

LAND ACQUISITION ACT – 2013 AND LAND ORDINANCES – 2014: A MOCKERY OF DEMOCRACY

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Abstract

This article presents a clear picture of controversial policies pertaining to land acquisition, resettlement, rehabilitation and compensation.

A critical study is made to bring out the lapses of the original Act of 1894 whereby not only the land owners but also the states had to encounter several hardships for want of valid and correct guidelines.

A specific mention is made about the faults of both ruling party as well as the opposition parties. Firstly, the government chose the wrong route of forcing ordinance hastily. Secondly the opposition parties mainly the congress is bent upon stalling the proceedings in Rajya Sabha for reasons best known to them.

Economists and political analysts expressed their views about the Act (2014) as “Pro-land -owners” and “Pro-industrialists”. In fact, it is not absolutely so, if one looks at it. “A coin has both sides”, one needs to understand positively.

Introduction

The Supreme Court emphasized on the need to enact a new land acquisition law. In November 2011, a joint bench of Justice Lodha and Justice Khehar in their Judgement vehemently remarked. It has been felt that Land Acquisition Act 1894(L.A.A 1894) does not adequately protect the interest of owners / persons interested in the land. For years, the acquired land remains unused. To say the least, the Act has become outdated and needs to be replaced at the earliest with fair, reasonable and rational enactment in tune with the constitutional provisions, particularly Act 300A. We expect the law making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.

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Undoubtedly land acquisition has remained a controversial issue in India resulting in conflicts between social, economic and political structures.

Accordingly, the previous government i.e., U.P.A (United Progressive Alliance) brought in the new legislation, Right to fair compensation and Transparency in land acquisition, Rehabilitation and Resettlement Act 2013, with a view to provide for a fair deal to the land owners who had suffered due to weak framework of the Land Acquisition Act 1894.

The R.F.C.T.L.A.R.R was passed by the Parliament on 5th September 2013 and came into force on January 2014. The Act overrode the Colonial Land Acquisition Act (L.A.A.) 1894. The 2013 Act for the first time, integrated Land Acquisition with Rehabilitation and Resettlement (R&R) and Social Impact Assessment (S.I.A.).

As per Section 105 of the Act, the provisions of the Act did not apply to 13 Central Acts, which acquired land under special provisions specific to their domain, considered critical for development.

After the washout of the winter session of the Parliament the Government of India decided to take the ordinance route to amend Section 105. On 31st December 2014, the last day for the notification, the ordinance was made applicable to all the compensation and R & R provisions of R.F.C.T.L.A.R.R to the 13 exempted laws.

Factors for New Legislation

In India, the Land Acquisition Act (L.A.A) 1894 had served as the basis for all government acquisition of land for public purposes. The Government of India adopted the L.A.A 1894. The Constitution of India placed “Acquisition and Requisitioning of Property” as entry 42 in the concurrent list. This meant that both the Centre and State could make laws governing land acquisition. However, in case of conflict between the Central and State Law the Central Legislation would prevail.

However, the law failed to address some important issues associated with land acquisition particularly forcible acquisitions, the definition of “Public purpose, widespread misuse of the “Urgency” clause, compensation, lack of transparency in the acquisition process, participation of communities whose land was being acquired and lack of R & R package.

The Supreme Court Judgments on various occasions spelt out divergent views in “Public Purpose”. In the *State of Bombay v. R.S. Nanji*, 1956, the Supreme Court of India observed “it is impossible to precisely define the expression “Public Purpose”. In each case, all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established. Prima facie, the government is the best judge as to whether public purpose is served by using a requisition order , but is not the sole judge. The courts have the jurisdiction and it is their duty to determine this matter whenever a question is raised whether a requisition order is or is not for a public purpose.

In *Coffee Board v. Commissioner of Commercial Taxes*, 1988, The Supreme Court of India again stated “Eminent domain is an essential attribute of sovereignty of every state and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner’s consent upon making just compensation.

Purpose of R.C.F.C.T.L.A.R Act

The primary objective of the Act was to fair compensation, through R & R of those affected, adequate safeguards for their well being and completes transparency in the process of land acquisition.

The most important features of the Act were:

1. The Consent of 80% land owners concerned was needed for acquiring land for private projects and 70% land owners for public private projects (P.P.P).
2. The term “Public Purpose” which was left vague in the Land Acquisition Act (L.A.A) 1894 was restricted to land for strategic purposes, infrastructural projects, P.A.F’s planned development or improvement of village or urban sites or residential purpose for weaker section and persons residing in areas affected by natural calamities or displaced.
3. The compensation was increased to four times the market value in rural areas and twice the market value in urban areas.
4. R & R package for the affected families with additional benefits to the Scheduled Castes and Scheduled Tribes families.

Exemption List

The L.A.R.R. Bill 2011 had 16 Acts under the exemption list. The following is the list

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
8. The Petroleum and Mineral 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
12. The Electricity Act 2003
13. The Railway Act 1989
14. The Special Economic Zones Act 2005
15. The Cantonments Act 2006
16. The Works of Defence Act 1903

The Right to Fair Compensation And Transparency In L.A.R.R (Second Amendment) Bill 2015

Highlights of the Bill

1. The Bill amends the Principal Act passed in 2013.
2. The Bill enables the government to exempt five categories of projects from the requirements of (i) Social impact assessment (ii) Restrictions on acquisition of multi cropped land (iii) Consent for private projects and public private partnership(PPP's) projects.
3. The five categories of projects are(i) Defence (ii) Rural infrastructure(iii) Affordable housing (iv) Industrial Corridor (v) Infrastructure including PPP's where government owns the land.
4. The Act would apply retrospectively, if an award had been made five years earlier and compensation had not been paid or possession not taken. The Bill exempts any period when a court has given a stay on the acquisition while computing the five-year period.

5. The Act deemed the head of a government department guilty for an offence by the department. The Bill removes this, and adds the requirement of prior sanction to prosecute a government employee.

Scope and Analysis

1. The Act requires consent of 70% of land holders for PPP projects and 80% for private projects. Acquisition being different from purchase, implies that land owners were unwilling to part with the land.
2. The Amendments in the Bill proposes to expedite the process of acquisition.
3. The removal of the provision that deemed the head of department guilty and addition of a new requirement of prior sanction to prosecute government employees may raise the bar to hold them accountable.
4. The change in the retrospective provision may be ineffective in cases instituted until 2014 in light of a recent Supreme Court of India's Judgment.
5. The five types of projects being exempt from the provisions of social impact assessment restrictions in case of multi cropped land and consent are broad and may cover many public purpose projects.

Discussion on L.A.A 2013, Bill 2014 and Ordinance 2015

A debate on the following issues will enable one to understand and appreciate the genuineness the actions taken in regard to the land acquisition.

I. Where was the need to amend the Land Acquisition Act 1894

The land acquisition is the process by which land owned by persons in compulsorily acquired. It is different from the purchase of the land, which is a contract between a willing seller and a willing buyer on mutually acceptable terms. Acquisition is where the land owner has no choice over parting with the land and is forced to relinquish his property. Therefore, the process of acquisition overrides the property rights of the private land owner. This can be justified only if a case can be made for greater public benefit in taking away someone's land ownership rights.

In India, Land acquisition is a concurrent subject and is governed by Central and State Laws. The main Central Act governing land acquisition is the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act 2013 (2013 Act).

Interestingly, the U.P.A (United Progressive Alliance) Government accepted most of the amendments proposed by the principal opposition party B.J.P and clinched a broad political consensus on the contentions L.A.R.R Bill.

The Bill was finally passed by the Indian Parliament on 5th September 2013 with further amendments, under the name of “The R.F.C.T.L.A.R.R Act 2013”. The Act received the assent of the President of India on September 2013. As a result of the notification by the Government of India on 19th December 2013, the Act came into force on January 2014.

In December 2014, an ordinance was promulgated to amend The Land Acquisition Act 2013. The ordinance was re-promulgated in a modified form in April 2015 and again in May 2015. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation (Second Amendment) Bill 2015 was introduced in Lok Sabha on 11th May 2015 to replace the April ordinance and was referred to the Joint Parliamentary Committee for detailed examination.

The shortcomings of the Act are dealt below to have a first-hand information about the developments that lead to amend the Land Acquisition Act 1894.

- (a) **Threat to the land owners:** - The Land Acquisition Act 1894 encouraged, forced land acquisitions. As per the Land Acquisition Act 1894 once the acquiring authority decided to acquire land, the act provides for carrying out the acquisition without thinking for a moment about the problems, difficulties and hardships encountered by Land owners. In a way the land losers were bulldozed forcefully, mercilessly.
- (b) **No Protection:** - Lack of proper forum or mechanism by the Government to stall the forced land acquisition, excepting a hearing U/s 5A where there is no scope for a discussion or negotiations to redress the sufferers and the views expressed are not taken seriously by the officers conducting the hearing.
- (c) **Rehabilitation & Resettlement:** - The Land Acquisition Act 1894 is absolutely silent regarding the efforts for Rehabilitation and Resettlement of those displaced by the acquisition.
- (d) **Urgent Need:** - This clause has become very controversial and faced stiff criticism by all sections of the society. This clause is silent as to the true and correct definitions of urgent need and such that the authority exercised

discretionary powers without any proper and justified grounds. This resulted in spree of land acquisitions under the guise of urgency clause in utter disregard to the principles of natural justice and law of equity.

- (e) **Disparity in Compensation:** - Even while fixing the rates of compensation for the land acquired no justification was made as the rates never matched the prevailing rates which should have been more appropriate, logically correct and acceptable in the normal course without giving any scope for arbitrariness.
- (f) **Bone of Contention:** - Thus all the acquisitions were challenged in the Courts of law on various courts as have discussed earlier leaving the parties and the government in jitters. Many claimants stalled the proceedings by getting stay or injunction orders leading to abrupt halt of several important and needy infrastructural projects. The Supreme Court of India had to view seriously at the lapses of government and even went to the extent of passing strictures against the erring officials on erroneous and unjustified action in acquiring lands at their whims and fancies much to the detriment and loss to the genuine and lawful land owners.

II. Scope of 157 amendments

Most of the amendments are insignificant and are of no consequence at all. Out of these 157 amendments, 103 are typographical, 28 amendments are minor in nature and only 26 amendments are substantive in nature.

Out of the 26 substantive amendments 13 amendments have been made on the basis of the recommendation by the standing committee, the details of which have now been discussed for the benefit of researchers, academicians, professionals etc. to enable than have more insight on the subject.

1. **Public purpose and Consent** :- In view of the observations and recommendation of the standing committee the definition of public purpose, needed a relook as such the amendment did the needful to make it easier and understandable.
2. **Multi-Crops** :- Based upon the recommendations of the standing committee, the state governments have been allowed to fix the limits on the acquisition of multi-crop land.
3. **Agricultural lands:** - Since the state governments can better understand the peculiar and unique circumstances of the region, climate conditions etc., the state

governments are empowered to fix the limits on the acquisition of agricultural lands.

4. **Private Purchases:** - In view of the fact that the land purchase falls within the authority of the state governments, they should be allowed to fix the limits of private purchase and in case the limits seem to have crossed the provisions of Rehabilitation and Resettlement will Suo-moto apply.
5. **Second Amendment** :- In regard to the restrictions made on private purchase in the second amendment, the states are empowered to fix the purchase limits.
6. **Additional Compensation** :- A new section has been inserted to provide for an additional compensation if the affected family is displaced twice.
7. **Scheduled Castes & Scheduled Tribes** :- A special provision is made exclusively for Scheduled Castes and Scheduled Tribes in this Act in order to enhance the safeguards, make them beneficial, helpful and enrich as a special case.
8. **Reservations** :- Through this amendment a clause is inserted as an annexure to the second amendment.
9. **Monitoring Committee** :- Based upon the recommendations of the standing committee a state -level monitoring committee has been established to provide supervision of Rehabilitation & Resettlement functions.
10. **Unutilised Land** :- Through this amendment the period of unutilised land has been reduced to 5 years from 10 years.
11. **Return of unutilised land** :- This amendment provides for the return of the unutilised land to the land owners at the option of the state governments.
12. **Exempted Acts** :- As per the recommendations of the standing committee, an amendment has been made to extend the provisions of this Act to all the exempted legislations in the fourth schedule with in a period of one year of its commencement.
13. In view of recommendations of the standing committee the provisions pertaining to Scheduled Castes and Scheduled Tribes have been removed from the Schedule to the Act and instead incorporated in the main Act only.

III. How safe are the investments?

- (a) In the case of Public Private Partnership Projects, the question of consent is answered in the affirmative only, as such consent is reduced from 80% to 70%. In case of addition only the consent is required.

- (b) “Market Value” definition has been amended so as to curtail the spiralling of prices and the collectors are given the powers.
- (c) State governments are given flexibility in fixing compensation in rural areas to twice and four times depending upon their distances from urban areas.
- (d) It is now left to the discretion of the States to restrict the limits on amounts of irrigated multi-cropped land and net sown area per district or state, available for acquisition, unlike capped at 5% for multi-cropped irrigated land and amount of net sown area was also capped.
- (e) Rehabilitation & Resettlement on Private purchase of land, depending on the land size, is now left to the discretion of the State governments unlike the earlier provision.
- (f) Payments for Rehabilitation & Resettlement costs by acquirer made a “One-off” that means to say the acquirer to put all the money in an escrow account, and ongoing commitments like annuities and benefits to be administered by agency established under this Act. However, families will not be displaced from this land till their alternative Rehabilitation & Resettlement sites are ready for occupation.
- (g) In cases where the land sought to be acquired is below a certain threshold then the Collector can be the acquiring authority.

IV. Rehabilitation & resettlement provisions

As a meridative measures various provisions have been made to the affected families towards their displacement on account of land acquisitions by the governments.

The following are the details:

- (a) In order to qualify for benefits under this Act, the time period has been reduced to three years of dependence, on the acquired land from five.
- (b) Tenants: - The definition of affected family includes agricultural labourers, tenants including any form of tenancy or use free at right, share-croppers or artisans who may be working in the affected area for three years prior to the acquisition, whose primary source of livelihood stands affected by the acquisition of land.
- (c) Houses: - All affected families are entitled to a house provided they have been residing in an area for five years or more and have been displaced. In case of refusal to

accept the house, the affected families are offered a one-time financial grant in lieu of the same.

- (d) Employment or Annuity: - All the affected families are given a choice of annuity or employment.
1. If employment is not forthcoming, they are entitled to a one time grant of Rs 5,00,000/- (Rupees Five Lakhs Only) per family.
 2. Alternatively, they will be provided with an annuity payment of Rs 2,000/- (Rupees Two Thousand Only) per month per family for 20 years, subject to inflation.
 3. Subsistence Allowance: All affected families which are displaced from the land acquired shall be given a monthly subsistence allowance, equivalent to Rs 3,000/- (Rupees Three Thousand Only) per month for a period of one year from the date of the award.
 4. All the affected families are also given training and skill development along with providing employment.
 5. All the affected families are given multiple monetary benefits such as transport allowance of Rs 50,000/- (Rupees Fifty Thousand Only) and Resettlement allowance of Rs 50,000/- (Rupees Fifty Thousand Only)
 6. One-time financial assistance: - Each affected family of an artisan, small trader or self-employed person shall get one-time financial assistance of such amount as the appropriate government may by notification specify subject to a minimum of Rs 25,000/- (Rupees Twenty Five Thousand Only).
 7. In case of acquisition of land for irrigation or hydel project the Rehabilitation & Resettlement shall be completed six months prior to submergence of the lands proposed to be acquired.
 8. Possession: - The Collector shall take possession of land only ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements commencing from the date of the award. However, families will not be displaced from this land till their alternative Rehabilitation & Resettlement sites are ready for occupation.
 9. Time-Limits: - The components of the Rehabilitation & Resettlement package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of 18 months from the date of the award.

Public Opinion on R.F.C.T.L.A.R.R

The R.F.C.T.A.R.R Act was welcomed by various civil society organizations who had been demanding the replacement of the Colonial Act though they felt that the new Act has several loopholes.

After the passage of the Bill in the Lok Sabha, former bureaucrat and social activist E.A.S.SARMA in an interview raised the concerns of the civil society. There are three positive features in this Bill. First, R & R is part of the Bill and they should be taken up hand in hand with the acquisition. Second, the compensation rates are far more attractive. Third, prior consent of the affected families (80%) is mandatory. But the Bill has a few shortcomings. First, the meaning of “Public Purpose” which had been progressively enlarged in the existing Act to include land for private companies remains as it is. Second, those who are the tillers of the land are often tenants of absentee landlords who usually pocket the compensation. The latest Bill fails to address this. The same in the case with landless cultivators in occupation of government lands, who may not get any compensation. Third, many private companies are circumventing the mandatory “Prior Consent” clause by deploying brokers to purchase lands in advance.

The following are the major issues raised by the industry

- (a) Mandatory R & R would have huge cost implications which may result in three-fold increase in the cost.
- (b) Requirement to seek consent of 80% of affected families would considerably increase the time taken to acquire land. Industry felt that the actual time taken would be much higher than the 50 months laid out in the Act, as there are likely to be delays at each stage due to absence of timelines and implementation difficulties.
- (c) Lack of clarity in definition of urban and rural areas.
- (d) Social Impact Assessment (S.I.A) would make the acquisition process extremely complex, lengthy and difficult.
- (e) Provisions to return the acquired land, which was unutilised for five years, would hamper large infrastructure projects since they took longer periods to kick start.
- (f) Retrospective clause would add to the uncertainty because it disrupted the land acquisition process which was underway in various infrastructure and industrial projects.

- (g) Manufacturing sector was heavily dependent on the governments for acquisition and should be included in the definition of “Public Purpose”.
- (h) The definition of “Affected families” who were eligible for R & R was too broad because it included “livelihood losers” working in the affected area for three years prior to acquisition of land and whose primary source of livelihood was affected.

Why Ordinance?

The winter session of the Parliament which started on 24th November 2014 was marred by disruptions. Proceedings of Rajya Sabha were washed out as opposition parties stalled the House by pressing the demand for a statement by the Prime Minister on alleged forced religious conversions in Agra. Several crucial bills including R.F.C.T.L.A.R.R Amendment Bill, Goods and Services Tax Bill, Insurance Bill could not be discussed in the Parliament due to stiff opposition by some parties.

Later both the Houses were prorogued by Mr Pranab Mukherjee, President of India on 23rd December 2014.

Article 123 of the Constitution of India enabled the President of India to promulgate an ordinance of both the Houses of Parliament were not in session and ‘Circumstances existed, which rendered it necessary for him to take immediate action’. Every ordinance had to be laid before Parliament, and ceased to exist six weeks from the end of the next sitting of Parliament.

On 29th December 2014, the Union Cabinet chaired by the Prime Minister of India approved the amendments and recommended the President of India to promulgate the R.F.C.T.L.A.R.R Ordinance 2014. The R.F.C.T.L.A.R.R. Ordinance in seven months of N.D.A(National Democratic Alliance) Government and the ninth for the calendar year.

The ordinance brought in the following amendments: -

- (a) Compensation and R & R specified in the Act was extended to the acquisition under thirteen Acts mentioned in the Fourth Schedule.
- (b) Projects in the areas of (i)Defence production (ii)rural infrastructure (iii)affordable housing (iv)industrial corridors (v)social infrastructure projects including PPP’s in which ownership lies with the government, were exempted from conducting Social Impact Assessment and taking the consent of affected families.

- (c) Definition of “Public Purpose” was widened to include private hospitals and private educational institutions.
- (d) The term “Private Company” was changed to “Private Entity” to encompass other forms of companies like proprietorship, partnership, corporation, non-profit organisations and other non-governmental entities.
- (e) “Companies Act 1956” which was the reference for the definition of “Company” was replaced by “Companies Act 2013”.
- (f) The period after which unutilised land had to be returned was extended to any period specified at the time of setting up the project. R.F.C.T.L.A.R.R 2013 required land, which remained unutilised for five years, to be returned to the original owners or the land bank.

Mockery of Democracy

On 26th May 2014, Narendra Modi took over as the Prime Minister of India after B.J.P gained a majority in the general elections 2014. The election manifesto of B.J.P has laid emphasis on industrial growth and improved infrastructure.

The manifesto said, “Work on the freight corridors and attendant Industrial Corridors will be expedited. This will result in the faster movement of people and goods. PPP would be encouraged to top into private sector resources as well as expertise.”

On this issue of land acquisition, the B.J.P manifesto acknowledged that land acquisition was a contentious issue due to the opacity of the land acquisition process. It promised to adopt a “National Land Use Policy”, which would look at the scientific acquisition of non-cultivable land and its development.

Other Party manifesto’s also dealt with the issue of land acquisition. The Congress manifesto ensured fast and fair implementation of the Act such that farmers, land owners and livelihood losers get adequate compensation for their acquired land. Aam Aadmi Party (A.A.P) manifesto also promised to work for fairer rehabilitation.

The amendments found support in Samajwadi Party, Government of Uttar Pradesh; A.I.A.D.M.K’s in Tamil Nadu, Trinamool Congress in West Bengal and B.J.D’s in Orissa while West Bengal categorically sought to have its own land acquisition policy, Tamil Nadu wanted the “Power to define Public Purpose” and felt that the present Act was an “Infringement upon the State’s autonomy”. Uttar Pradesh too sought similar powers for the State

Governments. Even B.J.P ruled likely Madhya Pradesh, Chhattisgarh and Goa felt that the Act was passed in a hurry and was motivated by political gains given that national elections were due in 2014. Interestingly, Congress lead States like Kerala and Haryana also had concerns regarding the consent requirements of the Act.

If one closely analyses the sequence of the events it is amply clear that it was the congress that brought an amendment to the old Land Acquisition Act 1894 since the provisions of the said Act were not conducive and also impracticable to a larger extent, hence the Amendment in 2013.

Later when the present N.D.A Government came into power in May 2014 and in order to fulfill its election manifesto sought further amendments too simply and ease land acquisition proceedings.

Interestingly, there is a sudden change in the stance and the opposition parties and the Congress in particular stalled the proceedings in Rajya Sabha and did not allow the Bill to be passed in the Upper House and thereby get the assent of the President of India, which lead to Government to promulgate four ordinances in 2015 and ultimately the Bill got lapsed on 31st August 2015, obviously at the behest of the Congress Party which was instrumental in getting L.A.A 1894 amended in 2013 for obvious reasons.

Since the Congress Party lost the power in general elections in May 2014, it turned around and found for itself the action of N.D.A Government illogical, unjustifiable and unreasonable, that suited the Congress Party when it was in power. Is it not Political Jealousy, intolerance and unwise on the part of the Congress Party? Is it not opportunism and against the principles of democratic norms?

Does it mean, the opposition party is only to oppose any move of the ruling party whether good, reasonable and in the interest of people at large?

Who is responsible to disrupt the Parliamentary proceedings during the two sessions?

Who is at lost?

Conclusion

All the above discussions on this subject foil down to arrive at the following points

- All the parties should raise to the occasion put a pull stop to their ego's and negative thinking.
- Immediately work for consensus building to achieve positive results.
- Let the opposition parties at least now stand tall and be a role model by extending wholehearted support to the ruling party in getting clearance to the Bill, so that in future such healthy practices will restore the true democratic norms in the country and win the confidence of the people in the days to come.

“SAVE DEMOCRACY, BE THE WORD OF THE RULING AND
OPPOSITION PARTIES”

