

LEGISLATIONS PERTAINING TO LAND ACQUISITION IN INDIA

[Volume 4, Issue 1]

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ABSTRACT

Since India's independence, land acquisition legislation has been a source of heated contention. The government began land reforms in India, guided by the socialist economic model, but was only able to achieve partial success due to the political clout of the landed class in rural areas. However, the land was taken for the construction of dams, mining, and infrastructure. Such development projects were justified as steps toward achieving rapid economic development, which was important for long-term public welfare. Also, because political consciousness was low and there were few unorganized political organizations to channel the voices, there was minimal opposition to land acquisition.

The laws for land acquisition arose in the post-liberalization period as a result of the push for commercialization and fast-track industrial investments. The new growth paradigm, which is based on the constant competition inherent in a market economy, has provided enormous prospects for private enterprise expansion. Pro-business governments saw it as necessary to make significant changes to existing legislation to streamline the land acquisition process. However, similar policies have been met with opposition on public platforms. Land acquisition opposition is significantly more organized and powerful than it was previously. This paper studies and analysis the various changes in land acquisition laws in India over the period along with the political and social issues faced along the way of the amendments.

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INTRODUCTION

The British government passed the first land acquisition legislation in India in 1824. It gave the British government the ability to "take, at a fair assessment, land or other immovable property required for developmental works such as the construction of roads, canals, and other public purposes." Act I of 1850 replaced Bengal Regulation I of 1824, which extended the provision for land acquisition to Calcutta town. By 1857, different land acquisition regulations had been unified into Act VI of 1857, which was made effective throughout British India. The Land Acquisition Act replaced the 1857 Act (Act X of 1870). The Act was rendered ineffectual by the Hon'ble Supreme Court in ¹Radhey Shyam(D) Through LRs and Others v. State of U.P. and Other.

The Land Acquisition Act of 1894 was accepted by the "Indian Independence (Adaptation of Central Acts and Ordinances) Order" in 1948 after India attained independence in 1947. The British-era act has been used to acquire land in India since 1947. The rural development ministry started the actual process of modifying the statute in 1998. In its first term (2004-09), the Congress-led United Progressive Alliance (UPA) attempted to alter the statute by introducing a bill in parliament. It was referred to the standing committee on rural development, and the group of ministers cleared it in December 2008, just before it was passed.

In February 2009, the Lok Sabha enacted the 2007 amendment bill as the "Land Acquisition (Amendment) Act, 2009," and the UPA won a second term in May of the same year. The bill, however, lapsed shortly after the 14th Lok Sabha was dissolved. The law could not be passed

¹ Division Bench comprising S Sighvi and Asok Kumar Ganguly Radhey Shyam(D) Through LRs and others v. State of U.P. and others Civil Appeal No. 3261 decided on April 15, 2011

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because the government lacked the requisite majority in the Rajya Sabha. In the case of large-scale "physical displacements" in the process of land acquisition, the bill of 2007 mandated a mandatory Social Impact Assessment (SIA) study. Tribes, forest residents, and people with tenancy rights under appropriate state legislation were all eligible under the act. According to the bill, the government was required to compensate for any losses or damages "made to the land and standing crops in the course of an acquisition," as well as the costs of resettlement and rehabilitation of affected individuals or families. The "planned use of the land" and current market values would be used to estimate the cost or compensation.

In 2011, the above-mentioned bill was renamed the "Land Acquisition Rehabilitation and Resettlement Bill, 2011" or LARR, 2011. The measure proposed that land may only be acquired for a private project if 80 percent of the affected families agreed to it. A public-private partnership (PPP) project requires the approval of 70% of the impacted families.

The bill further proposed that in rural areas, compensation would be four times the market rate, while in urban areas, compensation would be two times the market rate. It also intended to compensate artists, traders, and other impacted individuals with a one-time payment, even if they did not own land in the purchase area. The "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013" was passed in August 2013 and took effect on January 1, 2014.

The 2013 statute made it easier for private firms to acquire land, but the 2015 bill modified that to "private entities." A "private entity" is defined as "an entity other than a government entity" that includes "a proprietorship, partnership, firm, corporation, nonprofit organization, or other entity under any other law," according to the definition.

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PRE-EXISTING LAWS:

Previously, the Land Acquisition Act of 1894 was the primary law governing the government's acquisition of private land for any public use. Land acquisition was also provided for through laws adopted for special objectives like the construction of railways, national highways, tramways, and so on, in addition to the fundamental legislation on the subject.

Land Acquisition Act, 1894

The primary features of the law, which was repealed concurrently with the passage of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 (LARR Act, 2013), are outlined here.

The public good: The acquisition of land under the statute might be for the use of not just the federal or state governments, or their subsidiaries or corporations, but also privately owned businesses. Town or rural planning, providing houses for the poor and landless, "carrying out any educational, housing, health, or slum clearance initiatives sponsored by Government," and providing land for a government-owned enterprise are all examples of public purposes stated in the law. There was also more general terminology, referring to "the provision of land for planned development of land from public money following any strategy or policy of Government and later disposition thereof... to secure ongoing development as planned."

Other Pre-existing laws

The Land Acquisition (Mines) Act, 1885, and the Indian Tramways Act, 1886, were both enacted during the British rule for specific objectives including provisions on land acquisition. After independence, several infrastructure laws were enacted, including the Damodar Valley Corporation

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Act, 1948, the National Highways Act, 1956, the Coal Bearing Areas Acquisition and Development Act, 1957, the Petroleum and Minerals Pipelines (Acquisition of Right of User of Land) Act, 1962, the Metro Railways (Construction of Works) Act, 1978, and the Railways Act, 1989.

These legislations shared many of the same characteristics as the Land Acquisition Act of 1894.

LARR Bill 2011

Some people believe that, in comparison to the LAA, the Bill's 'public purpose' is not stated unambiguously enough to limit the scope of its misuse (Sahoo 2011). The NAC had aimed to establish 'public purpose' through a well-defined and open procedure that highlighted the nature of public interest in proposed initiatives, the costs and benefits associated with them, and an explanation of why other non-displacing alternatives are not practicable (NAC 2011). Section 4 of the LARR Bill proposes using Social Impact Assessments to assess public interest in prospective acquisition instances (SIA).

The 'urgency' element in the Bill improves on the LAA in terms of prohibiting forcible acquisition. Section 17 (1) of the LAA of 1894 authorizes state governments to seize land for public use in 'urgent' situations within fifteen days after submitting a notice of acquisition and without compensation. Section 24 gives governments even more discretion by stating that the 'urgency' aspect shall be ignored when deciding on compensation awards.

Because instances qualifying as 'urgent' were never specified, these 'enabling' terms have resulted in uncompensated acquisitions at short notice. The LARR Bill allocates priority possession (Section 38(1)) to defense, national security, and natural disaster emergencies. It also states that the

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government will pay 80% of the compensation plus an additional 75% of the market value of the land being taken over before taking control. There is, however, uncertainty in the form of Section 38(4), which states that governments may proclaim non-applicability of laws under Chapters II to VI of the LARR Bill for land gained in an emergency. SIAs, notifications, and R&R are among the provisions in the latter. As a result, there is a short window for governments to apply the 'urgency' phrase in circumstances when nothing else is mentioned.

DRAWBACKS OF LAA, 1894

The land is a rare resource in India, with the majority of the population relying on small plots of agricultural land for their livelihood. Compulsory land acquisition can produce a severe sense of deprivation in such a country. Because farming is the only occupation to which most rural residents are accustomed, compensation for lost land is insufficient for the majority of them. The money was squandered rapidly, and the former landowner became destitute due to a lack of alternative sources of income. Compulsory land purchase can be disastrous for small landowners, but all landowners, large and small, have been harmed by previous land acquisition legislation for the following reasons:

- Even though the Act required compensation to be paid based on the market value of land, the market value was calculated based on rates reflected in registered sale deeds, in which both the seller and the purchaser had a financial interest in under-quoting the price to save on stamp duty. As a result, despite paying a 30% solatium in recognition of the obligatory character of the sale, the landowner received compensation that was less than market value.
- Even though the law allowed for objections to the land purchase itself, as opposed to the amount of compensation, the authorities did not take such complaints seriously once a preliminary decision to buy the indicated area for a public purpose had been made.

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- The most serious flaw was the lack of a plan for the rehabilitation and resettlement of those who were uprooted from their homes as a result of the acquisition.
- The compensation paid under the Act is based on the area's current circle rates, which aren't even close to the actual rates. As a result, the government pays at its market rate, which is well below current market prices. Professor Ram Singh of the Delhi School of Economics claims:

“Market value is always hard to ascertain. The market rate is decided based on ‘circle rates’ (the registry rate or the stamp duty rate is the minimum rate decided by the government for valuation of land for determining the tax imposed at the time of registration of sale deed of a property), or ‘sale deeds’ of a similar property, whichever is higher. But people often under-quote prices in the sale deeds to avoid paying a high tax. As a result, the government only pays a certain amount as compensation, which is well below the market price of the property.”²

- Nothing can stop the government from taking a piece of property without considering the individual whose land is being purchased once it has developed a purpose to do so. The person who has been deprived in this way is unable to go to court and obtain an injunction against the intended acquisition.

In *Rajiv Saran v. State of Uttarakhand*,³ the Constitution Bench of the Supreme Court held:

“The incident of deprivation of property within the meaning of Article 300A of the Constitution normally occurred mostly in the context of public purpose. Any law, which deprives a person of his private property for private interest, will be amenable to judicial review. In just sixty years, though

² Namita Kohli, “Landing in Trouble”, The Sunday Hindustan Times of India, New Delhi, March 01, 2015, page 4.

³ Civil Appeal No. 4772 of 1998 was decided on August 09, 2011

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the concept of public purposes has been given quite an interpretation, nevertheless, the “public purpose” remains the most important condition to invoke Article 300A of the Constitution.”⁴

Finally, the Supreme Court in *Ramji Veerji Patel and Others v. Revenue Divisional Officer*⁵ held 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 the rehabilitation of persons displaced from their land although, by such compulsory acquisition, their livelihood gets affected. For years, the acquired land remains unused and unutilized. 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. We expect the lawmaking process for a comprehensive enactment concerning the acquisition of land being completed without any unnecessary delay.”⁶

IMPACT OF LARR, 2013 ON INFRASTRUCTURE, INDUSTRIALISATION AND URBANISATION

INFRASTRUCTURE

The establishment of infrastructural projects is at the core of the nation's growth process. An investment of US \$ 500 billion has been made for India's Eleventh Five-Year Plan (2007-2012) and this climbed to the US \$ 1 trillion for the Twelfth Five-Year Plan (2012-2017). Railways, highways, metro railways, and irrigation canals are among the infrastructure projects that require a

⁴ Ibid

⁵ 2011 (2) SCALE 364.

⁶ Ibid

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huge amount of land while power lines, telephone lines, and petroleum pipelines require the right of users of the land. The increased cost of land acquisition, including compensation to relevant parties and the R&R package, is anticipated to affect all of these projects.

The delays are expected to be required in conducting and finishing the social impact evaluation are also a source of concern. However, as aforementioned, the requirements of the LARR Act, 2013, are inapplicable to land acquisition legislation specified in the Fourth Schedule of the Act, which also includes legislation relating to railways, national highways, metro railways, petroleum pipelines, electricity, and so on. As a result, the social impact assessment obligation will not apply to infrastructure projects covered by the Fourth Schedule's enactments. The government extended the advantages of the LARR Act, 2013, relating to compensation and R&R, to projects that fall within the provisions in the Fourth Schedule. As a result, expenditures on land acquisition for these infrastructure projects, as well as those not covered by the enactments listed in the Fourth Schedule, are expected to rise.

As a result, land acquisition procedural constraints will influence a subset of infrastructure projects, but greater costs will affect all of them. Several major infrastructure projects would be exempt from the regulations on a social impact assessment; however, several infrastructure projects that are not covered by the enactments listed in the Fourth Schedule, such as airports, logistics parks, state highways, and major and minor district roads, to name a few, would still be covered by these provisions. Because of the necessity to conduct social impact assessments, the execution of projects has been prolonged. The Act notably exempts "projects that are linear in nature, such as those relating to railways, highways, major district roads, irrigation canals, and electricity lines," most infrastructure projects will be untouched by the agricultural land acquisition restriction.

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INDUSTRIALISATION

India's policymakers agree that manufacturing needs to be revived if the country is to substantially increase its GDP growth rate to reduce poverty and elevate the standard of living to a reasonable level. Manufacturing will not be able to expand unless the land is made available to entrepreneurs at a cost that does not jeopardize our ability to compete in Asia's emerging markets. Competitiveness is vital not just for exporting to international markets, but also for being able to compete in domestic markets. We must ensure that our manufacturers can compete with imports in the domestic market due to falling tariffs. Land costs are an essential component of manufacturing costs, and we need to look at land costs in other nations.

Land acquisition procedures are simple in countries that compete with India in manufacturing, and compensation for land or resettlement based on market value or the average value of yearly agricultural land production. In India, industrial plants must pay the price of land allocated to them in industrial parks, national manufacturing zones, or industrial corridors based on the government's cost of land acquisition, including compensation paid to "relevant parties" and the amount spent on resettlement and rehabilitation of such persons as required by the new land acquisition laws.

It is unrealistic to expect any changes in land acquisition regulations that would result in a lower modification of the pay scale or R&R. The quantity of compensation and R&R included in the LARR Act, 2013, are viewed as acquired rights by landowners across the country, and it would be politically untenable for the government to seek such a modification. The only option to improve the situation is for the government to stop passing on the entire cost of land to industrial entities and instead charge discounted or subsidized rates.

There is also fear that the newly implemented system for social impact assessment may cause

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delays in the government's acquisition of land for distribution to industrial units, in addition to the increased cost of land for industrialization. PPP initiatives will be hampered even further by the requirement to seek the permission of 70% of landowners. Governments have historically promoted the development of industrial zones, industrial parks, and industrial regions. Industrial parks for certain product groupings were also established in the recent decade.

URBANISATION

The assumption has been that as rural people move out in quest of livelihood in industries and services, the process of urbanization will pick up speed, based on experience in industrialized and even emerging countries. India is estimated to have an increased population of roughly 400 million people by 2050, with agriculture and related activities providing livelihood to about 220 million people. In India, urbanization occurs in an un-planned way on the outskirts of major cities and rural areas between urban communities. The axis of urbanization is sometimes formed by freshly built or renovated roadways. To avoid the reach of urban municipal organizations, the populace prefers to create habitations and commercial complexes, as well as minor industrial units, in rural areas. If the country is to reach its full growth potential and if the rural population's dismal economic plight is to be alleviated, the trend of urbanization must be expedited. It is urged that to save the country from chaotic urbanization, spatial planning shall be done and spontaneous urban sprawl be avoided. Sprawls result in low-density urbanization and have a proclivity to absorb enormous swaths of farmland. There are no current estimates of the area of land occupied by infrastructural projects, industrial zones, or individual industrial units.

India's urban area is expected to grow by 3.3-3.7 million hectares by 2030, resulting in the loss of

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an equivalent amount of farmland.⁷ According to the World Bank, South Asia's urban footprint grew at a rate of 5% per year between 1999 and 2010, more than twice the rate of urban population growth of approximately 2.5 percent per year.⁸ With this increased growth rate, India's urban areas will need to upsurge more than sixfold from 23.6 million hectares in 2010 to 146.8 million hectares in 2050 if the forceful intervention will not be implemented. As a result, it may be impossible to prevent agricultural loss due to urbanization in the upcoming decades. Increased productivity, as well as multiple cropping, may be able to compensate for the loss of agricultural production.

CONCLUSION

The land acquisition regulations that India inherited from colonial times were significantly weighted in favor of landowners and other persons who rely on property for a living. The Land Acquisition, Rehabilitation, and Resettlement (LARR) Act of 2013 greatly increased the magnitude of compensation available to landowners, as well as providing for their rehabilitation and resettlement (R&R) in the event of displacement. Compensation payments and R&R actions have been made available to sharecroppers and others who rely on the land for their livelihood. The transparency of the land acquisition process has been improved significantly supported by social impact assessments and, in some circumstances, prior approval from landowners and other impacted parties.

While landowners and other impacted parties have benefited significantly, some of the provisions could prove to be stumbling obstacles in the development process. Most people accept the increase

⁷ Bren d'Amour et al (2016)

⁸ Ellis and Roberts, 2016

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in compensation and the additional cost of R&R because they are viewed as provisions justified from the standpoint of justice and equity, even though there may still be consequences for the growth process, such as an increase in the cost of infrastructure. However, there is critical concern about the impact that the newly implemented social impact assessment and prior approval processes will have on infrastructure development, industrialization, and urbanization. There was also concern that the protection for food security could become a burden.

To address these issues, the central government proposed an amendment bill in 2015 that sought to revise the land purchase statute in several ways. The most significant changes sought were to address concerns about prior consent, social impact assessments, and restrictions on the use of agricultural land for five types of projects: national security or defense, rural infrastructure, affordable housing, industrial corridors and infrastructure, and social infrastructure. The Rajya Sabha has stalled on the amendment bill.

Land acquisition for infrastructure regulated by enactments in the Fourth Schedule is already exempt from the LARR Act's new procedural complications. The proposed amendment bill, or amendment legislation in the states already enacted or those that may be enacted in the future, will eliminate the potential for delays caused by the application of procedures for prior consent, social impact assessment, or agricultural land for infrastructure projects not covered by the enactments in the Fourth Schedule, as well as for industrial corridors and affordable housing.