

Dispute Resolution Instrument in relation to Land Acquisition

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1. Introduction

Land is not just a two - dimensional spaces, but also a social construction. No person can deny the importance of land in human life. In fact, we are so much attached to land that we are originated from the earth, we depend and move on it and we physically vanish into it. So, our interest in land is universal and it is one of the human rights. Nation is built on two wheels, namely, industrialization and agriculture, and land is a common factor running between them¹. Land continues to remain important for production and rural livelihoods in developing economies like India. But, Globalization and Liberalization in these economies has brought up land as an important policy issue as various stakeholders lay claims to it as never before². Land acquisition is a process of legal and institutional incidence of “Eminent Domain” of the state to acquire private property in land for a public purpose, on the pretext of supremacy of public cause over a private one and the loss of private interest being reimbursed through a legally defined compensatory entitlement (Law Commission of India, 1958).³ Land Acquisition is an issue which has gone up in all respects from the social and political point of view⁴.

Justice S. U. Khan⁵ rightly exclaims that,

“Land Acquisition is no more a Holy Cow. At present it is a fallen Ox. Everybody is a butcher when the Ox falls”.

The present land acquisition laws, its administration and management in India are not only full of intricacy, procedural difficulties and mismanagement but also not accessible and responsive to the interest of the common people of the country. Furthermore, the present mechanism to settle land acquisition disputes is not time saving, cost effective, peaceful and sophisticated. Land conflicts often have extensive negative effects on economic, social, spatial and ecological development and can have disastrous effects on individuals as well as on groups and even entire nations. Almost all other cases of land acquisitions, they are also marred by compensatory deficit, capital base meltdown and spatial inequity. As the Land Rights and Land Acquisition have travelled a long journey.

The article will try to explore the kind and nature of disputes arising out of land acquisition. And the instrument given in the new Act to address it. How far it is effective and how can it be improved citing the examples of The Bihar Land Dispute Resolution Act.

It examines various facets of land acquisition Act for their fairness and equity aspects including the land disputes and causes for land disputes. The article proposes and examines alternative mechanisms and options to manage land resource in a sustainable way and yet avoid land related conflicts.

¹ Anupam Srivastava and Monika Srivastava, “ Guide to Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013”, *wolters Kluwer India Pvt Ltd, 1st Edn, 2014. pp.01.*

² Sukhpal Singh, “Land Acquisition in India: An Examination of the 2013 Act and Options”, *Journal of Land and Rural Studies* 4(1) 66–78

³ Mohammad Israr Khan, “Participatory paradigm for linear land acquisition projects”, *World Wide Journal of Mul tidisciplinary Research and Development, 2015; 1(3): 1-5 (www.wvjmr.com).*

⁴ Brij Mohan Krishan Shorey; Dr. Nehal A. Farooquee, “Land as a Right before and after Independence: A Social and Democratic Issue”, *Wisdom Tree Volume 1, Issue 1, January-June 2016*

⁵ *Gajraj vs. State of U.P.* 2011: 245.

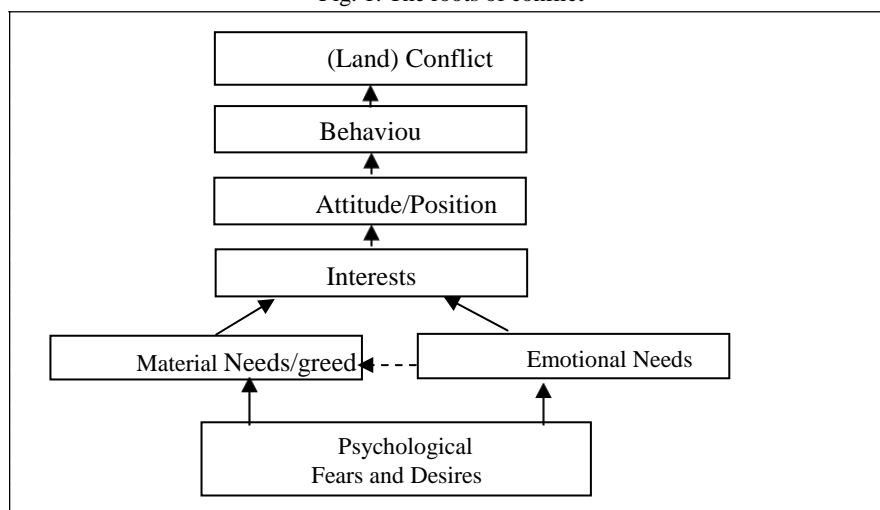
The objective of this paper is to aware the people about the Land Rights and its related land disputes and various Disputes Resolution Instrument available to them under the LARR Act 2013 and the Bihar Dispute Resolution Act 2009 and to provide Compensation, Rehabilitation & Resettlement to the persons displaced / being displaced and the stress on Judiciary. The hypothesis aims at achieving an equity oriented conflict resolution to the problem of land acquisition. Land rights as deprived, resources for livelihood should be explored. Displacement if inevitable for development, rehabilitation and resettlement is mandatory too. The study is based on information which is taken from the Right to Fair Compensation and Transparency in LARR Act 2013 and the Bihar Dispute Resolution Act 2009, and data which is collected and accessed from Census of India reports, Agriculture statistics, NSSO, CPR and journals.

2. Land Disputes and its Causes

A land Disputes can be understood as a misuse, restriction or dispute over property rights to land (Wehrmann B., 2005). Land acquisition for public purpose gives rise to Land disputes in developing countries like India and the nature of such disputes varies depending on the interest as land continues to constitute the key resource of livelihood, security, and status. Land conflicts often have extensive negative effects on economic, social, spatial and ecological development and can have disastrous effects on individuals as well as on groups and even entire nations. So, all over the world, people struggle for land and there is a long history people fought for piece of land and sacrificed the costliest thing that is their lives. The transition from pastoral to an agricultural economy helped the development of the idea of ownership. People began to think the terms of “mine and thine” (Mahajan, 1998). Therefore, in order to avoid land disputes there is need for reforms in land administration and for this Conclusive land titling system is necessary⁶.

Land conflicts occur in many forms. Both need and greed can equally lead to them. There are conflicts between single parties (as for instance boundary conflicts between neighbours), inheritance conflicts between siblings and disputes over the use of a given piece of land. These conflicts are comparably easy to solve. Those that include several parties though - such as group invasions or evictions of entire settlements – are more difficult to deal with (Wehrmann B., 2008). However, land dispute may be arise out of land, e.g., dispute from land itself, land instrument and any interest arising out of land. In a study, it is shown that about 80% cases including civil and criminal have arisen from land disputes (Hoque, 2000). struggle over land has continued, leading to violent conflict time and again (Deininger, 2003). All land conflicts, no matter how peaceful or violent they are, produce negative consequences for individual people as well as for the entire society.

Fig. 1: The roots of conflict



(Source: Wehrmann 2005)

From a different analytical perspective, Land disputes can also be distinguished by political, economic, socio-economic, socio-cultural, demographic, legal/juridical, administrative, technical (land management), ecological and psychological causes (Wehrmann B., 2005). Land ownership conflicts have negative effects on individual households as well as on the nation's economy. Disputes over the use of land generally have a negative impact on the poor or on the natural or building environment. Land conflicts also increase social and political instability. Where ever there occur a lot of multiple sales, evictions, land grabbing etc., people lose confidence in the state and start mistrusting each other. Dealing with land disputes therefore also means to re-establishing trust and confidence in public as well as private institutions. Land conflicts within a country will then occur at either the interpersonal or intra-societal level.

⁶ Dr. Amir Afaq Ahmad Faizi, Snehasis Mishra, “Conclusive land titling system : a need for reforms in land administration ”, D.K.Agency publication, 1st edn, 2015

Level	Dimension	Types of land conflicts (examples)
Inter-personal level	Micro-social dimension	<ul style="list-style-type: none"> • Boundary conflicts between neighbours • Ownership conflicts due to inheritance conflicts • Occasional multiple sales of private property by individuals without administrative assistance and without harming third parties • Individual occupation of private land • Building extensions on the private land of another • Illegal lease/sale of somebody else's private land
Intra-societal level	Meso-social dimension	<ul style="list-style-type: none"> • Boundary conflicts between tribes or villages • Illegal sale/lease of communal land/tribal land • Illegal allocation of state land by private individual • Group invasion of private land • Land use conflicts between farmers and pastoralists (e.g. animal corridors due to transhumance) • Occasional building extension on state land • Occasional illegal use of state land • Illegal use of one's own land • Violent attacks on property
	Macro-social dimension	<ul style="list-style-type: none"> • Ownership conflicts due to legal pluralism • Land grabbing • Illegal sale/lease of state land • Evictions (by force) by governmental authorities • Improper land privatisation • Land use conflicts between private and public utilisation due to a general disregard of land use regulations by a majority of people • Expropriation without compensation • Illegal acquisition and sale of somebody else's private property by individuals, supported by corrupt public agencies or courts • Multiple allocation of particular plots by officers working at the land registry

The classification of land disputes according to their social dimension illustrates the high number and diversity of *intra-societal land dispute* compared to *interpersonal land disputes*. While in most cases interpersonal land disputes can be addressed by existing formal or informal dispute resolution bodies, intra-societal disputes are much more difficult to tackle – mainly because disputes resolution mechanisms at the higher level are part of the problem.

In *State of Madras Vs. B.V. Subramania Iyer*⁷, the Court held that the word “*Dispute*” includes any controversy with regard to the title of a single claimant. It is obvious that when the government exercises its power of eminent domain and acquires property, public funds have to be utilized for the payment of compensation to the true owner, and not merely to any claimant who cares to appear on the scene. The government has a special responsibility in this regard, and cannot later take refuge behind the pretext that the compensation was paid to the claimant who actually appeared while others did not appear.

As Land acquisition is central to the government's thrust in infrastructure development and in order to facilitate its economic agenda the Government of India believed there was a heightened public concern on land acquisition issues in India⁸. For the purpose of providing speedy disposal of disputes relating to land acquisition compensation the Government sought to establish the Land Acquisition Compensation Disputes Settlement Authority at both the state and central levels under chapter Seven⁹ entitled: National Monitoring Committee for Rehabilitation and Resettlement and under chapter Eight entitled: Establishment of Land Acquisition, Rehabilitation and Resettlement Authority¹⁰.

Though the LARR Act 2013 do not speak directly the types of land disputes like the Bihar Land Dispute Resolution Act 2009 rather it talks about the fair compensation, transparency, rehabilitation and resettlement issues in detail. Under the Bihar Land Dispute Resolution Act 2009, there are following types of disputes¹¹:-

⁷ AIR 1962 Mad. 313

⁸ Venkat Ananth, *The evolution of the Land Acquisition Act* – Livemint, May 22 2015. 12 52 AM IST

⁹ Section 48 and section 50 of LARR Act 2013 respectively.

¹⁰ Section 51 of LARR Act 2013

¹¹ Section 4 of The Bihar Land Disputes Resolution Act, 2009, Amendments appended: 15 of 2012, 10 of 2013, 18 of 2015 (<http://egazette.bih.nic.in>)

- i. Unauthorised and unlawful dispossession of any settler or allottee from any land or part thereof, settled with or allotted to him under any Act contained in Schedule-1 to this Act by issuance of any settlement document/parcha by a competent authority;
- ii. Restoration of possession of settled / allotted land in favour of legally entitled settler/ allottee or his successors/heirs, upon adjudication of unauthorized and unlawful dispossession;
- iii. Threatened dispossession of a legally entitled settler/ allottee;
- iv. Any of the matters enumerated in (i), (ii) and (iii) above appertaining to raiyati land.
- v. Partition of land holding;
- vi. Correction of entry made in the record of rights including map/survey map.
- vii. Declaration of the right of a person;
- viii. Boundary disputes;
- ix. Construction of unauthorized structure; and
- x. *Lis pendens* transfer.

3. Critical Analysis of Dispute Resolution Instrument under the Right to Fair Compensation and Transparency in LARR Act 2013 and the Bihar Land Disputes Resolution Act 2009

India faces serious challenges in creating development processes that generate economic growth while being socially inclusive, ecologically sustainable, politically feasible, and in accordance with the Rule of Law. Equitable and efficient acquisition of land under the LARR Act 2013 by the state for economic development projects, including infrastructure and industry, lies at the heart of these challenges. Simultaneously, securing constitutionally guaranteed land rights to the poorest and most vulnerable communities in India against the state and other dominant communities, has been considered crucial to their economic and social empowerment. Land is not only an important economic resource and source of livelihoods, it is also central to community identity, history and culture. Unsurprisingly then, throughout India, dispute over state acquisition of land that deprives people of their land rights spans various dimensions of economic, social, and political life .

Merits of LARR Act 2013

- The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act 2013 was basically enacted in order to provide humane, participatory, informed and transparent process of land acquisition for industrialization, development and urbanization with the least disturbance to the owners of the land and other affected families.
- The LARR Act 2013 aims to provide just and fair compensation to the affected families whose land has been acquired or who are affected by such acquisition.
- The LARR Act 2013 was enacted to make adequate and proper provisions for the affected persons for their rehabilitation and resettlement. R&R Award for each affected family in terms of the entitlements provided in the 2nd Schedule.
- The LARR Act 2013 also ensure the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status.
- A detailed hierarchy of authorities has been provided from grass root level to state and central level and detailed procedures has been laid down.
- This Act also provides Social Impact Assessment study (SIA). For example, whenever the Appropriate Govt. intends to acquire land for a Public Purpose then it shall consult the concerned Panchayat, Municipality or Municipal Corporation as the case may be at Village level or Ward level in the affected area and carry out a Social Impact Assessment (SIA) study. This SIA study shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil followed by Public hearing and publication of SIA study. The Appropriate Govt. shall ensure that the SIA report is evaluated by an Independent Multi-Disciplinary Expert Group. Thereafter, examination of proposals for land acquisition and SIA report by Appropriate Govt. under Section 8 & where land is proposed to be acquired invoking the urgency provision under Section 40, the Appropriate Govt. may exempt undertaking of the SIA study .
- The LARR Act 2013 has also provided that the social impact assessment report is evaluated by an independent multi-disciplinary expert group¹².
- All efforts have been made under the LARR Act 2013 to meke the peocceedings in accordance with the rule of natural justice for example making provision for giving public notice, providing hearing objections as mentioned in the act¹³

¹² Under section 7(1) of the LARR Act 2013

Independent multi-disciplinary expert group consists of (a) two non-official social scientists; (b) two representatives of Panchayat, gram Sabha, municipality or Municipal Corporation, as the case may be (c) two experts on rehabilitation; and (d) a technical expert in the subject relating to the project.

¹³ Under section 21 of the LARR Act 2013

- The main contentious issue of LA is mostly based on Section 24 which says LA process under Act No.1 of 1894 shall be deemed to have lapsed where an Award under section 11 has been made 5 years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid. In that case the Appropriate Govt. shall initiate afresh LA proceeding.
- The collector shall adopt the transparent criteria laid down under the LARR Act¹⁴ in assessing and determining the market value of the land in order to provide just and fair compensation.
- The LARR Act 2013 has provided in detail the whole procedure in determining the amount of compensation to be¹⁵ awarded for land acquired under this Act.
- Award of Solatium has been provided under this act¹⁶ by the collector after having determined the total compensation to be paid. And this solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.
- the Authorities¹⁷ provided under the LARR Act 2013 has bestowed the supreme power and authority to dispose the land related issues at various hierarchical level from grass root level to state and Centre.
- A detailed procedure has been provided for the rehabilitation and resettlement award under the Act¹⁸ in second schedule by the collector.
- The Collector¹⁹ shall have power to summon & enforce attendance of witnesses & production of documents in the same manner as is provided in the case of a Civil Court under the CPC, 1908 and Award shall be & conclusive evidence, as between the collector & the persons interested.
- The collector shall be responsible for ensuring that the rehabilitation and resettlement process should be completed in all its aspects before displacing the affected families²⁰.
- The collector shall pay an additional compensation in case of multiple displacement²¹.
- As far as possible, no acquisition of land shall be made in Scheduled Areas²². In case where such acquisition does take place it shall be done only as a demonstrable last resort & that too with the prior consent of the concerned Gram Sabhas or the Panchayats or the Autonomous District Councils at the appropriate level in Scheduled Areas under 5th Schedule to the Constitution.
- The provision of appointment of Administrator²³ has Commissioner²⁴ has been provided under this Act to provide the rehabilitation and resettlement procedure to be functioned efficiently and smoothly.
- The LARR Act 2013 has also provided the rehabilitation and resettlement committee at project level²⁵ under the chairmanship of the collector to monitor and review the progress of implementation and resettlement scheme and to carry out post-implementation social audits in consultation with the gram sabha in rural areas and municipality in urban areas.
- Under the LARR Act there has been the provision of establishment of National monitoring committee²⁶ and State monitoring committee for rehabilitation and resettlement²⁷ for monitoring and reviewing the implementation of rehabilitation and resettlement schemes or plans.
- One of the most important provision under the LARR Act 2013 has been provided which was clearly missed in 1894 Act is which aims to provide speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement the establishment of land acquisition, rehabilitation and resettlement authority²⁸ to exercise jurisdiction, powers and authority conferred on it by LARR Act 2013.
- All Disputes Resolution Proceedings of LA before the Authority shall be deemed to be Judicial Proceedings within the meaning of section 193&228 of the IPC.
- The Authority shall be deemed to be a Civil Court for the purposes of sections 345&346 of the CrPC, 1973 .
- The members & officers of the authority shall be deemed to be Public Servants within the meaning of section 21 of the IPC.
- And no civil court (other than HC under Article 226 or Article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to LA.

¹⁴ Under section 26 of the LARR Act 2013

¹⁵ Under section 28 of the LARR Act 2013

¹⁶ Under section 30 of the LARR Act 2013

¹⁷ Define under section 3(f) of the LARR Act 2013.

¹⁸ Under section 31 of the LARR Act 2013

¹⁹ Define under section 3(g) of the LARR Act 2013.

²⁰ Under section 38(2) of the LARR Act 2013

²¹ Under section 39 of the LARR Act 2013

²² Under section 41 of the LARR Act 2013

²³ Under section 43

²⁴ Under section 44

²⁵ Under section 45

²⁶ Under section 48

²⁷ Under section 50

²⁸ Under section 51

- the Requiring Body²⁹ or any person aggrieved by the award passed by an Authority under section 69 may file an appeal to the HC within 60 days from the date of award.

The right to fair compensation and transparency in LARR Act 2013 is constituted to address the land acquisition, compensation, rehabilitation and resettlement issues which were missing in draconian Act of 1894. LARR Act 2013 is a new and central legislation in which every effort has been made to sort out all the complexities which were in 1894 Act and all efforts to provide speedy disposal of land disputes related issues at Centre and State level. Because Disputes relating to land pending before different forums are huge in number and the judiciary is overburdened because of pendency of huge number of disputes relating to land.

However, the different forums under different land laws have been provided for adjudication of disputes like the Bihar Land Disputes Resolution Act 2009. The Government is faced with complexities arising out of the multiplicity of adjudicating machinery and delay in the settlement of disputes. Therefore, the Government strives to ensure speedy disposal of disputes under LARR Act 2013 by establishing national monitoring committee at the Centre and state level and establishment of Land Acquisition, Rehabilitation and Resettlement Authority. As in the absence of these adjudicatory body, the people had faced with undue hardships in getting their grievances redressed under 1894 Act. However, the LARR Act 2013 has provided various disputes resolution instrument at various level in hierarchy as stated above.

Merits of the Bihar Land Dispute Resolution Act 2009

- The preamble of The Bihar Land Dispute Resolution Act 2009 provided in larger public interest for effective and speedy mechanism to resolve such disputes³⁰ which give rise to major turbulence if not addressed immediately and effectively. And also provide different forums and procedures for the resolution of disputes and it is considered expedient to provide a uniform and common forum, procedure and mechanism which would achieve the objective of effective, efficacious and speedy resolution of disputes.
- Under the Act 2009 the Competent Authority³¹ shall have jurisdiction and authority to hear and adjudicate, on an application or complaint or on any application referred to by a prescribed authority or officer, any issue arising out of above-stated disputes³².
- Under this Act 2009 the competent authority, wherever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent Civil Court³³.
- Under this Act 2009 the competent authority shall have the same powers in making enquiries under this Act, as are vested in a court under the Code of Civil Procedure, 1908 (V of 1908), in trying a suit³⁴ and the State shall be a necessary party³⁵.
- All proceedings under this Act shall be disposed off summarily³⁶. The competent authority shall take all possible steps for expeditious resolution of disputes and shall ensure final adjudication within a maximum period of three months from the date of the institution of the case before him³⁷.
- Under this Act the competent authority shall not allow adjournment to the parties without sufficient cause³⁸. Failure to dispose off within stipulated period without sufficient cause may call for disciplinary action against him³⁹.
- Under this Act the competent authority shall submit periodical report, as prescribed in the rules, every three months to the Collector furnishing information therein regarding disputes resolved by him⁴⁰.
- Under the Bihar Land Disputes Resolution Act 2009 if the competent authority considers it necessary to examine witnesses then he shall afford opportunity to the parties to dispute to produce witnesses in support of the application or complaint and in rebuttal thereof. The competent authority shall ensure that witnesses are produced by the parties to the dispute without undue delay and shall also ensure that the examination of witnesses is conducted on day to day basis⁴¹.

²⁹ Define under section 3(za) of the LARR Act 2013.

³⁰ As mentioned in Section 4 of The Bihar Land Disputes Resolution Act, 2009

³¹ Define under section 2(a) of the Bihar Land Disputes Resolution Act 2009.

³² Under section 4 of the Bihar Land Disputes Resolution Act 2009

³³ Section 4(5) of The Bihar Land Disputes Resolution Act, 2009

³⁴ Section 5 of The Bihar Land Disputes Resolution Act, 2009

³⁵ Section 6 of The Bihar Land Disputes Resolution Act, 2009

³⁶ Section 7 of The Bihar Land Disputes Resolution Act, 2009

³⁷ Section 9 of The Bihar Land Disputes Resolution Act, 2009

³⁸ Section 9(2) of The Bihar Land Disputes Resolution Act, 2009

³⁹ Section 9(3) of The Bihar Land Disputes Resolution Act, 2009

⁴⁰ Section 12(1) of The Bihar Land Disputes Resolution Act, 2009

⁴¹ Section 13(6) of The Bihar Land Disputes Resolution Act, 2009

- One of the most important provision under this Act is that if any party aggrieved by the order passed by the competent authority, he/she may file an appeal before the Commissioner⁴² within whose jurisdiction the order has been passed, within a period of thirty days from the date of the order.
- Under this Act the Appellate Authority shall dispose of the petition filed before him, for granting the aforesaid leave to file an appeal directly, within 21 (twenty one) working days of filing of such petition⁴³.
- One of the most important power conferred to the Commissioner is that he/she shall proceed to hear the appeal and may pass such order allowing, modifying, reversing or affirming the order passed by the competent authority as he may deem fit in accordance with law⁴⁴.
- The order passed by the Commissioner shall be final and no further appeal or revision shall lie before any other authority⁴⁵.
- This is the most important provision under the Bihar Land Disputes Resolution Act is that whoever obstructs, disobeys or fails to comply with the directions and findings contained in the final order passed under the Act shall be punishable with imprisonment for a term which may extend up to three years, and shall also be liable to fine up to five thousand rupees⁴⁶.
- One of the most significant step taken by the Bihar Government is the Establishment of the Bihar Land Tribunal in order to dispose the disputes expeditiously.

However, the Bihar Land Dispute Resolution Act has played very important and significant role in resolving land dispute in Bihar for example; Woman sarpanch in Bihar settles 20-year-old land dispute in 6 days⁴⁷. Land disputes account for 40% of the total murders recorded in Bihar. Official records say 45,906 land dispute complaints were lodged between January 2010 and July 2014. Of them, only 23,181 complaints land reforms (DCLR) the task of solving land disputes, they face a tremendous challenge in disposing of the cases due to non-availability of real time data related to ownership of land. However, with the intervention of technology and push for digitisation of land records in the state, things are gradually improving⁴⁸. There are catena of cases where The Bihar Land Dispute Resolution Act and the establishment of The Bihar Land Tribunal has played a very important role in successfully resolving the land disputes⁴⁹.

4. Pressure on Judiciary

The Supreme Court (SC) has increased the compensation amount in every six out of 10 cases of land acquisition where the compensation awarded for land by the government was challenged by the landowners. In several cases, the final award decided by the court was as high as 10 times of the original award, indicating how niggardly the governments have been compensating the landowners for their land. The findings have come out from an analysis of all reported SC judgements dealing with land acquisition cases across the country between 1950 and 2015, carried out by the New Delhi-based think tank Centre for Policy Research (CPR). Of the total 1369 land acquisition disputes adjudicated by the apex court over this period, the two biggest issues were compensation for land acquired, and the procedure by which the government had acquired land, either for itself or for a private company. Compensation was an issue in 58 per cent of the cases. In two third of the compensation cases, the government's ways of calculating compensation were challenged. In a sample review of the compensation cases, the study found that in almost half the cases, the final award was more than four times of what the government had calculated originally. In one-fourth of the cases the final award was more than ten times the original value. In at least one case, the final settlement went as high as hundred times.

⁴² Define under section 2(c) of the Bihar Land Disputes Resolution Act 2009

⁴³ Section 2 of The Bihar Land Disputes Resolution (Amendment) Act, 2013.

⁴⁴ Section 14(3) of The Bihar Land Disputes Resolution Act, 2009

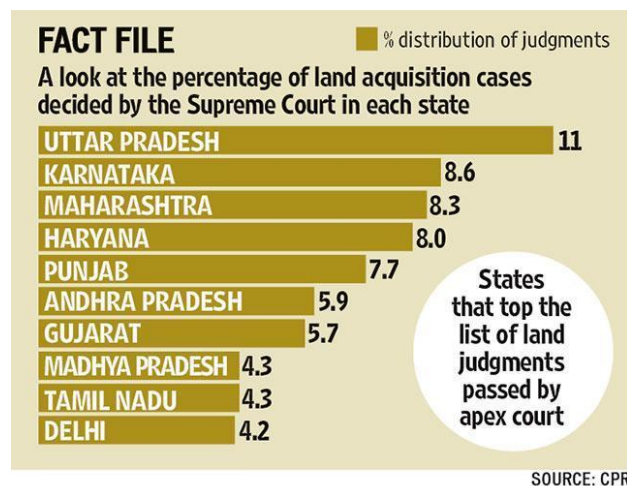
⁴⁵ Section 14(4) of The Bihar Land Disputes Resolution Act, 2009

⁴⁶ Section 4 of The Bihar Land Disputes Resolution (Amendment) Act, 2015

⁴⁷ Anil Kumar, *Woman sarpanch in Bihar settles 20-year-old land dispute in 6 days*, The Hindustan Times, Jun 16, 2017 11:11 IST(<http://www.hindustantimes.com/>)

⁴⁸ Mohd Ujaley, *Now, technology to settle land disputes? Check out what Bihar is up to* - The Financial Express, June 27, 2016

⁴⁹ Most. Premlata Devi vs The State Of Bihar & Ors on 4 April, 2016, Madhu Devi @ Madhu Motani & Ors vs The State Of Bihar & Ors on 10 February, 2015, MAHESHWAR MANDAL Vs. STATE OF BIHAR Decided on June 24, 2014



Land acquisition has been a hot-button issue before the current NDA government, which, tried to bring amendments in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act), enacted by Parliament under the UPA government. The NDA government wanted to do away with the consent of landowners and the social impact assessment provisions of the law to make the process of acquisition faster and smoother. The amendments were halted due to protest from farmers' groups and opposition parties. The centre then asked the states to bring their own versions of the law by amending the central law. Tamil Nadu, Gujarat and Rajasthan have already come out with amended laws. The study found that in almost 80 per cent of the disputes, land was acquired under the Land Acquisition Act of 1894, which mandated the government to pay the market value of the land to the landowners. In case the acquisition was on behalf of a company, the company had to pay the compensation. The law has now been replaced by LARR Act that provides for an increase in compensation to twice the value of average of registered sale deeds in urban areas and four times in rural areas. In a significant number of cases, the courts have awarded compensation up to 10 times the original amount calculated by authorities. Thus four times compensation may not deter Land owners from approaching the court unless the government starts assessing compensation based on the fair value of the land. In 2014, a quarter of India's districts were embroiled in ongoing legal and political conflicts over land acquisition, said a study by Washington-based think tank Rights and Resources Initiative. While several big-ticket projects have got embroiled in legal battles post enactment of LARR Act, 2013, they have not been reflected in the CPR study as it takes years for the cases to reach final decision in the courts. The study showed the maximum number of land acquisition cases decided by the Supreme Court were from Uttar Pradesh (11%) followed by Maharashtra (8.6%), Karnataka (8.3%), Haryana (8%) and Punjab (7.7%) (See Graph). The purposes for which maximum land acquisition disputes were recorded, included, planned development (21.4%) followed by Industrial parks and factories (11%), housing projects (9.5%), defence (6.5%) land reforms (5.6%), and highways, roads and bridges (4.7%).

Without going into the controversy with regard to physical possession, this much is clear that the award was made more than five years prior to the commencement of the 2013 Act and the compensation has also not been paid. The necessary ingredients for the application of Section 24(2) of the 2013 Act, as interpreted by the Supreme Court and this court in the decisions⁵⁰, stand satisfied. As a result, the petitioners are entitled to a declaration that the said acquisition proceedings initiated under the 1894 Act in respect of the subject lands are deemed to have lapsed. It is so declared." J.F Nariman said that It is important to note that a notice of award under Section 12(2) to persons interested can only be issued after money is received by the Land Acquisition Collector, and that the said Collector shall not take possession of land unless and until compensation amount is received by him. Further, actual payment to land owners must be made latest within a period of 60 days. It is high time that the State realizes that persons whose property is expropriated need to be paid⁵¹. In *New Riviera Coop. Housing Society v. Special Land Acquisition Officer*⁵², the Court held: "...Once the award has been made and compensation has been deposited or paid under Section 31 of the Act, the Land Acquisition Officer is entitled to take possession and the possession thereby taken stands vested in the State under Section 16 of the Act free from all encumbrances...". In *Banda Development Authority v. Moti Lal Agarwal*⁵³, the Court referred to the judgments⁵⁴ and held that No hard-and-fast rule can be laid down as to what act would constitute taking of possession of the

⁵⁰ *Pune Municipal Coporation and Anr. v. H.M. Solanki*, 2014 (2) SCC 183, *Union of India & Ors. V. Shiv Raj & Ors.*, (2014) 6 SCC 564. *Sree Balaji Nagar Residential Association v. State of Tamil Nadu & Ors.*: Civil Appeal No. 8700/2013. *Surender Singh v. Union of India & Others*: W.P.(C) No. 2294/2014 decided on 12.09.2014 by this Court; and *Gyanender Singh & Ors. V. Union of India & Ors.*, W.P.(C) No. 1393/2014, 10.09.2014.

⁵¹ *Delhi Development Authority Vs. Sukhbir Singh & Others* [Civil Appeal No.5811 of 2015], [Civil Appeal No. 8857 of 2016 arising out of SLP (Civil) No. 28304 of 2015], *Pune Municipal Coporation v. H.M. Solanki*, 2014 (3) SCC 183,

⁵² (1996) 1 SCC 731 at para 3

⁵³ [(2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747]

⁵⁴ *Balwant Narayan Bhagde v. M.D. Bhagwat* [(1976) 1 SCC 700], *Balmokand Khatri Educational and Industrial Trust v. State of Punjab* [(1996) 4 SCC 212], *P.K. Kalburqi v. State of Karnataka* [(2005) 12 SCC 489], *NTPC Ltd. v. Mahesh Dutta* [(2009) 8 SCC 339 : (2009) 3 SCC (Civ) 375], *Sita Ram Bhandar Society*

acquired land. (ii) If the acquired land is vacant, the act of the State authority concerned to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession. Trial court can review its order under the land acquisition act⁵⁵. In the case of *Neera Yadav v. C.B.I*⁵⁶, in Noida land allotment scam, Ex-UP chief secretary Neera Yadav & former IAS Officer Rajiv Kumar to undergo 2 years imprisonment.

In this way this new Act is an effort to address the historical injustice while speeding up procedures. It expressly provided that no land can be acquired in scheduled areas without the consent of the gram sabhas. It ensures special enhanced benefits for those belonging to scheduled castes and scheduled tribes and also provides that no one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared. The new Act applies retrospectively to cases where no land acquisition award has been made. Also in cases where the land was acquired five years ago but where no compensation has been paid or no possession has taken place, then the land acquisition process has to be started afresh in accordance with the provisions of the new Act. To ensure there remains no gap in interpretation of essential clauses of the repealed as well as repealing act, the Supreme Court has fairly provided initial interpretations to remove any probable ambiguity. The first such case was of *Pune Municipal Corporation and Anr. vs Harakchand Misirimal Solanki and Ors* wherein the Court clarified that where land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 of the 1894 Act is passed, then the provisions of 2013 Act would determine amount of compensation to be awarded. However, where the position is otherwise, then such proceedings would continue under the 1894 Act as if the Act has not been repealed. The court also held that if the acquisition proceedings are initiated under 1894 Act and an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies - physical possession of the land has not been taken or the compensation has not been paid - such acquisition proceedings would be deemed to have lapsed. Further, on the lapse of such proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. Furthermore, in the case of *Union of India & ors. vs Shiv Raj & Ors* the case has given the Act the clarity of application which it lacked. The new land acquisition law has given a severe blow to governments which issue notifications of take-over, but do nothing for years and even deny payments to the land owners. If the delay is more than five years, even if caused by stay orders from courts, the acquisition will lapse.

In this way after analyzing above legislation both at the Centre and State level the author has suggested the approaches for dispute resolution which is given below in another different heading in order to provide more expeditious, smooth and efficient way of resolving land related disputes.

5. Approaches for Dispute Resolution

Generally, there are two broad approaches for dispute resolution, namely: Consensual approaches & Non Consensual approaches.

5.1. Consensual approaches: Consensual approaches are those conflict resolution strategies which aim to find a compromise that is acceptable to all parties involved and which can best re-establish peace, respect and even friendship among the parties. Consensual approaches therefore try to find a consensus among the conflict parties through intensive discussions and negotiations. Consensual approaches are: moderation, consultation, socio-therapeutical consultation, conciliation and mediation. They are generally faster and cheaper than non-consensual approaches and therefore often a preferable alternative to using overloaded courts.

5.2. Non-consensual approaches: Non-consensual approaches are characterized by third party decision making. There is much less diversity in non-consensual approaches than there is in consensual approaches. One distinguishes between arbitration and adjudication. Adjudication is a formal litigation process. The decision-maker is a judge at a regular court, a specialized land court or a tribunal. The process follows formal procedures and rules. Both parties – often represented by a lawyer – present evidence to the judge whose binding decision makes one party win and the other lose the case, which can only be appealed through a higher court. Adjudication will therefore not re-establish the relationships between the parties. The current land conflict might be solved, but the hostility may continue or even be sharpened. Adjudication should therefore always be considered the method of last resort. Adjudication is hindered in many countries by the case overload of the courts. It can easily take several years until a case is finally treated by the court, resulting in a high number of land conflicts pending there e.g., in *Delhi Development Authority v. Sukhbir Singh*⁵⁷ where compensation neither tendered nor paid to landowners whose lands were notified for acquisition and of which possession was taken four decades later. Such acquisition would be *non est* and deemed to have lapsed in terms of Section 24(2).

v. *Govt. (NCT of Delhi)* [(2009) 10 SCC 501 : (2009) 4 SCC (Civ) 268], (*Banda Development Authority case* [(2011) 5 SCC 394 : (2011) 2 SCC (Civ) 747] , SCC p. 411, para 37)

⁵⁵ *State of Maharashtra vs. Pandu Rama Udar*, 2017 SCC online Bom 766 decided on 09.05.2017.

⁵⁶ 2017 SCC online SC 858, decided on 02.08.2017.

⁵⁷ AIR 2016 SC 4275; also see *DDA v. Islamuddin & others* 2017 (1) SCALE; *State of Haryana v. Vinod Oil and General Mills*, 2014 (5) SCC 410; *Sita Ram v. State of Haryana & Anr.* (2015) 3 SCC 597; *Velaxan Kumar v. Union of India & Ors.*, 2015 (4) SCC 325.

Choosing a suitable form of dispute resolution instrument depending on the degree of escalation present, eight strategies of dispute resolution are recommended (Glasl, 1999):

- a. **Facilitation:** The facilitator helps the parties come together, the parties still being able to solve the problem by themselves.
- b. **Moderation:** The moderator helps the parties come together to clarify and settle minor differences, the parties still being able to solve the problem by themselves.
- c. **Consultation:** The “tutor” accompanies the process, working on the deeply internalized perceptions, attitudes, intentions and behaviours of the parties in order to calm them. Consultation is yet another approach useful during the stage of pre-conflict to stop the conflict progressing toward becoming a full-blown crisis.
- d. **Socio-therapeutic consultation:** This special form of consultation focuses explicitly on destructive, dysfunctional or neurotic behaviour due to psychological damages caused by former negative experiences in life. Socio-therapeutic consultation is extremely helpful if the parties involved have already lost face during the processes of peacemaking, peacekeeping and peace-building, as it helps in the understanding of one own behavior as well as that of one’s opponent, and therefore creates understanding and a willingness to forgive one another.
- e. **Conciliation:** This is a mixture of consultation and mediation. The conciliator helps the parties to negotiate while – whenever necessary – addressing internalised perceptions, attitudes, intentions and behaviours with the objective of reducing prejudices and hostility. Conciliation can be applied in pre-conflict and early conflict situations as long as the parties are able to talk to each other.
- f. **Mediation:** Mediation, too, requires that the parties are willing to face each other and to find a compromise. The mediator follows a strict procedure, giving each party the opportunity to explain its perceptions and to express its feelings, forcing the other party to listen and finally moderating a discussion aimed at finding a solution with which both parties can live. Preferably, the moderator should not propose solutions but may lead the way towards them. At the end, a written contract is signed by all parties and the mediator seals the agreement. Mediation can be done in any situation as long as the parties are willing to find a compromise.
- g. **Arbitration:** Arbitration follows strict rules too. Unlike the moderator, however, the arbitrator is expected to make direct suggestions on how to settle the conflict. He is more influential and powerful than moderators, tutors or mediators. He has decision-making authority. Therefore, arbitration can be used even at the peak of a conflict. What makes it different from adjudication is that the arbitrators are accepted and trusted by both parties. The arbitrator may be appointed by all conflicting parties or be a respected person traditionally responsible for dispute settlement.
- h. **Decision by a powerful authority (adjudication)** should always remain the last resort.

In the case of moderation, consultation, conciliation, negotiation and mediation the third party helping to resolve the land conflict only influences the process, not the outcome. These are all consensual approaches where the outcome is exclusively defined by the parties.

An alternative to adjudication is arbitration, which is more flexible, much quicker and generally less expensive, especially in smaller cases in which no lawyers are involved. It also allows for much better conciliation, as the arbitrator can also act as a mediator, the only difference being that s/he has the last say in the matter. The arbitrator-as-mediator listens to the facts, perceptions and arguments presented by both parties, who can be represented by lawyers, but don’t have to be. Arbitration is therefore a perfect combination of mediation and adjudication, offering a chance of re-establishing trust and respect among the parties while on the other hand providing a third party decision. In some situations or cultures, this may be more appreciated than a solution decided upon by the parties alone. In the case of high asymmetry and the risk that the more influential party imposes its will on the other, arbitration will probably result in a fairer outcome – provided that the arbitrator really is neutral. Unfortunately, there is a lot of corruption in arbitration, as well. However, as there is more flexibility in the selection of an arbitrator than there is in case of a judge, the chances are higher of finding a qualified person who is suitably trained in legal matters, accepted by both parties and who will decide fairly. Whether or not the decision is binding depends on the legal frame, as well as on the agreements between the parties. Generally, an arbitrator’s decision should not be open to appeal through the courts. In some countries where the neutrality of the arbitrators cannot be guaranteed, however, the court should be accessible as an option of last resort.

All micro-social land disputes which cannot be solved by consensual approaches, as well as all meso-social land disputes among individuals or groups that will have to deal with each other in the future and which also cannot be solved by mediation (such as boundary conflicts between tribes or villages, illegal sale or lease of communal land, or land use conflicts between farmers and pastoralists) should be settled by arbitration. Even highly asymmetric land disputes such as group invasions of private land or evictions from state land can be resolved by arbitration. Arbitration can be carried out by different institutions. Special land courts or land tribunals could apply the method of arbitration, for instance. Adjudication should be reserved for violent and major criminal land conflicts.

6. Recommendations

In India because of land acquisition there has been severe resentment for ownership, control, management and use of the inadequate land resources. There have been many efforts in the recent few years to ensure conventional development of land rights, but they are dilapidated far behind and there have been disagreement. The present land acquisition laws, its administration and management in India are not only full of intricacy, procedural difficulties and mismanagement but also not accessible and responsive to the interest of the common people of the country. Furthermore, the present mechanism to settle land acquisition disputes is not time saving, cost effective, peaceful and sophisticated. Therefore, The complexity of causes leading to land disputes, as well as their diversity and the large number of different actors involved, requires an integrated, system-oriented approach for solving land disputes and for preventing additional ones. To ensure land right and to eliminate land dispute, it is recommended that govt. should do these:

- Functioning constitutive and regulatory institutions adapted to local requirements are needed. These are tenure security, land registration, rule of law, land management and ethical guidance.
- A Co-ordinated system of land dispute resolution bodies has to be established, to provide for a wide range of options for resolution, always giving priority to consensual approaches.
- Land governance can and should be improved by applying principles such as equity, accountability, integrity, transparency, effectiveness, efficiency, the rule of law, legal security, civic engagement, subsidiarity, security, and sustainability to the relevant areas. These include land policy, land related legislation, state land management, land administration, land management, land reforms, land dispute resolution etc⁵⁸.
- The establishment of transparent and accessible capital markets can help solve land conflicts, especially when small amounts of money are made available at the local level (e.g. through microfinance).
- The integration of psychotherapeutic methods to re-establish mutual respect and trust among the conflict parties should be considered and given priority.
- The effectiveness and jurisdiction of LARR Act should be increased and implemented with high hand to reduce land disputes;
- A suitable alternative dispute resolution (ADR) method can be introduced to minimize land-related disputes and court cases as well;
- Providing the legal aid and advice to the poor people who wish to contest their claims and introducing effective legal literacy program so that poor people could have better ability to realize and deal with land related issues easily.
- It is also recommended to organize Lokadalat on a routine basis in order to lower the burden and pressure on judiciary.
- Establishment of Land Tribunal specially dealing the land related issues at the hierarchy level like the Bihar Land Disputes Resolution Act 2009 because in the absence of a common adjudicatory body, the people are faced with undue hardship in getting their grievances redressed because of the complexities of the procedure which is definitely a difficult task for the layman.

7. Conclusion

The above analysis of various aspects of the 2013 Act and the Bihar Land Disputes Resolution Act 2009, it clearly shows that despite Rights-based Approach adopted for the 2013 Act, there are many loopholes and deficiencies in the LARR Act. However the Bihar Land Dispute Resolution Act 2009 is very useful and effective in resolving disputes related to land acquisition and it has strengthened the dispute resolution instrument in Bihar and the establishment of Bihar Land Tribunal is also a blessing there. In larger public interest and in the interest of the people of the State, it is deemed expedient to create a consolidated forum for adjudication of all disputes appertaining to land in the particular State as well as central level. With a view to provide a common and uniform forum for adjudication of land disputes and land acquisition related cases, it is necessary to create a Tribunal at the highest level in the hierarchy. The article proposes and examines Dispute Resolution Instruments and various Alternative Mechanisms and options to manage land resource in a sustainable way and yet avoid land-related conflicts. It is also pointed out that the market price-based compensation is arbitrary and will not ensure social justice or efficient allocation of land resources This article attempts at theoretical exposition of an alternate mechanism, heavily drawing upon land-losers "participation and cooperation. It relies upon post-acquisition utility of remaining land and occurrence of use and exchange value windfalls. It proposes an extended scale of acquisition in the first instance, followed by land return in certain proportion to all the participant land-losers, so that no one gets exclusively hurt and no one turns out land-less while the cohort fares together. As the gist or crux of the Right to Fair Compensation and Transparency in LARR Act 2013 is itself imbibed in its Literal Interpretation of the Act that is to provide Just and Fair Compensation first and acquisition later and this whole procedure should be very very transparent in all manner. Because the establishment of the Rule of Law is a prerequisite for all other measures for the prevention and resolution of land disputes. This includes clearly defined, non-concealing, non-contradictory laws, legal norms and by-laws without loopholes, clearly defined roles, functions and responsibilities of all participating actors, a hierarchical court structure, Land Tribunal responsible for monitoring, an independent media and public participation in the making of laws and rules

⁵⁸ FAO/UN-HABITAT: *Towards Good Land Governance* (preliminary title). Rome/Nairobi (to be published).

(Zimmermann 1999). Therefore, it is the need of the hour in order to make the LARR Act 2013 more efficient, more humane, more participative, more transparent and give more teeth and give more clear picture of dispute resolution instrument free from all deficiencies (as discussed above) as compared to the Bihar Land Dispute Resolution Act 2009. At last but not the least,

“Looking at all the procedures of resolving a land dispute, we would conclude that it is easier to prevent a dispute than to cure it. In resolving a dispute, we cannot do much about the harm that has already been done. It is therefore a more worthwhile investment for every government to invest in land dispute prevention measures by putting the right policies in place and ensuring implementation of what the policies require” (Kariuki, 2005).

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