

LAW & ECONOMICS:
EMINENT DOMAIN LEGISLATION IN INDIA - AN
EMPIRICAL ANALYSIS

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ABSTRACT:

This paper attempts to analyze the efficiency aspect of Eminent Domain Legislation in India and to explore whether individuals act rationally by seeking legal recourse in land acquisition cases. In order to determine whether the claimants' expectations are rationally motivated, the study has utilized the land acquisition cases that were brought for settlement before the Delhi High Court, and the bases for their acceptance or rejection. Analysis of the cases shows that challenging the validity of the act of acquisition itself did not yield positive results. However, it was rational to apply for higher compensation, even at the risk to time and money invested. This study also helps to explore to what extent Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 can ensure efficiency and preserve rights of individuals.

Keywords: Eminent Domain; New Land Acquisition Act 2013; Delhi High Court; Compensation

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I. Introduction

Eminent Domain in common law is the inherent power of the state to seize a citizen's private property, expropriate property, or seize a citizen's rights in property with due monetary compensation, but without the owner's consent. Though the Constitution originally provided for the right to property under Articles 19 and 31, later on the 44th amendment act of 1978 deleted the right to property from the list of Fundamental Rights. The Land Acquisition Act, 1894 allows the government to acquire private land for public purposes after paying a government-fixed compensation to cover losses incurred by landowners from surrendering their land to the concerned government agency. This act of acquisition has been criticized due to its coercive nature, in that the state is authorized to acquire the land even without the willingness of the owner to part with it.

Eminent domain legislation serves a useful purpose in that it counters the inefficiencies that might be created due to the 'holdout problem' in market exchange. Often, when a large tract of land is required for some purpose, the potential buyer must negotiate with all the owners of land in the target area. However, the buyer can only make offers to landowners, contingent on all the offers being accepted. Since each owner is aware that he has the power to veto the entire deal, he will hold out for a larger payoff. This results in a highly inefficient equilibrium wherein each landowner attempts to extract a premium from the buyer, resulting in the project being held up. Hence, the statutory provision of eminent domain corrects this market failure by allowing the state to acquire land without paying heed to the owners' consent, but, in general, providing for "fair" compensation as decreed by the legislative framework.

However, it is important to note that such acquisition of land often leads to displacement of people, depriving them of their livelihood and shelter, restricting access to their traditional resource base, and uprooting them from their socio-cultural environment. The rehabilitation and resettlement of the people affected by involuntary acquisition of private land and immovable property is of paramount importance. In order to protect the interests of the citizens whose land is acquired under the provision of eminent domain, there exist provisions for award of fair compensation to the owners of the land, as well as other legal safeguards.

The Government of India grants the right to appeal in court challenging the validity of the public purpose for which their land has been acquired, or demanding higher compensation if they are not satisfied with the award made by the Collector. Citizens can also appeal in court in cases where they have not received the compensation during the stipulated time-period. Though this provision is to protect the interests of the citizens but it can also lead to frivolous litigation. While the eminent domain legislation seeks to alleviate market inefficiencies, it may potentially create inefficiencies in the legal system. In addition to the social cost of legal disputes, it must be noted that the individuals who file such lawsuits and appeals in courts of law must also bear substantial costs with respect to the legal process (including monetary expenses such as administrative costs, lawyers' fees, etc. and the opportunity cost of wasted time). Hence, assuming rational behaviour by individuals, claimants should appeal for higher compensation, or challenge the validity of acquisition, only if they reasonably expect to gain damages that would more than cover their costs. In economic theory terms, their expected net payoff, after covering all transactions costs, must be positive.

The case-by-case analysis is contained in the following sub-sections, which comprise some important cases that challenge the validity of the purpose for which land is acquired, and those that seek higher compensation.

II. Cases Challenging the Validity of Land Acquisition

All parties interested in the land can file objections within 30 days of the date of notification. The objections are held to be valid on the following grounds:

- the purpose for which the land is proposed for acquisition is not a public purpose;
- the land is not or less suitable than another piece of land for the said purpose;
- the area under acquisition is excessive;
- the acquisition will destroy or impair historical or artistic monuments or will desecrate religious buildings, graveyards and the like.

In a number of cases, the petitioners have challenged the validity of the notifications issued by the Union of India or prayed for the quashing of the notification for their respective lands. Petitioners whose land were acquired for public purposes like **DMRC, channelization of Yamuna River, Planned Development Delhi Project (PDDP)** and others have argued that they are carrying on small businesses in different areas and they would be rendered homeless. Delhi High Court dismissed all these petitions on the grounds that public purposes like DMRC, PDDP etc. are very important and serves the interests of the larger public.

There were cases where the land acquired belonged to tribal/minorities/backward classes for whom special rights have been laid down in the Constitution. In such cases, the Court dismissed these appeals as it observed that such lands can be acquired but the law must acknowledge the special status of such institutions. For instance, The **Delhi Administration** acquired land measuring about 3500 hectares for channelization of river Yamuna. The **All India Minorities Welfare Trust** petitioned in order to protect the interests of the weaker sections who were rendered homeless due to the demolition of their property for a cause that was not in the public interest. Since the project allowed for 15% of the land area to be reserved for gainful purposes such as residential, commercial, public and semi-public uses, the court summarily dismissed the petition.¹

A related case is that of the **Ishat-e-Islam Trust**² which appealed against the notification issued by the **Delhi Administration** to acquire land for the planned development of Delhi. The petitioner was a minority educational institution and major contention was that according to Article 30 (1) of the Constitution, the lands of minority institutions could not be acquired under the Act. The court determined that relief could not be granted to the petitioner on the second ground since it was merely a trust of minority educational institutions.

Another issue that came up was that land acquired had legally constructed buildings serving public purpose such as Schools, Hospitals etc. For instance, **K.D.MODEL SCHOOL & ANR**

¹ All India Minorities Welfare Trust vs. Delhi Administration, WP (C) 2190/1990, Judgment delivered on: July 13, 2006

² Ishat-e-Islam Trust vs. Delhi Administration, WP (C) 1174/1981, Date of Decision: September 19, 2006

vs Government of India In such cases the Court dismissed appeals as it observed that large scale acquisition of land intended for the purpose of developing the metropolis/capital would clearly take within its sweep the term “civic amenities” etc. Wherever large tracts of land are acquired for the purpose of developing a colony, it is but unavoidable that roads, hospitals and other civic amenities will be required.

In addition, there have been petitions for quashing of notification when the acquisition of land has already been taken by the authorities. Such petitions are dismissed by the court outright as law does not give the petitioner any right to question the notification once the possession of land has been taken by state. For instance a petition was filed by **Radhaswami Satsang Beas**³ for denotification of their land, challenging the legality of the acquisition on religious grounds, arguing that the acquisition would harm the social interest. The court however upheld the notification stating that the petitioner had no legal right of compelling the administration to denotify its lands, particularly when the award in that regard had already been made.

In a writ petition filed by **366 landowners of village Nangal** whose land was acquired by the **Union of India for the Palam Airport authority** and a rehabilitation scheme duly ordered, quashing of land acquisition was requested due to the land allotted to the petitioners being inadequate. The petitioners claimed their land in light of the fact that the Airport authority had put a part of the land acquired for rehabilitation purposes to some other use and the appellants had been allotted smaller sized plots. The court dismissed the petition, ruling that the appellants did not have an enforceable right to alternative plots and therefore cannot challenge the relief.⁴

A few more cases such as **Banwari Lal Sharma vs Union of India**⁵, **Ashok Malhotra vs Union of India**⁶, **Raheja Hospital & Psychiatric Research Institute**⁷ were dismissed by the

³ Radhaswami Satsang Beas vs. Union of India, Land Acquisition Collector, Lt. Gov. of NCT, Delhi Development Authority, WP (C) No. 2909/2002, Date of Pronouncement: May 5, 2005

⁴ Airports Authority of India vs. landowners of village Nangal Devat, CM (M) 249/2007 and CM 2529/2007, Date of decision: May 30, 2007

⁵ Banwari Lal Sharma vs. Union of India, WP (C) 2322/1994 and CM No.10806/2006, Date of Decision : September 18, 2006

⁶ Ashok Malhotra vs. Union of India, WP(C) No. 5661/2001, Date of Decision: November 18, 2005

court on either technical grounds of not filing applications under appropriate sections or delay in filing of the same.

As can be observed, the validity of land acquisition has been held up by the court in every instance and the petitions contesting it dismissed without exception. This implies that the the Expression “public purpose” is broadly defined in the land acquisition act to include all the interests of the Government .There are certain cases where land is exempted from acquisition but 1)number of such cases is very limited and 2) Even if the petitioner’s land meet the requirements, still the final decision depends on the opinion of the court. Thus the “lands exempted from acquisition” is narrowly defined and scope is limited.

CONCLUSION: Based on past trends, it may be argued that challenging the validity of the act of acquisition itself is unlikely to yield positive results. Without this rigid stance, it is likely that the state’s power to acquire land through eminent domain would be ineffective if the action was overturned frequently by the courts upon appeal. However, considering the issue from the petitioners’ perspectives, it must be noted that there continue to be a great number of cases filed each year demanding denotification of land acquired under the Act. This phenomenon does not indicate rationality on part of the petitioners, since the costly nature of the appeal process should ensure that people only apply if they reasonably expect to win. Hence, this represents a deadweight loss on the system, due to the monetary & opportunity costs that must be borne by the applicants seeking relief and the extra burden put on the legal & administrative infrastructure.

III. Cases Demanding Higher Compensation

In determining the amount of compensation to be awarded for land acquired under this Act, the Court takes the following matters into consideration:

- market value of the land;
- damage sustained by the person interested;

⁷ Raheja Hospital & Psychiatric Research Institute vs. Lt. Governor of Delhi, Land Acquisition Collector (South-West), Delhi Development Authority, Govt. of NCT of Delhi, Union of India, WP (C) No. 4837 of 2005, Judgment delivered on: July 7, 2005

- expenses if the person is compelled to change his residence or business due to acquisition of the land by the collector;
- damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration and the time of the Collector's taking possession of the land.

Any person interested to whom the award is not satisfactory can submit a written application to the court. The amount of compensation awarded by the court should not be lower than that awarded by the collector and is deemed to be final. However, it must be recognized that the assessment of the market value involves a great deal of ambiguity.

Legally, the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer, then no further proceedings are required, the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, section 18 gives him the statutory right of having the question determined by court, and the amount of compensation determined by the court binds both the owner and the Collector. In that case, it is on the amount thus determined prejudicially that the acquisition proceedings are said to be concluded.

Rajiv Gupta⁸ sought reference to section 18 of 1894 Act and demanded higher compensation against acquisition of land in Masoodpur Village for the purpose of construction of Jawaharlal Nehru University by the **Union of India**. The reference court enhanced compensation to Rs.18,000/- per bigha (Rs.18 per sq. yd.) besides compensation at the rate of Rs.10,000/- per bigha for the china clay in their land.

In some cases determination of market value posed a serious problem due to the absence of any sale of land in the given area. The court enhanced the compensation on the basis of comparison

⁸ Union of India vs. Rajiv Gupta, CM No.8866/06 in RFA 83/1987, Date of Decision: August 28, 2006

with some nearby area. For instance, Land owned by **Ram Kishen and Ved Prakash**⁹ in the revenue estate of Village Chilla Saroda Khadar was acquired by the **Union of India** in return for an award of Rs. 8000/- per bigha. In the absence of evidence of any sales transactions, the Division Bench of the High Court ruled that fair compensation must be determined by the value of similar land sold in the adjacent village of Chillar Saroda Bangar.

Sh. Kanwar Singh¹⁰ filed a case against the **Union of India** for higher compensation with regard to an earlier judgment. He had received an amount of Rs. 4300/- per bigha, which had been increased to Rs. 9000/- and had further claimed Rs. 14000/- per bigha. Since his petitions had been pending in the high court for over 14 years, he increased the claim from Rs. 14000/- to Rs. 40000/- based on the present market value of the land. The same was acknowledged and the land was evaluated at Rs. 38500/- on the date of grant of compensation, but no interest was to be provided for the time between the filing of the appeal and the filing of application as the petitioner had belatedly claimed higher compensation.

The claimants in **Shiv Dhan Singh vs. Union of India**¹¹ are owners of the land falling in the revenue estate of Village Rithala, which was notified for acquisition. The Land Acquisition Collector assessed the price of the agricultural land on irrigated and unirrigated basis at Rs.3800/- per bigha and Rs.2600/- per bigha respectively. The compensation payable to the claimants was enhanced by the reference Court to Rs.20,000/- per bigha without any classification of the land.

In many cases such as **Gajraj Singh vs. Union of India**¹², **Kali Ram, Kamla, and Murari Lal's vs Union of India**¹³, **Shiv Taj Singh vs Union of India**¹⁴ petitioners demand for higher compensations were accepted and compensation were enhanced by the court.

⁹ Ram Kishan vs. Union of India, RFA 675/1999, Judgment delivered on: July 13, 2006 ; Ved Prakash vs. UOI, RFA 676/1999, Judgment delivered on: July 13, 2006

¹⁰ Sh. Kanwar Singh vs. Union of India, RFA No. 18 / 1986, Date of Decision: May 12, 2005

¹¹ Shiv Dhan Singh vs. Union of India, RFA No. 893/87, Judgment delivered on: May 11, 2006

¹² Gajraj Singh vs. Union of India, LA App. No. 91/2005, Judgment delivered on: April 27, 2006

¹³ Kali Ram, Kamla, and Murari Lal vs. Union of India, LA App. 631/2006, LA App. 632/2006, LA App. 701/2006, Date of Decision: November 18, 2006

¹⁴ Shiv Taj Singh vs. Union of India, RFA No. 61/1996, Date of Decision: December 7, 2007

However, there were some cases where appeals were dismissed. For instance, in case **Om Parkash vs. Union of India** and **Suresh vs. Union of India**, the petition for enhanced compensation or alternative land allocation in return for land acquisition was dismissed on the principle of the statute of limitations. Since the petitioners failed to pursue their claims within the prescribed time limit and offered no justification for the delay, the court found no merit in their cases.¹⁵ Similar cases were filed by **Bale Ram**¹⁶ and **Murari Lal vs. Delhi Development Authority**¹⁷. The court dismissed the appeals on the grounds that law is considerate to the ignorance of the petitioners, but they should be able to prove their ignorance regarding the notification or the award to explain the delay in appeal.

CONCLUSION: In order to explore the issue of efficiency, we must assess whether the expected net gain from filing petitions demanding higher compensation was positive. As discussed previously, the costs of engaging in the appeal process are significant. Hence, individuals would only invest their time and money if they expect to win. In case the appeal is allowed, often, the petitioners' costs are also covered by the award determined by the court. In case of delay due to the case remaining pending in court for an extended period, the petitioner may even get interest on the difference between original and enhanced compensation amount for the interim period. However, this is only contingent upon the appeal not being rejected by the court. An analysis of cases demanding higher compensation reveals that the petition was sustained for a majority of the cases and very few cases were dismissed mainly on 'technical grounds'. Therefore, over the entire period 2005-07, 10 out of 17 pleas for enhanced compensation were accepted. If we exclude cases where the justification for dismissal of appeal was on technical grounds, 10 out of 12 petitions were held to be valid by the court. This indicates that there is a high probability of the demand for higher compensation being accepted, with 59% of petitions accepted in the former case, and a substantial 83% in the latter. Since it may be reasonably assumed that potential applicants and their legal counsels are aware of the chance of

¹⁵ Om Prakash vs. Union of India, WP (C) 7292/2003, Date of Decision: September 13, 2006 ; Suresh vs. Union of India WP (C) 20367-68/2005, Date of Decision: November 12, 2007

¹⁶ Bale Ram vs. Land Acquisition Collector, WP (C) No. 1179/2005, Date of Pronouncement: May 12, 2005

¹⁷ Murari Lal vs. Delhi Development Authority, WP (C) 18189-202/2006 and CMs 15125/2006, 15872/2006, 15873/2006, Date of Decision: May 31, 2007

an appeal being accepted, it is rational to apply for higher compensation, even at the risk to time and money invested.

With regard to the expected time that is to be invested in the process, the number of years from the date of award to the date of final judgment in past years can be taken as an indicator. Based on the judgments discussed in this study, the average number of years between the date of declaration of the award and the date of final decision was as high as 17.6 years. In fact, in 4 out of 12 cases (excluding the cases in which there was some delay on the part of the petitioners), the cases had been pending in the courts for more than 25 years. These extended time periods imply that the appellants expected an award high enough to cover the costs incurred for such a long period.

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013 replaces the more-than-century-old Land Acquisition Act of 1894 by establishing new rules for compensation as well as resettlement and rehabilitation.

The Land Acquisition Act 1894 has been criticized by some groups as being harsh due to the coercive nature of the act of acquisition, in that the state is authorized to acquire the land without paying heed to the willingness of the owner to part with it. Some groups also call act as weak and ineffective, since the procedure is cumbersome and costly, often resulting in inordinate delay in land acquisition. They argue that the determination of public purpose should be matter of executive discretion and should not be contestable at law. However, the empirical evidence seems to indicate that, in general, appeals challenging the purpose of acquisition are regarded by courts as without merit and dismissed. On the other hand, some groups argue that fair compensation is not provided- there is a considerable difference between the market value of the property and the value that the land acquisition officer pays the land owners. This criticism is indeed valid since, as we observe, compensation has been increased substantially in the majority of cases. It is also argued that the relocation and rehabilitation of land owners displaced by the actions of the act, is not followed up adequately, and that this is not covered comprehensively in the framework of the act.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act- the new Land Acquisition Act 2013 intends to remove the shortcomings of land acquisition act 1894.

The Bill specifies provisions for land acquisition as well as R&R. Some of the major changes from the current provisions are related to (a) rights of the people displaced by the acquisition; (b) method of calculating compensation; and (c) requirement of R&R for all acquisitions.

Public purpose

The Bill defines public purpose to include: defence and national security; roads, railways, highways, and ports built by government and public sector enterprises; land for the project affected people; planned development; and improvement of village or urban sites and residential purposes for the poor and landless, government administered schemes or institutions, etc. This is broadly similar to the provisions of the 1894 Act.

Process of land acquisition

In certain cases consent of 80 per cent of the project affected people is required to be obtained. These include acquisition of land for (i) use by the government for purposes other than those mentioned above, and (ii) use by public-private partnerships, and (iii) use by private companies. This Act does away with the coercive nature of the 1894 act, ensures fairness and preserves the rights of individuals.

Compensation to the land owners

Compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in case of urban areas. On this amount, a 100 per cent solatium, (i.e., extra compensation for the forcible nature of acquisition), shall be given to arrive at the final compensation figure. The 2013 Act is expected to benefit rural families in India whose primary livelihood is derived from farms. This Act is also expected to save the resources of individuals as they would not have to bear substantial costs with respect to the legal process.

Rehabilitation and Resettlement entitlements

The Bill also provides the displaced families with certain R&R entitlements. Every resettled area is to be provided with certain infrastructural facilities.

Table1: Comparison of some key features between the 1894 Act and 2013 Act

	1894 Act	2013 Act
Public Purpose	Includes several uses such as infrastructure, development and housing projects. Also includes use by companies under certain conditions.	No significant change.
Consent from affected people	No requirement.	Consent of 80 % of displaced people required in case of acquisition for private companies and public-private partnerships.
SIA	No provision.	SIA has to be undertaken in case of every acquisition.
Compensation	Based on the market value.	Market value doubled in rural areas and not in urban area.
Market Value	Based on the current use of land. Explicitly prohibits using the intended use of land while computing market value.	Higher of: (a) value specified for stamp duty, and (b) average of the top 50% by recorded price of sale of land in the vicinity.
Solatium	30 %	100 %
R&R	No provision for R&R.	R&R necessary for all affected families. Minimum R&R entitlements to be provided to each family.

Source : www.prsindia.org

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Empirical analysis suggest that while the statutory power of eminent domain is an effective instrument that ensures smooth implementation of projects of public interest, it suffers from serious shortcomings with regards to fair compensation and rehabilitation of affected families. The recent introduction of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 that aims at providing fair compensation to farmers, obtaining consent of affected families, and mandating resettlement and rehabilitation of affected families will make the process more efficient, fairer and transparent.

References:

The judgment texts for the cases are sourced from the website of the Delhi High Court <<http://delhicourts.nic.in/monthjud.htm>>

Aggarwala, Om Prakash (1971) Compulsory acquisition of land in India: being an exhaustive, critical, and analytical commentary on the Acquisition of land act (I of 1894) and allied acts, Volume 1.

Mulla, Anand Narain (1971) Report of the Land Acquisition Review Committee on Land Acquisition Act, 1894

Row, Sanjiva (1907) The Land Acquisition Act, 1894. (Act I of 1894) *Harvard University*

Vasvani ,Kalpana, Dhagamwar, Vasudha &Thukral, Enakshi Ganguly (1990) The Land Acquisition Act and you , *University of Michigan*

Web Page <http://en.wikipedia.org/wiki/Land_Acquisition_Act,_1894>

WebPage<http://en.wikipedia.org/wiki/The_Right_to_Fair_Compensation_and_Transparency_in_Land_Acquisition,_Rehabilitation_and_Resettlement_Act,_2013>

WebPage<<http://www.prsindia.org/billtrack/the-land-acquisition-rehabilitation-and-resettlement-bill-2011-1978/>>