

**Different Methods of Compulsory Land Acquisition and Determining
Compensation under the Gujarat State Laws**

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1. Background and Rationale

The note provides a comparative analysis of **allied legislation** on land acquisition, which is the primary legal instrument that induces displacement. Land Acquisition Act 1894 has been considered summarily in context of the state amendments and its importance in compulsory land acquisition. The purpose is to study the procedures on acquisition process and determining compensation amount in the State Acts to ascertain whether there is any scope to include them in the compulsory land acquisition process to make it fairer and faster to those affected.

2. Land Acquisition Act with specific state amendments.

This is an overarching legislation that sets out the conditions under which the Government may acquire private land. The LAA lays down a detailed procedure for land acquisition for a ‘public purpose’, including declaration of award within a prescribed time limit and provides an opportunity to affected people to move the court against the award (see annex 2 for details).

Most of the State laws on land acquisition in Gujarat refer back to this national law. The objective of the Act is to empower the Government to acquire lands for a “public purpose”. The state government has more or less adopted the LAA with few amendments in context of the state which are:

- a) The Act contains statutory definitions¹, the most important definition is “public purpose”², and whilst this is not finitely defined, it contains “provision of land for a corporation owned or controlled by the State”³ and “provision of any premises or building for locating a public office”⁴. The Gujarat amendment does not provide for any substantial amendment in the national legislation; however there is provision for officers to carry out a preliminary survey to determine whether land in any locality is needed, or is likely to be needed, for a “public purpose”⁵. (See a note on the potential of this provision in Annex 3)

- b) The first stage of the compulsory land acquisition under the Act is the preliminary notification that land in any locality is needed, or is likely to be needed, for a “public purpose” or for a company⁶ and to make some preliminary preparations⁷. The Gujarat Amendment does not make any substantial amendment to the national legislation.

¹ Land Acquisition Act 1894, section 3.

² Ibid Section 3(f) which was added by Act 68 of 1984

³ Ibid Section 3(f)(iv)

⁴ Ibid Section 3(f) (viii)

⁵ Ibid, section 3-A

⁶ Added by Act 68 of 1984

⁷ Ibid section 4.

- c) On award the Gujarat amendment *makes provision for an agreement to be reached between the parties (interested), mitigating the need to make an enquiry*⁸. It empowers a Collector to require such persons to execute an agreement, if the parties are agreeable.
- d) A Collector has to make an award within a period of two years from the date of the publication of the declaration, and if no award is made within that period then the entire proceedings for land acquisition will lapse. The Gujarat amendment allows for the amending of clerical mistakes and to amend an award⁹. It also allows for the State Government to call for and examine a record of any order passed by the Collector, for the purposes of satisfying itself as to the legality or propriety of any order passed and to the regularity of any proceedings. The Government can modify, annul or reverse any such order¹⁰.

One of the major issues faced in land acquisition for a public project, is whether compulsory land acquisition should be used in the *first place*. Compulsory land acquisition under the LAA 1894 or State Acts is potentially time-consuming and expensive. Why for instance, could State Government not be required to attempt to acquire land in the normal way through a negotiated contract? The Land Acquisition Act itself is silent on requiring any attempt to come to a prior negotiated contract, however it is clear that the Act is only meant for the *compulsory* acquisition of land for public works, and therefore does not impinge on the question of a negotiated contract being made.

3. Allied state laws on ‘negotiations’.

Even though a number of the State Acts operate a land acquisition process outside the LAA 1894, all follow a similar process of land acquisition for a “public purpose”. There are differences and recognition of negotiations enables the executing body to reduce the time required for acquisition. Several of the Gujarat State Acts innovatively contemplate the compulsory acquisition process being used *only* in a situation where a prior negotiated contract for acquisition with the owner has not been reached. Few of them explicitly make provisions for negotiations whilst others consider it as alternative, as follows:

(a) **The Gujarat Municipalities Act 1963:** *“69. Recourse to the Land Acquisition Act 1894- when there is any hindrance to the permanent or temporary acquisition by a municipality upon payment, of any land or building required for the purposes of this Act, the State Government may, after obtaining possession of the same for itself under the Land Acquisition Act 1894, vest such land or building in the municipality on its paying the compensation awarded and on its repaying to the State Government all costs incurred by the State Government on account of acquisition”*

⁸ Ibid Section 11(2)

⁹ Ibid section 12-A

¹⁰ Ibid section 15-A

(b) Gujarat Industrial Development Act 1962: “30. *Compulsory acquisition of Land for Corporation [Industrial Development Corporation].-Whenever any land is required by the Corporation for any purpose on furtherance of the objects of the Act, but the Corporation is unable to acquire it by agreement the State Government may, upon an application of the Corporation in that behalf, order proceedings to be taken under the relevant land acquisition law for acquiring the same on behalf of the Corporation as if such lands were needed for a public purpose within the meaning of the relevant land acquisition law” .*

© **The Gujarat Town Planning and Urban Development Act 1976:** “20(1) *The area development authority of any other authority for whose purpose land is designated in the final development plan for any purpose specified in clause (b), clause (d), [clause (f)], clause (k), clause (n) [or clause (o)] of sub-section (2) of section 12 may acquire land either by agreement or under the provisions of the Land Acquisition Act 1894, I of 1894.*

(d) The Gujarat Rural Housing Board Act 1972 (as amended): “42. (1) *The Board may enter into agreement with any person for the acquisition from him by purchase, lease, or exchange of any land which is needed for the purposes of a housing scheme or any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith.*

(2) *The Board may also take steps for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme in the manner provided in the land acquisition law and the acquisition of any land or any interest thereto for the purposes of this Act shall be deemed to be acquisition for a public purpose with the meaning of the said law” .;*

(e) Gujarat Housing Board Act 1961: 44. *Power to purchase or lease by agreement (1) The Board may enter into an agreement with any person for acquisition from him by purchase, lease or exchange, of any land which is needed for the purposes of a housing scheme or any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference with.*

(2) *The Board may also take for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme in the manner provided in the land acquisition law and the acquisition of any land or any interest thereto for the purpose of this Act shall be deemed to be acquisition for a public purpose within the meaning of the said law” .*

(f) The Gujarat Town Planning and Urban Development Plan: where there is an unsuccessful initial attempt at a negotiated settlement, there could be a limitation period placed on acquiring the land by compulsory land acquisition i.e. short duration once notice has been given that land is needed for a “public purpose”, for the Government to acquire land, or they should be unable to acquire it for that purpose. It states that “20(2) *If the land referred to in subsection (1) is not acquired by agreement within a period of ten years of the coming into force of the final development plan or if proceedings under the Land Acquisition Act 1894 are not commenced within such period, the owner or any person interested in the land may serve a notice on the authority concerned requiring to*

acquire the land, and if, within six months from the date of service of such notice the land is not acquired or no steps are commenced for its acquisitions, the designation of the land as aforesaid shall be deemed to have lapsed”.

Whilst these State Acts do not *require* any prior attempt at reaching a negotiated purchase contract before compulsory land acquisition, it would make clear sense to attempt to do so. The fact that negotiated contract and compulsory acquisition are postulated as alternatives should not belie the fact that compulsory acquisition should only be commenced where the primary negotiated agreement has failed, because of the clear advantages in coming to an agreement in terms of time and cost over-run.

4. Creation of an Independent body on Acquisition and settling claims.

Under the LAA 1894, it is the State that is compulsorily acquiring the land for itself, or for a company. The land acquisition process is carried out by the State Government itself usually through the delegated Collector with defined procedures to arrive at the compensation amount. There are specific state laws with innovative approach maintaining an independent institution on assessment of compensation amount.

(a) **Bombay Forfeited Lands Restoration Act 1938:** mandates the State Government to constitute a Tribunal for the purposes of land acquisition under the Act. The Tribunal is ostensibly independent and whilst its members are appointed by the State Government, it could also incorporate a High Court Judge.

A publicized declaration is then made by the State Government that the land is required for a “public purpose” which is conclusive that there is a “public purpose” to such acquisition¹¹. Following such a declaration, public notice will require all those with an interest in the land come to the Tribunal to state the nature of the interest and claims for compensation after one month¹². There is an enquiry by the Tribunal as to the amount and apportionment of compensation¹³. There is provision for giving land as compensation instead of money. The Tribunal will then award the compensation and possess the land.

(b) **Gujarat Agricultural Lands Ceiling Act, 1960:** uses the Agricultural Land Tribunal to assess how much land should be compulsorily acquired by the State and how much compensation should be awarded¹⁴.

© **The Gujarat Municipalities Act 1963:** contains an innovative approach whereby if the compensation is not agreed between the parties there is compulsory recourse to arbitration. The Act provides for the amount of compensation and the apportionment to be ascertained and determined by a panchayat of five people¹⁵. Two members of the panchayat shall be appointed by the municipality, two by the affected party and another selected by those members. There is a time-limit to the appointment of members and for

¹¹ Bombay Forfeited Lands Restoration Act, 1938, section 4.

¹² Ibid section 5.

¹³ Ibid section 7.

¹⁴ Gujarat Agricultural Lands Ceiling Act 1960 sections 13-24

¹⁵ Gujarat Municipalities Act 1963, section 268.

a decision from the panchayat, with the sanction that the District Court will make the decision. There is an appeal to the District Court against the decision of the panchayat.

(d) **The Saurashtra Estates Acquisition Act 1952:** contains a provision whereby a person who is dissatisfied with the compensation award of the Government Collector can appeal to a specialist Tribunal known as the Saurashtra Revenue Tribunal. The Revenue Tribunal is a specialist Tribunal with expertise in determining the value of land and revenue issues. The decision of the Tribunal cannot be re-determined in any other court¹⁶ and so there is finality. The Act also provides guidelines which clarify the amount of compensation that should be paid making the compensation award more transparent.¹⁷.

(e) **Both the Gujarat Rural Housing Board Act, 1972 and the Gujarat Housing Board Act, 1961:** provide for the constitution of a tribunal to carry out ad judicatory functions involving determination of compensation of transferred land¹⁸.

(f) Another specialist Tribunal, the Gujarat Revenue Tribunal, has been set up under the **Bombay (Saurashtra Area) Aghat Tenure and Ijaras Abolition Act, 1959**. It recognizes non traditional interests in the land for the purposes of compensation. It is also used in appeals under the Gujarat Agricultural Lands Ceiling Act, 1960 where there is a bar on any other civil courts having jurisdiction.

The use of an expert Tribunals in compensation aids the determination of complex questions related to land value and revenue. It allows for a uniform approach to be used in all cases of compensation in a State or local area. The decisions should be purely objective and not influenced by State motivations or needs. The system should therefore be speedier because affected people consider the process to be fairer and more transparent. There is less litigation because the process has been more inquisitorial. For instance, the inquiry into compensation by an independent Tribunal is a fairer system, than one in which enquiries are made by the acquiring State itself, as is done under the LAA 1894.

5. Conclusion and Recommendations

The analysis of the Gujarat State laws does highlight a number of clear omissions. None of them refers to indirect loss to be awarded when land is compulsorily acquired. For instance, where there are costs in finding new land and relocating and building accommodation these have not been contemplated. What is offered is a like for like financial purchase at determined values, which may not be adequate. There is little provision for offering land of suitable quality as compensation.

The present system for compulsory land acquisition is deficient. The system is slow, costly and unfair to those affected. It leads to a large number of cases in front of the courts which can lead land acquisition projects incomplete for many years. When

¹⁶ Saurashtra Estates Acquisition Act, section 12.

¹⁷ Ibid section 7.

¹⁸ Sections 51 and 52 of the Act

compensation is awarded by the courts, the addition of interest payments can lead to a project becoming economically unviable as happened in Gujarat itself. Therefore following the above analysis it is recommended that:

a) A provision for a mandatory attempt to a negotiated contract be incorporated. The State Government or other designated authority should be required to arrive at a settlement with the owner of the land before compulsorily acquiring land.

b) The creation of an independent statutory body to compulsorily acquire the land.

c) The use of deemed “public purpose” in certain categories of public project to enable clarity and transparency in the process.

d) Compulsory recourse to arbitration to a panel of locally appointed people who represent both interests, State and affected people.

e) The single right of appeal to an expert Tribunal to decide any disputes and finally determine compensation. Any further right of appeal on a question of law only.

f) Additional and shorter limitation periods where land is compulsorily acquired to ensure that there are no delays caused by failure to give notice or make a declaration that land is needed for a “public purpose”.

Annex 1:

Statutory presumption of “public purpose”-Is it necessary for speedier compulsory land acquisition?

As noted above the LAA 1894 only allows land to be compulsorily acquired if it is for a “public purpose” or for a company.

The definition of the term ‘public purpose’ is an inclusive definition which has been interpreted very broadly. The High Courts and the Supreme Court have extensively dealt with the ambit and scope of the definition of ‘public purpose’ and have held that the “public purpose” is one where there is a general interest to the community as opposed to the particular interest of individuals. However, whether land *is in fact* being compulsorily acquired for a “public purpose” has been a huge source of litigation, delaying land acquisition, and causing expenditure on time and money for the affected people.

A number of the Gujarat State Acts, where there is a *pressing* or *important* need for land, contain a statutory presumption within them which deems that the land *would be* acquired for a “public purpose” in the furtherance of the objects of the particular Act. Such statutory presumptions avoid any court enquiry into whether there is a “public purpose” in the land acquisition. The Gujarat Industrial Development Act 1962 (above) contains such a statutory presumption, as do the following State Acts.

Acquisition of surplus agricultural lands deemed “public purpose”. The Gujarat Agricultural Lands Ceiling Act. 1960 states inter alia:

“12. Surplus land needed for public purpose and power to acquire it-All surplus land shall be deemed (my emphasis) to be needed for a public purpose and may be acquired by the State Government in accordance with the provisions of this Act”.

The restoration of forfeited land to the original holder is deemed “public purpose”. The Bombay Forfeited Lands Restoration Act 1938 states:

“4. Declaration that land is needed for restoration-(1) The State Government, if it is satisfied that any of the forfeited lands is needed for a public purpose and should therefore, in public interest be acquired and restored to the original holder, may make a declaration that the said land is needed for such purpose.

(2) The declaration shall be published in the Official Gazette and shall state the material particulars in regard to the said land.

(3) Such declaration shall be conclusive evidence that the said land is needed for such purpose” (my emphasis)

Land required for housing development deemed “public purpose”. Both the Gujarat Housing Board Act 1961 and the Gujarat Rural Housing Board Act 1972 containing deeming provisions as noted above.

Land required for town planning and urban development scheme deemed “public purpose”. The Gujarat Town Planning and Urban Development Act also provides for a deemed “public purpose”:

“107. Compulsory acquisition of land needed for purpose of town planning scheme or development plan.

Land needed for the purposes of a town planning scheme or development plan shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act 1894”.

The deeming “public purpose” provision in some of the Gujarat State Acts is clearly intended to speed up the land acquisition process in certain infrastructure projects, such as housing and urban development. The statutory presumption therefore prevents any objection or litigation in relation to the purpose of the land acquisition. An approach which stipulated for which projects, compulsory land acquisition would be deemed for a “public purpose” would clarify the legal position for affected people. It would enable affected people to see at the outset whether a decision could be challengeable in the Courts and thereby reduce the number of cases taken on this issue.

Annex 2

Box 2: The Process of Land Acquisition

According to the LAA, the process of acquiring land may be categorized into four stages.

Stage I

A preliminary notification is issued by the Government stating that a particular land is needed or may be needed for a public purpose or for a company. Note that any person interested who has an objection to the said intention, may under Section 4(1) file his/her objection, in writing, within 30 days to the Collector, who is required to give the objector an opportunity of being heard and to record the reasons for the Collector’s decision in this regard. The report of the Collector is filed to the ‘appropriate Government’ whose decision is final.

Stage II

The Government is required to make a formal declaration of the intended acquisition. The publication of this declaration is to be done in the same manner as the intention notification i.e., in the official gazette, in two newspapers and posting notices in public places in the village/town where the land in question is located. Thereafter the Collector is to take the order from the Government for acquisition and the land is to be marked out, measured and planned (Ss. 7, 8).

Stage III

This stage involves: a) giving a public notice at convenient places and individual notices to the persons interested in the land to be acquired and b) inquiry into the measurements,

value and claims leading to an award by the Collector. In case of disagreement, the person interested can make reference to the Court.

Stage IV

This is the final stage of the proceedings relating to the acquisition of land. At this stage the Collector takes possession of the land (Sec 16) and compensation is made to the affected parties (Ss 31 to 34). Thus the possession of land can be taken only after the Collector makes the award. With the Collector's taking possession of the land, rights to it are vested completely with the Government, free of all encumbrances.

Annex 3

Initial Screening- Realizing the Potential of Section 3-A under Land Acquisition Act in Gujarat

Introduction:

One of the key reasons attributed to delay in land acquisition processes is the affected party's access to judicial forums. It is thus imperative to analyse why acquisition processes are so litigation burdened. Often inadequate compensation is considered to be the most frequent reason adduced for litigation. But it is just not computation methods of compensation that needs emphasis. There are several ways to minimize delays. One such opportunity is presented by the Land Acquisition Act as applicable in Gujarat itself.

Preliminary Survey- The Legal position:

An amendment brought in by the State of Gujarat mandates, as a modification to the *Land Acquisition Act, 1894*, a *preliminary survey* of the land before the intention notification under section-4 is issued. In its application to the state of Gujarat, Section 3A has been modified to include several parameters in the preliminary survey process. Thus, for example, apart from entering upon the land for survey or taking levels and marking such levels of land, there are other provisions where the State government has been empowered to do all acts necessary to ascertain that the land is adapted and where survey can not be otherwise completed, the power to cut down and clear away any standing crop, fence or jungle has also been given to the State Government. Apart from the above there are several new powers that have been vested with the state government. These include digging or boring into the sub-soil¹⁹, setting out boundaries, measuring, and cutting trenches among other things.

The objectives of the amendment are to undertake an assessment of the land for its feasibility prior to acquisition. The amended Act thus enables the state Government or the Commissioner to determine whether land is needed and suited or is likely to be needed for any public purpose with the help of a preliminary survey of such land.²⁰ The Act also

¹⁹ Subs by Gujarat Act 20 of 1965, Section 5.

²⁰ The officer authorized by the government or the Commissioner is empowered to inspect the locality and find out the feasibility and suitability of acquiring the land for the public purpose ; See section 3-A of LAA as applicable in Gujarat

provides for awarding damages incurred in undertaking the survey²¹. Thus, the Gujarat²² amendment can be seen as an improvement to the LA process as it facilitates better and informed decision making for acquisition of land and at the same time it does not complicate or restricts the LA process in any way.

High Courts have however, asserted that the preliminary survey provisions do not take away the power of the State to acquire land even when the preliminary survey report is not favourable (and perhaps rightly so). The courts, in our humble opinion, have not adequately highlighted the usefulness of a preliminary survey provision which provides an opportunity to the state to assess the feasibility of acquiring land without getting into a mandatory legal processes under the Land Acquisition Act. Thus when such preliminary surveys are conducted it gives a statutory backing to a legally binding screening process. Even no project options or alternative site options at the preliminary stage can be arrived at through such preliminary surveys.

Rationale for creatively using Section 3-A:

As stated earlier, the preliminary survey provisions present several opportunities as a screening mechanism. The absence of scrutiny of the proposal and out dated land records have deprived affected people of their entitlements by obliterating their rights and interests in the past. The inadequate information about extent and magnitude of displacement and the adverse social and ecological effect of the project on the quality of life and livelihood of people in the vicinity not only delays the process of rehabilitation but may also leave out a large number of genuine people from its benefits. The environmental and social impact also brings out the externalities caused by the project to the people not directly affected by displacement. These aspects are not ordinarily attended to and even where they are sought to be done, the exercise is highly perfunctory and routinised which does not inspire confidence in the affected persons about its fairness. It is thus necessary to involve affected persons as well as experts in this exercise to enable the Collector to attend to these aspects before the acquisition process is initiated. This would help expedite the process of acquisition. In light of the above rationale, what could be the illustrative parameters of such a preliminary survey?

Illustrative Parameters of Preliminary Survey:

A preliminary survey clearly needs to be rather comprehensive in its approach from the social - economic environmental and legal standpoints. Some of the parameters which are illustrative are described below:

- It is imperative that a preliminary analysis of the land records of the sites involved and consequent updating of land records are done prior to acquisition of private land or even transfer of government land;
- The details of projects for which land is acquired including the quantum and its rationale must be made available prior to acquisition;

²¹ See Section 3-B of the LAA as applicable in Gujarat

²² A similar amendment exists in Maharashtra

- A preliminary analysis of the appropriateness of site must be carried out. Infact, alternatives to the present acquisition must be explored, whether it is the least displacing or is there a non displacing alternative; The authorities must prove beyond doubt that the present option is the best in the circumstances given giving due respect to social, economic and ecological concerns.

[Explanation: Least displacing and non displacing should include already available and unused government land (if any); It must also ensure or atleast attempt that wasteland instead of crop land, land of industries (esp. of Public Sector Units and other government projects) which are closed; land earlier acquired but not used are some of the lands that are used on a priority basis rather than new lands where agriculture is being carried out];

- Social impact assessment including social cost and benefit analysis must be carried out prior to acquisition. This could take the form of a socio legal due diligence in legal parlance.
- Scrutiny of R&R should be mandatory prior to acquisition.

The above screening process must be participatory including consultation with the gram sabha and with external expert inputs and not merely a bureaucratic process.