

LAND ACQUISITION AND NEED OF NEW ACT

Author's Name: Ashok Kumar Godara

Affiliation: Research Scholar, faculty of Law, Jai Narayan Vyas University Jodhpur, India

E-Mail ID: adv.ashokgodara@gmail.com

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Abstract

Throughout the history of mankind, societies have tried to balance between individual rights and the power, often a coercive power, of the State. While my own political ideology was struggling between "is" and "ought" of the situations, one fine day, my family received a notice that the road adjoining our house needs to be widened and we are required to give away a portion of our yard to the Government. For Indian policymakers, the most challenging issue now is land acquisition. A number of places with names like Singur, Nandigram, Kalinga Nagar, Jaitapur, and Bhatta Parsaul have become painful metaphors for social struggle in our language.

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The government has acquired more land as a result of the increasing pressures on land brought on by urbanization, rapid economic development, growing infrastructure needs, etc., particularly in a fast-growing country like India. The "sacrifice" of a small piece of land is insignificant in comparison to the hundreds of villages that the Indian Government has taken over under the law of eminent domain for "development" and the greater good, forcing millions of people to leave their homes.

HISTORY OF INDIA'S LAND ACQUISITION LAWS

The debates surrounding the Indian land acquisition bill are not new. It has been around for more than 200 years at this point. The following timeline applies to this:-

- **1824:** The first land acquisition law was adopted by the British government in India, and it included the entire "Bengal province subordinate to the president of Fort William." The statute permitted the government to purchase land or other immovable property "at a fair valuation" if it was needed for highways, canals, or other public purposes.
- **1839:** The Bombay presidency enacted law for land acquisition an act similar to the Bengal Resolution.
- **1850:** The British government then enforced Act XLII of 1850 in the country to acquire land for the purpose of building a rail network.
- **1852:** The Madras presidency passed an Act in order to facilitate the acquisition of land for public purposes.
- **1857:** The government passed laws that repealed all prior land acquisition enactments and united all of British-ruled India under a single, unified land acquisition statute.
- **1861:** The 1857 legislation was amended owing to the "unsatisfactory settlement," "incompetence" and "corruption."
- **1870:** A new act was implemented that replaced arbitrators with civil courts for resolving disputes.
- **1894:** Because the act of 1870 was deemed inadequate, the government passed the Land Acquisition Act, 1894. This law gave the government the right to compel private landowners to sell their property to the government for public projects. Government agencies set the price for the land.

- **1948:** The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, adopted the Land Acquisition Act, 1894 after replacing the words “the whole of British India” with “all the provinces of India.” The British-era act was used in the same form for several decades.
- **2011:** After winning the general elections in 2009 once again, the UPA government introduced the Land Acquisition Rehabilitation and Resettlement Bill, 2011—a new bill which traced its roots to the 2009 version.
- **2013:** The Land Acquisition Rehabilitation and Resettlement act 2013, is passed by the parliament and repeal old act and first time provision of Rehabilitation and Resettlement is incorporated and main aim of this act to provide fair compensation to displace person therefore, the mechanism of market price is included.

NEED FOR A NEW ACT

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:-

- I. **Forced Acquisitions**
According to the legislation from 1894, once the acquiring authority has made up its mind to purchase a certain piece of land, it may do so without consideration to how it will effect he individual whose land is being sought after.
- II. **No Safeguards**
There isn't really a way to appeal to stop the acquisition process. A hearing is required (under Section 5-A), but this is not a conversation or a negotiation. The officer conducting the hearing is not compelled to consider the opinions expressed.
- III. **Silent on Resettlement & Rehabilitation of those displaced**
There are absolutely no provisions in the Act relating to the resettlement and rehabilitation of those displaced by the acquisition.
- IV. **Urgency Clause**
The Law's most criticised provision is this one. The clause leaves it up to the purchasing authority's judgement as to what qualifies as an urgent requirement and never really specifies it. As a result, the urgency clause is used in practically all purchases made under the Act. As a result, the land is completely seized without even a minimal fulfilment of the Act's stipulated procedural requirements.
- V. **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.
- VI. **Litigations.**
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 infrastructural projects.
- VII. **Recent Observations by the Supreme Court**
The Land Acquisition Act of 1894 has "become a scam," according to Judge Ganpat Singhvi of the Supreme Court of India, following several infractions that have come to light in recent months. The statute seemed to have been written with "scant consideration for the wellbeing of the common man," he continued to say.
- VIII. In its comment that: "The provisions contained in the Act, of late, have been felt by all concerned, do not effectively protect the interest of the land owners/persons interested in

the land," another bench of the Hon'ble Supreme Court shared same sentiment. Notwithstanding the fact that their means of subsistence are impacted by such coercive acquisition, the Act makes no provision for the rehabilitation of people who have been forced off their land. To put it mildly, the Act has to be replaced as soon as possible with a fair, reasonable, and rational law that complies with the Constitution's provisions, especially Article 300-A. We anticipate that the legislative process for a thorough enactment with relation to land acquisition will be finished without needless delay.

PROTECTION OF INTERESTS OF FARMERS UNDER THE NEW ACT

Following are e ways to protect the interests of the farmers

1. **Retrospective Effect**

Where the Award under the 1894 Act has not been made then compensation will be paid at rates under this law. Also where acquisition has taken place five years prior to the commencement of the new law but no compensation/possession has taken place then the proceedings shall be deemed to have lapsed.

2. **Consent**

Consent shall be prior-consent required from 70 percent of land losers and those working on Government assigned lands only in the case of Public-Private Partnership projects and 80 percent in the case of private companies. This consent also includes consent to the amount of compensation that shall be paid.

3. **Return of Unutilised land**

Land not used can now be returned to the original owners if the State so decides.

4. **Share in Sale of Acquired Land increased** The share that has to be distributed amongst farmers in the increased land value (when the acquired land is sold off to another party) has been set at 40%.

5. **Income Tax Exemption**

All amounts accruing under this Act have been exempted from Income tax and from Stamp duty.

6. **Strict Restrictions on Multi-Crop Acquisition**

The acquisition of agricultural land and multi-crop land has to be carried out as a last resort. There will be definite restrictions on the extent of acquisition of such land in every State to be determined by the States concerned.

7. **Safeguards to ensure fair price**

Given the way in which market value is to be calculated and the imposition of a solatium of 100 percent over and above the amount, the farmers are guaranteed a fair price for their land.

8. **Acquisition only if necessary**

The Collector has to make sure that no other unutilised lands are available before he moves to acquire farm land.

9. **Damage to crops to be included in price**

The final award has to include damage to any standing crops which might have been harmed due to the process of acquisition (including the preliminary inspection).

10. **Share in Developed Land**

In case, their land is acquired for urbanization purposes, twenty per cent of the developed land will be reserved and offered to these farmers in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development.

11. **Fishing Rights**

In the case of irrigation or hydel projects, affected families may be allowed fishing rights in the reservoirs, in such manner as may be prescribed by the appropriate Government.

12. **Additional R&R Benefits**

Farmers also entitled to the various rehabilitation and resettlement benefits which are enumerated in response to question.

13. **Time Bound Social Impact Assessment**

The Act mandates a Social Impact Assessment of every project which must be completed within a period of six months.

CONCLUSION

The LARR Act of 2013 greatly increased the amount of compensation that landowners are eligible to receive and also included provisions for their rehabilitation and resettlement (R&R) in the event of displacement. Sharecroppers and other people who depend on land for a living have been included in the R&R's compensation payments and action. The procedures of social impact assessment and, in some circumstances, prior approval of landowners and other affected parties have significantly increased the transparency of the land acquisition process. In addition to receiving more salary, they also get to decide whether land acquisition should even be attempted. Moreover, measures have been taken to prevent the widespread purchase of agricultural land, which could reduce food production and jeopardise food security. The safety of food. Unquestionably, the above-mentioned changes have caused a rebalancing between the rights of private property owners and the authority of the government as the guardian of the public interest. Notwithstanding the fact that landowners and other impacted parties have benefited much, it might be claimed that some of the rules could prove to be barriers to development.

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6. Puran v. State of H.P. AIR 1976 HP 16