



# The Law of Eminent Domain and Forced Displacement in India

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## Abstract

India, in the new millennium, found its place in the ranks of rapidly developing countries. The primary model of development has long been the 'Western' one, where the emphasis is on projects including the construction of factories, dams, mining, weapon-testing grounds and the like. These projects require large areas of land, which India began acquiring under the umbrella of the Land Acquisition Act of 1894. As land is finite, an increase in the number of such development projects led to large-scale forced evictions of vulnerable populations, with the law relying on the principle of 'eminent domain'. This principle gives the right to the central and state governments to take away private property for 'public purposes'. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 repealed the Act of 1894 and ushered in a new era of hope for instances of development-induced displacement. However, the central government diluted this legislation by exempting certain categories of projects from the consent and social impact assessment (SIA) requirement. In the absence of specific international and national protective mechanisms, the human rights of development-induced displaced persons have suffered for generations.

**Keywords:** Development, Human Rights, Internally displaced persons, Land Acquisition Act, 1894, Social Impact Assessment

## 1. Introduction

The internal displacement of the civilian population and the protection of their human rights is one of the most pertinent

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aspects of the present-day world. The issue of internal displacement as a global problem has gained recognition with the increase in their numbers every year. The Global Report on Internal Displacement, 2023,<sup>1</sup> by the Internal Displacement Monitoring Centre (IDMC), has recorded 71.1 million people displaced in 110 countries due to conflicts and natural disasters by the end of the year 2022. Every year, India records one of the highest numbers of displacements as a consequence of natural disasters, primarily floods.<sup>2</sup> The report of 2023 on India's country profile illustrates that 1.8 million people have been displaced in the country within the period of 2008 to 2022 as a result of conflicts and natural disasters.<sup>3</sup> Although unfortunate, these figures are usually quantifiable and easily recognized by the government. However, there is another section of people who face similar displacement and yet face discrimination in acknowledgement. They are the people displaced as a result of development projects initiated by the government of India.

It has been recorded that millions of people are forcibly displaced by development projects every year.<sup>4</sup> These projects are virtually limitless and can range from a small-scale mining project to a hydropower plant construction, a highway, or a railway; they can be public or private, well-organized or hurried.<sup>5</sup> This model of development generated a rise in

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<sup>1</sup> 2023 *Global Report On Internal Displacement*, INTERNAL DISPLACEMENT MONITORING CENTRE, (May 11, 2023) <https://www.internal-displacement.org/global-report/grid2023/>.

<sup>2</sup> COUNTRY PROFILE: INDIA, INTERNAL DISPLACEMENT MONITORING CENTRE, <https://www.internal-displacement.org/countries/india> (last visited May 15, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> AJMAL HUSSAIN, *DEVELOPMENT-INDUCED DISPLACEMENT: ISSUES AND IMPLICATIONS 3* (The Icfai University Press 2008).

<sup>5</sup> IRGE SATIROGLU & NARAE CHOI, *DEVELOPMENT-INDUCED DISPLACEMENT AND RESETTLEMENT: NEW PERSPECTIVES ON PERSISTING PROBLEMS 2* (Routledge, 2015).

displacement as it was off-shoot.<sup>6</sup> Historically, it has been found that the people who had been forced to sacrifice their lands and homes for the sake of development were not in the picture when it came to the distribution of the benefits of such projects.<sup>7</sup> The need for better compensation, rehabilitation and resettlement policies became the need of the hour.

The right of acquisition of land for public purpose in India was initially provided for, under Part II of the erstwhile Land Acquisition Act of 1894.<sup>8</sup> The archaic law had to pave the way for the current legislation<sup>9</sup> due to several factors. The need was felt to be in consonance with international standards as internal displacement has emerged to be both an issue for development and human rights.

The right to development is a collective right of every society, but there is also an individual's right not to be deprived of one's land and home. The conundrum of development, displacement and human rights has paved the way for several questions in India.

## 2. Meaning of Internal Displacement

The umbrella term of 'internally displaced persons' (IDPs) is used to denote people who were forced to leave their homes as a consequence of conflicts, natural disasters or environmental degradation, other human rights violations, or development projects.<sup>10</sup> The expression 'internal displacement' is of recent

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<sup>6</sup> WALTER FERNANDES & ENAKSHI GANGULY THUKRAL, DEVELOPMENT, DISPLACEMENT AND REHABILITATION: ISSUES FOR A NATIONAL DEBATE 2 (Indian Social Institute, New Delhi, 1989).

<sup>7</sup> *Supra* n. 6, pg no.39.

<sup>8</sup> The Land Acquisition Act, 1894, § 3(f), No.1, Acts of Parliament, 1894 (as modified up to the 1<sup>st</sup> September 1985) (India).

<sup>9</sup> The Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013, No.30, Acts of Parliament, 2013 (India).

<sup>10</sup> SATIROGLU & CHOI, *supra* note 5.

origin. Its earliest usage can be traced back to a General Assembly Resolution of 1972 by the United Nations Organization in the context of Sudan.<sup>11</sup> Due to the lack of an internationally accepted definition of the term 'internally displaced persons', a working definition was put forth in 1992 by the Representative of the United Nations Secretary-General, which described them as,

Persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violation of human rights or natural or man-made disaster, and who are within the territory of their own country.<sup>12</sup>

This working definition was revised in 1998, and the Guiding Principles on Internal Displacement has now defined 'internally displaced persons' as follows:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized state border.<sup>13</sup>

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<sup>11</sup>*Assistance to Sudanese Refugees Returning from Abroad*, GA RES 57/2958, GAOR, UN DOC A/RES/57/2958 (Dec. 12, 1972), <https://www.unhcr.org/in/publications/assistance-sudanese-refugees-returning-abroad>.

<sup>12</sup>*Analytical Report of the Secretary General on Internally Displaced Persons*, UN DOC E/CN.4/1992/23 (Feb. 14, 1992), <https://digitallibrary.un.org/record/137260?ln=en&v=pdf>.

<sup>13</sup>*Report of the Representative of the Secretary General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum, Guiding Principles on Internal Displacement*, UN DOC E/CN.4/1998/53/ADD.2 (Feb. 11, 1998), <https://digitallibrary.un.org/record/251017?ln=en&v=pdf>.

The Guiding Principles seek to provide protection to all internally displaced persons and deal with both the causes and consequences of displacement. This description of internally displaced persons is of a non-legal nature since it is provided in the introduction of the document rather than in the main body and is also not universally accepted by legal scholars.<sup>14</sup> A common misconception may occur as to the identity of a 'refugee' and an 'internally displaced person'. Both are consequences of forced displacement, but the primary difference lies in the former crossing an international border, unlike the latter.<sup>15</sup>

The nature, frequency and range of the causes of internal displacement in India are varied. Primarily, they have been attributed to the following four factors by academician and political analyst Mahendra P. Lama:<sup>16</sup>

- (i) Political causes, including secessionist movements
- (ii) Identity-based autonomy movement
- (iii) Localized violence
- (iv) Environmental and development-induced displacement

The seven northeast sister states of India have witnessed quite a few major armed conflicts. The Naga Movement, primarily helmed by the National Socialist Council of Nagaland (NSCN)

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<sup>14</sup>*Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, BROOKINGS UNIVERSITY 11 (2008), <https://www.unhcr.org/50f955599.pdf>.

<sup>15</sup>M. Ashraf Haidari, *Need to end discrepancy between Refugees and IDPs*, OBSERVER RESEARCH FOUNDATION, (Nov. 5, 2016), <https://www.orfonline.org/expert-speak/end-discrepancy-between-refugees-and-idps/>.

<sup>16</sup>Mahendra P. Lama, *Internal displacement in India: causes, protection and dilemmas*, 8 FORCED MIG. REV. 24, 24-26 (2000).

for sovereignty and the movement in Mizoram by the Mizo National Front stands out.<sup>17</sup>

Identity-based autonomy movements, such as the clamour for Bodoland in Assam, the Khalistani Movement in Punjab and Gorkhaland, have also led to violence and displacement. One of the most gruesome strife happened in the Bodo Autonomous Council area of western Assam in 2012, leading to the death of nearly 100 persons and the displacement of thousands.<sup>18</sup>

In states like Bihar and Uttar Pradesh, caste disputes have contributed to internal displacement, while religious fundamentalism gave rise to urban riots in Bombay and Aligarh.<sup>19</sup> India has invested in industrial projects since independence to achieve rapid economic growth. It includes dams, mines, power plants, roads, new cities and the like, which have been possible only through the acquisition of large areas of land and subsequent displacement of people residing there. According to the figures provided by the Indian Social Institute, there were 21.3 million development-induced displaced persons in India over a period of 50 years.<sup>20</sup> The above four causes of internal displacement in India can be clearly identified. However, displacement through development deserves special attention in the current scheme of the country's growth.

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<sup>17</sup> Supra n.16

<sup>18</sup> Ashmita Bhattacharya, *Bodo's demand for creation of Bodoland*, LAND CONFLICTS WATCH (Nov.10, 2023,4:35PM), <https://www.landconflictwatch.org/conflicts/bodos-demand-for-creation-of-bodoland>.

<sup>19</sup> LAMA, *supra* note 17, at 25.

<sup>20</sup> Displacement and Rehabilitation of People Due to Development Projects, LOK SABHA SECRETARIAT (No.30/RN/Ref./December/2013), [http://164.100.47.193/Refinput/New\\_Reference\\_Notes/English/DisplacementandRehabilitation.pdf](http://164.100.47.193/Refinput/New_Reference_Notes/English/DisplacementandRehabilitation.pdf) (last visited May 15, 2024).

The terms 'development' and 'displacement' have become synonymous in the modern world. After over a century of colonial occupation, when the Third World countries attained political independence, their governments assumed that the Western model of development was the only correct method. Likewise, India also believed that her economic progress would be validated only if the Gross National Product (GNP) continued to rise.<sup>21</sup> Therefore, extensive attention was given to sophisticated technology and heavy capital investment. As opposed to an economy focused on utilizing the labour at hand adequately, capital investment became the norm, and it led to further marginalization of the weaker sections of the society.<sup>22</sup>

A few countries like Angola have enacted their own laws to deal with issues of internal displacement.<sup>23</sup> However, there is no international legal framework to support the same. The rising numbers in internal displacement<sup>24</sup> raises numerous questions about its causes and the protection available. The focal point here is development-induced displacement in India; the primary query would be about the law(s) that enable or authorize the construction of development projects in the country through land acquisition.

### 3. Historical background of the Law of Eminent Domain in India

The history of land regulation in India is deeply entrenched with the colonial rule of the East India Company and, subsequently, the British Crown.<sup>25</sup> The law of Eminent

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<sup>21</sup>FERNANDES, *supra* note 6, at 3.

<sup>22</sup>*Id.*

<sup>23</sup>Chapter -1, *Assessing National Approaches to Internal Displacement: Findings from 15 countries, From Responsibility to Response*, BROOKINGS UNIVERSITY, (2011), [https://www.brookings.edu/wp-content/uploads/2016/06/From-Responsibility-to-Response-Nov-2011\\_ch1.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/From-Responsibility-to-Response-Nov-2011_ch1.pdf).

<sup>24</sup>*Supra* note 1.

<sup>25</sup>Prabhat Kumar, *History of Eminent Domain in India*, 6(2) INT'L J.L. 13, 10-13 (2020).

Domain is rooted in the principle that a government, whether state, provincial or national, has the power to compulsorily acquire private property for a larger public use or interest.<sup>26</sup> The interest of the owners of such land and their willingness to part with the same are not at par as long as compensation is paid. Although the term finds its origin in the legal treatise 'On the Law of War and Peace' by Dutch jurist Hugo Grotius in 1625,<sup>27</sup> the application in federal law was first witnessed in the case of *Kohl v. United States*<sup>28</sup> in 1875. In England and Wales, this concept is known as 'compulsory purchase' wherein purchase rights are granted by the Parliament to acquire land of private owners with or without their consent, along with payment of compensation.<sup>29</sup>

In India, the Land Acquisition Act of 1894 was the primary legislation till the year 2013 that empowered the Government of India to acquire any private land for 'public purpose'. The Act relied on the principle of 'individual ownership' of land and considered it as a commodity, with the State as the ultimate owner.<sup>30</sup> The premise of this legislation was based on the colonial interest of the British Empire and gradually deemed too narrow to suit the purpose(s) of a democratic India.<sup>31</sup>

One of the leading problems of the Act was its method of fixing the monetary compensation, which was calculated on the basis of the market value of the land on the day of

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<sup>26</sup>*Id.*

<sup>27</sup>Buckner F. Melton JR., *Eminent Domain, "Public Use" and the Conundrum of Original Intent*, 36(1) NAT'L R.J. 85, 59-85 (1996).

<sup>28</sup>*Kohl v. United States*, 91 U.S. 367 (1875).

<sup>29</sup>Justice Megarry, *The Public Control of Land in England*, 6(4) R. P'TY P. & T.J. 494, 493-503 (1971).

<sup>30</sup>Namita Wahi, *Understanding Land Conflicts in India*, in Pranab Ranjan Choudhury & A. Narayana (eds.), *Land in India: Issues and Debates* 15-19 (India Land and Development Conference, 2020).

<sup>31</sup>Usha Ramanathan, *Displacement and the Law*, 31(24) E&PW, 1491, 1486-1491 (1996).



preliminary notification and left no scope for consideration to rising value(s) of the land in future.<sup>32</sup> The definition of ‘public purpose’ was also extremely wide wherein, the Government could acquire land for the provision of village-sites, town or rural planning, any projects for planned development, land for a corporation owned or controlled by the Government, any education, housing, health or slum clearance scheme, any other scheme of development and premises, or, building for a public office.<sup>33</sup> But ultimately it was the Collector who would have to decide what constitutes ‘public purpose’. It provided no scope for a dialogue or discussion with the people who would be affected or, displaced by the government’s project(s). The only resort for people was to file an objection within 30 days of preliminary notification.<sup>34</sup> There was also a grant of excessive discretionary power to the Collector(s) who had the last say in a matter of dispute with regard to the amount for payment of necessary damage in a property acquired.<sup>35</sup> Further, there was a lack of an independent judicial body to determine the amount of compensation and hear objections, if any.<sup>36</sup> However, the most problematic omission in the legislation was the inadequacy of consideration for the rehabilitation and resettlement of the people who would be displaced. Their land and, sometimes, livelihood were reduced to mere monetary compensation without any specific time limit for receiving it.<sup>37</sup>

India went on to acquire massive areas of land under this legislation for nearly seven decades after independence in 1947 and, consequently, displaced millions of its people.<sup>38</sup> This

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<sup>32</sup>ACT OF 1894, *Supra* note 8, at § 4-12.

<sup>33</sup>*Id.* at § 3(f).

<sup>34</sup> *Supra* note 8 at § 5-A.

<sup>35</sup> *Supra* note 8 at § 5.

<sup>36</sup> The Land Acquisition Act, 1894, § 5, No.1, Acts of Parliament, 1894 (as modified up to the 1<sup>st</sup> September 1985) (India).

<sup>37</sup> *Supra* note 36

<sup>38</sup>*Supra* note 3.

brings the question of what provision for the right to private property the Indian law, particularly the Constitution of India, contains to protect its citizens.

### 3.1. The Right to Property and Constitution of India

The Constitution of India originally contained another fundamental right under Article 19(1)(f), which was to acquire, hold and dispose off property by any citizen.<sup>39</sup> Further, Article 31<sup>40</sup> safeguarded a person from being deprived of one's right to property, the right being absolute and undeniable under any circumstances. It was enforceable under Articles 32 and 226 of the Constitution, similar to the other fundamental rights.<sup>41</sup> Unfortunately, there was a clash between this right and provisions in legislations like the Requisitioning and Acquisition of Immovable Property Act of 1952<sup>42</sup> and the Defence of India Act of 1962.<sup>43</sup> They required requisition and if necessary, acquisition of private property if they are deemed necessary for any public purpose or specific defence purpose by the central government, respectively. Both the laws provide for compensation to the people affected.

Several times, the issue of 'right to property' versus acquisition for 'public purpose' came up before the Supreme Court of India. It may be traced back to the year 1950 in the case of *A.K. Gopalan v. State of Madras*,<sup>44</sup> which upheld the constitutionality of the Madras Maintenance of Public Order Act, 1949, validating the state's power to take possession

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<sup>39</sup> INDIA CONST. art. 19(1)(f), *repealed by* The Constitution (Forty-Fourth Amendment) Act, 1978.

<sup>40</sup> INDIA CONST. art.31, *repealed by* The Constitution (Forty-Fourth Amendment) Act, 1978.

<sup>41</sup> INDIA CONST. art. 32 & art. 226.

<sup>42</sup> The Requisitioning and Acquisition of Immovable Property Act, 1952, No.30, Acts of Parliament, 1952 (India).

<sup>43</sup> The Defence of India Act, 1962, § 29, § 36, No.51, Acts of Parliament, 1962 (India).

<sup>44</sup> AIR 1950 SC 27.

of any property for public order. Thereafter, the Court took a historic decision in *Keshavananda Bharati's case*<sup>45</sup> and established the 'basic structure doctrine'. The Court acknowledged the power of the Parliament to amend the Constitution of India under Article 368 but prohibited the amendment of such elements of the Constitution that formed its 'basic structure', which included the fundamental rights. Subsequently, the Constitution (44<sup>th</sup> Amendment) Act, 1978 was enacted, which abolished both Articles 19(1)(f) and 31. A new version of the right to property was created and inserted as Article 300-A, which states that 'no person shall be deprived of his property except by authority of law'.<sup>46</sup> It converted the right to property from a fundamental right to a constitutional right. The clash between the 'right to property' and acquisition for 'public purpose' continued before various courts of law in the country.

The *Minerva Mills case*<sup>47</sup> upheld the amendment abolishing the fundamental right to property and emphasized that the same continued to be a constitutional right. In the case of *K.T. Plantation Pvt. Ltd. v. State of Karnataka*,<sup>48</sup> the Court held that "public purpose is a pre-condition for deprivation of a person from his property and the right to claim compensation is inbuilt in the Article." Therefore, any acquisition has to be for public welfare and just, fair and reasonable.

In a long-drawn struggle from the first acquisition of property in 1967-68, a landmark judgement<sup>49</sup> was given in appellant Vidaya Devi's case on January 8, 2020. It was held by the Supreme Court that right to own private property is a

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<sup>45</sup> *Keshavananda Bharati v. State of Kerala* (AIR 1973 SC 1461).

<sup>46</sup> INDIA CONST. art. 300-A, *inserted by* The Constitution (Forty-Fourth Amendment) Act, 1978.

<sup>47</sup> *Minerva Mills v. Union of India* (AIR 1980 SC 1789).

<sup>48</sup> AIR 2011 SC 3430.

<sup>49</sup> AIR 2020 SC 4709.

human right in a welfare state and “to forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution”. Further, the Court also observed that “Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.”

In light of these judgements, it can be understood that the Act of 1894 was already proving to be inadequate for a democracy like India, and it was finally repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation (LARR) Act, 2013. However, it was after much damage had already been accrued.

#### **4. Development and Displacement**

The disastrous consequences of the Act of 1894 began to be felt when large numbers of people continued to be displaced, bereft of rehabilitation and resettlement, two of the key aspects internationally recognized in the Guiding Principles on Internal Displacement, 1998.<sup>50</sup> In many cases, such forceful acquisition by the state led to loss of livelihood simultaneously.<sup>51</sup> A plethora of other issues emerged, including loss of homes, food insecurity, increased morbidity and mortality, loss of access to common property, marginalization and social disintegration.<sup>52</sup>

It was found that the largest number of development projects in the world were from India at the turn of the millennium and, consequently, the largest number in development-induced displacement.<sup>53</sup> A total of 21.4 million

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<sup>50</sup>BROOKINGS, *supra* note 14.

<sup>51</sup>Balaji Naika BG, *Land Acquisition and Development Induced Displacement: India and International Legal Framework*, ILI L.R. 66, 65-77 (2016).

<sup>52</sup>BROOKINGS, *supra* note 50, at 5-7.

<sup>53</sup>*Id.* at 8.

people were displaced as a result of development projects in India by the year 2007, and 16.4 million of them were displaced by the construction of dams alone, according to the Internal Displacement Monitoring Centre.<sup>54</sup> The same numbers were reiterated by the Government in a report in 2013.<sup>55</sup>

The North Eastern Social Research Centre, based in Guwahati, Assam, embarked on a heavily field-based study to acquire reliable data on development-induced displacement in various states of the country.<sup>56</sup> A figure of 60 million displaced people was recorded in the country between the years 1947 to 2000, which reached close to 70 million by the end of 2010.<sup>57</sup> The study further highlights the reality of tribal (indigenous) land alienation and people's deprivation, as their properties are usually common property resources and not individual property.<sup>58</sup>

The impact of the application of eminent domain to acquire land affects the holders of community property resources (CPRs) in a broader way.<sup>59</sup> Displacement due to such development projects leads to the alienation of CPRs like forests, land and water. The indigenous groups, like the tribals in the North-east states of India and other marginalized groups, lack legal titles (patta) to these resources.<sup>60</sup> They are, as the name suggests, owned and managed by the community at

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<sup>54</sup> Supra note 14

<sup>55</sup> Supra note 20.

<sup>56</sup> WALTER FERNANDES, BOKALI CHISHI MUHAVI, *et.al.*, THE CHALLENGE OF DEVELOPMENT: DISPLACEMENT IN NAGALAND 1 (NESRC, Guwahati, 2017).

<sup>57</sup> Supra note 56 pg no: 178.

<sup>58</sup> WALTER FERNANDES, BOKALI CHISHI MUHAVI, *et.al.*, THE CHALLENGE OF DEVELOPMENT: DISPLACEMENT IN NAGALAND 1 (NESRC, Guwahati, 2017).

<sup>59</sup> Walter Fernandes, *Displacement and Alienation of Common Property Resources* 105, 105-129, [https://www.nesrc.org/Studies/05\\_Lyla\\_Mehta\\_Ch-05.pdf](https://www.nesrc.org/Studies/05_Lyla_Mehta_Ch-05.pdf) (last visited May 15, 2024).

<sup>60</sup> *Id.*

large. These CPRs are the basis of their livelihood, and their control differs from tribe to tribe. The *Aka* tribe of Arunachal Pradesh lacks the very concept of individual ownership, while the *Dimasa* tribe of Assam and the *Angami* of Nagaland prefer a combination of individual ownership with clan land, but it is community-recognized and controlled.<sup>61</sup> These variants are not recognized by the law of eminent domain and fail to count such groups of people under displaced or project-affected.

The combined deprivation of basic human rights and state neglect led the people to mobilize themselves for resistance movements. Development projects in different parts of the country came to be challenged, initially in the form of peaceful protests by civilians and, subsequently, in the court of law.<sup>62</sup> A glaring example is the agreement that was signed by the Odisha government in the year 2004 with the South Korean steel corporation, the Pohang Steel Company limited, also known as POSCO.<sup>63</sup>

A building of a 12-million tonne integrated steel plant and port in the Erasama Block of Jagatsinghpur district was proposed, spread over three panchayats (a village council) and expected to affect seven villages, including 471 families.<sup>64</sup> Simultaneously, the acquisition of land would affect the primary cultivation of paan (betle nut leaves) and the summer cultivation of cashews in the areas.<sup>65</sup> The families engaging in the pisciculture of prawns were also to take a hit.<sup>66</sup> Thus, the

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<sup>61</sup> Supra note 59, pgno:107.

<sup>62</sup> BROOKINGS, *supra* note 52, at 67.

<sup>63</sup> MANSI ASHER, STRIKING WHILE THE IRON IS HOT: A CASE STUDY OF THE POHANG STEEL COMPANY'S (POSCO) PROPOSED PROJECT IN ORISSA 7 (National Centre for Advocacy Studies, Pune, 2009).

<sup>64</sup> Supra note 63, pg no: 11.

<sup>65</sup> Supra n.63, pg no: 12.

<sup>66</sup> MANSI ASHER, STRIKING WHILE THE IRON IS HOT: A CASE STUDY OF THE POHANG STEEL COMPANY'S (POSCO) PROPOSED

people were on the verge of losing both their lands and livelihoods. In a one-of-a-kind civil agitation, the villagers organized themselves as the POSCO Pratirodha Sangram Samiti (PPSS) and were successful when POSCO decided to give back the land to the government in March 2017.<sup>67</sup>

The Narmada Bachao Andolan has made its mark in India's history by being one of the largest social movements in post-independence India. This movement was a reaction to the Indian government's plan to construct a large number of dams across the river Narmada in the central part of India, which would affect a number of states.<sup>68</sup> The protest was regarding both relief and rehabilitation for the people who would be displaced, as well as the environmental concern of large dams. The agitation successfully translated into a suit in the Supreme Court of India.

The situation was similar in Singur, West Bengal, where agitation was over the acquisition of 997 acres of land for the Tata Motors Company to build a factory for the compact car model Tata Nano.<sup>69</sup> The local population there mostly depends on agriculture, and the legality of acquiring land for developing private businesses under the guise of 'public purpose' was challenged.<sup>70</sup>

The people of Himachal Pradesh were not similarly

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PROJECT IN ORISSA 7 (National Centre for Advocacy Studies, Pune, 2009).

<sup>67</sup>Jayabrata Sarkar, *Protestors may have stopped POSCO, but the fight isn't over yet*, THE WIRE, (Nov.10, 2023, 6:12 PM) <https://thewire.in/environment/posco-odisha-tribal-land>.

<sup>68</sup>Balakrishnan Rajagopal, *Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle*, WORKING PAPER SERIES 4, 1-65 (2012), <https://www.jnu.ac.in/sites/default/files/u63/04-Limits%20Law%28Rajagopal%29.pdf>.

<sup>69</sup>Sujit Bhar, *Singur: The Fight for Land*, INDIA LEGAL (Nov.10, 2023, 6:32 PM), <https://www.indialegallive.com/cover-story-articles/il-feature-news/landmark-verdict-on-singur-by-the-supreme-court/>.

<sup>70</sup>*Id.*

conscious in the year 1962 when the talks for the construction of the Pong Dam or the Maharana Pratap Sagar reservoir in the Kangra district of the state began.<sup>71</sup> This dam was built in 1974, which displaced over 30,000 people in 339 villages.<sup>72</sup> An area of 75,268 acres was acquired for 'public purpose' and the government of Rajasthan framed the Rajasthan Colonisation (Allotment of Government Land to Pong Dam Oustees in the Rajasthan Canal Colony) Rules, 1972 to rehabilitate the displaced population.<sup>73</sup> These people were supposed to be resettled in three districts of Rajasthan, according to the agreement between the two state governments.<sup>74</sup> Unfortunately, nearly five decades later, 6355 families out of 16,352, which makes up about forty per cent (40%) of the displaced people, are yet to be settled as of March 2021.<sup>75</sup>

The existence of a National Policy on Resettlement and Rehabilitation for Project Affected Families<sup>76</sup> effective from the year 2004, subsequently replaced by the policy of 2007<sup>77</sup>, did not suffice to address the problems of displacement. The policy had taken long strides by making it an objective to minimize displacement, broadening the definition of 'affected families' by including tenure-holders, landless farmers, and wage-labourers, giving primacy to rehabilitation before displacement, creation of several Resettlement and

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<sup>71</sup>FERNANDES, *supra* note 22.

<sup>72</sup>*Rehabilitation Of Pong Dam Oustees In Rajasthan Pending For Over 50 Years, 2021*, LAND CONFLICT WATCH, <https://www.landconflictwatch.org/conflicts/rehabilitation-issues-in-rajasthan-due-to-pong-dam> (last visited May 15, 2024).

<sup>73</sup>*Id.*

<sup>74</sup>*Supra* n. 72

<sup>75</sup>*Himachal Pradesh 13<sup>th</sup> Legislative Assembly Debates* (Mar. 16, 2021), <https://secure.evidhan.nic.in/SecureFileStructure/AssemblyFiles/13/12/20210316/Starr-ed/3355.pdf> (last visited Nov.10, 2023).

<sup>76</sup>THE NATIONAL REHABILITATION AND RESETTLEMENT POLICY, 2007, [https://www.centralcoalfields.in/hindi/indsk/pdf/employ\\_land\\_land\\_rules/natnl\\_rehab\\_restltmnt\\_plcy\\_2007.pdf](https://www.centralcoalfields.in/hindi/indsk/pdf/employ_land_land_rules/natnl_rehab_restltmnt_plcy_2007.pdf) (last visited May 15, 2024).

<sup>77</sup>*Id.*



Rehabilitation Committees in the project/district level, an Ombudsman, a National Monitoring Committee and assurance of a National Rehabilitation Commission.<sup>78</sup> However, it was plagued by limitations such as no clarity in the process of minimizing displacement, silence on the powers of the proposed committees and general ambiguity in the policy.<sup>79</sup> This paved the way for completely new legislation overriding the previous law and policies on land acquisition for public purposes and rehabilitation and resettlement for subsequent displacement.

## 5. Emergence of a New Legal Regime

The Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation (LARR) Act, 2013, is a historic legislation for India because it addressed the issue of displacement caused by compulsory acquisition of land for the first time. It abolished the erstwhile legislation of 1894 to achieve more transparency in the land acquisition process, as well as safeguard the interests of the resulting displaced population. The Act has extensively described under what circumstances the government can acquire land for public purposes. It defined the term 'public purpose' by including acquisition for strategic/defence purposes, infrastructure projects involving agro-processing, industrial corridors or mining activities, water harvesting, government-administered or aided educational/research institutes, projects for sports/health care/tourism/space programme, project for such project-affected families, housing for income groups notified by the government periodically, planned development or improvement of village sites, and residential projects for the poor/landless/displaced affected by natural

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<sup>78</sup> Supra n.76

<sup>79</sup> Deepak Kumar, *R&R Issues Vs. NRRP*, 2007, 9, 1-10 (Dec. 14, 2011), [https://www.greatlakes.edu.in/gurgaon/sites/default/files/R&R\\_Issues\\_vs\\_NRRP\\_2007.pdf](https://www.greatlakes.edu.in/gurgaon/sites/default/files/R&R_Issues_vs_NRRP_2007.pdf) (last visited Nov. 11, 2023).

calamities.<sup>80</sup> One of the significant improvements in this legislation is the inclusion of the concept of 'prior consent'. The Guiding Principles on Internal Displacement, 1998, under Principle 7.3(c), provides that free and informed consent shall be sought from the people in situations of displacement which are not an emergency armed conflict or a disaster.<sup>81</sup>

The Act of 2013 distinguishes between land acquired for public sector undertakings, public-private partnership projects, wherein the government will continue to own the land, and for private companies.<sup>82</sup> While all the acquisitions can take place only for a public purpose, there is a requirement of consent from at least eighty per cent of the people who would be affected/displaced due to projects by private companies and at least seventy per cent in case of public-private projects.<sup>83</sup> Further, the land acquisition would be based on the market transaction instead of administrative coercion and more financial incentives for people left landless or without a livelihood, and social impact assessment (SIA) procedures were introduced to identify all land losers and the impact thereon.<sup>84</sup> The SIA procedure consisted of conducting a study by the appropriate government in the proposed area of land to be acquired and an Environmental Impact Assessment (EIA), if any, as well. The Panchayat, Municipality or Municipal Corporation, at the village or ward level, is to be consulted and a notification issued by the government in the local language about it.<sup>85</sup> This study is to be completed within

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<sup>80</sup>*Supra* note 9, at § 2(1).

<sup>81</sup> *Guiding Principles On Internal Displacement, 1998*, INTERNATIONAL COMMITTEE OF THE RED CROSS, <https://www.icrc.org/en/doc/resources/documents/article/other/57jvgl.htm> (last visited May 15, 2024).

<sup>82</sup> ACT OF 1894, *supra* note 36, at § 2(2).

<sup>83</sup> *Supra* n.36

<sup>84</sup> ACT OF 1894, *supra* n. 37, at § 4.

<sup>85</sup> The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013, § 4, No.30, Acts of Parliament, 2013 (India).

six months of its commencement and assess whether the acquisition serves public purpose and estimation of affected families, among other issues.<sup>86</sup>

The Act provides a detailed procedure for the preparation, review, approval and publication of the declaration and summary<sup>87</sup> of rehabilitation and resettlement schemes. A public notice must also be published by the Collector for interested persons.<sup>88</sup> The rehabilitation and resettlement award also needs to be made within a span of twelve months from the date of publication of the declaration of the scheme.<sup>89</sup> It also provides for the establishment of a nationwide 'Land Acquisition, Rehabilitation and Resettlement Authority' for speedy disposal of disputes.<sup>90</sup> This legislation was drafted in the hope that land acquisition would be the last resort for a government and parallel displacement concerns would not arise.<sup>91</sup> However, it was criticized for being detrimental to industrial development and ended up being amended within a year of its enactment.<sup>92</sup> The central government promulgated the Ordinance of 2014 and added a new Chapter III A and Section 10A in the Act.<sup>93</sup> It exempts five categories of projects from the 'consent' and 'social impact assessment' clauses of the Act of 2013, *viz.* defence, rural infrastructure, affordable

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<sup>86</sup> *Id.*

<sup>87</sup> ACT OF 2013, *supra* n. 85, at § 11-19.

<sup>88</sup> ACT OF 2013, *supra* n. 85, at § 21.

<sup>89</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, § 25, No.30, Acts of Parliament, 2013 (India).

<sup>90</sup> *Id.* at § 51.

<sup>91</sup> G Seetharaman, *Five years on, has land acquisition act fulfilled its aim*, THE ECONOMIC TIMES (September 1, 2018, 6:00 PM), <https://economictimes.indiatimes.com/news/economy/policy/five-years-on-has-land-acquisition-act-fulfilled-its-aim/articleshow/65639336.cms>.

<sup>92</sup> *Supra* n.91

<sup>93</sup> Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014 (India).

housing, industrial corridors and infrastructure projects, including public-private projects<sup>94</sup> and makes the acquisition process simpler. The Ordinance was introduced as an amendment bill in the Parliament on February 24, 2015.<sup>95</sup> It was passed by the Lok Sabha but could not win the requisite votes in the Rajya Sabha.<sup>96</sup> Finally, it had to be referred to the Joint Committee of the Parliament, which has not been able to reach a consensus in its many sittings.<sup>97</sup>

A study on the Supreme Court of India cases by the Centre on Policy Research, New Delhi, on land acquisition over a period of 66 years after independence found that nearly half of such cases belonged to the exempted categories.<sup>98</sup> This affirms the government's priorities of development over displacement. Thus, the very objective of the Act, which was to create transparency in land acquisition and protect the interests of the original owners of the land, stands diluted. A few other state governments like Tamil Nadu, Maharashtra, Gujarat, Jharkhand, Telangana, Rajasthan and Andhra Pradesh followed suit, either seeking exemption like above or

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<sup>94</sup>Namita Wahi, *How Central and State governments have diluted the historic land legislation of 2013*, THE ECONOMIC TIMES (April 14, 2018, 5:32 PM) <https://economictimes.indiatimes.com/news/politics-and-nation/how-central-and-state-governments-have-diluted-the-historic-land-legislation-of-2013/article-show/63764378.cms>.

<sup>95</sup>The Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation And Resettlement (Second Amendment) Bill, 2015, Bill No. 152 of 2015 (India).

<sup>96</sup>Ishani Sonak, *State Governments acquire land by subverting rights and bending the law*, DOWN TO EARTH (Nov.11, 2023, 7:15 AM), <https://www.downtoearth.org.in/news/agriculture/-state-govts-acquire-land-by-subverting-rights-and-bending-the-law--62463>.

<sup>97</sup>*Id.*

<sup>98</sup>Centre for Policy Research, *Land Acquisition in India: A Review of Supreme Court Cases (1950-2016)* (Nov.11, 2023, 8:05 AM), <https://www.cprindia.org/research/reports/land-acquisition-india-review-supreme-court-cases-1950-2016>.

amending their state laws on the basis of this ordinance.<sup>99</sup> Another study researching the impact of the legislation six years since its enactment found its outcome to be unsatisfactory.<sup>100</sup> Several of the livelihood-affected families were denied benefits owing to factors like tradition of oral agreements between the landowners and tenants, absence of documentation to prove their domicile in the area, failure of survey teams to collect proper data during social impact assessment and lack of will of the acquiring bodies to extend such benefits.<sup>101</sup>

As the implementation of the law fails, the people are compelled to knock on the doors of the judiciary for relief.

## 6. Land Acquisition, Displacement and the Indian Judiciary

The questions of 'eminent domain' and 'public purpose' were raised immediately post-independence in the Supreme Court of India. In the case of *State of Bihar v. Kameshwar Singh*<sup>102</sup> the court explained the law of eminent domain as the sovereign's power to take property for public use without the owner's consent. Subsequently, in *State of West Bengal v. Bella Banerjee*<sup>103</sup> the court held the existence of an objectively established public purpose as a necessary condition for acquiring property under the law. On this background, the courts in India gave their judgements in subsequent cases.

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<sup>99</sup>Kumar Sambhav Srivastava and Nitin Sethi, *State governments continue to dilute the Land acquisition legislation*, BUSINESS STANDARD (April 23, 2019, 5:30 PM), [https://www.business-standard.com/article/economy-policy/state-governments-continue-to-dilute-the-land-acquisition-legislation-119042300104\\_1.html](https://www.business-standard.com/article/economy-policy/state-governments-continue-to-dilute-the-land-acquisition-legislation-119042300104_1.html).

<sup>100</sup>Preeti Jain Das, *The RFCTLARR Act, 2013: Are the outcomes fair?*, TERI: THE ENERGY AND RESOURCES INSTITUTE (Nov.11, 2023, 8:30AM), <https://www.teriin.org/article/rfctlarr-act-2013-are-outcomes-fair>.

<sup>101</sup>*Id.*

<sup>102</sup>*State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252.

<sup>103</sup>*State of West Bengal v. Bella Banerjee* (1954) S.C.R 558.

The case of *Narmada Bachao Andolan v. Union of India*<sup>104</sup> was built on the premise of the World Bank beginning work on the Narmada Project, especially the Sardar Sarovar Dam, after getting clearance from the Narmada Water Disputes Tribunal. The focus during the survey was on the economic and technical issues rather than the social and environmental impact. After several civil protests by activists, the case was taken to court in the year 1994, which forced the Indian judiciary to analyse the concept of 'national development' in its existing form.<sup>105</sup> The division bench ruled in favour of the petitioners and directed for immediate halting of work by the states until an appropriate rehabilitation process was undertaken. One of the primary faces of the movement was when Medha Patkar began an indefinite protest in November 2019, claiming that the 32,000 families were deceived by the state governments of Gujarat and Madhya Pradesh who have been affected by the completion of the Sardar Sarovar Dam.<sup>106</sup> There are also allegations of raising the water level in the dams over the prescribed limit, which poses a threat of submerging the nearby villages.<sup>107</sup>

In Singur, West Bengal, Tata Motors had to return the 997 acres of agricultural land in 2016 when the Supreme Court of India struck down the acquisition as illegal.<sup>108</sup> The division bench also allowed the farmers to retain the compensation they had received from the State as they were deprived of earning a

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<sup>104</sup>Narmada Bachao Andolan v. Union of India (2000)10 SCC 664.

<sup>105</sup>Mathew John, *Interpreting Narmada Judgement*, 36 (32) E&PW 3030, 3030-3034 (2001).

<sup>106</sup> Indo-Asian News Service, "Narmada Bachao Andolan back on indefinite protest", INDIA TODAY (November 18, 2019), <https://www.indiatoday.in/india/story/narmada-bachao-andolan-medha-patkar-back-indefinit-e-protest-1620007-2019-11-18>.

<sup>107</sup>Meena Menon, *As water levels of Gujarat's Sardar Sarovar Dam rises, villages in Madhya Pradesh drown*, MONGABAY (Nov.11, 2023, 9:03PM), <https://india.mongabay.com/2019/09/water-in-sardar-sarovar-dam-rises-as-villages-in-madhya-pradesh-drown/>.

<sup>108</sup>Kedarnath Yadav v. State of West Bengal (CA No. 8438 of 2016).

decade's worth of income from the land. The judgement, while recognizing the need for industrial development, emphasized that the 'brunt of development' should not be borne by the 'weakest sections of society'.<sup>109</sup> However, the citizens of the neighbouring states of Arunachal Pradesh and Assam have not been so fortunate in their protests against the construction of the Lower Subansiri Hydro-Electric Power Project. The construction of a large dam over the lower Subansiri River, passing through both states, began in January 2005.<sup>110</sup> This led to major protests by people from both states on account of environmental concerns and the non-inclusion of project-affected persons as opposed to direct displacement.<sup>111</sup> The matter reached the National Green Tribunal and, subsequently, to the Supreme Court of India. The latter directed the matter to be decided by the Tribunal expeditiously in 2010 when objections of bias were raised against the constitution of an Expert Committee that decided on the feasibility of the project. Since then, by an order in July 2019, the Tribunal has given clearance for the project to be resumed by the National Hydroelectric Power Corporation (NHPC Limited),<sup>112</sup> and work recommenced in October 2019 after eight years.<sup>113</sup>

In another case relating to 'compensation', the Supreme

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<sup>109</sup>*Id.*

<sup>110</sup>*Final Report From the POC Members of the Expert Group Of Assam For Subansiri Lower Hydro Electric Project Assam-Arunachal Pradesh, Project Oversight Committee (POC) (January 30, 2016).*

<sup>111</sup>Anupam Chakravarty, *Subansiri dam protests: blockade of Arunachal Pradesh continues*, DOWN TO EARTH(Nov.11, 2023, 9:08AM), <https://www.downtoearth.org.in/news/subansiri-dam-protests-blockade-of-arunachal-pradesh-continues---35624>.

<sup>112</sup>*Aabhijeet Sharma v. Union of India (M.A. No. 83/2019 IN M.A. No. 285/2018).*

<sup>113</sup>Sumir Karmakar, *Subansiri project resumes after 8 years, angers agitators*, DECCAN HERALD (Oct. 17, 2019), <https://www.deccanherald.com/business/business-news/subansiri-project-resumes-after-8-yrs-angers-agitators-768988.html>.

Court, while deciding a civil appeal on May 13, 2024, expressed its disappointment at the Patna High Court's approach for not probing the state government as to "why it did not pay compensation to the appellant for forty-two years after acquiring his land".<sup>114</sup> This appeal arose from an order passed by the High Court of Judicature at Patna on February 7, 2023, by which the Division Bench of the High Court disposed of the appeal by asking the appellant to file an appropriate application before the concerned authority for disbursement of the value of the land assessed.

The facts of the case arose in the year 1976 when a notification under Section 4 of the Land Acquisition Act, 1894, was issued by the state government of Bihar for the purpose of construction of the state highway. The land owned by the appellant was included in the notification, and the same was acquired in 1977. However, not a single penny was paid to him as compensation. The appellant addressed an application to the state government immediately after his land was acquired and possession taken for payment of compensation but the matter did not move ahead. The appellant filed a writ petition in the High Court of Patna, which was heard by a single bench judge. As per the order dated July 19, 2019, the petition was rejected on the ground that it was filed forty-two years after the acquisition, and the appellant had failed to submit any paper or notification in connection with the acquisition of his land for the purpose of payment of compensation.

The court cited its judgement in *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai*<sup>115</sup> wherein it was held that 'Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of eminent domain may interfere with the right of property of a

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<sup>114</sup> Dharnidhar Mishra v. State of Bihar, Civil Appeal No 6351 of 2024 (Arising out of SLP (C) No 10492 of 2023).

<sup>115</sup> *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chennai* (2005) 7 SCC 627.



person by acquiring the same but the same must be for a public purpose and reasonable compensation, therefore, must be paid.”

In the recent judgement delivered in *Kolkata Municipal Corporation v. Bimal Kumar Shah*,<sup>116</sup> the Supreme Court held that “compulsory acquisition of private properties will be unconstitutional if proper procedure is not established or followed before depriving a person of their right to property.” It is a significant verdict as the Court observed that “even the statutory scheme of payment of compensation in return for the acquisition of private properties will not be justified if the due procedure is not followed by the state and its instrumentalities.” The municipal corporation had approached the court challenging the judgment of a division bench of the Kolkata High Court which had quashed the acquisition of a property for constructing a park at Narkeldanga North Road in Kolkata city. The high court had held that it had no power under a specific provision to go for compulsory acquisition. The judgement clearly identified seven sub-rights to the constitutional right to property under Article 300-A, which are as follows: -

- i) the right to notice - duty of the State to inform the person that it intends to acquire his property
- ii) the right to be heard - the duty of the State to hear objections to the acquisition
- iii) the right to a reasoned decision - the duty of the State to inform the person of its decision to acquire
- iv) acquisition only for public purpose - the duty of the State to demonstrate that the acquisition is for public purpose

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<sup>116</sup> Civil Appeal No. 6466 of 2024 (Arising out of SLP(C) No. 4504/2021 XVI).

- v) the duty of the State to restitute and rehabilitate - the right of restitution or fair compensation
- vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings - the right to an efficient and expeditious process
- vii) final conclusion of the proceedings leading to vesting - the right of conclusion

The above are essential to the foundation of Article 300-A and the absence of any one of them would make the law susceptible to challenge. Although the RFCTLARR Act, 2013 is only a decade old, land and property being essential elements for a secure and dignified life, petitions under it before the courts of law continue in large numbers.

The Supreme Court, while dealing with civil appeals against the judgment of the Madhya Pradesh High Court in a batch of writ petitions, held that “a land owner's right to make objections under Section 15 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is akin to the fundamental right.”<sup>117</sup> In the instant case, the state of Madhya Pradesh had published a notification under Section 11 of the Act of 2013 proposing to acquire lands of three villages in the Dhar District, of which appellants' lands also formed a part. It was to be done for the purpose of establishing a Multi-Model Logistics Park under the Bharatmala Project of the Government of India. Certain objections were filed by the appellants to the Collector under Section 15 of the aforesaid law, but they received no response. They filed a fresh batch of objections, which were not considered by the Collector but taken up by the Anuvibhagiya Adhikari (Revenue) Evam Bhu Arjan Kshetra, Pithampur

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<sup>117</sup> Civil Appeal No(s). of 2024 (Arising out of SLP(Civil) No(s). 28410-28414 of 2023).

(Sub- Sub-Divisional Officer).

These objections were rejected by the SDO with the direction that a declaration under Section 19 of the Act be filed by the department. The same was published along with a summary of rehabilitation and resettlement under Section 21, and notices were issued to the appellants for the acquisition of their lands. The appellants, being aggrieved by the rejection of objections by an officer lacking jurisdiction, filed several petitions before the High Court of Madhya Pradesh seeking quashing of the land acquisition proceedings, but they were dismissed and hence, the appellants approached the Supreme Court. The Court held that even if the SDO is considered as an officer authorised to hear the objections, the final decision on such objections would have to be taken by the appropriate Government, which was lacking in the instant case. Accordingly, the Court allowed the appeals and quashed the impugned judgment of the High Court. It further directed the respondents to consider and decide the objections of the appellants according to the law.

## **7. Conclusion**

The history of the Land Acquisition Act of 1894 portrays profit as the primary intention for land acquisition by the colonizers of pre-independent India. This law continued till it was replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013. There also exists a National Policy on Resettlement and Rehabilitation since 2003; replaced by the policy of 2007. These laws and policies distinctly establish the necessity and usage of land acquisition measures by the government of India for 'public purpose'.

The Act of 1894 was vague in its provision for compensating the affected persons as a result of development projects and did not provide for rehabilitation and resettlement. The value of land and livelihood was measured

only in monetary terms, without any clarity on receiving it. In the absence of rehabilitation policies, the rise in displacement continued. The indigenous people in different parts of the country suffered the most due to their practice of holding 'community property resources' instead of individual property rights practised in other regions, which made land acquisition easier. Therefore, the law has played a key role in the displacement of people in India under the guise of 'public purpose' projects. The extent of development-induced displacement in the country can no longer be denied. Research organizations at international, national and regional levels have all recognized the correlation between land acquisition policies in India and development-induced displacement. The large-scale displacement led to public outcry, and several social movements began in different parts of the country. Since the implementation of the 1894 Act had violated the human rights of the people, public interest litigations were filed in the Supreme Court of India. The displaced people received relief in certain cases like the Singur case in West Bengal, partial relief in the case of the Narmada Bachao Andolan and no expected relief in the case of the Subansiri project in the states of Assam and Arunachal Pradesh.

The court of law is the last resort for people in a democracy, and hence, persistent challenges to the issues of the Act of 1894 led to its repeal and enactment of the new Act of 2013. The changes in the legislation included 'prior consent' from at least eighty and seventy per cent of the people who would be affected by certain projects, a concise definition of 'public purpose', broadening the ambit for 'affected families', social impact assessment and putting rehabilitation before displacement. However, the central government promulgated an ordinance in 2014 to dilute the 'consent' and 'social impact assessment' clauses for certain projects. In 2018, the Centre for Science and Environment, a Delhi-based non-profit organization, filed queries to 28 states under the Right to

Information Act, 2005 about the implementation of the Act of 2013.<sup>118</sup> Most of the states took months to reply, and six did not respond at all. It was also found that seven states had bypassed the central law and replicated the ordinance into state laws. Farmers in different parts of the country took to the streets to protest these changes.<sup>119</sup> Rajya Sabha member Jairam Ramesh has criticized the ordinance as being similar to the Act of 1894.<sup>120</sup> An independent study also highlighted the difficulties in the implementation of the resettlement and rehabilitation policy.

In the past decade, since the Act of 2013 came into force, the petitions relating to compulsory acquisition of land continue to throng the courts. In several instances, the Supreme Court of India had to reiterate the significance of the right to property under Article 300-A of the Constitution, an erstwhile fundamental right under Articles 19(1)(f) and 31. The court has gone ahead and compared a land owner's right to make objections under the Act of 2013 to a fundamental right. However, this tussle between the principle of eminent domain and the right to property continues.

Displacement must be the last resort for any kind of development projects, but India has revealed it to be its first, unavoidable step in such matters. Every successive government has followed the 'development pattern' of industrialization like the Western countries, forgetting that India has predominantly been an agricultural economy, where the majority of the people still practice the same; their life and livelihood intrinsically relate to the land. Development-induced displacement has affected generations of families in India, violating their basic human rights and compelling them

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<sup>118</sup>SONAK, *supra* note 96.

<sup>119</sup>*Farmers take to streets to protest Land Bill*, THE HINDU (Jan.24, 2018), <https://www.thehindubusinessline.com/news/national/farmers-take-to-streets-to-protest-land-bill/article7007973.ece>.

<sup>120</sup>KARMAKAR, *supra* note 113.

to reach out to the judiciary in the end on questions of compensation, resettlement and rehabilitation. The victories have been few in comparison to the technical intricacies the laws possess. The echoes of many provisions of the now repealed Act of 1894 still remains in the new law, where eminent domain continues to reign. India, in the third decade of the new millennium, needs to take a tough, honest look at its land acquisition laws and policies.

Firstly, the Supreme Court's interpretation of the right to property with its seven sub-sets of rights must be adhered to when any land is compulsorily acquired. Secondly, the state laws enacted with reference to the Ordinance of 2014 relating to the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013 must be done away with and probable reversal of their impact may be looked into. Thirdly, in each case, displacement must be the last resort, and all stakeholders must be consulted for better results of any development projects as mandated under the Act of 2013. Finally, it is necessary to revisit the concept of the law of eminent domain through a human rights-based approach, rather than the already existing economic prosperity agenda.