

Comparative Analysis of Land Acquisition and Rehabilitation Policies Across India – A Comparative Study about Maharashtra and Uttara Pradesh

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Abstract: *After independence in India, the age-old Land acquisition Act 1894 was outdated and not fit in today's time. Because of which different state government departments are adopting reformed or amended acts for acquisition of land. These notified Acts helped to ignore the old acquisition problems and lead to faster development and growth of few states in India. Development word has ultimately improved the economy of the Nation, but on the other side it has displaced people on large scale and unemployed them because of some compensation amount offered to them for, leaving their asset and livelihood, which is everything for them. To understand a development and Land Acquisition is an essential aspect. Both are related, to each other. Element of land is an essential need for development, that is why, the huge acquisition of land held in India and its States. It has not clearly defined the Public Purpose and displacement of people. It also does not elaborate about compensation, rehabilitation, and replacement of the people, public consent and negotiations, Stakeholder participation, and land valuation methods. Now a day's people are not emotionally thinking about land, but their livelihood concern forces them, not to leave the land. In this paper various timely land acquisition acts implemented by states of Maharashtra and Uttar Pradesh are studied, how they addressed the different land acquisition issues. In India, Development versus displacement is still an issue for Government, to solving land issues.*

1. LAND ACQUISITION ACTS & POLICIES IN MAHARASHTRA

I. Land Acquisition Act 1894 and its provisions

Among the fundamental rights given by our constitution, one of it is the right to hold, enjoy and dispose of property. Government for Public Purpose however can acquire individual property and land, provided compensation is paid.

The Land Acquisition Act, 1894 is one of the oldest Acts. This Act provides for compulsory acquisition of lands, without any encumbrances and hence the Land Acquisition officers are required to follow the procedure prescribed therein very carefully. Moreover, the determination of a reasonable

compensation for the property is a very intricate job, which requires knowledge and experience.

Part IV, (Section 29 and 30) provides for apportionment of compensation; Part-V, (Section 31 to 34) provides for payment of compensation or depositing the same in court and payment of interest; Part-IV (Section 35 to 37) provides, for procedure with regard to, temporary occupation of land, Part-VII (Section 38 to 44) lays down the procedure, when lands are to be acquired for companies; and the last Part VIII (Section 45 to 55), provides for miscellaneous provisions, including those of withdrawing notified lands, from acquisition under Section 48, etc.

There are the general provisions of the Act. However, the Government of India, in 1984, have made major amendments in the main Act of 1894, by enacting the Land Acquisition (Amendment) Act 1984

The major variations in the provisions of the Amended Act in 1984, from those in the Principal Act of 1894, in brief are as under:

1. Specific time limits are newly prescribed, according to which, the notification under Section 6 is required to be published within 1 year from the date of publication of notification under Section 4 of the Act, and the Award is required to be declared within 2 years from the date of publication of notification under Section 6 of the Act.
2. The procedure for publishing the notification is modified. Now it is necessary to publish the notification in Government Gazette, in two Regional Newspapers and on chawdi concerned, and the last date of amongst such publications, is taken as the statutory date of publication of notification.

3. The items for compensation is modified. In Principal Act, the compensation amount comprised only the Market value and 15 per cent solarium. In the amended Act, the same comprises of (i) the Market value; (ii) solarium at 30 per cent of the market value; and (iii) an additional amount worked out at the rate of 12% of Market value, per annum for the period. from the date of section 4 notification till the date of Award, or the date of section 16, that is , taking possession of lands, before declaring the Award (by applying urgency clause) whichever is earlier.
4. The rate of interest for delayed payment has been increased. from 4% to 9% for the first year and 15% for the remaining period.
5. In case the possession of lands is to be taken, under Sec.17 by applying urgency clause, then 80 per cent of the probable compensation amount has to be paid to the landowners, at the time of taking such possession.
6. In the principal Act, the benefits of the decision of Court, on reference made under Section 18 of the Act., used to be given, only when, the landowners who have gone to the Court. However in the amended provisions under Section 28-A provides that, such benefits would be payable also to the other landowners, covered under the same notification, if they make an application to the Collector within the prescribed time.

As stated earlier, lands can be acquired, through the other Acts, which are discussed, as follows:

II. The Maharashtra Highways Act (LV of 1955)

An Act to provide for the restriction of ribbon development along highways, for the prevention and removal of encroachment thereon, for the construction, maintenance and development of Highways, for the levy of betterment charges and for certain other matters.

III. Maharashtra Industrial Development Act 1961

This Act basically provides for making special provisions for securing the orderly establishments of industrial areas and Industrial Estates in the States, and to assist generally, in the organization thereof and for that purpose to establish an Industrial Corporation and for necessary related matters.

IV. The Maharashtra Regional & Town Planning Act, 1966.

This Act provides for planning the development and use of land (i) in Regions by way of preparing the Regional Plans for the Regions and (ii) in Municipal/Corporation Areas by way of preparing the Development Plans. The Act also provides for

compulsory acquisition of land required for Public Purposes. Provisions about acquisition of lands are made, in Chapter VII of the Act in Section 125 to Section 129.

Under Section 125, it is laid down that, any land required, reserved or designated in the Regional Plan, Development Plan or Town Planning Scheme for the Public Purpose, within the meaning of the Land Acquisition Act, 1984. Under Section 126, the Planning Authority can make an application to the State Government, for acquiring lands under the L.A. Act, which lands are required or reserved for the Public Purpose in any Plan or Scheme under the M.R. and T.P. Act, once the Draft of such plan or scheme is published.

V. Maharashtra Housing and Area Development Act, 1976:

Basically this Act, consolidated and amends the various laws relating to Housing, repairing, and reconstructing dangerous buildings and carrying out improvements work in Slum areas, so as to co-ordinate the Housing programme, with an orderly development of urban areas in the State. Provisions in regard, to acquisition of lands are made in Chapter V of the Act viz., in Section 41 to 50 therein.

VI. Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971

This Act aims to make better provisions of improvement and clearance of slum areas and their re-development. Provisions with regard to acquisition of the land, are made in the Chapter V of the Act, viz. Section 14 to 21. Whenever the Competent Authority, under this Act, represents to the State Government, its necessity of certain lands within/adjoining surrounding the slum area for development etc., the State Government, has to follow the procedure, as laid down in the MHADA. Act, with regard to serving of notice in the Official Gazette to the effect that the State Government has decided to acquire the land and under Section 14(2) the lands premises vest absolutely in the State Government free from all encumbrances on and from the date of publication of notice under Section 14(1). The possession of the land is taken, under Section 15, after serving a notice on the owner/occupier to surrender/deliver possession to the Collector within 30 days of the service of notice. If the same is not given peacefully, it is taken by force. The Collector, after taking such possession of the lands makes it available to the Competent Authority under the Act. The provisions in the Act, as regard to acquisition of lands, are generally similar to those in the Maharashtra Housing and Area Development Act, 1976.

VII. The Bombay Metropolitan Region Development Authority Act, 1974.

This Act generally aims at planning and guiding the development in the area of the Bombay Metropolitan Region and undertaking projects for implementing the proposals of

such plans. Provisions with regard to acquisition of lands, are laid down in Chapter VIII of the Act, viz. Section 32 to 41.

Wherever lands are required for the purpose of Bombay Metropolitan Region. Development Authority, the State Government publishes a notice in the Official Gazette and serves in prescribed manner calling upon the land owner/interested persons to show cause, why the land should not be acquired, and after considering the cause, the State Government assess suitable orders and publishes a notification under Section 41(i) in Official Gazette to the effect that the State Government has decided to acquire the land. On and from the date of publication of such notice in the Official Gazette the lands vest absolutely in the State Government free from all encumbrances.

The possession of the land, is taken under Section 33 after serving a notice on the owner/occupier to surrender/deliver possession to the Collector, within 30 days of the service of notice. If the same is not given peacefully, the possession is taken by force. After taking the possession, the land is made available to the Authority under the act. Every person interested in the land is entitled to receive the amount under Section 34 of the Act.

VIII. The Urban Land (Ceiling & Regulation) Act, 1976.

This Act enacted by Central Government and which came into force w.e.f. 17/2/1976, basically provides for the imposition of a ceiling on vacant land in excess of the ceiling limit, to regulate construction of buildings on such land and for matters connected therewith, with a view to preventing concentration of urban land in the hands of few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land, in urban agglomerations, to subzero the common good.

This Act, is made applicable in the Maharashtra State, to the lands in the urban agglomeration of the towns of Greater Bombay (in Category-A i.e. up to 8 kms. From the Periphery area of Municipal Corporation); Pune, Sholapur, Nagpur and Ulhasnagar (peripheral area upto 5 kms.); and Thane, Nasik, Kolhapur and Sangli (peripheral area up to 1 km.). In those areas, as per Section 3 except as otherwise provided in this Act, no person is entitled to hold any vacant land in excess of the ceiling limits, which as provided in Section 4, is 500 sq.m. in Bombay Urban Agglomeration, 1000, sq.m. in Pune, Urban Agglomeration., 1500 sq.m. in Thane, Nasik Sangli and Kolhapur, Urban Agglomeration. The vacant land is defined, in the Section 2(q) as the land being mainly used for the purpose of agriculture in an urban agglomeration, but does not include:

- Land on which construction is not permissible under building regulation in force;

- The land under buildings already constructed or under construction and the land appurtenant regulation thereto, where there are buildings and
- In an area where there are no buildings; regulations, the land occupied by any building which has been constructed before, or is being constructed on.
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra Amendment) Act, 2018

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is adopted with about 11 amendments made in its application to the State of Maharashtra on 26th April, 2018.

IX. The amendments are as follows:

1. **Short title.** - This Act may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra Amendment) Act, 2018.
2. **Amendment of section 2 of Act 30 of 2013.** - In section 2 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in its application to the State of Maharashtra (hereinafter referred to as "the principal Act"), in subsection (2), after the second proviso, the following proviso shall be added, namely: "Provided also that, the acquisition of land for the projects listed in section 10-A and the purposes specified therein, shall be exempted from the provisions of the first proviso to this subsection."

List of Maharashtra Enactments Regulating Land Acquisition in Maharashtra State.

1. The Maharashtra Highways Act (LV of 1955).
 2. The Maharashtra Industrial Development Act, 1961 (Mah. III of 1962).
 3. The Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966).
 4. The Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977)."
- 2. LAND ACQUISITION ACTS AND POLICIES IN UTTAR PRADESH (U.P)**

The State is dependent on agriculture, as its primary occupation and it has maximum GDP contributed to the State by agriculture. People dependency on the agricultural activities, directly and indirectly are high in the State, especially where

growth and production of agriculture are high in the western part of U.P. This western part of UP., is also known economically forward region, the overall Uttar Pradesh (State Profile Report, 2011). Uttar Pradesh has enormous potential to develop faster, and in the all India ranking, but Uttar Pradesh is still a backward State. It is counted, in BIMARU States (an abbreviation for Bihar, Madhya Pradesh, Rajasthan, and Uttar Pradesh – was coined in 1980 by the demographer, Ashish Bose in a paper he wrote in the early 1980s.) of India. Education, health and per person income is very low in Uttar Pradesh (HDRUP, 2008). Uttar Pradesh Government has taken a step into improving the situation in the economic area and launched several policies to develop it faster.

Infrastructural and Industrial Policy 2012, for bringing the Developmental Model in the State. Uttar Pradesh Government has promoted "Development Agenda" for integrated development of the State. This was the paradigm shift for a success of the State. That has provided help, in generating more industries and huge scale infrastructural changes in the State. Uttar Pradesh Government has announced

During that time, different States have started applying Land Acquisition Bill 2011, along with State land law bills. In Uttar Pradesh Government too, land laws, have been applied / amended.

- I. **Karar Niyamawali:** This law was setup in regard of any land misdeal or forcefully acquired land by any stakeholder. This has given fair chance to the sellers who cannot be forced, or through a reported misconduct, (this is the Uttar Pradesh State Government document for land dealing, especially for misconduct with farmers).
- II. Land Acquisition Act 2013 has applied in all over India to deal with land problems (this law known as RTFCLARR Act 2013 and applied all over India exempted Jammu & Kashmir).
- III. Infrastructural and Industrial Investment Policy 2012 (this is Uttar Pradesh government policy document, which gives openness in industrial investment and support to the industries in the State).
- IV. MSME policy this policy offered through government of India for promoting Small and Medium Scale Industries in the State; this is an initiative by the Prime Minister of India, to encourage, small and medium scale industries in all the States}.

List of Enactments Regulating Land Acquisition in the State of Uttar Pradesh

- I. ***The Uttar Pradesh Urban Planning and Development Act, 1973;***

This Act intends for the development of certain areas of Uttar Pradesh, where, the problems of Town Planning and Urban Development need to be tackled resolutely. As well as the existing local bodies and other authorities in spite of their best efforts have not been able to cope up with these problems to the desired extent.

There are Provisions for Compulsory acquisition of land in CHAPTER VI: Acquisition and Disposal of Land under S.No. 17:

II. *Karar Niyamawali policy, 1997*

In this policy Uttar Pradesh government has specified about a forceful acquisition of land held in the State, and to mitigate hardships, what actions Government would take against them. Land Acquisition Act 1894. It has given under section 55 and sub section 2 of section 11 that all the details of land law protection to protecting land at the State level. This law is known as the Uttar Pradesh land determination of compensation and declaration of award by agreement rules 1997. It has become the important document to declarations Land Acquisition rules and laws given in the first published gazetteer and it has come into force from dated 16. September 1997.

III. *The Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997, Amended in 2012:*

The compensation of land would be fixed by mutual consent with the landowner for determination of compensation and declaration of award in accordance with agreement.

IV. *Uttar Pradesh Rehabilitation & Resettlement Policy 2010*

This policy recognizes that, involuntary resettlement dismantles a previous production system and a way of life, all such rehabilitation programs will adopt a developmental approach rather than the well fair approach. The guidelines details out the assistance in re-establishing the homes and livelihoods of the Project Affected Persons (PAP) during the course of projects. The broad principles of resettlement and rehabilitation policy are:

- a. All negative impacts including displacement should be avoided or minimized wherever feasible by exploring all viable alternative project designs
- b. Where negative impacts are unavoidable, efforts should be made either to improve the standard of living of the affected persons or at least assist them in restoring their previous standard of living at no cost to them.

- c. Ensure people's participation during the course of the project cycle.
- d. Effort should be made towards the enhancement of the positive impact of the projects.

V. *Urban Land (Ceiling And Regulation) Act, 1976*

In UP, the implementation and Repeal is the ability of the state to acquire surplus land: In the Initial declaration of UP Govt surplus land was 1,16,168 ha, where Meerut registered the highest share of land along with Kanpur and Varanasi, the three cities constituted close to 60 per cent of the total area. The UP Government, owing to various reasons, was able to bring within its control only a small proportion of this declared surplus. Land physically acquired under section 10(6) free from all encumbrances accounted for only 9 per cent of that under section 6. Even after notification, only 21 per cent of land remained completely under the control of the State undisputed.

VI. *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Uttar Pradesh Amendment) Act, 2015*

The 2.00 (two) should be the factor by which the market value is to be multiplied in the case of any land to be acquired in the rural areas of Uttar Pradesh, notwithstanding any distance of project from urban area.

3. CONCLUSIONS

In case of Maharashtra, it would thus be seen that, there are different procedures and different methods of determining the compensation amounts of acquisition in different Acts. It is, in all fairness to the public and landowners, necessary that, there is uniformity in these matters. Government of India, after enacting the Land Acquisition (Amendment) Act, 1984 have instructed all the State Government to modify the related Sate Acts to bring such uniformity. It is understood that, the matter of land acquisition is receiving attention at policy level.

The Land Acquisition (Amendment) Act, 1984 provides both for speedily completing the Land Acquisition Proceeding as also giving a very reasonable amount in lieu of the lands acquired. The success of the Act depends now entirely on the efficiently, zeal and earnestness of the officers who work as the Land Acquisition Officers, it is hoped that, these officers would make the acquisition in a smooth manner.

Rehabilitation and resettlement (R&R): In case of Maharashtra, it is seen that this variable has been reflected in various Acts made for Land Acquisition such as The Maharashtra Regional & Town Planning Act, 1966, The Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971 and Maharashtra Housing and Area Development Act, 1976. However, in the case of U.P this

provision is seen only in the recent acts proposed after 2010 such as, Uttar Pradesh Rehabilitation & Resettlement Policy 2010 and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Uttar Pradesh Amendment) Act, 2015.

Public consent and negotiations: In case of Maharashtra, it is seen that, this variable has been reflected in various Acts, made for Land Acquisition such as The Maharashtra Regional & Town Planning Act, 1966, The Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971 and Maharashtra Housing and Area Development Act, 1976. Further, this variable is continued and reflected in the subsequent acts made in Maharashtra such as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra Amendment) Act, 2018.

In case of UP, the negotiations variable is reflected, with enactment of The Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997. The public consent variable is not reflecting and seems to be implemented with the provisions of The Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997, where protections to farmers in Land Acquisition was included, in the 2012 amended Act.

Stakeholder participation: In case of Maharashtra, except in case of CIDCO, the New Town Development Authority (NTDA) established under MR&TP Act 1966, this variable of stakeholder participation, is not given any emphasis. However, through the LARR Act 2013, along with subsequent amendments made by enacting, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra Amendment) Act, 2018, this aspect is well taken care and reflected.

In case of U.P, this variable of stakeholder participation, is not reflected, in the Acts made until 2011. However after subsequent Acts, made this provision is seen reflecting in the LARR 2013 as well as the adopted model by Government of U.P, with an amendment for Compensation Factor.

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