



## Forced Land Acquisition, Indigenous People and International Human Rights Obligations: A Study of Pakistan Legal Framework

Sannan Ali Shah

LLM Human Rights Law International Islamic University

Email: [sannan1157@gmail.com](mailto:sannan1157@gmail.com)



The process of the State acquiring the land compulsorily is still regarded as one of the most disputable practices of the sovereign authorities which rather leads to the conflict between development requirements and the preservation of the basic human rights. This research paper is the critical analysis of the correspondence of the Land Acquisition Act to the international human rights norms especially the norms provided in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It assesses the sufficiency of the Act in protecting constitutional rights to property, the right to life, livelihood and housing and the rights of vulnerable, marginalized communities, such as indigenous people and minorities. The paper holds that although the Act offers a legal framework of land acquisition, it does not meet the global human rights requirements because of poor procedural protection, compensation systems, and poor consideration of social and cultural rights.

The attachments that indigenous peoples have to their territories and resources, which they struggle to maintain against the exploitation by wealthier external entities and government- sponsored land acquisitions. Indigenous People Often accompanied with insufficient compensation, these acquisitions displace indigenous communities from their ancestral and spiritually important territories. The paper questions whether indigenous peoples' rights and interests are sufficiently safeguarded during such processes.

**Key words:** Indigenous People; Land Acquisition; Public Purpose; Compensation, ICCPR, ICESCR



Journament



### Introduction

This paper particularly focuses on the rights of indigenous peoples to their ancestral lands, culture, and resources that define their identity, religion, and sustenance indigenous people and their relation to their lands culture and other resources. Some individuals from various part possessed with wealth and other resources gains fully



Malik Yar Muhammad (MYM) Research Center (SMC-Private) Limited, Bahawalpur

control of these resources to benefit themselves. Beside the Government, acquires land compulsory (by giving a negligible compensation) as a result people were being separated from their important land and land of their forefather which was having a sacred value. Whether the existing structure of the government also protects the interests of the people adequately while they are acquiring the lands?

If we go through the Constitution of Pakistan 1973, the indigenous people are not recognized; the word ‘indigenous’ does not appear anywhere. Consequently, the rights and advantages of Indigenous Peoples do not have a special legal legislation that regulates their activities. Pakistan is a signatory to the convention on the elimination of all forms of Discrimination and the International Covenant on civil and political rights as well as the International covenant on economic, social, and cultural rights. Pakistan recognized the UN Declaration on the Rights of Indigenous Peoples by voting for it in 2007. While the Declaration enshrines rights for indigenous peoples, it does not mandate that member states provide legal Indigenous people’s rights. Therefore, unlike the promise of protection, the Declaration provides no benefit in Indigenous Peoples.

## **Indigenous People**

Indigenous people are best defined as group traditionally regarded as and self-defined as defendant of original inhabitants of lands which they have a strong often spiritual bond.<sup>1</sup> The Indigenous Peoples seek representation from their traditional chiefs and Indigenous organizations in contrast to the rest of the mainstream system.. Currently, numerous Indigenous populations maintain their languages which are different from the formal languages of their states where they reside. Still, many Indigenous languages are already gone or in the verge of becoming so due to forced displacement and removals. Today, Indigenous Peoples hold more than 4,100 of the world’s 7,000 languages, but over one half of these languages are expected to be extinct by the end of the twenty-first century.

According to UN estimation, approximately 476 million Indigenous Peoples live in the world today. They make up only 6% of the world population, yet 19% of the world population lives in extreme poverty. Indigenous people today live to 20 years less than the non-indigenous people in their respective countries. Moreover, Indigenous people usually do not receive legal acknowledgment for their rights to land, territories, or resources. They are often the least likely to reap the dividends of investment in public infrastructure and service delivery that rarely extends to them the quality of urban

services, they face many hurdles to exercising full benefits of economic formal sector, justice, political processes, and decision-making.

This social injustice and marginalization have placed IP particularly at high risk to climate change, disasters and other health disasters like the current COVID-19 pandemic. Yet Indigenous peoples own, live on, or interact with one-quarter of the world's surface area; they are caretakers of 80% of the terrestrial biological diversity. New research shows that forestlands owned and controlled by Indigenous Peoples and local communities hold over a quarter of all tropical and subtropical above-ground forest carbon. They provide innovative and appropriate solutions keyed into their rich culture and wisdom essential in responding to disasters, preventing and coping with climate change.<sup>2</sup>

## **Indigenous Peoples' Rights**

The right of the indigenous people by international law has evolved within the frameworks of human rights that are in existence as a solution to their special needs and priorities. These are their rights to lands, territories and natural resources and their right to self-determination.

Although these gains have been made, most indigenous people still grapple with great human rights issues. Their rights are yet to be fully implemented and some of the most pressing problems involve pressures on their lands and resources especially through development projects and extracting of resources. Their traditional lifestyles and cultures are still at the risk and any attempts to preserve and advance their rights are usually met with backlash.

Simultaneously, the level of participation of indigenous peoples in the international human rights policy and the legal procedures has become so high that it has never been experienced before. Their proactive participation has enabled them to make decisions on the global front which have direct significance on their lives as discussed further below.

## **The United Nations Declaration of the rights of Indigenous peoples**

On 13 September 2007, the UN General Assembly passed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) with 144 (out of 186) affirmative votes, 11 abstentions and 4 negative votes (Australia, Canada, New Zealand and the United States). Ever since its adoption, four States which at first were opposed to the Declaration have changed their mind and officially approved it.

UNDRIP is the broadest international tool that deals with rights of indigenous people. It sets minimum standards of its recognition, protection and advancement of their rights. Although its implementation is still inconsistent, the Declaration is a consistent reference point of States and indigenous people, together with the formulation of laws and policies that impact indigenous people, such as mechanisms to pursue the claims.

### **Human Rights Committee and international Covenant on civil political rights (ICCPR).**

The international covenant on civil and political rights (ICCPR) safeguards a number of rights that are very crucial to the indigenous people.:

*(Article 1)*

#### **The right to self-determination**

*(Article 27)*

#### **The rights of the minority to enjoy their culture, practice their religion and use their language**

The treaty body that oversees the implementation of the ICCPR, Human Rights Committee (HRC), has in the years considerably formulated international standards of rights of the indigenous people by making decisions concerning individual complaints, as well as by making concluding observations concerning State reports.

The Committee has understood the right to culture in article 27 in a broad way, and it has identified the following:

Traditional cultures and living lifestyles of the indigenous people.

Their connection with lands and territories and natural resources.

Their entitlement to make political choices on their cultural survival.

*(Hopu and Bessert v. France, Communication No. 549/1993)*

In a case law on the ancestral burial grounds, the Committee construed the term family as per the cultural practice of the indigenous people in a particular area. It said that cultural context has to be taken into consideration during the definition of the term family in a particular case. Consequently, the Committee found that the spiritual and cultural association of the indigenous complainants to the ancestral burial places was covered by the right to family.

Article 27 and Article 1 The Human Rights Committee has also indicated that the right to self-determination (Article 1) is pertinent to interpreting and implementing Article 27. Within a group of final considerations, the Committee demanded a State to make

sure, that indigenous peoples receive more say over the decisions made with regard to their natural environment, means of subsistence and their cultural rights. This definition associates the minority cultural rights with other principles of autonomy and self-governance.

### **Committee on Economic, Social and Cultural Rights and International Covenant on Economic, Social and Cultural Rights (ICESCR).**

The International Covenant on Economic, Social and Cultural Rights (ICS) has a declaration on the right to self-determination, similar to the ICCPR, which Articles 1, the Committee on Economic, Social and Cultural Rights (CESCR) interprets as directly applicable to indigenous peoples.

Several rights enshrined in the Covenant, including the right to work, family life, health, food, education, and in particular culture are the main focus behind the life and struggles of indigenous people. The Committee has employed these rights in demanding that the legal rights of the indigenous peoples as one people to their communal land be acknowledged in reviewing State compliance.

**The General Comment by the Committee** on the right to adequate housing and forced eviction (1997) is explicit that the indigenous people are disproportionately held by forced eviction.

#### **Application of these ICCPR rights in the case of land acquisition or displacement.**

Article of the ICCPR Land Acquisition / Evictions / Displacement Issue.

Article 1 Lack of free, prior, informed consent; unauthorized possession of natural resources; relocating entire communities.

Article 17 forced eviction; demolition of the house; no notice; no legal recourse; no compensation.

Article 26 Discriminatory remuneration; focus on poor/minority neighborhoods; inequality.

Article 27 Dislocation which annihilates minority culture, identity, sacred land, or customary livelihoods.

### **Identifying Indigenous People**

No definitive standards exist for the identification of Indigenous Peoples. According to the World Bank, IPs are a unique, vulnerable social and cultural minority with the realization that one belongs to a unique indigenous cultural group and that others acknowledge one's identity a shared attachment to geographically isolated habitats or

ancestral territories within the project area, as well as to the natural resources found there customary political, social, economic, and cultural institutions that are distinct from those of the dominant society and culture; and the use of an indigenous language that is frequently different from the official language of the nation or region”.

## **Is there any Laws in Pakistan related to the protection of the rights of indigenous people?**

### **Constitutional Framework**

Interestingly, the Constitution of Pakistan 1973 does not have provision for Indigenous Peoples since the word ‘indigenous’ does not form any part of the Constitution. This leads to absence of specific provisions of the Constitution that would either recognize or protect their rights. Therefore, Indigenous Peoples in Pakistan are devoid of constituent legal protection under the constitution. But there is some legislative and constitutional safeguard that exists for the tribes living in different areas of Pakistan. Nevertheless, the law does not recognise or treat them as Indigenous Peoples.

In the international realm, Rights have been supported by voting in support of the UN Declaration on the Rights of Indigenous Peoples (2007). Moreover, in the year 2007 Pakistan has also ratified ILO Indigenous and Tribal People Convention (1957) and the ICCPR (1966). These steps shows that Pakistan has acceded to international standards on rights and protection of Indigenous and tribal peoples, although local application is restricted.

. While there are no laws specifically dedicated to indigenous peoples, certain general legal frameworks could potentially offer some degree of protection

Fundamental Rights in the Constitution: **Article 25** guarantees equality before the law and prohibits discrimination based on race, religion, caste, sex, residence, or place of birth<sup>3</sup>

### **Article 24**

(1) No person shall be compulsorily deprived of his property save in accordance with law.<sup>4</sup>

### **Environmental Laws**

The Pakistan Environmental Protection Act of 1997, along with its associated regulations, focuses on safeguarding the environment and promoting sustainable development. Although these laws impact indigenous communities by controlling environmental harm, they do not directly recognize or protect their rights to land and

natural resources

## International Commitments

If we go through the several human Rights Instruments Pakistan is a signatory to the majority of them. Although they are not directly related to the Indigenous people but they indirectly influence the rights of indigenous people .

- International covenant on civil and political rights (ICCPR)

ICCPR has been ratified by Pakistan. The said covenant contains the provisions which protects rights to enjoy culture religion etc.

- United Nations Declaration on the rights of Indigenous People

While it is a non- binding instrument, the UNDRIP in a comprehensive manner enshrines the rights of the indigenous people including the rights to the land, territory, and resources. Pakistan voted in favour of it in 2007.

- International covenant on economics social and culture rights.

This covenant that was also ratified by Pakistan reaffirms the principle of self-determination of people and their right to Self-determination as well as for their economic, social and cultural advancement

## Land Acquisition

Land acquisition means when the government buys or otherwise comes into possession of land from the owners to meet certain public purpose.. Even though this kind of taking may be done involuntarily, the persons who have an interest in the land will be compensated. This is quite different from buying land when one opts to approach the market on their own. It should be noted that in most cases the initiative belongs to the government, and land purchase is compulsory regardless of the owner's desire

## Historical Background of the Land Acquisition Act 1894

Land acquisition history in India started with Bengal Regulation I of 1824 as an attempt of the British administration to acquire land for the public purpose. The regulation was in force in territories which were under Fort Williams. The process of land acquisition went on and, from 1839 extending to Bombay by the introduction of The Building Act XVIII. Earlier in 1852 the Bengal Regulation I was amended and in the launching of acts across the presidencies for the publicly optimistic purposes like construction of roads and canals etc the Madras Act came into force. Again, it is noteworthy that these early legal provisions were particularly much in tune with a fundamental of modern constitutional law, namely, the acquisition of land for public interest. When the

Railways have been established in 1850, construction of the railway lines was also considered as falling under the head of Public purpose.

These acts were mainly aimed at justifying what British wanted most was to acquire land and these two acts supported this greed of the British. However, in 1857, Act VI revoked all prior acts and brought enhancements to the process and compensated for the idea. Originally, this act empowered collectors to decide on compensation exacted from the debtors and the disputation of these was done through arbitration. In practice, the structures of arbitration, which might look liberal, were crippled by such vices as corruption and ineptitude of arbitrators.

To deal with these problems, Act of 1870 was initiated, which enables a case to be taken to civil courts if the Collector is unable to assess compensation. In addition, in 1885, the Mines Act again elaborated on compensation for miners. Nevertheless, some issues were continued to be experienced regarding the 1870 Act, which in turn was repealed by the Land Acquisition Act of 1894 which served as a proper measure in dealing with land acquisition both in respect of compensation<sup>5</sup>.

This evolution reveals that although Britons aimed at land acquisition to build infrastructure, they faced administrative problems and people's complaints.

## **Land Acquisition, Under the Land Acquisition Act 1894**

Pakistani law recognizes the government's right of Eminent Domain to seize privately owned property. This process is also known as "compulsory land acquisition," the state can force the owners to give up land although no consent is required, but which compensation is paid. This is not like a general real estate acquisition situation, where both the parties must agree on the deal. The legal provision governing the state power of eminent domain mainly draws its authority from the Land Acquisition Act of 1894 – often referred to as LAA, 1894.

### **Stages of land Acquisition Preliminary Stage**

#### **Notification under section 4**

The acquiring agency sends a proposal to the District Collector (Deputy Commissioner) and the latter publishes a first notice under Section 4 containing a notification for the purpose of exercising the power of acquisition, together with a survey of the area to determine its proper use. The preliminary notice shall be given through the official gazette and two local dailies before the acquisition of land can take place. Also it has to ensure that a 'public notice of the substance of such notification' is prominently

displayed in that region. The notice is that the landowner should not spend any amount of money or time incorporating the land without the Collector's permission; further, the public is advised not to have any interest in the land. It also legalizes the right of an authorized officer to access the said land despite the notification, even without asking consent from the owner.<sup>7</sup>

### **After that under section 5 the collector has to issue another notification stating that the said land is required for public purposes. In case of Objection**

Every landowner of the land shall forward any objection he or she may have within and not later than thirty days from the day of notification. All people who produce the objections have to produce them to the Collector who is expected to afford everybody an opportunity to state their cases.<sup>8</sup>

### **Notification**

The land against which the government notifies shall be measured according to section 7 and 8 of the Act .

### **Second Stage Award<sup>9</sup>**

Collector invites parties who want compensation to come forward and forward their claims. Notices are also served on the relevant government department or the acquiring agency. All objections are filed in writing with the Collector who takes an evidence to establish compensation and to take measurements of the land and apportion it. After the inquiry, the Collector pass the Compensation Award under Section 11.

### **Compensation**

The compensation should be determined by the market value of the land at the time of publication of notification under section 4(1)<sup>10</sup>

### **In Case of Disputes**

The person who is aggrieved by the award shall file an application to the collector. The collector then summarizes the statement of award and refers the matter to the court with objections. Then the court shall decide the matter and passes its decree<sup>11</sup>

### **Acquisition In Case of Urgency**

Section 17 deals with the cases in which the land is needed in urgent basis. Under this section the land can be acquired compulsorily with a notice of mere 48 hours to the owner.<sup>12</sup>

## **Acquisition of Land by a company**

One of the major problem in the Land Acquisition act is that apart from the govt the companies has also the authority or power to acquire land for the public purpose. Part VII of land acquisition Act deals with acquisition of land by companies.

If we go through the VII of land acquisition Act in contrast to Part II the company is bound to pay the amount of compensation full. A company cant pay in part it has to be paid fully for the notified land.

## **The global Approaches of Land Acquisition**

Third world countries can be said to have some legal structures as well as processes which guide the acquisition of land owned by individuals by the public. Nevertheless, few countries have really comprehensive systems, and still fewer have the institution or trained manpower required to enforce the existing laws. Countries that have relatively succeeded in the acquisition of land use typically adopt both compulsory and non-compulsory ways. For example, some countries heavily depend on the compulsory instruments whereas others put much stress on voluntary acquisition, however, there is a wide range of instruments which are being used in both countries for land acquisition. In many developing nations, due to public indifference or outright opposition, the laws are in fact made in the way that they are cryptic, weak and in dire need of overhaul.

## **Australia**

In Australia, the Land Acquisition Act 1989 was amended in 2013 explaining the procedures of acquiring of land for public interest. On this basis, Section 4 (1) of the LAA accords four methods of land acquisition, Ouster; negotiated; by agreement; and urgent land acquisition. Places where acquisition is compulsory are; where the owner of the land is reluctant to sell, the land may not have a clear title, it may be difficult to prove one's title to the land or wherever the owner of the land cannot be traced. Though this makes an extra safeguard to public rights the procedure used sometimes takes a longer time in calculating compensation to the affected landowners.

Compensations done under negotiated agreements entails consultations with the concerned parties to the land and compensation is then done provided under mutual consent. The acquiring authority can proceed with acquisition through agreement under specific conditions: : (i) Any time all the requirements for a declaration before acquisition have been met and become mandatory; (ii) when the Minister has issued a certificate under section 24 of the act; (iii) if the interest is freely traded in the market;

(iv) if the interest is held by the government authority<sup>13</sup> These methods concern stakeholders' expectations regarding equal fair compensations and adequate legal safeguards for land owners.

## **Singapore**

From the year 2014, the LAA has remained instrumental in Singapore's development as it provided the basis to put in place social amenities like roads, railway, school, hospitals, industrial estates, and flats for use of the public at large. In view of the effects it has on the 'affected' property owners, the Ministry has, over the years, fine-tuned the compensation policies and practices as well as acquisition. To this end, in 2007, the LAA was amended to require that compensation paid for the land being acquired should be based on the market value of the land being acquired. In 2012, subsequent changes also removed the need for physical notices to be pasted on structures to be gazetted for acquisition. The most recent changes which took place through the Land Acquisition Amendment in 2014 In accordance with the new land acquisition changes, if the part of the lot is acquired, full market value will now be paid as compensation. Earlier, any appreciation from the remaining land due to the government utilization of the partitioned part was offset from the compensation through something called the betterment levy. For example, when a portion of a lot was bought so that an MRT station can be built, the balance of the lot on which the station is located might experience an increase in value because of that. In the past, any increase in value was taken into account in reducing the compensation payable. By the changes the betterment levy has been removed. The government no longer requires owners of land to subtract such value additions from their payments. However, if the owner claims that further amount is required because of reduced value of the remaining land after the acquisition, the overall impact, which on the retained land will also be taken into account during the assessment of compensation.<sup>14</sup>

## **Bangladesh**

The procedure for acquiring land is provided for under Article 42 of the Constitution of the People's Republic of Bangladesh. This article permits the acquisition of land by the Government of Bangladesh (GOB) where it is desirable. Even as the constitution guarantees citizens a right to own, hold, acquire, transfer or otherwise deal in property, it also recognizes the pre-emptive state power to take over any land considered necessary for public use so long as appropriate compensation is made. British Rule has

enacted Land Acquisition Act of 1894 which forms the basis of the land acquisition laws. Since then, several bits of legislation have been made and others amended to suit certain occasions involving land acquisition.

Nevertheless, there have been numerous concerns for example concerning the compensation process and adequacy of compensation to the land owners. Such measures have, however, not received adequate redress for the landowners even during the subsequent East Pakistan period, currently known as Bangladesh.

The acquisition of land in Bangladesh is carried out purely based on administrative directive as in several pieces of legislation mentioned above. To manage its scarce land well the GOB created in 1976 the District Land Allocation Committee (DLAC) that manage the district's land allocations. Also, the Central Land Allocation Committee CLAC is responsible for land allocation of the Dhaka City. The CLAC also fully possesses the power to scrutinize all the cases of land acquisition at the time when the decisions have not been made on different levels it provides more responsibility in case. Practically two bodies work together, the Requiring Body (RB) and the Acquiring Body (AB). Legal issues are dealt by the RB and technical aspects by the AB. In the end the Deputy Commissioner takes the land and the compensation is paid by the office of the Deputy Commissioner. Formulations and the actual methods of arriving at the compensation payment therefore vary with different existing laws. However, once the people affected are compensated then the Government through the RB acquires legal ownership of such land. Currently, compulsory acquisition involves cash compensation made to the owners under the 1982 ordinance or under the laws currently in force<sup>15</sup>.

### **India Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR, 2013)**

As the Land acquisition Act of 1884 This new legislation was enacted with a view to achieve the twofold primary objective of protecting individual property rights and attaining land acquisition compulsory where these are in paramount public interest. As in LARR 2013 the procedure of land acquisition is similar to the one defined in LAA 1894; however, the significant difference is in concern for the rehabilitation and resettlement of the affected people defined in sections 31-42. In the act, “affected persons” was defined to comprise of temporary tenants and workers given the effect. It also reduces unfair acquisition of land by doing an arbitrary check through a method known as a “social impact assessment.” Also, the act assists the landowners by insisting

on their permission in some forms of compulsory land acquisitions as well as raising the amount of compensation<sup>16</sup>.

### **United kingdom**

Despite the range of legislation in UK, two key pieces of national legislation touching on the state power of compulsory acquisition of land are the Compulsory Purchase Act 1965, and the Acquisition of Land Act 1981. Each of these laws equally provides for ownership of property, especially land, while also recognizing the need to acquire land for purposes of development. They give an immense importance to the “public purpose”, so that the property of private persons cannot be taken away without legal grounds. Compensation and rehabilitation provisions include everyone who has partial interest in the property besides titleholders.

The process starts with entry or the notification to owners of land or any party that affect the land by the issue of a “Compulsory Purchase Order”. This process includes several stages: firstly, the acquiring authority considers the need and degree of land needed for the public endeavor. It then formally resolves to use compulsory purchase powers and obtains further particulars of the land owners, interested persons. An ordinance for a CPO is framed, and it is presented to the confirming authority. There is an opportunity to file objections by the affected parties which the confirming authority scrutinizes either through a public inquiry or in writing. The authority then gives either a stamp of approval on the CPO, changes it, or throws it out completely. When substantiated the acquiring authority takes over the land and reimburses the persons that were affected. The law also provides for fair treatment and rehabilitation for those affected also<sup>17</sup>.

### **Draw Backs in The Land Acquisition Act 1894 (Pakistan)**

#### **Dispossession And Article 24 of the Constitution Of 1973**

The Constitution of 1973 in Article 24 also stated that “no person shall be deprived of his property save in accordance with law/the process of law ” and the state is given limitations when it comes to acquiring land. However, there is a later clause in the same article, article 24(3)(1) that says that nothing in the article shall prejudice the operation of law. That is why it is the Land Acquisition Act (LAA) of 1894 that regulates mainly the use of eminent domain in Pakistan. The LAA still represents a memory of the history of mining for resources and colonization imperialism. It has even evicted and displaced deprived communities by enclosing more lands besides helping the rich to

accumulate more wealth. These are not random side effects or improper uses of the act but are inherent in its structure, the purpose of which is to commodify land. The LAA gathers numerous acquisition rules and orders that were in force during the British colonial period. In other words, compulsory acquisition of land can only be done for “public purpose,” but fair compensation must be made.

## **Public Purpose**

The meaning given to the term “public purpose” has been very liberal that most activities can be justified by the government for compulsory taking of land. This wide definition empowers the state to compulsorily take private property ‘in the interests of the public’ individuals and groups even though the interest sought to be protected largely may be of a group or party rather than the public at large. According to LAA 1894 it includes: The addition, improvement or furtherance of infrastructure facilities and amenities already in existence.

Concerning long-term planning for Rural towns or urban cities In. Any formation of structures in connection with government strategies or policies.

### **Case law: Muhammad Akbar v. Commissioner Rawalpindi 1976**

In the above case the Land of a person was being acquired by the trustee. It is pertinent to mention here that the person was displaced during the construction of Mangla dam. The court held that the acquisition was being done not for the public purpose but for the personal interest of the trustee. Hence the court didn’t allow acquisition<sup>18</sup>.

## **International Standard of the Public Purpose**

The CFS with 193 member countries undertook a top-down bottom consultation strategy inclusive of stakeholders with regard to such matters as expropriation, compensation, and resettlement. They Recommended that

“It is however important for states to embark on expropriation only when the rights in land, fisheries or forests are considered necessary for public use. Due diligence and to prevent the abuse of power by States, the concept of public purpose must be Define in the law and also for judicial scrutiny<sup>19</sup>.”

## **Case Laws**

Different courts in Pakistan have defined Public purpose differently which are as follows

### **Muhammad Shafi v. Lahore Development Authority**

The court held that the word public purpose must be interpreted in a way that it serves

the greater interest of the community. In this case the court declare acquisition of land for housing authority legal<sup>20</sup>.

### **Defence Housing Authority v. Jawaid Ahmad**

The supreme Court held that the public interest should not be used as a tool for all the acquisitions. The court emphasized the necessity of true general public interest in contrast to serving private public interest under the blanket of public interest<sup>21</sup>.

### **M. Younus v. Government of Punjab**

The court held that the commercial activities may come under the ambit of public purpose if that activity serves the public at large. The primary objective should not be the profit making of private entities<sup>22</sup>.

We can say that that Pakistani courts have not strictly construed the phrase 'public interest' and that they have sought to meet the growing need in society. But they have also stressed on the need for real public interest and warned against the use of the phrase public benefit when acquiring a firm only to serve its private needs.

### **Compensation**

One major weakness that characterize the LAA, 1894 is the way and manner in which compensation is carried out for the affected persons. As per the Act the compensation shall be exigible at the price that is determined on the market terms as on the date of the issuance of the preliminary notification under Section 4. However, it lacks specific guidelines for evaluating the market value, which triggers numerous law suits.

As for compensation, people are often paid according to DC rates – the rates used for stamp duty, which are considerably lower than market value rates of the acquired land. Such low rates of compensation irk some land owners who seldom fail to seek legal redress; the courts offer their decisions based on uses and sale deeds of similar pieces of land in the preceding year. Such lack of clarity and consistency put much pressure on the judiciary arm of the government and there is excessive time wastage in the completion of such projects. The LAA does not provide any standard in order to determine the market value.

I Interviewed one of my friend whose land was acquired back on 2018. During interview he claimed " Our land was acquired back on 2018 for the construction of a judicial academy but the compensation given was negligible when compare with the actual worth of the land. We have started the litigation but the court is still to pass any decree<sup>23</sup>

## **Acquisition In Case Of urgency**

Section seventeen of the Act redefines special powers for compulsory land acquisition during emergency situations, as acquisition occurs with only forty-eight hours of notice to the owner of the land. However, the Act is silent in explaining what is meant by 'urgent' hence the acquiring authority or state enjoys a free role to declare any case as urgent. This arbitrary use of coercive powers is a violation of the rights of any citizen, and erodes trust, leading to harm of the state as a whole<sup>24</sup>.

## **Lack of Resettlement And Rehabilitation**

If we go through the Act we can say that the Act does not provide any mechanisms for the resettlement and rehabilitation of the affected persons. The Act awards a type of payment, which is one-off compensational payment, and, as it has been mentioned before, it is often challenged. This approach fails, particularly when people are displaced from their home and their resources base disappears due to compulsory acquisition of land. It is extremely challenging and difficult for people, whose means of earning a living depended on the cultivable land. Since majority still depends on agriculture, the interest of the workers behind farms cannot be ignored. Moreover, long years of work in farming have made these workers so expert in their field that it is difficult for them to find a new job other than farming for their survival.

## **Lack Of professional surveys**

Moreover, the act fails to provide enhanced means for the assessment of social /economic repercussions of the land being acquired. Generally, the survey is normally conducted at basic level, takes place at the surface only and results in the unjustified occupation of the land resources and project abandonment eventually. Lack of proper evaluation of the land can as well lead to low efficiency and effectiveness of the project. One of the examples is that in Chitral the land was acquired by the government in order to install Gas plants. Later on due to unwanted circumstances government closed that project in which land was already acquired from the local.

## **Recommendations**

### **Reforms and Lesson from India**

Thus, an attempt to change the laws on the acquisition of land should be made squarely to address current injustices. The experience of operating Act, 2013 in India also gives important signals. These social cost-benefit, requirement of land owner consent, better

compensation measures and proscription of taking over of areas that are majorly used for intensive production of crops and fodder for livestock. However, it remains difficult to meet market demands with those of communities and their economic opportunities.

### **Need To decrease coercive power of government**

As we all know that excessive of every thing is bad. In a same way the excessive coercive power need to be in control. Like in India the act even endorse the consent of 80 % of the land owner in certain cases.

### **Fair Compensation**

In order to encourage ownership of the land joint ownership should be proposed to enhance the compensation system that will capture the true value of the land as well as the lost suffered by the affected persons. Make sure that compensation is both, in cash form also as in relocation assistance and support in restoring means of livelihood.

### **Need to redefine the word “affected person”**

If we go through the word affected word defined in Pakistan it is quite restrictive in nature

here only the title holder is considered to be affected person.in contrast to other countries like India it also includes non title holders with little interest in land. Expanding the definition of an ‘Affected Person as wide as possible will help with the fight for social justice while decreasing the number of disputes in the process of land acquisition. Pakistan can further align the laws concerning property to international and regional benchmarks for equal development by adding other stakeholders’ interest.

Need to define the urgency in section 17

Under section 17 of the land acquisition act the government can acquire land compulsory under different circumstances just with a notice of 48 hours to the land owner. The said urgency clause is not subject to any limitation. There must be defined cases in which urgency can be justified.

### **Need to adopt modern surveys techniques**

Use GIS, remote sensing and community mapping techniques in the evaluation of the land’s suitability and its sustainability for the intended project

### **Community Involvement**

Involve local stakeholders whenever conducting assessment surveys in order to know some socio-economic significance of the land to the people and to address their concerns if any at these early stages of the project.

### **Mechanism in case acquired land is revert**

Implement legislation for the assessment of long-term feasibility of projects that propose land acquisition before the purchase is made and formulate procedures for reverting or repurposing of acquired land if it is in light-use status due to the abandonment of a project.

### **Recognition of the Indigenous Peoples in Law**

To incorporate in the Constitution of Pakistan to give legal status to Indigenous Peoples using the term “indigenous” and to include the rights of Indigenous Peoples. Pass ordinary law enacting the definition of Indigenous Peoples, their special status and their rights to land, culture and resources as provided by this Act in accordance with the international instruments.

### **Need to Protect Cultural Land/Heritage**

Further support, developments, and documentation of cultural institutions which preserve Indigenous Peoples’ culture and traditions.

### **Conclusion**

The LA Act 1894 is legislation policy of colonial, which does not respond to social needs in the present world. The procedural issue, exclusionary nature and structure that inherently discriminates against landowners present several challenges to the individual and the state alike. These features work out in slow project implementation, high legal activities, and inefficiency in the use of available resources; these slow down economical development and negate social justice.

Reforming the LAA, 1894 is not purely a legal requirement but an important move toward the fair and efficient acquisition and distribution of land benefiting all. The legislature needs to focus on those kind of amendments which will deal with rationalization of process, which will ensure proper remunerative benefits to the project affected people, and which will attempt to deal with social and economic consequences of land acquisition. Also new approaches like socio-economic effect studies before land acquisition, engagement with the intended target groups and other stakeholders help ensure that land acquisition is sustainable without overburdening the intended beneficiaries. There is optimism that such reforms will lead to enabling laws which are in tune with international best practices, improve public confidence and enable effective implementation of development projects.

### **Bibliography**

## Articles/Reports

- I. Land Acquisition powers and land ownership restriction in European countries: evidence review (Published 14 December 2022)
- II. Land Acquisition in India: history and present scenario
- III. International journal of scientific and research publication, volume 6 issue 5, May 2016  
ISSN 2250-3153
- IV. Land Acquisition Policies- A Global Perspective by Dr.. Murali and M.Arul Vikram
- V. Honey, R., Pereira, J., Daly, C., Clutten, R., & Roots, G. (2022). The law of compulsory purchase. Bloomsbury Professional, Bloomsbury Publishing Plc
- VI. Lnehnoff A.(1942).Development of the concept of eminent domain. Columbia Law Review42(4),596-638.
- VII. Mayer, F. W. (2014). The problems of collective action. In F. W. Mayer (Ed.), Narrative politics: Stories and collective action (pp. 13–29). Oxford University Press.
- VIII. Harward Human Rights Law Journal Volume 12
- IX. Article Written by Advocate pir Abdul Wahid on Pakistani laws on Indigenous people and tribal persons
- X. Syed Al Atahar (2013), Development Project, Land Acquisition and Resettlement in Bangladesh; A Quest for Well Formulated National Resettlement and Rehabilitation Policy, International Journal of Humanities and Social Science, vol.3, pp.306-319

## Books

- I. Manual of The Land Acquisition Act 1984 by M. Mehmood
- II. The Constitution Of Pakistan 1973
- III. Land Acquisition Act 1984 Commentary by Abdul Basit

## Cases

- I. Muhammad Shafi v. Lahore evelopment Authority PLD 1989 SC 353
- II. Defence Housing Authority v. Jawaid Ahmad PLD 2001 SC 415
- III. Muhammad Akbar v. Commissioner Rawalpindi 1976  
Muhammad Younusv. Government Of Punjab PLD 2013L.H 352

## Websites

- I. ICCPR  
<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>
- II. ICESCR

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang_en)

III. [https://www.justice.gc.ca/eng/declaration/pdf/Themes\\_Doc\\_UNDA\\_ENG.pdf](https://www.justice.gc.ca/eng/declaration/pdf/Themes_Doc_UNDA_ENG.pdf)

IV. UN TREATY COLLECTION

<https://treaties.un.org/>

## References:

<sup>1</sup> Working Group on Indigenous Populations, Report of the Working Group on Indigenous Populations on Its Eleventh Session, U.N. Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, 45th Sess., Annex I, Agenda Item 14, at 50-51, U.N. Doc. E/CN.4JSub.211993129 (1993), reprinted in 9 ST. TkMAS L. Rev. 212 (1996)

<sup>2</sup><https://www.worldbank.org/en/topic/indigenouspeoples#:~:text=Indigenous%20Peoples%20are%20distinct%20social,which%20they%20have%20been%20displaced>

<sup>3</sup> The Constitution Of Islamic republic of Pakistan,1973,art.25.

<sup>4</sup> The Constitution of Islamic republic of Pakistan,1973,art.24.

<sup>5</sup> Law Commission Of India(law com No 10,1958),para4.

<sup>7</sup> Section 4(1), land acquisition Act,1894.

<sup>8</sup> Section 5(A) Land Acquisition Act, 1894

<sup>9</sup> Section 11 Land Acquisition Act,1894

<sup>10</sup> Section 23 Land Acquisition Act,1894

<sup>11</sup> Section 8 Land Acquisition Act,1894

<sup>12</sup> Section 17 Land Acquisition Act,1894

<sup>13</sup> Australian Land Acquisition Act 2013

<sup>14</sup> Chew R, Hoong V, Tay L K, Manimegalai V, Compulsory Acquisition of Land in Singapore. Singapore Academy of Law, 2010, 22: 166-188.

<sup>15</sup> Sayed Ali Ather(2013), International journal of humanities and social science,vol.3,pp.306-309.

<sup>16</sup> India Land Acquisition, Rehabilitation and Resettlement Act,2013.

<sup>17</sup> Honey, R., Pereira, J., Daly, C., Clutten, R., & Roots, G. (2022). The law of compulsory purchase. Bloomsbury Professional, Bloomsbury Publishing Plc

<sup>18</sup> M. Akbar v. Commissioner Rawalpindi 1976

<sup>19</sup> The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

<sup>20</sup> PLD 1989 SC 353.

<sup>21</sup> PLD 2001 SC 445.

<sup>22</sup> PLD 2013 L.H 352

<sup>23</sup> Personal interview of my friend Salman Zeb resident of jughoor Chitral

<sup>24</sup> Section 17 Land Acquisition Act,1894