



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

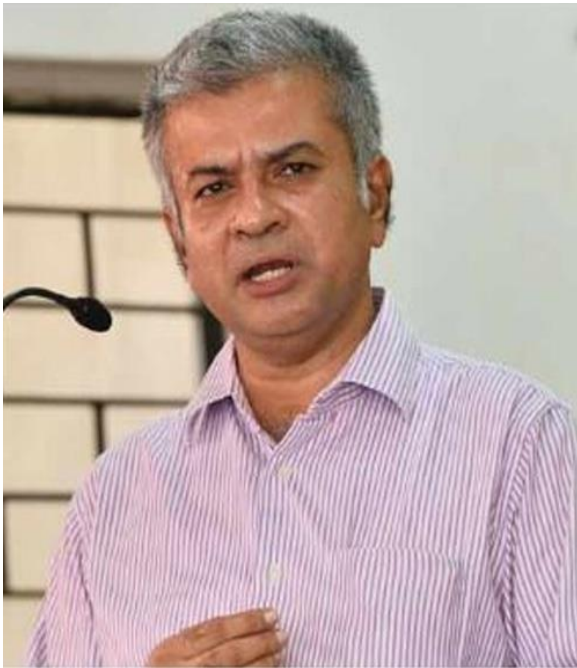
**DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL** **TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service** **officer**



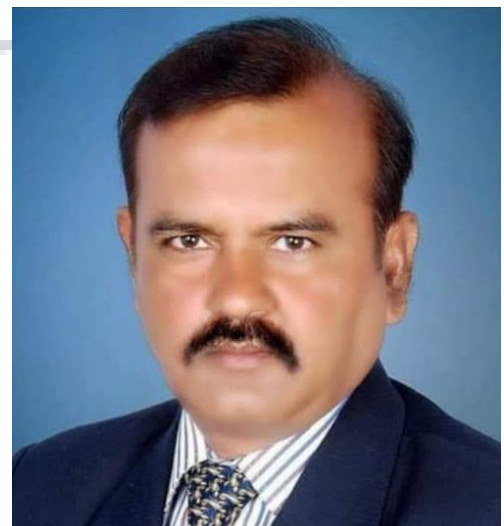
Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



### **Dr. Rinu Saraswat**

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

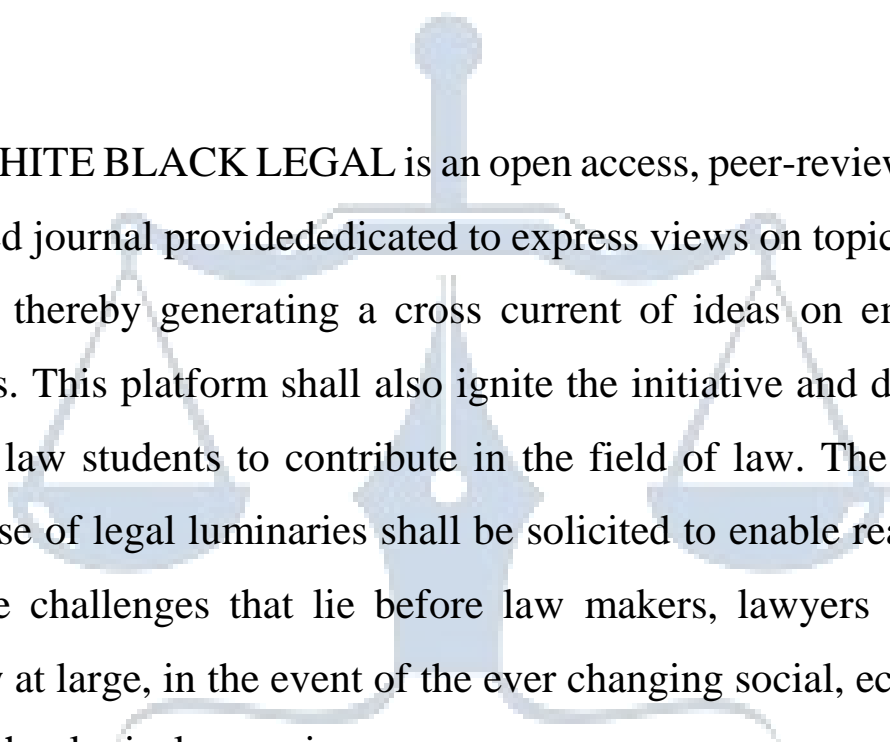


### **Subhrajit Chanda**

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

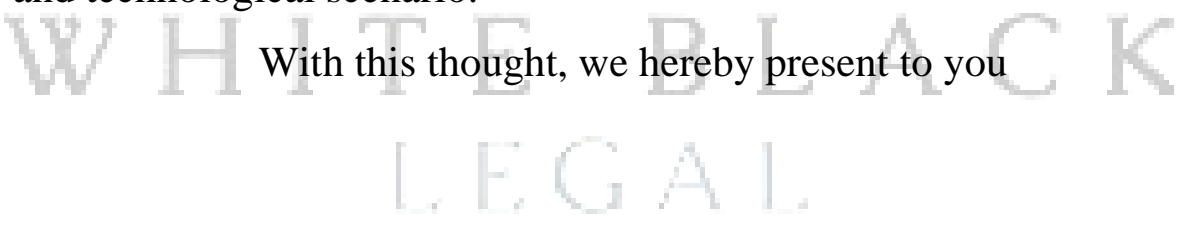
Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## *ABOUT US*



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



# **ANALYSIS ON ROLE OF JUDICIARY IN COMPENSATION CLAIMS FOR LAND ACQUISITION FOR PUBLIC PURPOSE**

AUTHORED BY - N. K. SHARITHIRA<sup>1</sup> & Dr. P. BRINDA<sup>2</sup>

## **ABSTRACT**

The State has power to acquire property owned by private entities for utilisation of public purpose. The payment of compensation to the land owners has become essential procedure in the acquisition process of the land. The importance of compensation and rendering relief to the affected land owners has been established as a principle by the Indian Judiciary by overcoming the Constitutional Amendment Acts. At present the fair and adequate compensation is a well established practice while acquiring the land for public purpose. The guidelines laid down by the Indian Courts provided clarity to the application of the legislation passed with the objective of acquisition of land by the State authorities. This paper discusses about the recognition of compensation to distressed land owners aftermath of Constitutional Amendment Acts and the need to implement the compensation procedure by the Court. It further discusses about the adaptation of various factor and interpretation of the acquisition law to render just and fair compensation to the land owners.

## **KEY WORDS**

Public Purpose, Compensation, Land Acquisition, Fair and Adequate Compensation

## **I. INTRODUCTION**

The doctrine of Eminent Domain gives the government the power to acquire the private property for utilisation of public purpose. The exercise of the Eminent Domain should be done with fair and equitable manner. The concept of compensation to acquired property owners is an essential part of the Eminent Domain<sup>3</sup>. The rights of the deprived land owners will be

---

<sup>1</sup>1st Year, LLM, School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University, Email Id: [n.k.sharithira@gmail.com](mailto:n.k.sharithira@gmail.com)

<sup>2</sup>Associate Professor, School of Excellence in Law, The Tamil Nadu Dr. Ambedkar Law University

<sup>3</sup> Dr. J. N. Pandey, Constitutional Law of India, Central Law Agency, 54<sup>th</sup> Edition, (2017); Doctrine of Eminent Domain, DeFacto IAS, <https://www.defactolaw.in/post/doctrine-of-eminent-domain-for-upsc-law-optional>

protected only with the effective implementation of awarding compensation. The Judiciary's role in compensation claims are not only technical in nature but also render the social justice to the land owners. The guarantee of compensation confirms that State is acting towards the welfare of the citizens and the acquisition process not arbitrary in nature. The intervention of the Judiciary ensures the acquisition and compensation process are exercised in a legitimate manner. The laws passed by the Indian Legislature and judgements pronounced by the Indian Judiciary have shaped the concept of compensation for land acquisition for public purpose.

## II. LAND ACQUISITION FOR PUBLIC PURPOSE

This doctrine of Eminent Domain rests upon the maxims "*Salus Populi Supreme Les Esto*" means the welfare of the people is paramount law and this could be rendered when the justice has been served lawfully and judicially and "*Necessita Public Major Est Quan*" which confirms that public necessity is greater than private necessity<sup>4</sup>. The public purpose term is dynamic in nature and it is impossible to enumerate all the uses under public purpose<sup>5</sup> yet the confirmation of public purpose is essential to determine the fairness of the acquisition and payment of the compensation<sup>6</sup>.

Article 31(2)<sup>7</sup> of the Indian Constitution which was abolished in the Forty Fourth Amendment Act, 1978 contained the specification with respect to public purpose, procedure, and compensation subject to acquisition of the property<sup>8</sup>. The Land Acquisition Act, 1894 which governed the acquisition of land failed to provide provision related to the public purpose.

The lack of provisions did not curtail the judiciary to apply its reasonableness and affirmed that the concept of public purpose in land acquisition cases with respect to Article 300 A<sup>9</sup> of the

---

<sup>4</sup> Dr. J. N. Pandey, Constitutional Law of India, Central Law Agency, 54<sup>th</sup> Edition, (2017)

<sup>5</sup> No:182, Law Commission Report on Land Acquisition Act 1894, (2002)

<sup>6</sup> Chanchal Kumbhkar, Land Acquisition in India: A Critical Study Concerning Legal Rights, *Academike*, <https://www.lawctopus.com/academike/land-acquisition-in-india-a-critical-study-concerning-legal-rights/>

<sup>7</sup> **The Constitution of India, 1950| Article 31(2)**- "No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given"

<sup>8</sup> Anjana, Lalit, Land Acquisition for 'Public Purpose' – A Critical Analysis (July 25, 2018). Available at SSRN: <https://ssrn.com/abstract=3772691>

<sup>9</sup> **The Constitution of India, 1950| Article 300A**- "No person shall be deprived of his property save by authority of law"



Indian Constitution. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act) allows the government to acquire land and compensate, rehabilitate and resettle the land owners for the acquired land for public purposes which includes strategic purposes and infrastructural projects<sup>10</sup>.

### III. RECOGNITION OF COMPENSATION UNDER INDIAN LAW

The Right to property was guaranteed under Article 19(1) (f)<sup>11</sup> and Article 31 (1)<sup>12</sup> of the Indian Constitution. In order to preserve this right, Article 31 (2) ensured the compensation to acquired property owners. The Constitution (Fourth Amendment) Act, 1978 deleted Article 19(1) (f) and removed Article 31 (1) from Fundamental Rights and reintroduced the Right to property under Article 300A under Part XII under Chapter V<sup>13</sup>.

The Courts have laid down that the right to property is a Constitutional right and it also amounts to Human right. When the property has been acquired in accordance with the law, it has

---

<sup>10</sup> **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013| Section 2. Application of Act.–(1)** The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:— (a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or (b) for infrastructure projects, which includes the following, namely:— (i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels; (ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute; (iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy; (iv) project for water harvesting and water conservation structures, sanitation; (v) project for Government administered, Government aided educational and research schemes or institutions; (vi) project for sports, health care, tourism, transportation or space programme; (vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament; (c) project for project affected families; (d) project for housing for such income groups, as may be specified from time to time by the appropriate Government; (e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas; (f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

<sup>11</sup> **The Constitution of India, 1950| Article 19(1)(f)-** All citizens shall have the right to acquire, hold and dispose of property

<sup>12</sup> **The Constitution of India, 1950| Article 31(1)** No person shall be deprived of his property save by authority of law.

<sup>13</sup> H.M. Seervai, Constitutional Law of India, Universal Book Traders, Volume 2, 4<sup>th</sup> Edition, (2002)

obligation towards the property owners to pay the compensation. The failure to pay compensation amounts to violation of Article 300 A of the Constitution of India, 1950<sup>14</sup>. The compensation for land acquisition has been now recognised as substantive right under Article 300A by the Indian judiciary<sup>15</sup>.

At present the Sections 8<sup>16</sup> and 9<sup>17</sup> of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 3G<sup>18</sup> and 3H<sup>19</sup> of the National Highways Act, 1956 and Section 27<sup>20</sup> of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 constitutes statutory recognition to the acquisition of land and compensatory relief to affected parties under the respective Acts.

#### IV. AWARDING COMPENSATION AS PROCEDURE IN LAND ACQUISITION

The payment of compensation to the land owners is an essential part of the acquisition procedure and it has to be followed for ensuring equity and justice in the society. It is the obligation of the State to pay the determined compensation in a fair and equitable manner but the State resources constrain the State to make the full compensation to the affected the parties<sup>21</sup>. The intervention by the Indian Judiciary has confirmed that fair acquisition constitute the awarding of adequate compensation to the land owners.

---

<sup>14</sup> Sucharita Roy vs. State of W.B., 2023 SCC OnLine Cal 5086

<sup>15</sup> Jilubhai Nanabhai Khachar vs. State of Gujarat, AIR 1995 SC 142

<sup>16</sup> **The Requisitioning and Acquisition of Immovable Property Act, 1952| Section 8. Principles and method of determining compensation**-Where any property is requisitioned or acquired under this Act, there shall be paid compensation the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out

<sup>17</sup> **The Requisitioning and Acquisition of Immovable Property Act, 1952| Section 9. Payment of compensation.**—The amount of compensation payable under an award shall, subject to any rules made under this Act, be paid by the competent authority to the person or persons entitled thereto in such manner and within such time as may be specified in the award.

<sup>18</sup> **The National Highways Act, 1956 |Section. 3G. Determination of amount payable as compensation.**—(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority

<sup>19</sup> **The National Highways Act, 1956 |Section 3H. Deposit and payment of amount.**—(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land. (2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto

<sup>20</sup> **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013| Section 27. Determination of amount of compensation.**—The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land.

<sup>21</sup> M.L. Singhal, Right To Property and Compensation under the Indian Constitution, J.T.R.I Journal, First Year, Issue II, (April- June 1995), <https://ijtr.nic.in/1995%20April.pdf>

The deprivation of property for the public purpose must follow the due process of law. In *Jilubhai Nambhai Khachar vs. State of Gujarat*<sup>22</sup>, while determining the Compensation, the Court laid down that the unfairness procedure will not be attracted for acquisition or deprivation of property under Article 300A. The judiciary stressed on the procedural safeguards to ensure the protection of land owners and embodiment of natural justice principles<sup>23</sup>.

## V. IMPACTS OF COURT'S ROLE IN CONCEPT OF COMPENSATION

The claims that are disputed before the Court with respect to the deprivation of property could be classified as two categories. Firstly, it comprises of the land owners who accept the legitimacy of the land acquisition process but approaches the Courts for fair compensations. Secondly, the landowners who question the acquisition process of their properties<sup>24</sup>. The legal disputes with respect to the fair compensation and the Court's interpretation in their principles has evolved the concept of compensation in the following manner.

### 5.1 Evolution of Just and Fair Compensation

The Constitution framers advocated that compensation and principles on fixation of compensation should be done only by the parliament and the justiciability of compensation should be limited to judicial review<sup>25</sup> yet the Judiciary played a major role in shaping the concept of just and fair compensation<sup>26</sup>.

#### 5.1.1 Recognition of Compensation under Right to property

Article 24<sup>27</sup> of the Draft Constitution contained the provisions related to Right to Property and during its discussion in the Constituent Assembly Sardar Patel firmly advocated that the State acquisition of property should be done only for a public purpose and on payment of *fair*

---

<sup>22</sup> AIR 1995 SC 142

<sup>23</sup> *Anand Singh vs. State of U.P.*, (2010) 11 SCC 242

<sup>24</sup> Wahi, Namita, *Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016* (February 27, 2017). Available at SSRN: <https://ssrn.com/abstract=3915345>

<sup>25</sup> Constituent Assembly Debates, Volume 7, p.1195-8; Constituent Assembly Debates, Volume 9 pp.1271-1272

<sup>26</sup> Samraditya Pal, *India's Constitution, Origins and Evolution*, Lexis Nexis, Volume 3, 1st Edition, (2015)

<sup>27</sup> **Draft Constitution of India 1948|Article 24(1)**- No person shall be deprived of his property save by authority of law; (2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

*compensation*.<sup>28</sup> Patel's view was differed from the Jawharla Nehru's view that acquisition of property for public use is a social engineering and supported *equitable compensation* which is equitable to individual and community<sup>29</sup>. By giving effect to these discussions, the Right to Property was conferred under Article 19 (1) (f) and Article 31(1) of the Constitution of India<sup>30</sup>.

On the concept of compensation, the Supreme Court in *State of Bihar vs. Kameshwar Singh*<sup>31</sup>, pointed out that the eminent domain is limited only to take away the property for public use upon making *just compensation*. In *State of W.B. vs. Bela Banerjee*<sup>32</sup>, the Court admitted the concept of just compensation and confirmed that the principles governing the compensation amount must be just equivalent of what owner has deprived off and requirement of full indemnification of expropriated owner.

### 5.1.2 Effect of the Constitution (Fourth Amendment) Act, 1955

The forth Constitutional Amendment Act amended the Article 31<sup>33</sup> which aimed to nullify the Bela Banerjee's observation. It assured that compensation will be determined using the market value, principles and relevant and irrelevant factors and confirmed the law made by the legislature amounts to fair and just compensation hence cannot be questioned in the Court of law for its inadequacy<sup>34</sup>.

The yardstick to determine full and fair compensation was taken away by the forth Constitutional Amendment Act yet the judiciary continued to review the compensation cases for property acquired for public purpose. The Supreme Court in *P. Vajravelu Mudalkar vs. Special Deputy Collector, Madras*<sup>35</sup>, laid down the principles that the compensation under Art. 31(2) should be treated as just equivalent and it should be prescribed only by parliament by

---

<sup>28</sup> Subrata K. Mitra, Strategy and Vision in Politics, Jawaharlal Nehru's policy choices and the designing of political institutions, Journal: Heidelberg University Library, (2009), <https://core.ac.uk/download/pdf/32581315.pdf>

<sup>29</sup> Constituent Assembly Debates, Volume 7, p. 930

<sup>30</sup> Samraditya Pal, India's Constitution, Origins and Evolution, Lexis Nexis, Volume 3, 1st Edition, (2015)

<sup>31</sup> 1952 SCR 889

<sup>32</sup> AIR 1954 SC 170

<sup>33</sup> **The Constitution of India, 1950| Article 31 (2)**- No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate

<sup>34</sup> H.M. Seervai, Constitutional Law of India, Universal Book Traders, Volume 2, 4<sup>th</sup> Edition, (2002)

<sup>35</sup> (1965) 1 S.C.R. 614

considering relevant and irrelevant factors. In *Union of India vs. Metal Corporation of India*<sup>36</sup>, the Court struck down impugned Act for *inadequate compensation*.

In *State of Gujarat vs. Shantilal Mangaldas*<sup>37</sup>, the Court ascertained that the term compensation under Amended Art 31(2) means proper and fair recompense for compulsory expropriation of property and so compensation fixed by legislature is non justiciable because it is inadequate. But, in *R.C. Cooper vs. Union of India*<sup>38</sup>, the Court widened the scope of just and fair compensation by interpreting the term 'compensation' after forth Constitutional Amendment Act means just compensation which cannot be inadequate and anything which is impeached as unjust or unfair is impinging on adequacy. The application of just equivalent is no more criteria for determining the principles or illusoriness of the compensation.

### **5.1.3 Effect of the Constitution (Twenty-fifth Amendment) Act, 1971**

The interpretation by the Courts with respect to the justiciability of compensation led to the Twenty Fifth Constitutional Amendment Act which replaced the term “compensation” as “amount” under the Article 31(2). This was done to place the compensation for acquired property outside the scope of judicial review<sup>39</sup>.

It has been pronounced in *Keshavananda Bharati vs. Union of India*,<sup>40</sup> that though compensations fall outside the scope of judicial review, the Court has power to interfere if the amount or principles has not fixed by the legislature or there is no payment or illusory payment of compensation.

### **5.1.3 Effect of the Constitution (Forty-fourth Amendment) Act, 1978**

The Forty-fourth Amendment of Constitution deleted the Article 31 and reintroduced Right to property under Article 300 A. The deletion of Article 31 will eliminate the concept of just or adequate compensation from Constitution and provide only a limited right to the land owners. The Supreme Court observed that deletion of Article 31 (2) cannot form as a hindrance while exercising fair compensation to the affected land owners<sup>41</sup>.

---

<sup>36</sup> (1967) 1 S.C.R. 255

<sup>37</sup> (1969) 3 S.C.R. 341

<sup>38</sup> 1970 AIR 564

<sup>39</sup> Samraditya Pal, *India's Constitution, Origins and Evolution*, Lexis Nexis, Volume 3, 1st Edition, (2015)

<sup>40</sup> AIR 1973 SC 1461

<sup>41</sup> *Elizebeth Samuel Aaron vs. State of Kerala*, AIR 1983 Kerala 225

The deprivation of property for the public purpose must be fair, just and reasonable<sup>42</sup> and it must follow the due process of law<sup>43</sup>. In the State of Maharashtra vs. Basanti Bai<sup>44</sup>, the Supreme Court reversed the High Court's judgment stating that quantum of compensation was illusory in nature and the acquisition procedure did not follow a fair and reasonable procedure. In Jilubhai Nambhai Khachar vs. State of Gujarat<sup>45</sup>, the Court laid down the need for fair and just compensation to landowners when their property is taken for public use.

Now it is a well established principle that the acquisition of land will amount to award of compensation to the land owner and the compensation should be just and fair compensation and it cannot be illusory or inadequate in nature<sup>46</sup>.

## 5.2 Determination of Fair Compensation using Market Value of the Property

The term full compensation means market value of the property at the time of the acquisition<sup>47</sup>. The Collector has the power to determine the compensation using the market value and considers the market value specified in the Indian Stamp Act, 1899, average sale price of land in nearest area, consented amount of compensation for private or public private partnership projects<sup>48</sup> and assets attached to the land<sup>49</sup>. The Courts have confirmed that adequate

---

<sup>42</sup> Maneka Gandhi v. Union of India, 1978 AIR 597

<sup>43</sup> K.T. Plantation Pvt. Ltd. v. State of Karnataka, 2011 AIR SCW 5356

<sup>44</sup> 1986 AIR 1466

<sup>45</sup> AIR 1995 SC 142

<sup>46</sup> H.M. Seervai, Constitutional Law of India, Universal Book Traders, Volume 2, 4<sup>th</sup> Edition, (2002)

<sup>47</sup> State of W.B. vs. Bela Banerjee AIR 1954 SC 170

<sup>48</sup> **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013| Section 26. Determination of market value of land by Collector (1)-** The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:— (a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or (c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher; **Section 28. Parameters to be considered by Collector in determination of award** –In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration— firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;

<sup>49</sup> **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013| Section 29. Determination of value of things attached to land or building (1)** The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him. (2) The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him. (3) The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition, may use the services of experienced persons in the field of agriculture as may be considered necessary by him

compensation could be established with the help of market value of the acquired land.<sup>50</sup> The Indian Courts have recognised various factors are considered while determining the market value of the acquisition of the property for public purpose<sup>51</sup> which could be categorised as:

1. Location of the land and Use of the land: The situation of the acquired land in the city or the town or village and the utilisation of the acquired land for residential, commercial or industrial purpose determine the potentiality of the land<sup>52</sup>.
2. Close proximity to Developed or Undeveloped Area: The Courts not only analyse the existing conditions but also look into the potential of the property to develop in the upcoming days<sup>53</sup>. The Courts have adjusted the compensation value for the development process from the overall value. The just and reasonable deductions are done when huge undeveloped area is located near acquired land<sup>54</sup>.
3. Market value of other land situated in the same locality: Properties surrounding acquired property helps to determine the future valuation of the property<sup>55</sup>. It is established principle that while assessing the nearby area, the exact amount is not applied in the acquired land. Based on the other relevant factors, the value would be adjusted<sup>56</sup>.

### 5.3 Right to Enhance Compensation

In many cases the compensation amount determined by the collector or concerned authority or lower Courts has been enhanced by the Higher Court stating the exclusive reason applicable to that particular case. In *C.E.S.C. Limited vs. Sandhya Rani Barik*<sup>57</sup> the judiciary increased compensation rate substantially from Rs 50,000 per-cottah to 2,25,000 per-cottah. This establishes that the Judiciary critically analyse the background of the case and rectify the errors in the awarded compensation.<sup>58</sup>

<sup>50</sup> NHAI vs. P. Nagaraju, (2022) 15 SCC 1

<sup>51</sup> Trishala Jain vs. State of Uttaranchal (2011) 6 SCC 47

<sup>52</sup> P. Ram Reddy and Ors. vs. Land Acquisition Officer, (1995) 2 SCC 305

<sup>53</sup> Union of India vs. Raj Kumar Baghal Singh (Dead) Through LRS, (2014) 10 SCC 422

<sup>54</sup> Trishala Jain vs. State of Uttaranchal (2011) 6 SCC 47

<sup>55</sup> P. Ram Reddy and Ors. vs. Land Acquisition Officer, (1995) 2 SCC 305; Sakshi Shukla; [Factors Determining Compensation In Compulsory Land Acquisition By The State: Judicial Principles And Precedents](https://lawbeat.in/articles/factors-determining-compensation-compulsory-land-acquisition-state-judicial-principles-and-precedents), <https://lawbeat.in/articles/factors-determining-compensation-compulsory-land-acquisition-state-judicial-principles-and-precedents>

<sup>56</sup> Union of India vs. Raj Kumar Baghal Singh (Dead) Through LRS, (2014) 10 SCC 422

<sup>57</sup> 2008, INSC 1036

<sup>58</sup> Ram Singh, Working Paper No. 209, Inefficiency and Abuse of Compulsory Land Acquisition: An Enquiry into the Way Forward, Centre for development economics, Department of Economics, Delhi School of Economics, (2012), [http://econdse.org/wp-content/uploads/2012/07/Inefficiency\\_and\\_Abuse\\_of\\_Compulsory\\_Land\\_Acquisition.pdf](http://econdse.org/wp-content/uploads/2012/07/Inefficiency_and_Abuse_of_Compulsory_Land_Acquisition.pdf)

A statutory remedy has been provided to the concerned land owner to contest against the determination of the compensation for the land through Section 64 of the LARR<sup>59</sup>. This statutory right has been denied to the land owner on the ground that they have already accepted the stated compensation. In *Ajit Singh vs. State of Punjab*<sup>60</sup> the Court clarified that the approach to the collector by the interested land owner establishes that he has intention for enhanced compensation<sup>61</sup> hence they are entitled to make a reference u/s 64 of the LARR Act. This confirmation of the statutory right assures the interested land owner's right to enhance the compensation cannot be arbitrarily curtailed.

#### 5.4 Failure of Payment of Compensation

The failure of payment of compensation amounts to violation of law. If there is any dispossession and failure of compensation then the land owners are entitled to restoration of their property<sup>62</sup>. If the land is acquired and the compensation has been paid the land owner has no right over the property<sup>63</sup>. The payment of compensation determines the relationship of the interested landowners with the acquired property. The failure of compensation and possession of the property will be treated as illegal dispossession by the State authorities and the land owners are entitled to compensation along with the interest calculated from the day of possession<sup>64</sup>.

#### 5.5. Disputes over Compensation Delays

The Courts provide remedies to the affected parties through their judgments when there is delay on payment of compensation. The Supreme Court pointed out that the State cannot evade its responsibility from whom the property was acquired and upheld that right to protect property can't be brushed away merely due to delay & laches. Under exceptional circumstances where the infringement of fundamental rights or illegal action takes place, the delay could be

---

<sup>59</sup> *Manoj Singh vs. State of M.P.*, 2024 SCC Online MP 4803; **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013| Section 64. Reference to Authority.**-(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

<sup>60</sup> (1994) 4 SCC 67

<sup>61</sup> *Reta Ram vs. Land Acquisition Collector CMPMO No. 313 of 2021*

<sup>62</sup> [Hari Krishna Mandir Trust vs. State of Maharashtra](#) (2020) 9 SCC 356

<sup>63</sup> *Sivaprakashan vs. State of Kerala* (2024) Ker 2605

<sup>64</sup> *Smt. Shashi Pandey vs. The State Of Madhya Pradesh No. 2024:MPHC-JBP:50683*



condoned.<sup>65</sup>

The interval period between the determination of compensation and present day is considered while finalising the compensation amount.<sup>66</sup> The calculation of the amount using the present conditions like financial value of the land would be impacted by the investment, potential of the land and inflation in the country are considered during extreme delays to ensure complete justice to the land owners.<sup>67</sup>

### 5.6. Denial of Compensation Due to Urgency Clause

The Collector has power to acquire the land without awarding compensation<sup>68</sup>. In this case the land owners are entitled to additional compensation of seventy five percent of total compensation subject to certain exceptions.<sup>69</sup> The Judiciary ensures protection to land owner by condemning the slow steps taken by government functionaries if the urgency clause is not justifiable<sup>70</sup>. The Courts analyse the fairness of the urgency clause based on the facts. The invoking of the urgency provisions can be justified only if there is an emergency which cannot be delayed and the delays may frustrate the public purpose.<sup>71</sup>

There are certain cases where the urgency clause was invoked in unfair manner but considering the fact that acquisitions ensure balance between the private and public interests then the acquisition is made valid by providing compensation to the affected parties<sup>72</sup>. It is now settled

---

<sup>65</sup> Urban Improvement Trust vs. Vidhya Devi and Ors, 2024 INSC 980

<sup>66</sup> Rajeev Kumar Damodarprasad Bhadani vs. The Executive Engineer, MSEDCL, W.P. No 1430 OF 2022

<sup>67</sup> Bernard Francis Joseph Vaz vs. Government of Karnataka, 2025 INSC 3, SLP (C) No. 10338 of 2023

<sup>68</sup> **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013| Section 40. Special powers in case of urgency to acquire land in certain cases.**—(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

<sup>69</sup> **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013| Section 40. Special powers in case of urgency to acquire land in certain cases.**— (5) An additional compensation of seventy-five per cent. of the total compensation as determined under section 27, shall be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated under sub-section (1) of this section: Provided that no additional compensation will be required to be paid in case the project is one that affects the sovereignty and integrity of India, the security and strategic interests of the State or relations with foreign States.

<sup>70</sup> Devender Kumar Tyagi vs. State of Uttar Pradesh, (2011) 9 SCC 164

<sup>71</sup> Darshan Lal Nagpal(Dead) by LRs. vs. Government of NCT of Delhi and Others, (2012) 2 SCC 327; Anamika Mishra, Invocation of Urgency Clause in Land Acquisition — Hazy Contours of Judicial Review, SCC, <https://www.sconline.com/blog/post/2023/03/17/invocation-of-urgency-clause-in-land-acquisition-hazy-contours-of-judicial-review/>

<sup>72</sup> [Sahara India Commercial Corporation Limited vs. State of Uttar Pradesh](#), (2017) 11 SCC 339

that if the invocation of urgency clause is not in par with the essential requirements then the payment of enhanced compensation confirms the acquisition done for the public purpose<sup>73</sup> and renders as remedies to the affected parties<sup>74</sup>.

### **5.7 Claims Related to Partial payment**

The State is bound to make the promised compensation to the affected party.<sup>75</sup> It cannot provide the compensation in a partial manner. The Supreme Court emphasis on the position that compensation payment should be made at the earliest by the authorities and the delayed payment of compensation might get away with its utility. The Court stressed this to ensure that the uprooted person for the development of the State should not be deprived off.<sup>76</sup> The Jammu and Kashmir High Court in the case of Villagers of Kanli-Bagh Baramulla vs. Union Territory of J&K<sup>77</sup> held that the partial payment made by the concerned authorities and delay for indefinite period infringes Art 300 A of the Constitution. It directed the State authorities to take all possible measures to award the full compensation within a reasonable time.

## **VI. CONCLUSION**

The compensation awarded to the affected land owners are not just monetary relief in nature, it also aims to address the emotional distress attached with the deprivation of the property. The relationship affiliated by private individual with their land makes the acquisition process tedious. The State Authorities are held with duties to develop economic opportunities and the acquisition of the private properties for development projects play a crucial part in the welfare of the State. The balance between the deprivation of property by the private individual and acquisition of property for the public purpose could be achieved by granting just fair compensation to the interested land owners. This balance has been constantly ensured by the Indian Judiciary. The Indian Courts while determining the compensation claims have considered the multiple facets involved in the case and tried to ensure adequate compensation to the interested land owners. The Court's interpretation has laid down principles that need to be followed when the facts of the case fall under same purview and evolved the concept to make it adaptable to the nature of the case. The red tape in bureaucracy may not efficiently deliver the social and equitable justice to the land owners and during this time the Indian Judiciary acts as last resort of facilitating justice to the land owners for their rights.

---

<sup>73</sup> Noida Industrial Development Authority v. Ravindra Kumar (2022 INSC 530)

<sup>74</sup> Yamuna Expressway Industrial Authority v. Shakuntla Education and Welfare Society (2022) SC 655

<sup>75</sup> M. Naga Venkata Lakshmi v. Visakhapatnam Municipal Corpn., (2007) 8 SCC 748

<sup>76</sup> Krishna Reddy vs. Special Deputy Collector Land Acquisition, AIR 1988 SC 2123

<sup>77</sup> OWP No. 2084 of 2018

## REFERENCES

## BIBLIOGRAPHY

### PRIMARY SOURCES

1. The Constitution of India, 1950
2. The Land Acquisition Act, 1894
3. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
4. The Requisitioning and Acquisition of Immovable Property Act, 1952
5. The National Highways Act, 1956

### SECONDARY SOURCES

#### BOOKS

1. Dr. J. N. Pandey, Constitutional Law of India, Central Law Agency, 54<sup>th</sup> Edition, (2017)
2. H.M. Seervai, Constitutional Law of India, Universal Book Traders, Volume 2, 4<sup>th</sup> Edition, (2002)
3. Samraditya Pal, India's Constitution, Origins and Evolution, Lexis Nexis, Volume 3, 1st Edition, (2015)

#### REPORTS

1. Constituent Assembly Debates, Volume 7, p. 930; p.1195-8
2. Constituent Assembly Debates, Volume 9 pp.1271-1272
3. No:182, Law Commission Report on Land Acquisition Act 1894, (2002)

#### JOURNALS

1. Anjana, Lalit, Land Acquisition for 'Public Purpose' – A Critical Analysis (july 25, 2018).
2. M.L. Singhal, Right To Property and Compensation under the Indian Constitution, J.T.R.I Journal, First Year, Issue II, (April- June 1995)
3. Wahi, Namita, Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016 (February 27, 2017).
4. Subrata K. Mitra, Strategy and Vision in Politics, Jawaharlal Nehru's policy choices and the designing of political institutions, Journal: Heidelberg University Library, (2009)

5. Ram Singh, Working Paper No. 209, Inefficiency and Abuse of Compulsory Land Acquisition: An Enquiry into the Way Forward, Centre for development economics, Department of Economics, Delhi School of Economics, (2012)

#### WEBLIOGRAPHY

1. <https://www.defactolaw.in/post/doctrine-of- eminent-domain-for-upsc-law-optional> (visited on Feb. 01, 2025.)
2. <https://www.lawctopus.com/academike/land-acquisition-in-india-a-critical-study-concerning-legal-rights/> (visited on Feb. 01, 2025.)
3. <https://lawbeat.in/articles/factors-determining-compensation-compulsory-land-acquisition-state-judicial-principles-and-precedents> (visited on Feb. 02, 2025.)
4. <https://www.sconline.com/blog/post/2023/03/17/invocation-of-urgency-clause-in-land-acquisition-hazy-contours-of-judicial-review/> (visited on Feb. 02, 2025.)

