

Land Acquisition in Pakistan: Loopholes in the Legal Framework and the Way Forward

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Abstract

In Pakistan, the process of compulsory land acquisition by the state results in a complex web of different social and economic problems. The involuntary purchase of land leaves the interest holders in a state of complete distress as they are not properly rehabilitated and resettled by the acquiring authority. This paper seeks to identify the inefficiency in process of compulsory land acquisition in Pakistan with a particular focus on the *Land Acquisition Act of 1894*. It will also elaborate the processes of land acquisition in some other common law jurisdictions like India and United Kingdom to understand the existing loopholes and identify the key areas for improvements so that the process of land acquisition in Pakistan be amended into a more efficient and equitable one.

Keywords: land acquisition; compensation; resettlement; public purpose

Introduction

A society is based on the cooperation of individuals among themselves. People collaborate and work side by side to make progress both at an individual and societal level. In a Utopian society, one can argue complete division of labor and a homogenous distribution of cost and benefit among all individuals. But in a real-world society, such a homogenous distribution is almost close to impossible. Generally speaking, individuals have a natural tendency to work for their interests and usually falter in contributing to things of public interest. This can also be described in terms of collective action problem; a situation where all the individuals would be better off cooperating but fail to do so because of conflicting interests (Mayer, 2014). If matters of public interests are left in the hands of private individuals, societies will come to a halt as people would prioritize their interests over a public interest i.e. everybody wants to enjoy the luxury of roads, railways,

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airports, and hospitals but not everybody wants to contribute in constructing them; the collective action problem where people want to enjoy the benefit but hesitate in bearing the cost. Because of this very problem, a state/sovereign looks over matters of public interest. A state levies taxes on individuals and uses those taxes to ensure things of public interest; construction of roads, dams, hospitals, airports, etc. These things are not created in thin air, the state requires land for constructing these things. The doctrine of *Eminent Domain* empowers the state to acquire private property for use in projects of public interest (Lenhoff, [1942](#)).

In Pakistan, the state has a right to acquire the property of private individuals under its powers of *Eminent Domain*. Such acquisition of land is also called “compulsory land acquisition”, as this acquisition can be done against the will of landowners, but compensation is awarded to them. This can be distinguished from a usual purchase of land where the consent of both parties is required. The primary law which governs the state’s power of eminent domain is the Land Acquisition Act of 1894 (Land Acquisition Act [LAA], [1894](#)). This piece of legislation is known to be the bible of compulsory land acquisition in Pakistan. Different statutory bodies like Lahore Development Authority (LDA), Central Business District Authority (CBDA), Capital Development Authority (CDA), and Ravi Urban Development Authority (RUDA) have either adopted the exact version of LAA, 1894 or have adopted a slightly modified version of LAA, 1894 but the general blueprint is the same. Even though LAA, 1894 holds a cardinal value for compulsory land acquisition in Pakistan, it’s not perfect. There are multiple loopholes and escape clauses in LAA, 1894 which give rise to a lot of complex problems. This paper seeks to identify those loopholes and escape clauses so the problems could be resolved and the process of land acquisition can be made more transparent, fair, and efficient.

Methodology

The study focuses on challenges imposed by the loopholes in the legal framework of land acquisition and for this, both primary and secondary resources have been considered. As far as primary resources are concerned, interviews have been conducted with different experts in the field to better understand the existing complications along with their redressal. Affectees/Victims of the compulsory land acquisition have also been engaged to get first-hand knowledge of shortcomings in LAA, 1894. As part of the secondary research, the LAA, 1894 itself has been deeply perused,

and different commentaries of the act have been examined to critically analyze certain sections. Legal case laws have been scrutinized, and different research journals have also been explored to substantiate the study.

Literature Review

Pakistan: Land Acquisition Act, 1894 (LAA,1894)

As discussed above, the Land Acquisition Act of 1894 is the primary legal instrument that enables the government to acquire private land for public purposes and it empowers both federal and provincial governments to exercise their power of *Eminent Domain*. It necessitates compensation to titleholders and registered tenants at the market rate after a proper evaluation of the acquired land. The regular process of land acquisition under LAA,1894 can be classified into three different stages; (1) *the Preliminary stage* which starts with a survey of feasibility and ends with a declaration to acquire, (2) *the Action stage* which starts with the publishing of declaration in the official gazette and ends with an award after inquiry, (3) *the Dispute stage* starts with objections to the award regarding which a reference is filed in the court and ends with a court decree.

In the **Preliminary stage**, the acquiring agency sends a request to the Collector of the District (Deputy Commissioner) who issues a preliminary notification under section 4 to kick start the process with a survey to assess the suitability of the land. After the survey, the Collector issues another notification under section 5 stating that land is required for public purposes. Objections from the landowners are invited under section 5A and an inquiry is conducted into them by the Collector. The collector submits the report of inquiry to the Commissioner of the Division. The Commissioner reviews the report and decides whether to proceed with the acquisition or not. If the Commissioner decides that the land is needed for public purposes then a notification about it is passed under section 6 which is also published in the official gazette.

In the **Action stage**, the Collector issues notice to the interested persons under section 9 inviting claims to compensation. Collector also issues notices to the relevant govt department/acquiring agency. All the objections are placed before the Collector in writing who then conducts an inquiry regarding compensation, measurement of land, and apportionment. After the inquiry, the Collector issues the award of compensation under section 11. With the dispensation of the award, the property rights of land are vested

in the govt. After the award, the Collector proceeds to take the possession of acquired land under section 16.

In the **Dispute stage**, the party who's aggrieved by the award files an application to the collector under section 18. Collector then refers the matter to the court with a covering statement that summarizes the award and the raised objections. The court adjudicates the matter and passes its decree.

India: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR, 2013)

Both India and Pakistan inherited the same law for compulsory land acquisition i.e. Land Acquisition Act, 1894. But due to numerous drawbacks in the act of 1894, India finally repealed the law and passed a new law for the acquisition of land: LARR 2013. This new law tries to create a balance between the property rights of individuals and the acquisition under the compelling case of public interest. LARR, 2013 predominantly follows a similar suit to LAA, 1894 in the procedure of land acquisition, but the salient feature which sets it apart from the previous LAA, 1894 is that the act ensures the rehabilitation and resettlement of the affected persons under its sections 31-42. The act broadens the definition of "affected persons" and also considers the livelihoods of temporary tenants and workers. It precludes unreasonable acquisition of land by ensuring a "social impact assessment" of the process. The act favors the landowners by mandating their consent in certain cases of land acquisition while increasing the rate of compensation at the same time.

United Kingdom: The law of Compulsory Purchase.

Even though there's an extensive list of legislation in the UK about land acquisition but the two primary laws that govern the state's powers of compulsory land acquisition are the *Compulsory Purchase Act, 1965*, and the *Acquisition of Land Act, 1981*. Both these laws take an equitable approach regarding the compulsory acquisition of land by striking a balance between the property rights of private individuals and the requirement of the acquisition (Honey et al., [2022](#)). The pre-requisite of "public purpose" is strictly followed under a narrow approach and compulsory acquisition of private property is not allowed arbitrarily. Similarly, the compensation and rehabilitation are not limited to the title holders only, people having a partial interest in the property are also taken care of. As far as the process of land acquisition is concerned, a "compulsory purchase order" is issued to the

landowners/interested persons. The process is made up of several stages. First, the acquiring authority considers whether the land is required to deliver the public project and the extent of the land that may be required. Acquiring authority then formally resolves to use its powers of compulsory purchase and gathers detailed information about the landowners/interested persons. A compulsory purchase order (CPO) is made and submitted to the confirming authority. Those affected by the CPO are invited to raise objections to the confirming authority. The confirming authority considers the CPO through a public inquiry or written representations and decides whether to confirm, modify or reject the CPO. If CPO is confirmed, the acquiring authority takes ownership of the land and gives compensation to the affected persons. Apart from compensation, rehabilitation, and resettlement of the affected persons is also ensured under the law.

Discussion

Land Acquisition Act of 1894 is the linchpin of compulsory land acquisition in Pakistan, all the provinces of the federation have adopted the same LAA, 1894 with some slight amendments in procedural provisions; the substantive provisions have been kept intact. Even though this act penetrates the roots of the acquisition process, it still has some major loopholes which are discussed below.

Loopholes in the Land Acquisition Act, 1894

One of the major loopholes in LAA,1894 is that it has a restrictive definition of “affected persons”; only the titleholders are compensated while the non-titleholders who may have a partial interest or privilege in the land are left without redressal. In rural areas, there are a plethora of cases where non-titleholders i.e. workmen or temporary tenants, have their complete livelihoods attached to the land being acquired. LAA, 1894 fails in ensuring any indemnification to these non-titleholders; the only beneficiaries of redressal are the titleholders.

On one side there’s a restrictive definition of “affected person” but on the other side, a broad definition has been given to the word “public purpose”; meaning the grounds on which land can be compulsorily acquired are large in number. The state can acquire the property of a private individual by declaring many things as a compelling case of public interest even when it’s not the case; the land is being acquired for the interest of a particular group. This can be corroborated through the case of *Muhammad*

Akbar v. Commissioner Rawalpindi (1976) where the land of a private individual was being acquired for the trustee (Matwalli) of a religious shrine; which was displaced during the construction of Mangla Dam. The courts didn't allow the acquisition as it was being done for the personal interest of the trustee (Mutwalli). This expansive scope given to the meaning of "public purpose" instills a sense of insecurity among the private individuals which eventually shudders their confidence in the state.

Another major deficit of LAA, 1894 is the rate at which compensation is awarded to the affected persons. The basic rule under the act is that compensation will be awarded based on the market value at the time of preliminary notification under section 4. But it fails to solidify any criteria for the market value which opens a floodgate of litigation in the courts. During an interview, a person claimed that "Our land was acquired in 2017 for the construction of a road, but the compensation we were given was almost negligible when compared with the actual price of land. We have taken the matter to the court but the court is yet to pass a decree on it" (H.I Thakur, personal communication, April 1st, 2022). Affected persons are usually compensated based on DC rates (evaluated for charging stamp duty) which are way too low than the actual market price of the acquired land. Landowners aggrieved by the low rates of compensation take the matter to the courts which rely on the sale deeds of adjoining houses in the preceding year to decide the compensation. The arbitrariness regarding the compensation and market value not only increases the burden of the judiciary but also delays the completion of the project.

Section 17 of the act grants special powers of compulsory land acquisition in cases of urgency by which land can be acquired with a notice of mere 48 hours to the owner. But the act doesn't stipulate the explanation of those cases of urgency; the acquiring authority/state can acquire the land by declaring anything as urgent. The arbitrary use of these coercive powers impinges upon the fundamental rights of citizens which eventually harms the state as a whole.

Lack of rehabilitation and resettlement of the affected persons is another major flaw of LAA,1894. The act only provides a one-time compensation which is also usually impugned as discussed earlier. A one-time monetary relief is not enough in cases when the entire villages are displaced and complete livelihoods are taken away due to compulsory acquisition of land.

In addition, the act doesn't emphasize the assessment of land being acquired through the lens of social and economic impacts. A precursory survey is usually conducted on a superficial level which can end up in an unreasonable acquisition of land and renunciation of the project at a later stage. Not assessing the land properly can also decrease the efficiency and effectiveness of the project. The project of an Industrial estate in Tehsil Chunian is an opposite case of carelessness in land feasibility assessment which not only resulted in the unreasonable acquisition of land but the project had to be dropped as well (Hasnain, [2021](#)).

All the loopholes and escape clauses discussed above pertain to the provisions of the Act, but there is another big deficiency that concerns the implementation of these provisions. For example, a proper procedure of acquisition has been outlined in the Act but it is usually not followed by the authorities. During a survey conducted in the district of Kasur where lands were being acquired for the construction of a road, almost none of the affected persons were taken in the loop through the issuance of notices. This non-implementation of proper procedures can open the doors to litigation which will delay the project and drain the resources of both state and the affected person. Lastly, some revenue officials exploit these loopholes and engage in underhand dealings which is detrimental to the whole process of acquisition.

Comparison with Land Acquisition in India and the UK

Both India and the United Kingdom are common law countries just like Pakistan, so it is only rational to compare the process of land acquisition among these countries. The perusal of land acquisition laws in India and the United Kingdom on the criteria of ease and efficiency can prove to be useful in ameliorating the process of land acquisition in Pakistan. Both India and Pakistan inherited the same law of land acquisition from their British colonial master which is LAA, 1894. But India repealed LAA, 1894, and replaced it with a new law; The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR, [2013](#)). This new law is quite progressive in the sense that it reduces the coercive power of the state and gives more latitude to the landowners. It even mandates the consent of 80% of landowners in case of land acquisition in certain cases, but no such requirement is found in Pakistan's LAA, 1894.

Both in India and the UK the definition of “affected person” includes non-titleholders with partial interest in the land or even those people who have their livelihoods attached to the land i.e workmen. While in Pakistan the definition of “affected person” is quite restrictive in nature and includes only titleholders and registered tenants.

Similarly, the definition of “public purpose” is somewhat restrictive in the jurisdiction of India and the UK; the land is usually acquired in cases of strategic requirement, critical infrastructure, defense, etc. But in Pakistan, the interpretation of “public purpose” is quite liberal and there’s a possibility that acquisition may be carried out even when there’s not a case of compelling public interest.

Under the new land acquisition law of India, a limitation has been placed on the urgency clause; land can be urgently acquired only for national defense. But in Pakistan, there is no such limitation and the land can be compulsorily acquired in multiple cases with a notice of mere 48 hours to the landowner.

A strict emphasis is placed on the social/economic impact assessment of the desired project in India and the UK; special authorities have been created for this purpose. The feasibility of the land is critically analyzed from different perspectives, and the project only proceeds if the benefit of the project outweighs the costs. The strict attention to social/economic impact assessment proves crucial in the success of the project. Unfortunately, in Pakistan, no special authorities have been mandated to assess the social and economic impact of the project. The level of feasibility analysis here is not that high as compared to one in India and the UK.

The most distinguishing factor amongst the laws of land acquisition in India/United Kingdom and Pakistan is the provision of amenities for rehabilitation and resettlement of the affected persons. In India and the United Kingdom, the state ensures the proper rehabilitation and resettlement of affected persons along with the compensation of acquired land. They are provided with jobs, housing, and important facilities like hospitals, schools, parks, community centers, etc. In cases of irrigation and hydel projects, the affected persons may be granted fishing rights. Regrettably, in Pakistan, the law of land acquisition is completely silent concerning the rehabilitation and resettlement of the affected persons.

Recommendations

Considering all of the above discussion, this study proposes following recommendations in the land acquisition process of Pakistan: The definition of “affected persons” should be liberally construed to include persons with temporary and partial interests i.e. workmen and temporary tenants. The requirement of “public purpose” needs to be critically analyzed with a conservative approach of interpretation so that the acquisition of land is only done when there’s an actual case of compelling public interest. Moreover, the scope of urgency clause (section 17) should be limited. The affected persons should be compensated as per the current market value (with set criteria) of the land and not according to the DC rates. However, DC rates should also be revised and updated. Further, a special authority should be established to carry out a proper social and economic impact assessment of land acquisition. Importantly, proper rehabilitation and resettlement of the affected persons must be ensured under the law. Additionally, multi-crop and irrigated lands should be acquired only as a last resort, as maintaining the food security of the country should be prioritized. There is also a need to completely digitize the land revenue records to ensure transparency and curb the underhand dealings of revenue officials. Finally, a mechanism needs to be drawn to ensure the proper and complete implementation of land acquisition law.

Conclusion

In a nutshell, the Land Acquisition Act of 1894 is outdated and opens up a plethora of complexities. The process of land acquisition is quite cumbersome and places landowners at disadvantage. The series of litigation not only delay the completion of projects but also drain the resources of both affected persons and the state. That’s why it is the need of the hour that the legislature takes immediate steps to make necessary amendments in LAA, 1894 so that the process of land acquisition can be made more smooth, efficient, and equitable.

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