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## **A Multifaceted Analysis of Land Acquisition Act 1894: Unpacking Legal, Religious and Social Implications**

Naveed Hussain (Corresponding Author)  
Assistant Professor, School of Law, University of Gujrat.  
Email: [Naveed.hussain@uog.edu.pk](mailto:Naveed.hussain@uog.edu.pk)

Yasir Arfat  
Lecturer, School of Law, University of Gujrat  
[Yasir.arfat@uog.edu.pk](mailto:Yasir.arfat@uog.edu.pk)

### **Abstract**

Purpose of this study is to focus on the Compulsory land acquisition law that disowns the individuals from their properties and assets which are constitutionally protected. It is done on the pretext of public good. Undoubtedly Islamic Law also permits the public rights and individual rights are there to stand subject to the public rights. But this study has focused on the aspects that how the acquisition practices in Pakistan are Shariah compliant as in such transactions it is not only the purpose that statutory requirements are met and transparency and fairness is propagated but that transparency is supposed to be seen in the actual transactions. If that is not the spirit, then worldly affairs can be settled but the lawgiver (Almighty Allah) cannot be deceived and he is well aware of all the affairs. The study also focused on the problems which are not being addressed because of obsolete legislation and recommendations have been advanced that the issue can be overcome. It is also pertinent to mention that Courts have adopted a dual attitude that while making the decisions courts are under constitutional obligation that there should not be anything which is supported, promoted, interpreted or implemented which is against the injunctions of Quran and Sunnah. At the same time Courts have been found to implement the intention of legislature which may or may not be adhering to the Golden principles laid down by Quran and Sunnah. Restrictive approach has been found in the legislation that puts the public at Large in a state of chaos and public loses its trust in the state and its institutions. The study concludes with practical solutions to deal with problem.

Keywords: Land Acquisition, Compulsory Acquisition, Compensation, Right to Property

### **Introduction**

This article has focused on an issue which is the most protected and established right in any jurisdiction that right to own and possess property. It is of no doubt that this right is valuable and the same has been acknowledged by constitution of Pakistan that everyone has the fundamental right to own property and he shall not be dispossessed or disowned save as provided by law. It has been given in the following terms:



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“Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.”<sup>i</sup>

This principle provided in Article 23 of the constitution seems to be fair enough that the law may have to make its way because the law is aimed to serve the collective interest rather than always trying to protect the individual interest or rights. But this constitutional provision is followed by Article 24 that states that what are the possibilities that may occur while securing the collective interest and article 24 deals with the issue in given terms:

“(1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of—

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

(b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or

(c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or

(d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or

(e) any law providing for the acquisition of any class of property for the purpose of—

(i) providing education and medical aid to all or any specified class of citizens; or

(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or

(f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.”<sup>ii</sup>

This spirit of the Supreme law seems to be very disappointing that in the chapter of Fundamental rights the approach of the law is to secure protection of executive actions and secure the decisions imposed by authorities and thus going against the principles of natural justice that no court shall interfere with the decisions imposed by the authorities involved in the process of land acquisition. It is pertinent to mention that in any mature legal system all such actions are subject to judicial scrutiny and it is appraised by court of competent jurisdiction that whether any action taken by the government or any authority acting on behalf of



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the government is just fair and reasonable.

Taking ahead the topic in Pakistan this process of land acquisition is governed by an inherited legislation known as Land Acquisition act 1894 (hereinafter called act). The act was legislated and implemented during the colonial time and it was focused to serve the purpose of ruling elite or a specific class.

### **Concept of ownership and property rights in Islamic Law**

As purpose of the study is to see the importance of rights associated with ownership and possession of property under Islamic law and study the case and method through which it is acquired compulsorily in Pakistan. It is also aimed to suggest that how this legal process of acquiring the land compulsorily can be refined and made less objectionable. To have a deeper understanding of the topic the issue is dissolved in the given sub topics.

### **Meaning of property**

The word "property" is often used to describe a broad variety of rights to the use or benefit of different assets, such as land and other fixtures. It is used to indicate either ownership rights or physical objects, such as land or merchandise, that are the focus of such rights. Depending on shifting goals and demands, the definition of a "property right" differs by jurisdiction, norms and traditions, laws, and judicial decisions. For instance, family law has its own rules for defining what constitutes marital property, and the breadth of property rights varies in the context of real estate and intellectual property. According to the Islamic worldview, the modern definition of "mal," or property, encompasses both proprietary and non-proprietary rights. A contemporary definition of mal includes Commercial value, corporeal, usufructory, and other rights of any kind of transaction that is customarily seen as having commercial worth are all included in the definition of "mal." Both movable and immovable items are included.

As per al Mawrid <sup>iii</sup> mal is a specific term that means enrichment which means that anything that leads to utility and can be benefited from comes under the definition of mal. Furthermore, this discussion about mal cannot be isolated from the concept of ownership. The concept of ownership is wider than that of mal as ownership includes both proprietary and nonproprietary rights.<sup>iv</sup> it is further widened by adding the usufructory rights which are directly or indirectly associated with the ownership of tangible property and sometimes these rights are incidental to that of real asset or property. The one question involved in this study is that to what extent Pakistani Law has taken into consideration this wider concept of property and mal as envisaged in Islamic law. In the modern context mal is something that can be owned, used, traded and be benefitted from. The land is a very strong example of mal. This study is also going to focus on instances when the state can acquire such assets without the consent of owner. It is also aimed that the instances declared by state are to be checked on many grounds i.e. legal, ethical and Shari grounds.

### **Concept of Property Ownership in Islam**

Human beings are not the only proprietors of property, as was previously explained. They are regarded as trustees or proprietors of majāzī and have a duty



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to protect it. In order to fulfil this trust, the property must be used appropriately to reap rewards. Islam offers a thorough framework for the legitimate use of money and the Defence of property rights.<sup>v</sup>

According to shari'ah law, the majority of Islamic jurists agree that three things are considered to be owned under Islamic law:

- 1) an object as seen by the senses,
- 2) advantages obtained from an object, and
- 3) tangible rights designed for people.<sup>vi</sup>

Generally speaking, Islamic law lists a number of justifications for property ownership.

The preservation of anything deemed *mubāh* is the fundamental principle. *Mubāh* in this sense refers to property ownership that is not restricted or outlawed by Islamic law. If two requirements are met, 1) the property must not have been owned, and 2) the property must be formed in ownership right, then the ownership of *mubāh* property for preservation may be carried out. The second is a contract which is defined as any human commitment or agreement that gives rise to shari'ah law.<sup>vii</sup> According to Islamic law, a contract is specifically defined as a relationship between an offer and an acceptance or their agents.<sup>viii</sup> Furthermore, it might be compared to a consensus and understanding between two or more individuals about the emergence and transfer of rights. *Al-khalafiyyah*, the third category, refers to a replacement, in which an item or person that has lost their right is replaced with a new one. Concerning this discourse, replacement may be classified into a) inheritance, which is the substitution of a new person for a deceased person and b) *taḍmīn* or *ta'wīd*, which involves replacing old property. The fourth component deals with the idea of addition or the result of held property. Anything that develops, grows, or is made is thus considered an owned item. It follows that the original owner of the property holds a greater claim to ownership over the results or additions of the initial than any other party.<sup>ix</sup> To put it another way, other mastery of material riches or material rights utilizes resources that are exclusively available to owners and not to others.

In Islam, the ownership of an object can be distinguished in several forms, namely *al-milk al-tam* and *al-milk al-nāqīṣ*. Furthermore, ownership may be divided into two categories—individual and public—according to the right to own or use the property.<sup>x</sup>

Complete ownership is the Shariah' provision or religious law regarding the authority and control over an object and its benefits. Therefore, people who have the right to ownership of something means they have the authority and control over the object and its benefits.<sup>xi</sup>18 Ownership of the object is only intended for the owner and not others.

Several reasons that create complete ownership over property are:

- 1) ownership of something unknown, such as opening up land. This is referred to as *fi'li*, which means that ownership rights arise as a result of an action,
- 2) that rights are transferred from one person to another through a contract, like gifts and *sadaqah*, and
- 3) that ownership rights to property are replaced (*khalafiyyah*) through wills and inheritance.<sup>xii</sup>



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Incomplete ownership (al-milk al-nāqis) is the Shariah provision regarding an object or its benefits.<sup>xiii</sup> People with ownership right through al-milk al-nāqis can only use the object or its benefits. Therefore, al-milk al-nāqis can be divided into two a) ownership right over the object, such as wills whose benefits are given to others and b) ownership right over benefits, such as rent, loans, and endowments.<sup>xiv</sup> Ideally, according to Sirajuddin and Tamsir, ownership may be divided into three types, namely individual, public, and state ownership.<sup>xv</sup> There are several types of property ownership based on the aspect of authority or power over an object or its benefits. Firstly, public ownership (al-milkiyyah al-āmmah) is the sharah law provision in property and its benefits associated with the potential for their use by the wider society. The sources of property that fall into the category of al-milkiyyah al-āmmah include

- a) endowment objects from the will of an individual,
- b) natural resources,
- c) minerals,
- d) zakat,
- e) taxes.<sup>xvi</sup>

Secondly, individual ownership (al-milkiyyah al-khāṣṣah) is a shari'ah law provision regarding the granting of a special right to humans to own a property or its benefits without any prevention. Therefore, individuals with this right have the authority to own, use, spend, and benefit from the property. The sources of property that can be used as individual ownership include

- a) inheritance,
- b) sale and purchase,
- c) farming,
- d) handicrafts,
- e) professional skills,
- f) wages from work for others,
- g) mining products,
- h) gifts from others, and
- i) found items.<sup>xvii</sup>

Individual ownership is respected because it is related to responsibility in daily life. Therefore, it is a valid assertion that individuals with greater property ownership also bear a higher level of responsibility as they are accountable for their property and its impact on society.<sup>xviii</sup> This connection arises from the inherent principles of Islamic economics, where property ownership is intrinsically linked to social obligations and responsibilities.<sup>xix</sup>

### **Rights Associated with property**

There are several rights attached with the property and it has been defined by various scholars in different ways as per requirements and understanding of their jurisdiction. Some of them are given below to have their deeper understanding and bring the importance on record.

- I. The idea that the right to property is not an absolute right is widely acknowledged by everyone. This power has always been considered to be subject to eminent domain, which is a right that is intrinsic to the state and a fundamental component of the sovereignty of the state.<sup>xx</sup>



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- II. In order to exercise eminent domain, there are two key requirements that must be met: private property must only be seized for the purpose of public use, and reasonable compensation must be provided for the property that is taken.<sup>xxi</sup>
- III. In his work titled "Principles of the Civil Code," Jeremy Bentham did an excellent job of illustrating the connection between law and property, as well as the manner in which property is recognized by the legal system.<sup>xxii</sup> According to what he had to say, "The concept of property arises from the establishment of an expectation; in the persuasion of being able to draw such or such an advantage from the thing that is possessed, according to the nature of the case." When it comes to this anticipation and this conviction, the only thing that can guarantee it to me is the words of scripture...Both the law and property are born together and, ultimately, perish together. Before laws were enacted, there was no such thing as property; if laws were removed, property would cease to exist.<sup>xxiii</sup>
- IV. Property was ranked second only to liberty in the Declaration of the Right of Man, which was written in 1789.

Universal Declaration on Human Rights 1948 also acknowledges the due right and states very clearly in Article 17 that everyone has the individual and collective right to own and possess property and no one shall be deprived of it arbitrarily or fanciful manner. The same principle has further been emphasized by First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 states as given below:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest, and subject to the conditions provided for by laws and by the general principles of international law".

"The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contribution or penalties".<sup>xxiv</sup>

### **Concept of Private and Public right under Islamic Law**

Islam acknowledges the public right and interest, which ought to take precedence over any individual interest, despite the fact that it acknowledges the fact that property rights are recognized. As a result, when there are obvious requirements of the public on certain amenities that need the acquisition of privately held property, and if the aim is obviously for the public to enjoy, then the land owner does not have the right to withhold his land unless there is a sufficient reason in the eyes of the law. It is the topic that defines the level of public interest. In Pakistan the authority of declaration that what is private and what is public interest that lies with the government. Once again, when there is a great deal of discretion granted to the authorities, there is a propensity to have those who According to the teachings of Islam, Allah swt is the true owner of everything in this world, including land for that matter. In line with the economic theory of Islam, which is presented in a clear and concise manner, man, in his capacity as the khalifah (vicegerent), owns property in trust for which he is answerable towards him. Following the discussion, it is an undeniable fact that owning land



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and rights associated with it are fundamental rights almost in every legal system of the world.

### **Land Acquisition in Pakistan**

When this study is specified with reference of Pakistan that Land Acquisition Act 1894 (hereinafter called “the act or LAA 1894”) comes in debate. This is the primary and inherited legislation that deals with the subject matter. It deals with all the affairs which are supposed to be taken into consideration during the process of land acquisition. Firstly, it is being discussed that what are the main stages which are involved in the process of land acquisition then loopholes and objections over the legislation will be discussed in the later part of the study.

Stages of land acquisition process:

The complete process of land acquisition is divided into 3 stages as given below:

- I. Declaratory stage
- II. Executory stage
- III. Litigation stage

### **Declaratory Stage**

it is the most important stage in the process of land acquisition. In this stage it is declared by the representative of the state that a certain piece of land is required by the state for public purpose or for a company. It is done by the collector who normally acts as a representative of provincial government. Soon after he declares the intention to acquire a certain land he is authorized by the law to enter into the land and conduct survey etc. doing this he doesn't need the process to be completed but he can do it following his own declaration. After inquiry and survey he submits his report to the commissioner. The commissioner evaluates the report and checks the suitability of proposed land for acquisition. If he is of the opinion that land is required for public purpose, then a notification is issued to the effect and it is published in the official gazette.

### **Executory Stage**

As the name indicates it the second stage where notification issued by commissioner is executed. in this stage a notice is issued under section 9 of the act by the collector to interested persons and invites the claims for compensation. Until this very practical and executing stage the aggrieved have been given no chance to dispute the decision of collector or commissioner but they are primarily invited to claim the compensation. A person who doesn't agree with the decision or want to bring any objection has been left directionless by the law. Collector entertains the claims and any objections with respect to compensation. It means that acquisition is objection less and absolute and only the issue related to compensation can be raised before the collector. He after receiving all the objections and inquiries makes an award of compensation under section 11 of the act. Soon after the award the rights associated with property are vested with the government and collector proceeds with taking possession of the land under section 16 of the act.

### **Litigation Stage**

Litigation under the Land Acquisition Act starts after declaration of award. It



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means that the process of declaration and acquisition is not subject to litigation. But when award is declared by the collector then if the interested persons do not agree with the award they may file objections with the collector and collector after making preliminary inquiries submits or forwards the objection to court of competent jurisdiction. Finally, the matter is adjudicated by the and a decree is passed.

### **Loopholes in the Land Acquisition Act 1894**

It is of no doubt that Land Acquisition Act 1894 is the primary legislation that deals with the compulsory acquisition of land and the same legislation has been adopted by the provinces. Provinces have adopted majority of the federal statute with minor amendments and amendments are also procedural in nature. Most of the substantive provisions have been kept intact. Undoubtedly this act is the mother legislation that deals with the process of land acquisition but still it has following loopholes which are supposed to be addressed.

1. It is one of the most significant flaws of the Act of 1894 that it contains a narrow definition of "affected persons." Only the titleholders are considered to be compensated, while the non-title holders who may have a partial interest or privilege in the property are left without any Redressal. When it comes to rural regions, there are a multitude of instances in which non-titleholders, such as laborers or temporary renters, have their whole lives connected to the property that is being taken into possession. The Land Acquisition Act of 1894 does not provide any kind of indemnity to those who do not own title; the only people who are eligible for restitution are those who hold title.
2. On one hand, there exists a narrow interpretation of the term "affected person," while on the other hand, the term "public purpose" has been expansively defined; this implies that the justifications for the compulsory acquisition of land are numerous and varied. The government possesses the authority to seize private property under the pretext of serving the public good, even in instances where such claims may be dubious; often, the land is appropriated to benefit specific factions. This can be substantiated by examining the case of Muhammad Akbar v. Commissioner Rawalpindi (1976), in which the land belonging to a private individual was appropriated for the trustee (Matwalli) of a religious shrine that was affected by the construction of the Mangla Dam. The courts prohibited the acquisition, as it was pursued for the personal benefit of the trustee (Mutwalli). The broad interpretation of "public purpose" fosters a feeling of uncertainty among private individuals, ultimately undermining their trust in the state.
3. A significant shortcoming of Act of 1894 lies in the pace at which compensation is dispensed to those impacted. The fundamental principle established by the act stipulates that compensation shall be determined according to the market value prevailing at the moment of preliminary notification as outlined in section 4. However, it does not establish any definitive criteria for market value, thereby creating a potential surge of litigation within the judicial system. In the course of an interview, an individual asserted that "Our land was procured in 2017 for the purpose of





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road construction, yet the compensation we received was nearly insignificant in relation to the true market value of the land.” The issue has been presented before the court; however, a decree has not yet been issued regarding it” (H.I Thakur, personal communication, April 1st, 2022). Individuals impacted typically receive compensation determined by DC rates (assessed for the purpose of charging stamp duty), which are significantly lower than the prevailing market value of the land acquired. Landowners dissatisfied with the inadequate compensation rates seek recourse through the judicial system, which utilizes the sale deeds of neighboring properties from the previous year as a basis for determining the appropriate compensation. The lack of consistency in compensation and market valuation not only exacerbates the challenges faced by the judiciary but also prolongs the timeline for project completion.

4. Section 17 of the legislation confers extraordinary powers for compulsory land acquisition in urgent circumstances, allowing for purchase with just 48 hours' notice to the owner. However, the statute does not define the criteria for circumstances of urgency; the purchasing authority or state may get the property by designating any situation as urgent. The capricious use of these coercive powers infringes upon the basic rights of people, ultimately detrimental to the state as a whole.
5. The absence of rehabilitation and relocation for the affected individuals is a significant deficiency of the LAA, 1894. The legislation offers just a singular recompense, which is often criticized as previously said. A singular financial compensation is insufficient when whole communities are evacuated and livelihoods are entirely eradicated owing to coercive land acquisition.
6. the act doesn't emphasize the assessment of land being acquired through the lens of social and economic impacts. A precursory survey is usually conducted on a superficial level which can end up in an unreasonable acquisition of land and renunciation of the project at a later stage. Not assessing the land properly can also decrease the efficiency and effectiveness of the project. The project of an Industrial estate in Tehsil Churian is an opposite case of carelessness in land feasibility assessment which not only resulted in the unreasonable acquisition of land but the project had to be dropped as well.
7. The aforementioned gaps and escape clauses relate to the Act's provisions; nonetheless, a significant shortcoming exists regarding the execution of these laws. The Act delineates an appropriate acquisition method; yet, authorities often do not adhere to it. In a study done in the Kasur area, where property was being purchased for road development, almost all impacted individuals were not informed via the issue of notifications. The failure to follow appropriate processes may lead to litigation, causing project delays and depleting resources for both the state and the impacted individual. Finally, some revenue officials abuse these vulnerabilities and engage in unethical practices, undermining the whole acquisition process.

### **Recommendations and Suggestions**

Following the earlier submitted discussion, the study can be concluded in the



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form of points given below. It is also of significant importance that points have been bulleted keeping in mind the aim of the study that is unpacking the religious and social implication of land acquisition law:

1. In the religious perspective the right to own property has been recognized by Shariah. The main principle is that the entire land belongs to almighty Allah and man acts as a vice to that of the lawgiver. He uses this right as a sacred trust and in lawful manner. He is not allowed or supposed to use this right anyway against the injunctions of Islam. It is also prohibited in Islam that he must not be disowned in an arbitrary manner or without due process as protection of property and assets is one of the purposes of Shariah. There are certain provisions in the Land Acquisition Act 1894 which are against the concept of not depriving someone in an arbitrary and fanciful manner. Elaboration of those provisions has also been given in detail in the following recommendations. It is thereby suggested that if it becomes inevitable to deprive someone from the rights provided by the lawgiver then he must not be deprived in arbitrary manner and due process shall be adopted. As it is much clear in Islamic injunctions that rights belonging to individuals will not be waived until the aggrieved individual consents to it. It is further recommended that individual shall only be deprived from this invaluable right if that is real urgency with respect to public need. But as it is practically seen that requirements of that due process are not substantively fulfilled and an anti-state sentiment arises in the masses.
2. The procedure adopted in terms of Land Acquisition Act doesn't seem to be fair and reasonable as Section 4 provides that notification of land acquisition will be issued by the collector and the same will be communicated to the land owner. Soon after the communication the collector or his workers will be allowed to enter into the land and conduct surveys thereof. All this process seems to be without providing any opportunity for objection and unidirectional. The real aggrieved person is not even being authorized to stop trespassing. Workers will enter the land and conduct the survey without giving the owner a chance to raise an objection. On the other hand, countries like America are example who exercise eminent domain concept. Under these criteria firstly state authorities negotiate with the land owners before making any announcement of land acquisition. Furthermore, compensation is not fixed as per whims and wishes of state authorities but that is decided by mutual consent which is favorable for land owners and lessens their misery they suffer because of compulsory land acquisition. Definition of compensation is also widened as that includes severance compensation, compensation for disturbance and injurious compensation.
3. Section 5A of the Act provides that if decision of the collector is not acceptable to land owner they may file their objections with the collector and after making preliminary inquiries a report will be prepared by the collector and submitted to concerned commissioner and decision of the commissioner shall be final in this regard. In this entire process one administrative action is validated or nullified by another administrative action which is against the principles of natural justice, morality, equity and fairness. The administrative action shall be judicially reviewed and then adjudicated accordingly. For the sake of this reform an amendment is suggested in the relevant portion of the



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Act I.e. Section 5A so that public at large shall rest assured that their matter will dealt in accordance with the principles of justice and fairness rather than in arbitrary manner by the administrative authorities. It is well established principle that courts always try to seek and adjudicate to achieve the ends of justice while on the other hand administrative authorities in a country like Pakistan are solely dependent on the sitting government and they never dare to go against the will and wish of the government of the time. But courts normally do not hesitate to go even against the government in the process of administration of justice.

4. Opinion of the collector regarding requirement of land for public purpose under Section 6 of the Act is presumed to be conclusive evidence of the fact that land is required for public purpose. It is also of significant importance that such opinion shall not be conclusive in nature and same shall be subject to judicial scrutiny.
5. Another important factor is determination of award. Award is an order that determines the quantum of compensation that is given to land owners against their land. It is a mandatory requirement under Section 9<sup>xxv</sup> of the Act that all parties will be summoned and commissioner will fix the compensation. Section 23 of the act deals with the factors which will be considered by the court regarding compensation if that award is challenged in the court. Further reading of the statute depicts that the Act also exercises a restrictive approach in terms of section 25<sup>xxvi</sup> and section 26<sup>xxvii</sup>. Section 25 bars the court that while dealing with the matter of compensation court shall not exceed the compensation what has been asked or demanded by the land owner. It means that if the party is not well vigilant then even in case of actual grievance and real loss if that is not claimed by him he will not be compensated by the court which is against the inherent scope of judicial office under which court can go beyond the pleadings to secure the ends of justice. It is also against the principle of interdiction as provided by Islamic Law and then implemented and interpreted by different school of thoughts of Islamic Jurisprudence. As per this principle a person who doesn't know the value of his asset is barred to conclude transactions which are objectively against his interest. The purpose to bar the owner is in line with the purpose of Shariah that protection and preservation of wealth is also one of the purposes of Shariah. This aspect of Shari principle does not differentiate public and private interest. Hence protection of private interest is also supposed to be secured by the court whether it is deemed so or not by the individual. Furthermore, section 26 of the act deals with the factors that shall be neglected by the court in determining the question of compensation. This dual attitude of the law is not attractive when it comes to Human Rights and Fundamental rights and it creates a situation of restlessness in the public. On one hand a person is deprived from his valuable right compulsorily and on the other hand when it comes to compensation then court is barred to take many factors into account. Indirectly it creates a double sense of deprivation. This section of the act shall be amended and state shall pose its confidence in the most prestigious institute of the state and that is judiciary. Court will never overburden the state with compensation to enrich the individual but court will do its best to ensure that ends of justice are achieved.



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6. Under the Act only “Affected Persons” are entitled for compensation and these persons include only those who have some title associated with the land being acquired. It is very restrictive approach and in many other such transactions any persons having any temporary interest with the property is considered to be interested party but here all such persons having temporary interest like being tenant or workmen are excluded. The definition of restricted person shall be construed liberally and persons having temporary interest shall also be considered affected persons to the extent of their interest. Considering someone to the extent of their interest does not violate any provision of substantive or procedural law.
7. The Act uses a term Market value for determination of compensation. It is of utmost importance that market value is normally considered DC rate of the area. DC rate are usually fixed for the purpose of uniform stamp duty in case of sale/purchase with respect to a specific area. It does not deal with the social and economic impact of compulsory acquisition. It is true that in Pakistan Market Value cannot be determined by DC rates as such rates fix a certain and specified amount with respect to unit of land i.e. Khewat etc. In one Khewat of land there are many Khasras and each Khasra values different on the basis of its location. One Khasra can have the double financial value than another Khasra in the same Khewat. Hence it is not fair to award compensation depending on the DC rates. It is therefore recommended that Act shall be amended and special authority shall be created which shall carry out a proper assessment keeping in mind social and economic implications of compulsory land acquisition.
8. Law has not bothered about rehabilitation of the affected persons. It is true that financial compensation is not an adequate remedy all the time so state shall strive for devising a mechanism that if a person is deprived from the land and if he refuses to take compensation how can be reciprocally compensated by providing another piece of land. State owned lands are there all parts of the country so there shall be legal provision in the Act to keep this aspect in mind.
9. Law has not stipulated a single provision about types of the lands which can be acquired. It means the law has neglected or fail to take into account this very important aspect. In the process of acquisition, it is nowhere considered that Multi-Crop and fertile lands shall be acquired as last resort and in case of real urgency. Law has also failed to take into account food security of the country which has become a prime objective in developed world as resources are shrinking day by day and demand is rising. It is therefore strongly recommended that such considerations must be incorporated in the law to foster the remote interest of the masses like many other vigilant nations of the world.

### **Conclusion**

Following the discussion, it is concluded that there are many instances in law pertaining to compulsory land acquisition which are required to be revisited and amendments are to be made. Such state of affairs as mentioned in this study create an unaddressed feeling of deprivation for public at large. Law has also neglected the important provisions related to food security and adequate



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compensation. Law has applied very restrictive approach with respect to acquisition and compensation which must be amended as it seems dictatorial in nature which creates an anti-state sentiment in this digital era. Everyone is supposed to be treated equally and enjoy equal protection of law. Requirements of due process shall be mandatory when someone is deprived from fundamental rights. Pakistan and India inherited the same Land Acquisition Act 1894 at the time of partition and India replaced this pre partition baggage with "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR, 2013)". But since 1894 the law implanted in Pakistan has not been substantively changed. It is very important that it is substantively amended to meet the requirements of this 21<sup>st</sup> century. Process of land acquisition under this outdated legislation puts the landowners in a disadvantageous position which attracts a series of litigation. That is also a burden on judicial system. It is therefore concluded and recommended that legislature shall take immediate and adequate steps to amend the law so that it can serve the purpose effectively and efficiently.

## End Notes

<sup>i</sup> Constitution of Islamic Republic of Pakistan, Article 23 (1973).

<sup>ii</sup> *ibid*

<sup>iii</sup> Al Mawrid, 1992, *A Modern Arabic-English Dictionary*, Dar al 'Ilm lil Malayin.

<sup>iv</sup> Azmi, Harun, 1996. *Land Acquisition: comparison of English and Malaysian Law*, England, Unpublished Thesis submitted to University of Reading.

<sup>v</sup> Facchini, François. "Islam and Private Property." *Working Papers*, 2007. <https://ideas.repec.org/p/hal/wpaper/hal-00270475.html>.

<sup>vi</sup> Muḥamad Zarkashī al-Bardisī, *al-Mīrāth* (Kairo: Muḥamad Zarkasyi al-Bardisy, al-Mīrās (Kairo: Dār al-Nahḍah al-'Arabīyyah, 1971), 12.

<sup>vii</sup> Ḥanāt binti Muhammad Ḥusayn, "Aqsām al-'Uqūd fi al-Fiqh al-Islāmī" (Madinah, Universitas Ummul Qurā', 1998), 34.

<sup>viii</sup> Alī al-Jurjānī, *Al-Ta'rīfāt* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2003), 166.

<sup>ix</sup> Shalabī, *al-Madkhal fi al-Fiqh al-Islāmī: Ta'rīfuh wa Tārīkhuh wa Mazāhibuh*, 343.

<sup>x</sup> Ahmad Suhendra, "Models of Land Ownership in Islam: Analysis on Hadis Ihyā' al-Mawāt," *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 18, no. 2 (October 20, 2017): 198, <https://doi.org/10.14421/esensia.v18i2.1480>.

<sup>xi</sup> Shalabī, *al-Madkhal fi al-Fiqh al-Islāmī: Ta'rīfuh wa Tārīkhuh wa Mazāhibuh*, 341.

<sup>xii</sup> Zahrah, *al-Milkiyyah wa Nazariyyah al-'Aqd fi al-Sharī'ah al-Islāmiyyah*, 121–22.

<sup>xiii</sup> Shalabī, *al-Madkhal fi al-Fiqh al-Islāmī: Ta'rīfuh wa Tārīkhuh wa Mazāhibuh*, 341.

<sup>xiv</sup> Zahrah, *al-Milkiyyah wa Nazariyyah al-'Aqd fi al-Sharī'ah al-Islāmiyyah*, 122

<sup>xv</sup> Sirajuddin and Tamsir, "Conceptual Reconstruction of Property from Islamic Economic Perspective (Critical Study of Property in Capitalist Economic System)," *LAA MAISYIR: Jurnal Ekonomi Islam* 6, no. 2 (2019): 223, <https://doi.org/10.24252/lamaisyir.v6i2.11838>.

<sup>xvi</sup> al-Tārīqī, *al-Iqtisād al-Islāmī: Asās wa Mabādi' wa Ahdāf*, 46.

<sup>xvii</sup> *ibid*

<sup>xviii</sup> Amir Kia, "A Non-Technical Primer on Private Ownership in Islam," 72–77.

<sup>xix</sup> Muhammad Bāqir Šādir, *Iqtisādunā* (Beirut: Dār al-Ta'aruf, 1987), 279-86.

<sup>xx</sup> Ghosh, A., 1973, *The Land Acquisition Act 1894-Law of Compulsory Acquisition and Compensation*, Sixth Edition, Eastern Law House

<sup>xxi</sup> *ibid*



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<sup>xxii</sup> Bentham, Jeremy. (1838-43). Principles of Civil Code, in the Works of Jeremy Bentham, 1, published under the superintendence of John Bowing, Edinburgh.

<sup>xxiii</sup> Ibid

<sup>xxiv</sup> Universal Declaration on Human Rights, Article 1 (1948).

<sup>xxv</sup> Land Acquisition Act, 9 (1894).

<sup>xxvi</sup> Land Acquisition Act, 25 (1894).

<sup>xxvii</sup> Land Acquisition Act, 26(1894).