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DO THE MEEK INHERIT THE EARTH?

A Study of Land Acquisition Litigation in Karnataka and
Maharashtra

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1. LIST OF ABBREVIATIONS

Abbreviation	Definition
A.D.J.	Additional District Judge
B.J.P.	Bharatiya Janata Party
CREDAI	Confederation of Real Estate Developers' Association of India
E.P.W.	Economic and Political Weekly
H.U.D.A.	Haryana Urban Development Authority
L.A.C.	Land Acquisition Cases
L.A.C. (APPL)	Land Acquisition Appeal
L.A.R.	Land Acquisition Reference
L.R. DKST	Execution of Land Reference Award
MRTP Act	Maharashtra Regional and Town Planning Act, 1966
L.R.M.A.	Miscellaneous Application in Land Reference
R&R	Rehabilitation and Resettlement
S.E.Z.	Special Economic Zone
S.I.A.	Social Impact Assessment
U.S.D.	United States Dollar

2. LIST OF STATUTES

- i. Constitution of India, 1950
- ii. Constitution (Forty-fourth Amendment) Act, 1978

1. Central laws:

- i. Ancient Monuments and Archaeological Sites and Remains Act, 1958
- ii. Atomic Energy Act, 1962
- iii. Coal Bearing Areas Acquisition and Development Act, 1957
- iv. Damodar Valley Corporation Act, 1948
- v. Electricity Act, 2003
- vi. Indian Tramways Act, 1886
- vii. Land Acquisition Act, 1894
- viii. Land Acquisition (Amendment) Act, 1984
- ix. Land Acquisition Bill, 2011
- x. Land Acquisition (Mines) Act, 1885
- xi. Metro Railways (Construction of Works) Act, 1978
- xii. National Highways Act, 1956 ('National Highways Act')
- xiii. Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962
- xiv. Railways Act, 1989
- xv. Requisitioning and Acquisition of Immovable Property Act, 1952
- xvi. Resettlement of Displaced Persons (Land Acquisition) Act, 1948
- xvii. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Rehabilitation Act, 2013

2. State laws:

- i. Karnataka Industrial Areas Development Act, 1966
- ii. Karnataka Urban Development Authorities Act, 1987
- iii. Maharashtra Highways Act, 1955
- iv. Maharashtra Housing and Area Development Act, 1976
- v. Maharashtra Industrial Development Act, 1961
- vi. Maharashtra Project Affected Persons Rehabilitation Act, 1999
- vii. Maharashtra Regional and Town Planning Act, 1966

3. Rules:

- Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005

3. TABLE OF CASES

1. *Arnold Rodricks vs. State of Maharashtra* (1966) INSC 74
2. *Babu Barkya Thakur vs. State of Bombay* (1961) 1 SCR 128
3. *Caritas India v. Union of India* W.P. No.22448 of 2018 (Madras High Court)
4. *Daulat Singh Surana vs. First Land Acquisition Collector* Supreme Court, Civil Appeal No. 6756 of 2003 (Supreme Court)
5. *Dhampur Sugar (Kashipur) Ltd. vs. State of Uttaranchal* (2007) 8 SCC 418
6. *Laxmanrao Bapurao Jadhav vs. State of Maharashtra* (1997) 3 SCC 493
7. *Prem Raj v. Union of India* (1992) 3 SCC 40
8. *Ramji Veerji Patel vs. Revenue Divisional Officer* (2011) 10 SCC 643
9. *Sooraram Pratap Reddy vs. District Collector, Ranga Reddy District* (2008) 9 SCC 552
10. *State of Bihar vs. Sir Kameshwar Singh* AIR 1952 SC 252
11. *State of Bombay vs. R.S. Nanji* 1956 SCR 18
12. *State of Karnataka vs. Ranganatha Reddy* (1977) 4 SCC 471

4. INTRODUCTION

After the liberalisation of the Indian economy, most governments at the centre and state-level have focused on promoting public welfare through a 'development agenda'. Part of this agenda is the large-scale acquisition of private land by the state, at times in the role a 'land-broker',¹ facilitating the transfer of land from marginal populations to private entities for industrialisation and economic reform. The right of the state to acquire property is not of such recent origin though and derives from the doctrine of eminent domain. This doctrine is a fundamental attribute of sovereignty and confers on the state the right to all property located under its jurisdiction.² It empowers the state to appropriate private property for public use without the consent of the landowner but upon payment of just compensation.

³

Within the Indian context, the right to property is enshrined under Article 300A of the Indian Constitution as a constitutional right. Originally, it was a fundamental right under articles 19 and 31. These articles recognised the requirement of a "public purpose" preceding any acquisition or possession of land, as well as a provision of compensation in lieu of the land. By way of the Constitution (44th Amendment) Act, 1978 however, the right to property was deleted from Part III of the Constitution. Pursuant to this constitutional amendment, the requirement for the state to pay compensation to the person whose land is acquired was not expressly provided for except under certain circumstances mentioned in Article 30(1A) and the second proviso to Article 31A(1). Article 30(1A) mandates payment of compensation to a minority institution for the acquisition of its property. The second proviso to Article 31A(1) requires compensation to be paid at the market value for the acquisition of estates where personal cultivation is undertaken. Apart from these two circumstances, the state is not required, under the Constitution, to pay compensation at market value to owners of expropriated land.⁴ Currently, under Article 300A, no person can be deprived of their property save by authority of law. It provides legitimacy to land acquisition legislation in the country and immunity to laws that restrict property rights.⁵

The law for acquisition of land prevailing till recently was the Land Acquisition Act of 1894 (hereinafter, the '**1894 Act**'). This colonial-era legislation was predominantly an instrument used by the British administration to easily acquire land for the purpose of building roads and railways, and for mining. In 1984, the 1894 Act was amended to allow the government to procure land on behalf of private companies using the public purpose clause.⁶ The compulsory nature of acquisition, the inadequate compensation given to landowners, and

¹ Levien, M., 2013. Regimes of dispossession: From steel towns to special economic zones. *Development and change*, 44(2), pp.381-407.

² Srinivas, S.K.P. 2017 *An Exclusive Commentary on The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013)*, Premier Publishing Co., Prayagraj.

³ Mathur, G.C. (ed.) *V.G. Ramachandran's The Law of Land Acquisition and Compensation* (Eighth Edition), Eastern Book Company, Lucknow.

⁴ Wahi, N., 2015. The fundamental right to property in the Indian constitution. *Available at SSRN 2661212*.

⁵ Supra Note 2.

⁶ The Land Acquisition (Amendment) Act, 1984.

lack of rehabilitation provisions were significant flaws of the 1894 Act.⁷ Over the years, the actions of the state in favouring commercial interests over individuals' right to own and possess their property inevitably led to conflict. India witnessed "development induced displacement", i.e., the forceful expulsion of individuals and communities from their homes, in furtherance of economic development,⁸ which led to deep resentment against the state and widespread protests. Severe criticism of and discontent against the 1894 Act's several shortcomings ultimately paved way for a new Act, i.e., the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Rehabilitation Act, 2013 (hereinafter, the '2013 Act'). The 2013 Act was intended to unify legislation dealing with the acquisition of land, to provide for just and fair compensation, and make adequate provisions for the rehabilitation and resettlement of affected persons and their families.⁹

The social, political and economic consequences of the 1894 Act have been widely studied, but there has been comparatively less focus on the judicial burden imposed by this legislation. The wide interpretation of 'public purpose' and inadequate compensation flooded courts across India with litigation under this legislation. The Centre for Policy Research in their study analysing land acquisition litigation in the Supreme Court of India found significant executive non-compliance with the provisions of this law and suggested that in the absence of administrative and bureaucratic reforms, the introduction of the 2013 Act had not succeeded in eliminating inequities and inefficiencies embedded within the implementation of existing land acquisition procedures.¹⁰ Apart from delaying the process of land acquisition, such litigation also added to the burden of the already burgeoning caseload of Indian courts. Six years have passed since the new legal regime for land acquisition was created and there is a need to examine if this legal regime has plugged the lacunae in the 1894 Act which led to litigation under the latter legislation. The availability of judicial data on eCourts and the various High Court websites have made it possible to carry out an analysis of land acquisition litigation at the district court and High Court levels and understand the causes of land acquisition litigation.

The primary objective of this study is to examine the nature of land acquisition litigation in the states of Maharashtra and Karnataka under the 1894 Act and examine if the 2013 Act has tackled the root causes for such litigation. The key findings from this study, based on the data that has been read, recorded, and analysed will aid in identifying the core issues that are being litigated in land acquisition cases – whether they relate to compensation, procedural irregularities, or challenge the acquisition itself. The findings from the quantitative analysis of cases at the district courts will help identify how long land acquisition cases are pending in these courts. The information collected and analysed will be useful for any future revisions to the land acquisition procedure.

⁷ Hoda, A., 2018. Land use and Land Acquisition laws in India (No. 361). Working Paper.

⁸ Supra Note 2.

⁹ Land Acquisition Act, 2013, Statement of Objects and Reasons.

¹⁰ Wahi, N., Bhatia, A., Gandhi, D., Jain, S., Shukla, P., and Chauhan, U. *Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016*, Centre for Policy Research, New Delhi, 2017.

5. OBJECTIVES

- i. To study the nature of land acquisition litigation along the following parameters:
 - (a) The total volume of land acquisition litigation in six districts (three each in Maharashtra and Karnataka) between 2008 and 2018;
 - (b) Analysis of the nature of the cases in the Bombay and Karnataka High Courts during the period of study
- ii. To understand the reasons why people are approaching courts in land acquisition matters and to determine whether the 2013 Act has been successful in tackling the root causes of litigation under the erstwhile 1894 Act.

6. METHODOLOGY, DATA DESCRIPTION, AND LIMITATIONS

This report contains a quantitative and qualitative analysis of land acquisition cases at the district court and high court level in the states of Maharashtra and Karnataka between 2008 and 2018. This dataset includes hearing and case data from three districts each of Karnataka and Maharashtra and hearing data and judgments and order of high courts of both states. This data was scraped from the eCourts website and the high court websites.

The qualitative analysis involved reading and hand-coding of reported judgments/orders from the Bombay and Karnataka High Court websites. The cases in the Bombay and Karnataka High Courts were filtered using 'Act Type' and by searching for the term "land acquisition" respectively. The researchers analysed 412 judgments and orders of the Bombay High Court and 704 from the Karnataka High Court. This includes all the judgments and orders from the Bombay High Court during the period of study and a sample from the Karnataka High Court. The researchers have selected a sample in case of Karnataka High Court because the total number of land acquisition cases in the High Court during the period of study was 17210, which was too large to be hand-coded. The sample contains a proportionate number of cases from each year as contained in the total.

The hand-coding was based on:

- (a) Case type and case number
- (b) Year of institution of the case
- (c) District and lower court where the case originated
- (d) The decision of the lower court
- (e) Names of the appellant and respondent before the high courts
- (f) Sections of the land acquisition legislation that were invoked, as well as any other Act that was invoked
- (g) Purpose of acquisition
- (h) Nature of challenge:
Under this parameter, the different alternatives were (i) challenge to compensation; (ii) no public purpose being served; (iii) procedural irregularity; (iv) purpose of acquisition contrary to statute; (v) other challenges.
- (i) Description of the challenge
- (j) The decision of the high court
- (k) The relief sought, relief granted, the compensation sought and compensation granted.

The quantitative analysis involved a basic statistical analysis on the hearing level data from district courts in three districts each in Maharashtra and Karnataka. These districts were selected on the basis of geographic spread and to represent a mix of urban and rural areas. This data has been taken from the DAKSH database.¹¹

For this study, the following districts in Maharashtra were chosen:

- (a) Beed: Beed is a landlocked district in the Marathwada division of Maharashtra. The number of pending land acquisition cases within the period of study above was 6,267

¹¹ The DAKSH database consists of cases that have been scraped through eCourts.

and the number of disposed cases was 15,132. Among the districts we chose, Beed had the largest number of pending and disposed cases.

- (b) Raigad: Raigad is a coastal district in the Konkan division of Maharashtra. The number of pending land acquisition cases in the district within the period of study was 522 and the number of disposed cases was 3,318.
- (c) Amravati: Amravati is in the Vidarbha division of Maharashtra, bordering Madhya Pradesh. The number of pending land acquisition cases in the district within the period of study was 948 and the number of disposed cases was 2,336.

In Karnataka, the following districts were chosen:

- (a) Bengaluru Rural: Bengaluru Rural covers the area surrounding Bengaluru, the largest city in the state of Karnataka. The number of pending land acquisition cases in the district within the period of study was 1,030 and the number of disposed cases was 827.
- (b) Kalaburagi: Kalaburagi is situated in the north of Karnataka and borders both Telangana and Maharashtra. The number of pending land acquisition cases in the district within the period of study was 957 and the number of disposed cases was 14,650.
- (c) Mysuru: Mysuru is the second-largest city in the state of Karnataka. The number of pending land acquisition cases in the district within the period of study was 686 and the number of disposed cases was 9,226.

Data from subordinate courts, for this study, were filtered using specific case types that correspond to land acquisition cases. Cases in Maharashtra were filtered using the case types L.A.R. (Land Acquisition Reference), L.R.DKST. (Execution of Land Reference Award) and L.R.M.A. (Miscellaneous Application in Land Reference). In Karnataka, cases were filtered using the case types L.A.C. (Land Acquisition Cases) and LAC (APPL) (Land Acquisition Appeal). The analysis has provided an insight into, among other things:

- (a) Average disposal time
- (b) Average pendency;
- (c) Hearing frequency;

The researchers supplemented this analysis with interviews with lawyers, practising in certain district courts of Maharashtra and Karnataka.

A limitation of this study is that the identification of cases is dependant on the accurate classification by those who are entering data in eCourts and the high court websites. Any errors in classification at the stage of data entry could not be identified or rectified by the researchers. A further limitation of this study is that the researchers were unable to analyse the orders of the district courts in both states because uploading of orders seems to have been very patchy.

7. REVIEW OF PREVIOUS STUDIES

There is considerable literature on the social and economic impact of land acquisition and the legal regime surrounding such acquisition. The Rights and Resources Institute and Society for Promotion of Wasteland Development in 2014 mapped land conflicts in India and found that at least one-quarter of India's districts are affected by some form of land conflict. Most of these conflicts arise from state takeover of lands, often on behalf of private investors.¹² This indicates a large-scale impact of land acquisition on social and economic dynamics all over the country.

i. Studies mapping trends in land acquisition litigation:

The most comprehensive study of land acquisition litigation is by Namita Wahi et al in their review of all land acquisition cases before the Supreme Court from 1950 to 2016. Their dataset of 1,269 land acquisition cases is representative of both geographical scope and nature of legal issues being litigated. The research reveals that claims have largely been brought by land losers contesting either (i) the legitimacy of the land acquisition process and the legality of the procedure, or (ii) the amount of compensation. Compensation claims have challenged the determination of either 'market value', 'solatium', 'interest' or 'rehabilitation' and trends show an overall increase in the compensation amounts awarded by courts. A comparison in the state-wise distribution of litigation shows that states such as Punjab, Haryana and Uttar Pradesh have the highest percentage of petitions before the Supreme Court, which is not surprising given their proximity to the Supreme Court and high levels of urbanisation and industrial development in these states.¹³

Research on land acquisition cases in district courts, however, remains limited. One of the few such studies is Ram Singh's analysis of judgments of district courts in Delhi and Punjab and Haryana High Court from 2008 till 2010. This study revealed how compulsory acquisition of land is inherently prone to litigation over compensation. Furthermore, the litigation over compensation is socially inefficient and regressive in its effects because it is relatively much more profitable for the owners of the high-value properties. The study found that excessive litigation around land acquisition is because the land acquisition collectors and courts used a different basis for determining compensation and that the courts awarded consistently higher compensation. Compensation awards in 86% of the cases before the Delhi district courts are higher than the awards of the Collector. Further, compensation awards in 63% of cases before the Punjab and Haryana High Court are higher than the awards of the district courts. The author suggests voluntary transactions

¹² As Modi Government in India Proceeds with Economic Development Agenda, New Map Tracking Land Disputes Shows Disturbing Pattern of Conflicts with Local People <https://rightsandresources.org/en/blog/as-modi-government-in-india-proceeds-with-economic-development-agenda-new-map-tracking-land-disputes-shows-disturbing-rise-in-conflicts-with-local-people/#.XWeVTQgzblU>.

¹³ Wahi, N., Bhatia, A., Gandhi, D., Jain, S., Shukla, P., and Chauhan, U. *Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016*, Centre for Policy Research, New Delhi, 2017.

between the landowner and acquirer as a fairer method to acquire land– this method also reduces the scope for ex-post litigation over compensation.¹⁴

(i) **Studies on the compensation model and price determination:**

Given the controversy and litigation generated by compensation, Maitreesh Ghatak et al in their paper published in 2011, discuss alternative ways of determining compensation. Viewing the use of market price for compensation purposes as fundamentally flawed, they propose the following solution: (i) land auction to be conducted to determine compensation; (ii) area to cover the project land as well as surrounding farmlands, and (iii) farmers to have the ability to choose compensation in either cash or land. The unique solution contemplated by the authors ensures that the landowners are more involved in the price determination process, with minimal Government interference.¹⁵

Sanjoy Chakravorty examines the structural problems associated with land acquisition in India in his book published in 2014. He traces the historical patterns of land ownership in India, from the pre-colonial to the post-independence era and also states that land conflicts in India during those periods were primarily because of the rigid land revenue systems. He also describes some major land acquisition cases such as Singur, Nandigram, Vedanta and Kalinganagar in detail. Chakravorty examines the unequal bargaining position between the landowners and acquirers in terms of price determination, the land acquirers' power to control pricing and the information asymmetry between the two, especially amongst rural landowners. He also traces the changing role of the state, from a "giving state" (through the implementation of land reforms) in the early years of independent India to a "taking state" (through the acquisition of land for industrial projects) in later decades. He examined the Land Acquisition Bill of 2011 and criticised its failure to understand the reality of the dynamic land markets. The author then goes on to analyse the dynamic land markets and its current implications on price determination and provides structural explanations on price determination in rural and urban areas. In urban land markets, land scarcity has led to a sharp rise in real estate prices, with market agents willing to pay more for prime property. The price of rural land, the author notes, is dependent on the sellers' financial conditions – most farmers enter the market only under financial stress or if there is an assurance of high monetary gains.¹⁶

ii. **Studies on the consequences of the land acquisition process:**

Other studies draw our attention to the consequences of land acquisition for specific projects. R. Nallathiga et al. have also examined, through their paper published in 2018,

¹⁴ Singh, R., 2012. Inefficiency and abuse of compulsory land acquisition: an enquiry into the way forward. *Economic and Political Weekly*, pp.46-53.

¹⁵ Ghatak, M. and Ghosh, P., 2011. The land acquisition bill: a critique and a proposal. *Economic and Political Weekly*, 46(41), pp.65-72.

¹⁶ Chakravorty, S., 2013 *The Price of Land: Acquisition, Conflict, Consequence*, Oxford University Press, New Delhi.

specific land acquisition cases to understand the legal regime of land acquisition¹⁷. These are Tata Nano Project in Singur, the Noida development project and the Koyambedu market in Chennai. The authors have studied each project in-depth and identified reasons for failure or success for each. Low rates of compensation offered to landowners led to the failure of the Singur project. In the Noida project, the urgency clause was misused and the land use purpose was changed from industrial to residential use without the approval of the state government. In contrast to these projects, the Koyambedu project was a success because of the additional efforts to provide rehabilitation and resettlement to displaced families, which was not contemplated under the Land Acquisition Act of 1894.

iii. **Studies on the role of courts and governments concerning land acquisition conflicts and the impact of the land acquisition process:**

Through an empirical narrative (largely informed by the author's experience in Singur from 2007 to 2009), Kenneth Bo Nielsen has tried to understand the litigants' motivation behind using the legal system to oppose the acquisition of their land in Singur, West Bengal for the Tata Nano project. He analysed the seemingly anachronistic phenomenon of farmers approaching courts against the acquisition of their land given that recourse to courts in India is often a gamble and since courts are avoided by those unfamiliar with their complexities. He noted that due to the failure of public protests and mediation with the opposite parties, the courts became an increasingly important option for the farmers in Singur, despite the unpredictability of outcomes. He has also chronicled the farmers' experience with the courts; from their decision to file a petition with the High Court and the Supreme Court. The unfavourable verdict of the High Court provoked an angry response from the farmers, who subsequently placed their reliance on the Supreme Court, which appeared to them as incorruptible and removed from the local relationships of power. Continued protest backed by political parties ultimately drove Tata from Singur. Finally, Nielsen observed in Singur that reliance on courts was a poor subaltern strategy and that political mobilisation and confrontation, for the most part, provide swifter justice.¹⁸

The experience of Adivasis in Andhra Pradesh with approaching courts against the appropriation of their land as described in K. Balagopal's study published in 2007, is considerably different from the Singur experience. Balagopal describes how due to shoddy government enquiries without the involvement of the Adivasis themselves, and how despite stringent laws prohibiting the transfer of Adivasi land in Andhra Pradesh, Adivasi lands have been encroached on by non-Adivasis. In addition to the problem of illegal occupation of tribal lands by non-tribals, Adivasis have had to face displacement to make way for development projects, such as the Polavaram dam project on the Godavari river and the bauxite mining project in the tribal area of Visakhapatnam district. The author has highlighted how, in acquiring these scheduled lands, the government has blatantly flouted

¹⁷ Nallathiga, R., A. Abhyankar, A. Gurnani, A. Goyal, and M. Umredkar. "Comparative Analysis of Land Acquisition Acts in India: A Case-Based Approach."

¹⁸ Bo Nielsen, K., 2009. Farmers' use of the courts in an anti-land acquisition movement in India's West Bengal. *The Journal of Legal Pluralism and Unofficial Law*, 41(59), pp.121-144.

legal procedures in place to protect Adivasi rights. Balagopal also found that courts did not come to the aid of the Adivasi claimants. Tribal unrest has been rife in the face of government apathy.¹⁹

Vishal Narain, in his 2009 study, examines the impact of the land acquisition process in Basai, a village near Gurgaon, Haryana, where similar to Balagopal, he found that courts have not delivered justice to landholders. The emergence of Gurgaon as a major commercial and residential centre affected social and economic dynamics in the surrounding peri-urban settlement of Basai. A large proportion of the village's private agricultural and grazing lands were acquired by state agencies and private builders for a "public purpose", i.e., development of residential areas and the HUDA water treatment plant. This led to an occupational shift amongst residents, from commercial cultivation to subsistence farming. Interviews revealed the resentment felt by the residents of Basai towards the authorities who forcefully acquired land for HUDA requirements, and did not fully honour their compensation obligations. In these instances, unlike in previous studies, legal recourse did not provide these residents with any respite. Despite petitions filed by the panchayat and individual farmers and a High Court order directing HUDA to pay the instalments, compensation was not paid in full.²⁰

Heather Plumridge Bedi and Louise Tillin have, in their article published in 2015 drawn on their years of fieldwork and assessed the phenomenon of inter-state competition in relation to land acquisition. By using examples of government responses to land acquisition conflicts in various states in India, the authors have refuted the commonly-held notion that a simple "race to the bottom" exists between state governments. The authors found that state governments' reactions towards the conflicting interests of capital and those of the dispossessed have actually been shaped by the local political and economic climate and not merely by their eagerness to compete with other states in bringing private investment in land. While there have been instances of some state governments using force and coercion to dispel resistance (in Jharkhand, Orissa and Nandigram, West Bengal), or using obfuscation and manipulation of legal processes to acquire land (in Maharashtra and Gujarat), there have also been instances of opposition political parties backing agitations that have led to failure in the land acquisition process (like BJP in Goa and Trinamool Congress in Singur, West Bengal).²¹

iv. Studies specific to SEZ resistance:

Preeti Sampat in an ethnographic account has studied the opposition of farmers to the development of special economic zones (SEZs) in Goa. This is an important study in the larger context of resistance to SEZs from local communities whose land was going to be acquired, all over India which played a major role in influencing the trajectory of the SEZ

¹⁹ Balagopal, K., 2007. Land unrest in Andhra Pradesh-III: Illegal acquisition in tribal areas. *Economic and Political Weekly*, pp.4029-4034.

²⁰ Narain, V., 2009. Growing city, shrinking hinterland: land acquisition, transition and conflict in peri-urban Gurgaon, India. *Environment and Urbanization*, 21(2), pp.501-512.

²¹ Bedi, H.P. and Tillin, L., 2015. Inter-state competition, land conflicts and resistance in India. *Oxford Development Studies*, 43(2), pp.194-211.

model and the enactment of the 2013 Act. Allegations of land-grabbing and corruption catalysed a Goa-wide movement against SEZs which ultimately led to the revocation of Goa's SEZ policy and cancellation of all approved SEZs. Interestingly, the movement was broad-based even though the extent of land allotted to SEZs in Goa was relatively small compared to other states and there was going to be little fresh land acquisition since most of the land allotted was already 'in possession' of the state government. The author attributes the success of the anti-SEZ campaign to the state's history of environmental activism, the perceived futility of industries in the state and irregularities in the land approval and allotment process. The developers of SEZs still under construction appealed the state government's decision and the matter is before the Supreme Court; creating in an impasse in Goa.²²

Michael Levien, through studies published in 2011 and 2012, has examined land dispossession caused by SEZs in India on a larger scale based on research conducted over 18 months. He points out how SEZ development has led to the commodification of rural land, where the state (in its role as a broker) assists in expropriating land from peasants and redistributes it to capitalists having the ability to make the land more marketable. The author terms this state-led assistance as "accumulation by dispossession". The author examines the reason behind the operational success of the Mahindra World City in Rajasthan which had a unique compensation model that gave farmers the option of receiving a certain percentage of their original land as developed plots of land next to the SEZ project. Since the peasants received unequal compensation, there was limited scope for them to mobilise for any collective action against the state or the SEZ.²³

v. Studies critiquing legislative provisions:

Anwarul Hoda and Niranjan Sahoo have traced the legislative history of land acquisition. Hoda in his working paper published in 2018, analysed the provisions of the 2013 Act along with its impact on development in the country. The author identified the shortcomings of the erstwhile 1894 Act, such as meagre compensation amounts to landowners and the absence of a provision for rehabilitation and resettlement. He described the changes brought about by the 2013 Act to remedy such deficiencies, including, among other things, enhanced compensation, the requirement for a social impact assessment, rehabilitation, and resettlements entitlements, and bringing livelihood losers under the ambit of the 2013 Act. He further examined the effects of the 2013 Act; particularly on infrastructure projects, industrialisation and urbanisation from the perspectives of private entities as well as landowners – he noted the hindrance of the implementation of projects due to the significant rise in the price of the acquisition.²⁴

²² Sampat, P., 2015. The 'Goan Impasse': land rights and resistance to SEZs in Goa, India. *Journal of Peasant Studies*, 42(3-4), pp.765-790.

²³ Levien, M., 2011. Special economic zones and accumulation by dispossession in India. *Journal of Agrarian Change*, 11(4), pp.454-483; Levien, M., 2012. The land question: special economic zones and the political economy of dispossession in India. *The Journal of Peasant Studies*, 39(3-4), pp.933-969.

²⁴ Hoda, A., 2018. Land use and Land Acquisition laws in India (No. 361). Working Paper.

Sahoo, on the other hand, suggests that the 2011 Bill is an improvement over the dated Land Acquisition Act, 1894 since it has provided for rehabilitation and resettlement and an increase in the compensation to landowners. In his paper published in 2011, he investigated the main policy contradictions and practical challenges in the Bill, whether the new consent requirements actually do justice to landowners, the ineffectiveness of the arbitrary guaranteed minimum price formula in the most backward rural regions, and the utilitarian concerns behind the ban on acquisition of multi-crop agricultural land. He has also highlighted administrative challenges, in terms of the ability of states to implement any new legislation, and political barriers, such as political interests in the land sector and the problematic nexus between politicians, real estate mafia and other criminal elements.²⁵

vi. Industry perspective:

The 2011 Bill also found opposition in several private players, such as builders and developers, who viewed it as excessively anti-development. The Confederation of Real Estate Developers' Association of India ('CREDAI') was of the view that the 2011 Bill would lead to unplanned and unsustainable development. CREDAI was also of the opinion that farmers would be impacted and would fail to realise the actual economic value of their lands because, under the proposed legislative framework, fringe development around urban areas would primarily be in the form of unauthorised developments.²⁶ Other concerns in relation to the 2011 Bill included the high cost of acquisition and the unrealistic compensation and rehabilitation package; the provisions relating to (i) rehabilitation and resettlement of the displaced, and (ii) giving jobs or a share in the equity for 26 years were found to be impractical and counterproductive by developers.²⁷

The Government has been increasing investment in infrastructure (which includes roads, railways, housing, mining, etc.) in recent years. According to the Economic Survey of 2018-19 ('Survey'), the Government believes that there is a strong link between infrastructure development and economic growth.²⁸ The Survey calls for an expenditure of 7-8% of the GDP annually (around USD\$200 billion) on infrastructure. However, spending has been limited to only around USD\$100-110 billion.²⁹ Due to restraints on public investment in the infrastructure sector, the Survey highlights the necessity for private investment. There is also a strong emphasis placed on collaborations between public and private sectors to address the existing gaps in infrastructure development. In relation to road projects, the Survey has mentioned that the major challenges faced, among others, are the protracted land acquisition process and compensation obligations, lack of funding for larger

²⁵ Sahoo, N., 2015. *In Search of a Model Land Legislation The New Land Acquisition Bill and its Challenges* (No. id: 6924).

²⁶ Sinal, P., "Builders call land acquisition bill anti-development" *Times of India* (September 7, 2011) available at <http://timesofindia.indiatimes.com/business/indiabusiness/Builders-call-land-acquisition-bill-antidevelopment/articleshow/9889205.cms?referral=PM>.

²⁷ "Industry against proposed law on land acquisition" *The Hindu* (November 14, 2011) available at <http://www.thehindu.com/business/Industry/industry-against-proposed-law-on-land-acquisition/article2627611.ece>.

²⁸ Economic Survey 2018-19 (Volume 2), Government of India, Ministry of Finance, July 2019.

²⁹ Id.

infrastructure projects and environmental issues. Another major challenge identified by the Survey is the lack of a comprehensive dispute settlement mechanism to deal with the timely resolution of project-related disputes and other disputes within the infrastructure sector.³⁰

Though the literature on land acquisition in India is vast, there are key questions about the nature of land acquisition litigation that remain unanswered in the existing literature that this paper proposes to answer. To our knowledge, there are no studies on land acquisition litigation in Maharashtra and Karnataka, the focus of this paper. A promising line of research that will be explored in this paper is how far courts are modifying compensation under the 2013 Act and whether such litigation is further incentivising other landowners to approach courts.

³⁰ Id.

8. ANALYSIS

8.1. The need for a new Act in 2013

A rise in the number of development projects across the country between 1947 and 2000 forcibly displaced, or severely affected, nearly 50 million people.³¹ Land acquisition by the State, and consequent displacement of millions, has been the subject of considerable contestation. Dissatisfaction has been directed mostly towards the inadequate compensation provided for under the 1894 Act, and the absence of a legal framework guaranteeing resettlement and rehabilitation of those displaced.³² Opposition has also been expressed at the misuse of the provisions of the 1894 Act by the state, the nexus between governments and powerful commercial interests (evident through the displacement of communities in order to allow for projects by private entities and for the benefit of higher-income groups), as well as the perceived complicity of the judiciary.³³ Resentment against the state that had exploited the right of eminent domain increasingly led to land movements in which action was collectively mobilised to create a legal regime that safeguards the rights and needs of subaltern communities threatened by dispossession.³⁴ Furthermore, civil society organisations continually agitated for a revision of the legal regime relating to land acquisition. These struggles finally culminated in the passing of the 2013 Act; an Act that claimed to remedy the shortcomings under the previous legal regime.³⁵

The major changes brought about by the 2013 Act are:

(a) Definition of “public purpose”

The 1894 Act lacked a clear definition of “public purpose”. Consequently, governments took interpretative liberties and courts rarely interfered. Under this regime, there were several cases of governments acting in the interests of profit-driven private entities and displacing millions in the garb of development. There were also instances where industries were allocated land in excess of their actual requirement; for example, Tata was allocated 997 acres of land in Singur when it required merely half of it.³⁶

Courts in India have, on several occasions, adopted a ‘hands-off attitude’ with respect to land acquisition cases, thereby extending their approval to almost all types of acquisitions. As such, in promoting the view that the term ‘public purpose’ is incapable of a precise definition, the Indian judiciary has supported the policies of the state over

³¹ Fernandes, W., 2004. Rehabilitation policy for the displaced. *Economic and Political Weekly*, pp.1191-1193.

³² Levien, M., 2011. Rationalising dispossession: The land acquisition and resettlement bills. *Economic and Political Weekly*, pp.66-71.

³³ Nielsen, K.B., 2011. Land, law and resistance. *Economic and Political Weekly*, pp.38-40.

³⁴ Sundar, N., The Rule of Law and the Rule of Property: Law-Struggles and the Neo-Liberal State in India. in A. Gupta and K. Sivaramakrishnan (eds) 2011 *The State in India after Liberalization: Interdisciplinary Perspectives*. Routledge, London.

³⁵ Nielsen, K.B. and Nilsen, A.G., 2017. Law-struggles, law-making and the politics of hegemony in neoliberal India: Towards a critical perspective on the 2013 Land Acquisition Act. *The Land Question in India: State, Dispossession, and Capitalist Transition*, pp.129-150.

³⁶ Supra note 18.

the entitlements of vulnerable communities.³⁷ In one judgment, the Supreme Court stated that “the law must keep pace with the realities of the social and political revolution of the country as reflected in the Constitution. If therefore, the State is to give effect to these avowed purposes of our Constitution we must regard as a ‘public purpose’ all that will be calculated to promote the welfare of the people as envisaged in these Directive Principles of State Policy whatever else that expression may mean”.³⁸ Another approach that the courts have been taking is to pronounce the Government more qualified than them in defining what constitutes ‘public purpose’.³⁹ Over several other judgments ‘public purpose’ has been held to include anything that furthers “welfare and prosperity of the community or public at large”.⁴⁰ In a decision of a seven-judge bench, the Supreme Court held that “in the review of such purpose, regard is not to be given by any detailed inquiry or investigation of facts. The matter has to be examined with reference to the various provisions of the Act, its context and set up, the purpose of acquisition has to culled out therefrom.”⁴¹ By this low standard, a purpose by which “even a fraction of the community is benefited”⁴² has been held to be a public purpose. Consequently, the ‘development of infrastructure and land for such industries is a legitimate public purpose’.⁴³ Courts have also held that conclusive proof of public purpose was established in a case where land was solely required for “development and utilisation as industrial and residential areas”.⁴⁴ In another case of land acquisition for industrial use, the Supreme Court held that “even if the acquisition of land is for a private concern whole sole aim is to make a profit, the intended acquisition of land would materially help in saving foreign exchange in which the public is also vitally concerned in our economic system.”⁴⁵ Although the term ‘public purpose’ is greatly dynamic, in recent times it has come to mean ‘a purpose useful to the public rather than for public use’.⁴⁶

With the enactment of the 2013 Act, the meaning of “public purpose” became clearer. Acquisition for a public purpose now includes land required by the government for its use, including for public sector undertakings, and for other purposes, including strategic purposes relating to the defence forces, infrastructure projects, projects for affected families, housing projects, projects for urbanisation and projects for residential purposes to the poor/landless/those affected by natural calamities. Acquisition for a

³⁷ Desai, M., 2011. Land acquisition law and the proposed changes. *Economic and Political Weekly*, pp.95-100.

³⁸ *State of Bihar v. Sir Kameshwar Singh*, AIR 1952 SC 252.

³⁹ *State of Bombay v R.S. Nanji*, 1956 SCR 18; *Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal* (2007) 8 SCC 418; *Arnold Rodricks v. State of Maharashtra* (1966) INSC 74; *Laxmanrao Bapurao Jadhav v. State of Maharashtra* (1997) 3 SCC 493; *Daulat Singh Surana v. First Land Acquisition Collector*, Supreme Court, Civil Appeal No. 6756 of 2003.

⁴⁰ *Daulat Singh Surana v. First Land Acquisition Collector*, Supreme Court, Civil Appeal No. 6756 of 2003.

⁴¹ *State of Karnataka v. Ranganatha Reddy* (1977) 4 SCC 471.

⁴² *Babu Barkya Thakur v. State of Bombay* (1961) 1 SCR 128.

⁴³ *Sooraram Pratap Reddy v. District Collector, Ranga Reddy District* (2008) 9 SCC 552.

⁴⁴ *Arnold Rodricks v. State of Maharashtra* (1966) INSC 74.

⁴⁵ *Sooraram Pratap Reddy v. District Collector, Ranga Reddy District* (2008) 9 SCC 552.

⁴⁶ *Supra* Note 2.

public purpose also extends to public-private partnership projects and land required by private companies for public purposes. Furthermore, the 2013 Act mandates a social impact assessment to be carried out for every such proposed acquisition.

(b) Expanding the definition of “interested persons”

By introducing the concept of “affected persons”, the 2013 Act finally recognised the rights of those who, while dependent on the land for their livelihood, did not hold any title to it. Under the 2013 Act, “affected persons” include tenants, share-croppers, agricultural labourers and artisans working on the affected lands for 3 years prior to the acquisition. The affected families are now entitled to compensation and rehabilitation and resettlement entitlements. Furthermore, the consent of affected families is required for certain projects.

The 1894 Act had completely failed to take into account this category of persons and the negative implications of the land acquisition process on them. The compensation amount and other entitlements under the 1894 Act were only proffered to those who had legal title to the land.

(c) Limiting the usage of the urgency clause

Under the provisions of the 1894 Act, the Government had the right to take possession of the land even before the award for compensation was made, in cases of urgency. There was no definition of the term “urgency” and no explanation as to the situations under which this clause could be invoked. Due to this ambiguity, the clause was frequently misused by the Government to rapidly acquire land.⁴⁷

While the 2013 Act retains this provision, it provides a safeguard against its arbitrary use by specifying the exact circumstances under which the urgency clause can be invoked. The urgency clause can be invoked only where the land is required for national defence and security or rehabilitation and resettlement in the event of natural calamities or other emergency situations.

(d) Consent requirements

Under the 1894 Act, the final decision to acquire land lay with the government, with no regard given to the opinion of the land losers. The 1894 Act contained no provision under which groups affected by the acquisition process could challenge the acquisition *per se* as their consent was not legally mandated.⁴⁸

The 2013 Act has provided some relief through the introduction of consent requirements. Landowners were provided with some protection in cases of land acquisition cases that involved private companies as well. Consent of 70% of affected families is required for public-private partnership projects and consent of 80% of affected families is required if the land is acquired on behalf of private companies for a

⁴⁷ Id.

⁴⁸ Samaddar, R. 2009. Prescribed, Tolerated and Forbidden Forms of Claim Making. In P.K. Bose and S.K. Das (eds) *Social Justice and Enlightenment: West Bengal* Sage, New Delhi, 153-179.

public purpose. The high thresholds for consent are to ensure that scope for manipulation of consent is minimised.⁴⁹

(e) Enhancement of compensation

The issue of compensation lies at the heart of the issue of compulsory land acquisition. The compensation provided to the person who loses their land must not merely be the economic value of the land, it must also counterbalance the forcible nature of the acquisition.⁵⁰ The 1894 Act stipulated payment of compensation as per the market value of the land, which was generally determined on the rates displayed in registered sale deeds. The problem here was that the price of land was usually undervalued in sale deeds to save on stamp duty. Therefore, the compensation paid to the landowner was lower than the market price.⁵¹

To remedy this, the 2013 Act provided for enhanced compensation, along with rehabilitation and resettlement entitlements. In the 2013 Act, the market value of the land is also the basis for the calculation of the amount of compensation. The Collector has to determine the market value based on

- (a) the market value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
- (b) the average sale price for a similar type of land situated in the nearest village or nearest vicinity area; or
- (c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public-private partnership projects, whichever is higher:

However, pursuant to calculating market value, the total compensation is calculated by including the value of all assets attached to the land. Thereafter, along with the solatium amount (which is paid in addition to the compensation and which is calculated as an amount equivalent to 100% of the compensation amount), the compensation under the 2013 Act is usually no less than four times the market value in rural areas and two times the market value in urban areas.

(f) Rehabilitation and Resettlement

The 1894 Act had not envisaged rehabilitation and resettlement of persons displaced by the land acquisition process. It only provided for compensation as a recompense for the lost value of the land. It is hardly the case that land acquisition is the result of a willing sale. Vulnerable communities who were forcefully displaced lost their livelihood and were left worse off. The World Commission on Dams and the World Bank have also stressed on giving "land for land" as an alternate mode of compensation.⁵² The 2013

⁴⁹ Ramesh, J. and Khan, M.A., 2015. *Legislating for Equity: The Making of the 2013 Land Acquisition Law*. Oxford University Press.

⁵⁰ Id.

⁵¹ Supra note 15.

⁵² Supra Note 2.

Act finally bridged this gap through the introduction of resettlement and rehabilitation provisions that went beyond monetary compensation.

Under the 2013 Act, a resettlement and rehabilitation package for all affected families is mandatory. Facilities envisioned under the 2013 Act include alternate parcels of land or housing arrangements for the displaced in the event of rehabilitation; resettlement/subsistence allowances or grants to affected persons and families; or where the land was acquired for industrial purposes, the possibility of employment in such industry. In addition to resettlement and rehabilitation entitlements, infrastructural facilities are also to be provided in the resettlement area.

8.2. Mapping Litigation in District Courts

In this section, the researchers analyse the lifecycle of land acquisition related cases in three districts in Maharashtra, Amravati, Beed and Raigad, and three districts in Karnataka, Bengaluru Rural, Mysuru, and Kalaburagi. These cases were identified by case types. These case types are L.A.R. (references to the district court), L.R.DKST. (execution of land reference awards) and L.R.M.A. (miscellaneous applications in land reference) in Maharashtra and L.A.C. (references to the district court) and LAC (APPL) (appeals from references to the district court) in Karnataka. The researchers analysed 25491 cases in Karnataka and 37466 cases in Maharashtra.

In Maharashtra, there are no guidelines regarding how long a reference case at the district court should take. However, the Supreme Court, in *Prem Raj v. Union of India* directed that courts should dispose of references within 2 years of the receipt of the references and that high courts and state governments ensured compliance with these directions.⁵³

In Karnataka, the Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005 classify cases into four tracks based on their subject matter of dispute or nature of offence. The timelines to dispose of cases under each track is different and range between nine months and two years. Land acquisition cases are in Track IV and need to be disposed of in two years. The state also has a litigation policy aimed at reducing government litigation. This policy stipulates that every major department should have a nodal officer whose responsibility is to manage the department's litigation. Every government department is also mandated to make reasonable efforts to resolving disputes through Lok Adalats rather than approaching courts.⁵⁴

⁵³ (1992) 3 SCC 40.

⁵⁴ Karnataka State Litigation Policy <https://doj.gov.in/sites/default/files/Karnataka.pdf>

8.2.1 Maharashtra

Figure 1: Average Disposal (in days) based on Case type

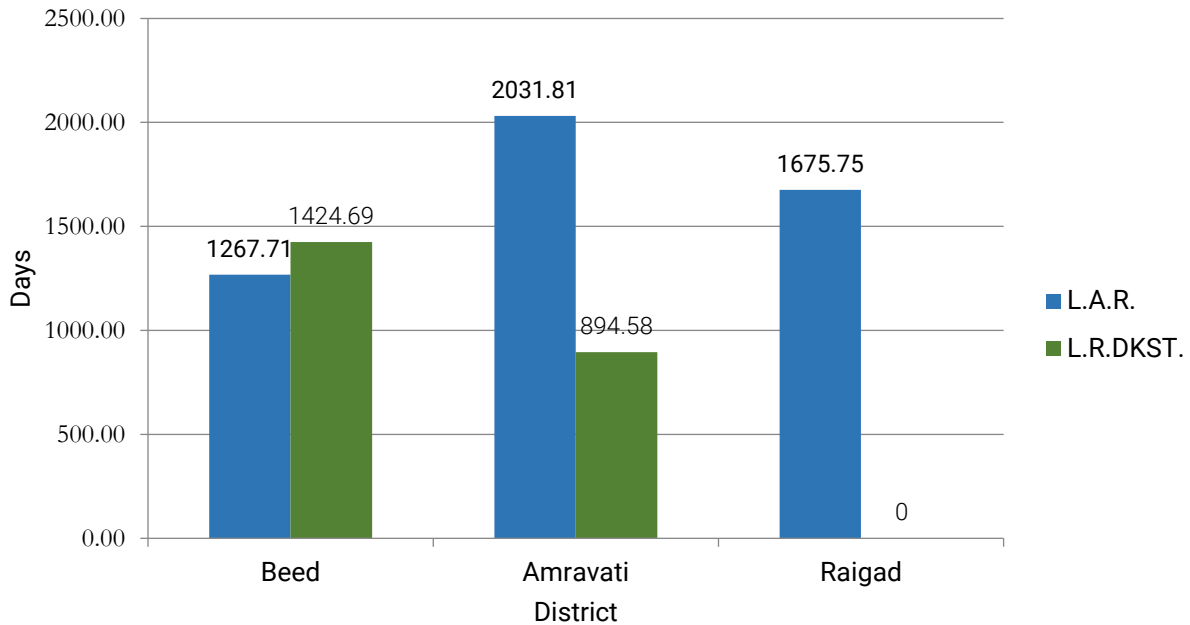


Figure 1 depicts the average number of days taken to dispose of land acquisition cases in the selected districts of Maharashtra, Beed, Amravati, and Raigad, during the period of study. These cases are of case types L.A.R. (Land Acquisition Reference) and L.R.DKST. (Execution of Land Reference Award). The average disposal time for L.A.R. cases would be expected to be higher than for L.R.DKST. cases since the former involves the adjudication of a dispute and will include the production of evidence and detailed arguments, whereas the latter involves only the execution of an award.

In Beed however, the average disposal time for L.R.DKST. cases was higher than for L.A.R. cases. This is despite the fact that in terms of the burden of cases before the judges hearing these cases, the number of L.A.R. cases before courts during the period of study, both pending and disposed (15,634) was significantly higher than the number of L.R.DKST. cases, pending and disposed combined (9,042). Lawyers in the district who handle land acquisition cases told the researchers that this is due to delays in payment of compensation amounts from the government departments acquiring land. Such delays take place despite interest and solatium payments. This indicates poor planning on the part of the executive in initiating the acquisition process in the absence of securing means to pay the compensation amounts.

In Amravati, the volume of L.A.R. cases, both pending and disposed (4,812) was much larger than that of L.R.DKST. cases, pending and disposed combined (103) and while L.A.R. cases took around 2,032 days (5.5 years) to get disposed, L.R.DKST. cases took a much less 895 days (2.4 years) to get disposed of.

In Raigad, L.A.R. cases took nearly 1,676 (4.5 years) days to be disposed of. There were no L.R.DKST. cases that were filed before the district courts in Raigad in this period indicating that the process of execution of the district courts' orders and decrees in this district was a simpler and less cumbersome process than in the other two districts. This also indicates that compensation amounts are paid promptly in Raigad compared to Beed.

Figure 2: Average Pendency (in days) based on Case type

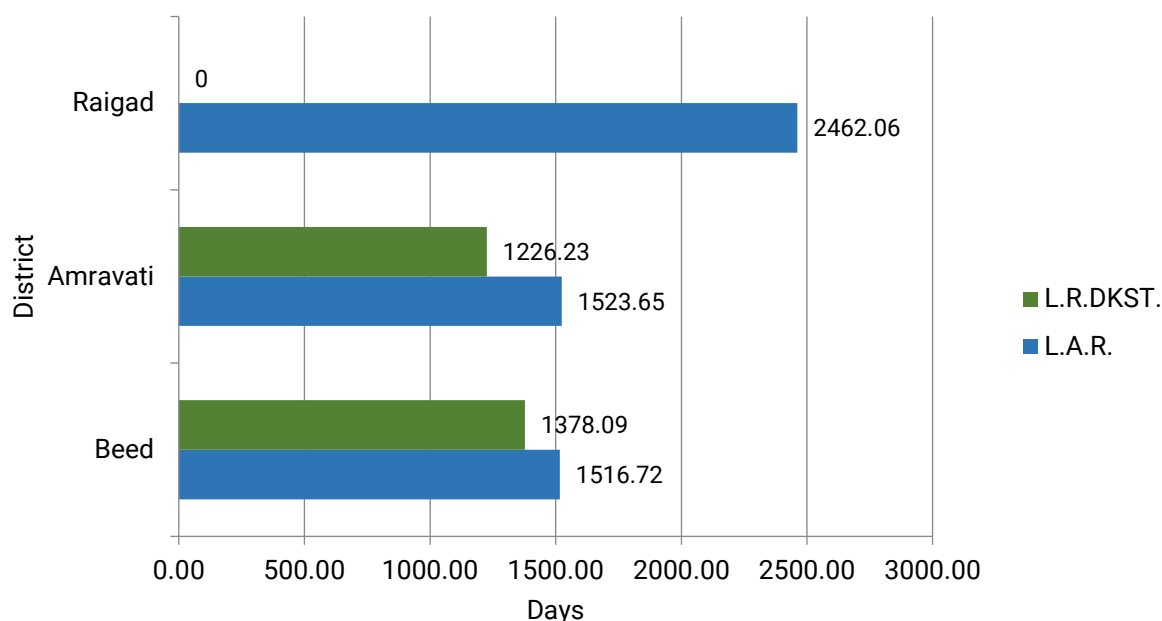


Figure 2 presents the average pendency of land acquisition cases in the selected districts of Maharashtra, Beed, Amravati, and Raigad, during the period of study. The findings relating to average disposal are aligned to expectation with the average pendency for L.A.R. being higher than that for L.R.DKST. cases across 2 districts (Raigad had no L.R.DKST. cases).

The number of pending and disposed L.A.R. cases before courts in Beed and Amravati was more than the number of L.R.DKST. cases. Despite the less complex nature of L.R.DKST. cases and their lower number, these cases were pending for long periods, even though such periods were lower than those for L.A.R. cases. This reflects serious inefficiencies on the part of the executive since execution will usually involve merely paying the compensation amount. The average pendency for L.A.R. cases in Raigad was 2,462 days (6.7 years) which is much higher than the average disposal.

Courts in Raigad despite having less than a third of the volume of land acquisition cases as Beed took longer than courts to dispose of these cases. The average pendency is Raigad is also higher than in Beed. Of the three districts analysed, Amravati had the lowest volume of cases, yet for L.A.R. cases, courts there took the longest to dispose of cases. Apart from L.R.DKST. cases in Beed, in the other districts average disposal is less than average pendency across case types. This is similar to DAKSH's findings from other courts in states

across India where pendency figures seem to indicate a level of inertia in pending cases, where some cases linger on.

The issue of pendency of land acquisition cases at district courts can be understood only by examining the pendency of both case types. For the litigant, a case is over only when the decree/order is executed. The pendency of L.R.DKST. cases which are execution matters needs to be seen as a continuation of L.A.R. cases. For example, in effect in Beed for an average litigant, it will take 2895 days (7.9 years) for the case to conclude, assuming neither party files an appeal, not including the time taken for the Collector to issue an award.

Figure 3: Number of cases filed (above) and disposed of (below) in Maharashtra

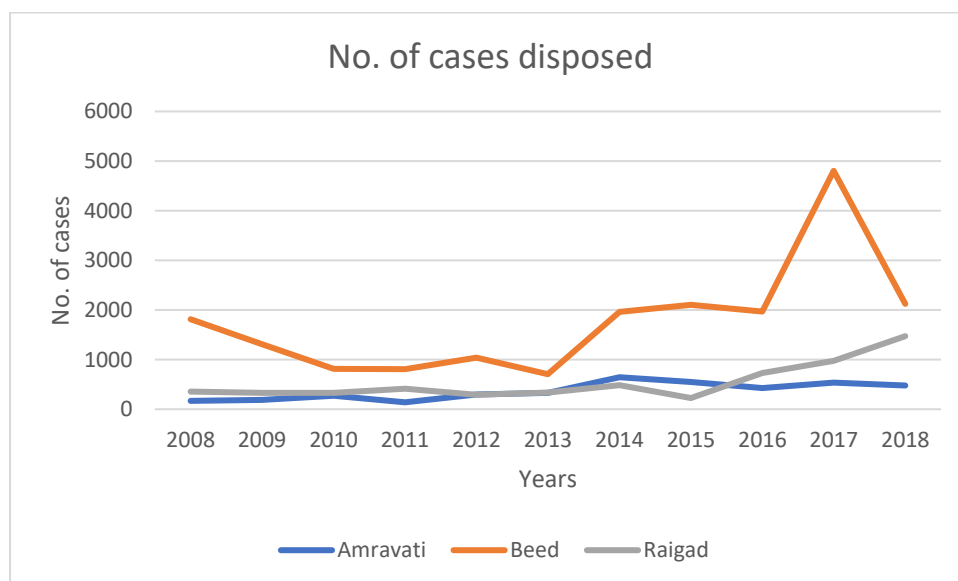
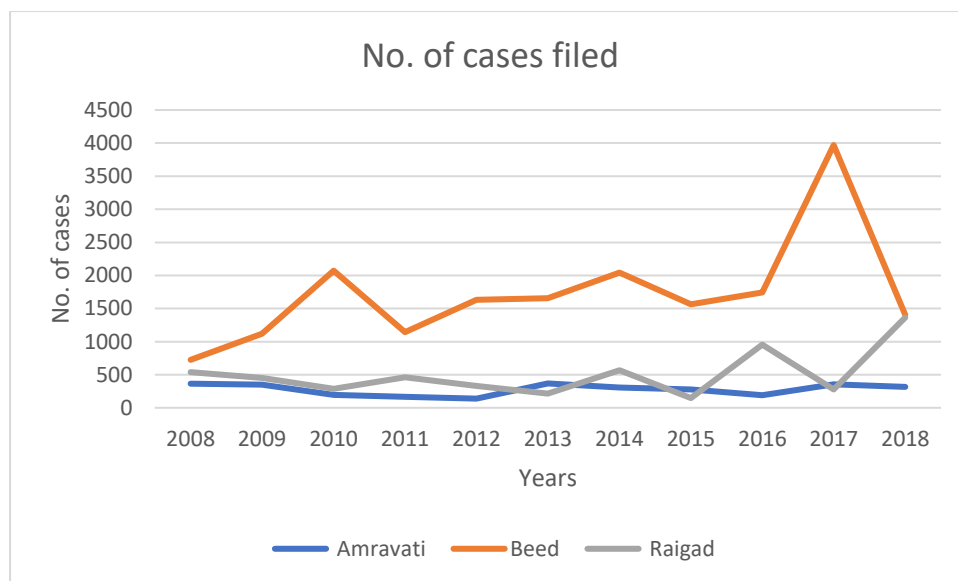


Figure 3 depicts the number of cases filed (figure above) and disposed of (figure below) in each year during the period of study across the 3 districts chosen in Maharashtra.

In Amravati, the number of cases filed and disposed of does not vary significantly from year to year. The number of cases disposed of in this district in most years was higher than the number filed, except in 2008, 2009, 2011 and 2013. Moreover, from 2014 onwards, after the 2013 Act was in force, there was a spurt in the number of cases being disposed of every year and these numbers were consistently higher than the number of cases filed. The highest number of land acquisition cases was filed in the year 2013 (368 cases) a year before the 2013 Act came into force, while 2014 was the year with the highest number of cases being disposed of (645 cases).

In Beed, the number of cases disposed of exceeds the number of cases filed in six out of the ten years studied. During the period of study, of the districts selected, the largest volume of land acquisition cases was filed before the courts in the Beed district. Until 2014, the number of cases filed was largely higher than the number of cases disposed of. Thereafter, similar to Amravati, the number of cases disposed of exceeded the number filed in every year. The year 2017 saw the highest number of cases filed (3,970) and disposed of (4,803). Beed has the largest volume of land acquisition cases among the selected districts despite high pendency numbers. A large number of litigants were willing to spend on average 2692 days (7.3 years) on a case (including execution). This could be because courts were increasing compensation amounts routinely and thus people were willing to spend time and money in the hope of higher compensation.

In Raigad, the number of cases filed exceeds the number of cases disposed of in six out of the ten years being studied. In all three districts, there is a spurt in the number of cases being filed after the 2013 Act came into force. The number of land acquisition cases filed before the district courts in Raigad was considerably higher, in most years than the number of cases filed in the district of Amravati but lower than in Beed. In Raigad, 2018 was the year with the highest number of cases filed (1,365) as well as disposed of (1,472).

The 2013 Act has ousted the jurisdiction of civil courts and now references from the Collector have to be filed with the authority. It is not clear whether these cases filed after 2013 are under the 1894 Act or whether cases under the 2013 Act are still being filed in district courts.

Figure 4: Average number of hearings per disposed of case

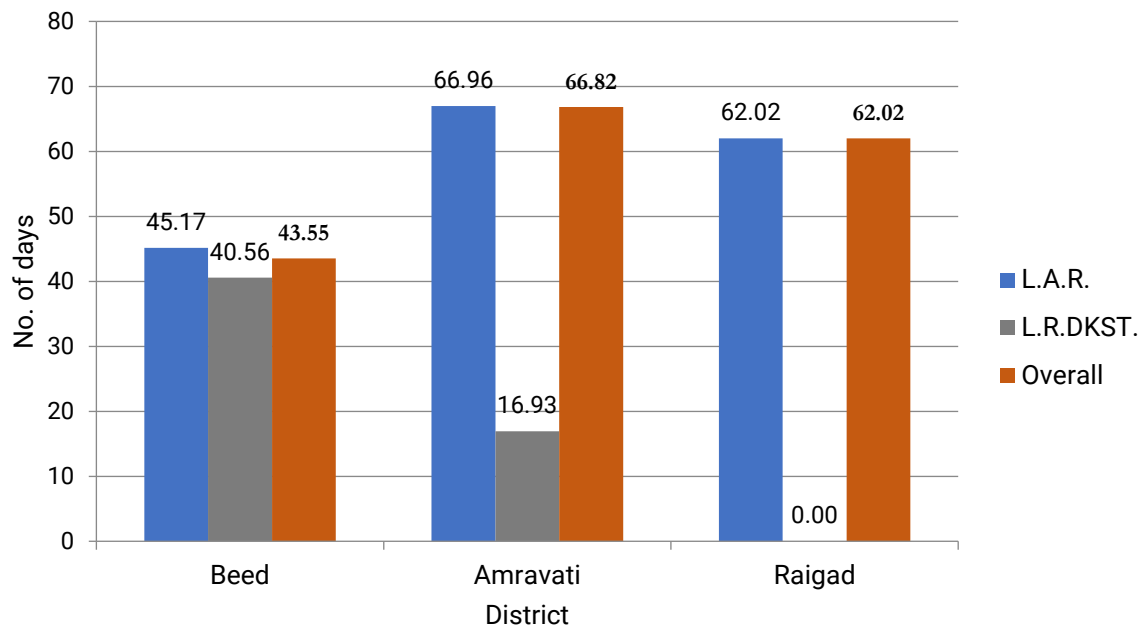


Figure 4 represents the average number of hearings per disposed of case across the three districts selected in Maharashtra. In Beed, on average L.A.R. cases had 45 hearings over 1,268 days (3.4 years). L.A.R. cases in Raigad took longer than cases in Beed to be disposed of (1,676 days), even having a higher number of hearings on average (62). Cases of the same type in Amravati took much longer to dispose of and had more hearings (67) than the other two districts. On average, L.R.DKST. cases needed fewer hearings than L.A.R. cases which is not unusual because these are execution cases. Courts in Amravati needed only an average of 17 hearings but still took 895 days to dispose of these cases. However, Courts in Beed took slightly longer to dispose of these L.R.DKST. cases – 1,425 days with around 41 hearings. Courts in Beed despite having the highest volume of cases, seem to have been able to dispose of cases with fewer hearings than courts in the other two districts.

8.2.3 Karnataka

Figure 5: Average Disposal (in days) based on Case type

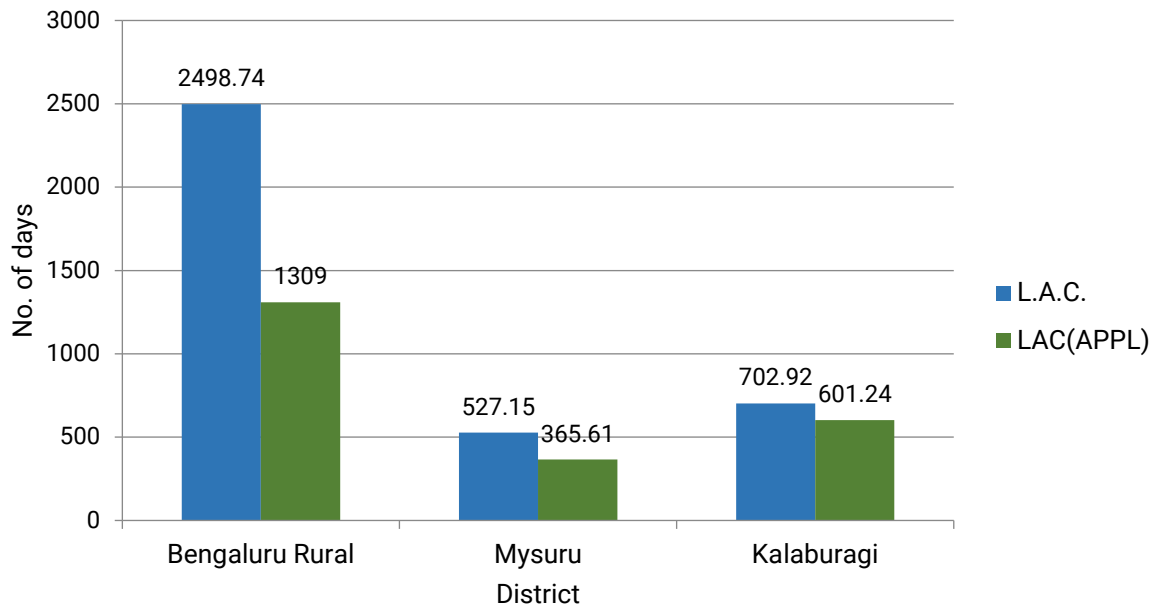


Figure 5 presents the average number of days taken to dispose of land acquisition cases in the three selected districts in Karnataka. In Karnataka, land acquisition cases have been classified under two case types: L.A.C. (Land Acquisition Cases) and LAC(APPL) (Land Acquisition Appeal). The average disposal time for L.A.C. cases was higher than that for LAC(APPL) cases across district courts in Bengaluru Rural, Mysuru and Kalaburagi. A lower disposal time for appeal cases is expected since appeals need fewer hearings since they do not involve the production of evidence and examination of witnesses.

In Bengaluru Rural, L.A.C. cases took 2499 days (6.8 years) to dispose of, whereas LAC(APPL) took 1309 days (3.6 years). Although appeal cases are expected to take less time to dispose of, it is worth noting that only 3 such appeal cases were disposed in the said period and yet the disposal time was 1309 days. The low number of appeal cases implies either that the adjudication at the court of the first instance in this district was to the satisfaction of the parties or that most of the litigation involved sums larger than 15 lakhs, in which case parties would have approached the High Court. The second scenario is more likely given that this district adjoins the state capital and hence land values are high. Additionally, from the perspective of a litigant, prolonging litigation by approaching courts of appeal is a viable option when the monetary stakes are high.

In Mysuru, LAC(APPL) cases took an average of 366 days to be disposed of and L.A.C. cases took longer (527 days) to be disposed of. Unlike Bengaluru Rural, the number of LAC(APPL) cases in Mysuru, both pending and disposed was 2,455. The number of L.A.C. cases in Mysuru, pending and disposed was 4,809. The higher number of appeal cases compared to Bengaluru Rural indicates that the sums involved were lower than in Bengaluru Rural.

In Kalaburagi, L.A.C. cases took slightly longer to get disposed of as compared to LAC(APPL) cases. The number of L.A.C. cases, pending and disposed of combined, was 10,349 and the number of LAC(APPL) cases, both pending and disposed, was 6,046. Similar to Mysuru it can be surmised that the high number of appeals indicates that the land values involved are lower than in Bengaluru Rural.

Mysuru courts took the least number of days among the three districts to dispose of cases. However, courts in Kalaburagi were comparatively more efficient in disposing of cases – these courts took slightly longer than the Mysuru courts to dispose of a significantly larger volume of cases. Bengaluru Rural courts took the longest to dispose of land acquisition cases despite having the lowest number of such cases before them.

Figure 6: Average Pendency (in days) based on Case type

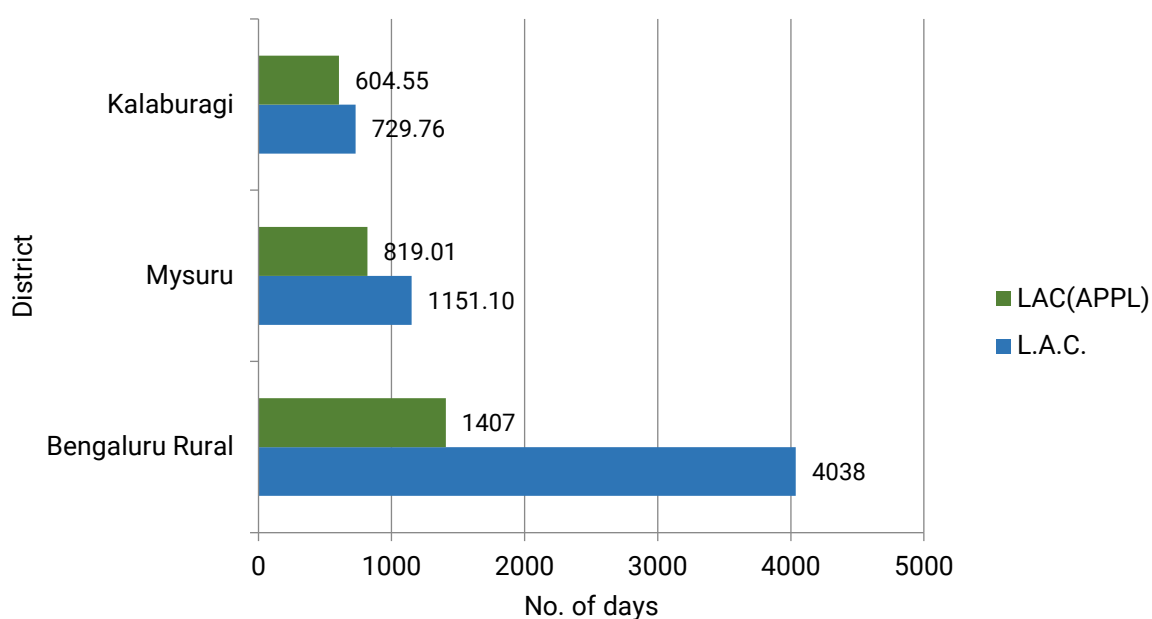


Figure 6 depicts the average pendency of land acquisition cases in the three selected districts in Karnataka. The average pendency for L.A.C. cases across all three districts was higher than the average pendency of LAC(APPL) cases.

In Bengaluru Rural, the average pendency of L.A.C. cases is 4038 days (11 years), considerably higher than the average disposal. Although there were only 3 LAC(APPL) cases, these remained pending for 1,407 days (3.9 years).

In Mysuru the average pendency for, L.A.C. cases, was 1,151 days (3.1 years), more than double the average disposal. LAC(APPL) cases on an average, were pending for 819 days (2.2 years) which is more than the average disposal of this case type. Despite the large volume of cases, the average pendency of cases in Mysuru was considerably lower than in Bengaluru Rural.

Kalaburagi had the largest volume of cases among the three districts selected. As such, the average pendency of L.A.C. cases (730 days) was only marginally higher than the average disposal (703 days). Similarly, for LAC(APPL) cases, average pendency 605 days was

almost similar to the average disposal (601 days) Despite a large volume of cases, the average pendency in Kalaburagi was the lowest among the three districts.

On the whole, the average pendency of cases before Kalaburagi courts was the lowest among the 3 districts, followed by Mysuru. While both these districts handled a large volume of cases, Kalaburagi handled significantly more cases than Mysuru. The average pendency of cases in Bengaluru Rural courts was alarmingly high, despite Bengaluru Rural courts handling the least number of cases among the three districts. In all three districts, however, L.A.C. cases were pending for a greater number of days than LAC(APPL) cases.

Figure 7: Number of cases filed (above) and disposed of (below) in Karnataka

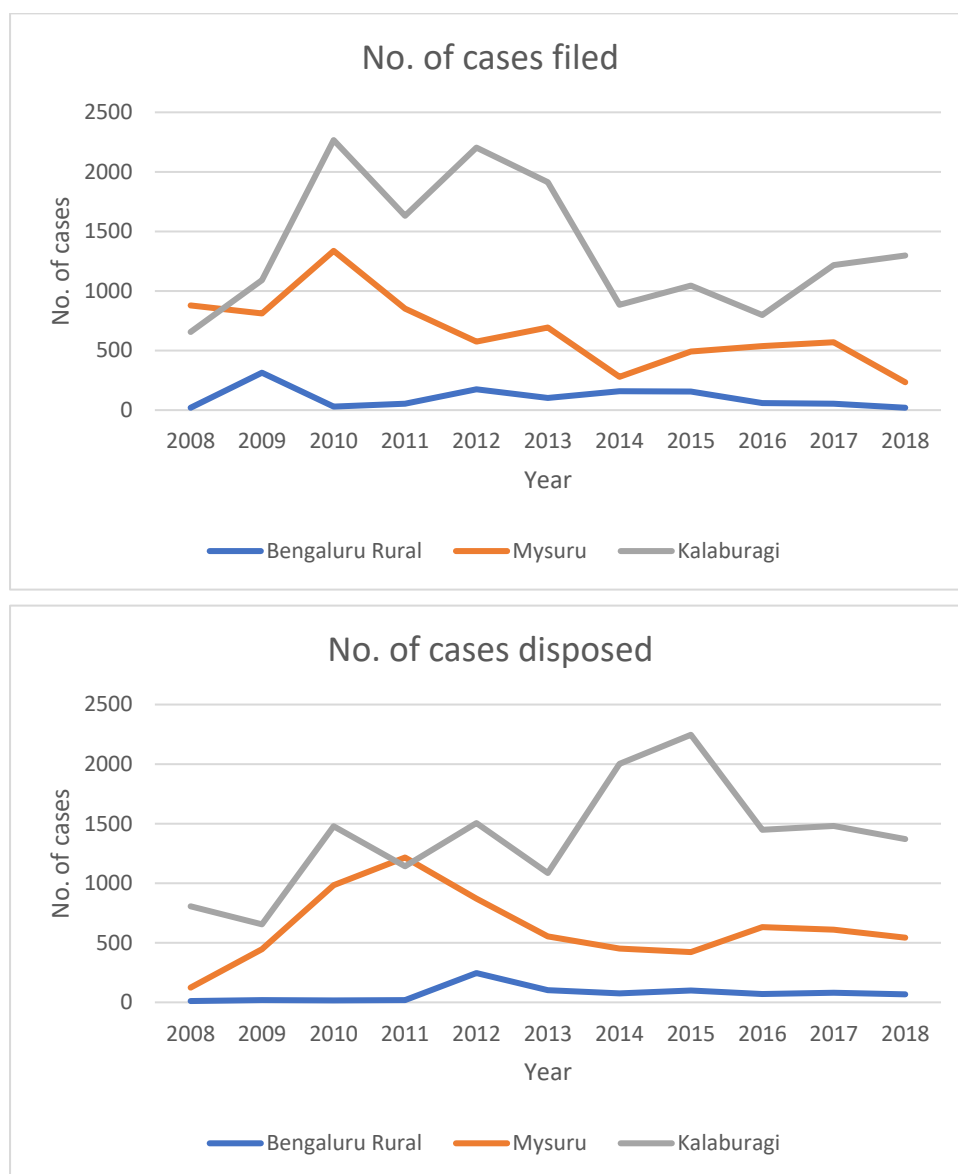


Figure 7 represents the number of cases filed (figure above) and disposed of (figure below) in each year during the period of study across the 3 districts chosen in Karnataka.

In Bengaluru Rural, the number of cases filed and disposed of do not vary significantly from year to year. The number of cases disposed of in this district on most years was higher than the number filed, except in 2012, 2016, 2017 and 2018. In Mysuru the number of cases

disposed of exceeds the number of cases filed in six out of the ten years under study. The highest number of cases filed was in 2010. The subsequent year saw the highest number of cases disposed of.

Of the districts studied here, the volume of cases filed and disposed of is the highest in Kalaburagi during the period of study. From 2014 onwards, the period after the 2013 Act came into force, the number of cases disposed of is higher than the number filed.

The 2013 Act has ousted the jurisdiction of civil courts and now references from the Collector have to be filed with the authority. It is not clear whether these cases filed after 2013 are under the 1894 Act or whether cases under the 2013 Act are still being filed in district courts.

Figure 8: Average number of hearings per disposed of case

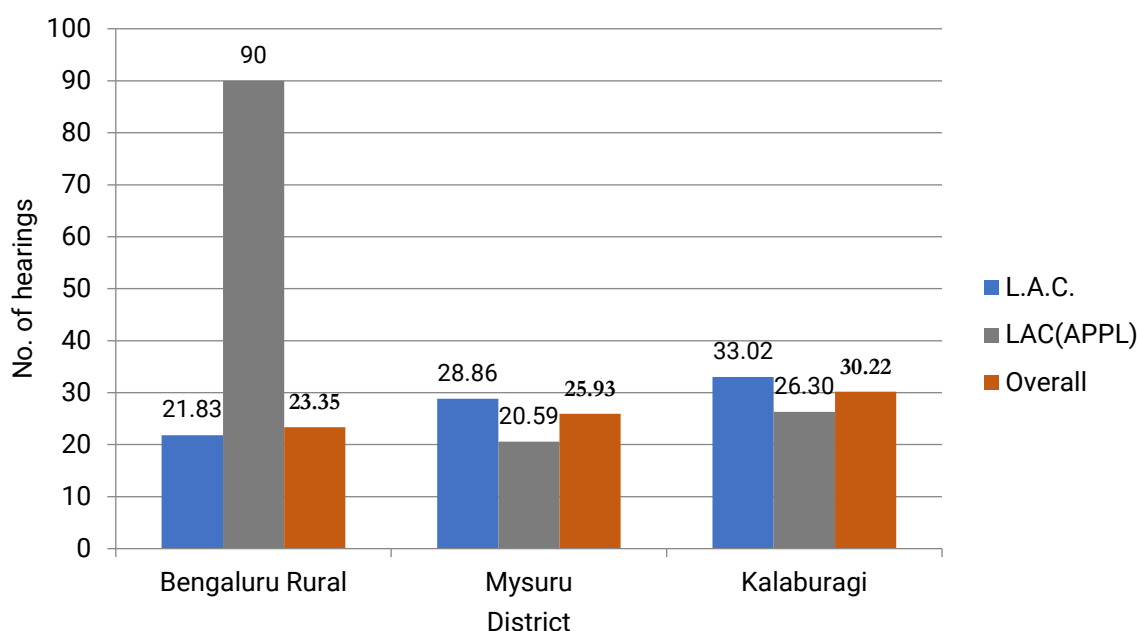


Figure 8 depicts the average number of hearings per disposed of land acquisition case across the three districts selected in Karnataka. The average number of hearings for L.A.C. cases was higher than that for LAC(APPL) cases across district courts in Mysuru and Kalaburagi whereas, in Bengaluru Rural courts, the average number of hearings for LAC(APPL) cases was drastically higher than that for L.A.C. cases. Courts in Bengaluru Rural heard the three LAC(APPL) cases before them on average 90 times over 1309 days. In this district surprisingly appeal proceedings seem to have many more hearings than proceedings in the reference courts. In the same district, courts heard L.A.C. cases on average 22 times over 2,499 days. In Mysuru, LAC(APPL) cases were disposed of more swiftly than L.A.C. cases with nearly 21 hearings for LAC(APPL) over 366 days. Similarly, in Kalaburagi, LAC(APPL) cases were disposed of more swiftly than L.A.C. cases with 26 hearings over 601 days.

In land acquisition cases, the disposal and pendency times are not merely a function of the court's efficiency or the parties' dilatory tactics. There is scope for saving judicial time where several cases heard by a judge relate to adjoining lands acquired for the same project, the facts out of which the dispute arose may be similar and valuations may also be similar. Such cases can be heard together thus reducing the judicial time the judge needs to spend on each case.

8.3. Mapping Litigation in High Courts

The researchers have analysed land acquisition-related judgments of the High Courts at Bombay and of Karnataka between 2008 and 2018 under the following heads:

- (a) Case type and case number
- (b) Year of institution of the case
- (c) District and lower court where the case originated
- (d) Names of the appellant and respondent before the high courts:
- (e) Sections of the land acquisition legislation as well as any other Act that was invoked
Section 105 of the 2013 Act provides certain exemptions for the application of its provisions when the acquisition is carried out under the following legislations:
 1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958
 2. The Atomic Energy Act, 1962
 3. The Damodar Valley Corporation Act, 1948
 4. The Indian Tramways Act, 1886
 5. The Land Acquisition (Mines) Act, 1885
 6. The Metro Railways (Construction of Works) Act, 1978
 7. The National Highways Act, 1956 ('National Highways Act')
 8. The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962
 9. The Requisitioning and Acquisition of Immovable Property Act, 1952
 10. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948
 11. The Coal Bearing Areas Acquisition and Development Act, 1957 ('Coal Bearing Act')
 12. The Electricity Act, 2003 ('Electricity Act')
 13. The Railways Act, 1989 ('Railways Act')

In Maharashtra, Section 105A has been inserted into the 2013 Act, which stipulates that the provisions of this Act will not apply when the following state legislations apply:

1. The Maharashtra Highways Act, 1955
2. The Maharashtra Industrial Development Act, 1961
3. The Maharashtra Regional and Town Planning Act, 1966
4. The Maharashtra Housing and Area Development Act, 1976

Karnataka does not provide a similar list of state legislations that override the application of the 2013 Act. However, based on judgments that were recorded and analysed, the researchers observed that authorities in Karnataka continue to utilise enactments such as the Karnataka Industrial Areas Development Act, 1966 and Karnataka Urban Development Authorities Act, 1987 to acquire land.

- (f) Purpose of acquisition:
The nature of the projects for which land has been acquired.
- (g) Nature of challenge:
These include
 - (i) challenge to compensation;
 - (ii) no public purpose being served;
 - (iii) procedural irregularity;
 - (v) other challenges.
- (h) Description of the challenge
 - (i) The decision of the High Court
 - (j) The relief sought and relief granted

8.3.1 Purpose for acquisition

Figure 9: Maharashtra – major purposes for acquisition of land

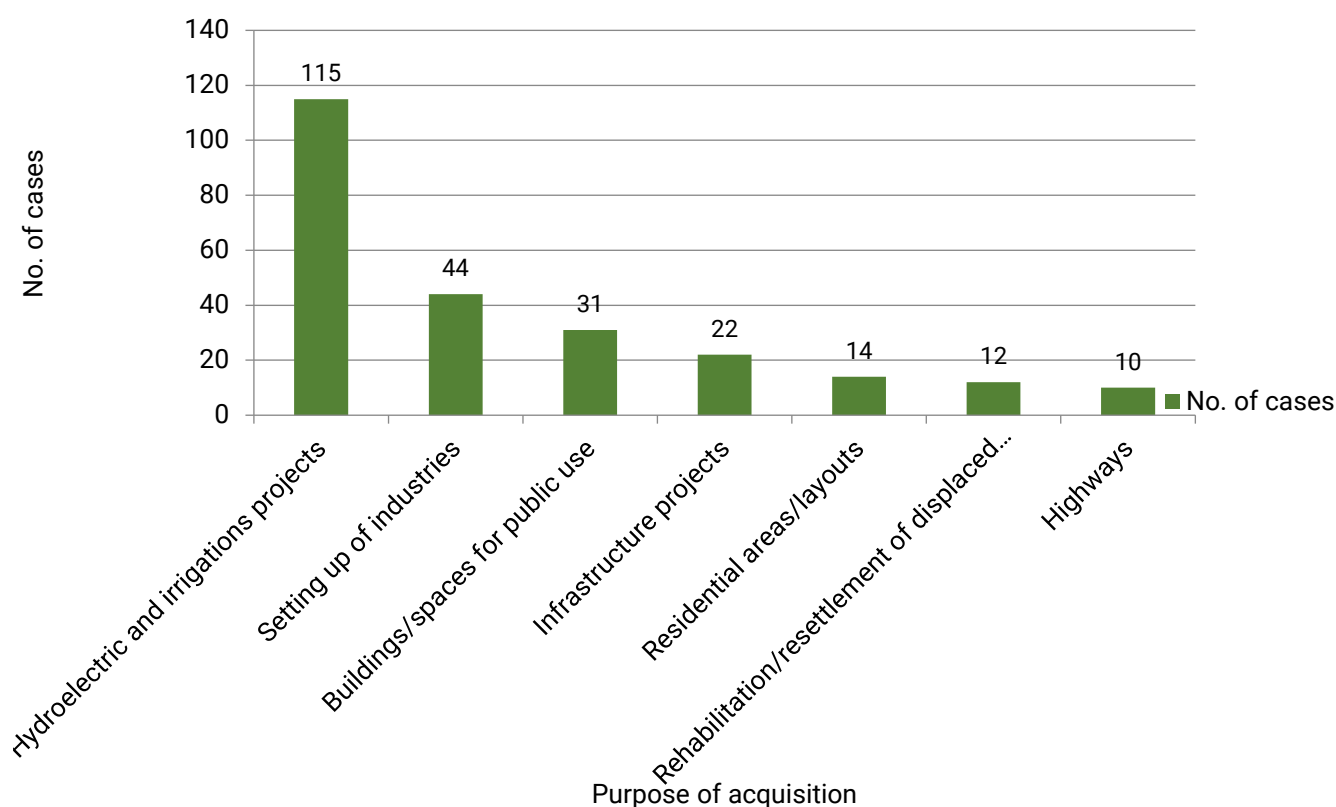


Figure 9 represents the major purposes for which land was acquired in the cases before the High Court in Maharashtra during the period of study. The most common purpose for which land was acquired was for the construction of hydroelectric and irrigation projects. The next most common purpose was for the setting up of industries. Interestingly, 12 cases were disputes regarding the rehabilitation and resettlement of displaced persons.

Figure 10: Karnataka – major purposes for the acquisition of land

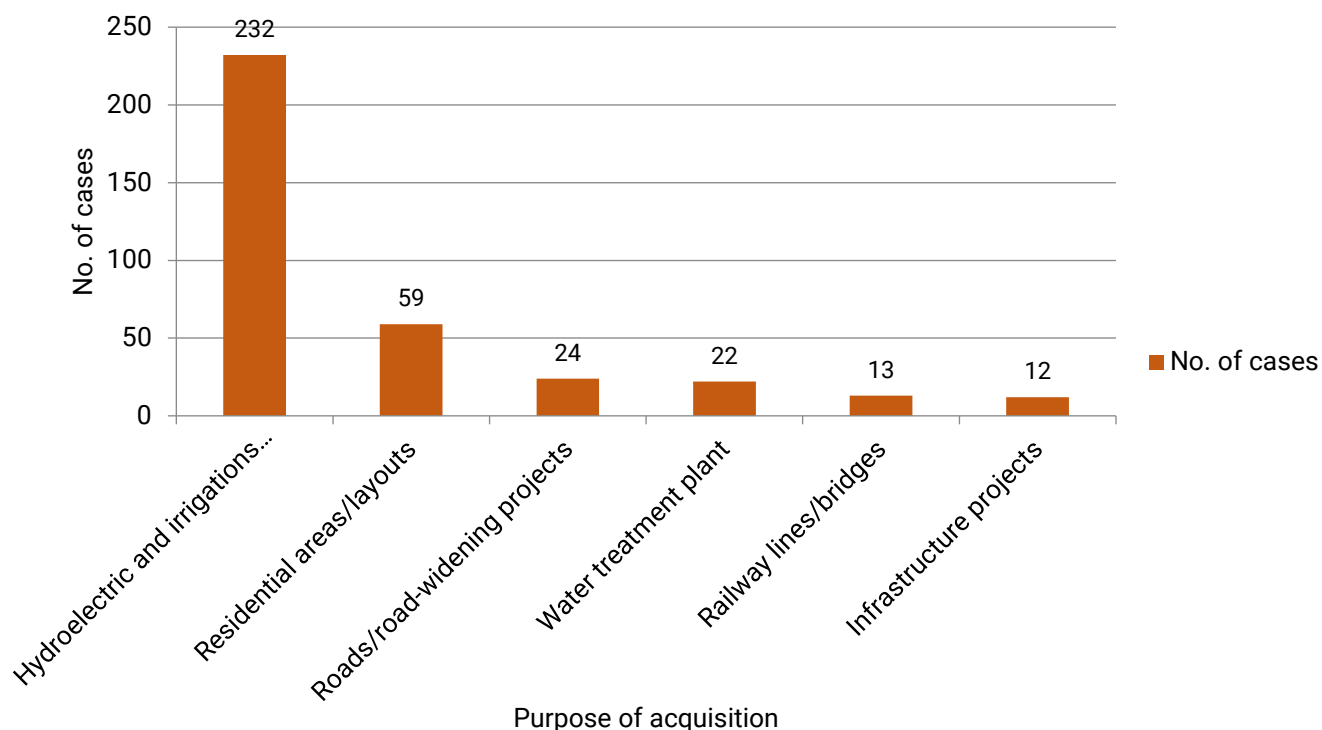


Figure 10 represents the major purposes for which land was acquired in the cases before the High Court in Karnataka. Similar to Maharashtra, the most common purpose for which land was acquired in Karnataka was hydroelectric and irrigation projects. The next most common purpose was residential areas/layouts. There are no cases relating to the acquisition of land for industries. This could be attributed to the fact that the Karnataka Industrial Areas Development Board (KIADB) handles the acquisition of land for industrial purposes. Under the KIADB’s procedure, the promoters of the single unit complex (SUC) need to obtain the consent of the persons whose land is going to be acquired before the initiation of the acquisition proceedings. Since consent has been obtained beforehand, disputes may be less likely.⁵⁵

8.3.2 Legislations used in land acquisition cases before the High Courts

The enactment of the 2013 Act was to remedy the shortcomings of the 1894 Act. This report seeks to examine if the 2013 Act has tackled the root causes of litigation under the 1894 Act. Therefore, it is not surprising that the majority of cases in the database have been initiated under the 1894 Act.

⁵⁵ Procedure For Acquization Of Lands For Single Unit Complex (SUC) <http://en.kiadb.in/procedure/>.

Figure 11: Distribution of cases in Karnataka and Maharashtra under different land acquisition legislations

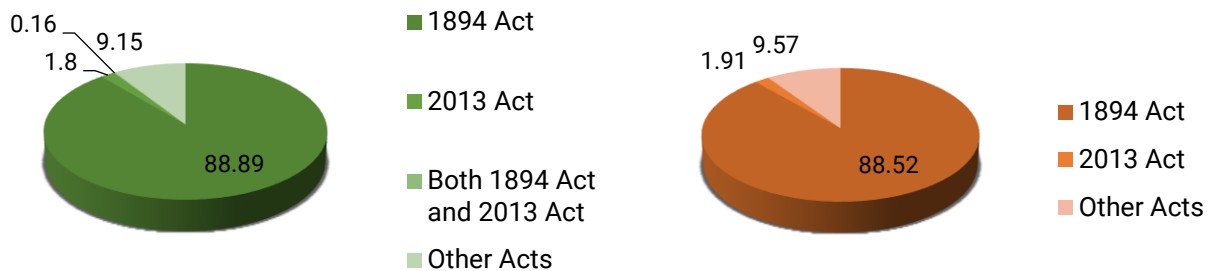


Figure 11 represents the distribution of cases filed in the Karnataka and Bombay High Court under various land acquisition legislations during the period of study. Nearly 89% of all land acquisition-related litigation in the period of study was filed under the 1894 Act in both the High Courts. A little over 9% of the High Court cases in both states were under other land acquisition statutes. Even in the period after the 2013 Act came into force, both states are using other legislations to acquire land. Governments may be avoiding land acquisition under the 2013 Act because it has more stringent requirements such as consent, payment of compensations to various persons dependant on the land and higher levels of compensation. Interestingly, the Madras High Court has struck down acquisitions under other legislations after the 2013 Act came into force. The Court held that all state legislations contradictory to the 2013 Act would be void as on the date the 2013 Act came into force since these conflict with a parliamentary legislation.⁵⁶ As of now, this is applicable only in Tamil Nadu but it is likely that this issue will be brought before the Supreme Court.

Less than 2% of the litigation was under the 2013 Act even though the study covers 5 years after it came into force. Acquisitions initiated under the 1894 Act seem to be being contested before both High Courts even five years after its repeal. The reason for the small proportion of cases under the 2013 Act could be that because it is too early for appeals under the 2013 Act to have reached the High Court.

8.3.4 Nature of litigation

Another aspect sought to be ascertained from the orders/judgments is the nature of the challenge, more specifically whether the appeals were challenging compensation, procedural irregularities or the acquisition itself. From the data that has been analysed from

⁵⁶ *The Caritas India vs. Union of India* judgment dated 3 July, 2019 in W.P. No.22448 of 2018.

the High Courts of Bombay and Karnataka, it is unsurprising that the majority of cases involve a challenge to the compensation. The researchers found that cases involving a challenge to compensation constitute 52.9% and 51% of the land acquisition litigation before the Bombay and Karnataka High Courts, respectively. This is not surprising given that challenging the acquisition itself would have been tough given the wide interpretation of 'public purpose' under the 1894 Act. Inadequacy of compensation was also one of the major criticisms of the 1894 Act which the 2013 Act sought to remedy. What is sought to be identified in this paper is the effectiveness of the new legal framework for land acquisition, especially the new compensation model, in tackling the causes of litigation under the older legal framework.

It is useful to also examine the most frequently invoked sections in the cases before the High Courts and understand if there are variations in disposal times between these categories of cases. The figures below present the distribution of cases before the Bombay and Karnataka High Courts in the period of study, according to the provisions of the 1894 Act. Among the most commonly used provisions of the 1894 Act were Sections 4 (and 5A) (Publication of Preliminary Notification and Hearing of Objections)⁵⁷, 6 (Declaration that land is required for a public purpose)⁵⁸, 11 (Enquiry and award by the Collector)⁵⁹, 17 (Special powers in case of urgency)⁶⁰ 23 (Matters to be considered on determining compensation),⁶¹ 28 (Collector may be directed to pay interest on excess compensation)⁶² and 30 (Dispute as to apportionment)⁶³. The sections that provide for reference to district courts and appeals to high courts have been left out of this analysis as they are purely procedural. It must be noted that many cases invoke multiple sections and therefore the cases may overlap between sections.

⁵⁷ Section 4 deals with the publication of the preliminary notification for acquisition of land required for a public purpose.

⁵⁸ Section 6 deals with the declaration that the land is required for a public purpose. Such a declaration published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated and in public places in the said locality is conclusive evidence that the land is needed for a public purpose and, after making such declaration, the appropriate Government may acquire the land

⁵⁹ Section 11 provides for the Collector to make an award on the area of the land being acquired, the compensation to be given and the apportionment of this compensation among the claimants.

⁶⁰ Section 17 provides that in case of urgency, the Collector can take possession of the land to be acquired fifteen days from the publication of the notice

⁶¹ Section 23 describes the factors to be considered while determining compensation.

⁶² Section 28 provides that in the event the Court increases the compensation awarded by the Collector, the Collector has to pay 19% per annum on this excess amount from the date they have taken possession of the land.

⁶³ Section 30 provides that the Collector may refer any dispute regarding apportionment of the compensation amount among the claimants to the court.

Figure 12: Section-wise disposal time in Bombay High Court

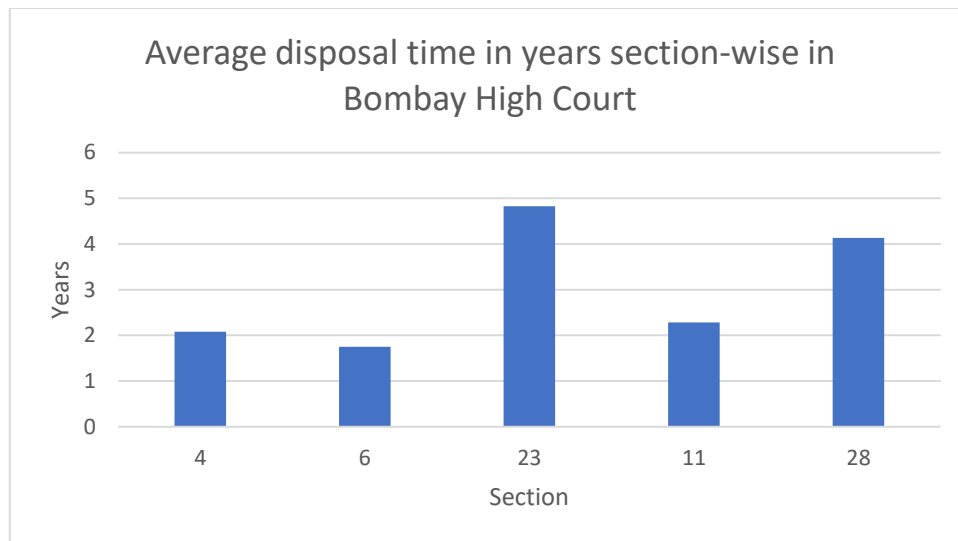


Figure 12 represents the average disposal time of the 5 most frequently invoked sections in land acquisition cases before the Bombay High Court. Section 4 and 6, the most frequently invoked sections deal with procedural irregularities, in the preliminary notification and the declaration of public purpose. These cases have lower disposal times than the others analysed here. Cases invoking sections 23, 11 and 28 deal with various aspects of compensation and on average take longer to dispose of than the cases dealing with procedural irregularities.

Figure 13: Section-wise disposal time in Karnataka High Court

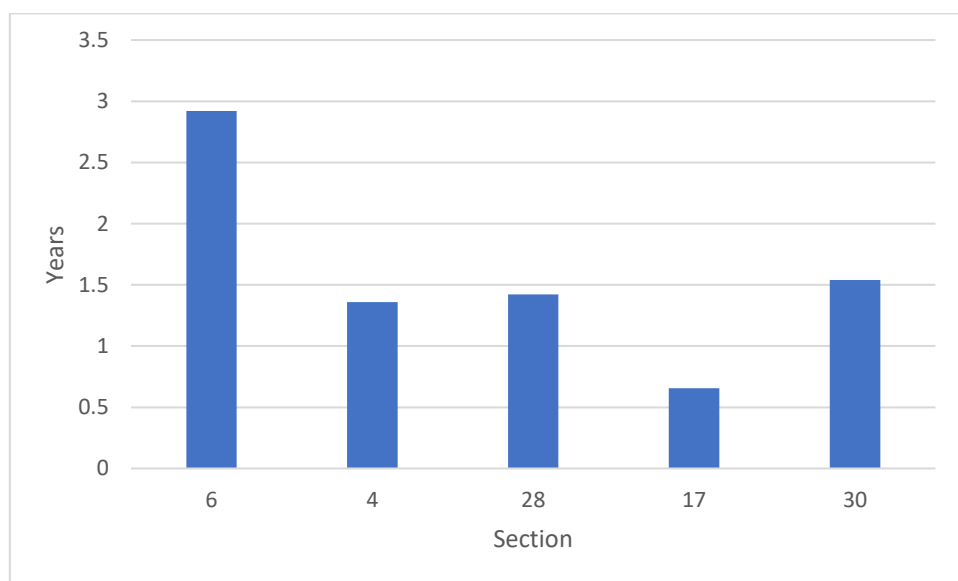


Figure 13 represents the average disposal time of the 5 most frequently invoked sections in land acquisition cases before the Karnataka High Court. Similar to Bombay High Court, section 4 and 6 are the most frequently invoked sections here too. Section 17 which is also procedural in nature is the third most frequently invoked. Sections 28 and 30 deal with compensation. Sections invoking section 6 take longer than the other cases.

A. Litigation relating to Compensation

Under both the 1894 Act and the 2013 Act, the Collector is required to make an award regarding the true area of the land, the compensation amount and the apportionment of the compensation among the affected persons. Under the 2013 Act, the award also includes the rehabilitation and resettlement award and the solatium award. Both these Acts provide landowners with the opportunity to challenge the award passed by the Collector on various accounts. Under the 1894 Act, the person who was dissatisfied with the award, could, by a written application to the Collector, require the matter to be referred by the Collector for the determination of the Court. The objections could relate to any aspect of the award, such as the amount of compensation, the measurement of the land, the apportionment among the persons interested, among other things.⁶⁴ These references had to be made to civil courts, i.e., district courts. The 2013 Act ousted the jurisdiction of civil courts and appeals now lie with the Land Acquisition, Rehabilitation and Resettlement Authorities ('**Authority**').

It may be noted that once the matter was referred by the Collector to the district court under the 1894 Act, the court was required, in every case, to award an amount calculated at the rate of 12% p.a. on the market value for the period from the date of publication of notice till the date of award of the Collector or date of taking possession of the land by the Collector, whichever is earlier. The court was further required to award a sum of 30% on such market value, in consideration of the 'compulsory nature of the acquisition'. These amounts were required to be awarded by courts in addition to the market value of the land, irrespective of whether they enhanced the compensation amount or not. A similar provision also exists under the 2013 Act, with the Authority being required, in every case, to award an amount calculated at the rate of 12% p.a. on the market value for the period from the date of publication of preliminary notification till the date of award of the Collector or date of taking possession of the land by the Collector, whichever is earlier. The Authority is further required to award a solatium of 100% over the total compensation amount. These amounts are mandated to be awarded by the courts in addition to the market value of the land, irrespective of whether they enhanced the compensation amount or not. Furthermore, under both the 1894 Act and the 2013 Act, if the courts/Authority enhance compensation, they may direct the Collector to pay interest on such excess compensation amount at the rate of 9% per annum from the date on which the Collector took possession of the land to the date of payment of such excess compensation amount. The courts/Authority also have the power to impose additional interest if the Collector fails to deposit the excess compensation amount within the stipulated time.

⁶⁴ Section 18 of the 1894 Act.

Therefore, under both the land acquisition legislations, landowners have been incentivised to challenge their awards, in the hope that they will receive a much higher compensation package from the courts/Authority. As mentioned above, in a majority of cases in analysed in this study compensation has been the main point of the challenge.

Reference courts (district courts hearing appeals from the decision of the land acquisition officer) have almost always enhanced compensation owed to landowners. Despite the increase in compensation by the reference courts, people still approached High Courts, seeking a further increase in compensation. 62.2% of the total land acquisition cases before the Bombay High Court in the period of study were instituted by individuals or companies. Government appeals contributed to 37.8% of the total land acquisition litigation. In Karnataka, the share of litigation of individuals and companies is higher at 74.25%. Government appeals contributed to 25.75% of the total land acquisition litigation in our sample of Karnataka High Court cases. Even if parties approach the High Court on the issue of compensation, the Courts do not always decide these cases on the issue of compensation only. In some cases, the Courts decide these cases on technical issues.

Figure 14: Decisions of the Bombay High Court in compensation cases

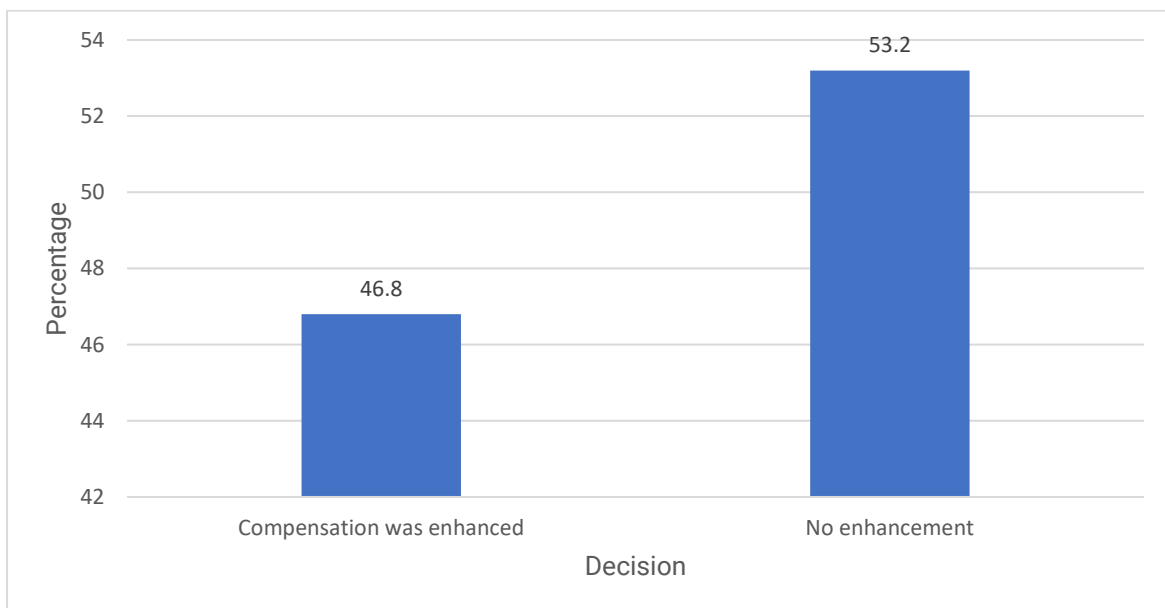


Figure 14 represents the distribution of the decisions of the Bombay High Court in cases relating to compensation in the period of study. Among the cases, related to compensation, in 46.8% compensation was not enhanced by the High Court whereas in 53.2% the High Court refused to enhance compensation. The non-enhancement of compensation in a majority of cases before the Bombay High Court could be because the compensation awarded by the reference court was correct. This court is not incentivising litigation before which may be one of the reasons for the low volume of land acquisition litigation before it.

Figure 15: Decisions of the Karnataka High Court in compensation cases

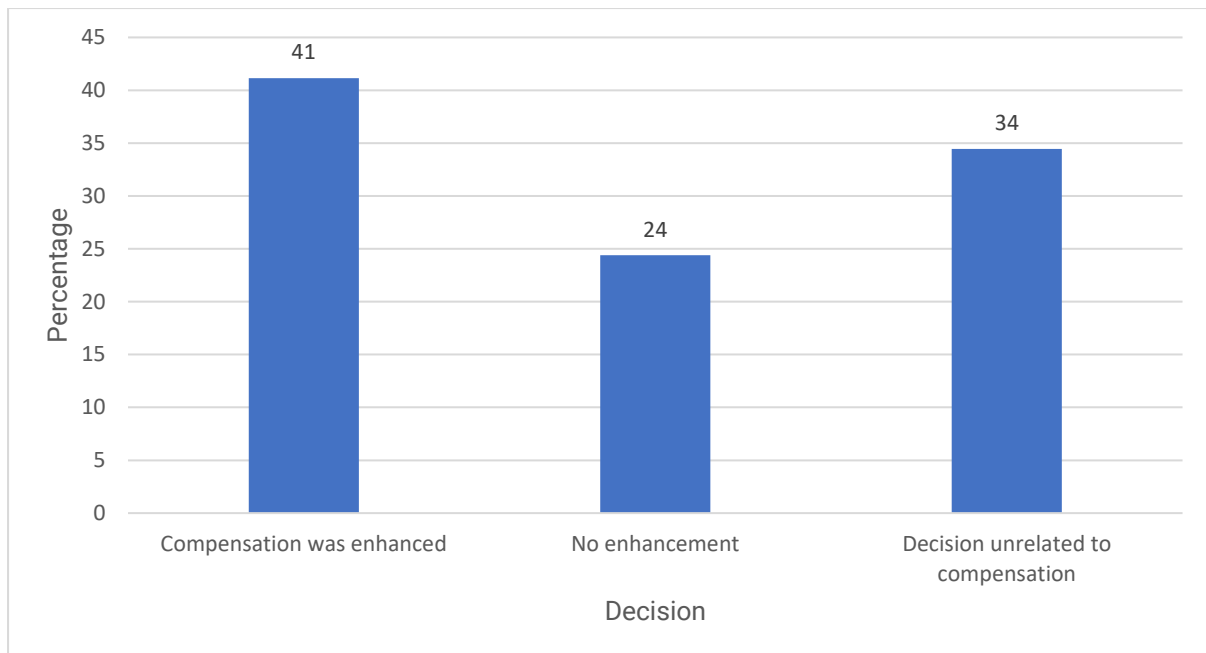


Figure 15 represents the distribution of the decisions of the Karnataka High Court in cases relating to compensation in the period of study. Among the cases, related to compensation, in 41% compensation was enhanced by the High Court, whereas in 24% the court refused to enhance compensation. In 34% of such cases, while the reason for approaching the High Court was compensation, the court did not delve into that aspect and decided the case on other technical issues. These technical issues include the case being withdrawn or being dismissed for several reasons like non-payment of court fees, non-condonation of delay, office objections not being complied with, or the case being referred back to the district courts.

In Maharashtra, in 11 of the cases related to compensation, in addition to compensation, the persons whose land has been acquired also sought additional compensation in the form of interest and solatium and the High Court has awarded them these. In 20 of the cases related to compensation, the persons whose land has been acquired sought additional compensation for assets such as wells and fruit-bearing trees. The High Court has awarded this additional compensation in 50% of these cases. In another case, for errors in determining the extent of land required to be acquired, the High Court has awarded damages to the landowners. Before the Aurangabad Bench of the High Court, 7 cases in the period of study related to compensation for loss of rental income. These cases involved issues such as rental compensation being due to the petitioners and also disputes regarding computation and due dates. Where the government, in one case, appealed the order of the lower court directing it to pay compensation for rental income, the High Court dismissed its petition. The High Court also dismissed 2 petitions of individuals, claiming rental compensation between certain periods. In the other 4 cases (all appeals by

individuals seeking payment of rental compensation), the High Court directed the payment of compensation for loss of rental income at rates deemed by the relevant authorities.

In Karnataka, the researchers observed similar trends relating to compensation. In 15 cases in the period of study, persons whose land was acquired approached the High Court claiming that the method of valuation of their land was improper or that the valuation carried out by the Land Acquisition Officer was incorrect. 11 cases relate to issues such as the nature of land not being determined correctly. For instance, in four cases, agricultural land was treated as non-agricultural land, and the adequacy of compensation for the same was challenged and in seven cases (relating to the Golden Quadrilateral Project), compensation was granted for the widening of roads when it was actually for the construction of a new road. Another case related to the compensation not being in accordance with the market value as stipulated under the land acquisition legislation. In five cases where parties have entered into a separate agreement for determination and payment of compensation, persons whose land was acquired approached the High Court because compensation paid was based on the Collector's award (a lower amount) rather than on the consent terms/consent decree. The Karnataka High Court granted 'costs and statutory benefits' and other monetary components like interest in 116 cases, constituting 34.11% of the aggregate cases in Karnataka relating to compensation.

Interestingly, 7 cases were also filed regarding the apportionment of compensation among landowners. These disputes generally arise regarding family property. According to Section 30 of the 1894 Act, any disputes relating to apportionment of the compensation amount among persons to whom it is payable may be referred by the Collector to the decision of the Court.

B. Litigation relating to Procedural Irregularities:

After disputes over compensation, the next major cause for land acquisition litigation in Bombay and Karnataka High Court is procedural irregularities in the process. The acquisition procedure envisioned under the 1894 Act is significantly different from the one under the 2013 Act. Several amendments were carried out to the 1894 Act to hasten the acquisition process. In this regard, time limits were also placed for making the declaration of acquisition and award for compensation.⁶⁵

The 2013 Act introduced a more elaborate procedure for the acquisition of land – it included obtaining the permission of a certain percentage of landowners, conducting a social impact assessment of the land to be acquired and providing a rehabilitation and resettlement package for the displaced. The flow charts in the Annexure provide a clearer picture of the procedure for land acquisition under both acts.

While most of the issues relating to procedural irregularities in cases in our dataset were peculiar to the case, the commonly litigated issues are detailed below. There were 337 and 162 instances before the Bombay High Court and the Karnataka High Court respectively challenging procedural irregularities under the 1894 Act. These instances are not individual

⁶⁵ Bansal, B.L. & Aiyer, R. 2004 *Law of Acquisition of Land in India* Delhi, Capital Law House.

cases but only instances of such irregularities being challenged. These may overlap with each other and with challenges to compensation.

The most common procedural irregularities alleged in both High Courts were related to the preliminary notification of acquisition, declaration of public purpose and invocation of the urgency provision. These mirror one of the major criticisms of the 1894 Act which is excessive executive discretion. This kind of discretion led to a lot of room for arbitrary actions, various interpretations of statutory provisions and hence created fertile ground for litigation

Among the cases involving procedural irregularities, several of them are unrelated to the specific land acquisition procedure under the two land acquisition acts. Six were on the issue of the law of limitation – petitioners argued against hearing an application that they believed was barred by limitation. In another case, claimants sought the permission of the court to carry out amendments in their reference applications. 23 cases also related to petitioners seeking condonation of delay in filing applications or in filing appeals against awards passed.

With respect to cases challenging procedural irregularities in the land acquisition procedure, one issue related to quashing of the order of the Land Acquisition Officer because it was not compliant with provisions of Section 11A of the 1894 Act and that the proceedings in relation to the petitioner's land had lapsed. Section 11A of the 1894 Act deals with the period within which an award is to be made which is within a period of two years from the date of publication of the declaration and where no award is made within such period, the entire proceedings for the acquisition of the land lapses. On the particular issue of Section 11A of the 1894 Act, another case discussed whether the timelines under the central land acquisition acts would be applicable for land acquired under state acts allowing acquisition of land. The High Court held that it would not be applicable.

In seven cases before the Bombay High Court in the period of study, the court discussed the issue of land acquisition being violative of certain provisions of the Indian Constitution. In one such case, the person whose land was being acquired challenged the land acquisition procedure as violating Article 14 (right to equality) of the Indian Constitution because lands belonging to eminent persons adjoining the claimant's land were not acquired. Furthermore, the contract for development of the area for rehabilitation was awarded to a private contractor, which the petitioner claimed as indicating profiteering. However, the order seeking quashing of the acquisition was not granted by the High Court in this case. In another case, the petitioners claimed that the acquisition was violative of Article 300A (right to property) of the Indian Constitution as it did not follow the process of law. The petitioners sought an order quashing the notification for acquisition and a direction to the respondents to release the acquired land. While the High Court did not quash the notification, it granted the petitioners the liberty to either submit an application seeking for release of their land or accept the compensation for their land.

As mentioned above, the state of Maharashtra allows state authorities to acquire land under certain state legislations. 53 cases relating to procedural irregularities were under the

Maharashtra Regional and Town Planning Act, 1966 (the 'MRTP Act'). 28 of these related to Section 127 of the MRTP Act. This section deals with the lapsing of reservations – where any land that is reserved has not been acquired within the time period prescribed under the said Act, the acquisition stands lapsed and the land will be returned to the owner. Petitioners in cases instituted under Section 127 of the MRTP Act have contended that acquisition proceedings have lapsed and the acquiring authority has not taken any steps for the acquisition of the land. The High Court in three cases has given time to the acquiring authority to complete the acquisition proceedings. In 25 cases, it held that the acquisition proceedings have lapsed and directed the acquiring authority to declare that the reservation of land has lapsed and return the land to the owners within a certain time period. In two cases, the High Court dismissed the petition of the persons whose land had been acquired, who had sought notification of de-reservation/repossession of their land as the reservation for their land has lapsed and the government had not taken any steps for acquisition of the land.

In Karnataka, nine of these cases related to issues of lapsing of acquisition proceedings awards not being passed pursuant to the issue of the final notification, and discrepancies in the notifications for the acquisition of land. In five cases, the authority of the acquiring bodies or the jurisdiction of the courts was challenged. For example, in one particular case, the pecuniary jurisdiction of the High Court was challenged, and in another, the power of the Deputy Commissioner to pass a notification under Section 4(1) of the 1894 Act was challenged.

While there has been no specific amendment to Section 105 of the 2013 Act in the state of Karnataka similar to that in Maharashtra, state authorities in Karnataka continue to acquire land under acts such as the Karnataka Industrial Areas Development Act, 1966. Three cases relating to discrepancies by the acquiring authority in following framework agreements and outline development plans have been filed before the High Courts under this specific Act.

In two cases involving procedural irregularities, there have also been contentions that the provisions of the relevant Act to acquire land have not been followed by the acquiring authority. One petitioner before the Karnataka High Court contended that the provisions of the Karnataka Urban Development Authorities Act, 1987 had not been followed, and another petitioner before the Bombay High Court contended that the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1999 had not been complied with.

C. Other categories of litigation

There were also 372 cases between both High Courts involving issues other than the issue of compensation or procedural irregularities. Some of these issues were:

- (i) An argument that the acquisition of the land was illegal per se under both the 1894 Act as well as the MRTP Act.
- (ii) An argument about the wrongful invocation of the 'urgency clause'. The 'urgency clause' under Section 17 of the 1894 Act states that in cases of 'urgency', the Collector has the power to take possession of the land, pursuant to the publication of the notice and prior to the award being made.

- (iii) Where compensation was included in the rehabilitation package, and the landowners sought enhancement in compensation, the question before the court was whether claimants would be precluded from seeking enhanced compensation since they had received certain amounts as part of the rehabilitation package from the state government. The High Court allowed claimants to seek enhancement in compensation despite having received the rehabilitation package.
- (iv) Five cases were on the issue of the petitioners not being granted a fair hearing or because they were given an inadequate opportunity to be heard.
- (v) 12 writ petitions have also been filed for the quashing of the entire land acquisition proceedings and the notification for acquisition on the ground that the acquisition proceedings are illegal.
- (vi) In one case the petition claimed that the use of land was contrary to the purpose in the notification.
- (vii) Seven contempt cases have also been filed contending that the order of the lower court has not been followed.
- (viii) In one case, the petitioner also sought employment in lieu of acquisition of their land.

9. CONCLUSION

The expropriation of land under the 1894 Act was a major source of disputes between citizens and the state and this colonial-era legislation was severely contested, in courts and through large people's movements. Past literature and empirical studies on land conflict have provided insight into the problems associated with the compulsory nature of land acquisition as well as the experience of land losers with the land acquisition process and the legal regime governing it. The need for reforms in the area of land acquisition was widely accepted. Even the Supreme Court remarked that

*"The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the landowners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected. For years, the acquired land remains unused and unutilised. To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A of the Constitution."*⁶⁶

The 2013 Act was enacted to overcome the shortcomings of the 1894 Act to correct the imbalance between the state and the person whose land is being acquired by making the legal regime less coercive.

Although the social and economic consequences of the 1894 Act have been widely studied, there has been much less focus on the judicial burden imposed by this legislation. Since awards by the Collector could be challenged, there was scope for litigation all the way to the Supreme Court. The volume and nature of this litigation are under-examined in academic literature. In this study, the researchers' objectives were to understand the lifecycle of land acquisition cases in district courts and High Courts in Karnataka and Maharashtra and ascertain whether the 2013 Act has been effective in addressing the root causes for litigation under the 1894 Act.

The analysis of district court data has helped in understanding the volume of disputed acquisitions and the efficiency of the courts in handling them in Maharashtra and Karnataka during the period of study. In the district courts, the duration for which cases are pending is longer than the duration for cases to be disposed of across both states. In the selected districts of Maharashtra, average pendency ranged between 1516 days and 2462 days and in the ones in Karnataka between 729 days and 4038 days. Within the context of Karnataka, it is obvious that the time-limits set by the Karnataka (Case Flow management in Subordinate Courts) Rules, 2005 are being ignored quite systematically, either out of ignorance or deliberately. The time limits set by the Supreme Court are being uniformly flouted in both states.

In Mysuru and Kalaburagi in Karnataka, the volume of appeal cases was half that of the references by the Collector. The parties to the reference cases seem to be dissatisfied with the decisions of the district courts in at least half of the cases indicating with a general

⁶⁶ *Ramji Veerji Patel v. Revenue Divisional Officer* (2011) 10 SCC 643.

proclivity to appeal in the expectation of higher compensation or perception in the minds of parties that the district courts have not treated them fairly. The proclivity to appeal persists despite the prospect of the case being pending for years on end, indicating that the perceived benefits of a favourable order from the appellate court far outweigh the transaction costs of the litigants in terms of time, effort and money. It is difficult to tackle this issue through legislation and therefore it is not possible to predict from the text of the 2013 Act if the volume of appeals will come down under the new legal regime. The answer depends to a large extent on how the Authorities established under the 2013 decide cases.

In Maharashtra, execution cases in land acquisition took inordinately long during the period of study. This in effect adds to the time the litigant needs to wait for the closure of a case. In land acquisition cases, the delays in execution indicate serious flaws in the administration of the process, especially the payment of compensation. If the state takes 1424 days to merely pay money to a person whose land has been acquired, it points to a severe lack of planning in the executive processes around land acquisition. Such lethargic executive action can only be remedied by the enforcement of timelines and protocols within the executive itself.

Once the 2013 Act came into force, the jurisdiction of district courts over land acquisition matters was barred and references now lie with the Authority. This was done to reduce the burden of these protracted cases on the civil courts. However, from our data, it can be seen that cases are still being filed before district courts. Several states are also yet to establish their Authorities, as mandated by the 2013 Act even six years after they were mandated to be set up. For efficient handling of land acquisition litigation, these Authorities must be established and must function effectively. Proper functioning of these Authorities can reduce the caseload of the district courts significantly. However, without data on the volume of litigation before these Authorities, it is too early to tell if the overall burden on the justice system will go down.

The volume of land acquisition cases in Bombay High Court is much less than the volume in the Karnataka High Court. We do not have data on the total volume of litigation in the district courts in both states, so it is difficult to attribute this to fewer cases at the reference level. It is pertinent to mention that the average disposal in the Bombay High Court was drastically higher than the disposal rates in the Karnataka High Court. Appeals before the Bombay High Court took more than thrice the amount of time taken by the Karnataka High Court to get disposed. The average pendency of cases before the Bombay High Court was nearly thrice that of cases before the Karnataka High Court.

The low volume of litigation before the Bombay High Court as compared to the Karnataka High Court could indicate that persons whose land was being acquired were more satisfied with awards of Collectors and/or decisions of the district courts in Maharashtra than in Karnataka or that the prospect of their case being stuck in the High Court for a long period is discouraging people in Maharashtra from approaching the High Court. This low volume may also be related to the fact that the Bombay High Court in a majority of cases does not enhance compensation, thus reducing the incentive to litigate.

Among the High Court cases, land acquisitions for irrigation projects seem to be the most litigated. Although the discourse on the subject focusses on acquisition for industries and SEZs, when we hold conventional wisdom to empirical scrutiny, irrigation projects seem to be loci of the greatest number of disputes. This finding aligns with the findings of the study by the Rights and Resources Institute which found that the largest land conflict was over land acquisitions for coal mining and irrigation.⁶⁷ However, at the level of the Supreme Court, the study by Centre for Policy Research found that irrigation and hydroelectric projects only comprised 2.7% of the volume of litigation.⁶⁸ None of the cases in the High Court of Karnataka in the period of study deal with the acquisition of land for industries. This could be because acquisition under the KIADB Act requires the consent of the persons whose land is being acquired.

Between 2008 and 2018, nearly 90% of cases before the High Courts of these two states were under the 1894 Act. This indicates that acquisitions that commenced under the 1894 Act are still being challenged before the High Courts. Although the 2013 Act has been in force for more than 6 years now, it may be too early for cases under this Act to reach the High Court.

In terms of the nature of the litigation in both High Courts, more than half of the cases were related to compensation. It would be fair to conclude that inadequate compensation under the 1894 Act compelled landowners to litigate. One of the main reasons for creating a new legal regime for land acquisition was inadequate compensation and insufficient coverage of persons dependant on the land. Landowners were dissatisfied with the quantum of compensation due to a culture of payment of less than the market value for compensation, exacerbated by inaccurate land records and the unavailability of true market values due to rampant undervaluation of sale deeds.⁶⁹ This dissatisfaction was enough for them to litigate on the issue for years. The 2013 Act increased the compensation to twice the market value in rural areas and four times the market in urban areas. Moreover, the 2013 Act also provides for rehabilitation and resettlement awards. These awards include the provision of a constructed house in place of the house lost through the acquisition of land. It also provides in certain cases for the grant of land in place of the land acquired. Although the low volume of cases before the high courts under the 2013 Act could indicate that compensation is sufficient under the 2013 Act it is too early to conclude if the sufficiency of compensation under the 2013 Act has reduced the propensity to litigate.

The volume of compensation-related litigation is also a factor of whether courts are routinely increasing compensation, thus incentivising litigation. The Bombay High Court enhanced compensation in over 46% of the compensation-related cases before it, while the Karnataka High Court allowed enhancements in 62.79% of the compensation-related cases before it. This clearly reinforced the notion of the land losers that approaching courts over their case would provide a better outcome than merely accepting the award of the Collector. A further incentive to refer awards to the district courts is because courts have to award an

⁶⁷ Supra note 12

⁶⁸ Supra note 10.

⁶⁹ Supra note 13.

amount equal to 12% of the market value to the litigant for the period from the date of notification to the date of taking possession of the land. The 2013 Act has a similar provision, thus maintaining the incentive to litigate.

These data from the high courts also indicate that the initial computations of compensation by the Collector were inadequate in several cases. Even if we assume that the Collector erred in their computation of the compensation amount, the fact that the High Courts are enhancing compensation in a large number of cases points to the fact that there were errors in computation even at the level of the district courts. The solution to the issue of erroneous computations lies not in the text of the legislation but in executive action.⁷⁰ Such computations do not involve weighty questions of law and hence should not be taking up so much judicial time. Officials tasked with land acquisition should compute compensation strictly according to the guidelines in the 2013 Act and in the event of a dispute, steps should be taken to resolve them at the level of the Collector itself. A nodal officer to manage litigation such as the one provided in the Karnataka Litigation Policy would help in settling such claims so that litigation is avoided.

Procedural irregularities were also a common reason for these cases reaching the High Court. The 1894 Act provided unbridled executive discretion to the Collector to define public purpose, claim urgency and determine compensation amounts. Under the 2013 Act, the meaning of public purpose has been clarified and leaves little scope for discretion. The method of calculating compensation is also clearly laid out in the 2013 Act. Urgency has been limited to natural disasters and national defence. Disputes regarding these procedural irregularities should come down under the 2013 Act given the curtailment of executive discretion under this Act.

The procedure for land acquisition under the 2013 Act is significantly different from that under the 1894 Act and mandates that a social impact assessment be carried out, certain consent requirements (of all interested parties in the land, and not merely the landowners) be met and rehabilitation and resettlement are provided to affected parties. While our High Court dataset does not include many cases under the 2013 Act, the elaborate and increased procedural requirements under the 2013 Act could lead to future disputes in the absence of proper enforcement. Detailed guidelines must be provided to the officials who are tasked with implementing these requirements. Conversations with officials and practising lawyers in the two states reveal that both are still unfamiliar with procedural requirements under the 2013 Act. This uncertainty in implementation could lead to a spike in litigation. The volume of litigation under various state statutes will depend on whether the Supreme Court finds that such statutes are repugnant to the 2013 Act or not.

Although the 2013 Act has made the land acquisition process more transparent, has reduced some amount of executive discretion and has addressed the shortcomings of the 1894 Act, it is too early to pronounce any findings on the effect of the Act on litigation rates. What is obvious from the analysis in this study is that the root causes of the litigation lie in executive action, and unless clear guidelines are prescribed on how executive discretion will

⁷⁰ Id.

be exercised, the volume of litigation will not come down. In the absence of administrative and executive reform, justice will not be delivered to those losing their land.

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11. ANNEXURE

1. Under the Land Acquisition Act, 1894

Publication of preliminary notification in the Official Gazette and 2 daily newspapers (**Section 4**)



Hearing of objections:

Objection to the notification to be made by any interested persons within 30 days from the date of publication of notification.

Collector to make a report with his recommendations on the objections for the final decision of the Government (**Section 5A**)



Declaration of intended acquisition to be made by the Government within 1 year from the date of publication of the notification (**Section 6**)



Collector to cause public notice of intended acquisition and direct that all claims to compensation of persons interested in the land are made to him (**Section 9**)

Enquiry and Award by the Collector:

The Collector to enquire into the objections, if any, made by interested persons and subsequently make an award of:

- true area of the land;
- the compensation for the land;
- the apportionment of the compensation amongst the interested persons.

Award to be made within a period of 2 years from the date of publication of the declaration (**Section 11 and 11A**)



Pursuant to the award made by the Collector, he may take possession of the land, which will vest absolutely with the Government, free from encumbrances (**Section 16**)

However, in cases of 'urgency', the Collector has the power to take possession of the land, pursuant to the publication of the notice and prior to the award being made (**Section 17**)



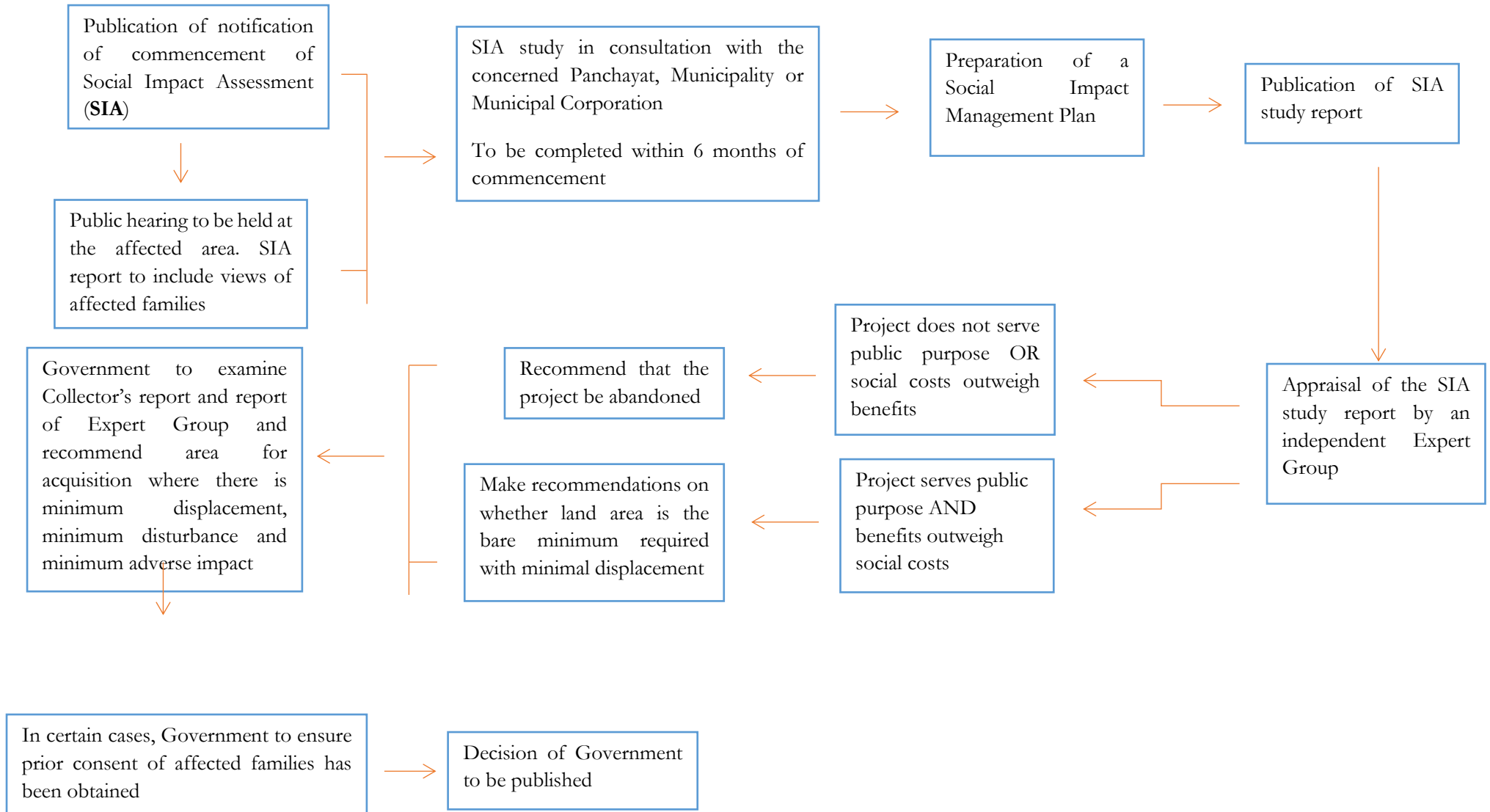
Reference to Court:

Where any interested person has not accepted the award, they have the right to require that the matter be referred by the Collector for the determination of the Court (**Section 18**)

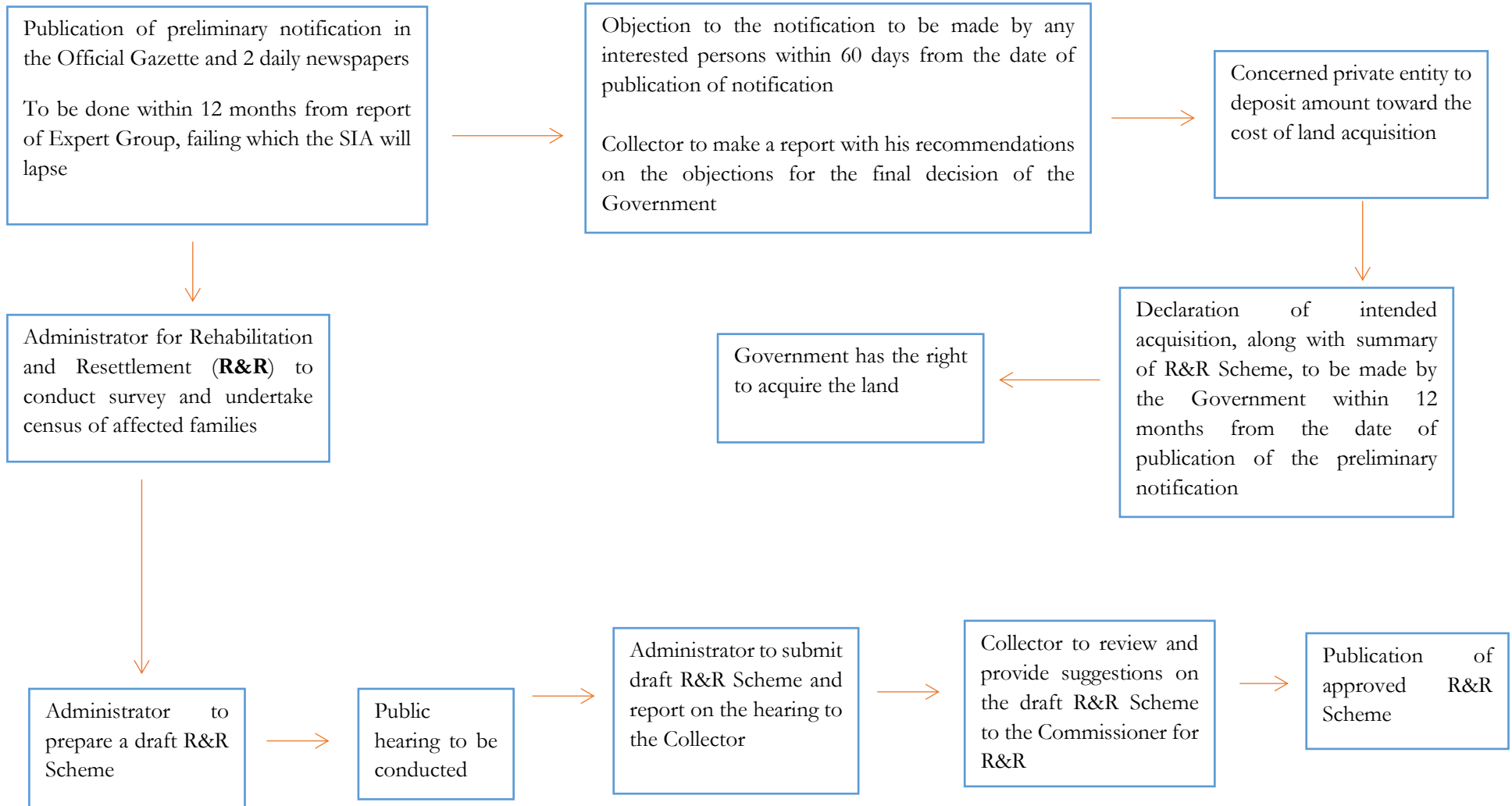
The Court is required to award an amount calculated at the rate of 12% p.a. on such market value for the period from the date of publication of notice till the earlier of the date of award of the Collector or date of actual possession of the land. Further, in addition to the market value of the land, the Court is required to award a sum of 30% on such market value, in consideration of the 'compulsory nature of the acquisition' (**Section 23**)

2. Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Rehabilitation Act, 2013

I. Mandatory Social Impact Assessment



II. Notification and Acquisition



III. Award and Possession

