

TITLE: POLICY AND PRACTICE OF LAND ACQUISITION IN DELHI: MAPPING THE (IN) APTNESS OF LARR ACT, 2013 IN URBAN SPACES

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ABSTRACT

The present paper elaborates on the provisions of The Right to Fair Compensation and Transparency in LARR Act-2013 for the urban areas. The article focuses on the specific issues of urban land acquisition, compensation, and social impact assessment. It further elucidates the efforts at 'circumventing', if any, by the State Governments by issuing their own land acquisition rules and the significance of such regulations for urban areas. The paper elaborates on the legal conundrum that has ensued because the affected persons in the urban areas have taken the course to the Courts. In this paper, the authors present the case studies of land acquisition in NCT of Delhi, especially after the 2013 Act. The present article also highlights the alternative policy mechanisms like land pooling, which may facilitate the conflict-stricken process of land acquisition in urban India, especially Delhi.

Keywords

urban areas, land acquisition, LARR-2013, Land Pooling, NCT of Delhi

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INTRODUCTION

The planet earth is experiencing a process of rapid urbanization. Although the past century witnessed a massive upsurge in built-up urban spaces, it diminishes in comparison to what lies ahead. More than half of the urban footprints expected to be built by the year 2030 are yet to be made. The next few years will witness an upscale and large-scale development in urban areas, including creating urban infrastructure. As high as ninety percent of this urban footprint growth will occur in low- and middle-income countries (LMICs), including India.

Land acquisition is often a natural corollary to the expansion and development of urban areas. This results in the physical rearrangement of people who own and occupy that land. Such Acquisition of land and resettlement of people may also be almost compulsory to improve the lives of the

more than 1 billion people living in slums worldwide, a large proportion of whom live in LMICs. Therefore, any effort to take on board sustainable urban development must ensure adequate land acquisition procedures so that resettlement does not limit much-needed urban development.

Also, social justice questions must be answered because of land ownership. Thus, its Acquisition would entail social justice administration and violate social justice if not undertaken with sensitivity. Historically, the Acquisition of land by the state has been marred with considerable contestations. The land is an economic resource and a livelihood source for people; it is a crucial representation of a community's history, identity, and culture. Disputes over land acquisition subsume different dimensions of economic, social, and political life. Various authors have examined

specific conflicts involving major dams, special economic zones, housing complexes, and industrial projects. Any study on systematic historical narration and geographically representative data on disputes over land acquisition have been conspicuous by its absence. With growing urbanization in India, identification of cities for the Smart City developments and a consequent increase in the number of urban projects funded by the public sector/governments, and simultaneous promulgation of the government's vision of providing housing to all by 2022, there is an increasing demand for land acquisition in urban areas. Such major urban projects such as urban development/redevelopment, up-grading urban transport, water supply, sanitation provision, and urban solid waste management necessitate significant land acquisition and resettlement efforts that further increase people's impoverishment substantial risks. In the process of urban expansion, the land previously used for agricultural and allied purposes is put to non-agricultural uses, and it commands far enhanced market value.

The governments of all modern nations possess the power to acquire land compulsorily[1]. The constitutional framework of various countries provides this as a single exemption to fully protected private property rights[2]. Since the nation has approved a development strategy through centralized planning, despite the constitutional division of power and function between Centre and State, the central government plays a significant role in India's urban areas. The origin of the regulatory and controlling framework of the land acquisition dates to colonial times. The Bengal Regulation 1 of 1824 that applied to all the provinces under Fort William's presidency was the first legislative attempt at regulating land acquisition. The law laid the foundation and was premised on the doctrine of Eminent Domain. One of the Constituent Assembly's initial steps was to develop a novel social and economic order based

on an expeditious social redistribution of justice and economic growth.

The problem faced by the makers of the Constitution was to create an outstanding balance between various rights such as rights to liberty, equality, and property as well as renovating a socio-economic order which was equitable and just in nature. Undoubtedly there was an ardent requirement to evolve a development scheme that shifted from a feudal agrarian to a capital-intensive industrial society. However, this task was like a double-edged sword[3]. It resulted in a prolonged and grueling debate of balancing the community's interests and the individual's claims on the other. There was a debate that lasted for more than two years before Article 19(1)(f), and the Assembly adopted article 31. Friction between the legislature and executive—which was given the task of implementation of development plan—and the judiciary—which had the power to enforce the fundamental property right—was a consequence of an innate anti-thesis of ensuring an absolute property right and taking forward a socialist developmental strategy of land reform and state-planned industrial growth. Article 31 provides the power to the State of Eminent Domain. This gives the state the power to exercise its sovereignty. The government can compulsorily acquire the property—for a public purpose—which belongs to private individuals upon payment of just compensation.

Post-independence, the governments at the Centre and state levels acquired vast land applying LAA, 1894. This was done for establishing heavy industries, physical infrastructure, the creation of townships, etc. In 1894, the LAA saved on the cost by assisting land transfer by eliminating the prolonged discussions with various small landholders. The Constitution of India brought the issue of the Acquisition of property under the Concurrent List. This empowered the central government to enact on the subject and further control the state legislations in line with the central legislation. Compulsory land acquisition based on eminent domain principles has been the

most important mechanism for acquiring land for urban infrastructure projects in the past.

II. FROM LARR ACT 1894 TO 2013: A STEP FORWARD OR A SIDESTEP

One of the major problems is that there is a total absence of acknowledgment of the impact of displacement and resettlement on the people. The legal fraternity and the various sections of the government are not sensitive to their needs. The land acquisition approach, as well as its exercise in this country, gravely lack the following:

- a) Absence of sensitivity towards the impact of land acquisition on the community.
- b) The crucial requirement of bringing in the opinion of the community that is distressed by land acquisition through public hearing and
- c) The land is not acquired with the informed consent of the landowner.

The Land Acquisition Act, 1894, was gravely condemned for several reasons. Such as:

- a) "Public Purpose" is not defined exhaustively:
Absence of any comprehensive definition of public purpose, which can regulate the need for land acquisition.

b) Absence of a legal framework to determine the "entitlements" of compensation:
Lack of a comprehensive legal structure to govern compensation for the acquired land. When there is no proper framework to regulate rehabilitation and resettlement, it automatically affects several human rights of the affected people, such as livelihood, housing, etc.

The battle for a uniform national land acquisition policy in this country which not only fosters the development requirements of a young developing nation but also attempts to provide a voice to the population bearing the social cost of such development interventions was a long and arduous one spreading over more than a hundred years. After long deliberation and various often violent struggles worldwide, the LARR Act 2013 became a reality on 1st January 2014. It is widely agreed and accepted that this Act is a step towards bringing in a culture whereby the government will

engage and educate the affected people about their rights, such as livelihood and the legitimate requirement and necessity for such disposition.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is a road towards a better involvement of the stakeholders, affected individuals in the development project and its implementation through the following provisions:

1. As compared to the 1894 Act, Section 3 (za) of the LARR Act, 2013, has an extensive listing of 'public purposes'.
2. The Act has increased the scope of people to whom compensation is to be given in case of Acquisition by exhaustively defining 'person interested'—under Section 3(x)—as those having an interest in the land as opposed to actual title and 'affected family'—under Section 3(c)]—as those dependent on the land for their livelihood.
3. The Act further manifests that the government can acquire land for private companies—for the production of goods for public or provision of public services—only if 80% of the affected individuals have given their consent to such Acquisition¹.
4. The Act further demonstrates the requirement for public participation in assessing the government's need for land acquisition in its inclusion of provisions for Social Impact Assessment (SIA) of large projects (Sections 4-8).

III. CRITICAL ANALYSIS THE "FAIR" AND "TRANSPARENT" NATURE OF LARR 2013

Elaborating the cornerstones of the country's land acquisition process, the preamble of the Act ensures an informed and transparent operation for land acquisition for development with minimal impact on the owners and the families who are

¹ Subject to 10A of The LARR (Amendment) Ordinance 2014; See, The LARR (Amendment) Ordinance 2014 available on <http://www.prsindia.org/uploads/media/Ordinances/RTFCTLARR%20Ordinance%202014.pdf> (last visited on 3/01/2015).

affected. It further acknowledges the importance of fair compensation.

Thus, the Act promises to make land acquisition fair, transparent, informed, consultative, inclusive, and humane. It further ensures that land acquisition in the country would make the "affected persons" "development partners," thereby not pushing them to bear the "brunt of development." This Section critically analyses the terms and components of the Act through which the citizens (affected persons) are guaranteed the fair and transparent enactment of the process of land acquisition.

A. The Concept and Usage of the term "Public Purpose."

Even though section 3 (za) of the LARR Act, 2013, has a detailed listing of 'public purposes' compared to the 1894 Act, it cannot be denied that this has made the nature of the definition not only expansive but also ambiguous. Ironically the State governments have been utilizing this ambiguity to defend an acquisition of land. 'Public purpose' is defined under the Act as 'benefits the general public', which gives the government considerable discretion in its decisions regarding the Acquisition of land. Moreover, the Act contains an exhaustive definition under section 3(o), including 'electricity, railways, defense,' etc. and 'education, sports, and tourism'.

It is understood that the enfeebling impact that a comprehensive definition of the term "public purpose" may be limited in nature for any governmental intervention. But in the current development debate, the government may be under pressure to declare any industrial or infrastructural development as advantageous to the community irrespective of its short-term and long-term consequences. It cannot be denied that amongst the entire list Infrastructure and Industry and land for Private Companies for Public Purpose is prone to be abused. These are the areas that are most often disguised as initiatives towards a public purpose by giving employment to the

locals and describing it as a step towards regional development. But there are various cases where the associated and accompanied land use often eats up a large proportion of the acquired land "earmarked" for a different public purpose due to the state government's share is extremely low in the project. At present, it is very convenient to prescribe anything as a use of land for a public purpose, and the possibility of a private firm taking undue advantage of such a situation cannot be over-ruled. Furthermore, when land is acquired in the name of any public purpose, public money is exploited for private interests.

Moreover, the Acquisition for a public purpose does not ponder the imbalance created in the environment, which is the entire process's product. The land acquisition projects in the ecologically fragile or diverse conditions may see the conversion of a reasonable extent of wetlands and other environmentally sensitive environs in the name of public purpose. Also, land acquisition for R&R is elucidated as a public purpose. However, it is nowhere explained whether the land acquired and converted in the name of public purpose may infringe the same public's rights by damaging that land's ecological security. One of the primary reasons behind the present law's discontent is that it provides no safeguards against expansive government interventions for private projects. This could open a Pandora's box of several corrupt practices and operations of various "interested" pressure groups.

B. DEFINITION OF "INTERESTED PERSONS"

The Act uses the term "interested persons" in addition to "Affected Persons." This usage of terms has widened the scope of the "entitlements" matrix and those entitled to get compensation. However, landless laborers and others like fisherfolk and cattle grazers included within the definition of 'affected families'—are excluded from 'persons interested'. Under section 16 of the Act, only 'persons interested' can raise dissent to the Acquisition of land. Hence this definition must

be modified to include all those affected by the proposed Acquisition.

Moreover, the practice of land acquisition has manifested that government officials often reject the very existence of these people and their dependence on the land in question. They also insist on documentary proof of their association with the land, for which they do not possess any documents. Hence, it is evident that the current Act needs amendments to ensure that all those affected by this Act are compensated and rehabilitated, and consulted in Acquisition.

C. LEGAL STIPULATION OF REHABILITATION AND RESETTLEMENT MEASURE

Under the 2013 Act, rehabilitation and resettlement (R& R) have been made compulsory. Section 16 of the Act deals with preparing a scheme for R& R. The Collector is the Administrator for this scheme, and his functions include surveying the census of the affected family. He prepares a draft R & R scheme based on this survey. LARR Act also deals with R & R committees' provision at the project level involving local people and elected representatives. The functioning of the R & R mechanism is regulated at the central and state levels. At the central level, the task is overseen by the National Monitoring Committee for R & R. At the state level, it is performed by the Separate Commissionerate for R & R. The Land Acquisition, Rehabilitation, and Resettlement Authority performs the adjudicatory function, and this authority is presided over by a Judge.

All land acquisitions by central and state governments are governed by the LARR Act's R & R provisions. R & R provisions will apply if the land acquisition is more than the prescribed limit—which is determined by the state government—and is performed by a private entity, including companies. Several private companies such as Singur, POSCO, etc., have already faced been problems. It would have been appropriate to incorporate R & R mechanism in every land

acquisition by private persons or entities in this light. In the case of land acquisition by a private company, the power to determine the limit for applying the R & R scheme is given to the state government, leading to the R & R mechanism's failure to be conceived under this legislation.

Furthermore, any land acquisition made under any legislation prescribed in Schedule IV of the LAAR Act—such as SEZ Act 2005, Railway Act 1989, National Highway Act 1956—are also excluded from the compulsory R & R scheme. The R & R scheme's effectiveness is further severely affected by land acquisition for SEZ, railway, highway road expansion, and other significant activities. They are excluded from the R & R scheme's ambit.

D. MANDATORY SOCIAL IMPACT ASSESSMENT STUDY

The LARR Act mandated the inclusion of a Social Impact Assessment (SIA)[4], [5] in the land acquisition process. This inclusion rationale was to help comprehend the impact of the proposed land acquisition on the affected population and the involved stakeholders[6]. Under the LARR Act, Social Impact Assessment (SIA) of large projects (Sections 4-8) emphasizes public participation for assessing the governmental need for land acquisition. Such an SIA has to be undertaken with the Panchayat and Municipality involvement, which is duly recorded in the official report. This SIA report would be later appraised by the expert group, which can recommend the necessity of land acquisition or otherwise. The expert committee is expected to employ a social-cost benefit analysis in reaching such a decision.

But this appraisal of the SIA report by the expert group is not impervious to questions of conflict of interest and integrity. This is so because, firstly, this expert group is appointed by the government itself. Secondly, such a group's report can be disregarded by the government. This can be accomplished easily by legal means as the appropriate government can exempt an SIA study if the urgency clause covers the project under section 30 of the Act. Herein, SIA is only required

to be undertaken if the Acquisition is for 100 or more land acres. This undermines the idea of making SIA a mandatory feature of the LARR Act. This posits grave concerns of lack of transparency and accountability in SIA's present framework under the LARR Act.

E. PUBLIC PARTICIPATION PROVISION

Authors have acknowledged that public consultation[7] holds a significant value in an Environment Impact Assessment[8]–[10]. It can be utilized to ascertain the views of the 'local affected persons' and 'any person who has a possible stake in any environmental aspect of the project.' These views must be considered by the agencies responsible for either granting or rejecting a project at the National or State level. Public hearing and submission of written representations are the two essentials of any public consultation process[11].

The idea of the LARR Act emphasizing public participation was to bring more legitimacy to land acquisition. The Act incorporates public participation right at the inception of land acquisition, i.e., preparing the SIA report prepared after consultation with local municipal bodies and conducting a public hearing in the affected area. But this provision that enables public participation does not guarantee that the dialogue and deliberation that ensues would be productive as far as the stakeholders' concerns are concerned and not a mere procedural part of the process, as has been seen under the Environmental Impact Assessment notification. These fears are not unfounded. There is a conspicuous absence of any member or representatives of Panchayats or municipalities in the expert group that made it non-inclusive and its working shrouded in mystery. However, the practice of including two representatives from Panchayat or Municipality in the expert group, which appraises the SIA report, could be perceived as a good practice.

F. THE REQUIREMENT OF INFORMED CONSENT OF AFFECTED FAMILIES

Under the LARR Act, the mandatory requirement of the affected families' informed consent is a progressive provision. It is a revolutionary step as far as such a law is concerned. But such prior approval does not apply to all types of land acquisition. It has a limited application to only land acquisition cases for private companies and public-private-partnership projects. Such prior consent must include at least 80% of the affected families when a private company is involved, and 70% of the affected families in a public-private partnership project. The consent of the project-affected families is not required to be taken when the government acquires land for its use, hold, and control.

Such exclusion of informed consent goes against the idea of including public participation in the land acquisition process. Such exclusion operates as a negation of the people's rights to their lands as, in reality, as most of the land acquired is for State-sponsored projects.

The legal framework of the LARR Act allows private companies to buy land from farmers directly. In return, an R&R package is offered to only those whose land is purchased by the private firms with the state's partial support or if a hundred or more acres are acquired. However, such a package is not necessary where private firms directly purchase land and the extent of landfall below 100 acres. In such a case, the affected people's prior consent is a grey area as its requirements are not delineated. In such a scenario, the sub-transactions in that locale where this development project is instituted may raise realty prices and result in land inequality. Such aspects of land acquisition are entirely ignored, ending up coercively handing over land under the old land acquisition legislation.

IV. DILUTIONS OF A CENTRAL ACT THROUGH STATE LAWS

The previous United Progressive Alliance (UPA) government had substituted the Land Acquisition

Act, 1894, with a new RFCLARR Act, 2013. This new law came under criticism for its widening of the "public purpose" definition that has led to the inclusion of private sectors. However, it has been lauded by the social movements led by NGOs and farmers groups who had been agitating for fairer legislation for land acquisition. Notably, the requirement of Social Impact Assessment (SIA), informed prior consent, food security, and compensation is the law's outstanding features. Adding to this list is the provision that allows for the return of land to original owners, which is left unused.

Under section 109 of the RFCLARR Act, 2013, the Central and State Governments can pass rules regarding land acquisition. To this effect, several states have passed laws that aim to make land acquisition easier for investors wherein they have either reduced the time or done away with the requirement of SIA conduct. In some instances, the states have also reduced the compensation award or modified the retrospective clause's applicability. Some States have also proclaimed an ordinance that does not require consent for land acquisition procedure. These states include Andhra Pradesh², Assam³, Bihar⁴, Himachal Pradesh⁵, Jharkhand⁶, Sikkim⁷, Telangana⁸, Tripura⁹, and Uttar Pradesh¹⁰. Central Government enacted the LARR Act.

It is pertinent to note that States' power to make rules was to further improve the LARR Act. However, the States have employed this power to restrict the law's scope, indeed, as noted above. Some notable features of these changes by the States are as follows :

- **Social Impact Assessment (SIA):** States like Uttar Pradesh have taken amended that law to reduce the time the SIA is to be conducted. Telangana, Uttar Pradesh, Jharkhand, Andhra Pradesh, and Sikkim have reduced the notice period for a public hearing. Such amendments by the States have severely weakened the new law's purpose that had aimed in its preamble to provide for a more fair land acquisition process. In some states, the provision for the SIA has been completely removed from the law.
- **Consent:** Free and informed consent is a central pillar of the LARR Act. The State Rules were envisioned to operationalize the process of land acquisition while ensuring fairness and transparency. But the Rules framed by some states like Gujarat, Andhra Pradesh, Tripura, and Telangana have negated such a requirement of prior consent. Several states have incorporated the changes in the village Assembly's quorum or the *Gram Sabha* as well as combined the consent clauses. Interestingly, Gujarat has included all the changes proposed in the amendment ordinance into its State Rules, making the regulation come to light, pending the Parliamentary Standing Committee's decision.
- **Calculating compensation:** Despite a fixed multiplying factor, several variations are found in the States regarding the same. The amount of compensation available across the states will not be uniform, as evidenced by Haryana, Chhattisgarh, and Tripura's changes. Further, the States have not made a distinction between rural and urban areas and have the same multiplying factor for both of them. As a result, the amount of compensation available in both cases would be the same.
- **Food security:** Food security has been given special attention as often in cases of land acquisition. There is a loss of

² Andhra Pradesh RFCLARR Rules, 2014 (20.11.2014).

³ Assam RFCLARR Rules, 2015 (31.07.2015).

⁴ Bihar RFCLARR Rules, 2014 (27.10.2014).

⁵ Himachal Pradesh RFCLARR (SIA and Consent) Rules, 2015 (09.04.2014).

⁶ Jharkhand RFCLARR Rules, 2015 (30.03.2015).

⁷ Sikkim RFCLARR Rules, 2015 (02.03.2015).

⁸ Telangana RFCLARR Rules, 2015 (19.12.2015).

⁹ Tripura RFCLARR Rules, 2015 (22.04.2015).

¹⁰ Uttar Pradesh RFCLARR Rules, 2015 (12.05.2015).

agricultural land that is a vital lifeline for the area's population's nutritional needs. Therefore, the provision regarding food security was incorporated in the law so that the loss of crucial multi-cropped and other agricultural lands does not adversely affect the population. The Centre, the states of Chhattisgarh and Madhya Pradesh, have passed notifications affixing limits on such land acquisition. But there is no uniformity in any of these limits. Furthermore, these Rules do not put forth any coherence as to what the "demonstrable last resorts" or the "exceptional circumstances"—which are requirements as per the RFCTLARR Act, 2013—even are, and instead only manifest the limits up to which such land can be acquired.

- **Retrospective operation:** The Act's retrospective effect was an effort by the government to right the wrongs that can ensue due to land acquisition under such laws as the Land Acquisition Act, 1894. The RFCTLARR Act, 2013, therefore, was made a law that had retrospective action. The Supreme Court has worked to clear the ambiguity around this crucial feature of the Act. It interpreted some of the critical wordings of Section 24 of the RFCTLARR Act, 2013, to bring in some clarity. However, the fate of such a retrospective action of the law rest in uncertainty as it has been rechallenged before the Gujarat High Court as ultra vires the Constitution of India.

V. URBANIZATION: IMPACT OF THE LARR ACT, 2013

India is in the coming decades and has been projected to increase to 400 million people by 2050. The agriculture and allied activities that can only provide a livelihood to about 220 million people (as per 2011 data) cannot be expected to absorb any more. This will inevitably lead to a

significant exodus from rural to urban areas[12], [13]. Already, the peripheries of large cities and rural areas near big cities are increasingly urbanized in an unplanned manner. The building of highways connecting these places forms the axis of urbanization. Such urbanization has also led to the proliferation of urban slums within the big cities, home to low-income strata of the population who work as the labor force for the commercial and industrial complexes and residential colonies developed in the cities.

The result of such activities in India has resulted in urbanization that is termed as "messy" and "hidden" by the World Bank report on urbanization in South Asia (World Bank, 2016).

The Jawaharlal Nehru National Urban Renewal Mission (JNNURM) is a visible effort on the part of the government to tackle this problematic urbanization, which saw implementation via the Tenth Five-year Plan in 2005 and continued over the Eleventh Plan (2007-12) and the Twelfth Plan (2012-17). JNNURM was chiefly focused on the rejuvenation of the central city only. However, to tackle urbanization effectively, there is a need to attend to these cities' periphery and areas beyond the city limits. The Working Group on Urban Strategic Planning for the Twelfth Plan (Ministry of Housing and Urban Poverty Alleviation 2011) had advocated for an 'urban strategic plan' instead of the current master plan system that regulated the land use in the city. Such plans would be spatial and development plans (SDP) to embody both the proposed land use and the development control regulations. A strategic plan to increase the density of cities that are already existing and develop new ones alongside transport and industrial growth corridors. For such urban renewal and planning, the statutory authority is already empowered, but it will also require that land be acquired. A viable incentive for implementing such a program can be the increased compensation under the LARR Act, 2013. Additionally, under the Second Schedule to the LARR Act, 20 percent of the developed land in

projects is mandated to be reserved for allocation to landowners (on payment of land acquisition and development) in proportion to the land acquired to facilitate Acquisition.

The social impact assessment is seen as an impediment to the land acquisition process. Still, the government has proposed to remove that same in cases of affordable housing projects through an ordinance. This 2014 ordinance also led to a dilution of the LARR Act, 2013 had the potential to impact urbanization in this country through the following modifications-

The ordinance provides that the appropriate government can exempt in public interest any projects which are:

- (a) Necessary for the national security of India;
- (b) Necessary for the rural infrastructure and that includes electrification as well;
- (c) Towards giving poor people affordable housing;
- (d) Vital for industrial corridors.
- (e) Infrastructure and social infrastructure projects include projects under public-private partnerships where the land ownership continues to be vested with the government.

Additionally, such projects will not need any compulsory social impact assessment—which includes environmental impact assessment—informed mandatory consent from the affected citizens and public hearing. 2013 Act mandated that irrigated multi-cropped land cannot be acquired beyond a limit specified by the state government, but the ordinance exempted the five types of projects from the same. Multi-cropped agricultural land can also be obtained for the above-stated kind of projects. This clause has been used after the lapse of the 2014 Ordinance by the various state governments. One of the stated five types of projects – affordable housing and housing for the poor- can impact urbanization.

Large-scale land acquisition for urbanization is mentioned as a public purpose, neither in the Act nor in the ordinance. The whole city or township is planned for development through the Acquisition of land by a state like Delhi. Instead,

various projects for infrastructure, housing, planned development, or improvement of the village or any other sites in urban areas are covered. This lacuna paved the way for land pooling as a valid option in creating the capital city Amravati in Telangana.

VI. MODEL OF URBAN DEVELOPMENT IN DELHI

In the year 1947, Delhi witnessed an unprecedented influx of refugees after the partition. This resulted in a large scale acquisition of land to check the haphazard growth of Delhi. This was followed by the Delhi Development (Provisional) Authority Act in the year 1955, and in the year 1959, 34,000 acres of land were notified, which indicated towards 'Planned Development of Delhi.'¹¹ The first Master Plan visualized 20 0000 acres of land for parks, 30,000 acres of land for residential use, and 10,000 acres of land for commercial purposes.

However, a study conducted by Vijay Singh in the year 2014 revealed that in the absence of foresight regarding Delhi's economic and social dynamics, the urban landscape that emerged showed many loopholes of the spatial-inefficiency in essential planning. This study covered all the 3,277 acquisition awards, starting from 1948 till 1989. Further, the study revealed that rural land conversion for urban use also increased the land's value, leading to several vested interests that should have gone to the state or the community. Three decades (1960-1989) witnessed a steep conversion (25%) of rural land to urban.

A. DELHI: SOCIAL AND ECONOMIC IMPLICATIONS OF LAND ACQUISITION AND URBANIZATION

On the one hand, where Shahjahanabad and Lutyen's Delhi demonstrated an efficient spatial relationship through a unique transport system, the first master plan of Delhi was utterly inadequate in intra-city spatial planning, and this resulted in a

¹¹ Land Acquisition Act s. 4

criss-cross of living and working spaces as well as a vast amount of time, money and energy was wasted. Land acquisition was not incorporated in the development; hence, there was an inefficient distribution and sub-optimal land use. Under local pressure and need, the Municipal Corporation of Delhi and the Public Works Department of Delhi acquired 25% of the land for non-plan purposes. Encroachment and illegal construction on green areas were possible as the city's ecology was ignored entirely, and the green regions were not acquired. There was no rationality behind the spatial and temporal phasing, and instead of contiguity in development and Acquisition, far off lands were acquired, which escalated the costs of development. Agricultural fields were acquired without any infrastructural planning or support, and this led to a constriction of village settlements and their degeneration into slums. Several problems, such as socio-economic issues, resulted from mindless cash compensation and no integration with urban colonies. Lack of urban planning can be demonstrated by a vast difference in the price of similar-sized flats in Munirka village and Delhi Development Flats. This has resulted in a lower city valuation and a significant loss to the country's economy. After the land acquisition, slow development has resulted in trespass and construction of unauthorized colonies on 1500 acres of land belonging to the Delhi Development Authority.

A sudden increase in the growth of unauthorized colonies resulted from a superficial assessment of the market value of land and an inordinate delay in giving compensation. Around 30% of Delhi's population in 2014 lived in 2200 unauthorized colonies on 36,000 acres of land, which accounted for 10% of the total and 20% of the urbanized land. In 2014, the Delhi Development Authority reported an encroachment on over 1500 acres out of 79,000 acres of land under its jurisdiction. Delhi's bad planning outcome is manifested by the fact that there is a total lack of development in 3600 acres of the village (*Lal Dora*), and 5848 acres of land remain under-developed. All this

could have been avoided if there was a proper prioritization of land to be acquired, quick utilization after Acquisition, and the affected community's urban planning involvement.

VII. URBAN LAND POOLING: AN ALTERNATIVE TO LAND ACQUISITION

Developing countries currently account for more than 95 percent of the global urban population growth. During the period between 2000 and 2030, the urban population is expected to double, and the built-up area of these countries is expected to triple in size (UN-Habitat, 2012). These population pressures necessitate the need to assemble and develop the land most efficiently and effectively.

Land Pooling/Readjustment/Reconstitution¹² is gradually attaining approval as a land assembly approach for India's development projects, predominantly dealing with urban extension in the urban periphery or restoration/redevelopment in existing urban areas. It is seen as a more efficient mechanism than the conventional assembly methods grounded in an eminent domain's power. The process is known in different parts of the world by various names, viz., Land Readjustment (LR) in South Korea and Japan, Land Consolidation in Europe, and Land Pooling in Australia.

According to Vitonen (2002), the LR procedure is justified based on the methods involving costs and efficiency, fair treatment of landowners, improvements in plan quality, and savings to the community and environmental benefits. Thus, it ensures an equitable distribution of developmental costs and profits created by spatial plans (Sonnenberg, 1996) and preserves the original ownership structure and social networks.

Under land pooling, public infrastructure is provided at a shared cost to the landowners and

¹²There is an important legal distinction between land readjustment and land pooling. In land readjustment, there is no transfer of title to the development entity. The original landowners retain title to their land throughout the process and the title is simply modified at the end to show the new property designation. In land pooling, the original landowners actually transfer title to the development entity at the beginning of the process and receive a new title after reconstitution.

the public authority. In the urban context, the process enables the metropolitan authorities to develop new areas by financing the infrastructure through increased land values. Once the infrastructure is in place, the land value rises. The landowners receive property of at least the same amount as their original property after developing the area. Thus, the cost recovery mechanism, coupled with the absence of purchasing land, outright eliminates the government's need to make a large up-front investment in infrastructure development.

On the other hand, the strategy is to shift the burden to the landowners by inviting them to contribute their land to participate in the development project's value. The landowners benefit by remaining in the same area, preventing significant social and emotional issues associated with displacement and relocation. On the other hand, the public authorities are much benefited as they do not require substantial upfront capital to compensate for the existing landowners.

The land pooling and redistribution process in urban areas are generally launched in various states through Town Planning Schemes (TPS). TPS's concept implies pooling together all the land under different ownership and redistributing it in an adequately reconstituted form after deducting the land required for open spaces, social infrastructures, services, and housing for the economically weaker Section, and road network. The process enables the government/local authority to develop the land without altogether acquiring it.

In India, the Town Planning Scheme (TPS) was first introduced under the Bombay Town Planning Act of 1915. In the words of A. E. Mirams, credited to have introduced the concept to India, "The Bombay Town Planning Act aimed at distributing the cost of development schemes over the lands improved thereby, and yet at the same time allowed a fair margin of profit to the owners of the land, who as a rule had done absolutely nothing to improve the value of the property. Simultaneously, the Act brings into the market

large areas of land that, without cooperative action, would for untold years remain agricultural land. In this way, the community at large can obtain land at a reasonable price". The first TPS was prepared for seven acres in Bandra (Deuskar, 2011).

In Gujarat, the first Town Planning Act was enacted in 1915, and the first TPS was taken up as early as 1917 for the Jamalpur area of Ahmedabad city. TPS became a more sustainable practice in Gujarat after the legislation's enabling amendments in the 1980s and 1990s. The constitutional validity of the Gujarat Town Planning Act was upheld in several judgments. It was also held that in case of lands which are needed for the local authority under the owners Planning Scheme which authorizes allotment of reconstituted plots to persons from whom original properties are taken, it is not easy to apply the provisions of the Land Acquisition Act, 1894 (Prakash Amichand Shah Vs. State Of Gujarat & Others).¹³

Delhi's development is presently by the third Master Plan, MPD- 2021, notified on 7th February 2007. As per estimates by DDA, Delhi's present infrastructure can accommodate a maximum of 1.5 crore people as against the current population of 1.7 crores. Delhi is expected to add another 60 lakh people by 2021. The increasing population would push the demand for housing, roads, sewerage, water, transportation, and power. Most importantly, affordable housing for the new community has emerged as the critical need of the hour. According to DDA, about 20,000 to 24,000 land needs need to be developed to address the deficit's accommodation needs and the estimated population increase.¹⁴

Given the large-scale demands of urban infrastructure in the country's capital, needs for

¹³ 1981 AIR 1597

¹⁴ The modifications in the form of a Draft Land Policy were published in the Gazette of India, Extraordinary, as Public Notice vide s.O. No. 990 (E) dated 4th April 2013 by the DDA. In accordance with the provisions of Section 44 of the Delhi Development Act, 1957 (61 of 1957) inviting objections/suggestions as required by sub-Section (3) of Section 11-A of the said Act. On 5th September, 2015 after duly considering the objections/suggestions received with regard to the proposed modifications, the Land Policy was incorporated in the MPD-21.

affordable housing, and the government's limited resources, the MPD-21 recommended increasing private participation in the development process in general and infrastructure development in particular. A significant policy change in this regard was the liberalized land policy by the DDA. The Land Policy was notified by the Ministry of Urban Development (Delhi Division) on 5th September 2013. Accordingly, Land Policy was incorporated as Chapter 19 in MPD-21.

The Delhi Land Pooling Policy envisages voluntary assembly of land by different landowners who can pool their land parcels together by forming associations/societies/partnerships or proper understanding amongst themselves (which are legally recognized). This pooled land is to be transferred to the Urban Development Authority. After carrying out verification and physical possession of the pooled land, the authority has to return a specific share of the deeded land to the landowners (or their representative) with the rights to develop the returned land for various urban uses. The DDA, which gets the ownership of the pooled land's balance, utilizes it for providing infrastructure to the new urban areas transportation, utilities, social and physical infrastructure, etc. In line with the MPD-2021 that provides for increasing the private sector's role in the urban infrastructure projects, particularly in acquiring land, the Land Policy assigns a facilitator role to the Government/DDA. The policy is applicable in the proposed urbanized areas for which Zonal Plans are approved. The land pooling policy further stipulates that the DE shall be returned within a 5 km radius of pooled land subject to other planning requirements. As per the procedure, a landowner who gives 20 hectares of his land would receive 60 percent of his pooled land back post-development. Those offering between 2 and 20 hectares for development will receive at least 48 percent of their land back. The remaining land would become DDA's property and be built upon as per the Master Plan 2021. Landowners and developers

will be able to get back developed land that they can further sell or use, as long as they adhere to the regulations according to the Master plan/Land Policy. According to the present policy, the land use distribution at the city level for infrastructure development is 53 percent for gross residential purposes (with approximately 50,000 dwelling Units for housing for EWSs; five percent for commercial purposes; four percent for Industrial purposes, sixteen percent for recreational uses (excluding green areas within various gross land-use categories); ten percent for public and semi-public facilities and 12 percent for roads and circulation. The DDA's share in the residential land shall vary between 0-10 percent, and commercial land shall vary between 0-2 percent. DDA shall retain the entire industrial land of 4 percent.

VIII. CONCLUSIONS

In a pluralistic, often contentious society, the concepts of "just," "fair," and "transparent" cannot be determined singularly or uni-directionally. They are multi-layered, multi-dimensional, and often open to interpretation and contextualization. The land is a visible, finite and perceivable entity but is equally a source of "being," an "identity," as well as "pride and status." Land and its Acquisition, thus, cannot be "compensated" monetarily only. For a land acquisition to be termed as "fair" and "just" is itself a questionable proposition because social justice, even in a democracy, can at best be relative and depend mainly on the mainstream popular perception of "justice."

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