

## CHAPTER - 4

# LEGAL AND CONSTITUTIONAL IMPLICATIONS OF LAND ACQUISITION

### 4.1. Introduction

In the previous chapter, the issue of land reform and land acquisition in West Bengal has been discussed at length. The up and downs together with various phases of land reforms and land acquisition starting after independence have been discussed. Special emphasis has been placed on agrarian reforms undertaken by the Left Front Government since 1978. Different aspects and phases of land reforms including ‘*Operation Barga*’<sup>1</sup>, recoding the rights of share-croppers initiated by the Left Front Government has been examined in-depth with the help of a few appropriate tables to show the changes in the agricultural map of the state.

Industrialization based on agriculture popularised and initiated by the Left Front Government in the context of liberalization policies undertaken in the early 1990s have been clearly dealt with after brief discussion on the impact of the agrarian reforms including effects of tenancy reforms, security of tenure, sharing of crops, effects of land distribution and ownership pattern, revers sale of barga lands and decline of food grains production etc. In this chapter, we propose to analyse the legal and constitutional implications of land acquisition.

As part of a long-establish practice agricultural land plays an essential role in shaping relations between the government and peoples depending on agriculture. To understand the perspectives of land acquisition in West Bengal and also in India, we need to look into the relevant aspects of land relations, the political and historical discourse which shaped proprietorial rights on land, and the political economy of the successive disposition of land acquisition. When it is put

---

<sup>1</sup>Operation Barga was a land reform drive all over rural West Bengal for recording the names of *bargadars* (share-croppers) while avoiding the time-consuming process of recording over the settlement machinery. Operation Barga was started in 1978 and finished by the mid-1980s.

forward as a fact-based on arguments, we observe that land acquisition in West Bengal as well as in India is multidimensional. It may be defined as the phenomenon of land as property, the phenomenon of joint land rights, the phenomenon of individual property rights in land and the phenomenon of the state as a promoter and as an agent for public well-being. Together with these aspects, the diversity of land rights that had developed gradually in different parts of India and gave shape to the federal political structure of the present Indian state. After taking together all these features which have made land as one of the most vital aspects of natural resources and the most problematic issue to be adjudicated in the context of land disputes. This chapter is an approach to locate the questions surrounding land acquisition with large political-historical and legal matrix, so that institutions and system's that would frame the guideline of the present arrangement which is linked more firmly to the past.

Nearly seven decades after independence, the economy of India is in a transitional phase with changes in policymaking and framework concerning different sectors of the economy. However, the land remains an essential need for all economic activities in various phases of massive industrialization; transforming a primarily agrarian economy into an industrial economy. The main concerns are with the location of industries, employment and compensation of the displaced and affected people. The mysterious aspect of land acquisitions is that neither the government nor any of the political parties is serious enough to discuss the effectiveness of colonial legislation-Land Acquisition Act,1894. This Act continued to be a legal tool of acquiring land for companies in the private sector even after decades of independence. The Land Acquisition Act plays an essential role in legislation and to give a direction to much-awaited industrialization, to give a solarium to unemployment<sup>2</sup>, minimizing

---

<sup>2</sup> R. Seshsayee. 'How can land acquisition be made human?', The Economic Times, Kolkata: Bennett, Coleman & Co. Ltd. 16 June 2007

the gap between urban and rural (Morris, 2002), solve the issues threatening environment, disguised unemployment (Morris & Pandey, 2007), etc.

The Colonial legislation had been introduced in a different regime is for purposes that suited mostly the colonial rulers. However, the future of democracy in India lies in its successful attempt to establish a legal structure for land acquisition that had not been made for a long interval of time. With the commencement of the 21<sup>st</sup> century, it was considered to remove the 120 years old colonial land acquisition law and to ensure justice and fairness. The essential right to Fair Compensation with Transparency in Land Rehabilitation, Resettlement and Acquisition Act, 2013 was passed by the Parliament in 2013 (Government of India, 2013).

#### 4.2. Concept of Property as Right in The Constitution of India

The Constitution recognizes property rights in its original form without modification as a fundamental right. The 1949- Constitution has three provisions for the protection of private property rights. It guarantees not only the right to private ownership but also the right to enjoy and dispose of the property without restrictions.<sup>3</sup>

First, it guarantees that every citizen has the right to obtain any 'property' by any legal means (such as inheritance, personal income or other means), treat it as his own property and freely dispose it subject only to (a) public benefits, and (b) any other reasonable restrictions that the State may impose to protect the interests of any Scheduled tribe<sup>4</sup>.

Therefore, from a substantive and procedural perspective, the restrictions previously imposed under article 19 1 (f), must be reasonable on the grounds of procedural standpoints.

A. Restrictions must not exceed the requirements of the public interest.

---

<sup>3</sup> 2

<sup>4</sup> The State Of Bombay And Another vs F.N. Balsara on May 25, 1951, AIR 318, 1951 SCR 682 Retrieved June 12, 2018, from <https://indiankanoon.org/doc/334293/>

B. It is procedurally unreasonable to impose restrictions on the subjective satisfaction of the administration.

Second, the Constitution guarantees that no one shall be deprived of their property except as authorized by law. That is without the consent of the owner, only the consent of the State, which is reflected in the law passed under the Constitution cannot be used to obtain men's property. In addition, property confiscated by the police or the government without proper legal authorities will be released with the court's intervention. Regarding his subjects, the state cannot exercise the 'state action', and the private property of the subjects cannot be taken away by administrative orders, which is different from the order given by the statute to exercise power.

The purpose of this clause is to protect businesses from administrative infringement, but not against the legislative, appropriation of property. However, the Supreme Court ruled that a law that attempts to deprive a person of property must be a valid law, which means that the law is enacted by the competent legislature and does not conflict with any basic rights guaranteed in Part III of the Constitution.

Third, the Constitution stipulates that if a state wants to obtain or acquire an individual's private property, it can only do so under two conditions: (a) that acquisitions or requisition is done for a public purpose. (b) After such laws have been passed, it must provide the principle of determining and specifying the amount to be paid to the owner<sup>5</sup>.

Therefore contradiction between the rights of citizens and the power of the state to implement the above principles can be resolved by restricting both rights and powers. Such fundamental rights are not absolute and are subject to reasonable restrictions in the interest of the public. The power of the state is also subject to conditions that the laws should not infringe on the

---

<sup>5</sup> The Constitution of India: Article 31 (2)

basic rights mentioned above without rationality and public interest. Therefore, the state has the right to acquire land from citizens for public purposes only after the payment of compensation. Therefore, the Constitution puts forward the concept of the property right from the right viewpoint. The judiciary act as the arbiter to maintain a fair balance between private rights and public interest. Therefore, it is expected that through the process of gradual judicial adjustment, the social order visualized by the Constitution will be successfully realized. Walter Fernandes argues about Singur and much of West Bengal that "the Colonial Land Acquisition Act 1894 ignores the fact that in rural economies land is not only the landowner's property and the maintenance of its landless service group " (Fernandes, 2007, p. 204).

As a result, substantive social processes and actual governance processes in the federal system complicates the areas of excellence and their legal impact. Where prominent territories are legally conferred on state or federal governments to enforce land purchases in the Indian federalism and governance of decentralization, have traditionally presented unique challenges to the central law.

#### 4.2. From the Fundamental Right to Legal Right

The 1978 amendment to Article 44 of the Constitution was passed to abolish Article 31, changing 'right to property' from the category of Fundamental rights to Constitutional right with the enactment of Article 300A. It is to be noted that Article 300A simply states: "No one shall be deprived of his property except as authorized by law" (Jain, 2001, p. 1418). Although section 300A is not a fundamental right, it makes little difference except that a written pleading cannot be maintained under Article 32 in the Supreme Court. A person who disputes a violation of section 300A must file a written complaint under Article 226 and go to the High Court. Constitutional property rights under section 300A is not a fundamental right. After the

amendment to Article 44 of the Constitution, property rights were considered to be a human right and a constitutional right but not a fundamental right.

The right to transfer land is an ancillary right to land ownership and cannot be deprived without legal authorization. Land ownership in law involves a series of rights. The right to transfer is one of these rights<sup>6</sup>. The property owners have the right to use the property in any way subject to the reasonable limitation that may be imposed by the legislature. Legal bans on the use and enjoyment of property must be strictly explained<sup>7</sup>. Property rights are now considered not only as constitutional rights but also as human rights. The Declaration of Human and Civil Rights of 26-8-1789 states by Article 17<sup>8</sup>: Because property rights are inviolable and sacred unless the public's necessity is legally determined, no one can deprive a person of his property unless it is necessary and fair and prior compensation has been paid. It is to be noted that the Universal Declaration of Human Rights, of 1948<sup>9</sup>, which was embraced by a resolution of the United Nations General Assembly, states:

- i. Everyone has the right to own property alone or in association with others,
- ii. No one shall be deprived of his property. Early human rights were more or less limited to the claims of individuals to enjoy the right to health, livelihood, right to residence and employment, but now human rights are multidimensional. Property rights are now also included in the definition of human rights. Even claims of adverse possession must be interpreted in conjunction with human rights<sup>10</sup>

---

<sup>6</sup> M/s. D.L.F. Qutab Enclave Complex Educational Charitable Trust Vs State of Haryana and Ors. On February 17, 2003: AIR 2003 SC648, Retrieved June 12, 2018, from <https://indiankanoon.org/doc/1119469/>

<sup>7</sup> Bhavnagar University vs Palitana Sugar Mill Pvt. Ltd. & Ors. On December 3, 2002: AIR 2003 SC648, Retrieved June 12, 2018, from <https://indiankanoon.org/doc/623061/>

<sup>8</sup>The Declaration of Human and Civic Rights of 1789(Article-17): on August 26,1789. Retrieved June 12,2018.from [http://www.conseilconstitutionnel.fr/conseilconstitutionnel/root/bank\\_mm/anglais/cst2.pdf](http://www.conseilconstitutionnel.fr/conseilconstitutionnel/root/bank_mm/anglais/cst2.pdf).

<sup>9</sup>The Universal Declaration of Human Rights, 1948 (Article-17): on December 10, 1948. Retrieved June 12,2018, from <https://www.un.org/en/universal-declaration-human-rights/index.html>

<sup>10</sup> 9

Article 300A attracts the acquisition or possession of the private property to imply it in public purpose by a law enacted by the Parliament or the state legislature. It is an integral part of every sovereign state to use the power of eminent domain to seize private property without the owner's consent (Jain, 2001, p. 1419).

The public interest has always been considered an essential part of public purposes<sup>11</sup>. In a case,<sup>12</sup> the Supreme Court once again disapproving the state government's actions to forcibly dispossessing some tenants from their property ruled out that the state government can only restore possession in a manner recognized by law and it cannot resume possession unless it is otherwise in due course of law. The court further asserted that, in the absence of specific legal provisions, the executive should not forcibly evict anyone without valid legal procedures even on the grounds of public interest.

In case, the Court, clearly mentioned that the cash benefits are also considered property<sup>13</sup>. The cancellation of Patta of land without landowner being heard is a violation of natural justice and is, therefore, shocking<sup>14</sup>. The concept of property in article 300A is the same as that previously developed under article 19, paragraph 1 (f) (Jain, 2001, p. 1421).

### 4.3. The Doctrine Eminent Domain

Eminent domain is the power of the state to acquire private property for public use, and this power can be delegated by the state to the local government through legislation. It is the crucial power of the state to take hold of citizen's private property Orto to seize citizen's rights in property with due financial compensation but without the property owner's approval. It is

---

<sup>11</sup> The State Of Rajasthan & Ors vs Basant Nahata on 7 September, 2005: AIR 2005 12 SCC 77, Retrieved June 16, 2018, from <https://indiankanoon.org/doc/1422834/>

<sup>12</sup> State Of West Bengal & Ors vs Vishnunarayan And Associates (P) LTD. & ANR. March 19, 2002: 4 SCC 134, Retrieved June 16, 2018, from <https://indiankanoon.org/doc/1338325/>

<sup>13</sup> State Of Madhya Pradesh vs Ranojirao Shinde & Anr on March 21, 1968: AIR 1053, 1968 SCR (3) 489, Retrieved June 17, 2018, from <https://indiankanoon.org/doc/1963913/>

<sup>14</sup> Ka Oldphimai Mukhim vs The District Council, Jantia Hills on September 25, 1981: AIR 1983, Gauhati High Court, Retrieved June 18, 2018, from <https://indiankanoon.org/doc/1258689/>

accepted as one of the most debated and politically superficial tools of exercising State authority which is used in several parts of the world, including India. However, executing the eminent domain law is not an easy task, and it is tough to deal with ground-level matters (Nielsen, 2011). The implementation of eminent domain or, compulsory acquisition of land by the State often gives rise to various economic, social, psychological and cultural pains for the affected people, i.e. land and property holders. Such acquisition and the consequent displacement not only leads to loss of financial assets, habitat and livelihood but also interrupts the communities, cultural identities, social relationships, local markets for goods as well as labour, subsequently placing the ousted in a 'spiral of impoverishment' (Jojan, et al., 2013, p. 31). Given such painful consequences, a legal rule signifying eminent domain needs to limit its application only to the cases of 'compelling public interest' and further minimise (or, compensate suitably for) the socio-economic costs of land acquisition and subsequent displacement of property owners. Moreover, it is also essential that such rule also contains a provision for a fair re-establishment of standards of living, production systems and community relations enjoyed by the affected persons before land acquisition so that the community moves on an ascending path rather than a descending path (Cernea, 1999).

It is to be noted that the Land Acquisition Act, 1894, was based on the principle of Eminent domain dogma. The legal foundation for eminent domain was established by the colonial period, which continued to prevail and served the purpose. The Land Acquisition Act, 1894 permitted the government to acquire private land for public purposes after compensating a government-fixed compensation to cover the damages incurred by landlords from surrendering their land to a concerned public agency. This act was criticized for its threatening nature, i.e., the government was authorized to acquire the land even without the willingness of owners to part with it. However, it survived over a very long time due to the simple process and also due to undeveloped land markets in a dominant agrarian economy.



## 4.4. Public Purpose

Article 31(2) did not have many words to ensure acquisition for public purposes before the Fourth Amendment. The Fourth Amendment of the Constitution clearly states that 'public purpose' is a condition for compulsory state access. However, it should be noted that under legislative entry 42 of Listing III, the legislature can obtain property even if it has no public purpose, and the only obstacle was article 31( 2). Later, this obstacle disappeared with Amendment No. 44 of 1978.

The term 'public purpose' means public welfare and this concept has changed over time. The confiscation of the property need not be made available to the public. It may benefit only specific individuals provided they are benefited in furtherance of a scheme of public utility.

Generally, courts have a very liberal attitude on the issue of 'public purpose', it is indeed rare where the court does not consider the purpose to be a public purpose. The court regards legislative decisions in high esteem, but ultimately powers remain with the court. A provision excluding the jurisdiction of the court and the decision of the executive or legislature that is binding and conclusive on a court of law is ultra vires article 31( 2). It is the liability of the court to see that no acquisition or requisition of property is allowed except for public purposes. S 6 (3) of the Land Acquisition Act 1894 states that the state government's declaration of land acquisition for public purposes should be conclusive evidence that the land is needed for the public purpose'. This section would have been ultra vires Art 31 (2) had it not been for the fact that its validity is saved by Article 31 (5) (a).

The Land Acquisition Act,1894was based on some of the following features which are of much importance :

- Public Purpose
- By a company when it is for a public purpose, and compensation is payable wholly or partly out of the public revenues.

This provision was challenged in *Somwanti v. Punjab*<sup>15</sup> because the petitioner's land had been requisitioned so that the respondent could build a refrigeration plant there. The petitioner, the landowner, was about to start a paper mill, and he had obtained a paper mill permit when his land was requisitioned. The government contributed ₹100, where the total compensation is about ₹ 4,50,000 to be payable to the petitioner of the land. The Supreme Court ruled that S 6 (3) of the Land Acquisition Act complicatedly prohibits judicial review of the public purpose of acquisition. A declaration by the state that land needed for the public purpose-made conclusive by the Land Acquisition Act did not infringe the constitution as it was saved and article 19 was not attracted as was decided by the SC in *State of Bombay v. Bhanji Munji*. In the case of *R L Arora v. state of UP*<sup>16</sup> clause in the Land Acquisition Act authorizes the government to purchase land for a company where the company pays the full compensation. The SC felt that the legislature should not compel individuals to part with their lands for the private profit of others simply because the company might produce goods which would be useful to the public. The court thus held that the particular work for the construction of which the land is sought to be acquired must itself be useful to the public directly.

In the *R.L. Arora case*<sup>17</sup> proposals were not pleasant for the government and due to the country's increasing industrialization, the government wanted broad powers to acquire land. Therefore, in order to go beyond the interpretation of the court, the Land Acquisition Law was amended, and a new clause (a) was inserted after the original provisions. In *RL Arora v. the State of UP*, the revised provisions were again questioned. It is argued that under the revised terms, the company seeking the acquisition should engage in any industry or work on the land it had acquired, which may not be for public purposes, which amounts to a violation of art. Article

---

<sup>15</sup> *Smt. Somawanti And Others vs The State Of Punjab And Others*, on May 2, 1962: AIR 151, 1963 SCR (3) 774 AIR 1053, 1968 SCR (3) 489, Retrieved June 16, 2018, from <https://indiankanoon.org/doc/1536600/>

<sup>16</sup> *R. L. Arora vs State Of Uttar Pradesh And Others*, on February 14, 1964: 1964 AIR 1230, 1964 SCR (6) 784, Retrieved June 17, 2018, from <https://indiankanoon.org/doc/1521043/>

<sup>17</sup> 16

31 (2) and Article 19 (1) (f), as such acquisition, would constitute an unreasonable restriction on the constitutional right to hold property.

For that purpose, the petitioner emphasized the literal interpretation of the clause. However, the argument was brushed aside by the majority keeping in view the setting under which the legislature amended the provision; thus literal construction was not possible. Interpretation should be such as to confirm the intention of the legislature, i.e. the building or work which is to be constructed shall serve the public purpose<sup>18</sup>.

#### 4.5. Frameworks of Land Acquisitions

The acquisition of property is in the concurrent list, which means that both the central and state governments can make laws on the said matter. There are many local and specific laws for land acquisition, but the primary law concerning acquisition is the Land Acquisition Act, 1984.

The land acquisition means acquiring of land for a public purpose by the government as authorized by the law from an individual landowner after paying fixed compensation due to losses suffered by owner(s) of land for surrendering of his/her/their land to the concerned government agency (The Land Acquisition Act, 1894, 2011).

The state's claim to the right to acquire land in the eminent domain theory must be located historically within the development of the concept of private land property. In independent India, the actual land acquisition process is in the governance of federal government's structure is very much complicated especially about the two most controversial aspects of the law—the consent of affected people must be (about 70-80 per cent of the population of the Area), and for the acquired land compensation to be paid. The disagreement between the centre and the state regarding land acquisition originates from the constitution itself, in which land is a state

---

<sup>18</sup> 16

subject<sup>19</sup> while the acquisition and requisition of property are placed on a concurrent list (the centre and the state can formulate law). The latter is considered “necessary because many national projects are of inter-state nature, especially those related to the construction of National Highways, railways and atomic energy projects” (Ramesh & Khan, 2015, p. 5).

Nonetheless, it does not take into account that land is the basis of the state's subject, that is, the land is not only a material entity to be expropriated at will because it determines social relations and the relationship between the state and land. Therefore land is linked to the unique and diverse social structural and political forces. Central land acquisition laws are clearly unpopular for states with unique political forces based on caste composition, local agricultural hierarchies, support networks, and conflicts between ‘monopoly capital’ and ‘non-monopoly regional capital’ (Damodaran, 2008, p. 317).

In order to highlight the annoying idea of consent to land acquisition in a society with multiple inequality and hierarchy, we need a proper theory of consent. It can be drawn on a theory of will which has a long history of political theory in describing the relationship between the government and the governed. For illustration Rousseau's idea of ‘General Will’ is Moral, qualitative thoughts. What he is talking about is ‘partial’ will, that is the group interests and sectional aim of some community members that belong to for example a political party or union or else a mere sum of particular aims which he Calls it ‘will of all’ (Thomson, 1990, p. 97).

Therefore, in order to truly solve the problem of land acquisition, it is necessary to ask ‘who's consent’ the law seeks for land acquisition and how to obtain the land on the circumstances of different land rights. It is in the First Amendment to the Constitution that the issue of land as a fundamental right and "the right of the government to seize land under its ‘police power’ for

---

<sup>19</sup> Jurisdiction over rights in or over land, land tenures including the relation of landlord and tenant, transfer and alienation of agricultural land, collection of rents, assessment and collection of land revenue, collection of taxes on lands, survey for revenue purposes, land improvement and agricultural loans, maintenance of land records, and buildings come under the purview of the state laws, as listed in entry 18, List II of the Seventh Schedule to the Constitution of India (Ramesh & Khan, 2015, p. 5).

revolutionary social purposes came into the front" (Austin, 2000, p. 70). Land acquisition in the early days of independence based on distributive justice through the abolition of *Zamindaris*. However, in the current circumstances, issues related to compensation for acquiring zamindari property will also be taken into consideration.

Does this imply to what is 'equitable' or 'just' or 'full' compensation, or simple compensation set by the legislature? How is compensation calculated (for example as a percentage of rent collected by *zamindar*? How to pay cash, bonds etc. either all at once or over time? Can zamindaris be 'taken over' immediately or 'acquired' later thereby avoiding the obligation to pay the compensation immediately? How are the forests and resources under *Zamindar's* land to be dealt with? (Austin, 2000, pp. 74-75). it was a perspective in the early phase of land acquisition.

#### 4.5.1. The Land Acquisition Act, 1894<sup>20</sup>

Although there are many local and specific laws for land acquisition, the Land Acquisition Act of 1894 is perhaps the oldest law. It extended throughout India except in Jammu and Kashmir. The law entered into force on March 1, 1894. This was the first systematically compiled land acquisition law that applies to British India as a whole. At that time, the colonial government needed a large amount of land for expansion plans such as railway projects, which required a large amount of land nationwide. This gave rise to the codification of existing laws. Accordingly, Land acquisitions Law, 1894 was enacted, which was used as the basis for subsequent land legislations by the Government of India after independence (1947).

---

<sup>20</sup> An Act to amend the law for the acquisition of land for public purposes and for Companies. Whereas it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the amount of compensation to be made on account of such acquisition (The Land Acquisition Act, 1894, 2011, p. 5).

## ▪ Background of Land Acquisition Act, 1894

The Land Acquisition Act(Regulation I)<sup>21</sup> was first introduced by the British Government in 1824. The regulations applied throughout Bengal Province immediately serving the presidency of Fort William. The rule authorizes the government to purchase property at a reasonable price for construction of roads, canals and other public purposes. In 1850 Act I of 1850 was passed to extend specific provisions of Regulation I of 1824 to Kolkata to confirm the ownership of land to be acquired in Kolkata for public purposes. The railway network was being developed at that time, and legislation was needed to secure railway land. Building Act No. XXVII of 1839 and Act No. XX of 1852 was introduced to eliminate difficulties related to the construction of public buildings in the cities of Mumbai and Madras. The Act of 1857 was the first complete statute applied in British India as a whole. It repealed all previous statutes related to the acquisition and its purpose. Act X of 1870 was subsequently implemented, which was further replaced by the Land Acquisition Act of 1894, and it was a completely separate act aimed at removing certain deficiencies of the Act 1870. After independence in 1947 Government of India passed the 'Land Acquisition Act 1894' as a device for land acquisition. Since then, various amendments to the 1894 Act have been made from time to time. Despite these amendments, governmental procedures remain unchanged.

From a historical point of view and on the perspective history repeats itself we observe that Land Act, whether it is in the year 1894 or 2013 is a link between a long list of institutional arrangements and conveniences that addresses today's specific problems. Some of these problems have not disappeared within a century and a half; thus, the task of drafting new laws to solve old problems in various old and new ways depends on its background.

---

<sup>21</sup> 20

During the colonial paralegal, aspects trace its roots back to 1894 to the Bengal Regulation I of 1824, Act I of 1850, Act XXII of 863, Act X of 1870, the Bombay Act No. XXVIII of 1839, 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-originally formulated by the colonial administration in the presidential towns and later extended throughout the country to facilitate easy acquisition of land for roads, canals and other 'public purposes', compensation is determined by an arbitrator appointed for the said purpose. These enactments established the fortress of the colonial government after the Crown re-established control after the revolt of 1857. By that time, strategic interests, such as battalions, garrisons, telegraphs, railways, and their feeder links, had dominated the imagination of the colonial government and to ensure greater control by avoiding the repetition of the event occurred in 1857 through government control of land, public infrastructure and the defence systems established on the land. There was also an apparent economic utility that could be achieved through the productive use of the land to generate income. Some 'rule of law', interpreted in different ways was necessary to secure the administrative foundations of the empire.

Since then, various amendments to the 1894 Act have been made from time to time. The term 'Public Purpose' has been involved in almost all the times the government adopted land acquisition policies since then and even after independence. This has particular reference to the cases about Land acquisitions in Singur and Nandigram. The Land Acquisition Act of 1894 was enacted with a clear purpose to facilitate the government's acquisition of privately owned property for public purposes. The term 'public purpose' as defined in the Act and purpose was clarified to avoid confusion.

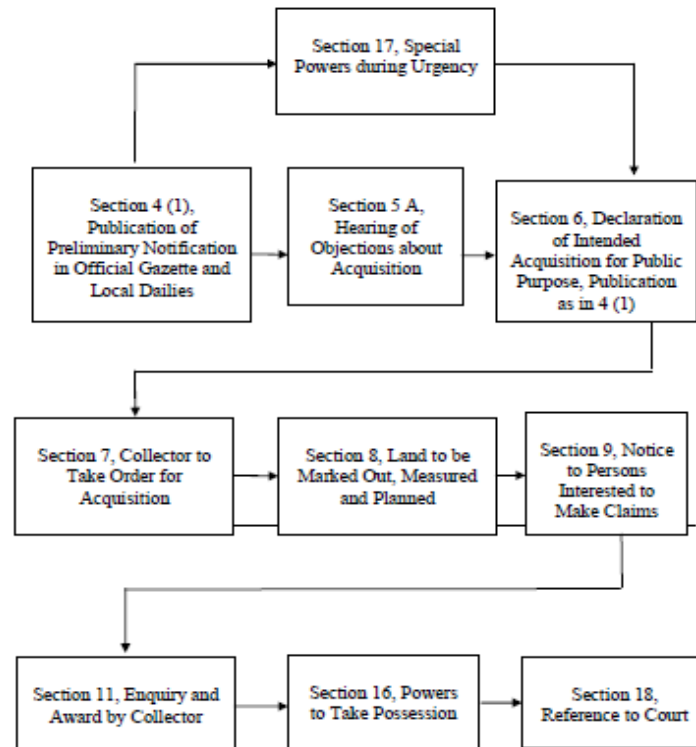
- Provision for village-sites or expansion of village-sites with planned development to improve them;
- Provision of land for urban or rural planning;

- Giving land for a corporation owned or controlled by the state.
- A provision in government policies for providing land about planned development from public funds, and then dispose of the land in whole or in part by lease, transfer or direct sale to ensure further development according to the plan;
- Provision for residential land for the landless or poor or to persons living in areas affected by natural disasters or persons displaced or affected by the execution of any plan implemented by the government or any local authorities or corporation owned by the state.
- Provision for land related to any education, housing, health care, slum clearing or any other program initiated by the government to implement any such program;
- Provision of any premises or building for the placement of public offices excluding the purchase of land for the companies.

If the objective of the acquisition is for the union, the term 'Government' refers to the Central Government, and for all other purposes, it refers to the State Government. Not all acquisitions need to be initiated by the Government. However, Societies registered under (The Societies Registration Act 1860) along with cooperatives established under the Cooperatives act and Local authorities can also acquire land for development activities through the government.



Figure 4.1. The Essential Contents of the Land Acquisition Process



Source: Land Acquisition Act, 1894

The essential contents of the land acquisition process are as follows:

1) Preliminary notice under section 4 (1): As long as the appropriate government considers land is necessary for a public purpose, the notice under section 4 (1) Indicates that if the government intends to Acquire a specific range of land in certain areas for public purposes, then a Notice is to be issued. Before issuing this notice, the government must ensure that necessary conditions should be full filled such as:

- The requisition by the acquiring body in a prescribed format;
- The purpose of the project which acquires land.
- A detailed sketch of the project showing the survey number and other details;
- Reasons for choosing a specific location.
- The area to be acquired is proportional to the purpose of the project.
- Provides the necessary budgetary funds to bear the costs of the acquisition.

Upon notification, the landowner will be prevented from making any improvements and transactions in the notified land. The notice shall be published in the Gazette and shall be published in at least two local newspapers, one of which shall be published in a regional language. The announcement shall also be notified on the bulletin board of the relevant authority and local agency where the land is located.

2) Filing and hearing of objections under section (5A): In fact, issuing a notice under section 4 (1) provides the victim with an opportunity to raise an objection under section 5 (A) of the Act within 30 days of publication of the notice. Each objection shall be addressed to the collector in writing, and the collector shall give the objector an opportunity to state his grievances. After hearing all such objections and further inquiries (if required), a report is submitted to the government for a final decision.

3) Final declaration section 6 (1): After receiving the Land Acquisition Officer's report on the objection after considering the report and verifying the record the government issues a final declaration by Article 6 (1). The declaration converts the government's intention to acquire land. The law states that Article 6 (1) declarations shall be published in the Official Gazette and elsewhere by Article 6 (2) of the Act.

4) Award and Claims, Section 11:: The Land Acquisition Officer shall investigate in accordance with Articles 8 and 9. This section provides that after all stakeholders are notified under Article 9 (2) are required to appear before the Land Acquisition Officer either personally through an advocate for making their claim. At this stage, the land acquisition officer is required to complete an accurate measurement of the survey figures based on its location, fertility and other facilities, etc., the value of the land to be purchased was obtained, and the relevant records were verified before the reward was passed. The ruling so passed should also include relevant information about the owner's name, the actual extent of the land to be acquired, the total compensation to be paid and its allocation.

5) Compensation: This is the total amount mentioned in the award to be paid to the landowner. This total amount is calculated based on two methods firstly it determines compensation through valuation method and secondly by capitalization method. For simplicity, most follow valuation methods. The valuation method is based on the market value of the property; this value is determined or based on circle rates or the sale deed of similar properties. According to Article 30 of the Act, there are provisions related to the settlement of disputes and distribution of compensation in which the Deputy Director may refer the matter to the court. The claimant will be entitled to compensation, which is determined based on the market value of the land determined on the date of the preliminary notice. According to Article 34, if the payment of compensation is delayed for more than one year from the date of possession of the property interest shall be paid at the rate of 15% per annum from the date on which the given one-year period expires.

6) According to Section 18, the landowner who is not satisfied with the compensation mentioned in the award may submit a written application to the land acquisition officer within six weeks from the date of receipt of the notice under Section 12 (2) or within six months from the date of award whichever is earlier. The land acquisition officer will refer the application to the competent civil court to determine mutually agreeable value. If the value determined reasonable, the government would decide not to go for appeal and pay the landowner accordingly. On the other hand, if the value determined by the civil court is too high, the government would instead appeal to a higher court, and its decision will be final.

7) Article 11 (2): The procedure for obtaining land under the Act is very lengthy and cumbersome. After 22 years of a protracted discussion, the Land Acquisition Bill No. 63 was introduced in Lok Sabha on August 6, 1984. The amended bill provides for the settlement of compensation through negotiation by adding a new subsection 11 (2). The amended section reflects that if the collector is satisfied at all stages of the proceedings that all persons interested

in the land appear before him/her and both agree to write down the matters to be included in the award of the collector in accordance with the rules set by the relevant government, and he/she can make a decision in accordance with the terms of the agreement without further inquiry.

8) Time limit: The government may make a ruling and complete the acquisition process at any time after the preliminary notice issued under Section 4 (1). The time limit now established is one year from notification 4(1) to 6 (1) and two years from notification 6(1) to the final award.

9) Special powers in an emergency, Section 17: As long as the government considers that land is urgently needed for national defence and strategic construction, it can invoke the emergency clause in Section 17 and issue a preliminary notice following Section 4 (1) read with sections 17 (1), (4) and (6). Under the emergency clause, the government can expedite the acquisition process by eliminating objections by Article 5 (A) and Article 2. The government may issue a 15-day notice by Article 9 (1) to occupy the acquired land) and pay 80% of the compensation in advance.

10) De-Notification, Section 48 (1): At some point, the government may propose to cancel the purpose of land acquisition or change in such a way that there is no need for land acquisition. The government may de-notify under Article 48 (1) and stops further proceedings.

#### 4.5.2. Land Acquisitions Act after Independence

Even after independence and the adoption of The Constitution of India, the 1894 Act was in effect despite periodic amendments. New nation-states established new cities as part of Nehruvian vision, including Jamshedpur, Chandigarh, Bhilai, etc.), and through the construction of heavy industries and related land-based Infrastructure has expanded with economic effect. The theory of 'Eminent Domain' or the justification of the state in acquisitions of land for 'public purposes' and 'compensation' is still an essential attribute of sovereignty

itself. What constitutes 'public purpose' is part of the universal discourse of 'nation-building'. At the same time, there have been no significant changes in land acquisition laws since independence, although the political context and the framework of the debate changed. India is now an independent country governed by its constitution. It is a democratic country with universal adult suffrage (not just for property owners) It has the characteristics of a federal system and guarantees the fundamental rights of its citizens. In the new constitutional plan, land acquisition quickly became the subject of a concurrent list. Thus the centre and the state have the power to enact laws on 'requisition and acquisition of immovable property'. Property rights were also initially considered as a fundamental right. It is therefore inevitable that institutional conflicts arose between the specific capabilities of colonial land acquisition laws and the broader requirements of newly formed independent nation-states.

The state itself is beginning to show the first signs of internal division in the form of an independent judiciary. Article 141 of the Constitution specifies that the law interpreted by the Supreme Court is the binding law of the country. The line between the executive and the judiciary was first carried out on property rights in 1951 (in the Kameshwar Singh case) and finally called for some innovative investigation in the form of a 'basic structure' doctrine (i.e., a broad outline of elements considered to be indispensable to functional democracy and cannot be deleted by Parliament) to solve the problem. Subsequently, after the emergency a new Government was established in the centre in 1977, property rights changed from fundamental rights to legal rights (through The 44<sup>th</sup> Amendment of 1978), and no one could challenge the validity of acquisition of property on the grounds of a violation of fundamental rights. In other words, Eminent Domain requirements met the Land acquisition law of 1894 and will continue to have its effect. In other words, on the question of the validity of the rule of law itself, public purpose and 'compensation' remained elements of review about legal terminology. However, complaints about inadequate restoration and resettlement are growing gradually. The nation-

state itself is becoming more sophisticated and its decisions on development to a large extent being adopted with a little pinch of salt.

### ▪ Purpose of Land Acquisition

The Land Acquisition Act (LAA), 1894 was enacted to promote the role in the acquisition of private land for public purposes. The term 'public purpose' as defined in the decree refers to the purchase of land for the establishment of educational institutions or schemes related to housing, health care, slums, rural planning and other similar aspects. If the acquisition is done by the union, the term 'Government' refers to the central government, and for every other purposes, it refers to the state governments. Local authorities, associations registered under the Association Registration Act 1860, and cooperatives established under the Cooperatives Act can also acquire land for development activities through the government.

### ▪ The Process of Land Acquisition

Land acquisition proceedings conducted by officials appointed by the government known as Land Acquisition Collector. The proceeding conducted by the Land Acquisition Collector is administrative and not judicial or quasi-judicial. When the Government intends to occupy the land it has to issue a notification under Section 4 in the Official Gazette, newspaper and must issue a public notice for at least seven days on behalf of the government to enter the land to dig, take level, set out boundaries. The notice puts forward the government's intention to acquire and empowers government officials to investigate and determine whether the land is suitable for their purpose.

### ▪ Compensation

Over the period since independence, there has been a clear view to restrict and limit the right to compensation for property acquired by the state. The right has been severely curtailed

through various amendments of the Constitution. By the Fourth Amendment in the Constitution in Article 31 (2) the words 'taking possession and 'acquisition were replaced by the words 'compulsorily acquired or requisitioned'. To explain these terms, a new provision in article 31 (2) A was added.

The position under Art 31 (2) A defines that deprivation of property is divided into two categories:

1. Compulsory acquisition and requisitioning of property by the state for a public purpose which can be affected by-law providing for compensation or specifying principles for it.
2. All cases in which the ownership or right of possession of the property is not transferred to the state. This deprivation may be affected by the law, and the legislature has full discretion as to whether to grant compensation. In the first case, compensation is now payable only when ownership of the property is transferred to the state or a corporation owned or controlled by it. In the second case, the legislature can compensate as needed according to the Constitution; it has no obligation.

#### 4.5.3. Loopholes in the Land Acquisition Act

There are certain major loopholes in the Land Acquisition Law and one of these 'public purpose' the term itself is ambiguous and sometimes the term itself is confusing since it is very difficult to precisely determine whether the purpose behind a particular case of acquisition is 'public' or not. Courts can only instruct collectors to hear the objections of a person whose land has been acquired, but the Collector may not always listen to the objections raised by the legal owner of the land. The second loophole is in the calculation of compensation based on market value. It not only deprives landowners but also hides the various socio-cultural aspects of land ownership in an agricultural society. Not only does the land have a market price when it is acquired, but it also provides the owner with various social, political, and psychological

functions. The ownership of a small piece of land can empower a landless family and increase the family's status and reputation in the local setting. A piece of land supports generations and not only the existing members at the time of acquisition. However, while giving compensation to landless people, these critical aspects of land and their ownership in agricultural society are not taken into account to calculate its value.

The Land Acquisition Act only deals with compensation to the legal landowners and does not involve compensation for people affected by land acquisition projects. State responsibility for the victims ends with compensation.

The Act does not require payment of compensation to landless workers, forest land users and forest product collectors, artisans and cultivators because they do not have any legal rights to the land, even though these people are affected when land is acquired for development projects.

The Government of West Bengal had to make an amendment in the Land Acquisition Act (it was done in 1963) in order to provide compensation to (bargadars), who also suffered the loss of livelihood due to acquisition of agricultural land.

The Land Acquisition Law recognizes only property rights of the individuals and not community rights over land. As a result, tribal and non-tribal communities' right to use common land has no place in the law. Therefore, in case of acquisition of common village land, no compensation is provided to village communities that receive various common benefits from these lands. Law does not include any scope for such compensation or losses in the Common Resource. Interestingly in India's vast rural areas, villagers use common land as ordinary grazing field in post-harvest season. The Law does not have provision for the shared pool or common cattle grazing land.

In the past 25 years, democracy has further 'deepened', bringing new voices, especially marginalized castes and regional parties. Along with liberalisation in India, civil society and private companies have made an impact on politics and governance. Coalition politics is an



inevitable political reality today. In addition to the executive, legislature, and judiciary (which are interdependent but distinctly different under the 'separation of powers' theory). There are numerous centre-state (and now some local), debates around federalism. Within the emerging system of federalism, various areas and aspects of 'land use' have become part of the State List in the Constitution. Presently, debates around land acquisition have gradually shifted to the states from the centre.

Since 1991, especially in the last two decade, although the state played a significant role, the private sector has been playing an important role in the process. The state has also acknowledged the latter's role in economic growth and policy-making decisions, including facilitation of land acquisition for 'public Purposes'. This development is not entirely new because such possibilities are also reflected in the 1894 Act. However, the contemporary situation is different which gives increasing role of private enterprises and its acknowledgement by the State in economic growth. Eminent Domain still holds in such cases where acquisition has to be for a 'public purpose', and 'compensation' has to be paid.

As the political landscape is diverse enough for multiple competing voices, the term 'public purpose' has also become the subject of multiple renderings, where each voice has an opinion on what 'public purpose' is, and more significantly, what is not. An economic argument is beginning to open as well on taxation and redistributive machinery (within the newer debates on fiscal federalism, such as the proposed Goods and Services Tax structure, to justify newer forms of 'public purpose'. The judiciary has a greater role now due to the rise of public interest litigation (PIL) as a legal tool since the 1980s.

#### 4.5.4. Present Situation

The current wave of people's resistance all over India including Singur and Nandigram needed to be tackled in right perspectives in order to alter the Land Acquisition Act, 1894 by the spirit

of democracy and egalitarianism in the Indian Constitution, thereby promoting the country's sustainable future, which has long been awaited of. 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' was passed to meet out the problems relating to compensation, resettlement and rehabilitation of displaced people, calculation of market price. Through the implementation of the Land Acquisition, Restoration and Resettlement (Compensation, Restoration and Resettlement, Development Plan) Rules 2015; the Government claims to provide a better standard of living sustainably, minimum displacement and appropriate Rehabilitation.

The promise to provide a better standard of sustainable living remains a bleak objective as the policy includes the weak expression, i.e. 'maybe allotted' or 'maybe provided'. It never guarantees a land for compensation to the project affected families as a consequence of which marginal farmers (small farmers), landless labourers, and people who earn their livelihood from forest produce, in a more vulnerable situation.

In the previous few years, the Government of India has understood the need for bringing up new acts rather than making small changes so that land acquisition can be achieved while protecting some of the rights of its citizens. In the process, the Land Acquisition Act has been modified and brought out in the form of a new legislation such as Land Acquisition, Rehabilitation and Resettlement (LAR&R) Bill, 2013; it has been further subject to some additional changes and to be brought out as Land Acquisition, Rehabilitation and Resettlement (LAR&R) Ordinance, 2015.

#### 4.6. Land Acquisitions Provision and Its Comparison

Land Acquisition Act consists of a continuous set of legislations: (i) the Land Acquisition Act, 1894 which was introduced during the British rule (ii) the Land Acquisition, Rehabilitation and Resettlement Bill, 2013 brought out by the United Progressive Alliance (UPA) Government.

It is clearly different in several aspects from the Acts of 1894 (iii) The Land Acquisition, Rehabilitation and Resettlement Ordinance, 2015 brought out by the National Democratic Alliance (NDA) Government with nine amendments, which changed many clauses of the 2013 Act. The amendment bill was presented in Parliament to approve the Ordinance and Lok Sabha passed the bill, however the same was placed before the Rajya Sabha. On 30<sup>th</sup> May 2015, President of India promulgated the amendment ordinance for the third time.

### ▪ Land Acquisition, Rehabilitation and Resettlement Act, 2013

United Progressive Alliance (UPA) Government after extensive consultations and several rounds of discussions of a first legal draft prepared in 2011 introduced the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Government of India, 2013)<sup>22</sup> initiated some important changes to India's land acquisition law. The first among the changes is the increase of compensation for the landowners, who were also recognised as urban and rural landowners. The law, therefore, provided the scope of consideration of different factors operating in rural and urban settings while determining the land price. Consequently, the cash award was raised to be at least four times the estimated local market price of land in rural areas, and at least twice in urban areas. The Act also mandates that all affected parties be paid a Rehabilitation and Resettlement (R&R) package in addition to the cash compensation for lost assets so that the displacement costs are met by projects. The scope of 'affected parties' was also expanded to the persons and families whose primary source of livelihood was the land being taken. It, therefore, includes

---

<sup>22</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is an act that regulates land acquisition and lays down the procedure and rules for granting compensation, rehabilitation, and resettlement to the affected person and this act also provide fair compensation to those whose land taken away. The process of acquisition of land to set up process of acquisition of land to set up factories or buildings, infrastructural projects and assures rehabilitation of those affected. The Act provides regulations for land acquisition as a part of India's massive industrialisation drive driven by public-private partnership. The Act replaced the colonial Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule.

the intended beneficiaries as tenants of the property, sharecroppers and agricultural workers who were employed on the seized land (Bedi & Gangwani, 2015).

The Right to Fair Compensation Land Acquisition, Rehabilitation and Resettlement Act, 2013 requires a Social Impact Assessment (SIA) which should be conducted to detect the families those who are being affected and to analyse the social impact when land is acquired. A committee of independent experts examines the SIA and approves the social impact assessment of the project, and administrative committee evaluates whether it serves the public interest and furthermore if the assistances outweigh the costs, and the disputes are to be referred to a specially constituted body as an alternative of civil courts. Multi-cropped agricultural land is proposed not to be acquired except under special circumstances, and even under such a situation land acquisition must not exceed 5 per cent of the cultivated area in the district.

The stipulated Rehabilitation and Resettlement package for the affected community includes a variety of entitlements, including transportation and resettlement allowances, a monthly stipend for one year, and a job for one family member which can be exchanged for a lump sum payment. The compulsory R&R benefits may add up to the cash value of nearly 6.5 lakhs for every affected family (Bedi & Gangwani, 2015), which were ignored so far. There are also, some conditional benefits to be provided to affected families, such as the provision of constructed housing (with different built space entitlement for rural and urban areas) when there is loss of homestead, some land-for-land in the case of irrigation<sup>23</sup> and urbanisation projects, and a share of capital gains if the land is resold undeveloped. Even industries buying land on the open market will have to meet R & R obligations if the procured area is 100 acres or more (50 acres in urban areas).

---

<sup>23</sup>Irrigation was considered as a device of purposively providing land with water, other than rain water, by artificial means for crop production.

The Right to Fair Compensation Land Acquisition, Rehabilitation and Resettlement Act, 2013 was of the view that if land acquired under it had not been utilised for five years, it would be given back to the government land bank or actual owners. The Ordinance expressed that the period after which unutilised land needed to be returned will be five years or any period specified at the time of setting up the project, whichever is later. The Act 2013 also states that the Land Acquisition Act, 1894 would continue to apply in some instances where an award was made under the LAA 1894. Nevertheless, if such as award was made five years or more before the enactment of the Act in 2013, and the physical possession of land has not been taken or compensation has not been paid, the provisions of Act 2013 would apply (Government of India, 2013).

#### ▪ Land Acquisition, Rehabilitation and Resettlement Act, 2015

The RFCT LAR&R Second Amendment Bill, 2015 is under the course of becoming a law since the prior Act of 2013 seeks few amendments. This bill was introduced in May 2015 in *Lok Sabha* and passed by the *Lok Sabha* with certain changes but the bill is pending in *Rajya Sabha* since then and is still lying in the Parliamentary Committee to get it passed.

The RFCT LAR&R Act, 2013 exempted thirteen laws (such as the Railways Act, 1989 and the National Highways Act, 1956). However, the RFCT LAR&R Act 2015 needed compensation, rehabilitation, and resettlement provisions on these thirteen laws to be considered with the RFCT LAR&R Act 2015 (Government of India, 2015), within a year of its enactment, through a notification. The Ordinance also brings the compensation, rehabilitation, and resettlement provisions of these 13 laws in consonance with the RFCT LAR&R Act 2013. The RFCT LAR&R 2015 Ordinance (Government of India, 2015) creates 5 special categories of land use to be exempted from the provision of public approval: (i) defence, (ii) affordable housing, (iii) infrastructure projects including Public-Private Partnership (PPP) projects (iv)

rural infrastructure, (v) industrial corridors, and where the central government owns the land. The Act of 2013 needs the consent of 80 per cent of landowners if it is taken for private projects and consent of 70 per cent of landowners is to be obtained for Public-Private Partnership projects. The new Ordinance exempts all the five categories stated above from the provision of the Act. Also, the Ordinance authorizes the Government to exempt projects in these five categories through a notification:

The RFCT LAR&R Act 2013 barred the acquisition of land for private educational institutions and private hospitals. The new Ordinance eliminates this restriction. However the RFCT LAR&R Act 2013 was applicable for the acquisition of land for private companies, the new Ordinance changed the same to acquisition for 'private entities'. A private entity is defined as any entity other than government entity and could include a proprietorship, corporation, non-profit organisation, partnership, company or other entity under any other law. It, therefore, expanded the scope of 'purpose' from the strictly 'public agency' too lenient 'public-like private body'. The compulsion of the current government to make such change lies in its drive to propel economic growth through large scale industrial and urban development. However, taking such legal short-cuts may only harm the people and may become harmful in the long term (Government of India, 2013).

Table 4.1 Comparison of Various Aspects under the ACT

| Sl. | Factor                          | Land Acquisition Act, 1894   | The RFCT LAR&R Act, 2013   | The RFCT LAR&R Act, 2015   |
|-----|---------------------------------|--|--|--|
| 1   | Public Purpose                  | Includes numerous uses such as development, infrastructure and housing projects. Similarly includes use by companies under certain conditions. | There are no changes as such   | Do not include the acquisition of land for private educational institutions  |
| 2   | Social Impact Assessment (SIA)  | No provision   | Social Impact Assessment has to be undertaken in every acquisition.  | Exemption of Social Impact Assessment for above mentioned five categories of Consent and also limits on irrigated land.  |
| 3   | Consent From affected people    | Such clause is not applicable  | Consent of 80 % of displaced people required 03.in case of acquisition for private companies and 70 % for public-private partnerships.   | Consent for five categories of projects is exempted 1. Defence 2. Affordable Housing 3. Rural Infrastructure 4. Industrial Corridor 5. Infrastructure The consent for the other projects remains the same as that of the 2013 Act. |
| 4   | Compensation                    | Based on the market price.   | “Two times of market price for urban areas & four times of market price in rural area”.  | Same as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.  |
| 5   | Market Price                    | Based on the contemporary use of land. Prohibits using the intended use of land while calculating market value.                                | Higher of: (a) price specified for stamp duty, and (b) average of the top 50% of the recorded amount of sale of land in the vicinity.  | Same as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.  |
| 6   | Solarium                        | 30%  | 100%   | 100%   |
| 7   | Rehabilitation and Resettlement | No provision.  | Rehabilitation and Resettlement are essential for all suffered families. Minimum R&R entitlements to be delivered to every family. With employment to the members of the sufferer family | Rehabilitation and Resettlement award for each affected family includes mandatory employment to at least one member of such an affected family of a farm labourer.   |
| 8   | Food Security                   | No provision   | The multi-crop plot of land to be picked up only as a last resort. States to impose limits on the region of the  | No limit on the multi-crop plot of land to be acquired for above said five categories.   |

|  |  |  |   |  |
|--|--|--|---|--|
|  |  |  | agricultural or multi-crop plot of land that can be acquired in a State. If farming land is acquired, the state has to cultivate the equivalent area of land elsewhere. |  |
|--|--|--|---|--|

Source: (*The Land Acquisition Act, 1894*), (*Government of India, 2013*), (*Government of India, 2015*)

### ▪ Comparative Analysis of Land acquisition Provisions: A Case Study on Singur Project

The implications of the changes in the land acquisition act are not fully understood by various stakeholders, both legally and operationally. This case study concludes with the implications of the Land Acquisition Act and its changes concerning Singur to point out the ground level issues and also spells out the significant findings. Scrutiny of land acquisition and Rehabilitation and Resettlement under the three legislations is carried out about Singur project. In the early part of 2006, the Left Front Government (LF) of West Bengal prepared a blueprint and reported on the acquisition of approximately 1,000 acres of farmland in an area known as Singur. The proposed area in Singur was designed to be converted into an industrial park and to revive the industrial sector of the state. The proposed land was planned to build a production unit of Tata Motors, a private company that would produce Tata Nano, viewed as the cheapest four-wheelers small car in the world. The acquisitions through under the Land Acquisition Act of 1894, which enabled the state government to exercise its right to eminent domain in acquiring any land thought to be fit. By these provisions, the population affected by Singur's project, which included many small and marginal farmers (Banerjee P. , 2006, p. 4719), was offered financial compensation for their losses.

But while some accepted cash in the alters of their land, a significant proportion of local landowners did not agree. These 'unwilling peasants' – i.e. landowners who had refused to agree to the proposal of the government decided to protect their farmland and organised a movement conforming various forms of public protests and resentments. It is essential that



much time, energy and resources were lost to all the parties involved in the disputes. The judiciaries especially, High Court at Calcutta(HC) and Supreme Court of India (SC) were flooded with petitions and counter petitions from the contending parties and the government for almost a decade.

On the basis of argument and counter-arguments on legal and factual issues in Singur case, the following questions came to the forefront for consideration by the judiciary.

1. Whether the lands involved in the proceedings have been acquired for a public purpose or a private company (Tata Motors Limited).
2. If the lands were acquired for a company, whether the procedure mentioned under Part VII of the Land Acquisition Act, 1894 complied with the state government.
3. Whether the Land Acquisition Collector had stated particular reasons in his report for rejecting the objections raised by the landowners/cultivators after consideration.
4. Whether the Land Acquisition Collector duly conducted the enquiry as contemplated under Section 5-A(2) of the Land Acquisition Act.
5. Whether the awards have been passed after holding a proper inquiry under Section 9 of the Land Acquisition Act and also in compliance with the principles of natural justice?
6. Whether the report of the Land Acquisition Collector was motivated on the decision of the state government taken before issuing a notification under Section 6 of the Land Acquisition Act.
7. Whether the compensation awarded in favour of the landowners/cultivators was based on a proper appreciation of the market value of the land.
8. Whether the acquisition proceedings of not conducting an enquiry under Section 5-A (2) and passing composite awards under the Land Acquisition Act(Section 11), followed with the laws and regulations.

In the second half of 2006, the Government of West Bengal acquired 997 acres of prime agricultural land in Singur in order to enable M/s Tata Motors, a leading industrial house in India, to build a factory for manufacturing Nano car, its new model of small and cheap car. In order to do so, the West Bengal Government used its power of eminent domain under the 1894 Land Acquisition Act. The state subsequently decided to acquire the area required for the car factory and offered compensation to the farmers and other landowners whose lands were being taken as required by the 1894 Act. The local people of Singur were enraged by this action and put up resistance led by farmer households against forced acquisition and displacement.

This confrontation soon snowballed into a protest movement due to which the main opposition party, the Trinamool Congress (TMC) subsequently came into limelight. The West Bengal Government subsequently offered to improve the terms of compensation, including 25% compensation for tenant farmers engaged in the cultivation of acquired plots. No strategies were offered to compensate agricultural labourers claiming to have lost occupation on acquired agricultural lands. Local outbursts of violence occurred, and the protests got national and international media attention. In due course, two years later, after being frustrated with the protests and non-acquisition, the Tata Motors decided to withdraw its manufacturing unit from Singur, West Bengal and took the Nano car manufacturing factory to Sanand, Gujarat.

A household survey of five mouzas in Singur conducted by me gives a vivid picture of the land acquired for Tata Car Factor are in maximum from marginal landowners, and from those engaged in cultivation on the acquired plots such as registered and unregistered bargadears. A major fraction of landowners were under-compensated owing to misclassification of land in the government land records. Those agricultural workers who were affected by the acquisition of land had significant reductions compared with non-agricultural workers.

Thus land acquisition in Singur imposed major economic hardships on a large fraction of affected landowners, bargadars and agricultural workers. A large section of owners were under-

compensated relative to market values. Registered Bargadars were under-compensated, and unregistered Bargadars with agricultural labourers were not compensated at all. Singur case study clearly shows the ground level hurdles that need to overcome for successful land acquisition (Nielson 2011).

Table 4.2 A Synoptic view of the Differential Impacts on Singur Project Due to Land Acquisition Acts.

| Sl. No. | Parameter                      | LAA, 1894  | RFCT LAR&R, 2013  | RFCT LARR, 2015                                       |
|---------|--------------------------------|--|---|---|
| 01.     | Public Purpose                 | Land of Singur was acquired in the name of West Bengal Industrial development cooperation for Public Purpose.  | No effect of this the section would have affected   | No effect of this section would have affected         |
| 02.     | Consent of affected purpose    | There was no provision of consent, less time was taken for land acquisition but this was the leading cause of Tata Small Car Plant's Failure.  | This would have increased the time for acquisition but later people wouldn't have complained about the forceful acquisition of their land   | It would have the same effect as that of the 2013 Act |
| 03.     | SIA (Social Impact Assessment) | Since there was no provision of Social Impact Assessment, it was also the reason for the failure of Tata Small Car Factory. The affected people, later on, rose with Political support.  | This would have certainly helped Tata's project, as all the parameters would have already looked upon to avoid any the problem at a later stage   | It would have been same as 2013 act.                  |
| 04.     | Compensation                   | Market prices of the acquired lands were calculated by land records of already sold lands. But the government records were misclassified in order to save Stamp Duty. Due to this, many farmers were under-compensated, which was also the reason for the failure of this project. | The compensation is much higher, that would increase the cost of the project, but certainly, it would lead to the satisfaction of owners of the acquired land. Moreover, it would lead to the success of the project. | It would have been same in case of the 2013 Act.      |
| 05.     | Market Price                   | The market prices were misclassified, this leads to under-compensation of many farmers which lead to dissatisfaction among these farmers, and then they rose together, which caused the project to go in vain  | The market price, in this case, would be higher which increase the cost of the project but undoubtedly it would be beneficial during the operation stage of the project   | Same as the 2013 Act.                                 |
| 06.     | Solarium                       | This was low, only 30% of the market value. As already stated market value was misclassified, the farmers did not get proper solarium which in turn affected the project's success.  | 100% solarium will certainly cost more for the project during the acquisition stage. However, the chances of the project getting successful will be much higher.  | Same as the 2013 Act.                                 |

|     |               |   |   |   |
|-----|---------------|---|---|---|
| 07. | R&R           | The affected families were not provided with job security and the shelter of their livelihood which created more hurdles in the project, which lead to the failure of the project.  | Providing Job security to the members of affected family and shelter for their livelihood would increase project cost Moreover, some portion of employment would be unqualified for the project, thereby creating project hurdle. | Same as the 2013 Act  |
| 08. | Food security | Many lands where multi crops were cultivated were acquired; this reduced the production of many crops which affected the supply of these crops across the state. Thus food security to the people was reduced. Moreover, the cost of multi cropped land was more, so it increased acquisition cost. | Only 5% of multi cropped land can be acquired under this act which would help to ensure the food security for all the people and help to ensure the lower cost of acquisition.  | Same as the 2013 Act as the project does not fall under the five exempted categories. |

Source: (Status Report on Singur, 2006), (The Land Acquisition Act, 1894, 2011), (Government of India, 2013), (Government of India, 2013)

Tata Nano project's land acquisition case indicates the reasons for its failure. This failure was due to improper market rate consideration of lands which led to less compensation paid to farmers. The other reason being, no consent was obtained from the farmers whose land was acquired; they got angry due to this and protested against the government. As this case falls under LAA, 1894, there was no R&R for the affected people. Moreover, the food security issue was not given any consideration during the acquisitions, which lead to reduced supply of various food grains. A lot of lessons were learned by the government from this case, which helped them to formulate LAR&R, 2013. If this case would have fallen under LAR&R, 2013 or LAR&R, 2015, it would have cost more to Tata group but would have undoubtedly led to its success. Also, it was a lost opportunity as the employment in West Bengal would have increased to a great extent considering various ancillary industries associated with the Tata Nano Project.

The critical conclusion about the Land Acquisition Acts in India and its transformation is that the Government was on the learning curve by including stakeholders, increasing compensation and making R&R mandatory. However, this learning is getting reduced with very painful

escape routes sought in the new bill of 2015. The transformation from 1894 to 2013 to 2015 is turning out to improve the success of large development projects. It is already understood that land acquisition becomes an obstruction if it is not handled carefully and correctly, thereby affecting project success (Nallathiga, 2009). Although changes to eminent domain act are needed as per the need of the hour, they need to strike a balance between 'gainers' and 'losers'; also, what is more, important is that the implementation of the Acts at ground level from the spirit with which they have been prepared. More and more amendments will make the bill to land nowhere due to political oppositions, and this political conflict may also affect project success.

#### 4.7. Singur Case and the Idea of Justice

The Singur land acquisition case judgment in the Supreme Court has provided relief to the landowners who lost their lands to Tata Motors Limited, the ruling looked at procedural lapses in the land acquisition law rather than question the idea of 'public purpose' that is being distorted to include private interests. The judgment was the result of several contingencies that made the end result different. The apex court ordered that the land, measuring about 1,000 acres, that had been taken away from its owners and handed over to the Tata Motors Limited (TML), should be returned within a period of 10 weeks from 31 August to those who challenged the compulsory acquisition, as well as to those who acquiesced for want of the wherewithal to fight the battle and accepted the compensation. The contingencies that made the Singur case and its outcome different are: (i) the total rout of the Communist Party of India (Marxist)—CPI(M)-led Left Front in the 2011 state assembly elections; (ii) the fact that the Left Front was replaced in power by the All India Trinamool Congress, whose leader Mamata Banerjee, refused to conform with the neo-liberal agenda on the specific issue of land acquisition and held on to her opposition to forced acquisition of agricultural land, at least in

the case of Singur;<sup>1</sup> (iii) the fact that a section of those who lost their land had complete faith in the constitutional scheme (rather than perceiving it as an instrument of the ruling classes) and preferred to appeal to the Supreme Court even after their case was dismissed by the Calcutta High Court in 2008; and (iv) the fact that there are lawyers of repute at the highest level who have refused to be co-opted into the dominant definition of ‘public purpose’ and ‘development’ and remain committed to the ‘idea of justice’ as envisaged by the makers of modern India.<sup>3</sup> Ideally, the West Bengal Government ought to have given up the land acquisition process even before all these developments took place. In a constitutional democracy, where the people are sovereign, the state ought to see the writing on the wall and refrain from forcing its will upon the people. Even where there is a disconnect between the people and the state on what is ‘public good’, the effort ought to be to engage with them rather than wielding a law, especially one that belongs to the colonial era like the Land Acquisition Act, 1894. It is relevant in this context to stress that this colonial law remained valid in the constitutional scheme, protected by Article 31(5) of the Constitution, only because there was a certain want of clarity in the Constituent Assembly over the status of the right to property in independent India.<sup>4</sup> The historical process, involving Article 31 of the Constitution, the amendments to it and the judicial interventions until the Constitution (Forty-fourth Amendment) Act, 1978, when Article 31 was scrapped, brought to an end a phase that was marked by legal battles by the landowning classes against laws towards building an egalitarian society. In hindsight, it may be argued that although Article 31 of the Constitution was scrapped to prevent the landed gentry from persistent attempts to frustrate measures at land reforms, it ended up reviving the problematic aspects of the 1894 Act. The return of the doctrine of eminent domain, as against the right of the citizen to own property as a fundamental right (guaranteed by Article 31), ended up working against the small and middle peasants in their battle against the state.

While the Singur tragedy involving the dispossession of the small and the medium farmer belongs to another league—taking away farmlands to build factories to create job opportunities and thus serve the ‘public purpose’—the fact is that the process involves a lot of similarities in a substantive sense. What is common in both is the proclamation by those in power as to what constitutes the ‘public purpose’ and the determination of whatever constitutes the ‘public purpose’. In the instant case—Singur—the CPI(M) seemed to agree with parties across the spectrum that agriculture is no longer viable in comparison with industries and hence decided to chart out a course it considered best. Such a consensus exists across the political spectrum and that brings into focus the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, replacing 1894 Act. All political parties believe the new law will ensure justice to farmers in the event their farmland is sought to be converted to non-agricultural purposes. This, however, is not true. If the LAA, 1894 Act was rooted in the logic of a colonial politico-legal premise, the LAR&R, 2013 Act is a product of the logic of a neo-liberal politico-legal set-up. In other words, if the LAA, 1894 Act was consistent with the Right to Private Property is fundamental to the system, the LAR&R, 2013 Act, in fact, denies to landholders any such fundamental right and even denies them many of those provisions that led the Supreme Court to restore the land to the land-losers in recent times. The fact is that the 2013 law seeks to further illegitimate struggles against land acquisition. For instance, Section 2(1)(b) contains a list of sectors where this act shall apply and this includes acquisition of land for tourism. Tourism is now an industry and land acquisition for setting up resorts, health tourism and any such business propositions is possible under the new act. Such indulgence could have been challenged under the 1894 Act. Likewise, the 2013 Act specifies fair compensation and also lays down the quantum of compensation for land acquired, including the solarium. With this, in the larger context of our jurisprudence (the procedure

established by law rather than the due process of law), the scope for stalling indiscriminate acquisition of farmlands in the name of development is considerably restricted.

In other words, where it was possible for land-losers in the earlier regime to defend their cause in the higher judiciary against acquisition for building a tourism resort on grounds that it was not a public purpose (as defined under Section 3(f) of the 1894 Act), such a process is no longer possible. This, and some other provisions in the 2013 Act, render insignificant those other provisions such as Section 4 that mandates a social impact assessment on such alienation of land or Section 16 that presupposes a rehabilitation plan in place before the notification for acquisition of land is issued. These provisions are all about the procedure and are based on a premise that acquisition of agricultural land is an inevitable and indisputable measure in the cause of development and nation-building. Similarly, the 2013 Act also contains Section 40, which is as bad as Section 17 of the 1894 Act. It provides for short-circuiting all the steps, including the social impact assessment in the event of an emergency. In short, the 2013 law is premised upon treating land as a commodity and thus renders fair compensation as the only requirement for compulsory acquisition, an adaptation to the ideology of the market economy. This is, in many ways, akin to the primitive accumulation as carried out earlier rather than capitalist transformation and suggests freeing the peasantry as against the bondage of the peasant class to the land.

#### 4.8. CONCLUSION

The land acquisition process in India has been the source of increasing political and legal contest for almost two hundred years. This has roots from the inherently coercive nature of the process, which creates a severe imbalance in power between land losers and the state. This



analysis of various land acquisitions act and Court litigation shows that much of this imbalance was created within the very text of the Land Acquisition Act. A considerable part of it could also be attributed to executive non-compliance with the rule of law. The result was a situation of great injustice for the land losers.

A section of land losers, namely titleholders, who were legally empowered to make claims under the Land Acquisition Act sought to redress this imbalance and secure more equitable outcomes through litigation. The vast majority of land losers, both livelihood losers, and those who had property interests other than a title that were not recognised by the Land Acquisition Act, remained victims of the land acquisition process. However, because of the extraordinary long pendency of court cases, litigation did not sufficiently lessen the inequities for land losers, and insofar as it delayed legitimate development projects, it also resulted in a highly inefficient system of land acquisition by the government. Therefore, reform of the existing Land Acquisition Act, which took place, was essential.

The provisions of the LARR Act insofar as they empower livelihood losers along with titleholders to bring claims for compensation and rehabilitation, bring compensation requirements by existing reality, and introduce requirements of consent and social impact assessment, are steps in the right direction for redressing the imbalance of power was added to Land Acquisition Act. Nevertheless, this research highlights that legal reform is an essential aspect but not a sufficient precondition for ensuring more significant equity and efficiency within the land acquisition process. In the absence of bureaucratic and administrative reforms, the introduction of the LARR Act will not succeed in removing injustices and inefficiencies embedded within the implementation of existing land acquisition procedures. The increase in procedural necessities under the LARR Act implies an even greater need for securing executive inclination with the rule of law, in order to translate the equities intended by these additional procedures into reality for land losers.

More holistic administrative and legal reforms relating to existing land administration, including updating of land records to reflect the accurate title and other property rights concerning land and accurate reporting of land value in registering land transactions, are indispensable for ensuring more significant equity and efficiency in land acquisition processes. Due to the retrospective operation of the LARR Act, we expect to increase inland acquisition litigation in the coming years. This research has shown that over the past sixty-eight years every amendment to the Land Acquisition Act was accompanied by a sharp increase in litigation in its immediate aftermath as individual land losers sought to claim the benefits of the legal reform. However, as mentioned earlier, litigation insofar as it pre-empts extra-legal conflict may not always be a socially regressive outcome.

Determining the extent to which the new land acquisition procedures under the LARR Act, concerning consent, social impact assessment, public purpose, compensation and rehabilitation, have been hitherto applied and litigated along with the efficacy of the new procedures outlined by the LARR Act in securing equitable outcomes for land losers is a part of this study.

This study has revealed that industrial development, proximity and access to courts are common factors that explain the incidence of litigation across the country. These insights are investigation for a fuller understanding of the variations in litigation patterns across different states. This is indeed a ripe area of research for legal and social science scholars. Some of the answers may emerge from a more comprehensive evaluation of the textual provisions and actual implementation of nearly eighty-seven state laws of land acquisition.

Finally, litigation is only one aspect of political contestation relating to land. Vast areas of the country, particularly rural areas, and areas governed by the Fifth and Sixth Schedules of the Constitution, show high political conflict over land had deficient levels of litigation. This is likely because land losers in these areas usually do not possess individual titles to the land and

were therefore disempowered from bringing claims under the Land Acquisition Act, also facilitated by the abolition of the constitutional right to property in 1978. The LARR Act will likely channelize some of this contestation into litigation, but more holistic legal and administrative reforms may be necessary to systematically redress the causes of such conflict by the rule of law. This is an approach to provide further insights into ‘constitutional right to property’, land conflict and displacement of vulnerable individuals and groups, particularly in the area around Singur of West Bengal. The said issues are essential features to create a politically and socially feasible economic development in West Bengal.