

LAND ACQUISITION IN PAKISTAN: A COLONIAL LEGACY AND THE NEED FOR REFORM

A state's treatment of those it dispossesses of their land for public interest projects offers useful insight into its relationship with its citizens. In Pakistani parlance, the "qurbani" (sacrifice) demanded of citizens for the state's or public's benefit is a reflection of the state's priorities; is the state an extractive institution that considers its citizens to be dispensable objects, or does it prioritize their welfare and well-being as its *raison d'être*?

Article 24 of the Constitution of Pakistan guarantees the protection of private property but includes exceptions where the state can exercise eminent domain. These include preventing danger to life, property, or public health; acquiring unfairly obtained property; acquisition, administration and disposal of enemy or evacuee property; temporary acquisition for property in public interest or owner's benefit; acquisition for essential services like education, healthcare, housing, infrastructure; and social security, such as providing maintenance to the unemployed, sick, infirm or elderly. Land acquired for land reforms is also constitutionally protected. While seemingly reasonable, these exceptions emphasize the state's right to acquire land over individual ownership rights, offering little constitutional protection for landowners facing dispossession.

The process of land acquisition in Pakistan continues to be governed by the colonial-era Land Acquisition Act of 1894. This law empowers the state to acquire private land for public purposes with inadequate consideration for landowners' rights. While amendments, such as the Land Acquisition (West Pakistan Amendment) Ordinance,



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1969, aimed to provide fairer compensation, including interest for delayed payments and additional compensation of 15% above market value and a further 10% where the land is acquired by a company, these fall short of international best practices. Furthermore, the ordinance expanded the state's right to acquire land urgently, further strengthening its coercive power.

The Act's protective mechanisms, such as allowing landowners to raise objections, are often ineffective. The collector's report, which forms the basis for the government's declaration of acquisition, routinely dismisses these objections. There is no requirement for a social impact assessment or resettlement and rehabilitation plan, which are essential, in particular where the land acquisition affects socially marginalized people. While the Act mandates the payment of market value and considers potential damages and loss of livelihood, in practice, landowners rarely receive more than the market value along with some extra statutory compensation. Although the Act allows recourse to courts, they can only award compensation as per the statute, which is inadequate for resettlement and rehabilitation.

Public sector institutions regularly utilize the Act to acquire land for various projects, including infrastructure, schools, and hospitals. Multilateral lenders like the World Bank and Asian Development Bank, recognizing the need to balance public purpose with individual rights, require borrowers to prepare resettlement and rehabilitation plans in accordance with their guidelines and frameworks. However, such practices are deemed unnecessary in projects funded from the public sector development program (PSDP) or from the organization's own resources, with officials often opting to

The Tarbela dam project, a cornerstone of Pakistan's power sector which provides not only clean hydro-electric power to the national grid, but also subsidizes the country's expensive thermal electricity generation mix, exemplifies this issue. Despite the immense "qurbani" made by those displaced by the dam, they have yet to receive full compensation for their land even after 50 years.

In contrast, India replaced its own colonial era Land Acquisition Act of 1894 with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013. Under the new Indian law, consent of the affected landowners is mandatory for public private partnerships (70% landowners' consent) and for private projects (80% landowners' consent). In addition, the new law entitles landowners to higher compensation, which can be up to two times the market value in rural areas. In addition, this law provides for payment of a solatium equal to the market value as further compensation (i.e. in addition to the market value) together with the value of all assets attached to the land (meaning landowners can receive sums multiple times the market value of the land). In addition, officials are required to conduct a social impact assessment to study the potential consequences of land acquisition and prepare a rehabilitation and resettlement plan, including housing, employment, and infrastructure development. The Indian law was passed during Manmohan Singh's term as Prime Minister and sought, in the context of land acquisition, to redefine the state's relationship with its citizens from an extractive to a benevolent one.

In many ways, the Pakistani state continues the extractive colonial legacy. This problem pervades the entire state structure.

pay the bare minimum to avoid scrutiny from anti-corruption bodies.

Corruption of state functionaries is an obvious example. The military, on the other hand, has institutionalized its extractive role in the economy by not only taking the lion's share of the budget (after debt servicing), but the award of agricultural land, commercial and residential plots and houses to retired servicemen is facilitated by land acquisitions made using this outdated legal framework. The extractive nature of the state is also visible in the relationship the state has with business elites in the private sector, whether it be in the form of subsidies for the export-oriented industries, guaranteed returns for IPPs or subsidized electricity and gas for industries, which has allowed each of them to reap excessive profits to the detriment of the general public.

The British colonial administration enacted laws focused on extracting resources at the expense of its colonial subjects. Pakistan needs to redefine this relationship by prioritizing its citizens' welfare and becoming a provider of public services and an enabler of its people.

“Say not what the country has done for you, but what you have done for your country” is a common patriotic exhortation intended to remind people that they must happily forgo their individual rights for the sake of the religiously inspired state and its holy cows. In reality, a state is simply a set of relationships that bind its inhabitants to the state's institutions; a state has no intrinsic moral value nor any god granted right to command the loyalty of its citizens. A state's legitimacy rests on the mutually reciprocating rights and responsibilities it shares with its citizens, which are expressed in its legal framework and institutional structures. An extractive approach undermines the state's legitimacy and its ability to command the loyalty of its citizens.

To redefine its relationship with its citizens, the Pakistani state needs to move away from this colonial legacy. Rewriting the Land Acquisition Act, 1894, in line with international best practices and the guidelines applied by multilateral lenders, would be an important step in this direction.