



## A critical analysis of the new Land Acquisition Act: “The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013”

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### Abstract

“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. 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 and controversies also start for acquisition as in a welfare state the government can't force the people to sell the land to private persons even on the name of Eminent Domain also this is wrong.”

**Keywords:** land acquisition, compensation, transparency, rehabilitation and resettlement, farmers, development, public purpose

### Introduction

#### Issues and challenges with 1894 Land Acquisition Act

- 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”. No adequate compensation or rehabilitation was given to those people were affected due to acquisitions or even no opportunities were given for them their employment.

There were huge protests on of these issues and on account of

protests over the years against many such development projects be it the protests against Tehri Dam or those against Sardar Sarovar dam or 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 houses also 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 Land Acquisition (Amendment) Bill, 2007” and “Rehabilitation and Resettlement Bill, 2007” supposed to amend the “Land Acquisition Act, 1894” have been introduced but unfortunately they could not see the light as they were lapsed due to dissolution of the 14<sup>th</sup> Lok Sabha. Thereafter the Land Acquisition Act (2011) was introduced, and finally passed in the Lok Sabha on 29th August 2013.

#### Important features of the Act are discussed as follows with their pro and cons

##### i) On what acquisition this Act applies

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?

#### **ii) 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.

#### **iii) Adequate notice period for acquisition of land**

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 Act 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 Act.

#### **iv) 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-forland or 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-forland 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.**

a) 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.

- b) 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.

#### **v) 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 onetime 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 compensatorycum- 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.

#### **vi) 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.

#### **vii) Social Impact Assessment**

A major point in this Act 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.

**viii) Acquisition of Multi-Cropped Land:**

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.

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