

# LEGISLATING ON LAND ACQUISITION IN INDIA: A POSSIBLE CONSENSUAL MODEL?

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**Abstract:** The term ‘Eminent Domain’, refers to the power the State has to take away an individual’s land for public benefit which has been a highly controversial topic of debate since its very conception. Following through Sustainable development, the concept wherein, securing the rights of the present generation while safeguarding the interest of the future generations is the focus of present human development, puts today’s society in a seesaw position. On a comparative analysis the two concepts raise questions as to, in a society already suffering from inequality and huge income disparities, whether crushing the rights of individuals today for benefit of the next generation is just and fair? And if not what are the steps or incentives that the State laws shall incorporate to balance the need of today and tomorrow?

With the increase in capitalisation and expansion of modern day infrastructure, such contrasting concepts are applied by the State under the garb of public betterment. Land serves multitudinous purposes as an asset for future; an investment to dwell on; a place you can call home or a farmer’s livelihood and most importantly a weapon which can be utilised towards the development and progress of any nation. At the very outset there is a need for the State to acquire land, specifically to protect the interest of the people displaced; to that effect the Ministry of Rural Development, Government of India in 2011

introduced the, ‘Draft National Land Acquisition and Rehabilitation & Resettlement Bill, 2011.’ Aiming towards development, better livelihood and safeguarding the ecosystem; the Land Acquisition and Rehabilitation Bill provides transparency in the process of land acquisition and brings about a consensual approach towards Land Acquisition, Rehabilitation and Resettlement.

On one hand land being the major source for development of a nation attracts the economic perspective and infrastructural development, whereas on the other hand in a country like India where nearly 70% of the country’s population lives in rural areas; land is the basic necessity for the survival of any individual; providing him food for sustenance, shelter to live and clothing to cover; being his only source of income and traditional form of employment; brings forth the sociological perspective of this new Bill in focus. The present paper emphasizes on how the Bill caters to the competing need for land and natural resources while touching upon the necessity of maintaining the ecological balance arising out of such land acquisitions and development processes; and highlighting the wide lacunae left in the proposed consensual model. Therefore, the paper balances out the need for equitable and just sustainable development. Furthermore, an attempt is made to establish as to what constitutes ‘Public Purpose’ while vindicating the relation between progress and

justifiability. For the sake of brevity, the aim of the paper is to determine how well can the Bill facilitates and adapts to anticipated practical applicability in the Indian setup.

**Keywords:** Ecological Balance, Eminent Domain, National Land Acquisition and Rehabilitation and Resettlement Bill, Sustainable Development.

## INTRODUCTION

### Sustainable Development

The non-linear human behaviour to achieve high rate of growth have resulted in rampant , reckless and exorbitant exploitation of natural resources creating a need to integrate environmental protection with economic development viz. ‘Sustainable Development’[1]. Sustainable Development is not only a broad concept but also is a serious analytical subject [2]. According to the World Commission on Environment and Development [3] it is the “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. Thus, Sustainable Development is a relationship of interdependence on environmental, social and economic systems. The concept is by and large to promote equality and justice through people empowerment and for the generations to come.

Twenty years after the Earth Summit 1992, Rio De Janerio, Brazil also known as Rio Declaration, United Nations (UN) General Assembly has endorsed the outcome document ‘The future we want’.[4] wherein following from the former UNGA declares to “[R]enew our commitment to sustainable development and to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations.”. Furthermore, it provides for reaffirming their commitments to fully implement the Rio Declaration, Agenda 21[5] the Programme for the Further Implementation of Agenda 21, the Plan of Implementation of the World Summit on Sustainable Development (Johannesburg Plan of Implementation) [6], the Johannesburg Declaration on Sustainable Development [7], the Programme of Action for the Least Developed Countries for the Decade 2011–2020 (Istanbul Programme of Action) [8]. Moreover, even the outcomes of all the major United Nations conferences and summits in the economic, social and environmental fields are recognised in it, for instance the United Nations Millennium Declaration, the 2005 World Summit Outcome, the Monterrey Consensus of the International Conference on Financing for Development [9], the Doha Declaration on Financing for Development: outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the

Monterrey Consensus, the outcome document of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, the Programme of Action of the International Conference on Population and Development [10], the key actions for the further implementation of the Programme of Action of the International Conference on Population and Development and the Beijing Declaration [11] and Platform for Action [12].

The report recognises the condition of poor’s need to be ameliorated significantly in order to uplift the economic development of many countries particularly the developing countries. In addition to it is stated that there is a need to revitalize the agricultural and rural development sectors too, notably in developing countries, in an economically, socially and environmentally sustainable manner to help agricultural producers, in particular small producers, secure land tenure, affordable technologies, including for efficient irrigation, reuse of treated wastewater water harvesting, traditional sustainable agricultural practices, including traditional seed supply systems, including for many indigenous peoples and local communities. [13]. It provides for an increase in sustainable agricultural production and productivity globally, including by improving the functioning of markets and trading systems and strengthening international cooperation, urban-rural linkages and investment (sustainable agricultural practices; rural infrastructure, storage capacities and related technologies), particularly for developing countries [14]. Furthermore, provides for conserving land, biodiversity and ecosystems and enhancing resilience to climate change and natural disasters [15].

The enormous extreme level of dependency on land is required for Sustainable Development. The aforesaid declarations given in the report “*The future we want*” emphasising on the pattern of usage is not only vital but is necessary. It is required for so many varied reasons for instance, agriculture [16], ecosystems [17], pasturing, irrigation, water management [18] etc. The significance of land utilisation to be wisely and judiciously performed can be taken from the fact that the report has gone to the extent of officially stating that it shall encourage countries to [19 ] give due consideration to implementing the Committee on World Food Security Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. The governance for the good land management has been recognised [20] in terms of the economic and social factors. Furthermore, the significance of good land management lies in its contribution to economic growth, biodiversity, sustainable agriculture and food security, eradicating poverty, women’s

empowerment, addressing climate change and improving water availability [21]. A point also worth mentioning here is the stress on encouragement for capacity-building, extension training programmes and scientific studies and initiatives aimed at deepening understanding and raising awareness of the economic, social and environmental benefits of sustainable land management policies and practices [22]. In an attempt to eradicate the differences between gender the report provides for equal rights to economic resources, including access to ownership and control over land and other forms of property [23].

### **Eminent Domain**

The power of the Government to acquire private property for public purpose is termed as eminent domain. This concept was inherited from the Britishers in India and had continued ever since then. In 1824, the then British Government ruling over India had passed numerous legislations/policies for forceful acquisitions of lands under the hands of masses under the garb of public purpose particularly in the Bengal and Madras Presidencies. This callous and reckless approach was continued till the freedom of India (1947).

Since then there have been major changes in the land acquisition legislation. It is pertinent to mention here that in Indian context that 'right to property' has been deleted from being a fundamental right (44th Amendment Indian Constitution, 1978) to a Constitutional right (Article 300-A, Constitution of India). The recent trends in the Indian context and even at the predominant global level have been realised on the ongoing onslaught of the corruption and greed. Therefore, the land acquired under the pretext of public purpose is usually done so under the clandestine cover of economic growth and development. Economic growth directly or indirectly relates to the capitalisation and industrialisation. A major source of income generation leading to capitalisation is through means of industrialisation that requires increased production and manufacturing, in turn there is a need for space/land that leads to allotting land to private companies through means of acquisition.

It is pertinent to mention here that after 1984 amended of the land acquisition act, an individual could only raise objections qua compensation of the acquired land, under the law there was no opportunity given to raise objections against any other subject-matter like habitation, source of employment etc. To clarify the grounds of acquisition without providing any consideration to other factors vide Section 5A was inserted, [24] stating that the persons having an interest in the land shall neither have right to object nor is the local government bound to consider any

objections or enquire into them in case where the land is acquired for public purpose. Initially this power of eminent domain vested in the state for public purpose was evolved to enforce forceful acquisition of land without any consideration to the grievances of the people whose land was so encroached upon. Laws framed are such that they give cover to State's capricious exercise of power to acquire the land without raising any question on factors such as the need for acquiring the land, proper structure and plan for the use of land, methodology adopted for rehabilitation and resettlement, compensation to be provided based on the existing market value etc. In a landmark decision the Indian Apex Court realising the practical problem of corruption, greed, collusion between private-public officers has lucidly asserted the following in the case *Tukaram Kana Joshi & Ors. thr. Power of Attorney Holder v. Maharashtra Industrial Development Corporation & Ors.*, [25], and held:

".....There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the land owner as a 'subject' of medieval India, but not as a 'citizen' under our constitution."

In addition to this, the Court had held that deprivation of immovable property to any person of his own property would be a clear violation of Article 21 of the Constitution and in a welfare State, statutory authorities are duty bound to pay both the adequate compensation to rehabilitate such affected persons. "The non fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development."

To succinctly support an argument on the same lines, a consideration can be placed upon Article 14 Basic Law for Federal Republic of Germany which guarantees right to property and inheritance. Under law expropriation is only permissible for public good

wherein the compensation is determined by establishing an equitable balance between the public interest and interest of those affected.[26]

Furthermore, it is an established law that the Basic Law in case the property acquired is no longer needed the same shall be delivered to its original owner. As against the Indian Law where the property no longer required stays with the Government, that shall be used for any other public purpose and in case it is not put to any use by the Government. The same shall be put to public auction and the money raised shall be used for public purpose. The approach seems to be biased against an individual owner, Article 300-A of the Constitution protects the right of an individual to property on the other hand Govt itself takes away the right of property from individual. An individual is made to suffer and is deprived of his property even when there is an evident lack in administrative and execution policies

Germany's Constitutional Court has developed a four-part proportionality test to determine the constitutionality of takings. Under this test: (a) there must be legal authority for the purpose of the taking; (b) the taking must be an appropriate means of accomplishing the government's purpose; (c) the taking must be necessary and government must use the least intrusive means possible to accomplish its purposes; and (d) the taking must pass a balancing test, in which the value of the public interest advanced by the taking outweighs the owner's property interests.

Under the necessity prong of the test, the Court has held that only those parcels actually needed for a public project can be taken. It has held that a taking is unconstitutional if the property to be taken is not yet needed. If property that is taken is no longer needed for the public purpose, it must revert to its former owner. Finally, the Court has held that a taking of property in fee simple is unconstitutional if the government's purposes could be accomplished by acquiring a lesser interest in the property, e.g., an easement. [27]

### Criticism

With the increase in capitalisation and expansion of modern day infrastructure, land today has become the biggest available asset to mankind. It serves multifarious purposes: an asset for future, an investment to dwell on, a place you can call home or a poor man's source of income and what a country can utilise in to become the greatest contribution towards its development and progress. In times when industrialisation is rapidly growing and increasing the profitability margin for many, the ratio still remains the same for the majority of population of the country. In a country like India nearly 70% of the

country's population lives in rural area, of the 121 crore Indians; 83.3 crore live in rural areas while 37.7 crore stay in urban areas, as according to Census of India's 2011 Provisional Population Totals of Rural-Urban Distribution in country, released by Union Home Secretary RK Singh. As according to Data Portal of Government of India [] the total population of India for the year 2010 was 1190.52 million [28] with the per capita income of only \$1369.54/- [29]. As according to 66<sup>th</sup> round of National Sample Survey (NSS) carried out between July 2009 and June 2010, all India average monthly per capita consumer expenditure (MPCE) in rural areas was Rs. 1,054. It was also pointed out that 10% of the population at the lowest rung in rural areas lives on a meagre wage of Rs. 15 a day. With land and its cultivation being the only source of income and livelihood for about 70% of the people living in the rural areas, an act of Land Acquisition is being opposed by farmers all over the country. An act that on the pretext of development of the country camouflage the progress of the remaining 30% of the population without providing an appropriate means for basic survival of the majority 70% of the population. Under such circumstances an act of acquisition raises a question on the concept of development that is against the viability of their basic sustenance.

With a view to even out the need of the State to acquire land and protect the interest of the people displaced; the Ministry of Rural Development, Government of India on July 27<sup>th</sup> 2011 introduced The Draft National Land Acquisition and Rehabilitation & Resettlement Bill, 2011. The Bill provides suggestions to deal with such displacements addressing issues of compensation, rehabilitation, resettlement and means of participation by the public through social assessment in order to mitigate the ill-effects of Land Acquisitions. The drafters of the Bill in the foreword state that the Bill seeks to balance the need for facilitating land acquisition for various public purposes including infrastructure development, industrialisation and urbanisation, while at the same time meaningfully addressing the concerns of farmers and those whose livelihoods are dependent on the land being acquired. The objective is to make the process of land acquisition easy, transparent and fair for both sides in each instance. The Bill aims at providing a 'consensual approach' towards Acquisition and Rehabilitation & Resettlement.

On one hand land being the major source for development attracts the economic perspective to build infrastructure for development of any State and on the other hand land is the basic necessity for survival of any individual, providing him with shelter and also being his only source of income draws the

sociological perspective of the new Bill in focus. The Bill is a much needed step forward to formulate a fair and transparent system for acquisition and compensation but on evaluating the practical situation of land in India and its uneven distribution as in proportion to the existing population the bill lacks progressive safeguards to make the bill effective and practically functional.

The Bill makes taking approval of 80% of the affected people and Social Impact Assessment (SIA) as mandatory before acquisition of the land. For the purpose of implementation of SIA the Gram Sabha is to be consulted, leading to summary of SIA to be notified along with the draft notification and the summarized document then to be made available for public scrutiny for an area of 100 acres or more. As an additional safeguard in accordance with the SIA and to legitimize public purpose the Bill proposes that consent of 80% of the affected people is sought before the acquisition and the same is to be pre-notified. As under Clause 3(za) (i)-(v) 80% approval is required for the following purpose: (i) all activities listed by the government as infrastructure projects in its notification dated March 27, 2012, excluding private hospitals, private educational institutions and private hotels); (ii) projects related to agriculture, agro-processing, cold storage facilities; (iii) industrial corridors or mining activities, national investment and manufacturing zones as designated in the National Manufacturing Policy; (iv) government administered or government aided educational and research institutions; (v) sports, health care, transport or space programme projects; whereas 70% consent is required for Public-private partnerships projects (PPPs). The reason behind the differentiation in the percentage count has not been explained.

Prima facie the intent behind such a proposal seems pretty valid in order to avoid any further conflict or opposition of any form in the future, but with a closer look into the Bill it can be noticed that the decision making process is completely controlled by the Government officials, with no democratic or public involvement. The Bill fails to provide any justification as to who decides if such a project has in actuality got 80% consent. As per Clause 7 it states that Social Impact Assessment is to be "examined" (not obtained) by an expert committee under an appropriate Government creating a loop hole in the process of carrying out the assessment as there is no specific authority under whose domain the duty to obtain consent is designated. The Bill only specifies that the 'appropriate Government' shall ensure that Social Impact Assessment is evaluated by an independent multi-disciplinary group. Expectancy of several administrative setbacks due to non-appointment of a specific authority to supervise the assessment procedure is high. Moreover, there has

been no specific procedure enumerated in the Bill as according to which the 80% consent shall be obtained. A more specific question would be 'How, in fact, the consent is to be taken'?

The vagueness in the proposed consensual model takes us back to the square one where the question whether the consent has actually been taken or not shall remain uncertain; as the same would then again fall back to be answered by the Judiciary, as there would be no fool-proof record to keep a track of how the consent has been obtained, leaving one with a much anticipated possibility of the same being fabricated.

In a country like India where the illiteracy rate is sky-high, fabrication of documents can be done easily. It comes as no surprise to one that the prices paid or the benefits given in the documents are much higher than the corresponding benefits that are actually offered. The farmers from whom their shelter or source of livelihood has been taken away are left with nothing but only a hope in their eyes of being rehabilitated and resettled someday.

Then again the Bill proposes under Clause 5 that a public hearing is required for assessment of Social Impact but the successive steps to be taken based on the results of such a hearing are not mentioned in the subsequent provisions. Though there is a mention of inclusion of its result in the report prepared of Social Impact Assessment. In case the public objects to such an acquisition then what recourse could these people take? What shall happen in case most people object and oppose to such an acquisition is there any authority that would be ready to hear to these people with an un-biased opinion? To add to these grievances the Bill takes away the right of such people to approach the authority directly against such an arbitrary use of power.

Under Clause 58 they have to make an application to the Collector in case of disapproval, wherein the most cases he is the very person against whom these people are likely to complain. Under such circumstances that are likely to arise in future who would be accountable for deciding on these objections and answer the grievances of the affected. Under the said draft there is no one. In furtherance of the same, it is disappointing to note that the Bill protects the mala fide intentions of the Government by providing a loop-hole as a cushion to the already expectant lack in pre-planning and proper execution of the acquisition procedure on behalf of Government authority. At present, there are numerous cases being filed against the Land Acquisition Commissioner and DMRC as against their arbitrary use of power in acquiring land for development of Delhi Metro Rail Corporation. The major contention of the affected people being that the land was acquired without

proper planning in reference to the area of land actually required for the project and now the same extra/unutilised land is being used for building housing projects. Taking such cases in mind it is provided in the Bill that in case the government is not able to utilise the said land within 5 years, the same shall be returned to owner at 1/4<sup>th</sup> price or be used in some other Government project. To any citizen the latter part of the suggestion seems a more plausible option to be executed by the Government than the former being that of returning the unutilised land at 1/4<sup>th</sup> price. When the Government fails to use such land for public purpose, it does not come back to the original owner rather it is kept under consideration for the use of the same for any other public purpose and on the failure of the same it is dealt by a public auction wherein the money raised goes back to the Government.

It might be said that to avoid such fabrication Government is taking precautionary steps at its own end vide SIA by evaluating the social impact of such an acquisition. But how exactly would such an assessment be carried out? There have been no parameters listed for carrying out such an assessment. How will the Government carry out such an assessment? The laws stays silent as in by what means would the Government evaluate the assessment, through whom would such an assessment be carried, the authority who would be required to keep a record of such an assessment or who would supervise such an assessment to avoid any discrepancy? All these questions remain unanswered in the Bill.

The proposed consensual model of the Bill aims at gaining the consent of the farmers by reassuring them of the financial security provided to them under the Bill in order to facilitate the need to rehabilitate and resettle. But the suggestions put forth in the Bill seem short sighted and lack practical applicability in reality and at some point might suffer the blow of arbitrary exercise of power. To suffice my statement above I would like to state that the Bill proposes a subsistence allowance of Rs. 3000/- to those who lose their livelihood for a period of 12 months. Such means of rehabilitation though glossy on paper are pretty impractical when it comes to actual purpose behind the same. For an average family of a farmer whose source of income though meagre still sufficient for them to sustain themselves as they are certain that there is a constant source of income and livelihood available with them to maintain themselves. But once such a means is taken away from them it is very uncertain that a family of peasants who are uneducated and unskilled for any work other than their age old expertise in their field of employment; from which they have been uprooted would be able to adapt and find other sources of

employment. In times where the job opportunities are restricted even for the educated such an alternative for rehabilitation and resettlement seems quite unstructured, improper and anti-social. In addition to the subsistence allowance; annuity of Rs. 2000/- for 20 years is to be provided. There could be two plausible outcome of such an Act: (a) If the situation is to be looked sociologically then the inflow of money to any individual without an output in form of work can make such an individual lethargic and laid back, leaving him with no need to go out and look around for new work as his need are being catered to from the money provided as under the Bill. And (b) even if we overlook the sociological impact of such a proposal then in practicality how is this money going to be circulated? There has been no authority assigned in the Bill to whom the work shall be designated to regulate and keep a track of the whereabouts of such displaced in order to hand the subsistence and annuity money. The very fact of providing transportation money of Rs. 50,000/- to the land-owners or those who lose their livelihood due to acquisition signifies that there would be uncertainty of the location of the displaced. The subsequent procedure that of resettlement and rehabilitation would be delayed due to lack of data and several individuals would not get benefit under the Act as their location would not be traced. For instance, if proper framework for rehabilitation and resettlement would have been formulated before the acquisition then the onus of transportation and rehabilitation of the displaced would have rested upon the Government and not on individuals themselves. There is a need to incorporate provisions stating that the rehabilitation and resettlement facilities shall be worked out and executed prior to the acquisition of the land. Wherein, the individuals would only be displaced when a proper plan for rehabilitation and resettlement would have worked out and the Government shall transport the then displaced families to the new allotted areas. It is not possible for a poor man to find a new place of dwelling on its own, the compensation provided for his area of land might not be sufficient to buy a new land at any other place, due to the difference in the land prices. Moreover, if he is a farmer who knows the means and techniques of agriculture for a specific season he might not be able to employ himself in another part of the country with different type of farming. Hence, it is not only important to provide place of habitation but also create sufficient means of employment.

The priority of the State has been to use land for the purpose of industrialisation and capitalisation over individual use. In order to balance the two interests the Government need to employ such means that create opportunities for trickle-down effect in order to gain sustained economic development. Wherein the

land acquired is for use by private companies, a percentage of the benefit/profit thus generated shall be given to the original owners.

The present Bill based on the consensual model may find its way through all the hindrance that are pre-conceived on what might arise in future but out of all; Is it development of the already progressing urbanised sector or the majority of the Public living in Rural Areas? Acquisition of land affects an individual in several ways leading to loss of traditional forms of employment in agricultural sector, loss of habitation for such farmers, effective means of earning a livelihood and above all else the emotional attachment to a land acquired without one's consent. The new Bill intended to provide transparency in the process of acquisition, rehabilitation and resettlement is losing its objective and is being defeated due to lack of proper framework for execution. More than viewing it as a consensual model, it can be perceived as creating a greater social instability. There is an impending need to redesign the Land Acquisition Bill that at its very roots leads to the socio-economic growth and development of the nation.

### **Public Purpose**

Of lately various similar terms have been used analogously particularly in the context of public welfare such as, public interest, public use, public purpose, etc. However, courts of various judicatures have given different interpretations. The term that this paper will explore is 'public purpose' for this is the one recognised and used in Land Acquisition Bill (the issue at hand). Although for the sake of brevity, in general usage 'public interest' means "common well-being" or "general welfare" [30]; 'public use' wherein American Supreme Court had held that the seizure [31] of the private property by the Government to be sold to private developers was for the economical development thus public benefit [32], in a broad sense it has been interpreted to mean 'public purpose'.

The general dictionary meaning of the word 'public' is "of or concerning the people as a whole" [33] and the word 'purpose' is "the reason for which something is done or created or for which something exists" [34]. Thereby, the 'public purpose', in common terms implies something done or created which is of or concerns the public as a whole. The Indian Land Acquisition Act in Section 3(f), makes the term 'public purpose' as one inclusive (by the usage of word 'including') by permitting within its ambit the land utilization for town/rural planning, upgradation of existing villages; for the residential purposes for poor or those affected by natural calamities, government schemes; for development schemes sponsored by the government; for

construction of public offices. The new Bill (The Draft Land Acquisition and Rehabilitation and Resettlement Bill (LARR), 2011) however keeps in sight the concept of 'public use' and provides specifically for the provision of 'land for private companies for the production of public goods or provision of public services'. Furthermore, on the similar terms the Apex Court had held that for the effective usage of the 'public purpose' it is necessary that the wherever an acquisition of requisition of property by the Welfare State is performed, only in the wider interest of the general public, and such term shall be weighed without passion of prejudice for either the property or the public [35].

It may become very difficult with the time and rising needs to adjudge the constitutional validity between the aforesaid similar terms. Moreover, till date there has been no cut-&-dried formulae drawn for the same. In addition to this, the Indian political system is working against it for selfish motives and cannot be obviously trusted (within last 4 years the biggest scams of all time being revealed 2G Scam, Coal Scam, Adarsh Housing Society Scams, Commonwealth Games Scam). However, from the conspectus of past precedents, economic situation concerning that particular residents/place can guide in providing some factors/limitations to be kept in mind while determining the same such as whether it serves a social utility, efficiency, or social welfare; is it justifiable to curb the freedom of people with the magnitude of the compensation that will be granted to them. Thus, more or less, in the prevailing circumstances the onus is on the Indian Judiciary to determine whether the legislative process at the following three important steps of condemnation was fair: (1) determination of conditions (necessary or sustainable considering the present need) (2) determination of public use and weighting of all costs and benefits (present and future), and (3) determination of necessity. The courts' scrutiny ensures that the 'public purpose' is used in that manner which is just, fair, efficient and required and which are less likely to be dictated by self-interested private parties [36].

### **CONCLUSION**

Keeping in view the progressive approach adopted by the Ministry of Rural Development, Government of India by Introducing the Draft National Land Acquisition and Rehabilitation & Resettlement Bill, 2011 it can be said that the proposal aims at eradicating the discrepancy between the existing laws and the futuristic scenario. But the Bill lacks provisions to ensure proper functionality and implementation of the remedies proposed. To succinctly put it seems to be essentially driven by a desire to make land acquisitions, under various

pretexts of the modern societal needs easier. Due to lack of transparency administrative imbalance is bound to occur sooner or later, in addition to the existing loop holes in the present Bill. It is clear that the Bill, which does contain many good features, nevertheless requires substantial improvement.

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