



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

LAND ACQUISITION IN INDIA

Maroof Bashir

PHD*LLM,SLET,B.A LLB,M.A ENGLISH

PRESENTLY WORKING AS LECTURER AT SOPORE LAW COLLEGE

CHAPTER 1

INTRODUCTION

Land Acquisition in India refers to the process of land acquisition by the central or state government of India for various infrastructure and economic growth initiatives. Several controversies have arisen with claims that land owners have not been adequately compensated.

Land acquisition in India is governed by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force from 1 January 2014.¹ Till 2013, land acquisition in India was governed by Land Acquisition Act of 1894. On 31 December 2014, the new government in India passed an ordinance with an official mandate to "meet the twin objectives of farmer welfare; along with expeditiously meeting the strategic and developmental needs of the country". The government passed Land Acquisition Amendment Bill² in Lok Sabha on 10 March 2015.

Controversies

Eminent domain doctrine has been widely used in India since the era of Independence, with over 21.6 million people in the period of 1951-90.³ They have been displaced with large-scale projects like dams, canals, thermal plants, sanctuaries, industrial facilities, and mining (Pellissery and Dey Biswas 2012, pp 32–54). These occurrences are generally categorized as "development-induced displacement".

The process of land acquisition in India has proven unpopular with the citizenry. The amount reimbursed is fairly low with regard to the current index of prices prevailing in the economy. Furthermore, due to the low level of human capital of the displaced people, they often fail to find adequate employment.

1. "The Land Acquisition, Rehabilitation And Resettlement Bill, 2011 – Full Text Of Bill".

Ministry of Rural Development, Government of India.

2. "Land Bill: Opposition, in leadership of Sonia Gandhi, marches towards Rashtrapati Bhawan" (Post.jagran.com). Retrieved 17 March 2015

3. Sainath, Palagummi (1996). *Everybody loves a good drought*. Penguin Books. p. 470.

ISBN 0-14-025984-8

The draft of the government's National Policy for Rehabilitation states that a figure around 75% of the displaced people since 1951 are still awaiting rehabilitation. However, it should be noted that displacement is only being considered with regard to "Direct Displacement". These rehabilitation policies do not cover fishermen, landless laborers, and artisans. Roughly one in ten Indian tribals is a displaced person. Dam projects have displaced close to a million Adivasis, with similar woe for displaced Dalits. Some estimate suggests 40 percent of displaced people are of tribal origins.

There have been a rising number of political and social protests against the acquisition of land by various industrialists. They have ranged from Bengal, Karnataka, and Uttar Pradesh in the recent past. The acquisition of 997 acres of land by Tata motors in Bengal in order to set up a factory for the cheapest car in India was protested (Singur Tata Nano controversy). At least a decade before the Singur episode similar events occurred in West Bengal, although the opposition parties and other civil society organisations remained silent at that time. Similarly, the Sardar Sarovar Dam project on the river Narmada was planned on acquired land, though the project was later cancelled by the World Bank.

The Land Acquisition Act of 1894 allowed the government to acquire private lands. It is the only legislation pertaining to land acquisition which, though amended several times, has failed to serve its purpose. Under the 1894 Act, displaced people were only liable for monetary compensation linked with market value of the land in question, which was still quite minimal considering circle rates are often misleading. Land acquisition related conflicts during the post reform period in India has shown three distinctive tendencies:⁴

- i. Technology and bundle of rights
- ii. Power Land regulation nexus, and
- iii. Disappearing commons

The current BJP government driven Land Acquisition Amendment Bill in Lok Sabha on 10 March 2015 has seen a tough resistance from key position parties in India who have called the proposed amendments anti farmer and anti poor. The proposed amendments remove requirements for approval from farmers to proceed with land acquisition under five broad categories of projects.

4. Pellissery, Sony and Sattwick Dey Biswas. (2012). *Emerging Property Regimes In India: What It Holds For the Future of Socio-Economic Rights?* IRMA Working Paper 234. PP. 9-16.

While the bill was passed in Lok Sabha, it still needs approval from the upper house, where the current government does not have a majority, for the proposed amendments to become effective.

Displaced Tribals			
Project	State	Displaced Population	Tribal Percentage
Karjan	Gujarat	11,600	100
Sardar Sarovar	Gujarat	2,00,000	57.6
Maheshwar	Madhya Pradesh	20,000	60
Bodhghat	Madhya Pradesh	12,700	73.91
Icha	Bihar	30,800	80
Chandil	Bihar	37,600	87.92
Koel Karo	Bihar	66,000	88
Mahi Bajaj Sajar	Rajasthan	38,400	76.28
Polavaram	Andhra Pradesh	1,50,000	52.90
Maithon & Panchet	Bihar	93,874	56.46
Upper Indravati	Odisha	18,500	89.20
Pong	Himachal Pradesh	80,000	56.25
Ichampalli	Andhra Pradesh	38,100	76.28
Tultuti	Maharashtra	13,600	51.61
Daman Ganga	Gujarat	8,700	48.70
Bhakra	Himachal Pradesh	36,000	34.76
Masan Reservoir	Bihar	3,700	31
Ukai Reservoir	Gujarat	52,000	18.92
Tamnar	Chhattisgarh	59999	

Issues

Some of the important issues surrounding the Land Acquisition are discussed below.⁵

The major land acquisition and conflicts happen in the densely populated areas of the countryside.

5. <http://www.rfgindia.org/publications/LandAcquisition.pdf>

Eminent Domain

The power to take property from the individual rooted in the idea of eminent domain. The doctrine of eminent domain states, the sovereign can do anything, if the act of sovereign involves public interest. The doctrine empowers the sovereign to acquire private land for a public use, provided the public nature of the usage can be demonstrated beyond doubt. The doctrine is based on the following two Latin maxims,

(1) *Salus populi suprema lex* (Welfare of the People Is the Paramount Law) and
(2) *Necessitas publica major est quam* (Public Necessity Is Greater Than Private Necessity).⁶ In the history of modern India, this doctrine was challenged twice (broadly speaking) once when land reform was initiated and another time when Banks were nationalized.⁷

The Constitution of India originally provided the right to property (which includes land) under Articles 19 and 31. Article 19 guaranteed that all citizens have the right to acquire, hold and dispose of property. Article 31 stated that “no person shall be deprived of his property save by authority of law.” It also indicated that compensation would be paid to a person whose property has been taken for public purposes (often subject to wide range of meaning). The Forty-Fourth Amendment of 1978 deleted the right to property from the list of fundamental rights with an introduction of a new provision, Article 300-A, which provided that “no person shall be deprived of his property save by authority of law” (Constitution 44th Amendment, w.e.f. 10.6.1979). The amendment ensured that the right to property“ is no more a fundamental right but rather a constitutional/legal right/as a statutory right and in the event of breach, the remedy available to an aggrieved person is through the High Court under Article 226 of the Indian Constitution and not the Supreme Court under Article 32 of the Constitution.

State must pay compensation at the market value for such land, building or structure acquired (Inserted by Constitution, Seventeenth Amendment) Act, 1964), the same can be found in the earlier rulings when property right was a fundamental right (such as 1954 AIR 170, 1954 SCR 558, which propounded that the word “Compensation” deployed in

6. Chandrachud, Y. V. 2009. *Concise Law Dictionary*. New Delhi: LexisNexis Butterworths Wadhwa Nagpur.

7. Tripathi, P.K. 1980. “Right of Property After 44th Amendment Better Prosecuted Than Ever Before.” *Air Journal* (51).

Article 31(2) implied full compensation that is the market value of the property at the time of the acquisition. The Legislature must “ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of”). Elsewhere, Justice, Reddy, O Chinnappa ruled (*State Of Maharashtra v. Chandrabhan Tale* on 7 July 1983) that the fundamental right to property has been abolished because of its incompatibility with the goals of “justice” social, economic and political and “equality of status and of opportunity” and with the establishment of “a socialist democratic republic, as contemplated by the Constitution. There is no reason why a new concept of property should be introduced in the place of the old so as to bring in its wake the vestiges of the doctrine of *Laissez Faire* and create, in the name of efficiency, a new oligarchy. Efficiency has many facets and one is yet to discover an infallible test of efficiency to suit the widely differing needs of a developing society such as ours” (1983 AIR 803, 1983 SCR (3) 327). The concept of efficiency has been introduced by Justice Reddy, O Chinnappa, very interestingly coupled with the condition of infallibility. In India, with this introduction of ‘social’ elements to the property rights, a new phase had begun. K. K. Mathew, justice

of *Kesavananda Bharati vs State of Kerala*⁸ stated this precisely: “Property in consumable goods or means of production worked by their owners (use aspects of property) were justified as necessary condition of a free and purposeful life; but when property gave power not only over things but through things over persons (power aspect of property) also, it was not justified as it was an instrument of servitude rather than freedom”.⁹

Legislative changes

The 2013 Act focuses on providing not only compensation to the land owners, but also extend rehabilitation and resettlement benefits to livelihood loser from the land, which shall be in addition to the minimum compensation. The minimum compensation to be paid to the land owners is based on a multiple of market value and other factors laid down in the Act.

8. Bhat, P. I. (2004) *Fundamental Rights: A Study of their interrelationships*. Kolkata: Eastern Law House.

9. Pellissery, S. 2014. *Land rights as social rights. The case of India. FLOOR Working Paper No. 23. Paper prepared for the workshop »Understanding Southern Welfare – the B(R)ICS countries«, 24–26 November 2014, Center for Interdisciplinary Research (ZiF), University of Bielefeld, Germany.*

The Act forbids or regulates land acquisition when such acquisition would include multi-crop irrigated area. The Act changed the norms for acquisition of land for use by private companies or in case of public-private partnerships, including compulsory approval of 80% of the landowners. The Act also introduced changes in the land acquisition process, including a compulsory social-impact study, which need to be conducted before an acquisition is made.¹⁰

The new law, also has some serious shortcomings as regards its provisions for socioeconomic impact assessment and it has also bypassed the constitutional local self governments by not recognizing them as "appropriate governments" in matters of land acquisition.¹¹

Monetary compensation

Major Indian infrastructure projects such as the Yamuna Expressway have paid about Rs. 2800 crores (US\$500 million) for land,¹² or over US\$25,000 per acre between 2007 and 2009. For context purposes, this may be compared with land prices elsewhere in the world:

- According to The Financial Times, in 2008, the farmland prices in France were Euro 6,000 per hectare (\$2,430 per acre; IN Rs. 1,09,350 per acre).¹³
- According to the United States Department of Agriculture, as of January 2010, the average farmland value in the United States was \$2,140 per acre (IN Rs. 96,300 per acre). The farmland prices in the United States varied between different parts of the country, ranging between \$480 per acre to \$4,690 per acre.¹⁴

A 2010 report by the Government of India, on labour whose livelihood depends on agricultural land, claims that, per 2009 data collected across all states in India, the all-India annual average daily wage rates in agricultural occupations ranged between IN

10. Cernea, M. (2013) *Progress in India: New Legislation to Protect Persons Internally Displaced by Development Projects*, 21 October 2013. www.brookings.edu/blogs/up-front/

11. Guha, A. (2012); *Social Impact Assessment in the Draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011: A Critical Overview*. In 'Anthropological Impact Assessment of Development Initiatives'. (2012) Eds. A.K. Danda, K.K. Basa, K.K. Misra. Jhargram: Indian National Confederation and Academy of Anthropologists.

12. *Spent Rs 2800 cr on land acquisition for Yamuna Expressway: JP Associates*

13. "European farmland hits record prices". *The Financial Times*.

14. "Land use, value and management: Agricultural Land Values". *USDA Economic Research Service*.

Rs. 53 to 117 per day for men working in farms (US\$354 to 780 per year), and between IN Rs. 41 to 72 per day for women working in farms (US\$274 to 480 per year). This wage rate in rural India study included the following agricultural operations common in India: ploughing, sowing, weeding, transplanting, harvesting, winnowing, threshing, picking, herdsman, tractor driver, unskilled help, masonry, etc.

The compensation for the acquired land is based on the value of the agricultural land, however price increases have been ignored. The land value would increase many times, which the current buyer would not benefit from. Secondly, if the prices are left for the market to determine, the small peasants could never influence the big corporate tycoons. Also it is mostly judiciary who has awarded higher compensation than bureaucracy.

Delayed projects

Delayed projects due to mass unrest have caused a damaging effect to the growth and development of companies and the economy as a whole. Earlier states like Maharashtra, Tamil Nadu, Karnataka, and Andhra Pradesh had been an attractive place for investors, but the present day revolts have shown that land acquisition in some states pose problems.

Consequences

The consequences of land acquisition in India are manifold. The empirical and theoretical studies on displacement through the acquisition of land by the government for development projects have so far focussed on the direct and immediate adverse consequences of land acquisition.¹⁵ Most of the analytical as well as the descriptive accounts of the immediate consequences of land acquisition for development projects draws heavily from Michael Cernea's 'impoverishment risk model', which broadly enumerated eight 'risks' or 'dimensions' of development-induced displacement. These eight risks are very much direct and basic in nature which are (i) landlessness, (ii) joblessness, (iii) marginalization, (iv) loss of access to common property resources, (v) increased morbidity and mortality, (vi) food insecurity, (vii) homelessness and (viii) social disarticulation. Recently L.K. Mahapatra has added 'loss of education' as another impoverishment risk in situations of displacement.

But apart from these direct and immediate effects of land acquisition there are more subtle and indirect effects of this coercive and centralized legal procedure, which have a

15. Chandrachud, Y. V. 2009. *Concise Law Dictionary*. New Delhi: LexisNexis Butterworths Wadhwa Nagpur.

bearing on various decentralised and participatory democratic processes, and institutions of the state power. Land reforms and the Panchayati raj institutions are the two most important areas, which are being vitiated by land acquisition. Of all the states of India, the consequences and controversies around land acquisition in West Bengal has recently gained a lot of national and international attention. The peasant resistances against governmental land expropriation in Singur (a place in the Hoogly district) and Nandigram (a place in the East Medinipur district) has finally led to the fall of the communist party(Marxist) led government in West Bengal, which ruled the state through democratic election for 34 years. The communist led left front government of West Bengal under the economic liberalisation policy adopted by the Central government of the country shifted from its pro-farmer policy and took to the capitalist path of industrial development, which at the micro-levels endangered the food security of the small and marginal farmers as well as sharecroppers who formed the vote bank of the left front government of West Bengal

Alternatives

One of the alternative proposals to land acquisition is leasing the land from landowners for a certain lease period. Proponents cite how land acquisition policies by Governments unwittingly encourage rampant land speculation making the projects expensive since huge portion of investment would be need to be allocated for land acquisition costs.¹⁶ According to them, policies of land acquisition gave way to political cronyism where land is acquired cheaply by securing favors from local governments and sold to industries at steep mark up prices. Leasing land, may also support sustainable project development since the lands need to be returned to the landowners at the end of the lease period in a condition similar to its original form without considerable environmental degradation.¹⁷ When the land is leased then anybody who has to otherwise give up land or livelihood will be compensated for its growing valuation over time. In this model, the landowner lends her land to the government for a steadily-increasing rent, or through an annuity-based system as currently practiced in Haryana and Uttar Pradesh.

16. *Lease land, don't acquire it*, by Swaminathan S Anklesaria Aiyar
http://articles.economictimes.indiatimes.com/2012-06-20/news/32335633_1_land-acquisition-bill-land-prices-conversion-of-agricultural-land *Economic Times*, 20 June 2012

17. *Why Land Tenure should be considered in Design of Projects*
<http://www.fao.org/docrep/005/y4307e/y4307e06.htm>

Some industries already follow the model of leasing lands instead of acquiring it. Energy development projects such as oil & gas extraction usually lease lands. Renewable energy projects such as Wind Power farms and Bio-fuel projects often lease the land from land owners instead of trying to acquire the land which could make the projects prohibitively expensive.

CHAPTER 2

TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) ORDINANCE, 2014

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated on December 31, 2014. The Ordinance amends the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.¹

- The LARR Act 2013 outlines the process to be followed when land is acquired for a public purpose. Key changes made by the Ordinance are:
- **Provisions of other laws in consonance with the LARR 2013:** The LARR Act 2013 exempted 13 laws (such as the National Highways Act, 1956 and the Railways Act, 1989) from its purview. However, the LARR Act 2013 required that the compensation, rehabilitation, and resettlement provisions of these 13 laws be brought in consonance with the LARR Act 2013, within a year of its enactment, through a notification. The Ordinance brings the compensation, rehabilitation, and resettlement provisions of these 13 laws in consonance with the LARR Act 2013.
- **Exemption of five categories of land use from certain provisions:** The Ordinance creates five special categories of land use: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure projects including Public Private Partnership (PPP) projects where the central government owns the land.
- The LARR Act 2013 requires that the consent of 80% of land owners is obtained for private projects and that the consent of 70% of land owners be obtained for PPP projects. The Ordinance exempts the five categories mentioned above from this provision of the Act.
- In addition, the Ordinance permits the government to exempt projects in these five categories from the following provisions, through a notification:
- The LARR Act 2013 requires that a Social Impact Assessment be conducted to identify affected families and calculate the social impact when land is acquired.

1. LARR Act, 2013

- The LARR Act 2013 imposes certain restrictions on the acquisition of irrigated multi-cropped land and other agricultural land. For example, irrigated multi-cropped land cannot be acquired beyond a limit specified by the government.
- **Return of unutilised land:** The LARR Act 2013 required that if land acquired under it remained unutilised for five years, it was returned to the original owners or the land bank. The Ordinance

states that the period after which unutilised land will need to be returned will be five years, or any period specified at the time of setting up the project, whichever is later.

- **Time period for retrospective application:** The LARR Act 2013 states that the Land Acquisition Act, 1894 will continue to apply in certain cases, where an award has been made under the 1894 Act. However, if such an award was made five years or more before the enactment of the LARR Act 2013, and the physical possession of land has not been taken or compensation has not been paid, the LARR Act 2013 will apply.
- The Ordinance states that in calculating this time period, any period during which the proceedings of acquisition were held up: (i) due to a stay order of a court, or (ii) a period specified in the award of a Tribunal for taking possession, or (iii) any period where possession has been taken but the compensation is lying deposited in a court or any account, will not be counted.
- **Other changes:** The LARR Act 2013 excluded the acquisition of land for private hospitals and private educational institutions from its purview. The Ordinance removes this restriction.
- While the LARR Act 2013 was applicable for the acquisition of land for private companies, the Ordinance changes this to acquisition for ‘private entities’. A private entity is an entity other than a government entity, and could include a proprietorship, partnership, company, corporation, non-profit organisation, or other entity under any other law.²

The LARR Act 2013 stated that if an offence is committed by the government, the head of the department would be deemed guilty unless he could show that the offence was

2. PRS Legislative Research, Institute for Policy Research Studies, January 8, 2015

committed without his knowledge, or that he had exercised due diligence to prevent the commission of the offence. The Ordinance replaces this provision and states that if an offence is committed by a government official, he cannot be prosecuted without the prior sanction of the government.

Few differences between the Acts are mentioned below:

Colonial Act 1894	LARR Act 2013
The term “public purpose” was ambiguous and open to Government’s discretion	Clearly defines various types of “public purpose” projects for which, Government can acquire private land. (Refer to appendix-1)
Land could be acquired forcibly.	<ul style="list-style-type: none"> • For private project, 80% affected families must agree. • For PPP project, 70% affected families must agree. • Only then land can be acquired.
They were given no voice in decision making.	Under Social impact assessment (SIA) even need to obtain consent of the affected artisans, laborers, share-croppers, tenant farmers, fishermen, small traders, desi liquor den

	owners, etc. whose (sustainable) livelihood will be affected because of the given project.
Government was free to decide how much money to pay while acquiring private land.	<ul style="list-style-type: none"> • Compensation proportion to market rates. • 4 times the market rate in rural area. • 2 times in urban area. • Affected artisans, small traders, fishermen etc. will be given one-time payment, even if they don't own any land.
No such restrictions on fertile land	<p>To ensure food security:</p> <ol style="list-style-type: none"> 1. Fertile, irrigated, multi-cropped farmland can be acquired only in last resort. 2. If such fertile land is acquired, then Government will have to develop equal size of wasteland for agriculture purpose.
—	<ul style="list-style-type: none"> • if Government acquires the lands for private company- the said private company will be responsible for relief and rehabilitation of the affected people. • Additional rehab.package for SC/ST owners. Example- fishing rights over dam, 25% extra money if settled outside their native district and so on.
No such safeguards	State Governments have to setup dispute settlement authorities. Chairman must be a district judge or lawyer for 7 years.
No such accountability	Head of the department will be made responsible, for any offense or mischief played from Government's side. (although this made the officers very cautious given the media-trials. They'd sit on the files instead of taking any action).
If project did not start, then acquired land was secretly sold/leased to private players at sky-high prices.	If project doesn't start in 5 years, land has to be returned to the original owner.

Why Land ordinance?³

- 1894's land act was bogus and exploitive. So Congress government enacted new law in 2013, with provisions for social impact assessment, fair compensation, dispute settlement and other fancy things.
- LARR-2013 Act became effective from 1st January 2014.
- But, this LARR Act-2013 established an extremely complex and impractical land acquisition process.
- **Holdouts:** Jhola chhap NGOs would instigate 20-25% of the affected families to stage holdout-promising them it'll fetch them even higher prices. and Given the 70-80% consent requirement, the project will never kickoff.
- **Litigation:** because local (and therefore corruption) Patwari and Tehsildars never maintain proper land records of who owns how much land.
- This raised the land prices, red tapism and thus the overall project cost.

3. Land Acquisition bill\Explained Land Ordinance 2014 Salient Features, Criticism.html

- Neither the farmer could sell its land and move to urban areas, no the entrepreneur could buy the land and move towards rural areas.
- Combined with Environment-activism and policy paralysis of UPA regime, the end result was infrastructure bottleneck, high inflation and fall in GDP.

Why Prime Minister Modi had to bring Land Ordinance 2014?

- As such those stringent LARR provisions did not apply to 13 central laws e.g. if land was acquired under Railways Act or Atomic Energy Act, then Social-impact assessment, market-rate compensation etc. were not applicable.
- But this "Exemption" was given only for a year i.e. upto 1st January 2015. By the time, Government needed to amend those 13 acts so that LARR-like high compensation rates can be given to farmers in those projects also. But it was no possible to amend 13 central laws because:
 - Frequent Disruptions in Winter session (December 2014)
 - Modi doesn't enjoy majority in Rajya Sabha.
 - some of the union ministries hadnot even prepared the bills.

Therefore, Government decided to use ordinance route under Article 123 of the Constitution

Differences between LARR ct 2013 and Land Ordinance 2014 are mentioned below:

LARR-Act 2013	Land Ordinance 2014
<ul style="list-style-type: none"> • Mandatory 70% consent for PPP projects. 	Those " mandatory " things are no longer required for 5 types of projects:

<ul style="list-style-type: none"> • Mandatory 80% consent for private projects. • Mandatory Social impact assessment (SIA) for every projects. 	<ol style="list-style-type: none"> 1. National security and Defense Production 2. Rural infrastructure, Rural electrification 3. Infrastructure and Social infrastructure 4. Industrial corridors 5. Housing for Poors.
SIA mandatory for every type of project.	SIA not needed for <ol style="list-style-type: none"> 1. Those five categories listed above 2. PPP projects, IF Government owns the land.
—	Building private hospitals and private educational institutes will also count as “public purpose”. Means, they too can acquire land if 80% affected families agreed.
Compensation: <ol style="list-style-type: none"> 1. 4 times the market rate in rural area. 2. 2 times in urban area. 	Remains the same.
Stringent provisions for relief and rehabilitation (R&R).	remains the same
Private “ companies ” can acquire land for public purpose.	Private “ entities ” can acquire. Meaning private companies, NGOs, trusts, foundations, charity bodies, proprietors etc. too can acquire land for “public purpose”.
If any mischief played on Government’s part then head of the department will be responsible.	<ul style="list-style-type: none"> • Head of the department can’t be prosecuted without prior sanction of government (under CrPC Section 197). • This “immunity” is given to ensure bureaucrats don’t sit on the files, fearing media-trials and judicial activism.

Land ordinance: Criticism/Anti-arguments

- Given the “Immunity” against prosecution, Bureaucrats will play mischief in land acquisition, to help Robert Vaadra types unabated.
- Those “five exempted categories” are very broad- particularly “infrastructure and social-infrastructure”. So, Pretty much all projects can be done without social impact assessment or taking consent of 70-80% of affected families. Entire LARR-2013 is made invalid through clever-wordplay.

- Social impact assessment (SIA) not required in five types of projects. So, local laborers, artisans, small traders will either get zero or very small relief package, even if their livelihood is lost because of industrial/infrastructure project.
- Private colleges and hospitals too can acquire land. But if they continue to charge hefty-fees then no real ‘public-purpose’ is served. Mushrooming of self-financed bogus-quality Engineering, Pharmacy and MCA colleges doesn’t help reaping India’s demographic dividend.
- Ordinance doesn’t specifically say that such private hospitals and school/colleges are exempt from “Social impact assessment” (SIA). But they too can dodge SIA-bullet by claiming it’s a “social-infrastructure” project.
- In parliamentary democracy, Ordinance should be used only for dire emergency. Modi could have waited till budget session, and get proper approval from parliament. [Counter-argument: there was deadline of 1/1/2015].

Examples of Public Purpose acquisition

- Strategic projects e.g. missile silos, anti-aircraft batteries, artillery installments and army bunkers.
- All type of infrastructure projects and PPP projects.
- Cold storage, Packaging-Processing units for Agriculture produce, dairy, fisheries and meat.
- Industrial corridors and manufacturing clusters.
- Education, research, vocational institutes.
- Sports, healthcare, tourism, space-tech.
- Housing for low income group.
- Creating new houses/towns for people affected in natural or manmade disasters.

13 central laws exempted

- If land is acquired for any of these 13 central laws, then LARR-2013 Act’s provisions will not apply (For a year).
- Within that time, Government had to amend those 13 laws to give fair compensation. Since Modi couldn’t do it, he got an ordinance cleared to extends LARR-high-compensation rates to these central laws:

These Acts were exempted from LARR Act 2013 but covered via Ordinance

Old Act	Year
Land Acquisition (Mines) Act	1885
Indian Tramways Act	1886
Damodar Valley Corporation Act	1948
Resettlement of Displaced Persons (Land Acquisition) Act	1948
Requisitioning and Acquisition of Immovable Property Act	1952
National Highways Act	1956
Coal Bearing Areas Acquisition and Development Act	1957
Ancient Monuments and Archaeological Sites Act	1958
Atomic Energy Act	1962
Petroleum and Minerals Pipelines Act	1962
Metro Railways (Construction of Works) Act	1978
Railways Act	1989
Electricity Act	2003

Cabinet approves ordinance on amendments to Land Acquisition Act

The Union Cabinet, chaired by Prime Minister Narendra Modi, decided to amend the Act to bring under its purview 13 central legislations, including those relating to defence and national security, to provide higher compensation and rehabilitation and resettlement benefits to farmers whose land is being acquired.

As per the government following points are noteworthy:⁴

- The government decided to relax certain provisions of the Act and add Section 10 A to the legislation keeping in the mind development needs of the society.
- The mandatory "consent" clause and Social Impact Assessment (SIA) will not be applicable if the land is acquired for five purposes including national security, defence, rural infrastructure including electrification, industrial corridors and building social infrastructure including PPP where ownership of land continues to be vested with the government. However, the compensation and rehabilitation and resettlement packages will be applicable as per the new Land Acquisition Act for acquiring land for these purposes.
- As per the changes brought in the ordinance, multi-crop irrigated land can also be acquired for these purposes.
- "Such projects are vital to national security and defence of India including preparation for defence and defence production.

- The earlier Act provided for consent of 70 per cent of land owners whose land is acquired for PPP projects.
- There is a mandatory condition for provision of job for those whose land is acquired for industrial corridors.

4. <http://www.ibnlive.com/news/india/land-acquisition-bill-the-main-points-of-debate-and-controversy-969424.html>

- With this decision, rehabilitation and resettlement and compensation provisions of the Right to Fair Compensation and Transparency in Rehabilitation and Resettlement Act, 2013 will be applicable for the 13 existing central pieces of legislation including the Coal Bearing Areas Acquisition and Development Act, 1957, the National Highways Act, 1956 and the Land Acquisition (Mines) Act, 1885.
- Cabinet approved certain amendments in the Act "in order to remove" many difficulties which have been reported and certain amendments have been made to further strengthen the provisions to protect the interests of the 'affected families'.
- In addition, procedural difficulties in the acquisition of land required for important national projects required to be mitigated, the government said in a release.
- Government decision to bring excluded 13 Acts under the Land Acquisition Act for compensation and Rehabilitation and Resettlement purposes was a "pro-farmer step". "In the process of prolonged procedure for land acquisition, neither the farmer is able to get benefit nor is the project completed in time for the benefit of society at large.
- As per government the present changes allow a fast track process for defence and defence production, rural infrastructure including electrification, housing for poor including affordable housing, industrial corridors and infrastructure projects including projects taken up under Public Private Partnership mode where ownership of the land continues to be vested with the government.
- These projects are essential for bringing in better economic opportunities for the people living in these areas and would also help in improving quality of life.
- The existing Act vide Section 105 (read with Schedule IV) has kept 13 most frequently used Acts for Land Acquisition for the central government projects out of the purview.
- These Acts are applicable for national highways, metro rail, atomic energy projects, electricity-related other projects etc. Thus, a large percentage of farmers and affected families were denied the compensation and R&R measures prescribed under the Act.
- The government bring all those exempted 13 Acts under the purview of this Act for the purpose of compensation as well as rehabilitation and resettlement. "Therefore, the amendment benefits the farmers and the affected families.

- With the changes, the R & R (rehabilitation and resettlement) and compensation provisions of the Act will be applicable to the laws including the Atomic Energy Act, 1962, the Indian Tramways Act, 1886, the Railways Act, 1989, the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 and the Damodar Valley Corporation Act, 1948.⁵

5. *Land Acquisition bill\Explained Land Ordinance 2014 Salient Features, Criticism.html*

CHAPTER 3

THE EVOLUTION OF THE LAND ACQUISITION ACT

19th century legislation to promote commercial interests of the British was amended to include social impact assessments only in 2007

The first land acquisition legislation in India was enacted by the British government in 1824. Called the Bengal Resolution I of 1824, the law applied “to the whole of Bengal province subject to the presidency of Fort William.” The law enabled the government to “obtain, at a fair valuation, land or other immovable property required for roads, canals or other public purposes.” In 1850, the British extended the regulation to Calcutta (now Kolkata), through another legislation, the Act I of 1850, with “the object of confirming the title to lands in Calcutta for public purposes”.

It was also that time when the British were building railway lines across the country, and needed some form of legislation, which would enable them to acquire land for the same. The Act XLII of 1850 “declared that Railways were public works and thus enabled the provisions of Resolution I of 1824 to be used for acquiring lands for the construction of railways.” Likewise, similar Acts in Bombay (now Mumbai) in 1839, the Building Act XXVII and Act XX of 1852 in Madras (now Chennai) were passed to facilitate land acquisition in these presidencies (within the “islands of Bombay and Colaba” and the Presidency of Fort St. George).

However, it was in 1857 that the British enacted legislation that applied to the rest of the provinces or presidencies and the whole of British India. Act VI of 1857 “repealed all previous enactments relating to acquisition and its object as stated in its preamble, was to make better provision for the acquisition of land needed for public purposes within the territories in the possession and under the governance of The East India Company and for the determination of the amount for the compensation to be paid for the same.” This act, owing to “unsatisfactory settlement”, “incompetence” and “corruption” was further amended in 1861 (Act II) and 1863 (Act XXII) and subsequently led to the enactment of Act X of 1870. The 1870 law, which for the first time, brought a mechanism for settlement (the reference to a civil court for compensation, if the collector couldn’t settle by agreement), was eventually replaced by the Land Acquisition Act, 1894 (Act I of 1894). The 1894 law did not apply to princely states like Hyderabad, Mysore and Travencore, who enacted their own land acquisition legislation.

After India gained independence in 1947, it adopted the Land Acquisition Act of 1894 by the “Indian Independence (Adaptation of Central Acts and Ordinances) Order” in 1948.

Since 1947, land acquisition in India has been done through the British-era act. It was in 1998 that the rural development ministry initiated the actual process of amending the act. The Congress-led United Progressive Alliance (UPA) in its first term (2004-09) sought to amend the act in 2007 introduced a bill in parliament. It was referred to the standing committee on rural development, and subsequently, cleared by the group of ministers in December 2008, just ahead of its eventual passage. The 2007 amendment bill was passed in Lok Sabha as the “Land Acquisition (Amendment) Act, 2009” in February 2009, and the UPA returned to power for a second term in May that year. However, with the dissolution of the 14th Lok Sabha soon after, the bill lapsed. The government did not have the required majority in the Rajya Sabha to pass the bill.

The 2007 bill called for a mandatory social impact assessment (SIA) study in case of large-scale “physical displacements” in the process of land acquisition. The act ensured the eligibility of tribals, forest-dwellers and persons having tenancy rights under the relevant state laws. As per the bill, while acquiring the land, the government had to pay for loss or damages “caused to the land and standing crops in the process of acquisition” and additionally, the costs of resettlement and rehabilitation of affected persons or families. This cost or compensation would be determined by the “intended use of the land” and as per prevailing market prices.

It also sought to establish the Land Acquisition Compensation Disputes Settlement Authority at both the state and central levels “for the purpose of providing speedy disposal of disputes relating to land acquisition compensation.” Besides, the bill also proposed that land acquired as per the act which is unused for a period of five years shall be returned to the appropriate government.

After the UPA came back to power with a bigger mandate, it sought to reintroduce the bill in 2011 as the “Land Acquisition Rehabilitation and Resettlement Bill, 2011” or LARR, 2011. The bill proposed that for a private project, land could be acquired only if 80% of the affected families agree to its acquisition. For a public-private partnership (PPP) project, 70% affected families must agree. Besides, it proposed compensation for the affected parties—four times the market rate in rural areas and two times of the market rate in urban areas. It also sought to compensate artisans, traders and other affected parties through a one-time payment, even if they didn’t own land in the area considered for acquisition. The bill was passed in August 2013 as “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” and came into effect on 1 January 2014.

In May 2014, as the Bharatiya Janata Party-led National Democratic Alliance (NDA) swept to power, riding high on its development-driven agenda, it sought to bring about immediate reforms in land acquisition procedures. Without land acquisition, it argued, the government will find it difficult to execute its ambitious pet projects, including the “Make in India” programme, which seeks to revive and boost domestic manufacturing.

Land acquisition is also central to the government's thrust in infrastructure development. To facilitate its economic agenda, it promulgated the land acquisition amendment ordinance in December 2014 with a view to introducing legislation in the Budget session of parliament.

Under the proposed 2015 bill, there will be five categories which will be exempt from certain provisions of the previous act, including consent for acquisition. They are: national security and defence production; rural infrastructure including electrification; affordable housing for the poor; industrial corridors; and PPP (public private partnership) projects where the land continues to vest with the central government. These categories are also exempted from the SIA provisions, as provided for in the 2013 act.

The 2013 act facilitated land acquisition by private companies, which the 2015 bill has changed to "private entities." As per its definition, a "private entity" is "an entity other than a government entity" and includes "a proprietorship, partnership, company, corporation, non-profit organisation, or other entity under any other law."

The 2015 version also removes restrictions on acquisition of land for private hospitals and private educational institutes.

CHAPTER 4

THE LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2011

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in the Lok Sabha by the Minister for Rural Development on September 7, 2011. The Bill has been referred to the Standing Committee on Rural Development (Chairperson Ms. Sumitra Mahajan). The report was due on May 11, 2012.

Highlights of the Bill¹

- The Bill provides for land acquisition as well as rehabilitation and resettlement. It replaces the Land Acquisition Act, 1894.
- The process for land acquisition involves a Social Impact Assessment survey, preliminary notification stating the intent for acquisition, a declaration of acquisition, and compensation to be given by a certain time. All acquisitions require rehabilitation and resettlement to be provided to the people affected by the acquisition.
- Compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in case of urban areas.
- In case of acquisition of land for use by private companies or public private partnerships, consent of 80 per cent of the displaced people will be required. Purchase of large pieces of land by private companies will require provision of rehabilitation and resettlement.

- The provisions of this Bill shall not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

1. Standing Committee Report on Land Acquisition (Amendment) Bill, 2007 and Standing Committee Report on Rehabilitation and Resettlement Bill, 2007; Land Acquisition, Rehabilitation and resettlement Bill, 2011

Key Issues and Analysis²

- It is not clear whether Parliament has jurisdiction to impose rehabilitation and resettlement requirements on private purchase of agricultural land.
- The requirement of a Social Impact Assessment for every acquisition without a minimum threshold may delay the implementation of certain government programmes.
- Projects involving land acquisition and undertaken by private companies or public private partnerships require the consent of 80 per cent of the people affected. However, no such consent is required in case of PSUs.
- The market value is based on recent reported transactions. This value is doubled in rural areas to arrive at the compensation amount. This method may not lead to an accurate adjustment for the possible underreporting of prices in land transactions.
- The government can temporarily acquire land for a maximum period of three years. There is no provision for rehabilitation and resettlement in such cases.

Context

Land acquisition refers to the process by which government forcibly acquires private property for public purpose. The Land Acquisition Act, 1894 (1894 Act) governs all such acquisitions. Additionally, there are 16 Acts with provisions for acquisition of land in specific sectors such as railways, special economic zones, national highways, etc. The 1894 Act does not provide for rehabilitation and resettlement (R&R) for those affected by land acquisition. Currently, the R&R process is governed by the National Rehabilitation and Resettlement Policy, 2007. In 2007, two Bills were introduced in the Lok Sabha: one to amend the Land Acquisition Act, 1894, and the other to provide statutory status to the R&R policy of 2007. These Bills lapsed with the dissolution of the 14th Lok Sabha in 2009.

2. PRS Legislative Research, *The Land Acquisition, Rehabilitation and Resettlement Bill*, 2011, April 23, 2012

In May 2011, the National Advisory Council recommended combining the provisions of land acquisition and R&R within a single Bill. In July 2011, the Draft Land Acquisition and Rehabilitation and Resettlement Bill was published by the Ministry of Rural Development for public comments. In September 2011, the government introduced the Land Acquisition and Rehabilitation and Resettlement Bill in the Lok Sabha. This Bill will replace the 1894 Act.

Key Features

The Bill specifies provisions for land acquisition as well as R&R. Some of the major changes from the current provisions are related to:

- (a) the process of land acquisition;
- (b) rights of the people displaced by the acquisition;
- (c) method of calculating compensation; and
- (d) requirement of R&R for all acquisitions.

Public purpose

- Land may be acquired only for public purpose. The Bill defines public purpose to include: defence and national security; roads, railways, highways, and ports built by government and public sector enterprises; land for the project affected people, planned development; and improvement of village or urban sites and residential purposes for the poor and landless, government administered schemes or institutions, etc. This is broadly similar to the provisions of the 1894 Act.
- In certain cases consent of 80 per cent of the project affected people is required to be obtained. These include acquisition of land for
 - (i) use by the government for purposes other than those mentioned above, and
 - (ii) use by public-private partnerships, and
 - (iii) use by private companies.

Process of land acquisition

- The government shall conduct a Social Impact Assessment (SIA) study, in consultation with the Gram Sabha in rural areas (and with equivalent bodies in case of urban areas). After this, the SIA report shall be evaluated by an expert group. The expert group shall comprise two non-official social scientists, two experts on rehabilitation, and a technical expert on the subject relating to the project. The SIA report will be examined further by a committee to ensure that the proposal for land acquisition meets certain specified conditions.

- A preliminary notification indicating the intent to acquire land must be issued within 12 months from the date of evaluation of the SIA Report. Subsequently, the government shall conduct a survey to determine the extent of land to be acquired. Any objections to this process shall be heard by the Collector. Following this, if the government is satisfied that a particular piece of land must be acquired for public purpose, a declaration to acquire the land is made. Once this declaration is published, the government shall acquire the land. No transactions shall be permitted for the specified land from the date of the preliminary notification until the process of acquisition is completed.
- In case of urgency, the above provisions are not mandatory. The urgency clause may be used only for defence, national security, and in the event of a natural calamity. Before taking possession of land in such cases, 80 per cent of the compensation must be paid.

Compensation to the land owners

The compensation for land acquisition is determined by the Collector and awarded by him to the land owner within two years from the date of publication of the declaration of acquisition. The process of determination of compensation is given below:

First, the market value of the acquired land is computed as the higher of

- (i) the land value specified in the Indian Stamp Act, 1899 for the registration of sale deeds; or
 - (ii) the average of the top 50 per cent of all sale deeds in the previous three years for similar type of land situated in the vicinity.
- Once the market value is calculated, it is doubled for land in rural areas. There is no doubling of value in urban areas. Then, the value of all assets attached to the land (trees, buildings, etc) is added to this amount. On this amount, a 100 per cent solatium, (i.e., extra compensation for the forcible nature of acquisition), shall be given to arrive at the final compensation figure.
 - Land owners whose property is acquired using the urgency provisions shall be given an additional 75 per cent of the market value of the land.

Process of Rehabilitation and Resettlement

- The Bill requires R&R to be undertaken in case of every acquisition. Once the preliminary notification for acquisition is published, an Administrator shall be appointed. The Administrator shall conduct a survey and prepare the R&R scheme. This scheme shall then be discussed in the Gram Sabha in rural areas (equivalent bodies in case of urban areas). Any objections to the R&R scheme shall be heard by the Administrator. Subsequently, the Administrator shall prepare a report and submit it to the Collector. The Collector shall review the scheme and submit it to the Commissioner appointed for R&R. Once the Commissioner approves the R&R scheme, the

government shall issue a declaration identifying the areas required for the purpose of R&R. The Administrator shall then be responsible for the execution of the scheme. The Commissioner shall supervise the implementation of the scheme.

- In case of acquisition of more than 100 acres, an R&R Committee shall be established to monitor the implementation of the scheme at the project level. In addition, a National Monitoring Committee is appointed at the central level to oversee the implementation of the R&R scheme for all projects.
- In case the land is being privately purchased (100 acres in rural areas and 50 acres in urban areas), an application must be filed with the Collector who shall forward this to the Commissioner for approval. After the application has been approved, the Collector shall issue awards as per the R&R scheme.

Rehabilitation and Resettlement entitlements

- Every resettled area is to be provided with certain infrastructural facilities. These facilities include roads, drainage, provision for drinking water, grazing land, banks, post offices, public distribution outlets, etc.
- The Bill also provides the displaced families with certain R&R entitlements. These include, among other things,
 - (i) land for a house as per the Indira Awas Yojana in rural areas or a constructed house of at least 50 square metres plinth area in urban areas;
 - (ii) a one-time allowance of Rs 50,000 for affected families; and
 - (iii) the option of choosing either mandatory employment in projects where jobs are being created or a one-time payment of Rs 5 lakh or an inflation adjusted annuity of Rs 2,000 per month per family for 20 years.

Other provisions

- A Land Acquisition and Rehabilitation and Resettlement Authority shall be established for settling any disputes relating to the process of acquisition, compensation, and R&R.
- There shall be no change of ownership of acquired land without prior permission from the government. Land may not be used for any purpose other than for which it is acquired.
- Acquired land which has been unused for 10 years from the date of possession shall be returned to the Land Bank of the government. If any unused acquired land is transferred to another individual, 20 per cent of the appreciated land value shall have to be shared amongst the original land owners.
- The government may temporarily occupy and use any piece of waste or arable land for a public purpose. This occupation may be for a period of not more than three years. The compensation of

such land may be decided mutually by the owner of the land and the Collector. Any disagreement on matters relating to compensation or the condition of the land on being returned shall be referred to the Land Acquisition and R&R Authority.

- In any district, land acquisition will be restricted to a maximum of five per cent of irrigated multi-crop land.
- The provisions of this Bill shall not apply to land acquisition under 16 existing laws. These include: the SEZ Act, 2005, Atomic Energy Act, 1962 and the National Highways Act, 1956.

Exemption of certain Acts

Absence of R&R provisions for some acquisitions

The Bill specifies 16 Acts such as the Atomic Energy Act, 1962, and the National Highways Act, 1956 which will be exempt from its provisions. The central government has the power to modify this list. The compensation and R&R provisions under some of these Acts are different from this Bill. For example, the National Highways Act and the Atomic Energy Act provide that the compensation shall be based on the market value of the land on the date the notification is published. Both these Acts do not stipulate any R&R provisions.

Purchase of land by private companies

The Bill provides that R&R provisions are mandatory for all private purchases through private negotiations if the land purchased is over 100 acres in rural areas or 50 acres in urban areas. This raises two issues

- (i) jurisdiction of Parliament to make laws on purchase of land; and
- (ii) possible circumvention of R&R provisions.

Jurisdiction of Parliament to make laws on purchase of land

It is not clear whether Parliament has jurisdiction to require R&R on purchase of agricultural land through private negotiations. Parliament derives its power to make laws on “acquisition and requisition of property” from Item 42 of the Concurrent List. Further, “transfer of property, *other than agricultural land*, registration of documents and deeds” is included in the Concurrent List (Item 6). However, „transfer and alienation of agricultural land“ is included in the State List (Item 18). If it is interpreted that the R&R arises out of transfer of agricultural land, the issue may fall within the sole jurisdiction of state legislatures. On the other hand, if the interpretation is that this subject is primarily related to R&R, which is not specified in any of the three lists, then it may fall within the ambit of the residuary power of Parliament specified in the Union List (Item 97).

Possible circumvention of R&R requirements

A private company that acquires or purchases more than 50 acres of land in urban areas or 100 acres in rural areas is required to rehabilitate and resettle affected families. This threshold can be circumvented by a private company by purchasing multiple parcels of land, each under the prescribed limit, through other entities.

Social Impact Assessment

No threshold for the SIA

The Bill requires an SIA study to be conducted for every acquisition of land. There is no minimum threshold for the land to be acquired. This could lead to delays in the implementation of various government welfare schemes such as building public toilets under the Total Sanitation Campaign or building bus shelters.

No detailed guidelines for the Expert Group appraising the SIA

The Bill provides for an independent multi-disciplinary expert group which shall evaluate the SIA. This group would be required to assess whether

- (iii) the project serves the stated public purpose;
- (iv) it is in the larger public interest; and
- (v) the potential benefits outweigh the costs and adverse impact. There are no guidelines to determine the methodology for such assessment and the Bill does not provide for such guidelines to be delegated to the Rules. This could lead to lack of consistency in the assessment of projects by different expert groups.

Requirement of consent from the project affected people: Consent required from project affected people and not just land owners

The Bill requires consent to be obtained from 80 per cent of the project affected people. This means groups other than owners such as agricultural labourers and sharecroppers may also be required to give their consent. This provision differs from other existing laws such as the Industrial Disputes Act, 1947, and the Companies Act, 1956. In all these Acts, in the case of closure or change of ownership of the company, consent is required to be obtained only from the owners although the livelihood interest of all the employees is protected. The Land Acquisition (Amendment) Bill, 2007 (which lapsed in 2009) required consent to be obtained from 70 per cent of the land owners and not the affected people.

Differential treatment of public and private enterprises

In the case of acquisition of land for the purpose of railways, highways, ports, power, irrigation projects, etc., requirement of consent from project affected people is applicable only to private companies and not

to PSUs. This may lead to a situation where two companies wanting to make an acquisition for the same project will have to fulfil different conditions on the basis of the nature of their ownership.

Computation of compensation paid to land owners

Basis of calculation of the market value of land in rural areas unclear

Compensation shall be calculated on the basis of the market value of land and the value of assets attached to the land. The market value of land is determined by taking into account the higher of: (i) the minimum land value in the Indian Stamp Act, 1899 or (ii) the average of the top 50 per cent of the reported sale price during the preceding three years for similar type of land in vicinity. In the case of land in rural areas, the value of land determined by this method is further doubled. A possible reason for this doubling could be to compensate for under reporting of the transacted price in registration deeds. However, this may not provide an accurate estimation of the value of the land.

Land transactions after SIA could affect the compensation amount

Transactions on the proposed land to be acquired shall be frozen from the date of issue of the preliminary notification till the time the process of land acquisition is completed. This is done to prevent sale of land just before the acquisition which could drive up prices. However, the possibility of land acquisition would be known from the time of the SIA process. This implies that there could be sale of different parcels of land in the vicinity from the time of the SIA till the issue of the preliminary notification. As the compensation for land is linked to the actual transactions in the three years prior to the preliminary notification, these sales during the SIA process may increase prices.

Subsequent transfer or sale of land

Computation of profit sharing may be difficult in some cases

If the acquired land is transferred without any development, 20 per cent of the appreciated land value must be distributed amongst the original land owners. Computation of the appreciated land value may be possible in case the transaction involves only transfer of land. However, it may be difficult to compute the value of land if the transfer is part of a larger transaction. For example, company A owns some undeveloped land as well as a number of other assets (factories, sales centres etc.) and company B takes over company A. In this case, company B will pay a consolidated price for all assets (including land) and it would be difficult to compute the price paid for land that could have been previously acquired.

Basics & Context:

Land acquisition refers to the process where a government acquires land from land owners for any purpose. Generally, the purpose is related to development projects conducted either by PSUs (Public Sector units) or the private sector. Prior to the passage of this Bill (and it is yet to become an Act), we had the Land Acquisition Act of 1894 which was imposed in India since the time of British rule. Under this Act, the government could acquire any land as it wishes to, in the name of "public purpose". The British had never defined the words "public purpose" in a straightforward manner, which meant that in theory as well as in practice, a government could acquire land for any purpose they wanted, and term their purpose "public purpose". After independence, this practice continued whereby Indian governments, both at the central and at the state level, acquired large amounts of land for various kinds of development and infrastructure projects, such as roads, highways, ports (air and sea), power projects (thermal, hydro and nuclear) etc. During 1947 till 1991, most of these acquisitions had been done by agencies or units in the public sector. After 1991, when liberalization had taken place, most of the land acquisition was done by the government to provide land for the private sector, either for private sector projects (infrastructure projects like power, roads etc.) but also for housing projects.

There were many issues raised against such land acquisition:

- a) No one, be it the land owners whose land was acquired (mostly farmers), nor those who may not have owned the land but whose occupations were dependent on the land acquired (mostly agricultural laborers), were compensated monetarily or otherwise as per this Act. No attempt was made for the rehabilitation or resettlement of those who had been affected by such land acquisition either.
- b) There was no requirement of any prior consent of the affected parties (those who will lose their land and/or their occupation or be affected by the pollution or environmental impacts of these infrastructure projects in future as they live nearby) for constructing any of these projects.
- c) Also, land could be acquired with just a notice by the Collector within a very short time frame where people who would be affected neither had a chance necessarily to challenge the acquisition legally, nor had a chance to find some alternate occupation or arrangements for their own. The government could acquire land in a manner it thinks fit.
- d) Most of the land was acquired in the name of India's development, but the local people found very little stake or benefits in the project. Not only were they not given much compensation or rehabilitated, they also did not get employment opportunities (which in many cases were promised to them) in the name of development of the area. In many cases, educated people from outside were able to get these jobs, while the local people did not get any kind of benefit. Once liberalization came in, companies which used to spend on health and education in the name of Corporate Social Responsibility (CSR) outside the areas affected by their projects, were not willing to spend on health and education of those affected by their own projects the same money. Many of them refused to take consideration of the externalities like pollution imposed by their own projects, while the local people also did not receive any training in many

cases to be fit to be employed in these development projects as well, either by the government or the project-owner (be it private or public).

There were huge protests on account of these issues, where people decided to squat illegally on government land because they had been displaced by development projects but were not rehabilitated, resettled and/or adequately compensated in any manner. In some cases like those displaced by the Hirakud dam project, there was no rehabilitation or compensation given of any sort whatsoever to these people.

On account of protests over the years against many such development projects, be it the protests against Tehri Dam, those against Sardar Sarovar dam, those against Singur or Nandigram, and many others which failed in preventing land acquisition, there were growing demands from not just the activists, but also to an extent from the corporates for a transparent and accountable land acquisition process so that while the people could get adequate compensation and would be suitably rehabilitated, corporates do not have to face delays on account of protests against land acquisition.

And it is in this context that the Land Acquisition Act (2011) was introduced, and finally passed in the Lok Sabha on 29th August 2013. Now let us analyse the highlights of the bill and also see if these have pros and cons attached to them.

Features/Highlights of the Bill:

1) When the act applies:

Cons:

The first problem here is with the fact that this act will apply only when a private project developer acquires or purchases land more than 100 acres in rural areas or 50 acres in urban areas through a private negotiation with the landowner, or when a private project developer asks the government to acquire land on his/her/their behalf. So if a private project developer wants to escape this clause, he/she will take land in multiple parcels instead of one-time acquisition, which helps him or her escape the application of this Act.

The other big joke is that if land has been acquired under sixteen previous acts, this act will not apply. These include SEZ Act (2005), Atomic Energy Act, Cantonments Act, Damodar Valley Corporation Act, Land Acquisition (Mines) Act, National Highways Act, Electricity Act and many others. This list is under 4th Schedule of this bill, and other acts can be added to this bill with just a Central govt. notification. If the intention was to ensure that acquisitions in the name of Special Economic Zones, electricity projects or mining projects should be safeguarded from the impact of this bill, what is the use of such a limited Act?

2) Requirement of consent:

In the original Land Acquisition Act (1894), there was no requirement of any consent from the original landowner in acquiring his/her land. But as per this bill, consent of 70% of the landowners is required

prior to acquiring land for a "public-private partnership" project, while consent of 80% of the landowners is required prior to acquiring land for a "private" project. Land can be acquired for "public purpose" only, where public purpose refers to a number of development projects: mining, infrastructure, defence, roads, railways, ports etc.

Pros: This is an improvement upon the original act, since if the majority of the landowners do not agree to the project to be established on their land, a majority of them can unite and oppose the project by not giving their consent. Hence, a major demand of the protesters has been met to a certain extent. The other big achievement is that the definition of "public purpose" is much more clearer and is related to development unlike in the past, where the government could acquire land on any pretext while terming it "public purpose".

Cons: There are some major lacunae even in the kind of provisions put up. For one, a large amount of land is acquired even today by public sector units like NTPC, BHEL or others. Yet, no public consent is required by public sector units in acquiring land, be it for mining, for power projects, for highway building or for any other purpose. This is still a failure of this act and the demand of those protesting against the previous act has still not been met in totality.

3) Adequate notice period for acquisition of land

Pros:

Under the Land Acquisition Act (1894), an "Urgency Clause" could be used to acquire land overnight without any basis. However, a proper procedure is designed under this bill for both the procedure of acquisition of land and of awarding compensation and rehabilitation and resettlement award by an authority as designated by the government under the bill.

4) Compensation for those affected by land acquisition:

As per the Land Acquisition Act (1894), nobody affected by the land acquisition process, be they the landowners or those whose occupations were dependent on the land originally or even those whose lives or livelihoods were to be affected by the project for which land is acquired in future for a variety of reasons (such as land, water and/or air pollution) would be compensated. This bill provides a monetary compensation of up to four times the market value in rural areas, and up to two times the market value in urban areas for farmers/landowners. Compensation is also to be provided for the market price of the buildings standing on the land, and also a solatium amount is to be provided to farmers in case they are losing standing crops on account of the acquisition process.

The bill also makes an attempt at providing non-monetary compensation such as land-for-land for many cases, such as for a landowner when his/her land is acquired for an irrigation project, those who are SC/ST landowners and who lose land due to land acquisition for any project, and those whose lands are taken away for the process of urbanization (20% of their land acquired, at a price commensurate with price of acquisition + price of developing the land). Landowners avail of these provided they are ready

to forego a part of their compensation amount in lieu of these facilities.

The bill allows for land to be not only acquired but if required, leased by the landowner so that the landowner can continue to retain ownership while earning money from the project developer, such as in case of renewable energy projects.

Pros: Again, there is an improvement upon the original act which did not provide any kind of compensation (monetary/non-monetary) to those affected by the land acquisition process. This bill makes a start, compensating those who will be affected by land acquisition prior to the setting up of the infrastructure or development project, monetarily and in some cases, non-monetarily. The bill also provides land-for-land compensation in certain cases. Also, the clause of lease means that the landowner at least need not lose land ownership, although others may lose their livelihoods in the process and have to be adequately compensated and rehabilitated.

Cons: The bill has been criticized mainly on two accounts.

First, there is a huge debate on account of whether such compensation amount would be enough or not. Activists argue that prior to the coming up of a development project, the market price is quite low particularly in rural areas or semi-urban areas, and so the compensation amount (up to 4 times the market price) may be too little for a landowner/farmer who is losing his/her livelihood in a big way. Corporates argue on the other hand that this compensation amount is too high particularly in urban areas where the prices may already be very high. They also state that once it is announced that a development project is going to be constructed in a particular place, the market price of that land increases significantly for any area (rural/urban) and so, the compensation amount would be too high to provide for a private producer or the government. Activists however reject this argument by stating that it would be a little share of the overall investment in the project and so would not affect the project budget significantly. Still, a compensation of up to only 4 times the market price seems low, and many Member of Parliaments suggested that this should be increased to at least 5 to 20 times the market price in at least rural areas if not urban.

Second, those who would be affected after the establishment of the project, they have not been considered at all in the bill although one could say that this was not the primary purpose of the bill, and second, one could address these through proper implementation and enforcement of the environment regulations for air and water (if not for land). There are issues with those norms though, but for once, this is a secondary problem with the bill itself.

There are other issues however, such as that compensation should not be denied/reduced even if land-for-land is provided, and that those who are losing their livelihood because of land acquisition should also be given monetary compensation. These are major issues which remain unaddressed in this version of the bill. Also, concerns were expressed by a few MPs, notably the Leader of Opposition Sushma

Swaraj in the Lok Sabha, that many landowners who become rich overnight on getting compensation money do not understand what to do with this excess money and use it to buy cars and vehicles rather than invest it in some productive activity. That concern also remains.

5) Rehabilitation and Resettlement:

Pros:

Under the Land Acquisition Act (1894), again no provision was there for rehabilitating or resettlement of those who would be losing their ownership of land or livelihoods associated with the land acquired for any project. But under this bill, a number of provisions have been made for rehabilitation and resettlement of all those affected by land acquisition in any manner (loss of ownership and/or loss of livelihoods):

- a) A housing arrangement would be provided for those who either lose their homes built on the land acquired or who have been living on the land but don't have a home for themselves. Moreover, those not opting for the house would get a one-time financial assistance for constructing the home of Rs. 1,50,000/- .
- b) In addition to land-for-land as compensation for landowners, those losing their land and/or their livelihoods on account of land acquisition can ask for one of the following: employment of at least one person within their family within the project coming up, a one-time monetary compensation of up to Rs. 5,00,000/- or annuity of up to Rs. 20,000 per family per month for up to 20 years, indexed to Consumer Price Index for Agricultural Workers (CPI-AW).
- c) A monthly subsistence amount shall be granted to all those families displaced from the land acquired. This amount would be up to Rs. 3,000/- per month for a year from the date on which the Award is given. SC/ST families displaced from Scheduled Areas will receive Rs. 50,000/- for subsistence.
- d) Each affected family will receive a transport amount of up to Rs. 50,000/- one-time for transport of all necessary things to the place of rehabilitation and resettlement. Also, those losing a cattle shop or petty shop will be paid a minimum of Rs. 25,000/- per one such shop they lose.
- e) Those whose land has been acquired against their wish and who belong to a family having artisans, small trader or self-employed family and who are affected by land acquisitions, their families shall receive a minimum of Rs. 25,000/- each as compensatory-cum-rehabilitation allowance.
- f) A one-time "Resettlement Allowance" of Rs. 50,000/- will be granted.
- g) Fishing rights would be allowed as per government notification for those whose fishing activities would be affected by the construction of hydro power or irrigation projects.
- h) Land allotted to those who have opted for it will be jointly registered in the name of husband and wife and would be free from all encumbrances.
- i) Special provisions have been made for SC/ST families whose land is appropriated under this Act. A Development Plan will be formulated side-by-side with the acquisition process, with the plan focusing on giving these families title rights to land to be given to them, a plan for development of alternative

fuel, fodder and non-timber forest produce on non-forest land on which they will be settled. Moreover, in cases where the Gram Sabha under PESA (Schedule V) has consented to land acquisition, all SC/ST affected families will be paid one-third of compensatory amount in the first installment, and two-thirds after the land is acquired. Land given to these families would be given as per government notification with a part to be given for free for their community activities. Not to forget, if land acquisition is done on behalf of a Requiring body or if the SC/ST family has to be rehabilitated outside their original district, then an additional 25% of the compensatory amount shall be paid to such families as "Rehabilitation and Resettlement Allowance."

j) Finally, Reservation benefits shall continue to be enforced for such families and moreover, all entitlements or acts enjoyed by them prior to land acquisition on their original owned land will continue to be enjoyed by them after land acquisition when they are rehabilitated elsewhere, even if the area they currently live in does not enjoy those rights, such as PESA (Schedule V).

These are of course, huge advantages, considering the kind of benefits which have been bestowed on not just SC/ST families but in general on landowners and land-affected people. In addition, the government has prepared a list of amenities which have to be provided and whose cost has to be borne by the project developer, to those being resettled and rehabilitated: roads within the resettled villages and an all-weather road link to the nearest pucca road, passages and easement rights for all the resettled families be adequately arranged; Proper drainage as well as sanitation plans executed before physical resettlement; one or more assured sources of safe drinking water for each family as per the norms prescribed by the Government of India grazing land as per proportion acceptable in the State and many more as mentioned in Schedule III of the Act.

In other words, a huge number of benefits are laid out to be enjoyed by those within this Act. Then are there any cons? Yes.

Cons:

- First of all, there is no making of these provisions as mandatory, and the project developer can say that he/she is not in a position to do so with reasons, the project developer is not mandated really to provide these provisions.
- Second, there is no clear idea of the timeline under which these facilities are to be provided. For example, amendments were moved by various MPs that these facilities should be made ready at least six months prior to actual land acquisition so that those who will be displaced or affected can be sure if the amenities provided for them are adequate or not, and if not satisfied or if having genuine grievances, can ask for a redressal of these prior to actual land acquisition. None of those were accepted and added in the bill.

6) Social Impact Assessment:

Pros:

A major point in this bill is that on the lines of Environmental Impact Assessment done prior to obtaining Environment Clearances from MoEF, this bill requires that a Social Impact Assessment be done by an Expert Group appointed by the respective State government. The Expert Group can ask for land acquisition not to be done provided it is satisfied that the project is not in public interest, the costs outweigh the benefits or it does not serve the stated public purpose. The Expert Group has to assess the impact of the project on various things such as grazing land, transport, housing, lives of people, their occupations, their ownership, their economic conditions, physical infrastructure (drainage, roads, water availability, sanitation etc.) and many other things. A public hearing must also be held prior to the final SIA report formed, which should also include the minutes of the hearing.

7) Acquisition of Multi-Cropped Land:**Pros:**

Only in extreme circumstances, where multi-cropped land has to be acquired at any cost, only 5% of the total multi-cropped land in the district can be acquired and not more. Otherwise, multi-cropped land should not be acquired. This is done for the purpose of ensuring that food security needs are not threatened. This is better compared to allowing multi-cropped land acquisition in any case whatsoever. State governments can set additional conditions or modify those set in this bill as per their own requirement.

CHAPTER 5

**SIGNIFICANCE OF THE NEW TITLE 'THE RIGHT TO FAIR COMPENSATION AND
TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT
BILL**

The title of the old law conveyed that its primary purpose was to expedite the acquisition of land. However, the principle objective of the new Bill is fair compensation, thorough resettlement and rehabilitation of those affected, adequate safeguards for their well-being and complete transparency in the process of land acquisition. The title has been amended to reflect this.¹

Need 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 is any 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.
- 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.

1. Land Acquisition bill\All you wanted to know about new land acquisition Bill - Livemint.html

- Urgency clause: This is the most criticised 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. This results in the complete dispossession of the land without even the token satisfaction of the processes listed under the Act.
- 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.
- Recent observations by the Supreme Court: Justice Ganpat Singhvi of the Supreme Court has observed, in the wake of repeated violations that have come to light over the last few months, that the law has “become a fraud”. He observed that the law seems to have been drafted with “scant regard for the welfare of the common man”.
- Another bench of 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.”

Government need to acquire land for private companies as well as public-private partnership projects

- Land Records in most parts of the country are fragmented and disorganised. In most cases they haven't been updated for decades. The new law overcomes that by ensuring the Collector updates the land records and also pays up to four times the value to correct any inaccuracies.
- If land is purchased then there are no benefits for livelihood losers who are usually far greater in number than the land owners. This Bill ensures that they are taken care of and not simply displaced.
- The inequality in terms of bargaining power between large-scale corporations and small farmers and other marginalised groups increases the likelihood of unfair agreements. Contracts tend to be signed in favour of the party negotiating from a greater position of strength. That is why government is required to bridge the gap and bring balance to this relationship.
- A legitimate need for acquisition by the state itself (to build public goods such as roads, schools and hospitals) can be undermined and stalled by groups with vested interests. If there is no sovereign power to compel these groups, a single individual or group of individuals can hold a process hostage merely by refusing to part with land. Further, in times of crisis such as war, famine and floods, coupled with absence of legislation clarifying and guiding the state's exercise of 'eminent domain', situations can emerge jeopardising human lives.

Highlights of the new Bill²

- Compensation: Given the inaccurate nature of circle rates, the Bill proposes the payment of compensations that are up to four times the market value in rural areas and twice the market value in urban areas.
- R&R: This is the very first law that links land acquisition and the accompanying obligations for resettlement and rehabilitation. Over five chapters and two entire Schedules have been dedicated to outlining elaborate processes (and entitlements) for resettlement and rehabilitation. The Second Schedule in particular outlines the benefits (such as land for land, housing, employment and annuities) that shall accrue in addition to the one-time cash payments.

1. *Land Acquisition bill\All you wanted to know about new land acquisition Bill - Livemint.html*

- Retrospective operation: To address historical injustice the Bill applies retrospectively to cases where no land acquisition award has been made. Also in cases where the land was acquired five years ago but no compensation has been paid or no possession has taken place then the land acquisition process will be started afresh in accordance with the provisions of this act.

- Multiple checks and balances: A ‘comprehensive, participative and meaningful’ process (involving the participation of local Panchayati Raj institutions) has been put in place prior to the start of any acquisition proceeding. Monitoring committees at the national and state levels to ensure that R&R obligations are met have also been established.
- Special safeguards for tribal communities and other disadvantaged groups: No law can be acquired in scheduled areas without the consent of the Gram Sabhas. The law also ensures that all rights guaranteed under such legislation as the Panchayat (Extension to Scheduled Areas) Act 1996 and the Forest Rights Act 2006 are taken care of. It has special enhanced benefits (outlined in a dedicated chapter) for those belonging to Scheduled Castes and Scheduled Tribes.
- Safeguards against displacement: The law provides that no one shall be dispossessed until and unless all payments are made and alternative sites for the resettlement and rehabilitation have been prepared. The Third Schedule even lists the infrastructural amenities that have to be provided to those that have been displaced.
- Compensation for livelihood losers: In addition to those losing land, the Bill provides compensation to those who are dependent on the land being acquired for their livelihood.
- Consent: In cases where PPP projects are involved or acquisition is taking place for private companies, the Bill requires the consent of no less than 70% and 80% respectively (in both cases) of those whose land is sought to be acquired. This ensures that no forcible acquisition can take place.
- Caps on acquisition of multi-crop and agricultural land: To safeguard food security and to prevent arbitrary acquisition, the Bill directs states to impose limits on the area under agricultural cultivation that can be acquired.
- Return of unutilized land: In case land remains unutilized after acquisition, the new Bill empowers states to return the land either to the owner or to the State Land Bank.
- Exemption from income tax and stamp duty: No income tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the new law.
- Share in appreciated land value: Where the acquired land is sold to a third party for a higher price, 40% of the appreciated land value (or profit) will be shared with the original owners.

Protection of interests and concerns of farmers

- Retrospective effect: Where awards are made but no compensation has been paid or possession has not been taken, compensation shall be paid at the rate prescribed under the new Act. Where the Award has not been made the entire process shall be considered to have lapsed. Also where acquisition has taken place five years prior to the commencement of the new law but no compensation/ possession has taken place the proceedings shall be deemed to have lapsed.

- Consent: Prior-consent shall be required from 70% of land losers and those working on government assigned lands only in the case of public-private partnership projects and 80% in the case of private companies. This consent also includes consent to the amount of compensation that shall be paid.
- Return of unutilized land: Land not used can now be returned to the original owners if the state so decides.
- Share in sale of acquired land increased: The share that has to be distributed among farmers in the increased land value (when the acquired land is sold off to another party) has been set at 40%.
- Income-tax Exemption: All amounts accruing under this act have been exempted from income tax and from stamp duty.
- 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.
- Safeguards to ensure fair price: Given the way in which market value is to be calculated and the imposition of a solatium of 100% over and above the amount, the farmers are guaranteed a fair price for their land.
- Acquisition only if necessary: The Collector has to make sure that no other unutilized lands are available before he moves to acquire farm land.
- 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).
- Share in developed land: In case their land is acquired for urbanization purposes 20% 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.
- Fishing rights: In the case of irrigation or hydel projects, affected families may be allowed fishing rights in the reservoirs.
- Additional R&R benefits: Farmers are also entitled to the various rehabilitation and resettlement benefits which are enumerated in response to question 2.
- Time-bound social impact assessment: The Bill mandates a social impact assessment of every project which must be completed within a period of six months.

Rehabilitation and resettlement provisions for farmers, landless and livelihood losers

- Reduced qualifying criteria: To qualify for benefits under this Act the time period has been reduced to three years of dependence (on the acquired land) from five.
- Affected family to include tenants: The definition of affected family includes agricultural labourers, tenants including any form of tenancy or usufruct 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.

- Houses for all affected families: 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. If they choose not to accept the house they are offered a one-time financial grant in lieu of the same.
- Choice of annuity or employment: All affected families are given a choice of annuity or employment;
 - If employment is not forthcoming they are entitled to a one-time grant of Rs.5 lakh per family.
 - Alternatively they will provided with an annuity payment of Rs.2,000 per month per family for 20 years (this will be adjusted for inflation).
- Subsistence allowance: All affected families which are displaced from the land acquired shall be given a monthly subsistence allowance equivalent to Rs.3,000 per month for a period of one year from the date of award.
- Training and skill development: All affected families are also given training and skill development while being offered employment.
- Miscellaneous amounts: All affected families are given multiple monetary benefits such as transport allowance of Rs.50,000 and resettlement allowance of Rs.50,000.
- 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.
- R&R to be completed in all aspects for irrigation projects: In case of acquisition of land for irrigation or hydel project the rehabilitation and resettlement shall be completed six months prior to submergence of the lands proposed to be so acquired.
- Possession upon fulfilment of conditions under Act: 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 R&R sites are ready for occupation.
- Time Limit for provision of R&R entitlements: The components of the Rehabilitation and 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.

Protection of interests and concerns of scheduled castes and scheduled tribes

- **Separate chapter:** A separate Chapter has been carved out to protect interests of tribals and those belonging to the Scheduled Castes. Where acquisition does take place it shall be done as a demonstrable last resort.
- **Approval:** As far as possible no acquisition shall take place in the Scheduled Areas. And where such acquisition does take place it has to be done with the approval/ consent of the local institutions of self-governance (including the autonomous councils where they exist).
- **Development plan:** A Development Plan has to be prepared laying down the details of procedure for settling land rights due but not settled and restoring titles of tribals on alienated land by undertaking a special drive together with land acquisition. The Plan must also contain a programme for development of alternate fuel, fodder and non-timber forest produce resources on non-forest lands within a period of five years sufficient to meet the requirements of tribal communities as well as the Scheduled Castes.
- **One-third to be paid up-front:** In case of land being acquired from members of the Scheduled Castes or the Scheduled Tribes, at least one-third of the compensation amount due shall be paid to the affected families at the outset as first instalment and the rest shall precede the taking over of the possession of the land.
- **Resettlement in the same scheduled area:** The Scheduled Tribes affected families shall be resettled preferable in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic and cultural identity.
- **Land for community:** The resettlement areas predominantly inhabited by the Scheduled Castes and the Scheduled Tribes shall get land, to such extent as may be decided by the appropriate Government free of cost for community and social gatherings.
- **Alienation of tribal lands to be void:** Any alienation of tribal lands or lands belonging to members of the Scheduled Castes in disregard of the laws and regulations for the time being in force shall be treated as null and void: and in the case of acquisition of such lands, the rehabilitation and resettlement benefits shall be available to the original tribal land owners or land owners belonging to the Scheduled Castes.
- **Fishing rights:** The affected Scheduled Tribes, other traditional forest dwellers and the Scheduled Castes families having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects.
- **If resettled outside scheduled area then additional benefits:** Where the affected families belonging to the Scheduled Castes and the Scheduled Tribes are relocated outside of the district then they shall be paid an additional twenty-five per cent rehabilitation and resettlement benefits to which they are entitled in monetary terms along with a one-time entitlement of fifty thousand rupees.

- Higher land-for-land area for SCs/STs: In every project those losing land and belonging to the Scheduled Castes or Scheduled Tribes will be provided land equivalent to land acquired or two-and-a-half acres, whichever is lower (this is higher than in the case of non-SC/ST affected families)
- Additional amounts: In addition to a subsistence amount of rupees 3000 per month for a year (which all affected families get), the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to rupees 50,000.

Protection of interests and concerns of Panchayati Raj Institutions

- SIA in consultation with PRIs: The Social Impact Assessment (SIA) has to be carried out in consultation with the representatives of the Panchayati Raj Institutions (PRIs). In fact, the appropriate Government is required by the law to ensure adequate representation of these institutions during the discharge of the process.
- SIA reports to be shared: Reports prepared under the Social Impact Assessment are to be shared with these individuals in their local language along with a summary.
- Representation in expert group: The expert group has to have two members belonging to the Panchayati Raj Institutions. This is a powerful body that has the power to reject a project.
- Hearings in all gram sabhas: In case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha where more than twenty five per cent of land belonging to that Gram Sabha is being acquired.
- Consultation in compliance with PESA: Consultation with the Gram Sabha in scheduled areas under the Fifth Schedule referred to in the Constitution shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996.
- Representation of panchayat chairpersons on R&R committee at project level: The Rehabilitation and Resettlement Committee at Project Level has to have the chairpersons of the Panchayats located in the affected area or their nominees as representatives.
- Panchayat ghars have to be provided as per the list of Infrastructural amenities given in the Third Schedule.

Protection of states interests and concerns

- Only a baseline: The Bill only provides the baseline for compensation and has devised a sliding scale which allows States to fix the multiplier (which will determine the final award) depending on distance from urban centres.
- Choice for return to land bank or owner: Where unutilized land is returned the state can decide whether it goes to the original owner or to the land bank.
- Threshold for private purchase left to government: While the Bill requires the discharge of obligations related to Resettlement and Rehabilitation (R&R) even in the case of private purchase

provided the purchase exceeds a certain threshold, it leaves the said threshold to the discretion of the state governments.

- In extreme cases, equivalent amount for multi-crop land: While the Bill seeks to discourage acquisition of irrigated multi crop or agricultural land it gives the choice of earmarking how much of such lands should be reserved for protection against acquisition to the States. Furthermore if no alternative land is available to replace the multi-crop land acquired, the state can instruct the payment of an equivalent amount.
- R&R procedure at discretion of state: The procedure related to the functioning of the R&R committee at project-level has been left to the state government if the acquisition is by the state.
- States free to enact other laws: The state governments are free to enact any law to enhance or add to the entitlements enumerated under the Bill which confers higher compensation than payable under the Bill or make provisions for rehabilitation and resettlement which are more beneficial than those provided under the Bill.

Working of compensation mechanism

- In urban areas there is no multiplier. This means no enhancement of the market value calculated occurs. However a solatium of 100% (which currently exists at 30%) is imposed on this market value calculated. This 'solatium' amount is a compensation to ameliorate the pain of forcible acquisition.
- In rural areas the multiplier has been left entirely to the discretion of state governments which may range on a sliding scale from 1 to 2 depending on the radial distance from urban centres.

Safeguards in the law to ensure food security

- Special provisions have been inserted in the Law to ensure that multi-crop land is acquired only as a last resort.
- States are also required to impose limits on the area of agricultural/ multi-crop land that can be acquired in a State. No acquisition of such lands in excess of that limit can take place.
- When acquiring agricultural land, the state has to cultivate an equivalent area of land elsewhere as agricultural land. If they cannot do this then they must deposit an amount equivalent to its value in an account to be used for the purposes of enhancing food security.

Investor concerns addressed

- Consent: In the case of public-private partnership projects consent has been reduced from 80% to 70%. In addition only the consent of land owners is required.
- Definition of market value has been amended to ensure that acquisition price doesn't form the basis for compensation calculation in future acquisitions. Also power has been given to the Collector to not consider transactions which he feels are outliers and not indicative of true value while calculating market value. Earlier there was a danger of a price-spiral as (a multiple of) price

of first acquisition in an area would go into calculation of land price for any subsequent acquisitions

- States given large flexibility: A sliding scale will give states flexibility to fix compensation in rural areas (between two and four times market value), depending on their distance from urban areas. Earlier compensation in rural areas was to be four times market value.
- Restrictions/thresholds on amount of irrigated multi-crop land and net sown area per district or state available for acquisition left to the discretion of states. Earlier amount of irrigated multi-cropped irrigated land that could be acquired was capped at 5%, and amount of net sown area that could be acquired was also capped.
- Land size thresholds on when R&R on private purchase of land becomes applicable has now been left to the discretion of States. Earlier R&R on private purchases was to apply to all acquisitions above 100 acres in rural areas and 50 acres in urban areas.
- Payment for R&R costs by acquirer made a 'one-off' acquirer to put all monies in an escrow account, and ongoing commitments like annuities and benefits to be administered by agency established under this Act. Earlier the Buyer would have had to pay and be involved with R&R infrastructure building until complete, and R&R annuities to perpetuity. However, families will not be displaced from this land till their alternative R&R sites are ready for occupation.
- Collector can be considered appropriate government: In cases where the land sought to be acquired is below a certain threshold then the Collector can be the acquiring authority.

Reasons for 157 amendments being made to this Bill

- It must be understood that most of these amendments are non-consequential in nature. Out of these 157 amendments, 103 amendments are typographical/ definitional, 28 amendments are minor in nature and only 26 Amendments are substantive in nature. This classification is explained below.
- Substantive changes: These are significant changes. They bring about new provisions or thoroughly alter existing provisions on any area. Example: Changes in quantum of consent required, process for determining compensation etc.
- Minor changes: These are changes which are new additions but are of such a nature that they do not alter the provisions of the Bill as it was originally drafted. Example: adding time limits to existing processes. These do not fundamentally alter the process.
- Typographical /nomenclature/ definitional changes: These are minor modifications which correct errors in type or clarify definitions which already exist. Example: replacing the term 'project affected persons' with 'project affected families'.

26 substantive amendments

The 26 substantive amendments are given below. 13 amendments that have been made in accordance with the recommendations of the standing committee are as follows:

- Revised definition of public purpose and revised consent requirements: Given the observations made by the standing committee that the definition of public purpose needed reworking, an amendment has been made which collates the previously scattered definition of public purpose and streamlines it to make it easier to understand.
- Restrictions on multi-crop land acquisition left to the states: In response to the recommendations made by the standing committee that since states better understand the peculiar and unique circumstances in their regions, the fixation of the cap should be left to them, an amendment has been made to allow state governments to fix the limits on the acquisition of multi-crop land.
- Restrictions on agricultural land acquisition left to the states: In response to the recommendations made by the standing committee that since states better understand the peculiar and unique circumstances in their regions, the fixation of the cap should be left to them, an amendment has been made to allow state governments to fix the limits on the acquisition of agricultural land.
- Restrictions on private purchase of land left to the states: In response to the recommendations made by the standing committee that since land purchase falls within the legislative domain of the States they should be allowed to fix the limits of private purchase. If these limits are crossed then the rehabilitation and resettlement provisions of this law will apply.
- Second amendment on restriction of private purchase: A second amendment in furtherance of the preceding amendment has been made to empower states in the fixation of purchase limits.
- Additional compensation in case of double displacement: A new section has been inserted to provide for additional compensation if an affected family is displaced twice.
- Special provisions for scheduled castes and scheduled tribes: Special provisions have been inserted specifically for scheduled castes and scheduled tribes in the body of the Act. These include greater benefits and enhanced safeguards.
- Provision for reservation and other benefits: This amendment has been inserted specifically for scheduled castes and scheduled tribes in the body of the Act in continuation of the previous amendment.
- State-level monitoring committee: A state-level monitoring committee has been established on the recommendations of the standing committee to provide supervision over R&R functions.
- Period for return of unutilized land reduced: The period for the return of unutilized land has been reduced to 5 years from 10 years.
- Unutilized land may be returned to the original owners: An amendment has been made which allows the state governments the option to return the land to the original owners if they so decide.
- Extension of the new law to exempted Acts: In response to the recommendation made by the standing committee, an amendment has been made to extend the provisions of this Act to all the exempted legislations in the fourth schedule within a period of one year of its commencement.

- The provisions relating to scheduled castes and scheduled tribes have been removed from the schedule to the law: And brought into the main legislation as recommended by the Standing Committee.

The 13 amendments have been made in accordance with the recommendation of the group of ministers are as follows:

- Deposit of amount in case of acquisition of agricultural land: A new amendment allows states the option, while acquiring agricultural land, to deposit an amount equivalent to the value of the agricultural land acquired if they are unable to find alternative land to cultivate in lieu of the acquired agricultural land (this was the original requirement).
- Retrospective operation: To correct historical injustices, a retrospective clause allowing certain classes of individuals to benefit from enhanced compensation and rehabilitation and resettlement has been provided for.
- Revised social impact assessment process: A revised provision for a more thorough social impact assessment process in consultation with unutilized raj institutions has been drafted.
- Power to override recommendations of expert group: It was felt by many individuals that a non-elected group of individuals should not be given final authority over whether acquisition should be allowed to proceed or not. As a result an amendment has been made to allow the Government concerned to override them but only if they have sufficient reasons that are recorded in writing.
- New responsibilities for the collector: New amendments have been made to ensure the collector updates the land records so that compensation can be paid on true and accurate values.
- Power to appropriate government to raise R&R: An amendment has been made to enable the appropriate government to raise the rate of rehabilitation and resettlement to take into account for inflation.
- Power to taking possession only after satisfying obligations: Section 37 which deals with taking possession of the land has been strengthened to ensure that the collector shall only take possession of the land “after ensuring that” the compensation/ R&R responsibilities have been discharged.
- Waiver of income tax and stamp duty: To further ameliorate the suffering of displaced families, the Act has exempted them from the payment of income tax and stamp duty for amounts received under this law.
- Power to divert land in exceptional cases: If land acquired for one purpose cannot be used for that purpose due to an unforeseen calamity, then the appropriate government may use it for another purpose.
- Increase in share of appreciated value: If the government after acquiring the land sells it to a third party then 40% of the appreciated value will be shared with the original owners. This has been increased from 20%.

- Limit on benefit from sale of acquired land: In addition to the preceding amendment, an additional amendment has been made to limit this benefit to only the first time the land is sold after acquisition.
- Multiplier to calculate compensation: Flexibility has been given to the states to fix the multiplier by which the compensation will be calculated. In other words states can give up to four times the market value but it can be lower if they chose to fix a lower multiplier.
- Offer for developed land: A new amendment has been made which provides that in the case of acquisition for urbanisation purposes, 20% of the developed land will be reserved and offered to the original owners at a price equal to the cost of acquisition and development.

Bill as introduced in Lok Sabha

1. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein referred to as the Fair Compensation in Land Acquisition Act) was enacted to provide for just and fair compensation to the owners of the land and affected families for the land acquisitions made under the said Act and the 13 Acts specified in the Fourth Schedule, which makes provision for acquisition of land for the purposes specified in the respective Acts, in terms of the provisions made in the First, Second and Third Schedule to the Fair Compensation in Land Acquisition Act. In other words, the benefits of compensation, rehabilitation and resettlement provided in the Fair Compensation in Land Acquisition Act is proposed to be extended in cases of land acquisition made under the Acts specified in the Fourth Schedule.
2. In view of the deadline provided in Section 105 of the Fair Compensation in Land Acquisition Act and the necessity of extending the enhanced compensation, rehabilitation and resettlement to land acquisitions under thirteen Acts of the Fourth Schedule and to make necessary provisions for infrastructure projects the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated on the 31st December, 2014. On the 24th February, 2015 a replacement Bill was introduced in Lok Sabha. The Bill was passed by Lok Sabha with some amendments on the 10th March, 2015. Notice for Motion for consideration and passing of the Bill as passed by the Lok Sabha was given in Rajya Sabha on the 13th March, 2015. However, the Bill could not be taken up for consideration in the Rajya Sabha as the Rajya Sabha was prorogued on the 28th March, 2015.
3. Section 105 of the Act of 2013 as amended by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 extends the benefit of enhanced compensation in case of land acquisition made under the thirteen Acts listed in the Fourth Schedule of the Act.

4. Section 105 of the Act of 2013 as amended by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 provided to extend the benefit of enhanced compensation, rehabilitation and resettlement in case of land acquisitions done under the 13 Acts listed in the Fourth Schedule of the Act. With a view to give continuity to the provisions of the said Ordinance, it was necessary to repromulgate the Ordinance and get the same replaced by the Replacement Bill in Parliament so that enhanced compensation and rehabilitation and resettlement made available through the provisions of earlier Ordinance continue to remain in force in cases of land acquisitions made under the thirteen Acts listed in the Fourth Schedule to the Act of 2013.
5. As the Council of States was not in session and immediate action was required to be taken by the Central Government to give continuity to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 and to expedite the process of land acquisition, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (No. 4 of 2015) was promulgated on 3rd April, 2015.
6. The said Ordinance contains enabling provision necessary to expedite the process of land acquisition for strategic and development activities, such as, national security or defence of India including preparation for defence and defence production; rural infrastructure including electrification; affordable housing and housing for poor people; industrial corridors set-up by the appropriate Government and its undertakings (in which case the land shall be acquired up to one kilometre on both sides of designated railway line or roads for such industrial corridor); infrastructure projects including projects under public private partnership where the ownership of the land continues to vest with the Government, it is proposed to continue with the "Consent" clause provided under sub-section (2) of section 2 of the Fair Compensation in Land Acquisition Act in case of the acquisitions provided in the Act except in cases provided above.
7. Further, to ensure the growth and development of the country, while safeguarding the welfare of farmers, it is proposed to empower the appropriate Government to exempt them from "Social Impact Assessment" and "Special Provisions for Safeguarding Food Security" provisions of the Fair Compensation in Land Acquisition Act. However, the appropriate Government shall, before the issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project. The appropriate Government shall undertake a survey of its wasteland including arid land and maintain a record containing details of such land, in such manner as may be prescribed by the appropriate Government.
8. It is proposed to make consequential amendment by substituting the "Companies Act, 1956" with the "Companies Act, 2013" where the word "Company" has been defined. At present, the provisions of the Fair Compensation in Land Acquisition Act extend to "private company"

thereby excluding others like public company, proprietorship, partnership, nonprofit organisation, etc. Therefore, in place of the term “private company”, the term “private entity” is proposed to be substituted and defined accordingly.

9. It is proposed to exclude all such period, that is the period during which the proceedings for acquisition of the land have been held up on account of any stay or injunction issued by any court, or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in designated account maintained for this purpose, in calculation of five years period as specified in sub-section (2) of section 24 of the Fair Compensation in Land Acquisition Act, arising out of the Land Acquisition Act, 1894.
10. Section 31 of the Act is proposed to be amended so that in the Rehabilitation and Resettlement Award passed by Collector for affected families, compulsory employment to at least one member of such affected family of a farm labourer is also included.
11. Section 46 is proposed to be modified so that the rehabilitation and resettlement benefits are available to land owners in case of purchase of land through private negotiations by non-governmental entities.
12. A new Section 67 A is proposed to be inserted in the Act mandating that the Land Acquisition, Rehabilitation and Resettlement Authority shall hold the hearing in the district where the land acquisition takes place for settlement of the objections raised in the reference under section 64 of the Act.
13. Section 87 is proposed to be amended to provide that the court shall take cognizance of offence by Government officials under the Act in accordance with the procedure laid down in section 197 of the Code of Criminal Procedure, 1973.
14. Section 101 which deals with return of unutilised land is being amended to increase the period after which unutilised land will be reverted back to land owner or to Land Bank from “five years” at present to “a period specified for setting up of any project or for five years whichever is later”.
15. In section 113 of the Fair Compensation in Land Acquisition Act, the word “Part” has been inadvertently used instead of the word “Act” which needs to be rectified. Further, the period provided for removal of difficulties is being extended to five years.
16. The Bill proposes to replace the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (4 of 2015).

CHAPTER 6

LAND ACQUISITION ACT: RIGHT STEP, WRONG ROUTE

After a failed winter session of Parliament, the government recommended promulgating an ordinance for changes to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. According to Finance Minister Arun Jaitley, the government had to amend the Act before the end of the year since Section 105 of the Act, which provides for exempting 13 other central laws, would otherwise have to be notified by December 31.

The 13 pieces of legislation include the Land Acquisition (Mines) Act 1885, Atomic Energy Act, 1962, Railway Act 1989, National Highways Act 1956 and Metro Railways (Construction of Works) Act, 1978. A key change in the ordinance is that the higher compensation and rehabilitation and resettlement package would also apply to the 13 exempted legislations.

According to Finance Minister Mr Jaitley:

With regard to the process of land acquisition, the priority of the government was that the interest of farmer whose land is to be acquired is paramount. Currently, the Act also contains an urgency clause — related to natural disasters and wars — where the acquisition of land is exempted from the stringent requirements in the legislation.

The opposition Congress party has criticized the development and has reached out to all other political parties asking them to come together to block the ‘anti-farmer’ amendments. ***According to Congress party general secretary Mr Digvijay Singh:***

His party would oppose every move to dilute the Land Acquisition Act.

And while politicians quibble, analysts are upbeat about the government’s move.

According to Religare in a report:

The ordinance highlights the government’s intent of bringing in major reforms for the infrastructure/manufacturing sector. The same would go help the government in executing several of its marquee projects like – 100 smart cities, DFC and DMIC amongst others.

The changes in the ordinance have been made after taking inputs from states suggesting changes to the Act which would make it more industry-friendly. Changes included in the Act include doing away with the consent clause for public private participation (PPP) projects, removing the requirement for mandatory social impact assessment (SIA) study and relaxing the retrospective clause. Experts say that

holding a social impact study involving public hearings - procedures that industry executives say would have dragged the acquisition process for years.

One of the key reasons for low rate of investments was the Land Acquisition Act which was introduced by the previous government in January 2014 which not only made the process of acquiring land costly but also tedious. The ordinance will act in ironing out procedural difficulties in land acquisition needed for defence and infrastructural projects.

Goldman Sachs sees this development as positive for India's infrastructure overall as key projects related to rural infra, electrification, industrial corridors and PPP projects being exempted will result in faster land acquisition and help move along projects that have been stuck for want of land.

The ordinance, however, is unlikely to solve the problems of the manufacturing sector. According to Goldman Sachs, the ordinance will only bring in partial relief as manufacturing sector/industry will still have to go through the process of SIA and obtain mandatory consent and administrative burden related to rehabilitation and resettlement which would continue to impact both infrastructure and industrial projects. Furthermore, the ordinance now includes the earlier exempted 13 acts.

Higher cost of land acquisition is not so much of a negative as long as land acquisition becomes swifter says the Goldman Sachs report. Direct cost related to land acquisition will rise as a result; however, faster land acquisition would result in indirect cost savings for infrastructure projects.

Though the intentions of the government are right the mode selected to implement them are questionable. Unable to solve the parliament logjam adopting the ordinance route is not a healthy sign for the democracy.

According to HSBC Securities:

While ordinances can be reissued once they lapse, they may not be perceived as a stable solution by investors wanting secure property rights. It was the stability in policies through a new government which attracted global investors to India in the first place.

CHAPTER 7

REFORMATION POLICY OR PLOY: THE INDIAN GOVERNMENT'S NEW LAND ACQUISITION ORDINANCE

Ordinance appears to be the watchword for the incumbent government as of late, with the most recent one inciting fervent debate over an extremely fragile issue. The recent ordinance passed by the government on the 29th of December, 2014 to ease and amend certain provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has resulted in heated discussions all over the country and so there is a need to understand the issue at hand and to critically analyse its pros and cons.¹

History of the Land Acquisition Act

In India, the Land Acquisition Act had been prevalent from 1894 till it was repealed by the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act in 2013. The provisions as per the Act of 2013 included the required projects coming under the purview of Public Private Partnership to attain the consent of 70% of the land-owners whose land was being acquired, a social impact assessment to be conducted for every land acquisition and a retrospective clause wherein the proceedings of land acquisition would expire if either there was no physical possession of the said land or if compensation was not paid within a time period of 5 years and the land would have to be returned.²

The rigorous procedural framework of the Act led to the industrialists demanding for its reformation which included the need to remove the consent clause, regulate the requirement of social impact assessments to large projects, a reorientation of the compensation clause and to expunge the clause for the return of unutilised land to the owners. The fundamental objective of the ordinance passed was to reform these certain provisions in the Act that were proving to be bottlenecks in the economy's endeavour to maximize growth keeping in mind the welfare of the citizens being affected.

1. Sarah Mary Stanley, *Reformation Policy Or Ploy: The Indian Government's New Land Acquisition Ordinance, 2014*

2. http://en.wikipedia.org/wiki/Land_Acquisition_Act_1894

Key Features of the Land Acquisition Ordinance

A quick glance through the provisions of the Act might elicit a negative reaction that the process sounds cumbersome and dragged out. In the ordinance issued by the government these provisions are done away with especially in the case of projects related to the infrastructure or social infrastructure sector, affordable housing, national security and industrial corridors as well as those coming under PPP wherein the acquired land would remain in the ownership of the government. The retrospective clause was also changed wherein acquired land need only be returned to owners if it remained unused for a period of ten years. As a bonus and with an aim to balance the scales, the government stated that the rehabilitation

and resettlement clause would now also be applicable to the previously exempted 13 legislations which included the Special Economic Zone Act, 2005, the Atomic Energy Act, 1962, and such.

Evaluation of the Ordinance

An initial evaluation may consider this as a supposed win-win situation, wherein essential developmental projects have more leeway for moving forward and the land-owners receive a guarantee for compensation, resettlement and rehabilitation in previously exempted cases. However, a thorough perusal reveals the need to discuss the provisions of the Act, its administration and the true nature of the bottlenecks that are constricting growth.

On examination, the removal of the Social Impact Assessment does away with accountability to a large extent. Without such an assessment, there is no proper manner of finding out the actual number of citizens that get affected by such degree of land acquisition which include not just the land-owners. Without the said assessment only the land-owners receive recompense, when earlier, compensation would also have been received by those dependent on the land for their livelihood. Due to the high population density of the country there is a high dependency on land and other natural resources, therefore such an act would affect the lives and livelihoods of not just the owners. The Social Impact Assessment to a great extent was prosaic and time consuming because of its requirement for all projects irrespective of size and due to a lack of structure of methodology for evaluation by the constituted expert committee. However, the accountability that it provided was undeniable as it helped to exactly estimate the cost of compensation, resettlement and rehabilitation that have to provided (as it also allowed for the estimation of indirect dependents on land) and if administered effectively could have even helped to reduce grievance litigation.

The alteration to the Act for elimination of the consent clause with respect to certain areas is as of now only an agreement from the side of the Centre. There is no certainty that the mandate will be exercised and further mandates will not be put into place by the States, whose support is crucial in projects as the state level authorities are finally responsible for the possession of land. Also, the consent clause has only been eliminated for PPP projects thus leaving private players still in a quagmire over the procedure wherein they require 80% of consent for their projects. This brings into play a level of disparate treatment of public projects and private funded projects, wherein through the normal route private players will still be plagued by delays whereas the less regulatory route requires a partnership with the government.

A McKinsey Study in 2009 on “Building India Accelerating Infrastructure Projects”³ stated that one of the major bottlenecks in acquisition of land for continuation of projects was the under-valuation of the price of land being acquired, which the ordinance does not address as the compensation clause has been left as it is. Land acquisitions would become an easier process if the valuation of land, for the purpose of providing compensation, was done effectively and not based on registered value that is more often than not an under-valued price and which also does not take into account the value that will be lost to the owners due to appreciation as a result of construction of infrastructure.

A Goldman Sachs report states that an increment in the cost of purchasing land (a direct cost) would not prove harmful in the long run as prompt appropriation of property will amount to lesser indirect costs. The dispute resolution mechanism that is made use of in India is another obstacle in itself especially due to its lack of exaction. It further adds to project delays due to lengthy litigation periods. All of this results in an increment in the cost of project, with regard to just the acquisition of land, which is injurious to private investment in the long run.

A survey of media reports and court cases by Rights and Resources Initiative shows that there have been 252 conflicts in just 165 districts of the country over the acquisition of

3. *Building India: Accelerating Infrastructure Projects, 2009.* McKinsey

land (inclusive of private land, diversion of forest land, transfer of common land). In India, approvals for projects are given with only 15 to 20% of the required land being acquired and land conflicts due to the above reasons would only further stall construction and development as well as the flow of investment.

A factor that is also not considered to a great extent is that the burden of poorly gauged projects falls on the shoulders of the public sector banks that have to take over the non-performing assets.

The analysis of the factors as mentioned above brings us to the conclusion that the acquisition of land may not pose as much of a problem as the framework that is in place for the process of acquisition and the efficiency and effectiveness of its administration. The ordinance route that has been adopted by the government most certainly does not inspire confidence in its ability to move reforms in the legislative section of the government and also the stability of its proposed policy changes.

The examination of the proposed modifications to the Act of 2013 indicates that the ordinance, in effect, fails to address the confirmed quandaries that plague the land acquisition issue in the country and it makes us question the true purpose of this initiative as to whether it actually serves to protect the interests of the citizens and the growth of the country or whether it only serves to elevate the political agenda of the government during a time of low faith and is in fact a ploy to control market players and market acquisitions and strengthen the power of the Government entity at the Centre rather than correct market failures.

Suggestions

In retrospect, appropriate solutions can be identified for all the issues; however the fundamental correction to be made is to provide a definitive right to the people over their land and resources, which would provide them with the certainty and stability of ownership to conduct negotiations and enable them to advocate their needs and participate in the developmental process. Social Impact Assessments should also be reinstated at least for medium to large scale projects, where the assessment is done by an expert group that currently deals with and is familiar with the situations of the area under consideration (possibly with no political affiliations) and the final approval has to be provided by them in consultation

with the local self-government and not by the state. An avenue must be provided for private players to forge deals themselves with the owners without additional cumbersome regulatory requirements. The deals made could include an agreed upon modest compensatory package over and above which the private players could offer the owners continued payment of a percentage of profits for a certain period (a steady income flow) as an incentive. Another solution could be to let the owners maintain their rights over the property (therefore they will receive aid only for resettlement and rehabilitation) till after the completion of the projects, based on which they can then sell their property to take benefit of the appreciated land value, thus providing them with added incentive to give consent for the sale of their land.

CHAPTER 8

AMENDMENTS TO THE LAND ACQUISITION LAW – THE REAL PICTURE

On December 31, 2014, the Government promulgated the ordinance to amend some provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation (Amendment) Act, 2013. What was the need to amend the 2013 law and what is the effect of these amendments?¹

It has been repeatedly mentioned that the Land Acquisition Act, 1894 had become obsolete and needed amendment. It indeed had. The compensation provisions in the 1894 Act were highly inadequate and, therefore, it was desirable that higher compensation coupled with a rehabilitation and resettlement package be provided. The 2013 Act did that. I support the 2013 Act on that ground. However, thirteen Acts of Parliament, which provided for land acquisition, were put in the Fourth Schedule of the Act. Section 105 of the 2013 Act made the provisions of the Act inapplicable to these exempted Acts. The said Section provided that the Government could issue a notification and direct 'any' provision of the Act relating to compensation or R&R would be made applicable to the exempted acts. The "Proposed" notification had to be placed before Parliament for a period of 30 days and Parliament was expected to approve, disapprove or modify the said proposed notification. The need for an ordinance arose because such a notification would have to be put before Parliament in the Budget session itself in July-August, 2014 and the approval or disapproval taken accordingly. 31st December, 2014 being the last day for such a notification, the Government decided to amend the Section 105 and apply all the compensation and R&R provisions of the 2013 Act to the thirteen exempted laws. Through this provision the present ordinance provides that the farmers' would get higher compensation if land is acquired under any of the exempted laws. It goes a step further than the 2013 Act itself. This also explains the urgency of issuing the ordinance on the last day of the year since otherwise the Government would have been in default of the complicated approval provisions outlined in the 2013 Act.

The 2013 Act provided for consent of the land owner in varying percentages in a number of cases.

1. Union Cabinet Approves Amendment to Land Acquisition Act. (2014, 12 29). The Indian Express.

It is only when the land owner's give consent that their land be acquired and the Government can initiate the acquisition process. Thereafter, the Act provided for a detailed social impact study. It further provided for special provisions with regard to food security.

Historically the power to acquire the land is a sovereign power. The State needs land for any form of development. Land is required for housing, townships, urbanization, sub-urbanisation, industrialization, infrastructure, both urban and rural, irrigation and defence of India. This list would be endless. A larger public interest always prevails over private interest. However, the land owner who loses the land has to be more than adequately compensated. A highly complicated process of acquisition which renders it difficult or almost impossible to acquire land can hurt India's development. When the 1894 law is amended in the 21st century, it must provide for a 21st century compensation and cater to the developmental needs of the 21st century. It cannot completely ignore the developmental needs of the society and mandate that India does not grow.

The present amendment carves out five exceptions for which this complicated process of acquisition will not apply. However, the compensation provisions remain untouched. The five exempted purposes are discussed herein below:

- The defence and security of India has been made an exempted purpose. The 2013 Act completely ignored it.
- Rural infrastructure, including electrification, is an exempted purpose. Roads, highways, flyover, electrification and irrigation will all add to the value of the farmer's lands. This exemption is entirely in the interest of rural India.
- Affordable housing and housing for poor is an exempted purpose. Migration from rural areas to urban and sub-urban centers where employment opportunities are available, is a reality. It is the migrants from rural areas who would benefit from this exception.
- Industrial corridors which run for a narrow distance alongwith various highways, give a fillip to the entire development of those rural areas. A Delhi-Mumbai industrial corridor would benefit thousand of villages while running alongwith national highway. There could not be a greater opportunity for the rural areas than an industrial corridor running close to agricultural lands. This would generate employment opportunities and enhance the value of the land itself.
- Infrastructure and social infrastructure projects, including those under public private partnership, where ownership of the land vests with the Governments. This is bound to benefit the entire country, particularly the people in rural areas where infrastructure and social infrastructure is inadequate.

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 the thirteen exempted acts.

The amendment, therefore, balances the developmental needs of India, particularly rural India, while still providing enhanced compensation to the land owners. Will the State Governments ruled by political parties, which are opposed to this ordinance, publically declare that they will not use the law which provides for enhanced compensation in the case of exempted acts and acquisition process which balances the developmental needs of society, particularly those of poor, weaker sections, rural India alongwith defence requirements of the country?

This 2013 Act had over 50 drafting errors. The provision with regard to the rectification of errors will be used to cure most of them. Some are being cured through this ordinance which alters the earlier mandate of the 2013 law that unused land has to be returned five years after the acquisition. The earlier provision was clearly defective. Creation of smart cities, townships, industrial corridors, business centers, defence projects, cantonments, ports, nuclear installations, building of highways, irrigation projects, dams have a long gestations 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.

The draft provisions of the 2013 Act enthusiastically provide that no part of an acquired land could be used for a private educational institution or a hospital. How will new smart cities and townships come up? Will they only have a civil hospital and a Government school/ college and no other healthcare and educational institutions will be allowed to be established there? The ordinance permits hospitals and educational institutions to be established on an acquired land. That is the purpose of acquisition for townships. A township without a social infrastructure would be inherently incomplete.

The needs of a modern growing and developing India need a balanced approach. Development and justice to the land owner must coexist. One cannot be done at the cost of the other. 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. History will judge how these States will lose out in the era of competitive federalism.

CHAPTER 9

CONTROVERSY OVER LAND ACQUISITION BILL

As the Lok Sabha takes the controversial Land Acquisition Bill for a debate on Monday, the NDA managers are keeping their fingers crossed with the entire opposition and some of its allies raising strong objections to the new amendments saying the new bill is against the interest of farmers. Though the bill may get passed in the lower house, the government will find it difficult to sail through the tough test in Rajya Sabha where the NDA is a minority. The bill has become an apple of discord at a time when Prime Minister Narendra Modi and his team are pitching hard for a platform for growth based on industrialization.

What the controversy about

Until 2013, the land acquisition in India was governed by The Land Acquisition Act 1984. In 2013, the UPA government passed the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act to repeal the 19th century act. The UPA Act was aimed at ensuring the land is acquired strictly for public welfare projects and land owners are adequately compensated and rehabilitated. The protests and outrage began after the Modi government decided to brought in following amendments to the RFCTLARR Act .

- Removal of ‘consent’ clause: As per the UPA law, land could be acquired only with approval of 70% of land owners for PPP projects and 80% for private entities. However, the amendment, brought in by the NDA removed this provision of ‘consent’ for acquiring lands for five purposes – Industrial corridors, Public Private Partnership projects, Rural Infrastructure, Affordable housing and Defence. This has drawn much of the criticism not only from political circle but also from activists like Anna Hazare who has launched a mass protest against the bill.
- Return of unutilized land: According to the Act 2013, if the land remains unutilised for five years, then it needs to be returned to the owner. But according to the ordinance promulgated by the NDA government, the period after which unutilised land needs to be returned will be five years, or any period specified at the time of setting up the project.
- According to the 2013 Act, land can be acquired by any private company. But according the recent ordinance, land can be acquired by any private entity.
- As per the new law, if any government official commits an offence during the process of acquisition, he/she cannot be prosecuted without prior sanction from the government.
- The amendments propose to include 13 legislations that are currently exempted under the purview of the Act in the compensation, rehabilitation and resettlement provisions. This is, however, seen as a pro-farmer move as there was no uniform central policy of rehabilitation and resettlement.

Why NDA brought the amendments?

Ever since this government came to power, Prime Minister Narendra Modi has been vigorously campaigning for the 'Make in India' vision which aims to boost the domestic manufacturing. Though Modi is wooing the foreign companies to invest in India, land acquisition is a major problem for these firms with many of them dropping their investment plan over the past few years.

Though there are suggestions from some corners that the industrial enterprises should purchase land directly from farmers, it doesn't seem feasible in India as the records of land holding cannot be easily verified in the country. This may open the possibility of disputes after the purchase. However, the government mediation in the transfer of land has not proved fully successful to compensate and rehabilitate the displaced people. The draft of the government's National Policy for Rehabilitation states that a figure around 75% of the displaced people since 1951 are still awaiting rehabilitation.

According to Finance Minister Arun Jaitley, the ordinances were aimed at speeding up development in five areas: development of industrial corridors, social infrastructure such as education, rural infrastructure such as roads and power, housing for the poor, and the country's defense capabilities. The ordinance makes land acquisition easier in these areas by exempting them from several provisions of current law.¹

1. <http://blogs.wsj.com/indiarealtime/2012/09/27/>

Politics over the bill

The Congress-led opposition parties are training their guns to corner the government when the bill comes for consideration in the parliament. Creating more trouble to the government, some of the NDA allies have also come against the bill.

Even though Parliamentary affairs minister Venkaiha Naidu expressed hope to garner the support of Shiv Sena, Akali Dal, Lok Jansakthi Party in the house, the Maharashtra ally has made it clear that it will strongly oppose the bill. The BJD has come up with a suggestion that it would support the bill if land owners whose land was sought to be acquired for commercial enterprises, public as well as private, were given a share in the profit.

Sensing the stiff opposition to the bill, government has set a reconciliatory note with Narendra Modi saying it is ready to review any amendments which are deemed as anti-farmer. Asserting that the land bill is not anti-farmer, Modi said, "The law that was passed by earlier government has no provision for allotment of land for schools, hospitals, houses, water and irrigation. I ask you whether you need all these facilities or not."

Media reports say that the government may make some changes in the amendments to get the opposition members on board. According to sources the government may bring back the 'consent clause', although most probably in a diluted form.

Future of the bill

If the government cannot get the bill passed in Rajya Sabha, it may call a joint session of the parliament. However, with its own allies opposing the bill, it will be tough for the government to get it passed in the joint session also. Though the NDA has 395 members out of the total 788 in both the houses, BJP alone has only 327 MPs, making the fate of the bill hang in balance.

Disclaimer: We respect your thoughts and views! But we need to be judicious while moderating your comments. All the comments will be moderated by the NIE editorial. Abstain from posting comments that are obscene, defamatory or inflammatory, and do not indulge in personal attacks. Try to avoid outside hyperlinks inside the comment. Help us delete comments that do not follow these guidelines.

Build United Struggles against Pro-Corporate and Anti-People: Land Acquisition Ordinance

The Modi Government in an authoritarian manner has amended the Land Acquisition legislation through an Ordinance without going through the Parliament. The CPI(M) had criticised the Act brought by the UPA Government as being inadequate and had moved amendments to it. The CPI(M) wanted the Act to be further strengthened to protect the interests of farmers and those dependent on the land.

However the Modi Ordinance snatches away even those protections. It is a step backwards to reinstate the anti-farmer framework of the colonial Land Acquisition Act of 1894. The Ordinance ignores genuine concerns of farmers and millions of persons dependent on land.

The Issue of Consent

The 2013 Act provided that acquisition of land for private companies required consent of at least 80 per cent of those affected families and in the case of public private partnership projects of at least 70 per cent. (*Sec 2.sub clause 2 (b) (1) and (2)*)

The Ordinance excludes a range of more projects whether in the public or private sector from the condition of getting consent from the farmers. Projects to be excluded include all those relating to defence production, power projects and other projects for rural infrastructure, housing for poor, industrial corridors and PPP projects. Since most of land acquisition has been for such power and irrigation related projects, the exemption given from getting the consent of farmers will be disastrous for the farmers. (*Insertion of new Ch 3A*)

Thus the Ordinance reinstates the “Eminent domain” or power of the State to forcibly acquire Land without the owner's consent by the different exemptions given in the Ordinance. The amendments will remove distinction between acquisition for the State and for Private companies. It will bring private companies and their activities of unbridled profiteering into public purpose.

In a sense therefore these amendments are even more retrograde than the 1894 Act. Even though the 1894 Act allowed the use of the State’s eminent domain to forcibly acquire land for public purpose, acquisition could not be done for “private purposes” of a company simpliciter, and had to be made in the

“larger public interest”. Further, acquisition for companies was not to be done without due consideration, simply on demand. But now all that is done away with. The ordinance shows that Modi Raj is Company Raj.

The Issue of Social Impact Assessment and Safeguard for Food Security

The 2013 Act has two important chapters 2 and 3. Chapter 2 deals with Social Impact Studies and Assessments. This is to have an impartial assessment as to how many families will be affected, is the land being acquired the minimum of what is actually required, whether any alternative site is available and so on. Corporates had strongly opposed this Chapter as often they have acquired land far in excess of the actual requirement, fudged figures of those affected and so on.

The Ordinance exempts all categories included in its new proposed Ch 3 A described above entirely from having any Social Impact Assessment.

Similarly there is wholesale exemption from Chapter 3. Chapter 3 deals with ‘special provisions to safeguard food security. It categorically states “no irrigated multi cropped land shall be acquired under this Act.” However it does give certain exemptions for “exceptional circumstances” and as a “demonstrable last resort.” But the Modi Government is unambiguous about its drive for allowing private projects in the name of infrastructure. Thus the entire chapter is nullified by exemptions given to the five categories listed above.

These three aspects namely the dilution of consent of farmers, exemption of any Social Impact Assessments and freedom to acquire even the most productive agricultural land are the actual core of the Ordinance. They are deeply anti-farmer and pro-corporate and must be opposed.

The Issue of Government Acquisition for Private Sector

The Act had excluded Government acquisition for private hospitals, private educational institutions and private hotels. (*Sec 2.1 Clause b.(i)*) The Ordinance however permits Government acquisition of land for private hospitals, hotels and educational institutions. Thus the very definition of “public purpose” gets converted to public purpose for private profit.

Public purpose must be defined as activities which are of direct benefit to the largest number of people and does not include the furtherance of private speculation and profit.

The provision to include private hospitals and private educational institutions under social infrastructure category thus to enable cheap and forcible acquisitions of land cannot be accepted.

New Addition of Private Entity

The Act has a chapter under Sec.4 which provides definitions. An addition has been made to this list with the inclusion of the words “private entity” which includes corporates, proprietorships and even non-

profit organisations or any other entity under any law. Thus NGOs close to the sangh parivar or anyone else can be included in the law.

This amendment widens the scope of those who can grab land.

The issue of Unutilised Land

Under the Land Acquisition Act, 2013 if land acquired remained unutilised for 5 years, it was to be returned to the original owners or the land bank.

According to the Land Acquisition Ordinance, 2014 the period after which unutilised land will need to be returned will be 5 years, or any period specified at the time of setting up the project, whichever is later.

This Amendment will ensure holding of land for a prolonged period even if unutilised and encourage speculative activity. Even today land taken for projects remains unutilised for years together while the former owners suffer, no public purpose is served.

This is entirely unacceptable.

The Issue of Retrospective Effect

The Land Acquisition Act, 2013 states that the Land Acquisition Act, 1894 will apply in those cases, where an award has been made under the 1894 Act.

However, if such an award was made five years or more before the enactment of the 2013 Act, and the physical possession of land has not been taken or compensation has not been paid, the 2013 Act will apply.

The Land Acquisition Ordinance, 2014 states that in calculating this time period, any period during which the proceedings of acquisition were held up:

- (vi) due to a stay order of a court, or
- (vii) a period specified in the award of a Tribunal for taking possession, or
- (viii) any period where possession has been taken but the compensation is lying deposited in a court or any account, will not be counted.

Thus Ordinance discounts farmer protests and in effect saves the land acquirer from the costs of compensation under this Act. This is clearly unfair and unjust.

Issue of Extension of Compensation

The Land Acquisition Act, 2013 exempted 13 Acts from its purview with the condition that they would be included under the purview of the Act within one year. This means that all land losers whose land was to be acquired under any of the 13 Acts such as the Coal Bearing Areas Act etc. would be eligible for the benefits of the compensation and other benefits of resettlement and rehabilitation under the Act.

This had to be done within a year. At that time the CPI(M) had demanded that there was no logic in waiting for a year and that all benefits under the new law should also accrue to those whose land was acquired under the 13 exempted Acts. This was not accepted by the then UPA Government.

The year was completed in January 2015. The Modi Government should have brought a simple amendment in the December session of Parliament for the inclusion of similar rates of compensation. Instead of which it used the occasion to bring not only this clause in the Ordinance but to dilute and eliminate other rights.

Fight the Ordinance

As can be seen this Ordinance paves way for forcible and indiscriminate land acquisition by doing away with the need for consent of the land owners and Social Impact Assessment. The definition of public purpose is further diluted and will bring Private companies and their activities of unbridled profiteering into public purpose and promote further unregulated takeover of land by corporates. Food security will be compromised as it will now be possible to easily acquire multi-cropped fertile land as well as productive rain-fed and semi-arid land for industrial corridors, infrastructure projects including the PPP projects. The provision to substitute “private company” with “private entity” is a blatant attempt to widen the scope of land grabbing. The provision to include private hospitals and private educational institutions under social infrastructure category thus to enable cheap and forcible acquisitions of land cannot be accepted.

The Ordinance is merely an instrument for speedy expropriation and facilitation of land acquisition in a quick, cheap and easy way with little concern for consent, adequate compensation and rehabilitation of landowners and other dependents on land.

As per CPI(M) it shall build broad united movements at all sites of indiscriminate, unjust land acquisition and fight to protect the rights of the peasantry, tenants, agricultural workers, Adivasis, Dalits and all affected persons.

Understanding the Land Acquisition Bill: Politics, changes and impact

It is hard to believe before the UPA Government brought the amendments to the Land Acquisition Law in 2013 that we were following the so-called The Land Acquisition Act, 1894, a 120-year-old legislation. The 1894 Land Act begins with “Whenever it appears to the Government the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette...”

My sincere thanks goes to the UPA Government led by the Congress, which brought in these changes with equal credit to the opposition, mainly the Bhartiya Janata Party for getting rid of that draconian law. *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014*, signed by the President of India on the last day of 2014 is the doing of

the present National Democratic Alliance (NDA) government, and it lists the amendments to the Act passed by the United Progressive Alliance (UPA) government in 2013: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The Narendra Modi Government has brought out some key changes in the LAB, which in their opinion were fundamental to the overall growth and development of the country as a whole, keeping in mind the benefit of villagers, farmers and more importantly farm labourers. Many political parties have come together, particularly for political reasons to corner the NDA Government and are agitating against it, calling the Bill and the Government, anti-farmer.

Our beloved modern Gandhi, the serial agitator Anna Hazare also doesn't like the changes that have been made to the UPA Act. Before we delve into why this is so, it is important to first list precisely what the reservations are and more importantly, what the changes are and how it is going to impact farmers or villagers.

Main Acquisitions

Serial social activist. **Anna Hazare** started his agitation against the changes brought to the LAB through ordinance by the NDA Government at the Jantar-Mantar in New Delhi. Sitting on a day-long fast Anna Said "PM Modi promised good days ahead, that is why people voted him. But it did not happen. Good days are only for capitalists."

The main points of opposition by Anna and other political parties include:

- Land Acquisition Bill is undemocratic and anti-farmer.
- How can Government cheat farmers to pass benefits to businessmen and industrialists?
- This Government is planning to snatch land in the same fashion as the British.
- What was the need for an Ordinance when the Bill was already passed in 2013?
- Very few farmers have knowledge about the bill, they need to be educated.

Key Changes and their Impact

1. Consent Clause: The first proviso of sub-section (2) of section 2 in the UPA version of the Act has a requirement of the prior consent of at least 80 per cent of those affected families before acquiring land. For public-private-partnership projects (PPP), prior consent has to be of at least 70% of those affected families.

Change: The NDA amendment proposes that for projects relating to (i) National security or defense, (ii) Rural infrastructure including electrification; (iii) Affordable housing for poor people; (iv) Industrial corridors; and (v) Social infrastructure and PPP projects where government holds the land, there is no longer any need to obtain prior consent.

Defence: This is a major change. But is it anti-farmer? Is National security not of prime importance? The Government has brought this change looking at the national security aspect. The country needs to

be independent in this matter. Today millions of our heard earned money from the public exchequer goes to other countries in importing the latest arms and ammunition. Should Government inform citizens and take their consent if it plans to put a strategic nuclear plant in some area? No. I also believe that if our farmers come to know that their land is being used for defence purposes, they would only feel proud.

Rural infrastructure including electrification and housing for poor: Infrastructure and social infrastructure projects, including those under public private partnership where ownership of the land vests with the Governments. This is bound to benefit the entire country, particularly the people in rural areas where infrastructure and social infrastructure is inadequate. The Narendra Modi Government came to power on its promise to people to provide irrigation facility to each agricultural land, a house to each family with drinking water facility and 24 hours electricity, and good roads to provide better connectivity. Does this change in law which will help Government execute these projects and fulfil promises made to our villagers is anti-farmer? Don't our villagers deserve a better life?

Industrial corridors and PPP Projects: There are confusions created among people for political reasons. People should know that the Industrial Corridors are not created by capitalists and businessmen. They participate once the corridors are designed. Government will create the industrial corridors and before taking the land, the district magistrate will have to confirm in writing who in the family is going to get a job of what scale before any acquisition takes place.

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 in addition to the enhanced compensation. PM Modi on 'Man ki Baat' also clarified that the Government understands that, for these projects, Government shall first utilize the land owned by them, then the barren land and if at all required, agricultural land would be acquired.

2. The Compensation Clause: Thirteen Acts of Parliament like the Railways Act, the Electricity Act, the Atomic Energy Act, etc (see page 45 of the UPA's legislation of this selfsame Act), which provided for land acquisition, were put in the Fourth Schedule of the Act, (these schedules are listed in the UPA Act page 37 onwards) also apply to the orders stated in the fourth schedule "with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act". Which means, with a notification, land acquired for the above 13 Acts, the new increased compensation clause will not apply. This was a blunder.

Change: The NDA amendment has removed the aforementioned provision (underlined). To a layman, it might appear as nothing significant. However, reading the fine details of this provision, it is clear that it ensures that even if the land is acquired under the above 13 crucial Acts, the farmers will get the new, increased compensation—hold your breath—at **four times** the market rate. Is this anti-farmer? The Modi-led NDA Government has not changed the increased compensation provided in the UPA's version of the Act and also clarified that the compensation will be applicable to not only the land owners but also the people dependent on that land.

On top of that the law modified by the Modi Government ensures that unless full compensation is not paid, land cannot be taken in possession. Compensation will be deposited in a designated bank account and the transactions are totally transparent.

3. Time Limit Clause: Section 101 of the UPA Act states that if the acquired land remains unutilized for a period of five years from the date of taking over the possession, the land shall be returned to the owners.

Change: The NDA amendment has changed it from “five years” with “a period specified for setting up of any project or for five years” and period wasted in legal matters is not included in this timeframe. By doing this the Government fixes responsibility on its own that it has to finish the project within the time limit specified for the project. If Government does not finish the project within the time line, then whatever the original land owners wishes, would prevail.

4. Why did the NDA support the bill in 2013?

Those who are agitating today for the cause of the villagers and farmers, ruled the country for 60 years under the same law made some 120 years back. The draconian Land Act of 1894 was expunged neither during the socialist governments of Jawaharlal Nehru or Indira Gandhi or the Janata Party, nor during the period the communists held great sway over India’s politics and policies all the way up to the mid-1990s. All these grand protectors of our land were following the extortionate, 120-year-old British-made decrees like *“Whenever it appears to the Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit...”*.

The UPA Government brought in this Act in a hurry to gain the political mileage when it realized that it was facing an inevitable defeat in the ensuing Lok Sabha Election. The BJP, for obvious reasons supported the Act without reading the fine print. However, our thanks are due to both parties for getting rid of the 1894 Act.

When the Modi-led NDA Government was formed at the Centre, State Governments started writing to the central Government that the Act has limitations and requires changes. An year passed by and no state Government was ready to bring the Act to force. Back then, two Congress-governed states—Maharashtra and Haryana applied the new Act but both these “farmer-friendly” Governments, through notification, reduced the compensation to 50 per cent. It is evident that the Modi Government believes in strengthening the federal structure and giving more power to states and therefore, the changes are as per their recommendations now.

5. Why Ordinance?

Under Sec 105, the “Proposed” notification had to be placed before Parliament for a period of 30 days and Parliament was expected to approve, disapprove or modify the said proposed notification. The need for an ordinance arose because such a notification would have to be put before Parliament in the Budget session itself in July-August, 2014 and the approval or disapproval taken accordingly. 31 December

2014 being the last day for such a notification, the Government decided to amend Section 105 and apply all the compensation and R&R provisions of the 2013 Act to the thirteen exempted laws. Through this provision, the present ordinance provides that the farmers would get higher compensation if their land is acquired under any of the exempted laws. It goes a step further than the 2013 Act. This also explains the urgency of issuing the ordinance on the last day of the year since otherwise the Government would have been in default of the complicated approval provisions outlined in the 2013 Act.

The Real Cause

The ragtag Opposition and other fringe agitators are creating confusion for political reasons. LAB is a major law that is going to change the outlook and the future of India. To help their cause, the Opposition is shifting the narrative of a national requirement to mean it to be a personal requirement. Owning a small piece of land is also a matter of pride for an individual but it is not above national pride and above all, these are narratives which are used to confuse people. Migration from rural areas to urban and suburban centers where employment opportunities are available, is a reality. It is the migrants from rural areas who would benefit from this, who travel thousands of kilometres to Metro cities in search of a job and live miserable lives in slums.

In the end, the most fundamental question arises: What do we want for our own fellow Indians? That our farmers' children are compelled to live their lives in the slums of Delhi, Mumbai etc in search of a job that provides them two meals a day? It is important that villages, farmers and their whereabouts are strengthened by providing them better roads, electricity, irrigation water, and industries around them for the additional burden on farms to shift to industrial employment. Better market, better school, better healthcare...indeed, the very *basic* needs that should be met, is the need of the hour for our villagers.

To know what our villagers, farmers, farm workers actually want and expect from the Government, watch this—a riveting, magnetic, and enthralling speech that shakes you to the core by none other than a backward farmer and also a Member of Parliament from Bihar, Hukumdev Narayan Yadav. This is one of the greatest speeches ever made in the Parliament since the Constituent Assembly Debates.

He needs of a modern, growing and developing India needs a balanced approach. Development and justice to the landowner must coexist. One can't be done at the cost of the other. The amendments brought in by the Modi Government are based on extensive consultations where State Governments of most political parties supported these changes. Those who are opposed to these changes can certainly mandate their respective party's State Governments not to use the provisions of the ordinance. History will judge how these States will lose out in the era of competitive federalism.

The Contention about the Land Acquisition Amendments?

With the Bharatiya Janata Party coming to loggerheads with political parties in the Rajya Sabha on the amendments to the land acquisition bill, it threatens to throw the Parliament into disarray. Anna Hazare

has already started a huge protest on the issue, and he is joined by several political parties including Aam Aadmi Party, Trinamool Congress, the Left, etc.²

Here's a short history of the land acquisition bill and what's happening right now.

What Is The Land Acquisition Bill?

The Land Acquisition Act was passed in 1894, and allows the government to acquire private land for public purposes, which could be for large-scale development like building roads, industries, mining, public private partnership (PPP) projects, etc.

The Parliament in 2013 passed The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act to repeal the nineteenth century act. This was to ensure that land was acquired for strictly public welfare projects and land owners were adequately compensated, which would include monetary relief as well as proper rehabilitation.

At the time, the Congress-led UPA government had passed the new act after all-party consultations. The BJP had supported the Bill.

The BJP government has now introduced amendments to this act, which have been opposed by all political parties, including their ally Shiv Sena in the Rajya Sabha. The BJP's argument has been that the UPA's land acquisition law makes it impractical to acquire land for any public purpose and endlessly delays infrastructure projects.

While the amendments were passed in the lower house of the Parliament where BJP enjoys a vast majority, it has been unable to pass this in the Rajya Sabha. Instead, it took recourse in an ordinance to pass the amendments to the bill in December 2014.

The Political Parties Opposed To The Amendments

The amended act does not require consent from 80 percent of the land owners, if the purpose is for five sectors — national security, defence, rural infrastructure (including electrification), industrial corridors and housing for the poor. Social Impact Assessment (SIA) is also not required for these projects, according to these new amendments.

2. <http://economictimes.indiatimes.com/news/politics-and-nation>

This would mean that only the land owner would be compensated, since the SIA, used to track how many people depend on the land, is now being done away with.

According to the Campaign for Survival and Dignity, a national platform of tribal and forest dwellers' organisations in ten States, the bill has far too many loopholes to swing it in favour of industrialists and private interests.

Even though 80 percent consent from land owners is required when the project does not fall into the five categories stated earlier, the group claimed that there were two easy ways to circumvent the rule. One was in cases when a private group had acquired part of the land, then the government could acquire the rest of the land and would not require consent from land owners.

Second, government could acquire land for their own purpose, "to hold and control", and then change their mind and hand it over to a private company. According to the organisation, under section 1A(1)(a) of the amended act, what mattered was the intent of the government at the time of acquisition, which could change afterwards.

The members from Congress, Left, Trinamool Congress, SP, BSP and JD-U have all opposed the government over provisions of the land ordinance calling it "anti-farmer" and aimed at "benefitting corporates".

What Does The BJP Have To Say?

BJP has completely denied allegations that the amended act is anti-poor and anti-farmer.

"Opposition parties like Congress, Trinamool, Samajwadi Party and BSP have been carrying out a relentless campaign to create an impression that the ordinance is anti-farmer. We want to make it clear that contrary to their claims, the provisions in the ordinance will provide huge long-term benefits to the farmers of the country," BJP national secretary Siddharth Nath Singh has said.

They have also claimed that it is a "pro-farmer" bill as it has included 13 so far excluded Acts under the Land Acquisition Act, and land acquired from these existing central pieces of legislation will also require the same form of rehabilitation and compensation.

These Acts include the Coal Bearing Areas Acquisition and Development Act 1957, the National Highways Act 1956, Land Acquisition (Mines) Act 1885, Atomic Energy Act 1962, the Indian Tramways Act 1886, the Railways Act 1989, the Ancient Monuments and Archaeological Sites and Remains Act 1958, the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962 and the Damodar Valley Corporation Act 1948, the Electricity Act 2003, Requisitioning and Acquisition of Immovable Property Act 1952, the Resettlement of Displaced Persons (Land Acquisition) Act 1948 and the Metro Railways (Construction of Works) Act 1978

Ordinance for the Land Acquisition Act: Key Developments

- Senior social activist Anna Hazare has launched a protest against the Land Acquisition Bill ordinance, calling it "anti-farmer" legislation.
- 2 day protest to be followed by padyatra of three to four months across the nation for creating awareness about the ordinance's anti-farmer focus
- On 29/12/2014, the government has promulgated the ordinance leading to significant changes in the Land Acquisition Act. This includes removal of consent clause for acquisition of land for:

- Industrial corridors, PPP projects, Rural Infrastructure, Affordable housing , Defence
- Protest is being lodged against the nature of amendments to the Land Acquisition, Rehabilitation and Resettlement Act 2013
- Amendment removes provisions for taking the farmer's consent before engaging in land acquisition

Opposition to the Bill

The Land Acquisition Act mandates necessary consent of at least 70% of land owners for acquisition of land for PPP projects and 80% for acquisition of land for private companies; ordinance seeks to remove this for 5 key sectors

Nature of Changes as against previous legislation

- Omission of SIA and consent clause for 5 sectors
- Pro-farmer step with respect to rehabilitation, resettlement and compensation provisions for close to 13 existing pieces of legislation namely:
 - Coal Bearing Areas Acquisition and Development Act 1957,
 - the National Highways Act 1956,
 - Land Acquisition (Mines) Act 1885,
 - Atomic Energy Act 1962,
 - the Indian Tramways Act 1886,
 - the Railways Act 1989,
 - the Ancient Monuments and Archaeological Sites and Remains Act 1958,
 - the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act 1962
 - the Damodar Valley Corporation Act 1948
 - The Electricity Act 2003,
 - Requisitioning and Acquisition of Immovable Property Act 1952,
 - the Resettlement of Displaced Persons (Land Acquisition) Act 1948 and
 - the Metro Railways (Construction of Works) Act 1978
- Compensation for the farmers remains the same; close to 4 times the market price for rural and 2 times for urban land
- Land ordinance bill has been introduced as under Section 105 of the Land Acquisition Act, clarity is required on whether provisions need to be applied for aforesaid 13 legislations.

Reaction to the Changes

- Congress has opposed the ordinance indicating anyone who is pro-farmer should be able to raise their voice against this

- Indian Express report says Kerala and Haryana want the removal of the consent clause for PPP and bring it close to 50%
- Assam, Haryana and HP have objected to the definition of the family as being too broad and generic
- Regarding SIA, Karnataka, Kerala, Manipur and Maharashtra have said process should be restricted to the large projects alone

Positive

- As per the ordinance farmers will get 4 times the market price of their land and 20% of the original land following development after ensuring the payment of the development and acquisition cost
- Development of infrastructure in rural areas will help the farmers and their families and improve the quality of life
- Land acquisition is only meant for projects associated with public good and welfare
- Private companies will purchase land as per the price the farmer demands from them; legislation is not anti-farmer
- Ordinance has only removed Social Impact Assessment and 70% consent in the event of PPP projects for the greater good
- State governments have been empowered with the choice of exempting projects from Social Impact Assessment and the consent clause is left with concerned state governments
- Ordinance represents and respects cooperative federalism

Negative

- Land ordinance does not take SIA and consent clause into account
- Land can forcibly be acquired from farmers
- Farmers may suffer the effects of unsustainable development
- Through omission of the social assessment part, government has removed the hurdle of compensating those dependent on the land; new ordinance only ensures land owner alone will be compensated
- Whether land is fertile or not will not be considered if it is acquired for the 5 key sectors; even extremely fertile land will be acquired if it is deemed fit for any of these 5 sectors

Ordinance exempts many projects from checks in 2013 land acquisition law. More projects to comply with fair compensation provisions.

The *Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (“**2013 Act**”)³, which repealed the archaic *Land Acquisition Act, 1894* (“**1894 Act**”), was passed in pursuit of the objectives clearly spelt out in its title.

3. <http://indiacode.nic.in/acts-in-pdf/302013.pdf>

On December 31, 2014, the Union government promulgated an ordinance, *The Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014* (“**2014 Ordinance**”)⁴ and amended the law on land acquisition again.

Key features of the 2013 Act

The key features of the 2013 Act are highlighted here:

- The process of land acquisition under the Act is transparent and involves a compulsory social impact assessment study and determination of public purpose by the appropriate authorities described under Chapter II of the 2013 Act. The 1894 Act did not contain a transparent process for land acquisition and there was virtually no participation of communities as is the case under the SIA in the 2013 Act. These provisions of the 2013 Act are in line with global standards of land acquisition and good governance. The State has to issue a preliminary notification that includes the details of the acquisition, a statement on the nature of the public purpose, reasons for displacing the affected persons, a summary of the SIA report, and provisions with respect to rehabilitation and resettlement (Chapter IV of the 2013 Act). The 1894 Act did not contain such refined and comprehensive provisions. It did not define public purpose which the 2013 Act does in Section 2(1). It also did not contain provisions dealing with SIA and rehabilitation and resettlement. The 2013 Act has incorporated these just and indispensable provisions to facilitate democratic and fair transactions.

The quantum of compensation to land owners under the 2013 Act is four times the market value of the land in rural areas and twice the market value in urban areas. In comparison, the compensation under the 1894 Act was at par with the circle rates in the area which were often outdated and did not reflect the true market value of the land.

Acquisition by private companies and public private partnerships require prior consent from eighty and seventy per cent of the affected families respectively. This has to be determined alongside the process of the SIA study. The draconian 1894 Act did not provide such a safeguard and the acquiring authority could forcibly acquire land without prior consent.

4. <http://www.prsindia.org/uploads/media/ordinances/RTFCTLARR Ordinance 2014.pdf>

Even though they are criticised for being time consuming and cumbersome to comply with, these checks went a long way in removing the element of arbitrariness and oppression from the process of land

acquisition. Despite the drawbacks in the 2013 Act, it has been successful in addressing the lacunae of the 1894 Act by enacting provisions dealing with crucial issues of forcible acquisition, inadequate compensation, lack of transparent process, rehabilitation and resettlement, and social impact assessment.

2014 ordinance exempts more projects from the checks introduced in the 2013 law

Section 40 of the 2013 Act, that is, the ‘urgency clause’ allowed compulsory acquisition by the government for the defence of India or national security or for any emergencies arising out of natural calamity only. This provision was very much limited in scope in contrast with the 1894 Act which did not define urgent need and gave wide discretion to the acquiring authority.

The 2014 ordinance, most notably, has again expanded the urgency clause by introducing Section 10A under which some broad categories of projects are now waived from the mandatory application of the provisions of the 2013 Act. These are projects vital to (a) national security or defence, (b) rural infrastructure, (c) affordable housing and housing for poor people, (d) industrial corridors, and (e) infrastructure and social infrastructure. Some of the provisions that will now not apply to these projects are the requirements for social impact assessment study, determination of public purpose, public hearing and prior consent of affected families and the prohibition on acquisition of irrigated multi-cropped land. Essentially, having circumvented the fair and democratic processes established by the 2013 Act, the state can once again invoke the principle of ‘eminent domain’ and exercise its sovereign powers to acquire land compulsorily for these purposes, leaving ample scope for bureaucratic discretion, akin to the archaic 1894 legislation.

Provisions related to fair compensation and rehabilitation and resettlement to apply even to previously exempt legislations and projects

The Fourth Schedule of the 2013 Act enumerates thirteen statutes which provide for land acquisition such as the Atomic Energy Act, the Electricity Act, the Railways Act, and the National Highways Act. Section 105 read with the Fourth Schedule of the 2013 Act states that the authorities need not adhere to the transparent and fair processes put in place by the statute. The government, however, had the power to notify that a portion of the provisions of the law (such as those in relation to compensation and rehabilitation and resettlement) may apply to any of these thirteen statutes within one year from the date of commencement of this Act.

On a positive note, the 2014 ordinance amends Section 105 of the 2013 Act so that the provisions relating to compensation, rehabilitation and resettlement, and infrastructure amenities will now apply even to the thirteen statutes that had so far been saved from the application of the law by the Fourth Schedule. While these just measures are certainly a step in the right direction to prevent exploitation of land owners and

affected families, it is worthwhile to ponder whether they compensate for the wide and discretionary powers conferred to the State by the Ordinance.

Notably, even the five new categories of projects ushered in by the ordinance have to comply with provisions related to fair compensation and rehabilitation and resettlement. Given the State's absolute powers of eminent domain under the archaic law of 1894, this remains a huge leap in socio-economic development.

Other provisions

The Ordinance also brings in amendments of lesser significance.

The term 'private company' has been substituted and replaced with 'private entity', widening the scope of Act.

Section 101 has been amended to authorise the State to retain unutilised land for five years or more than a period of five years upto the period specified for setting up any project as opposed to a flat five year period in the 2013 Act.

Section 113 has been amended to give power to the State to remove difficulties which might arise in giving effect to the provisions of the 2013 Act, but which can only be exercised after a period of five years from the commencement of the Act as opposed to a shorter period of two years under the 2013 Act.

The Land Ordinance (now Bill) is bringing back the Colonial Legacy

Forcible land acquisition has always been an issue of life and death for millions of people in India, not only farmers but also agricultural laborers and fish workers. With the Land Ordinance it has become a political hot potato. More than 350 people's organizations gathered at Parliament Street on February 24th, with 25,000 people from Gujarat to Orissa to Assam, and from Himachal Pradesh to Tamil Nadu and Kerala. This show of strength has forced the political parties to take a stand on the issue, leading to heated debates and discussion on the floor of the Parliament. The Ordinance, now Bill, reflects the anti-farmer and anti-poor move of un-democratically amending the 2013 Act on Land Acquisition and Rehabilitation, killing its very spirit and purpose.

The Ordinance brought in by the NDA government just after the Winter session of the Parliament came to an end was an obvious imposition on the country's common people, of the colonial legacy of a perverted vision of development through an unjust and undemocratic modus operandi. The Ordinance is an attempt to open up the land that is the life support, source of livelihood and shelter for India's toiling masses, to wealthy investors, including big corporations and builders. Its intention is to forcibly divert India's agricultural land at the cost of food security, giving a free hand with no ceiling to the private companies as well as private entities i.e. private trusts and expensive profit-making educational and health institutions.

The intention is to benefit private interests in the name of public interest.

The 2013 Act which replaced the British Act on Land Acquisition, for the first time brought in the process of assessing Social Impact (SIA) along with environmental assessment (EIA) in consultation with the affected people and the Gram Sabhas as well as appropriate urban units. This precondition is essential for the proper planning of rehabilitation including identifying and listing of the affected population, the impact on their livelihood and culture, and for making an appropriate plan to compensate those who are made to sacrifice in the name of development, and to do them justice. Assessing options and seeking suggestions for alternatives to minimize impact and displacement would go a long way. The consent of land losers was also an important clause at least for private and PPP projects (the 2013 Act too had left out government projects, unjustifiably) to respect and give our farmers due role, space and primacy in development planning as against 'no level playing field' situation between the monetary capitalists (the corporates) and the natural resource investors (farmers and others).

BJP's Half Truths and Propaganda

The BJP leaders are now making false interpretations and unjustifiable arguments implying that the people's movements and pro-people politicians and parties are anti-national, as indicated by the press conference held by Nitin Gadkari and the statement by Arun Jaitley, the Finance Minister in parliament, both of them the architects of the Ordinance and now the Bill. Without entering into dialogue with the agitating farmers' organizations except members of their own 'Parivar', they are deliberately confusing issues and presenting the struggle as a war between Bharat and Pakistan, drawing a false picture of threat to India's security.

Signatures of 70% of the villagers (whose land is being acquired) would be needed as their consent, as also the social impact assessment of installing the project. So, the information will be revealed and it will also reach Pakistan. It (UPA's land law) was a defective piece of legislation and threat to India's security. We corrected it. It had a disastrous impact on security...Our strategic installations had been held up.

This statement an indicator of the frustration and fury among the ruling party led by the Prime Minister that wishes to save the Bill by misleading the people. How can seeking consent of the people concerned, whose lands will be taken for a project, be a threat to the national security but no threat to national security is posed by private corporations' involvement in building strategic projects? The government is after all, allowing PPP and FDI in Defence as well. Does the FM's statement make any sense ?

The people's movements, instrumental in getting the former UPA government to abolish the British Act of 1894 and to bring in the 2013 Act, strongly condemn this fake, communal appeal to disrespect the farmers and deny them the right to be partners in development. SIA and consent will not stop the projects but rather resolve the conflicts due to imposition of projects without rehabilitation.

The private and PPP projects have been grabbing land through forcible acquisition standing on the shoulders of the State. The SEZ of Ambani was to get 35000 hectares in Maharashtra, and DMIC is targeting 3,90,000 hectares. While the thousands of hectares of Sardar Sarovar command area land in Gujarat are already diverted to companies, along with waters; and for Industrial Corridors for mining, tourism, water and power projects; now companies are to be granted land that can be forcibly acquired from farmers. Even the colonial 1894 British Act did not permit acquired land to be used for this, and no other country in the world has any such legal and legitimate way to forcibly transfer the farmers', fish workers', and common peoples' resources to profit making corporations.

Mr. Gadkari is claiming the credit for including 13 Acts under the purview of the 2013 Act but this is being done after killing the spirit and main provisions in the Act. Mr. Gadkari and BJP spokespersons have also resorted to a farcical justification for the Ordinance, referring to 31.12.2014 as the deadline, for including the Acts.

The fact is that Section 105 allowed 1 year to bring in these 13 Acts so as to allow amendments in those, and make land acquisition procedures and provisions therein, consistent with the new Act. Section 105 also elaborates the procedure of placing any amendment, notification before the parliament for 30 days, seeking approval. Instead of doing this, the BJP government waited till the last day to include the Acts, only after excluding the main pro-people provisions.

The farmers in dam areas like Tata's, Gosikhurd, Waang Marathwadi, Narmada or in industrial areas in Nandigram, POSCO or hill city project like Lavasa have experienced that the wasteland and previously acquired but unused land is ignored by the government and more land, even irrigated, multiple crop land is forcibly acquired for non-agricultural purposes. There is not less than 100,000 hectares of MIDC land, acquired for industries but left un-utilized. Of the land acquired for Varasgaon Dam, 141 hectares were leased out for bungalows once Lavasa City came up, engulfing the dam itself!

The 2013 Act for the first time, brought in a restraint by suggesting a certain percentage to be decided by the state as a limit for acquiring multiple crop land in a district and a state. The movements believed no agricultural land should be acquired as today's single crop land becomes multiple crop land tomorrow. But BJP doesn't wish to put any limit to grabbing and destroying even prime agricultural land by changing the 2013 provisions.

The Penalty Clause (Section 87) in the 2013 Act is also changed The original stringent provision about punishment for violation of this Act by any government official has been reversed. Earlier the Head of the Department was held responsible if the violation took place with their knowledge and connivance. The Amendment removes this provision and actually provides special immunity to the government officials under Section 197 of CCP. The common persons cannot file a case (FIR) against the violators without a sanction, according to the new the Bill, 2015.

All this proves that the strong opposition to the Ordinance and the Bill of 2015 by many opposition parties and some of the NDA partners like Shiv Sena and LJD, is fully justifiable. We appreciate their

taking a position in favor of the farming community in the country at this crucial juncture. Considerations of food security and the demand for rehabilitation including guaranteeing alternative livelihood (missing in the 2013 Act itself), has now led all those who support our food growers and toiling masses including small traders and artisans, to challenge the anti-people legislation, the land Acquisition Bill of 2015 which will lead to more suicides and make millions of farmers into landless laborers.

We instead demand further pro-people amendments as recommended by the two Parliamentary Standing Committees in the 2013 Act to save farmers' lives and livelihoods of millions.

CHAPTER 10

LARR (AMENDMENT) BILL, 2015

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in Lok Sabha on February 24, 2015 to replace an Ordinance. The following amendments were circulated by the government on March 9, 2015:¹

Change to public purpose

- The Bill amends the Act to include acquisition of land for private hospitals and private educational institutions within the definition of public purpose.
- The amendments remove this provision of the Bill. This implies that acquisition of land for private hospitals and private educational institutions is no longer included within the definition public purpose.

Changes to five categories of exempted projects:

- The Bill allows the government to exempt five categories of projects from:
 - (i) Social Impact Assessment,
 - (ii) limits on acquisition of irrigated multi-cropped land, through a notification, and
 - (iii) consent provisions.

These five categories are:

- (i) defence,
- (ii) rural infrastructure,
- (iii) affordable housing,
- (iv) industrial corridors, and
- (v) infrastructure and social infrastructure.

1. PRS Legislative Research, Institute for Policy Research Studies, New Delhi, March 10, 2015

The amendments make the following changes to this provision:

- *Industrial corridors*: The amendments clarify that land acquired for industrial corridors will be for industrial corridors set up by the government and government undertakings. Further, land can be acquired up to 1 km on both sides of the designated railway line or road of the industrial corridor.
- *Social infrastructure*: The amendments remove social infrastructure as an exempted category.

Changes to SIA and limits on irrigated multi-cropped land:

- The Bill allows the government to exempt the above five categories of projects from SIA and limits on irrigated land, through a notification. The amendments add that before issuing this notification, the government must ensure that the extent of land being acquired is in keeping with the minimum land required for such a project.

Survey of wasteland:

- The amendments add that the government must conduct a survey of its wasteland including arid land, and maintain a record containing details of such land, as may be prescribed by the government.

Changes to rehabilitation and resettlement:

- Under the Act, the rehabilitation and resettlement award for each affected family includes employment for at least one member of the family.
- The amendments change this provision to ensure compulsory employment to at least one member of such an 'affected family of a farm labourer'.

Changes to Land Acquisition, Rehabilitation and Resettlement Authority:

- The Act provides for the establishment of a Land Acquisition, Rehabilitation and Resettlement (LARR) Authority which may be approached in case a person is not satisfied with an award under the Act.
- The amendments state that the LARR Authority must hold its hearing in the district where the land acquisition is taking place, after receiving a reference from the Collector and giving notice of this reference to all concerned parties.

Changes to application of 2013 Act:

- The Land Acquisition Act, 1894 will continue to apply in certain cases, when an award has been made under it. The 2013 Act will apply in case an award has been made five years prior to the

commencement of the 2013 Act but the physical possession of the land has not been taken or compensation has not been paid.

- The Bill states that in calculating the five year time period, any period where possession of land was taken but the compensation is lying deposited in a court or any account, will not be counted. The amendments change ‘account’ to ‘designated account’.

Offences by government employees:

- The Bill states that if an offence is committed by a government employee he cannot be prosecuted without the prior sanction of the government, as provided in Section 197 of the Code of Criminal Procedure, 1973.
- The amendments state that the government employee can be prosecuted if procedure laid down in Section 197 of the Code of Criminal Procedure, 1973 is followed. Section 197 requires the prior sanction of the government prior to prosecuting a public servant.

Critical analysis of the 2015 Bill²

(i) Misuses the principle of ‘public purpose’

The 2015 Bill, like the LARR Act endorses the notion of ‘eminent domain’ of the state and fails to adopt a human rights definition of ‘public purpose’ or indicators to determine whether a project truly benefits and improves the well-being of all.

2. www.dnaindia.com/india/report-land-acquisition-bill-implies-deep-trouble-2072222

The Bill provides exemption from Social Impact Assessment, acquisition of irrigated multi-cropped land and consent for five categories of projects: national security and defence; rural infrastructure; affordable housing; industrial corridors; and, infrastructure (including public-private partnership projects on central government-owned land). The obscurity of these categories, without the provision of adequate detail, allows for wide application and misuse of ‘public purpose.’ The Bills states that land for industrial corridors can be acquired up to one kilometre on both sides – a provision that could displace and destroy the livelihoods of thousands of small farmers across India.

(ii) Violates international human rights law, guidelines and principles

The Bill violates several international human rights laws and principles. First is the recognition of land as a human right since it is integral to the life, sustenance culture, and livelihood of land-dependent populations, including farmers, agricultural workers, pastoralists and forest-dwellers. Second is the principle of ‘prior informed consent.’ The basic tenet of a democracy is that people must have a say in decisions that directly affect their lives and livelihoods. The Bill obliterates the need for consent for the

five categories above, thereby sanctioning land grabbing. Third is the need for ‘human rights impact assessments’. The five categories are exempt from Social Impact Assessment to determine the effects of land acquisition on affected families. The UN Basic Principles and Guidelines on Development-based Evictions and Displacement, and principles related to large-scale land acquisitions, inter alia, mandate comprehensive impact assessments to be undertaken in advance and stipulate procedures to be followed. Fourth is the need to adhere to human rights standards at every stage, including resettlement. All affected families, irrespective of the land tenure they possess, must receive equal benefits. Fifth is the principle of ‘social function of land’ that calls for equitable use of land. The redistribution of land from the poor to the non-poor, as sanctioned in the Bill, is a reversal of this principle. The Bill also contravenes principles of non-discrimination, gender equality, sustainability, and inter-generational equity.

(iii) Does not protect food security

The majority of cases of violations of the right to food are related to the expropriation of land, forced evictions, and displacement. The amendment in the Bill to prohibit the acquisition of multi-cropped land is a dangerous step, and would result in dependence on food imports and economic instability.

(iv) Does not check against misuse

The history of land acquisition in India is replete with evidence of excess land being acquired and diverted. This is apparent in most airport redevelopment projects. The Centre for Science and Environment’s green rating survey 2012 reveals that Indian iron and steel plants have about 1,200 hectares of land per million tonne of installed capacity while a well-designed plant does not need more than 200 hectares. The Bill, however, does not promote minimising land acquisition. While it states that wasteland should be surveyed and recorded, it does not advocate the use of this land or the need to seek alternatives and less land-intensive inputs for industry.

The Bill also dilutes the provision of returning unused land after “a period of five years”, by inserting the words “a period specified for setting up of any project or for five years, whichever is later.” This could promote inequality and declines in productivity.

(v) Does not address historic injustice

The greatest paradox of India’s growth paradigm is the phenomenon of the poor subsidising the lifestyles of the rich. At least 70 million people have been displaced for ‘development’ projects in India since independence; the majority without rehabilitation. The beneficiary population of these projects is, however, different from the displaced population. Land is the basis of livelihood for most Indians, especially women. The assumption that monetary compensation for land is sufficient violates the human rights to work and to an adequate standard of living. Furthermore, most of the affected persons are not land-owners but share-croppers, agricultural labourers and forest workers, including dalits and adivasis,

who are never compensated. Instead of redressing the historic injustice of forced land acquisition, the 2015 Bill will further increase marginalisation.

(vi) Will not promote growth in GDP

Several reports highlight that obstacles to India's economic growth include fiscal indiscipline, tax evasion, food inflation, lack of investment in agrarian reform, and large trade and investment deficits. Land acquisition is not the problem, but is being projected as the panacea.

On the contrary, forced land acquisition contributes to loss of GDP by increasing rural and urban poverty. The economic cost of displacement to the country is significantly higher than the perceived benefits of exclusionary industrial development. The tragedy is that India has never documented its displaced persons or assessed the impact of the collective loss of their livelihoods, land, housing, natural resources, food, health, and education on the nation's economy.

It is ironic that while advocating 'Housing for All by 2022' and increasing budgetary allocations to MNREGA, the government has passed a Bill that will cause more rural unemployment, landlessness, and homelessness. There is an urgent need to question the paradigm of neoliberal growth, and instead promote holistic development through the adoption of a human rights approach. The government should optimise land use, develop sustainable and equitable alternatives, promote non-land intensive industrialisation through improved technology, and implement human rights laws.

National development and economic growth can be realised only when there is a significant improvement in the lives of all Indians.

The Constitution of India declared India to be a sovereign, socialist, secular, and democratic republic. While there was uproar, earlier this year, of a government advertisement that omitted the words 'secular' and 'socialist,' the Land Bill 2015, in effect, has deleted the word 'socialist.'

CHAPTER 11

LARR (AMENDMENT) BILL IN NEWS

For the third time in recent months, India's cabinet used an unusual maneuver – issuing an “executive order” — to push forward with its economic overhaul agenda.

The executive order, or ordinance, tries to make it easier for industrial projects to acquire land. The ordinance chips away at a major obstacle to industrial investment. Several proposed economic overhauls from India's new government had been delayed by opposition protests in Parliament, which ended its session recently.

Ordinances are generally used to implement laws only in case of emergencies when Parliament isn't in session. For an ordinance to remain law, it must eventually be approved by Parliament. However, under Parliamentary rules, there are special procedures that could make it easier for the government to ultimately win Parliament's approval for these ordinances.

Finance Minister Arun Jaitley said in announcing the ordinances that the changes focus on speeding up development in five areas: development of industrial corridors, social infrastructure such as education, rural infrastructure such as roads and power, housing for the poor, and the country's defense capabilities. The ordinance makes land acquisition easier in these areas by exempting them from several provisions of current law, Mr. Jaitley said. For instance, such projects now won't need the consent of 80% of landowners during acquisition, as is the requirement in other sectors.

However, the ordinance also makes another significant change: It expands the current law to increase the likelihood that landowners will be compensated in projects, such as highways and rail, where the government is involved, according Mr. Jaitley.

In similar moves last week, the cabinet approved ordinances for increasing the cap on foreign ownership in local insurance ventures to 49% from 26%, and for facilitating auctioning of coal mining licenses.

The latest move add to criticism from opposition parties, which have objected to the use of ordinances, arguing that they show the government's intention to muscle through its agenda. The government has defended its actions, saying the ordinances were necessary because opposition parties weren't allowing parliament to function.

“The ordinance demonstrates the firm determination of the government for reforms,” Mr. Jaitley.

Mr. Jaitley said that while the ordinance on land acquisition aims to facilitate industrial development, the government wasn't diluting provisions that deal with compensation for land owners, mostly farmers.

“In a nutshell, we have tried to achieve a balance, where higher compensation will continue. At the same time, procedural rigors will be loosened or eased.”

In recent years, foreign companies have faced troubles in acquiring land for projects, prompting some to cut back their investments. In 2013, ArcelorMittal, the world's largest steelmaker, dropped its plan to build a plant in the eastern Indian state of Orissa, citing delays in acquiring land as a main reason.

The changes now being introduced are important for Prime Minister Narendra Modi's "Make in India" campaign that intends to boost Indian manufacturing. Mr. Modi has often in his speeches addressed foreign investors, inviting them to manufacture goods in India.

Mr. Jaitley acknowledged that major changes in policies were needed to achieve that objective. "Unless radical steps are taken, manufacturing continues to be a challenge," he said.

The Union Cabinet, chaired by Prime Minister Narendra Modi, decided to amend the Act to bring under its purview 13 central legislations, including those relating to defence and national security, to provide higher compensation and rehabilitation and resettlement benefits to farmers whose land is being acquired.

Finance Minister Arun Jaitley said the government decided to relax certain provisions of the Act and add Section 10 A to the legislation keeping in the mind development needs of the society.

He said the mandatory "consent" clause and Social Impact Assessment (SIA) will not be applicable if the land is acquired for five purposes including national security, defence, rural infrastructure including electrification, industrial corridors and building social infrastructure including PPP where ownership of land continues to be vested with the government.

However, the compensation and rehabilitation and resettlement packages will be applicable as per the new Land Acquisition Act for acquiring land for these purposes.

As per the changes brought in the ordinance, multi-crop irrigated land can also be acquired for these purposes.

"Such projects are vital to national security and defence of India including preparation for defence and defence production," Jaitley said justifying the government's decision to bring changes in the Act enacted during previous UPA rule.

Asked about the consent clause, Jaitley said "if the land acquisition is for the five purposes, then the consent clause will be exempted".

The earlier Act provided for consent of 70 per cent of land owners whose land is acquired for PPP projects.

Jaitley said there is a mandatory condition for provision of job for those whose land is acquired for industrial corridors.

With this decision, rehabilitation and resettlement and compensation provisions of the Right to Fair Compensation and Transparency in Rehabilitation and Resettlement Act, 2013 will be applicable for the 13 existing central pieces of legislation including the Coal Bearing Areas Acquisition and Development Act, 1957, the National Highways Act, 1956 and the Land Acquisition (Mines) Act, 1885.

Government said Cabinet approved certain amendments in the Act "in order to remove" many difficulties which have been reported and certain amendments have been made to further strengthen the provisions to protect the interests of the 'affected families'.

In addition, procedural difficulties in the acquisition of land required for important national projects required to be mitigated, the government said in a release.

Government said its decision to bring excluded 13 Acts under the Land Acquisition Act for compensation and Rehabilitation and Resettlement purposes was a "pro-farmer step". "In the process of prolonged procedure for land acquisition, neither the farmer is able to get benefit nor is the project completed in time for the benefit of society at large.

"Therefore the present changes allow a fast track process for defence and defence production, rural infrastructure including electrification, housing for poor including affordable housing, industrial corridors and infrastructure projects including projects taken up under Public Private Partnership mode where ownership of the land continues to be vested with the government," it said.

The government further said these projects are essential for bringing in better economic opportunities for the people living in these areas and would also help in improving quality of life.

"The existing Act vide Section 105 (read with Schedule IV) has kept 13 most frequently used Acts for Land Acquisition for the central government projects out of the purview.

These Acts are applicable for national highways, metro rail, atomic energy projects, electricity-related other projects etc. Thus, a large percentage of farmers and affected families were denied the compensation and R&R measures prescribed under the Act," it said.

The government said the present amendments bring all those exempted 13 Acts under the purview of this Act for the purpose of compensation as well as rehabilitation and resettlement.

"Therefore, the amendment benefits the farmers and the affected families," it said.

With the changes, the R & R (rehabilitation and resettlement) and compensation provisions of the Act will be applicable to the laws including the Atomic Energy Act, 1962, the Indian Tramways Act, 1886, the Railways Act, 1989, the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 and the Damodar Valley Corporation Act, 1948.

Having had to promulgate an ordinance twice on the bill and having failed to get the bill cleared in Parliament, the government referred it to a 30-member committee comprising MPs from both the Houses. The Joint Committee has been mandated to submit its report on the first day of Monsoon Session.

Interestingly, the Congress, which has vociferously opposed the amendments introduced in the bill, was silent on the move. Party vice-president Rahul Gandhi slammed the government for making changes to the UPA bill but did not touch upon the joint committee aspect.

Sources within the party said the Congress was divided on the question of sending the bill to a parliamentary committee. A meeting of Congress leaders on Tuesday morning saw the divergent views coming to the fore.

An influential section of the party, comprising some Rajya Sabha members, was not in favour of demanding or supporting the bill's referral to the Joint Committee as the party had already taken the stand that it wanted the 2013 bill unchanged. "How can then we be part of a committee and consider the amendments then," a senior leader asked.

On the other hand, another section felt they should try to block the bill using parliamentary procedures. They, sources said, argued that the committee should be used as a tool to convey the party's opposition. Their argument was that the Congress had been demanding referral of many bills to the select committees and attacking the government for bypassing standing committees.

One of the leader said that "How can we then oppose when the government says let the bill be considered by a parliamentary committee. We can fight within the panel and at the end give dissent notes. Then we can take the fight to the Parliament."

Rahul Gandhi accused the NDA government of "killing" the Land Acquisition Act brought by the UPA and said Congress will fiercely resist within and outside Parliament the attempt of "suit-boot ki sarkar" to "grab" farmers' land.

"This government is in a hurry to pass this bill... It will not happen so easily. If we are not able to stop it here (in Parliament), we will hit the streets against it outside," the Congress Vice President said in Lok Sabha during a debate on the land bill.

He drew a parallel between a daylight robbery and the proposed law, saying an economist had told him that thieves wearing suits now strike during daylight. Rahul's repeated jibes at the Modi government invited running protests from the treasury benches.

Hitting out at the bill, he termed it as an attempt by the government to acquire land, whose price has been rising, for industrialist "friends" and crony capitalists. "This government wants to give land to crony capitalists and its industrialist friends because it's a 'suit-boot ki sarkar'," he said.

Rejecting the government's stand that the new law was needed for faster development, Rahul quoted an RTI reply, saying it has shown that only 8 per cent of projects have been hampered due to non-availability of land. He said there is no dearth of land for development purposes as 40 per cent of land in the SEZ was lying unutilised but the NDA government was hell-bent on taking the land of only the farmers.

Terming the government as anti-farmer and anti-poor, Rahul said it does not want to acquire land in Bundelkhand or in the deserts of Rajasthan but those near big cities like Noida, Gurgaon and Pune to make money as their prices have been rising. "Gold lies beneath your feet. These people want to snatch it," he said amid cheers from Congress benches. He said, "It took the UPA government two years to bring the land acquisition law but the NDA government killed it within days of coming to power. The first blow with an axe was right at its (bill) throat when the government decided to remove the consent clause.

"When the body had fallen, then it dealt a second blow of the axe. You said there should be no social impact assessment."

The Congress leader said the law enacted in 2013 had a provision that land, acquired from a farmer, will have to be returned to the farmer if no project comes up in five years. "This was the third blow when you said that there is no need to return land to farmers even if the project does not take off or is delayed by 10, 20 or 50 years," he said.

Taking a dig at BJP leaders, Rahul said its top leaders like L K Advani, Sushma Swaraj and Rajnath Singh, while sitting in opposition benches, had "even thumped the desks" when land bill was passed in 2013 during UPA's tenure. "They had supported the bill then, but I don't know why they changed their stance today. It can either be that their mind changed, or they are scared lest they say something wrong," the Congress leader said.

Earlier, while beginning his speech, Rahul took jibes at the treasury benches saying "I am thankful to BJP members for having come (to the House) in such large numbers to listen to my speech. I had thought I will be speaking to empty benches."

He also said that many members from the treasury benches were "busy shopping or having lunch." Taking a dig at Rural Development Minister Birender Singh, who was in Congress before joining BJP, the Congress Vice President said he used to agree with him on this issue.

Setting out on a padyatra on April 30, 2015 to meet farmers in the Vidarbha region of the state, Congress Vice President Rahul Gandhi was told by several of them that insurance companies were engaging in fraud and that the requisite compensation was not paid to them for crop loss.

Rahul launched his 'sanvad yatra' from Gunji village in Maharashtra's Amravati district to highlight farmers' woes and the agrarian situation in the region.

He visited five villages between Gunji to Ramgaon and will meet the farmers who have suffered crop losses due to unseasonal rain as also the families of those who have committed suicide over crop loss.

Sitting on a jute mat at a temple in Hirapur village, the Congress vice president gave a patient hearing to a group of marginal farmers.

The villagers alleged that "insurance companies were only selecting sample areas for giving compensation while the rest of the farmers were being deprived by them of the benefits due".

"The insurance companies send their agents who mop up business for foreign giants as an incentive but, ultimately, it is the poor farmer who loses," a villager, Pandurang, complained to Rahul.

Some of them said that pesticides and fertilisers were being supplied to them at high prices even though the cost of production of such items was quite less.

The villagers also drew Rahul's attention to the damage their soya crop has suffered in the unseasonal rainfall. Soyabean prices have crashed heavily due to the damages, another farmer said.

Hailing Rahul's initiative in opposing the Land Acquisition Bill, 2015, in Parliament, the villagers said they was apprehension that farm land would be acquired for business. Nearly 171 farmers have committed suicide from 2006 to 2014 in Dhamangaon taluka of the district, the villagers informed the Congress leader.

Under a scorching sun, Rahul went on foot from village to village. The padyatra saw the participation of a large number of Congress workers, particularly from Youth Congress, waving the party flag, banners and posters.

“Rahul Gandhi is resorting to a day’s excursion. Where was he when lakhs of farmers were dying during the last 10 years when his party was in power? Such things of one-day publicity are going to boomerang,” said the senior minister.

He visited five villages between Gunji to Ramgaon and met the farmers who have suffered crop losses due to unseasonal rain. He is accompanied by MPCC president Ashok Chavan and senior state Congress leaders.

Maharashtra is one of the states that experienced severe agrarian crisis and Amravati division in Vidarbha region has witnessed many suicide cases of farmers this year.

Ahead of his visit, a farmer, Gajanan Sheshrao Khongal, allegedly committed suicide by jumping into a well in Morshi tehsil of the district on Tuesday.

In Gunji, Rahul met family members of farmers Nilesh Walke and Ambadas Vahile who had committed suicide recently.

Gunji, with a population of 1,200 people, was the first stop in the ‘padyatra’ undertaken by the Congress scion where he also met a group of children from orphanages and interacted with them briefly.

Subsequently, Rahul marched to Shahpur village, another suicide-prone area, five kms from Gunji in Amravati district, which is represented by Virendra Jagtap of Congress in the Maharashtra Assembly.

The Congress Vice President accused the government of not procuring the the produce of farmers, a charge that was flatly rejected by Food Minister Ram Vilas Paswan.

Raising the issue during Zero Hour, Gandhi said he wanted to apprise the House of the pain and problems of the Punjab farmer whose produce is lying in Mandis and is not being procured by the government.

Targeting the Prime Minister, he said he is on tours and should also visit Punjab so that he understands the plight of farmers.

Amid protests from BJP benches, Gandhi also took a swipe at the Prime Minister’s ‘Make in India’ initiative, questioning whether farmers are not contributing to ‘Make in India’ by providing food to the entire country.

Even before the Act has been fully implemented by either State or Union government, the Narendra Modi government has created an impression that it is an impediment to the development needs of the country.

Mukherjee, as a senior Cabinet colleague of former Prime Minister Manmohan Singh, played no mean role in bringing about the much needed progressive legislation. The LARR Act, meant to expedite land acquisition, though not the best, is progressive. It ensured adequate compensation and rehabilitation of the affected. The ordinance, on the other hand, promulgated in the name of economic reforms and

development, takes a significant step backward in social justice and violates all democratic norms. By choosing the ordinance route, Prime Minister Modi has displayed least patience and respect for parliamentary traditions. Matters concerning the lives of millions of farmers cannot and should not be decided by a mere ordinance. It is a matter of grave importance and needs a thorough debate in Parliament.

The LARR amendment ordinance creates a separate category of projects to be fast-tracked and covers industrial corridors, defence production, rural infrastructure including electrification, housing for the poor and projects taken up under the Public-Private Partnership mode.

It may be recalled when Modi was Chief Minister of Gujarat, he enacted the Special Investment Region Act, 2009, to facilitate large-scale land acquisition and developed 13 SIRs and four industrial areas centered on manufacturing and promoted crony capitalism which gave his government the sobriquet of “Ambani-Adani-Sarkaar.”

Vinayak Chatterjee, chairman of the Confederation of Indian Industry’s National Task Force on Infrastructure, welcoming the LARR Act when it was passed, said: “The term ‘public purpose’ has now been clearly defined. The misuse of this clause under ‘eminent domain’ was the bane of the earlier legislation. It led to forcible, heartless acquisition programmes as well as lazy acquisitions where acquired land was largely in excess of needs.” When the apex industry body was satisfied with the LARR Act what was the necessity to dilute safeguards given to land owners even before giving a chance to implement it fully? The Mid-Year Economic Analysis by the government’s chief economic advisor, Arvind Subramanian, had said recently that given the current corporate debt overhang, there was going to be difficulty in attracting new private investments even if the past backlog was cleared. One of the reasons cited for the urgency in promulgating the ordinance is Section 105 of the LARR Act which provides for amending 13 Central legislations like the Land Acquisition (Mines) Act, 1885, National Highways Act, 1956, Coal Bearing Areas Acquisition and Development Act, 1957, Railways Act and the Electricity Act by 1 January 2015. The government, through a Notification in Parliament, could have extended the deadline instead of resorting to an ordinance.

By exempting special categories of projects from social impact assessment and obtaining consent of affected families mandated by the LARR Act, the BJP has put the clock back. Jaitley’s claim that priority of the government was not only to ‘protect’ the interest of farmers but also to balance it with the development needs of society lacks credibility. The ordinance waters down the five-year time limit put on projects after which the land would be returned to the owner if it remained unutilised. A report of the Comptroller and Auditor-General of India on Special Economic Zones, tabled in Parliament in November last, found that out of 45,635 hectares of notified lands 38 per cent remained unutilised even after several years of acquisition.

In the Mukesh Ambani promoted SEZ in Navi Mumbai, no operations had taken place in 1,250 hectares of land at Dronagiri acquired in 2006. Several industrial houses had raised loans of Rs. 6,309.53 crore mortgaging leasehold government land. The ordinance is tailor-made to help these entities. But according to Jaitley, a few “oversight errors” had crept in the LARR Act and the ordinance was to ease “procedural rigours.”

The ordinance relaxes norms for land purchases for affordable housing, defence and defence manufacturing, PPP (Public – Private Partnership) projects, which include private health and educational institutions, industrial corridors and rural infrastructure. Such projects would neither require the mandatory consent of land owners nor social impact assessment any longer. Hundreds of farmers have committed suicide protesting such unfair acquisition. These two key provisions are central to addressing the issue of forced land acquisition and resulting impoverishment of the communities.

It was forced acquisition of land which led to massive protests in places like Nandigram, Singur, Kalinganagar, Kakrapalli, Bhatta Parsaul, where many people died, and was responsible for the UPA government enact the LARR legislation. For years, Narmada Bachao Andolan, Niyamgiri Suraksha Parishad, Anti-SEZ protests in Raigarh, Jhajibhar had been demanding the repeal of the colonial era Act and enactment of a new people-friendly development planning legislation and it was fulfilled by the UPA government only to be undone by the BJP in such a short period.

A White Paper issued brought out by the Ministry of Road and Surface Transport a couple of months before the New Year eve promulgation of the ordinance blamed the LARR Act for holding up sanctioned projects worth Rs. 4 crore. With the coming into force of the ordinance, the agency acquiring land will have to compensate and resettle only the land owners.

Millions of agricultural workers and share croppers are left high and dry. The distinction between fertile and unfertile land, irrigated and non-irrigated, has also been done away with in regard to acquisition of land for the five specified ‘eminent domain’ sectors. Land can now be acquired for these projects without having to go through the process of Social Impact Assessment. By requiring the government to seek the consent of 70 to 80 per cent of the affected families, the LARR Act gave the citizens a say in acquisition of their land and prevented arbitrary exercise of power by the State.

With the stroke of the pen of the President just before midnight, 31 December, the BJP has taken the nation back to the colonial era which led the Congress to coin the acronym ‘FAIL’ for the Modi government. F stands for anti-farmer, A for anti-accountability, I for intolerance and L for forcible land acquisition.

CHAPTER 12

CONCLUSION

It is often said that a just land acquisition – with all the involved parties satisfied – is an impossibility. However, considering the aspirations of Indian economy and the interests of farmers and land owners at stake, a democratic and progressive legislature governing the consent, compensation, resettlement, and resolution of conflicts on land acquisitions is long overdue. And with the ordinance which passed early this year; on the Land Acquisition, Rehabilitation and Resettlement Bill, 2013; looks like we have taken a major step backwards.

Legislature on land acquisition in India dates back to the 1894 law, which allowed colonial authorities to carry out the acquisition regardless of how the person whose land is sought to be acquired is affected. Even after India's independence, no safeguards or appeal mechanism were brought in to hinder the acquisition process, nor was there any law concerning the resettlement and rehabilitation of the displaced. As expected, the farm houses of the rich and the affluent were never acquired. It was always the farmers, agricultural workers and tribals who suffered.

In 2011, the twelfth five-year plan noted that of the estimated 60 million people displaced in development projects since independence, over 40% were tribals. Considering that tribals constitute about 8% of India's population, the numbers are quite high. An estimated one in ten Indian tribal is a displaced person. The draft of the government's National Policy for Rehabilitation states that around 75% of the displaced are still awaiting rehabilitation. Given the extent of exploitation the voiceless millions have gone through, the reformation of laws governing land acquisition in India was extremely critical.

The Union Ministry for Rural Development initiated the process of amending the Act back in October 1998. The bill underwent numerous changes, and was passed by the Lok Sabha twice, but failed at the Rajya Sabha on both occasions. The bill, over these years, became more and more lenient, hence compromising with the interests of the displaced. Over a period of seven years, and after being reviewed by two Parliamentary Standing committees, the bill was finally passed in September, 2013.

The Land Acquisition, Resettlement and Rehabilitation Act, 2013

The Land Acquisition, Resettlement and Rehabilitation Act, 2013 ensured the displaced a compensation up to four times the market value of land in rural areas and two times in urban areas. The act made it mandatory to obtain prior consent of owners of the land – 70% for Private Public Participation (PPP) projects and 80% for private projects, which could be raised to 100% by respective State Governments.

The 2013 law exempted 13 laws from the purview of the bill, which included the Indian Railways Act, National Highways Act, Land Acquisition Mines Act, Coal Bearing Areas Acquisition & Development Act etc, under which the bulk of the land acquisition takes place. While the colonial legislation did not permit the government to acquire land for the corporate sector, the current piece of legislation did. Despite these loop holes, the 2013 Act was seen as a step forward.

Ordinance to amend the Land Acquisition Act, 2014

On 5th January, 2015, the new government amended the 2013 act through an ordinance. Although the compensation for the displaced remains the same, the ordinance removed the mandatory consent clause – both the 70% consent for PPP and 80% consent for private projects. Unlike the 2013 Act, the ordinance enabled the acquisition of multi-crop irrigated land as well. The provisions related to food security bill were removed. A Social Impact Assessment (SIA) of the acquisition and provisions requiring public hearing and Gram Sabha were omitted, hence removing the role of Panchayats in the negotiation process altogether. Also, according to the ordinance, a land remaining unused for more than 5 years will not be liable for return to its owner anymore.

Earlier the acquisition for private purposes was limited to Private Companies, which are registered under the Companies Act. The ordinance has extended it to any Private Entity which includes proprietorship, partnership, and NGOs as well.

While in opposition, the BJP was opposed to ordinances altogether, calling it undemocratic and authoritarian. In just six months since it has come to power, the BJP government has already used ordinances thrice.

In its defense, the BJP has argued that the rates of compensation have been kept unchanged. But what about consent? Does axing of the SIA not imply that it would no longer be necessary to identify, compensate and rehabilitate millions of landless peasants who work on land owned by others? In a recent report, the National Sample Survey Office revealed that only 57.8% of rural households are engaged in agriculture. What about rehabilitating the rest of the population?

A matter that affects a huge majority of Indian population, especially farmers and dalits, which underwent debates and discussions over decades, was brought to conclusion through an ordinance, which favors the interests of the corporates and real estate barons, and cripples the voiceless millions. The 2013 Act, despite its shortcomings to provide complete cover to the displaced, was framed after consulting the stake holders over a period of seven years. It was reviewed by two Parliamentary Standing Committees, both headed by senior BJP leaders, Kalyan Singh and Sumitra Mahajan. The new BJP government changed the Act over the stroke of a pen, avoiding every debate and discussion, and took it closer to the old colonial Act of 1894.

How long can the government deny the rights to farmers and agricultural laborers and remain unwilling to establish the balance between democracy and development? If this does not raise questions on India being a democracy, then what does?

BIBLIOGRAPHY

- A Mark of Urgency Land Ordinance a Step towards Reviving Investment Climate. (2014, 12 31). Business Standard.
- Asthana, S. (2014, 12 31). Land Acquisition Act: Right Step, Wrong Route. Business Standard.
- B. Terminski, Development-Induced Displacement and Resettlement: Theoretical Frameworks and Current Challenges, research paper, Geneva, 2013.
- Bedford Biofuels https://en.wikipedia.org/wiki/Bedford_Biofuels Kenya, 2009
- Bhat, P. I. (2004) Fundamental Rights: A Study of their interrelationships. Kolkata: Eastern Law House.
- Building India: Accelerating Infrastructure Projects. McKinsey (2009).
- Cernea, M. 1991. Socio-Economic and Cultural Approaches to Involuntary Population Resettlement. Edited by Michael M. Cernea. World Bank, Oxford University Press.
- Cernea, M. (2013): Progress in India: New Legislation to Protect Persons Internally Displaced by Development Projects, 21 October 2013. www.brookings.edu/blogs/up-front/
- Chakravorty, Sanjoy. 2013. The Price of Land: Acquisition, Conflict, Consequence. New Delhi: Oxford University Press.
- Chandrachud, Y. V. 2009. Concise Law Dictionary. New Delhi: LexisNexis Butterworths Wadhwa Nagpur.
- Decoded: What Changes Has the Narendra Modi Government Made in the Land Acquisition Ordinance. (2014, 12 30). Daily News and Analysis.
- Dugal, I., & Sanjay, P. (2014, 07 25). India Opens the Funding Tap for Infrastructure Projects. Live Mint.
- Government Approves Ordinance to Ease Land Acquisition. (2014, 12 30). Business Standard.
- Guha, A. (2012): Social Impact Assessment in the Draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011: A Critical Overview In 'Anthropological Impact Assessment of Development Initiatives'. (2012) Eds. A.K. Danda, K.K. Basa, K.K. Misra. Jhargram: Indian National Confederation and Academy of Anthropologists.
- Guha, A. Land Law and the Left: The Saga of Disempowerment of the Peasantry in the Era of Globalization (2007) pp. 259 + xxviii (index, glossary and references) Concept Publishing Company: New Delhi ISBN 978-81-8069-398-4
- Guha, A. (2013) The Macro-Costs of Forced Displacement of the Farmers in India: A Micro-Level Study. European Journal of Development Research, advance online publication, 31 January 2013; doi:10.1057/ejdr.2012.37
- "Land Bill: Opposition, in leadership of Sonia Gandhi, marches towards Rashtrapati Bhawan" (Post.jagran.com). Retrieved 17 March 2015.

- Modi Government to Give Industry its Promised Land. (2014, 12 29). Hindustan Times.
- Nataraj, G. (2014). Infrastructure Challenges in India: The Role of Public-Private Partnerships. Observer Research Foundation.
- Ordinance Raj begins, 2 days ahead of 2015: Land acquisitions can now be accelerated. (2014, 12 30). The Economic Times.
- Pellissery, Sony and Sattwick Dey Biswas. (2012). Emerging Property Regimes In India: What It Holds For the Future of Socio-Economic Rights? IRMA Working Paper 234.
- Pellissery, Sony and Sattwick Dey Biswas. (2012). Emerging Property Regimes In India: What It Holds For the Future of Socio-Economic Rights? IRMA Working Paper 234. PP. 9-16.
- Pellissery, S. 2014. Land rights as social rights. The case of India. FLOOR Working Paper No. 23. Paper prepared for the workshop »Understanding Southern Welfare – the B(R)ICS countries, 24–26 November 2014, Center for Interdisciplinary Research (ZiF), University of Bielefeld, Germany.
- Public Private Partnership: Partnering for Growth. India Brand Equity Foundation (2013)
- Research, P. L. (2012). Legislative Brief The Land Acquisition, Rehabilitation and Resettlement Bill, 2011. New Delhi.
- Sainath, Palagummi (1996). Everybody loves a good drought. Penguin Books. p. 470. ISBN 0-14-025984-8.
- Singh, Satyajit (1997). Taming the waters. Oxford University Press. p. 284. ISBN 0-19-564051-9
- Tripathi, P.K. 1980. "Right of Property After 44th Amendment Better Prosecuted Than Ever Before." Air Journal (51).
- Union Cabinet Approves Amendment to Land Acquisition Act. (2014, 12 29). The Indian Express.

Other articles

- <http://indiatoday.intoday.in/story/land-bill-passed-in-lok-sabha-shiv-sena-abstains-from-voting/1/423149.html>
- <http://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/Note%20on%20Amendments%20of%20LARR%20Bill,%202015.pdf>
- <http://www.thehindu.com/news/national/land-bill-six-facts-you-need-to-know/article6978832.ece>
- "NAC's seven-point test for land acquisition bill". The Hindu (Chennai, India). 10 June 2011.
- <http://www.epw.in/insight/peasant-resistance-west-bengal-decade-singur-and-nandigram.html>
- <http://www.rfgindia.org/publications/LandAcquisition.pdf>
- Spent Rs 2800 cr on land acquisition for Yamuna Expressway: JP Associates
- "European farmland hits record prices". The Financial Times.

- "Land use, value and management: Agricultural Land Values". USDA Economic Research Service.
- <http://www.business-standard.com/india/news/pranab-bardhanvexed-issueland-acquisition/370959/>
- "Land acquisition problems delay major projects". The Hindu (Chennai, India). 23 June 2008.
- Lease land, don't acquire it, by Swaminathan S Anklesaria Aiyar http://articles.economictimes.indiatimes.com/2012-06-20/news/32335633_1_land-acquisition-bill-land-prices-conversion-of-agricultural-land Economic Times, 20 June 2012
- Why Land Tenure should be considered in Design of Projects <http://www.fao.org/docrep/005/y4307e/y4307e06.htm>
- Projects must be sustainable for society at large under new land acquisition law, <http://blogs.economictimes.indiatimes.com/et-editorials/projects-must-be-sustainable-for-society-at-large-under-new-land-acquisition-law/>
- Wind power in Texas https://en.wikipedia.org/wiki/Wind_power_in_Texas
- Papalote Creek Wind Farm https://en.wikipedia.org/wiki/Papalote_Creek_Wind_Farm
- Community wind energy https://en.wikipedia.org/wiki/Community_wind_energy

