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Land acquisition forms a critical aspect of any venture however, it is also the sole means of livelihood for many Indians and any amendment should be made keeping the interest of all stakeholders in mind

Land Bill

*Is it a step in the right direction?**

The government's recent amendments to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has attracted a huge debate in the country. Critical issues of unfair acquisitions in the past had created an extensive trust deficit in the country, and the 2013 Act attempted to address some of these. However, implementation problems with the 2013 Act, along with the enormous challenge to generate employment for the youth were some of the reasons that prompted the government to bring amendments. This Issue Note reviews the scenario, key elements of the previous Act, the amendments and whether they address the major issues of the previous Act.

BACKGROUND

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 sets out to address some of the concern areas of the 2013 Act. The Bill has been passed by the Lok Sabha but is facing stiff resistance from the opposition and awaits passage by the Rajya Sabha, where the government is in minority.

India is a land scarce country and issues of forced acquisitions, meagre compensation, land mafia, non-utilisation of acquired land, absence of compensation to households dependent on the land, lack of adequate resettlement and rehabilitation have resulted in the extensive trust deficit in the country. India had been operating under the regressive Land Acquisition Act, 1894 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act 2013) attempted to right some of the wrongs by providing safeguards such as the consent and the social impact assessment clause which appear to fall short on some aspects.

FROM 1894-2013

The archaic Land Acquisition Act, 1894 allowed governments to acquire land, often forcibly, under the 'eminent domain' provision, the details of which was not clearly spelt out. Compensation was another contentious issue as it was more often than not, inadequate, which has contributed to the cases of opposition from land owners. Further, there were no provisions to address concerns of households dependent on the land as they did not receive compensation and even lost the means of livelihood.

* Revised version as on
April 29, 2015

The 1894 Act also failed to address the issue of resettlement and rehabilitation (R&R) of not only land owners but also households dependent on the land. Often the land acquired for a specific purpose was employed for other means. There existed limited safeguards and process of appeal against the acquisitions under this Act, and even though a hearing was prescribed it often did not necessarily result in resolution. Absence of accurate land records, emergence of land mafia and lack of institutional capacity, inadequate compensation and failure to provide rehabilitation to the displaced led to increasing distrust and emergence of protests. The POSCO-India, mega steel plant worth approximately US\$12bn, has been facing extensive delays in part due to protests relating to forced acquisition which is likely to displace around 22,000 people in Odisha.¹

However, land holdings in India are extremely fragmented and often accurate records are unavailable. Problems of land acquisition lead to extensive delays in major projects significantly impacting not only public sector projects but also those under the public private partnership (PPP) model.

LAAR ACT, 2013

The LAAR Act, 2013 aimed to set right some of the faults of the archaic Land Acquisition Act, 1894 by creating a transparent and fair system of land acquisition

In order to address major challenges being faced by different stakeholders the LAAR Act, 2013 was passed by both the Houses of Parliament after extensive debates and discussions with support from the BJP as well, which was then in opposition. The process took over two years with the Standing Committee devoting more than a year for deliberation on the Bill and also involved widespread consultations, all party meetings and extensive debates in two houses of Parliament. Given that the title is the objective of the Bill, it could also have been labelled simply as Fair Land Acquisition Act. The Act came into effect on January 01, 2014² and some of the rules, such as those relating to Social Impact Assessment (SIA) and consent provisions were notified under the present NDA government in August 2014.³

Objectives

The key objectives of the Act can be derived from the name itself, as it aimed to:

- provide fair and adequate compensation;
- eliminate forced acquisitions;
- safeguard concerns of households whose livelihood was dependent on the land;
- resettlement and rehabilitation of those households affected due to acquisitions;
- create a fair and transparent process of land acquisition; and
- include dispute resolution mechanisms.

Key Elements

The Act aimed to set right some of the faults of the archaic Land Acquisition Act, 1894 by creating a transparent and fair system of land acquisition. It also built in safeguards such as consent clause, involvement of *Panchayati Raj Institutions* and *Gram Sabhas* in case of scheduled areas among others.

Compensation: Providing adequate and fair compensation for acquired land was one of the key features fixed at four times the market value in rural areas and two times the market value in urban areas. Due to the non-availability and inaccuracy of data available for circle rates, these factors of two and four times were introduced. Additionally, compensation was also to be provided to households dependent on the land. However, the final figures would be decided by the state government.

Consent: Land which could, in the past, be acquired forcibly now required consent of at least 80 percent of the affected households in case of private projects and 70 percent in case of PPP projects. It also included *Gram Sabha* consent along with 'affected families' which was a more participatory approach.

Social Impact Assessment: This was included in order to provide clarity and assurance to the land owners regarding the process, objectives and benefits to be provided, ensure multi-cropped irrigated land which is critical for food security is acquired as a last resort and identify the people apart from land owners whose livelihoods are dependent on that piece of land.

Rehabilitation and Resettlement: The Act provides for resettlement and rehabilitation of affected households and details the benefits to be provided apart from the one time payments. No one could be dispossessed until all payments were settled and alternative sites for R&R were prepared.

Dispute Settlement: State governments should set up dispute settlement authorities. The head of the department would be deemed guilty in case of any offence committed by the government unless s/he can prove it was done without his/her knowledge.

Timelines for land usage: Since there were cases of acquired land lying vacant for a long time, the Act set up a timeline of five years post acquisition. If the land lay unutilised after this period it would be returned to the owner.

Retrospective operation: The LAAR Act, 2013 also applies for cases where land acquisition award has not been made and in cases where the land was acquired five years ago but compensation has not been provided or possession not been taken, the processes would start afresh.

Cap on multi-crop and agricultural land: It also provides for states to impose limits on land acquired under these categories and this would be acquired only as a last resort.

Public purpose: In order to correct the misuse and forced acquisitions in the name of public purpose the Act aimed to explicitly state these items.

KEY CONCERNS: LAAR ACT, 2013

There are various causes of concern with the LAAR Act, 2013 which ranged from the compensation amounts to cumbersome processes are likely to lead to extensive delays.

Land holdings in India are extremely fragmented and often accurate records are unavailable. Problems of land acquisition lead to extensive delays in major projects significantly impacting not only public sector projects but also those under the PPP model

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Compensation: Due to absence of adequate measures to establish accurate market rates, the factors of two and four times was applied to urban and rural areas respectively. However, no explanation has been provided for arriving at these figures. This methodology does not adequately address the issue of determining the accurate market rate and the registered values are often under-represented to avoid high stamp duties.⁴ Alternatively, one suggested mechanism was holding land auctions where farmers could state the asking price based on current rates as well as future inflation levels.

Timelines: The various processes now included in the land acquisition exercise would take an extensive amount of time which could have an impact on project timelines. The estimated time for acquisition post completion of all formalities and assuming no extensions was around 50 months.⁵

Consent: The stated percentage of households is said to be on the higher side which can further delay the processes.

Social Impact Assessment: This process has to be undertaken by a committee and the report vetted by a group of experts within a stipulated period of time. However, there were concerns regarding the lack of guidance and capacity to determine guidelines for undertaking such as assessment which can lead to further delays and increase the costs.

Manipulation of Clauses: The Act leaves room for manipulation in some cases. For instance, it states that private players would have to undertake resettlement and rehabilitation if the acquired land is greater than 100 acres in rural areas and more than 50 acres in urban areas. However, in such cases the company can purchase smaller areas of land under several associates.⁶

Exemption of Key Acts: There are various acts which are exempt from the ambit of the LAAR Act, 2013 which include acquisition for sectors such as mining, coal, highways, railways among others. Acquisitions under these categories are likely to impact a large number of people and should not have been excluded from the provisions of the Act. This also makes the processes cumbersome for states in some cases as they have to undergo the processes as per the Act while the Centre does not in many cases.

Thus, for instance, through this provision if the Centre has to acquire land for a PPP project for building highways, it can continue to do so under the National Highways Act, 1956 while if the States need land for a road which is funded through PPP they would need 70 percent consent.⁷

NEED FOR CHANGES

The Indian economy is still heavily dependent on agriculture with almost 58 percent⁸ of rural households characterised as agricultural households⁹ as per the 70th round of National Sample Survey Office (NSSO). Thus, while a significant section of the population is still dependent on agriculture and allied services, this accounts for only about 13.9 percent of the Gross

Domestic Product (GDP) in 2013-14¹⁰ and the share of manufacturing has stagnated at around 15 percent.¹¹

Poverty in India is concentrated in villages where most people either do not own land, or at best have a meagre plot. Most farm labourers are either wage workers or sharecroppers, with very low earnings. The big challenge that India is likely to face in the near future is that new jobs will need to be created to provide opportunities to the youth. The increasing migration to urban areas for better employment and the need for rapid urbanisation also requires attention. Efforts should be made to develop new habitats or factories away from existing cities, so that there is reduced concentration and newer development.

With around 12 million people entering the workforce each year¹² the manufacturing sector also needs to be strengthened to provide additional avenues for gainful employment. However, with this need comes the urgency to improve sectors such as infrastructure and enhance the ease of doing business in India and one of the primary requirements is land, thus the need arises for faster acquisitions. Some of the provisions were said to be lengthy which could impact the overall cost to the industry and delays if any, would further hamper the viability of the project. As per estimates by National Highways Authority of India, the cost of the Delhi-Jaipur highway was expected to treble as per the original estimates.¹³ Thus, based on these issues, the current government was of the view that the process of land acquisition needed to be reviewed and expedited so as to ensure it meets the expectations of all stakeholders.

Additionally, the key acts which were exempt from the provisions of the LAAR Act 2013, needed to be brought within the ambit of the Bill, since they have an enormous impact on a large number of people. The new National Democratic Alliance government brought forth an ordinance with proposed changes to LAAR Act, 2013 followed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015.

The LAAR Act, 2013 came into force only from January 01, 2014 and many states have not even begun implementation of the Bill, thus the primary question is whether this Act has been given enough time to prove effective or ineffective

KEY AMENDMENTS PROPOSED IN THE NEW BILL

- Consent clause, SIA and limits on acquisition of irrigated multi-cropped land, through a notification are not applicable for five categories namely, (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure
- With regard to Industrial corridors the above provisions apply for those set up by government or government undertakings. Further, land can be acquired up to 1km on both sides of a railway line or road
- The government has to conduct a survey of its wasteland and maintain records with details of such land
- Included a provision for compulsory employment of at least one member of such an 'affected family of a farm labourer'.
- The Act provides for the setting up of LARR Authority, which may be approached in case of any grievances in relation to the award stipulated under the Act. The amendments state that the hearing must be held in the district where the acquisition is taking place. This should be done post receipt of a reference from the District Magistrate and notifying all relevant parties

Land Acquisition: The Debate

Opposition	Government
<p>“Give time to the 2013 Act to work. I believe that the 2013 law is a compromise, a balanced middle path and protects the interests of land owners and livelihood losers” Jairam Ramesh</p>	<p>“In the Act of 2013 there were certain lacunae...Our attempt is to address these lacunae to ensure that the law is beneficial for villagers, farmers, their future generations and to ensure they get electricity and water, Narendra Modi</p>
<p>“The 2013 legislation came after two years of extensive nationwide consultations, two all-party meetings, 14 hours of spirited debate in both Houses of Parliament in which over 60 members participated and incorporation of amendments suggested by the-then principal opposition party” Jairam Ramesh</p>	<p>“The amendment ordinance is based on extensive consultations where State Government of most political parties supported these changes. Those who are opposed to it can certainly mandate their party’s state governments not to use the provisions of the ordinance” Arun Jaitley</p>
<p>“The fact is that Section 105(3) of the 2013 Act mandates that within one year of its coming into force, these 13 laws had to be amended to provide for enhanced compensation and R&R benefits at par with the new land acquisition law” Sonia Gandhi</p>	<p>“The biggest lacuna in the 2013 Act was that 13 aspects of government activity, like railways, national highways and mining, for which maximum land is acquired, were kept out of its ambit, meaning that compensation for acquiring land for these purposes would be paid on the basis of the 120-year-old law” Narendra Modi</p>
<p>“Basically, you are going back to the 1894 Act. Forcible acquisition becomes possible and in fact will happen. Diversion of land acquired in public purposes to be used for non-public purpose that will open up. Excess land being acquired will now become a reality” Jairam Ramesh</p>	<p>“It is a misunderstanding that we will acquire land for private sector. The projects which will be in PPP mode (public-private partnership) will be ultimately owned by government” Nitin Gadkari</p>
<p>“The soul of the LARR Act is Social Impact Assessment. The protection for the landowner (invariably a small landowner) is in obtaining the consent of 70 percent or 80 per cent of the affected families” P Chidambaram</p>	<p>“Almost all the exempted purposes benefit rural India. They would enhance the value of land, create employment and provide rural areas with better infrastructure and social infrastructure. This is in addition to the enhanced compensation and R&R provisions being expanded to 13 exempted acts” Arun Jaitley</p>
<p>“As for irrigation projects, the 2013 law specifically exempted them from the social impact assessment (Section 4) when the environmental impact assessment had already been carried out” Sonia Gandhi</p>	<p>“The earlier Act says that suppose we have to build a dam in, say, 3,000 acres and its water will be received by farmers in 3 lakh acres, then we have to get the consent of 80 percent of farmers, which is impossible. So irrigation would not be possible and farmers will commit suicide” Nitin Gadkari</p>
<p>“The impact of this will be that the acquirer can specify an extremely lengthy and generous period for the completion of any project without any accountability. This, in effect, nullifies the clause” Jairam Ramesh</p>	<p>“Creation of smart cities, townships, industrial corridors, business centres, defence projects, cantonments, ports, nuclear installations, building of highways, irrigation projects, dams have a long gestation period. They cannot be completed in five years. If the earlier provision is to be effected, we would be a nation of incomplete projects on account of defective legislative drafting” Arun Jaitley</p>

- Removes the provision of prosecuting the head of department in case of an offence by the department. In case of an offence committed by a government employee, a prior sanction is required before prosecuting the employee
- As per the earlier Act, LAAR 2013 would apply in case an award has been made five years prior to commencement of the Act but either possession has not been taken or compensation not provided. The amendment states that while calculating the five year period any period where (i) possession was taken and money deposited in a designated account, (ii) stay order given by a court, and (iii) period specified in the award of a Tribunal for taking possession, will not be counted
- 13 acts which were earlier exempted from LAAR 2013 have been included in the Bill
- Unutilised land is to be returned to the owner after five years or any period specified at the time of setting up the project, whichever is later
- Replaced the term 'private company' which was defined as per the Companies Act, 1956 with 'private entity' which implies 'any entity other than a government entity or undertaking' and can now include a proprietorship, partnership, company, corporation, non-profit organisation etc. Thus, while earlier the government could acquire land only for a private company for public purpose, this is now extended to any private or non-government entity
- Any notification in relation to the compensation and R&R would be tabled in each House of the Parliament and would have to be passed by them. This provision has now been removed which could impact the transparency of the process

CONCERN AREAS WITH THE NEW BILL

Various states had expressed their apprehensions regarding some of the provisions of LAAR Act, 2013 which were said to be difficult to implement¹⁴ and resulting in delays. Industry bodies had also put forth their concerns regarding the processes which were cumbersome and time-consuming.

The major cause for concern with the new Bill is the removal of the consent and SIA clause in the name of public purpose. Within the LAAR Act, 2013 there was an urgency clause which could be brought in for certain cases such as defence, however extending this to categories such as infrastructure is likely to make the process undemocratic. Though the provisions include compulsory employment to at least one member of the affected family and the compensation amounts have been left untouched, the process of identification of such families was to be done through SIA, which has been removed for the five categories.

SIA has been criticised as it places additional burdens of cost as well as time and with delays would exceed the stipulated period of six months, the concern however, is the implementation of the provision rather than the provision itself. Thus, perhaps this should have been corrected rather than an altogether removal of the provision. The compensation amounts, which were an area of concern, remain unaddressed in the new Bill. Further, the LAAR Act, 2013 came into force only from January 01, 2014, with some rules notified as late as August, 2014 and many states have not even

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begun implementation of the Bill, thus the primary question is whether this Act has been given enough time to prove effective or ineffective.

As per data released by the Finance Ministry post an RTI query, out of the 804 stalled projects as of February 2015, land acquisition was the cause in 8 percent of the cases. The main reasons stated were unfavorable market conditions, lack of non-environmental clearances and decreasing promoter interest.¹⁵ Thus, there is a need to critically examine the impact of the LAAR Act, 2013 prior to executing any significant changes which would affect a large number of people.

CONCLUSION

There exists examples of fair practices and workable model for land acquisition within Indian states itself which can be reviewed for best practices. The Uttar Pradesh government recently simplified the land acquisition process which can now be done through a mutual agreement between the buyer and the seller.

A study by Accenture on 'Best Practices to Improve the Business Environment across States/UTs in India', mentions the Gujarat model of land acquisition which has simplified the process and minimised government intervention. The 'acquisition and requisitioning of property' falls under the concurrent list and centre as well as the states can make laws on the subject. In the spirit of cooperative federalism, the new law allows States to decide whether to implement the provisions (relating to the five categories created) of the new bill or not.

Land acquisition forms a critical aspect of any venture however, it is also the sole means of livelihood for many Indians and any amendment should be made keeping the interest of all stakeholders in mind. It cannot be either pro-farmer or pro-industry but has to balance the needs of both. In this case, it is essential to first undertake an impact assessment (cost benefit analysis) of the existing Act before proceeding to amend it and evaluate the key provisions causing the most harm and accordingly review and revise those.

In many cases it is not the provisions but the implementation which is the problem area and removing the provision would not solve the underlying issues. There is rarely a regulation acceptable to all and the key is to strike a balance given the resources and conditions of the country and the most acceptable solution to all groups is the right answer.

ISSUES FOR DISCUSSION

- Often, the land owners and other affected families do not have proper information and clarity regarding the need for acquisition and benefits to them. How can greater information be provided to ensure trust is maintained and the process functions smoothly?
- How can compensation amounts be adjusted to reflect the true picture of land prices in the country? The mandatory compensation amounts of two times and four times the market value, does not leave room for negotiation or flexibility. Can conducting land auctions be a more

suitable method? Can there be a workable solution involving negotiations between the buyers and sellers with the State merely facilitating the process?

- The timelines for land acquisition have been extremely stretched through the LAAR Act, 2013. Can these be reduced without diluting the provisions of consent and SIA? Can the capacity to conduct SIA in a time-bound manner be strengthened in states to ensure smooth implementation?
- What can be some other innovative solutions to this issue? Can a long-term lease based approach be adopted?
- How can the grievance redressal mechanism be further strengthened?
- How can the resettlement and rehabilitation clause be further enhanced to ensure livelihoods are restored?
- How can the issue of misuse of acquired lands be addressed? Since the provision regarding unutilised land has been amended, can a reasonable time period be stated rather than keeping it ambiguous? How does the policy address the issue of speculative hoarding of land?
- What would be the impact of this Act on food security?
- There is also a need to reduce government's role in the process of acquisition. Can an independent land regulator at the Centre and states be established which can operate to ensure that both parties get the best deal?

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