

# ***EMINENT DOMAIN-ANALYSIS OF LAND ACQUISITION LAW***

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Land is a scarce resource, and in a country with a population of 1.2 billion that is aiming to become the world's manufacturing hub with best in infrastructure, land becomes an even more priced commodity. Land is required for laying down the base of any large scale project, be it infrastructure projects like ports, railways, airports, power stations, highways, etc., or industries like iron & steel, food processing, real estate, mines and minerals, petrochemicals, etc. These businesses have two ways of acquiring land: 1) approach the land owners directly and purchase the property rights in the land without any interference from a third party, or 2) when the land owner(s) is reluctant to part with the title owing to personal, community, religious or livelihood reasons, then approach the appropriate governmental authority to acquire the title from such agitating land owner(s) by use of force of law. The latter is the real-life application of the well-established doctrine of 'Eminent Domain'.

The Indian jurisprudence of eminent domain has its roots in the works of the 17th Century Dutch philosopher of natural law Hugo Grotius. He propounded that "*property of subject is under the eminent domain of the state,*" such that the state "*may use and even alienate and destroy such property...for the ends of public utility.*" It is extremely important to explain the two fundamental qualifications that Grotius had attributed to the state's unbridled power under

eminent domain. Firstly, the use of this expropriated land must be restricted to *"public use, to which ends those who found civil society must be supposed to have intended that private ends should give way."* Secondly, on expropriating private land for government's use, the *"state is bound to make good the loss to those who lose their property."* It is now well established that the following three factors are pre-requisites for the exercise of this power of eminent domain, namely, (1) the authority of law, (2) the requirement of public use, and (3) the payment of just and reasonable compensation. This absolute power of expropriation has been statutorily condensed in several central and state laws. However, the doctrine's interface with an individual's property rights granted by the Constitution was a contentious domain. Stronger the Constitutional property rights granted to an individual, weaker would be the application of the doctrine of eminent domain. The Nehru-Patel divide during our Constitutional Assembly debates was on the extent of property rights that should be Constitutionally granted to an individual. Articles 19(1)(f) and 31 of the first draft of the Constitution that codified eminent domain in a post-independence India, bestowed a Fundamental Right status to property rights. However, this was watered down with time as the government took a pro-active role in acquiring zamindari lands; for which, it had to first water down the property rights granted to individuals. After a thirty seven year old battle in and out of courts, the law on this subject was finally settled with the promulgation of the forty fourth Constitutional amendment that repealed Articles 19(1)(f) and 31 and replaced them with Article 300A. The moot development being that an individual's right to property was no more protected under the elevated realm of Part III, effectively making it vulnerable to the (ill) application of the doctrine of eminent domain.

## **I. VILLAGE COMMUNITIES: LITTLE REPUBLICS**

The 73rd and 74th Amendments were inserted in the Constitution of India with the avowed object and intention of strengthening the local self-governance both at the village and district level by de-centralizing the powers and conferring the powers on the local self governments for effective and better administration of rural India. Self-governance was very much a part of the Indian society historically. The words of Sir Charles Metcalfe, the Acting Governor General of India from 1835 to 1836, on the functioning of the village panchayats made during the 19th century which are recorded as under:

*"The village communities are little republics, having nearly everything they can want within themselves, and most independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds after revolution; but the village community remains the same. The union of the village communities, each one forming a separate little state, in itself, has I conceive, contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their enjoyment of a great portion of freedom and independence"*

It is imperative to note here that the Constitution initially did not vest power on villages or communities as units. It rather vested power on individual as units of the society. It was proposed by Dr. B.R. Ambedkar, Chairman of the Drafting Committee of the Constitution, that the administration of India should not be carried out at village level since they are ignorant units of communities immune from the progress of the city and are also influenced by social biases and

prejudices. With these biases and prejudices, it was apprehended that India, at the time during the drafting of the Constitution, was not suited to be ruled at village and panchayat level. On the other hand, Dr. Ambedkar proposed that there should be a strong Centre governed by the Rule of Law for the administration of the country. Formal inclusion of the panchayats in the Constitutional system was deferred for a later time since the framers of the Constitution deemed it fit to introduce social reforms in the village prior to conferring upon them the power of self-governance, in the light of the constraints faced by the new Republic of India. [Article 40](#) was therefore inserted in the Constitution in the form of Directive Principles of State Policy in Part IV of the Constitution so as to move towards the vision of introducing local governance when the time arrived. Though this was the decision taken at the time of the drafting of the Constitution, most of the framers in the Constituent Assembly reposed their faith on the potential of village panchayats and were of the opinion that self-governance at local level is the only way forward to realize 'Swaraj' for our country. Shri Ananthasayanam Ayyangar, member of the Constituent Assembly, presented his opinion on village panchayats before the Assembly which is recorded as under:

*"But who are these republics? They have to be brought into existence.....Therefore, I would advise that in the directives, a clause must be added, which would insist upon the various governments that may come into existence in future to establish village panchayats, give them political autonomy also economic independence in their own way to manage their own affairs." It is further to be noted that Entry 5 in the list-II to the VII Schedule of the Constitution enables the State Legislature to make laws pertaining to local government which also include the powers to be vested on the Municipal Corporations, Improvement Trusts,*

*Authorities, Mining Settlement Authorities, District Boards and other local authorities for the purpose of village administration and the local self-governance. The constitutional amendment in 1992-93 through the 73rd and 74th [Amendment Act](#) provided for uniformity in the structure in terms of three-tier local governments at the District (Zila Parishads-ZPs), Block (Panchayat Samitis-PS) and Village levels (Gram Panchayats-GPs). With the constitutional amendment, the panchayats are constitutionally expected to move away from their traditional role of simply executing the programs handed down to them by higher levels of government. They are on the other hand, expected to implement their own programs of economic development and social justice. The amendments further confer power upon the states in the form of Schedule XI to enlarge the domain of panchayats and to include functions with distributional consequences. This schedule includes key functions such as agriculture, drinking water, education, irrigation, poverty alleviation, primary, secondary and adult education, roads and rural electrification and maintenance of community assets."*

## **II. LAND ACQUISITION ACT, 2013: BACKGROUND**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 was enacted by the Parliament in September 2013, repealing the Land Acquisition Act, 1894. The Land Acquisition Act, 1894 had always been subject to heavy criticism due to its largely anti-landowner approach. These related to forcible acquisitions, definition of "public purpose," widespread misuse of the "urgency clause," compensation, lack of transparency in the acquisition process, participation of communities whose land is being acquired and absence of provisions of rehabilitation and resettlement

packages to farmers. Further, weak implementation and ineffective administration at the ground level increased the suffering and anguish of the people. Due to lack of a clear definition of "public purpose," there has been considerable difference of opinion among various judgments of the Supreme Court, finally resulting in granting very broad discretionary powers to the state in terms of deciding the contours of "public purpose" under particular circumstances.

Under the Land Acquisition Act for acquisition of land state government and central government apply the doctrine of Eminent Domain. Eminent domain has been applied in India since the era of Independence, affecting over 21.6 million people during the period from 1951-90. They have been displaced for the purpose of large-scale projects like dams, canals, thermal plants, sanctuaries, industrial facilities, and mining. These occurrences are generally categorized as "development-related displacement." But this process of land acquisition by the State Governments in India proved to be unpopular. Because, the amount reimbursed to the land losers was fairly low with regard to the current index of prices prevailing in the economy. Furthermore, due to the low level of human capital of the displaced people, they often failed to find adequate employment. The draft of the government's National Policy for Rehabilitation states that figures around 75% of the displaced people since 1951 are still awaiting rehabilitation. However, it should be noted that displacement is only being considered with regard to "Direct Displacement." These rehabilitation policies do not cover fishermen, landless labourers, and artisans. Roughly one in ten Indian tribals is a displaced person. Dam projects have displaced close to a million Adivasis, with similar woes for displaced dalits.

The Act did not address the issues of rehabilitation and resettlement to the affected persons and their families. There had been multiple amendments to the Land Acquisition Act, 1894 not only by the Central Government but by the State Governments as well. However, there was growing public concern on land acquisition, especially multi-cropped irrigated land. There was no central law to adequately deal with the issues of rehabilitation and resettlement of displaced persons. As land acquisition and rehabilitation and resettlement were two sides of the same coin, a single integrated law to deal with the issues of land acquisition and rehabilitation and resettlement was necessary.

### **III. LAND ACQUISITION ACT, 2013**

#### **1. STATEMENT OF OBJECTS AND REASONS**

The relevant portions of the Statement of Objects and Reasons are extracted as under:

"1. The Land Acquisition Act, 1894 is the general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

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2. The definition of the expression "public purpose" as given in the Act is very wide. It has, therefore, become necessary to re-define it so as to restrict its scope for acquisition of land for

strategic purposes vital to the State and for infrastructure projects where the benefits accrue to the general public. The provisions of the Act are also used for acquiring private lands for companies. This frequently raises a question mark on the desirability of such State intervention when land could be arranged by the company through private negotiations on a "willing seller-willing buyer" basis, which could be seen to be a more fair arrangement from the point of view of the land owner. In order to streamline the provisions of the Act causing less hardships to the owners of the land and other persons dependent upon such land, it is proposed to repeal the Land Acquisition Act, 1894 and to replace it with adequate provisions for rehabilitation and resettlement for the affected persons and their families.

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6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, particularly in case of the weaker sections of the society including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement,



rehabilitation and resettlement process framework, not only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

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11. "Public purpose" has been comprehensively defined, so that Government intervention in acquisition is limited to defence, certain development projects only. It has also been ensured that consent of at least 80 per cent, of the project affected families is to be obtained through a prior informed process. Acquisition under urgency clause has also been limited for the purposes of national defence, security purposes and Rehabilitation and Resettlement needs in the event of emergencies or natural calamities only.

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13. To ensure comprehensive compensation package for the land owners a scientific method for calculation of the market value of the land has been proposed. Market value calculated will be multiplied by a factor of two in the rural areas. Solatium will also be increased up to 100 percent of the total compensation. Where land is acquired for urbanization, 20 percent of the developed land will be offered to the affected land owners.

14. Comprehensive rehabilitation and resettlement package for land owners including subsistence allowance, jobs, house, one acre of land in cases of irrigation projects, transportation allowance and resettlement allowance is proposed.

15. Comprehensive rehabilitation and resettlement package for livelihood losers including subsistence allowance, jobs, house, transportation allowance and resettlement allowance is proposed.

16. Special provisions for Scheduled Castes and the Scheduled Tribes have been envisaged by providing additional benefits of 2.5 acres of land or extent of land lost to each affected family; one time financial assistance of Rs. 50,000; twenty-five per cent. additional rehabilitation and resettlement benefits for the families settled outside the district; free land for community and social gathering and continuation of reservation in the resettlement area, etc.

17. Twenty-five infrastructural amenities are proposed to be provided in the resettlement area including schools and play grounds, health centres, roads and electric connections, assured sources of safe drinking water, Panchayat Ghars, Anganwadis, places of worship, burial and cremation grounds, village level post offices, fair price shops and seed-cum-fertilizers storage facilities.

18. The benefits under the new law would be available in all the cases of land acquisition under the Land Acquisition Act, 1894 where award has not been made or possession of land has not been taken.

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23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact

Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.”

## **2. PROCEDURE TO BE FOLLOWED UNDER THE NEW LAND ACQUISITION ACT**

Here it is appropriate to sketch the scheme of the Act. As soon as it is proposed to acquire the land under this Act, the Government should appoint a Committee headed by the District Collector to specify the public purpose. The report of the District Collector should be considered by the High Level Committee constituted by the Government at the Secretariat level. This Committee headed by the Chief Secretary and the members include the Secretaries of different departments. If the High Level Committee is satisfied about the public purpose, the Government proceeds to appoint an expert group to evaluate the social impact of land acquisition. The said Committee prepares a report promising amongst other measures several special benefits to the land losers and others who are deprived of their source of livelihood on ground of land acquisition. Even if the Committee decides against the acquisition, the Government may still proceed with land acquisition.

#### **A. SOCIAL IMPACT ASSESSMENT (SECTION 4):**

While under the 1894 Act, the process of acquisition was initiated with the publication of notification under Section 4. Under the new Act, the process is initiated with the preparation of the Social Impact Assessment Study Report. The Social Impact Assessment Report shall be prepared under Section 4 of the Act after following the mandatory procedure contemplated in the said provision and hearing the representatives of both village panchayath or municipality or Municipal corporations by the appropriate government. Before the Government issues notification to acquire any land, the Government has to take two steps: (i) appoint a Committee to prepare a report on social impact (ii) appoint an Authority for rehabilitation and resettlement. The Government will issue the notification to acquire the land only after it is satisfied about the need of acquiring the proposed land and after satisfying itself with the schemes of rehabilitation and resettlement. Hence, the first step is to decide on the public purpose and the second is regarding the schemes of rehabilitation and resettlement. Social Impact Assessment Report shall be prepared by the Government. It may be the Collector of the District where the land is situated. His report is examined by an Expert Group consisting of social scientists and other officers.

#### **B. PUBLICATION OF SOCIAL IMPACT ASSESSMENT STUDY(SECTION 6):**

The Social Impact Assessment Study Report is concerned about the purpose for which the Government may acquire the land and Social Impact Management Plan refers to the assessment of the facilities provided to the persons who are

affected by the land acquisition. The reports of both the Committees shall be published by the Government in the language of the people residing in the area and the same shall be uploaded on the website. A copy of each of these reports shall be supplied to the agency which is authorized to conduct environmental impact assessment of the area proposed to be acquired. Whenever any meeting is conducted for the purposes of environmental impact assessment on account of land acquisition it is the responsibility of the persons conducting such public meetings to supply copies of the assessment report. If any person attending such meeting desires to secure a copy of the above reports they are recommended to approach the website. It would have been proper for the State Government or the Central Government, as the case may be, to supply copies of these reports to all persons attending such meetings free of cost.

**C. APPRAISAL OF SOCIAL IMPACT ASSESSMENT REPORT (SECTIONS 7 & 8):**

After consideration by the Expert Group, the Social Impact Assessment Report shall then be examined by the Appropriate Government through a High Level Committee at the Secretariat consisting of Chief Secretary, Secretaries of Finance, Revenue, Rural Development, Social Justice and Tribal Welfare, Panchayat Raj and three other experts in the field of relevant subjects. The contents of the report and the social impact assessment may deal with the question whether the purpose behind the land acquisition is public purpose. The other particulars relating to the details about the property sought to be acquired and the impact of its severance on the other land, and also whether there were any alternatives available and whether the local bodies are consulted. It is only

after the Government is satisfied about the purpose it will proceed further to acquire the land. The other step the Government takes is the scheme prepared on the measures of rehabilitation and resettlement. Even the schemes are examined by the Resettlement Committee at the district level and further considered by the Commission for Rehabilitation and Resettlement. It is only after it is satisfied about the schemes of rehabilitation and resettlement the Government will proceed further to acquire the land by issuing notification under Section 9 of the Act. The recommendations of the Expert Group are not binding on any Authority much less on the high level authority under this section. The High Level Authority can also act independently. It only records the recommendations of the Expert Group. It need not follow the recommendations of the Expert Group. The text of the High Level Committee Report shall be included in the Report of Social Impact Assessment Authority. The purpose of land acquisition and rules framed by the District Collector shall form part of the Report of Social Impact Assessment Authority. The schemes approving additional benefits under the rehabilitation and resettlement need to be examined thoroughly by a superior authority in the Government so that no proposal which is defective or frivolous may be executed. The executive only shall have the absolute discretion to decide whether a particular acquisition of the land is intended for public purpose. So long as the bona fides of the executive are not doubted, the executive shall have the absolute discretion to undertake the projects and execute them. The Land Acquisition Act was originally concerned with and executed to enable railways to fulfill their projects. That is the reason why acquisition of land for a company is treated as one intended for public purpose. Laying of railway lines, construction of workshops for railways, construction of railway stations and storage sheds were achieved in

a very short time. The scale of achievement spread over whole of India was magnificent. Hence, interference of too many authorities to decide whether a particular project satisfies the parameters of public purpose may block quick planning and execution of works of significant magnitude. Under the present Act the final authority to decide on public purpose is with the executive. Accordingly, the Land Acquisition Act does not leave the question of public purpose to an open debate.

#### **D. SAFEGUARD OF FOOD SECURITY AND LAND (Section 10):**

To safeguard food security, no irrigated multi cropped land shall be acquired. Such land may be acquired subject to the condition that it is being done under exceptional circumstances as demonstrable. Whenever multi crop irrigated land is acquired under sub section (2) of Section 10 as a last resort, equivalent area of cultivable waste land shall be developed for agricultural purposes or an amount equivalent to the value of the land shall be deposited with the appropriate government for investment in agriculture for enhancing food security. Thereafter, the preliminary notification under Section 11 has to be published proposing to acquire the land required for public purpose. The details of the land to be acquired in rural and urban areas shall be published in the manner as provided under clause (a) to (e) of the Section 11(1) of RCTLARR Act, 2013, and shall be published immediately after issuance of the notification under sub section (1). The concerned Grama Sabhas or Sabhas at the village level, Municipalities in the case of Municipal areas and Autonomous Councils in the case of areas referred to in the Sixth Schedule of the Constitution of India, shall be informed of the contents of the notification. Further, the nature of public

purpose involves reasons necessitating the displacement of affected persons, summary of Social Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and re-settlement under Section 43 of the Act shall be mentioned.

**E. Preparation of Rehabilitation and Resettlement Scheme by the Administrator (Section 16):**

After the preliminary notification proposed to acquire the land is issued, two steps must follow. The first step is that the authorized officers should survey the land and record the assets available therein and the payment to be made for damages during survey shall be paid immediately then and there. The second step is that the Administrator shall publish the rehabilitation and resettlement provisions. The Administrator's report shall be considered by the Gram Sabhas and their objections shall be recorded so that they may be suitably attended to. The objections relating to rehabilitation and resettlement proposals can be filed by any person interested in the land acquisition. While the objections relating to survey are complied with then and there, the objections relating to rehabilitation and resettlement proposals shall be settled finally in appeals and references. Both the matters shall be discussed at the Public Hearing at the Panchayat level. The objections recorded at the Panchayat level may be attended to by the Collector or the Government in an appropriate manner. Thereafter, the Collector shall consider and review the draft scheme submitted by the Administrator and shall submit his own comments to the Commissioner for rehabilitation and resettlement. The said Commissioner will finally approve the scheme of rehabilitation and resettlement. Thus, it may be seen that the question of public



purpose is finally decided by the Government, the question of finalizing the schemes of rehabilitation and resettlement lies with the Commissioner. The Commissioner of Rehabilitation and Resettlement is also directed to publish the final report in the locality so that the Panchayats and Municipal bodies may discuss the schemes of rehabilitation and suggest measures for improvement. Thus it is imperative that the final Authority to approve the public purpose and the schemes of rehabilitation and resettlement may be the Gram Sabhas and Panchayat bodies. After strictly complying with the Statutory requirement as provided under Section 16 of the Act with regard to the re-settlement and rehabilitation of the displaced persons from their lands on account of the proposed acquisition of the land for public purpose, the Collector shall give opportunity to the land owners to file their objections to the proposed acquisition of land. After receiving such objection statement, the Collector of the district shall give adequate opportunity to hear them if they have got tenable objections with regard to the aspects mentioned under clauses (a) to (e) of Section 15(1) of the RCTLARR Act, 2013. Thereafter, the Collector shall consider the objections of the owners/land losers and submit the report to the appropriate government. The appropriate government after considering the report and being satisfied with the same shall proceed to publish the declaration notification along with the declaration of the area identified as "Re-settlement Area" for the purpose of Rehabilitation and Resettlement for the affected families under the hand seal of a Secretary to such Government or any other officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of land covered by the Preliminary Notification. The Act provides necessary safeguards to the land owners/losers for acquiring the land for public purpose.

#### **F. NOTICE TO PERSONS CONCERNED (SECTION 21)**

This is a substantial Section. The Collector after publishing the consequential Final Declaration of the Government to acquire the land shall issue a Public Notice calling upon everybody to file his/her objections and representations before him so that he may make the final Award firstly as regards the compensation and secondly as regards the benefits under the scheme of rehabilitation and resettlement. He may make as many awards as there are claimants. He may make separate awards in respect of compensation and also with regard to the measures of rehabilitation and resettlement. Each award must be in the form of a decree which can be executable. Before he makes the award, he shall consider the representations and evidence produced by each claimant. The claimants include the occupiers claiming interest in the land acquired such as tenants, mortgagees and others who have any interest in the land by virtue of any agreement. The proceeding of inquiry conducted by the Collector prior to making the award shall be thorough and he shall give full opportunity to those who appear before him. The award made by the Collector may relate to persons not only who appear before him but all those who are reputed to have interest in the land. If the Collector fails to give any opportunity to the claimant the same will be rectified by the Tribunal and the High Court to the extent of the persons to whom opportunity is denied.

#### **G. DETERMINATION OF MARKET VALUE OF LAND BY COLLECTOR (SECTION 26):**

This is a substantial Section which lays down as to how the market value of the property shall be ascertained. Market value is the price at which the willing seller offers his property for sale and the willing purchaser agrees to pay such price. In order to ascertain the price there are several methods. One of such method is capitalization. Capitalization means multiplying the annual return from the property by number of years of its life expectation. The other method is adopting the price fixed by the Registrar of the area for purposes of stamp duty and registration. The third method is the average price of the land noted in 50% of the documents. The method involves adoption of the present value of the land, which is already developed by the deducting the costs of development. Yet another method is adding the prospective potentialities that might increase the price of land. In all such cases the claimants must adduce necessary evidence by producing certified copies of the documents. Registration of such document must be insisted upon and no private documents or unregistered documents may be allowed to be produced in evidence relating to the price. The Collector will not go into any question relating to forgery, etc. The District Collector is not entitled to decide on such allegations. In addition to the market price, solatium is also to be calculated on the entire property at 100% of its value. Solatium is calculated for other items of property such as the value of the crops, trees, buildings, etc. If the requisitioning authority is a company, it may issue 25% of the amount in the form of shares.

Section 27 provides for determination of amount of compensation. The market value of the land proposed to be acquired is not the same as the amount to be fixed as compensation. The compensation payable to the land owner should cover the value of all other assets. Solatium and interest also are to be

ascertained and added to the compensation payable to the land. While calculating the compensation, the District Collector may take the assistance of the concerned officials and specialists.

**H. PARAMETERS TO BE CONSIDERED BY COLLECTOR IN  
DETERMINATION OF AWARD (SECTION 28):**

In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration:

- a) the market value as determined under Section 26 and the award amount in accordance with the First and Second Schedules;
- b) the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;
- c) the damage if any sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
- d) the damage if any sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

- e) in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses if any incidental to such change;
- f) the damage if any *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 19 and the time of the Collector's taking possession of the land: and
- g) any other ground which may be in the interest of equity, justice and beneficial to the affected families.

## **I. SOLATIUM (SECTION 30)**

The award to be passed by the District Collector shall be in one document only and it shall have three parts. Part I shall deal with the question of public purpose. Part II shall contain the particulars of compensation for the property acquired. Part III shall contain the names of persons to whom the compensation is payable and the proportions in which the compensation is proposed to be paid. Where there is an agreement among the sharers of the compensation, the same must be incorporated and followed in the award. The copies of the award shall be served on all the claimants irrespective of whether they participated in the enquiry or not. The extent of the land and the compensation payable to it and also the benefits granted to the beneficiaries shall form part of the award. The amounts mentioned in the award shall be treated as final and shall be treated as correct as between the Collector and the claimants. It is not open to any Court to alter the Collector's list of particulars. The Collector shall add to the compensation so arrived at and the benefits to be granted under the scheme of

rehabilitation and resettlement, what is called solatium. Under the new Act, the quantum of solatium is increased by 100%, that too on the total compensation including the assets. The solatium shall be treated as a separate amount. Interest has to be calculated only on the amount of compensation. The interest payable shall be calculated at the rate of 12% on the amount of compensation fixed for the land acquired from the date of the first notification under Section 4 till the date of the award made by the District Collector or till the date of taking possession whichever is earlier. It will not be redundant to once again state that awards shall be made in respect of every person independently so that there are as many awards as there are claimants. Solatium shall be calculated on the amount of compensation payable for the land holder for assets attached thereto. The interest shall be calculated on the compensation but not on the solatium.

**J. REHABILITATION AND RESETTELEMENT AWARD (SECTIONS 31 to 42):**

These are important provisions which are added in this Act. For the first time the Act itself provides that those who lose land and those who lose opportunities of living as a consequence of land acquisition shall be entitled to the benefits of rehabilitation and resettlement. Earlier the Central and State Governments were providing discretionary reliefs relating to rehabilitation and resettlement. It is now made a statutory obligation under the Act to provide assistance to all those who lose opportunities of living as a direct consequence of land acquisition. It is also made a mandatory obligation for the Collector to make a separate award providing each person measures of rehabilitation and resettlement. Such measures may be in the form of cash or may be in the form of land for

cultivation or in the form of houses for the houseless families. The award made in this regard may also provide the infra structural facilities to be made available at the resettled areas. The award made by the Collector shall be binding on the parties referred to in the award. In order to see that the beneficiary, for whom the land is acquired, shall also promptly pay the compensation and benefits of rehabilitation and resettlement, the beneficiary is required to pay the full amount of compensation and full value of the schemes of rehabilitation and resettlement in advance. In the case of the land acquired for irrigation and other hydel projects, the rehabilitation and resettlement shall be completed within six months prior to submergence of the lands acquired. In the case of land acquired in Scheduled areas or land acquired from members of Scheduled Castes and Scheduled Tribes, they shall be paid additional compensation. Apart from the additional compensation, they should be resettled preferably in the scheduled areas in a compact block so that they can retain their ethnic, linguistic and cultural identity. In case the Scheduled Castes and Scheduled Tribes are located outside their areas in a different district, they should be paid further compensation as well as additional reliefs due under the rehabilitation and resettlement schemes. Notwithstanding the change of location the rules of reservation in posts, in services and seats in educational institutions, they were enjoying shall continue in the new locations where they are resettled.

#### **K. PAYMENT OF COMPENSATION:**

The award issued by the Collector is a final document. Therefore, the Collector is required to pay the amount of compensation awarded by him to the parties concerned or deposit the same in their Bank accounts. In case he refers the

award to the Authority, he shall deposit the relevant compensation before the Authority. The fact that a person has received the compensation without any protest will not deprive him of the right to refer the disputed matter to the Authority or claim the difference in the compensation awarded to others. In case the Collector finds that the land holder has no power to alienate the same, he may order the compensation amount to be invested and the proceeds may be paid to the person in possession of the land at the time of take over. In such cases the Collector may recover the costs of investment out of the proceeds of such investment. Till the date of such investment the Collector shall pay the interest on the amount awarded.