JURNAL e-INVESTA
Jurnal Rumpun Ilmu Ekonomi dan Bisnis Islam
Vol. , No. (2023), page
p-ISSN: e-ISSN:
http://einvesta.uinkhas.ac.id

Research Paper

An Overview of the Land Acquisition Act, Policy of Nepal

Minesh Kumar Ghimire [a], *Sanju Kumar Singh* [b]
[a] *Patan Multiple Campus, Tribhuvan University, Kathmandu, Nepal*
[b] *Department of Management, Faculty of Economics and Business, Universitas Airlangga*
Corresponding email: singhsanju@feb.unair.ac.id

ARTICLE INFO

Keywords: Land acquisition, compensation, displacement, project affected person

Article history:
Received: November 4, 2024
Revised: November 10, 2024
Accepted: November 11, 2024
Available online: November 13, 2024

To cite in APA style:

ABSTRACT

This paper analyzes Nepal's current act and land acquisition and compensation policies. Land acquisition and compensation are the main controversial issues protests occur when the property is taken during development projects; these protests are frequently caused by inadequate compensation, increased project expenses, and the forced displacement of citizens, who may become homeless. The impacts of land acquisition are highlighted in the research, but laws and policies require further attention. So, the main research questions of this article are what kind of administrative structures are there in Nepal's policies and laws related to land acquisition, what are the processes and how is compensation determined etc.? It reviews the legal structures and policies for property acquisition and the process of land acquisitions. It has adopted a descriptive research design, analyzing, and discussing the weaknesses of acts and policies. It concludes that the compensation is considered inadequate, lacks transparency in the land acquisition process, and lacks any resettlement and environmental impact provisions. (;).

This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

Introduction

People used to provide land out of personal desire and wish. The state acquired land for the power plant in B. S. 1968 for the first time. In 1979, 38 Ropani land was acquired for the Sundarijal hydroelectric project. The acquisition of immovable property started in 2013 after making a law. Later on, Land Acquisition Act, 2018, Compensation Act, 2018, and Land Acquisition Rules, 2026 were issued. Further, the Land Acquisition Act, 2034 was enacted. It is seen that land acquisition, compensation, and rehabilitation/ restoration-related legal provisions need to be made timely, transparently, and effectively when infrastructure and other development projects are growing rapidly ((National Planning Commission, B.S. 2071).

Comparatively, literature has been found on the effects of land acquisition and compensation. Few researchers focused on the study and research into the laws, rules, and policies related to land acquisition and compensation. A review of research should be conducted regarding the land acquisition laws and policies. All the procedures and functions of land acquisition and compensation are done based on law and policy, the problems related to land acquisition and compensation can be solved only if the strengths and weaknesses of act, law, and policies are presented.

Kharel (2021) concludes that the Land Acquisition Act of Nepal in 2034 B.S. is insufficient in its provisions. This results in delayed implementation of development projects. Due to low compensation amounts and valuation methodologies, landowners themselves hold back from giving out their lands for the purpose. It leads to public resistance and implementation difficulties. Kharel explores the weaknesses of this Act, which are: neglecting the public interest, not being able to ensure the participation of local people, lack of coordination between the administration and the public, not addressing the grievances of the local people, not keeping the record of the land in a scientific way, only providing partial compensation, etc. He focuses less on the administrative mechanism, land acquisition process, compensation determination, and other related policies and laws.

Ansari & Ghimire (2024) argue that the land acquisition process for road projects in Nepal is characterized by a lack of transparency and effective compensation with public

participation. Compensation has been a difficult experience for impacted landowners due to complex legal procedures, and limited public access to information, but the authors ignore the Land Acquisition Act and policies of Nepal.

Development and construction projects in Nepal are affected due to land acquisition. As an obstacle to development, the compensation dispute for property acquisition should be faced. Stakeholders have also opposed the development. Locals protested due to the lack of proper compensation for the loss of their property. Koirala et al. (2017) argue that the delays in development projects to conflicts over land acquisition and compensation, emphasizing social challenges for displaced communities. There are examples of past projects where the cost of the project has gone up a lot due to compensation. Similarly, due to some development projects, it is also seen that the affected people have become homeless without a home. Baboo (1991) highlights that many displaced people mismanaged their compensation due to inexperience, with most funds being spent on unproductive expenses, leaving only a few able to invest wisely. In this context, there is also an allegation that when a development project in Nepal acquires property, its valuation depends on arbitrary. Determining property compensation is a sensitive and complex task. Valuing property is a very important task. The legal structures and policy aspects of Nepal determine this work. Legal and policy aspects determine the amount and nature of compensation. In this context, this paper has reviewed the legal arrangements and policy aspects for the acquisition of property during development and construction work for the public interest in Nepal. In this way, the reference for legal review has been reviewed constitutional provisions, laws, and policies.

Thus, the main research questions are: What type of administrative structures does Nepal envision in its policies and laws to deal with land acquisition? What is the sequential process toward meeting requirements related to land acquisition? And how does one determine compensation? The specific objectives are:

- To explain the administrative mechanism as provided in the policies laws and regulations made for the acquisition of property

- -To describe the land acquisition process as mentioned in the policies and laws and regulations made for property acquisition
- To analyze the determination of compensation for land acquisition as provided in the policy and law.

Research Method

This paper has adopted a descriptive research design to summarize and interpret the land acquisition acts and policies. The literature has been selected from published documents by the Nepal government, which have been selected as thematics-based. The Constitution of Nepal 2072, Immovable Property Requisition, Act 2013, Land Acquisition Act, 2034, Policy on Land Acquisition, Rehabilitation and Relocation for Infrastructure Development Projects, 2071, etc. have been reviewed. The descriptive and analytical framework has gained significance primarily due to the interpretation and analysis of the property acquisition-related legal framework included in Nepal's laws and policies. It is based on secondary data. The nature of the data is qualitative. In particular, the Land Acquisition Act has been thoroughly discussed. Its weaknesses are described. Data have been interpreted by synthesizing findings, and critically evaluating contextualizing results. Its contexts and dimensions have been distinguished and have been critically interpreted.

The Constitution of Nepal

The Constitution of Nepal 2072, Article 25 considers property rights as fundamental rights. It is stated that the state cannot acquire or acquire a person's property except for public interest. When the state receives a citizen's property for the public interest, compensation must be paid according to the law. It seems that it is arranged that the property can be acquired only by paying compensation. It has been provided that the state has acquired the use of a person's property for public interest so that it will not be hindered from using such property for any other public interest instead of such public interest. The Nepalese Constitution ensures that every citizen in Nepal has the right to own property. Citizens have the entitlement to earn, use, and sell their property, and the state cannot take control of individuals' property unless it is for public welfare. In such cases, the state is required to provide compensation for any loss of

property as mentioned in the legislation. However, the state will be authorized to implement land reforms, management, and regulations as per the law to improve land productivity, modernize agriculture, protect the environment, and develop planned housing and urban areas. Similarly, Article 37 provides for the right to housing. It is mentioned that every citizen has the right to suitable housing. There is a provision that no citizen shall be removed or trespassed from his/her residence except according to law. Analyzing the constitutional system, the state can acquire the property of citizens only under certain conditions. The state can acquire private property only for public works that are in the public interest. When the private property of a citizen is acquired by the state, the owner of the property must be compensated. The state cannot take the private property of citizens without providing compensation. Therefore, the right to private property is constitutionally guaranteed, but it is a conditional property right.

Immovable Property Recquisition Act 2013 (1956 AD)

Under the Immovable Property Acquisition Act 2013 (1956 AD), the acquisition of land and structures can be made for public benefit for which compensation needs to be provided. Compensation is provided either by agreement or, in the absence of an agreement, by an arbitrator appointed by the government. Immovable Property Acquisition Act 2013(1956 AD) empowers the government to acquire an immovable property that primarily comprises land and a permanent structure attached to the land, only for public benefit. The provision of appointment of a mediator to fix the rate of compensation is made available under this Act. According to this act, Section 7 is entitled to compensation, in case any property is requisitioned under this act, the government of Nepal shall give compensation, and the

The valuation of such compensation shall be calculated as per the principle prescribed as the following methods:

(a) In case the amount of compensation is fixed in an agreement if any, such agreement prevails.

(b) In the absence of agreement, the Government of Nepal shall appoint any judge either sitting or retired as an arbitrator and the compensation shall be given as per the award of the arbitrator.

Land Acquisition Act, 2034 (1977)

The administrative mechanism for the acquisition of property

According to the Land Acquisition Act 2034, land acquisition for development projects is done. As Section 3 of the Act mentions, the State has the right to acquire land for public works. The state can acquire any amount of land in any place by giving compensation. Section 5 of the Act has a provision regarding the authority to take the decision and initial action regarding the acquisition of land. If the office for which the land is to be acquired does not have at least a gazetted third-class employee or a gazetted employee, there is a provision that the head of the office can conduct the preliminary work for a project.

In section 6, a provision is made regarding preliminary action related to land acquisition. The officer who conducts the investigation shall post one copy of the notice for the information of the concerned persons. If there is a place where there is a lot of movement of the general public around the land concerned, the relevant village development committee or municipal office, house and any compound discussed by it, the notice shall be pasted on the wall of such house or compound. In this way, three days after the notification is issued, the officer conducting the investigation can take the employee or worker and enter the related land or house compound. Taking land measurement maps or surveys, collecting samples of soil, stone etc. to determine whether the land is suitable for acquisition, digging trenches or Boring, to separate as much land as is considered suitable for acquisition, to build a fort, or to target in any other way. Suppose any crop or tree planted on such land has to be cut or uprooted or any fence or wall has to be removed or demolished. In that case, any person may do so after obtaining the order of the officer conducting preliminary action and in doing so, all concerned. It should be done in a person's presence. This section provides a clear framework for preliminary actions related to land acquisition. The notice posting ensures transparency and allows affected individuals to be informed. The provision for entry onto the land facilitates

necessary investigations and assessments. Permissible activities are clearly defined, and the requirement for permission and the presence of concerned individuals safeguard the interests of landowners. Notice Posting: The officer conducting the investigation must post a copy of the notice in a public place and on the wall of a nearby house or compound frequently visited by the public. The preliminary actions of land acquisition are the officer can enter the land with employees or workers to conduct surveys, collect samples, and build temporary structures.

The Process of Land Acquisitions

According to section 6, the officer has to post a notice for stakeholders in public places including government offices and places near the relevant land. Three days after posting the notice, the officer can appoint staff and workers to survey the land, collect samples, erect boundaries and install necessary equipment. If it is necessary to remove crops or trees, this can be done with the approval of the officer and preferably in the presence of the affected person.

As mentioned in section 7, compensation will be given if crops, trees, and walls are destroyed or soil is removed. The officer will assess the compensation and award the compensation to the affected person. If the person is not satisfied with the compensation amount, the person can file a complaint with the Chief District Officer, whose decision will be final.

Section 8 requires the officer to prepare and submit a preliminary action report. The preliminary work should be completed within fifteen days, and the report should be submitted to the local office immediately after deciding whether the land is suitable for acquisition. The report should contain full details of the compensation amount and particulars of losses.

In section 9, a provision has been made regarding notification of land acquisition. After receiving the preliminary action report, the local authority will determine the purpose of land acquisition, whether it is land only or existing structures such as houses, walls, etc. A notice will be issued with the land details including the address, and plot number. In the case of unsurvey land, the boundary, area, and other necessary details should be mentioned to identify the information.

The notice has to be posted in certain offices or places. Those locations are the project Local Office, District Government Office, Appropriate Village Development Committee or

Municipal Office, Land Registry Office, Roads around the concerned land, and any other place considered appropriate by the local authority. Despite the notification, the local authority may personally send the notification to the affected person. The land title documents are suspended by the Land Registry after the notice is published.

Section 10 mentions the things to be included in the notification. The concerned person should submit a compensation claim with proof of ownership of the land within fifteen days. Time limits for felling of trees, harvesting of crops, and demolishing houses or walls located therein, if he/she is permitted to do so.

According to Section 11, if the landowner is not satisfied with the acquisition of his/her land, the landowner can file a complaint with the Ministry of Home Affairs, Government of Nepal within 7 days of the notification according to Section 9. Tenants can also file a complaint if a brick house is built on the land with the landlord's consent. The Ministry of Home Affairs consults with the hearing complaints to exercise district court powers for local investigations, summoning witnesses, recording statements, or procuring evidence.

According to Section 12, after addressing any complaint, the local authority seizes the land and hands it over to the Acquisition Office. If no complaint is received then the land can be used. The officer should inform the Nepal government after taking possession. If both the house and the land are to be acquired from the landlord, the possession is withheld until 50% of the fixed compensation is paid to the landlord, or if the compensation is undetermined, the possession is not taken.

As per Section 13, the compensation shall be paid in cash. There is a provision to form a compensation determination committee. The committee will consist of the chief district officer, head of land administrator or land office, project chief (for projects), or officials appointed by the chief district officer and representatives of the district development committee. The committee will determine the compensation amount.

According to section 14, If the person who has acquired the land completely wants to take the land as compensation instead of the land, the Government of Nepal can distribute wasteland, government-owned land, or other available land.

The determination of compensation for land acquisition

In section 16, the Compensation Determination Committee follows the guidelines issued by the Government of Nepal while determining compensation for land acquisition for government agencies and wholly government-owned institutions. Similarly, compensation for land acquisition will be determined based on the loss suffered by the concerned person due to relocation or loss of business. The Compensation Determination Committee determines the compensation for acquired land for organizations and government-owned organizations accept the local bodies. While determining the compensation for the land, the committee should consider the value of the land at the time of publication of the land acquisition notice, the value of the crops, houses, walls, sheds, etc. on the land, and the loss incurred by the person during the transfer of residence or business.

Under section 17, if the land acquired for government entities exceeds the legal landholding limit, the amount payable as compensation shall not exceed that payable under the Lands Act, 1964, notwithstanding anything to the contrary.

According to section 18, the local officer prepares a compensation list of entitled people according to the application received within the time frame and informs accordingly the concerned. If any person is not satisfied with the list of compensation, then a complaint can be lodged before the Ministry of Home Affairs, Government of Nepal, within fifteen days from the date of notification. Those complaints which are not related to disputed ownership and possession are settled within fifteen days. In a case where there is any dispute as to the ownership or possession, compensation is withheld pending such a decision by the court. Compensation would be collected by the claimant within two years from the date of the final court decision, failing which it would be paid to the Consolidated Fund.

Section 19 states that following a decision on the amount of compensation by the Compensation Fixation Committee, the Chief District Officer informs the Government of Nepal about it.

According to Section 20, if the land being acquired under this Act is a tenancy holding, the amount of compensation shall be received by the tenant if the amount so received is fifty percent of the compensation amount. If a house built by the tenant with the landowner's consent is acquired, he shall receive the entire amount of compensation for the house.

Under section 21, all land due or any tax payable by the individual at the time of payment shall be deducted from the amount of compensation.

As per Section 22, after the land has been taken possession of by the local officer as per Section 12, it is vested in the Government of Nepal or the agency on whose behalf the land was acquired

According to section 23, the local officer shall, within fifteen days from the date of obtaining an ownership certificate for the Government of Nepal or an institution, send a request to the office where the records relating to the land are kept, mentioning full particulars thereof, to record new ownership. The office where the record of the land is kept shall make necessary entry of the new ownership and promptly inform the local officer and the previous owner.

Accordingly, adjustment of records and transfer of land ownership will be considered to have taken place with effect from the date accrual occurred even though it would have occurred on some other date. Records relating to land acquired under the old laws are assumed to have been adjusted upon commencement of the new Act if that has not already been done.

Under section 25, the Government could give the order for the local officer to initiate the land acquisition procedure in special circumstances where it is urgently required for the Government of Nepal to acquire the land for various purposes such as maintaining transport facilities, ensuring safety, and protecting public property on emergencies.

When land acquisition is urgently needed for any specific purposes the Government of Nepal serves a notice to the concerned persons by the local officer; after issuing the notice, he occupies the land, assesses the compensation with the help of a committee, receives only complaints about compensation and sends a dispute to the Ministry of Home Affairs for disposal. The ownership is shifted to the government once the land is occupied. Compensation for crops, trees, houses, and walls on the land is also allowed. Upon acquisition, the local officer makes the changes that are required in the entries in the land revenue records.

Section 26 describes the consent of the landowner. This Act will come into operation even when the government has already used any land for any public purpose without initiating the acquisition process. In this regard, even the compensation to a land owner will be claimable under this Act, provided the land owner consents to this process. If the determined

compensation is paid to him after the consent, the land shall be considered to have been acquired under this Act.

Section 27 allows the acquisition of land by agreement. The government may acquire any land for any purpose by agreement with the landowner.

Section 28 allows land to be acquired by the Government for diplomatic missions, as well as international agencies under this Act, and compensation for such lands shall be determined by a particular provision in the Act.

According to section, 29, If the landowner requests, the government will acquire all crops, trees, walls, buildings, etc., located on the land being acquired.

Section 30 describes that the government may at any stage of acquisition decide against acquiring land. To this end, a notice to that effect will be mounted by way of notification to the concerned persons. Any losses to be incurred as a result of preliminary acts executed before arriving at such a decision will be determined.

In section 31, land acquired may be leased by the government or any institution in the act of cultivating such land until there is a solution for its intended purpose; but in so doing the cultivator shall hold no tenancy rights in such land.

Under section 32, any building or crop grown on the land acquired under this Act without written approval can be confiscated by the Nepali government or institution, and such structure or crops constructed/grown without permission may be so confiscated without compensation.

As per Section 33, land acquired for the Government of Nepal or an institution belonging to the government may be utilized for public purposes or activities referred to in Sub-section (1) of Section 4 if it is not needed for the same purpose

According to Section 34, the Act requires that land acquired for a particular purpose has to be returned to the expropriated land owner if not utilized by the Government of Nepal or a fully owned institution. The provisions are such that if it is not used for the agreed purpose, it shall have to be returned. The compensation paid for the land has to be refunded by the expropriated land owner. Once the form is returned, the local officer shall instruct the proper office to issue the record in the name of the landowner.

According to 37, if a person does not receive compensation within the specified time or refuses it, a notice will be issued setting a final three-month deadline. Failure to receive compensation by then will result in losing entitlement to it.

Section 39 prescribes penalties for a host of offenses that relate to hindering actions under Section 6. The offenses are opposed, obstructed, assaulted, using force, destroying equipment, erasing markers, or in any manner creating a disturbance. Penalties to be imposed are a fine up to Rs. 1,000, imprisonment up to one month, or both. Specific penalties for acts in clamping notices or occupying land by the local officer under Sub-Section (3) of Section 25 are highlighted.

According to section 40, original jurisdiction under this Act is vested in the Chief District Officer, Nepal. Appeals against their decisions lie to the Court of Appeal within five days.

The Land Acquisition Act, 2034 has been amended in the Nepal Gazette dated 16 Baisakh, 2081, published by the Government of Nepal. Sub-section 3 has been added after sub-section (2) of section 16. It is mentioned that while determining the compensation according to this subsection, the compensation amount shall not be more than three times the minimum assessment determined for registration.

Policy on Land Acquisition, Rehabilitation and Relocation for Infrastructure Development Projects, 2071 (2015)

This policy is considered very important in terms of land acquisition for infrastructure projects. It seeks to correct the deficiencies in the Land Acquisition Act, of 1977. There is no provision in the Act for economic and social impact assessment. However, this policy mandates an Economic and Social Impact Assessment (SIA) for all development projects. This impact assessment plays an effective role in properly assessing and mitigating the potential consequences of land acquisition on affected communities. This policy has adopted the fact that the implementation of development projects should not displace local people, families, or communities as much as possible. If that is not possible, then a situation of minimal displacement should be created. In case of displacement due to the project, it has adopted a policy to minimize the adverse effects of the project on the affected person, family, or

community, and provide compensation and opportunities for economic and social benefits to the affected person, family, or community. It has been mentioned that land acquisition, compensation, rehabilitation and relocation, and assessment work will be made simple, easy, transparent, and fair to create an environment to complete the project within the indicated time.

This policy recognizes that the implementation of projects will displace local households, the displaced households should be taken into consideration. This policy categorizes projects based on displacement risk. A project involving the relocation of a large number of households is considered high-risk. High-risk projects require the implementation of large-scale resettlement schemes and livelihood restoration programs for displaced communities. The policy classifies projects into three categories based on displacement risk: high-risk, medium-risk, and low-risk. A project that displaces 50 or more households in the Himalayan region, 75 or more households in the mountainous region, and 100 or more households in the Terai region is called a high-risk project. Similarly, a project that displaces less than 50 households in the Himalayan region, less than 75 households in the mountainous region, and less than 100 households in the Terai region is called a medium-risk project. A low-risk project refers to a project that does not displace households but shrinks productive assets by up to 10 percent.

Local Government Operation Act 2074

It is mentioned in the Act that the local level is responsible for coordinating the implementation of federal and province-level projects and projects. The local level also refers to rural municipality or municipality and district assembly. Similarly, the local level only has the role of coordination and facilitation in the acquisition, compensation, determination, and distribution of land for public purposes.

Discussion and Results

There are two types of land ownership in the world. It seems that the sole ownership of the state and the ownership of individuals is in the land. The land tenure system traditionally prevailing in Nepal rests on the principle of state ownership. This basic relationship is, however, often obscured in practice by the use of land by individuals and intermediaries who were managing the land between the state and the cultivators. Before 1950, the Crown was

taken as the ultimate owner of all land at the apex of land tenure. The land tenure system has undergone much change since 1951. Many of the customary land tenures were abolished. There are three types of land tenure system which are private land with absolute ownership, public and government land, and trust land or *Guthi* land (Acharya, 2008). In Nepal, state ownership has been established as a fundamental right of individuals through constitutional arrangements in the Constitution of Nepal, 1915. Although the land is private property, the state can take it from the individual when it is needed.

Most of the men in Nepal are employed abroad. Men are out of the house. They have left for seasonal migration for employment. There are more women in rural areas. The literacy rate in rural areas is low. In such a social environment, it cannot be said that information about land acquisition can be communicated by this Act. Being a multilingual society, information written in Nepali language does not mean that all language groups can easily understand the stakeholders. But the Act seems to ignore these social backgrounds. It seems wrong that everyone understands the information about land acquisition and compensation. It cannot be ensured based on this Act that all stakeholders can easily get information on time.

In this act, the scope of acquisition of property is limited to the area of state authority only. It seems that only the state has the right to acquire property. The Land Acquisition Act for the private sector is silent. Nepal has already adopted the liberalization policy. Therefore, development activities are being conducted with the investment of the private sector. Thus, it does not address the need for private sector acquisition of assets. For example, there seems to be no provision regarding the acquisition of land required to construct industrial factories. This can hinder the development of the private sector. It seems that there is no provision for a public hearing in this Act.

It seems necessary to hold a public hearing and discuss property acquisition. This will enable the participation of project-affected families. Due to public participation, the acquisition of property can be facilitated. It is easy to win the heart of the affected family. But this act seems to be an information system imposed by force from above.

This Act covers only certain stakeholders during the acquisition of property. Stakeholders who have no land registration certificate due to the state are not defined as

affected persons. Therefore, this Act focuses only on protecting the interest of the landlord. Covers the tenants' rights to a limited extent, but ignores the rights of squatters, informal tenants, and *Ailain* landholders. *Ailani Jagga* (unregistered land) is a type of land that is outside the boundary of the forest and the land is exempted from the survey measurement without the landowner's proof. Since ancestral times, a person or a family has been living and enjoying rights on such land. It can be said that this type of property acquisition Act has disadvantaged certain groups.

Ghimire et al (2017) conclude that the good governance principle is not well applied to and followed in land acquisition and compensation processes. the land, and should be followed to improve its situation in Nepal.

The Act lacks clarity on the compensation process. Based on this centralized system, a compensation determination committee is constituted. There is no possibility to include the views and wishes of the stakeholders. There is no clarity in the process of determining compensation. Especially in terms of assessment, standards, and dispute resolution mechanisms, the administrative and bureaucratic system remains in a state of flux. It has promoted a coercive system. People-oriented compensation determination process has been neglected as all the powers have been given to the administrative staff. This ambiguity can lead to disputes and delays in the payment of compensation to affected individuals. Project implementation tends to get delayed. The argument of Kharel (2021) supports mentioned problems This leads to complaints that the compensation committees do not represent the interests of the local stakeholders. Further, critics raise the fact that committees headed by officials such as the Chief District Officer, among others, do not represent landowners, and demands are made for its inclusion together with the local ward chairpersons, who can reflect the representation of community interests. Besides this, differences in the amount compensated and the cash nature of compensations cause dissatisfaction because one cannot reinvest in the land as compensation is used for other financial needs.

Lack of ability to reinvest the cash productively, be it in buying new land or property, the land owners find hardly suitable replacements. Cash compensation does not work out because Inability to find suitable replacement land or property, misuse of funds, spending for

non-productive purposes like education or gambling, and economic inequality, more conflicts arise over the amount of compensation and the processes for distribution.

The Act fails to sufficiently consider the environmental impacts associated with land acquisition. It is essential to incorporate measures for evaluating and mitigating these environmental effects to promote sustainable development practices.

Kharel (2021) argues that the Land Acquisition Act has caused several social problems, including public opposition and landowners' reluctance to accept compensation. These issues lead to delays in infrastructure projects such as roads, public buildings, and industrial expansions. Additionally, some regions face protests, disputes, and political interference, further complicating land acquisition.

FAO (2008) states that poorly managed compulsory land acquisition can render individuals homeless, and landless, and loss of livelihood and resources; this may engender injustice. Well-managed acquisitions can efficiently deliver community gains at a very limited impact on the individuals concerned, leaving them in no worse a position than that experienced before the acquisition.

Land acquisition can only be done by the state. The private sector also needs to acquire land for the construction of industrial factories. The Act seems to be silent on this aspect. The Land Acquisition Act covers landowners and registered tenants but does not consider squatters, informal tenants, other family members, or the landless community.

The Act makes provisions for land acquisition by the government for public purposes, in which the compensation of private landowners is normally realized in cash at market rates. However, again, it is not in conformation with World Bank's Environmental and Social Standards, since no Resettlement Plan is required, there are no consultations required with the affected persons, and no compensation for informal land users is paid. It further lacked provisions for replacement housing when homes or livelihoods were lost. To address these gaps, measures such as compensating titled and non-titled holders, consultation of the affected persons, and mechanisms for redress of grievances are proposed (MPIT et al, 2022).

Although there is a provision for allotment of other lands in exchange the quantity of land is not mentioned. Nothing has been mentioned about the proportion of land, the

productivity of land, facilities, and accessibility to land, natural disaster risk situations, etc. People become victims by giving land instead of land without paying attention to these aspects. Their social, cultural, historical, and ideals are connected with that place. The land received for compensation lacks those things, compensation cannot be given to

Cemea (2008) highlights that monetary compensation alone is often inadequate for displaced individuals, as it is frequently spent on immediate needs, leaving them without resources to replace lost income-generating assets.When analyzing the basis for determining the compensation that has been amended and added to this Act, it has been mentioned that the compensation amount should not be more than three times the minimum evaluation. In this too, since the amount of compensation is not fixed, it seems that the administration has the right to exercise discretion. One can get three times the minimum rate. Some may get double and some may get one of these aspects. Once the rate of government assessment is fixed for land, it is not re-assessed for a long time. Hence, three times the minimum valuation amount of land becomes much lower than the current market price. The potential for further development can make land values skyrocket. If these aspects are taken into account, the amount of compensation seems very low. Based on this law, may draw the argument that the state will be cheap to get the land from the people.

Fernandes & Paranjpye (1997) state that there has not been a single project where displaced The system of providing 50 percent of the total compensation amount as an advance to the affected person when acquiring a house is impractical. Because that amount of money cannot be used to manage their residence. The idea is to take away their houses and sheds and send them to live in open spaces. The situation of being homeless can be created. Otherwise, how can you manage the household with 50 percent of the money? This arrangement is surprising. This is not the case in other countries, housing is acquired only after the state conducts resettlement programs. The Act does not show much concern about the problems and related expenses due to displacement to another place. Access to resources is lost due to displacement. Nothing is mentioned about its compensation. Likewise, there is no provision in the Act for compensation for suffering extensive social and economic consequences. Jodha (1981) argues that compensation for land should have a greater emphasis on social and

emotional attachment rather than economic value but the act and policies ignore the social and emotional attachment.

Conclusion

The Land Acquisition Act of Nepal has several shortcomings that negatively impact stakeholders, particularly marginalized groups such as squatters and informal tenants. While the right to acquire land by the state remains, processes on compensation, public participation, and environmental considerations in the Act are not explicit and inclusive. Besides, the lack of provision for private-sector land acquisition constrains industrial development, while reliance on cash compensation results in discontent and social problems such as homelessness and landlessness. The process of compensation lacks transparency and does not involve stakeholders effectively; the valuation of land is too low, hence the delays and disputes arising in the process. Furthermore, no provisions are made for displacement, resettlement, or socio-economic consequences of loss of access to land and resources. The Act needs amendments in respect of proper compensation mechanisms, public consultations, and environmental safeguards for ensuring equity and sustainable development.

The Act should be amended to make it mandatory to evaluate the impact of the overall aspects such as socio-cultural economic etc. while acquiring land. It is necessary to amend the Act by adding the provision that no land can be acquired without a rehabilitation action plan. There should be made for the stakeholders to listen to the complaints easily. An initiative should be taken not only for the compensation of the land but also for the entire loss. When acquiring land, people should be motivated to give it, not by force. There is a need to free the land acquisition process from administrative complications and lengthy procedures. In the end, the state should formulate laws and policies to prevent any people from impoverishment due to development activities.

References

Acharya, B. R. (2008). Land tenure and land registration in Nepal. TS 7B- Administration of Land Tenure, Integrating Generations, FIG Working Week. Sweden.

Ansari, S. H, & Ghimire, S. (2024). Analysis of good governance in land acquisition and compensation for road development in Nepal. *Science, Technology & Public Policy,* 8(1):22-29. DOI 10.11648/j.stpp.20240801.14.

Baboo, B. (1991). State policies and people's response lessons from Hirakud Dam. *Economic and Political Weekly*, 26(41): 2373-79.

Cernea, M. M. (2008). Compensation and benefit sharing: Why resettlement policies and practices must be reformed? *Water Science and Engineering*, 1 (1): 89–120.

FAO (2008). Compulsory land acquisition and compensation. FAO Land Tenure Studies No. 10, Rome Conference, FIG, Washington DC.

Femandes, W. & Paranjpye, V. (1997). Rehabilitation policy and law in India: A right to livelihood. New Delhi: Indian Social Institute.

Ghimire, S., Tuladhar, A. & Sharma, S. R. (2017). Governance in land acquisition and compensation for infrastructure development. *American Journal of Civil Engineering*, (3): 169-178.

Jodha, N. S. (1981). Role of credit in farmer's adjustment to against risk in arid and semi-arid tropical areas of India. *Economic and Political Weekly 16*:1696-1709.

Kharel, D. (2021). Implementation challenges of the land acquisition act in Nepal. *Journal of National Development*, (34) 2: 135-147.

Koirala, S., Hill, D., & Morgan, R. (2017). Impacts of the delay in construction of a large scale hydropower project on potential displaces. *Impact Assessment and Project Appraisal*, 35(1), 106–116. DOI 10.1080/14615517.2016.1271540

MPIT, MoICS & MoFE (2022) Accelerating transport and trade connectivity in Eastern South Asia-Nepal phase 1. Draft Resettlement Framework. Kathmandu: Ministry Physical Infrastructure and Transport, Ministry of Industry, Commerce and Supply and Ministry of Forests and Environment.

National Planning Commission. (2014). Policy on Land Acquisition, Resettlement, and Rehabilitation for Infrastructure Development Projects, 2014. Kathmandu: Secretariat of the National Planning Commission.

Nepal Law Commission (2013). *Immovable Property Requisition Act, 2013 (1956 AD.* Kathmandu: Nepal Law Commission.

Nepal Law Commission (2034). *Land Acquisition Act, 2034 (1977 AD)*. Kathmandu: Nepal Law Commission

Nepal Law Commission (2074). *Local Government Operation Act, 2074*. Kathmandu: Nepal Law Commission.