RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT 2013: A PROCESS PERSPECTIVE

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Abstract

Land acquisition has become a most vexing problem for policymakers in India. This paper captures the policy processes leading to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Ordinance, 2014. It maps the role and the influence of the three primary stakeholders - Government, industry and landowners - at various stages of the evolution of the land acquisition law in India. Land acquisition has remained a controversial issue in India resulting in conflicts between social, economic and political structures. The RFCTLARR Act 2013 was an attempt by the earlier Government to provide a fair deal to the landowners who had suffered due to the weak framework of the Land Acquisition Act, 1894. The salient features of the proposed legislation are as follows. It significantly increases the minimum compensation payable, but continues to use the market price obtained from recently registered sale deeds from the region as a yardstick. The minimum compensation has been fixed at four times the market price in rural areas and twice the market price in urban areas. LARR (2011), which is a comprehensive Bill on land acquisition as well as rehabilitation and resettlement (R&R), subjects all eminent domain acquisitions as well as private purchases of over 100 acres in rural areas and 50 acres in urban areas to a mandatory R&R package, with a host of benefits both for affected landowners as well as livelihood losers.

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INTRODUCTION

Land acquisition is the process by which land owned by private persons is compulsorily acquired. It is different from the purchase of 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 and Resettlement Act 2013”. It replaced the Land Acquisition Act, 1894. Many states have also enacted laws to regulate land acquisition. The 2013 Act differed from the 1894 Act in several ways. It narrowed the definition of ‘Public purpose’ i.e. the types of projects for which land could be acquired. It required the consent of land owners if the project was for a public private partnership (PPP) or a private company. Compensation was set at two to four times of prevailing market rates and minimum norms for rehabilitation and resettlement of affected persons were prescribed. The Act also required a Social Impact Assessment (SIA) to be conducted to determine whether the potential benefits of the project would outweigh the social costs. In December 2014, an Ordinance was promulgated to amend the 2013 Act. The Ordinance was repromulgated in a modified form in April 2015, and again in May 2015. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015 was introduced in Lok Sabha on May 11, 2015 to replace the April Ordinance and was referred to a Joint Parliamentary Committee for detailed examination.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR) was passed by the Parliament on September 5, 2013 and came into force on January 1, 2014. The Act overrode the colonial Land Acquisition Act. 1894 which had been criticized for giving both the Government of India and the State Governments absolute power to acquire private land in the name of public purpose' and for promoting an unfair compensation policy. The Right to Fair Compensation and Transparency in Land
Acquisition, Rehabilitation and Resettlement Act 2013, for the first time, integrated land acquisition with rehabilitation and resettlement (R&R) and Social Impact Assessment (SIA).


RESEARCH METHODOLOGY

The research adopted basically is doctrinal in nature, and the emphasis is to analyze the statutory provisions, with the help of the opinions of jurists and policy framers available in current Law and journals in India and abroad and on internet websites. The judicial interpretation which is helping in the emergence of a new corporate jurisprudence is a major area of analysis. For the purpose of primary data scholar would endeavored to collect views of legal, social, political

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luminaries in various professions as academics, and practitioners of law. The effort of the scholar is in toto; an observation on various events/incidents would also be used as a primary data for the purpose of the study

LIMITATION AND AMBIT OF WORK

The present work is aimed at studying the land acquisition with keeping in mind the social concern. The primary objective has been to correlate the law as it stands to the practice actually followed, and to test it against contemporary developments. The work sets out the Chapter I Introduction historical and theoretical framework of land acquisition and public purpose requirement. The theory itself has been critically analyzed, keeping in view the development of law
THE HISTORY AND THE PRESENT OF LAND ACQUISITION ENACTMENT IN INDIA

COLONIAL PERIOD

The foremost enactment of land acquisition in India was in 1824 by the British government which was called the Bengal Resolution I of 1824 and the law applied to whole of Bengal which was the subject to the presidency of Fort William. This enactment enabled the British government to obtain land or any immovable property for construction of roads, infrastructure, canals, etc. at a fair price. In 1850 this regulation was extended to the then Calcutta, now Kolkata by another subsequent legislation, Act I of 1850 with the sole objective of confirming the title of lands in Calcutta for public purposes. This helped British to acquire land for construction of railway lines across the country. The Act XLII of 1850 declared that railways were for public utility and thus the provisions of Resolution I of the Act of 1824 to be used for the acquisition of land for constructing railways. Similarly such Acts were also passed in Bombay, now Mumbai as the Building Act XXVII and Act XX of 1852 in Madras, now Chennai, were passed to facilitate the act of land acquisition by government in these presidencies.

In 1857 the British government enacted land acquisition legislation making it apply to the rest of the province and whole of British India by the enactment of the Act VI of 1857 which repealed all previous enactments relating to land acquisition within the territories of East India Company. This Act was again amended in 1861 (Act II) and in 1863 (ACT XXII) and subsequently led to the enactment of Act X of 1870.  

The law of 1870 was eventually replaced by the Land Acquisition Act, 1894 (Act I of 1894) and this law was not applicable to the princely states of Hyderabad, Travancore and Mysore where their own enactments on land legislation prevailed.

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3 Land Acquisition Act, 1894 (Act I of 1894), last seen on 13/02/16, (http://www.gjms.co.in/index.php/SAJMS/article/view/1098)

**EARLY INDEPENDENCE PERIOD**

Even after independence and the adoption of the Indian Constitution, the 1894 Act continued to be in force, albeit with periodic amendment.\(^4\) The new Nation State built new cities Jamshedpur, Chandigarh, Bhillai and so on as part of the Nehruvian vision of modernity. The State also expanded its economic reach by focusing on heavy industries and linked infrastructure, for which available land was a pre-requisite. *Eminent Domain* theory or the justification of State’s acquisition of land, even if involuntary, for ‘public purpose’ and for ‘compensation’, continued, this time, as an essential attribute of sovereignty itself, control over territory being a marker of sovereignty in International Law.\(^5\)

Combined with the needs of modernity, the rhetoric of the ‘commanding heights of the State’ or of ‘dams as the ‘temples of modern India’ also finds prominence in land acquisition. In light of the State’s predominant role in national development within this discourse of nation building, the early Judiciary’s relative deference to the Executive’s determination of ‘public purposes’, is better understood.\(^6\) At the same time, the new Constitutional frame brought in elements of federalism, universal adult suffrage (not just for the propertied) and basic fundamental rights. Land Acquisition, in the new Constitutional scheme, was rendered in a Concurrent list subject, with power to both Centre and States to make laws on ‘requisition and acquisition of immovable property’. The right to property too was initially considered a fundamental right. It was only inevitable then for an institutional clash to emerge between the specific ability of a colonial land acquisition law and the broader demands of a polity which also included a newly independent Nation State\(^7\)

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\(^4\) The Land Acquisition Act, 1894 has been amended in 1919, 1921, 1923, 1933, 1962, 1967 and 1984.


\(^6\) RL Arora v State of Uttar Pradesh and others AIR 1964 SC 1230.

\(^7\) LAND ACQUISITION ACT: A HISTORICAL PERSPECTIVE, last seen on 12/02/16, (http://indiafacts.org/understanding-the-land-acquisition-bill-politics-changes-and-impact/)
Since the independence of India, land acquisition by government was done by the laws laid down in the British era. In 1998 the rural development ministry started initiating the actual process of amendment of the act. The UPA led by the Congress in its first term in office (2004 to 2009) amended the act in 2007 by introducing a Bill in the Parliament.

It was referred to the standing committee and finally passed in the parliament as the Land Acquisition Amendment Act, 2009 in February 2009. In May, 2009, the UPA returned to power for a second term. But after the dissolution of the 14th Lok Sabha, soon after the passing of the Bill the government did not have enough majorities in the Rajya Sabha to pass the Bill.

CURRENT POSITION

The Land Acquisition Bill 2007 called for a compulsory study of the Social Impact Assessment (SIA) in case of physical displacement of large scale in the due process of land acquisition. This act also ensures the eligibility of tribal community, forest dwellers and the people having the tenancy rights under the relevant state legislatures. The bill stated that while acquisition, the government is liable to pay for the loss or damages caused to the land and the standing crops. The cost of resettlement and rehabilitation of the affected families or the person has also to be borne by the government. The amount of compensation to be borne would vary by the intended use of the land and as per the prevailing market rates. The Act also established the Land Acquisition Compensation Dispute Settlement Authority at central and state levels for speedy resolution of disputes relating to land acquisition compensation. The bill also proposed that unused land which is not in use for five years or more shall be returned to the appropriate government.  

8 Understanding the Land Acquisition Bill: Politics, changes and impact, Last seen on 12/02/16, (http://mrunal.org/2015/01/polity-land-ordinance-features-criticism-land-acquisition.html)
A bigger mandate was brought by the UPA government when the bill was reintroduced in 2011 as Land Acquisition Rehabilitation and Resettlement Bill, 2011 or LARR 2011. Under this bill the proposition was that land could be acquired for a private project if 80 % of the affected families agree for the acquisition. Similarly for a Private Public Partnership project or a PPP the agreement of 70 % of the parties were required. Apart from that it also proposed the compensation for the affected parties which was four times the market rate in rural and two times the market rate at the urban areas.9

It also attempted to compensate the traders, merchants, artisans and other affected parties through a provision of single lump-sum payment although they may not own the land in the area considered for acquisition. This law came into effect on January 2014 as The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and resettlement Act, 2013 after the bill was passed in August 2013.

In May 2014, the BJP led government led by the National Democratic Alliance NDA came to power with a speedy development driven agenda and wanted to make immediate Land Acquisition Act reforms without which it argued the government will find it difficult to implement its ambitious projects including the “Make in India” program which would revive the face of domestic manufacturing. Land acquisition, the government argued is also cardinal for development of infrastructure. To facilitate the economic agenda of the government the land acquisition amendment ordinance in December 2014 was introduced in the budget session of the parliament.

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9 Land Acquisition – history and issues, Last seen on 12/02/16, (http://www.lokraj.org.in/?q=articles/views/land-acquisition-history-and-issues)
The cabinet decided the destiny of the land acquisition bill and under the proposed bill five
categories of land has been laid down which will be exempt from certain provisions of the
previously laid down act including the consent of land acquisition. The categories are: rural
infrastructure; national security and defense production; industrial corridors; affordable housing
for the economically backward class; and the (Public Private Partnership) PPP projects wherein
the land will vest with the central government.

These categories are said to be exempt from the Social Impact Provisions as enacted in the act of
2013. The amendment of 2015 was that it replaced the facilitation of land acquisition by private
entities instead of private companies. The Act defined private entities as an entity other than a
government entity and necessarily includes a proprietorship, company, partnership, corporation,
nonprofit organization or any other entity under any other law. This version also eradicates
restrictions on acquisitions of land for private hospitals and educational institution.10

CALL FOR A NEW BILL

There is unanimity of opinion across the social and political spectrum that the current Law (The
Land Acquisition Act 1894) suffers from various shortcomings. Some of these include:

- **Forced acquisitions:** Under the 1894 legislation once the acquiring authority has formed the
  intention to acquire a particular plot of land, it can carry out the acquisition regardless of how
  the person whose land is sought to be acquired is affected.
- **No safeguards:** There are no real appeal mechanism to stop the process of the acquisition. A
  hearing (under section 5A) is prescribed but this is not a discussion or negotiation. The views
  expressed are not required to be taken on board by the officer conducting the hearing.11
- **Silent on resettlement and rehabilitation of those displaced:** There are absolutely no
  provisions in the 1894 law relating to the resettlement and rehabilitation of those displaced by
  the acquisition.

10 The history and the present of Land acquisition enactment in India, Last seen on 16/02/16,

- **Urgency clause**: This is the most criticized section of the Law. The clause never truly defines what constitutes an urgent need and leaves it to the discretion of the acquiring authority. As a result almost all acquisitions under the Act invoke the urgency clause. These results in the complete dispossession of the land without even the token satisfaction of the processes listed under the Act.¹²

- **Low rates of compensation**: The rates paid for the land acquired are the prevailing circle rates in the area which are notorious for being outdated and hence not even remotely indicative of the actual rates prevailing in the area.

- **Litigation**: Even where acquisition has been carried out the same has been challenged in litigations on the grounds mentioned above. This results in the stalling of legitimate infrastructure projects.

- The Supreme Court has echoed this sentiment in its observation that “The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the land owners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected. 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 law making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”

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¹²RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) ORDINANCE, 2014. Last seen on 08/02/16, (http://iihs.co.in/wp-content/uploads/2013/11/Land_Acquisition_Law_and_Politics_Amlanjyoti_Goswami.pdf)
THE AIM AND OBJECTIVES OF THE RIGHT TO FAIR COMPENSATION AND TRANSPERENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT AACT, 2013 (RFCTLARR) INCLUDE:

- To ensure, in consultation with institutions of local self-government and Gram Sabha established under the Constitution of India, a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families.
- Provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition.\(^{13}\)
- Make adequate provisions for such affected persons for their rehabilitation and resettlement.
- Ensure that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.\(^ {14}\)

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FEATURES OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

Important points about The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

1. Five categories of land use have been created
   (i) Defense and national security projects
   (ii) Affordable Housing = housing for the poor
   (iii) Rural/ Social Infrastructure
   (iv) Industrial Corridors
   (v) PPP infrastructure projects, wherein Central Government own the lands
   And these five categories do not require the Social Impact Assessment to be done and neither requires 70-80% approval of the landowners for private/ PPP projects respectively.

2. However to protect the farmers and farmlands there are restrictions imposed on acquisition of irrigated multi-cropped and other farmlands. Since India’s major population thrives on agriculture and agricultural land owners are poor this one is to safeguard their interests.

3. Moreover, one person from each family of farm labourers will be given (guaranteed) employment when the land on which they were employed as farm hands is acquired.15

4. The Amendment also looks to limit the amount that can be acquired for industrial purposes.

5. In The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 private companies’ was mentioned. The Bill has changed the wordings to ‘private entities’ which bring many other institutions under the purview of the Act, such as companies, NGOs, NPOs, corporation, firms and individual etc.

6. Land if unutilized will be returned after the later of (i) 5 years, or (ii) such period as is mentioned at the time of setting up of the project agreement. Earlier it was just 5 years.

Some projects may by their inherent nature require more time to materialize and hence the ‘later’ period clause has been introduced.

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7. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 did not apply to 13 other Statutory Acts, such as the Atomic Energy Act, Petroleum Act, Railways Act, Electricity Act etc. these have been brought under the purview of the Land Ordinance, 2014 and to be included ultimately into the Amendment Act, 2015 which will require amendments and Rajya Sabha approval on those 13 Act separately too.\(^\text{16}\)

8. Private Hospitals and Private Educational Institutions which were earlier excluded from The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are now through the proposed bill brought under the purview of the Act.\(^\text{17}\)

9. One for the Government Officials, if an offense is committed by a Government Official he can only be prosecuted with prior approval of the Government.\(^\text{18}\)

**VARIOUS AMENDED PROVISIONS WHICH WERE ACCPETED INCLUDES**

- Removed exemptions for Social Infrastructure Projects in public-private-partnership mode.
- Land that will be acquired for industrial corridors will be limited to one kilometer on either side of highways and railway lines.
- Compulsory employment will be provided to one member of a farming family that is selling its land.
- A hassle-free grievance redressal mechanism of land losers will be put in place.
- Farmers may get right to appeal/complain over land acquisition hearing and redressal of grievances at the district level.
- Ceiling on land for acquisition in industrial corridors.
- Panchayats nod may be mandatory for acquiring tribal land.
- Government may acquire land for government bodies, corporations.
- Term private entity was replaced with private enterprise.

\(^\text{16}\) Land Acquisition, Rehabilitation and Resettlement: Law and Politics, Last seen on 17/02/16, (http://iihs.co.in/wp-content/uploads/2013/11/Land_Acquisition_Law_and_Politics_Amlanjyoti_Goswami.pdf)


\(^\text{18}\) The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015, Last seen on 18/02/16, (http://bankersadda.in/land-acquisition-bill-2015-pdf-highlights/)
CONCLUSION AND SUGGESTIONS

With the enormous expansion of the State's role in promoting public welfare and economic development since independence, acquisition of land for public purposes, industrialization, building of institutions, etc., has become far more numerous than ever before. While this is inevitable, promotion of public purpose has to be balanced with the rights of the individual, whose land is acquired, thereby often depriving him of his means of livelihood. The Department of Land Resources (DoLR) is administering the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (hereinafter referred to as Act), 2013. This Act came into force on 01.01.2014 by repealing the Land Acquisition Act, 1894. It was observed that some provisions of the Act were making the implementation of the Act difficult and this made it necessary to bring changes in the Act, while safeguarding the interest of farmers and affected families in cases of land acquisition.

1. Compulsory land acquisition should be limited to a few strictly-defined government purposes. For private projects, the government’s role should be to regulate purchases.

2. Social safeguards should be strengthened by giving binding powers to the expert committee’s recommendations.

3. Provisions for R&R should be revised to ensure that people's livelihoods are restored.

4. Special laws that regulate a broad range of acquisition should effectively be aligned with the proposed bill

Again, acquisition of land for private enterprises ought not to be placed on the same footing as acquisition for the State or for an enterprise under it. The individual and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community. The pendency of acquisition proceedings for long periods often causes hardship to the affected parties and renders unrealistic the scale of compensation offered to them. It is necessary, therefore, to restructure the legislative framework for acquisition of land so that it is more adequately informed by this objective of serving the interests of the community in harmony with the rights of the individual.
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