselaw 330 SC
- *Union of India v. Premlata,* 2022 Latest Caselaw 290 SC
- *Sukh Dutt Ratra v. State of Himachal Pradesh,* 2022 Latest Caselaw 289 SC
- *Delhi Development Authority v. Rajan Sood,* 2022 Latest Caselaw 272 SC
- *The Municipal Committee, Barwala, District Hisar, Haryana through its Secretary/President v. Jai Narayan and Company,* 2022 Latest Caselaw 269 SC
- *Laxmikant v. State of Maharashtra,* 2022 Latest Caselaw 250 SC
- *The Agricultural Produce Marketing Committee Bangalore v. State of Karnataka,* 2022 Latest Caselaw 249 SC
- *Jai Parkash v. Union Territory, Chandigarh,* 2022 Latest Caselaw 220 SC
- *Sanjay Kumar Singh v. State of Jharkhand,* 2022 Latest Caselaw 216 SC
- *M.P. Housing Board v. Satish Kumar Batra,* 2022 Latest Caselaw 143 SC
- *New Okhla Industrial Development Authority (Noida) v. Yunus,* 2022 Latest Caselaw 117 SC
- *Bangalore Development Authority v. State of Karnataka,* 2022 Latest Caselaw 69 SC
- *The Jamia Masjid Vs. Sri K v. Rudrappa (D) by LRS.,* 2021 Latest Caselaw 431 SC

⁴⁶ Deshpande VS. 38, *The Farming of India's Constitution*, Journal of Indian Law Institute, Volume. 11, 1969

owners of the land⁴⁷. Modifications were done in the 1894 Act under Section 5A by raising objections against the Acquisition of Land⁴⁸. However, Bill No. 29 of 1923 the Statement of Objects and Reasons specified that the individuals that have an interest in the land cannot object to the Acquisition of Land. It also specified that it is not the liability of the governing body to identify the interest of the individuals against the land and the individual that have an objection against the acquisition of land have to come to the front voluntarily. Thus, the amendment acted as a check on the governing body that it could not acquire any land unless the objections are cleared, and it is ensured that the land is used for a Public Purpose.⁴⁹

9. Conclusion

“The State must ensure to each individual that he can appropriate for his own use what he has created by his own labour and what he has acquired under the existing economic order”.

- Roscoe Pound⁵⁰

As we know that there was no transparency in the Land Acquisition Act, 1894 that resulting in increased agitation among the landowners. The Act was not appropriate as it brought misery to the poor landowners and created widespread poverty and subjection in the Country.

The challenges of Rehabilitation and Resettlement for disabled people and their families were not covered by the 1894 statute. Furthermore, the 1894 Act's definition of ‘Public Purpose’ was quite open-ended. It needed to be reformulated to restrict its use to Land Acquisition for Public Infrastructure Projects and strategic goals crucial to the state. The terms of the 1894 law were also applied to the purchase of private land by Corporations. Since a Firm may arrange land through private talks on a willing seller-willing buyer basis, which might be seen as more equitable from the landowner's point of view, this sometimes called into question the legitimacy of such state action and a justification for each such award.

⁴⁷ G. Raghuram and Sunny. “Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement ordinance 2014: A process perspective”, IIMA Working Papers WP2015-07-03, Indian Institute of Management Ahmedabad, Research and Publication Department.

⁴⁸ Sarkar PK, *Law of Acquisition of Land in India: including Requisition & Acquisition of Immovable Property*. Eastern Law House; 2007.

⁴⁹ Guha AM. “A decade after land acquisition in Paschim Medinipur, West Bengal”, *Journal of the Indian Anthropological Society*. 2008; 43:121-33.

⁵⁰ Roscoe Pound, *Jural Postulates: Social Engineering Theory*, quoted in V. Sriraj, *Autonomy of State in the Domain of Expropriation 1* (an unpublished manuscript on file with author).

A lease (even a very long one) gives the proprietor the psychological assurance that he still "owns" the land, which is another drawback of the 1894 Act. As a result, Compulsory Acquisition through leasing faces less emotional resistance than it does through outright purchase. There is no provision in the Act of 1894 for the Government to Lease property. So, it became imperative to repeal the 1894 Act and replace it with a new one that had sufficient protections. And to make the compulsory Land Acquisition provisions more effective and reduce the hardships of landowners and other dependents. for rehabilitation and resettlement for disabled persons and their families.

In terms of the process of Land Acquisition, the World Bank Guidelines prescribe a Consultative Approach. Stakeholders are to be informed about their rights and allowed to select between economically feasible compensation alternatives. Land-for-land alternatives are offered as a first choice and alternative site should have a combination of productive potential, locational advantages, and other factors at least equivalent to the advantages of the old site. These Guidelines also take a Liberal view on the constitution of parties that are affected by the land transaction. Parties with common property resources, squatters residing on public lands, encroachers deprived of established access to resources as well as those with formally recognised property rights, tenants, artisans, and wage earners are all eligible for compensation. Only actors who act opportunistically and invade a site for compensation benefits are denied⁵¹.

Despite being more Liberal with respect to the views of the erstwhile landowners, the Consultative Process set out in the World Bank Guidelines may result in the entire process being played out over an extended period of time, thus delaying the benefits that citizens would receive from infrastructure or facilities that are to be built Post-Land Acquisition. Furthermore, as in the case of the Indian Land Acquisition Act, the Theoretical Guidelines laid down by the World Bank may not be adequately implemented in practice.

In the end, it can be said that, the country desperately needs a programme that works well in these contexts because there is no other way to develop industrially while being fair to those who get dispossessed.

⁵¹ World Bank, "Involuntary Resettlement", *Op 4-12*, March 2007