

# LAND ACQUISITION IN INDIA: HISTORY AND PRESENT SCENARIO

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## 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.<sup>1</sup> Land Acquisition has become a most vexing problem for policy makers in India.<sup>2</sup> Given the growing controversies, chaos and confusion over the land acquisition during the past few years, the then Congress government was forced to re-examine the existing land acquisition mechanism as given under the Land Acquisition Act 1894. The Land Acquisition Act of 1894 allowed the government to acquire the private land for public purposes, which could be used for large developmental projects like building roads, industries, mining, Public Private Partnership (PPP) projects, etc. but the Congress government in 2013 passed the **Right To Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act (RFCTLARR)** to repeal the 19<sup>th</sup> century Act. The purpose behind introducing this act was to acquire land for strictly public welfare projects and to compensate the owners adequately. The Act again came into limelight when BJP lead NDA government introduced a bill to replace the ordinance promulgated in December 2014 which brought certain changes in the RFTCLARR Amendment Act passed by UPA government in 2013.

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<sup>1</sup> Dr Chetan Upadhyay “*Research Paper on Land Acquisition in India*” Vol 5 No 6, 2015 *South Asia Journal of Multidisciplinary Studies* available at [www.gjms.co.in/index.php/SAJMS/article/view/1098](http://www.gjms.co.in/index.php/SAJMS/article/view/1098) last accessed on 21st July, 2016.

<sup>2</sup> Maitreesh Ghatak, Parikshit Ghosh “*The Land Acquisition Bill: A critique and a Proposal*” Vol XLVI No 41, October 8 2011, *Economic & Political Review*, Pg 65, available at <http://econ.lse.ac.uk/staff/mghatak/GG.pdf>, last accessed on 21<sup>st</sup> July, 2016.

Though the bill being praised in some quarters and reviled in others was passed in Lok Sabha but after facing a lot of opposition is finally withdrawn from Rajya Sabha and the Modi Government has asked state governments to push through amendments to their own laws to simplify land acquisition. The members from Congress, left, Trinamool left, Samajwadi Party, Bahujan Samajwad Party, JD-U have all opposed the Modi government over provisions of the land ordinance calling it “anti-farmer” and aimed at “benefitting corporates”

Sensing the stiff opposition to the bill, the Modi Government setting a reconciliatory note is ready to review the amendments which are “anti-farmer”. PM Narendra Modi referring to the law made by the earlier UPA government asserts that there were no provisions for allotment of land for schools, hospitals, houses, water and irrigation. He 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 same form of rehabilitation and compensation.

In order to get the opposition on board the Modi government is expected to bring some changes in the suggested amendments.

### **EVOLUTION OF PROPERTY AND OWNERSHIP RIGHTS UNDER INDIAN LAWS**

Ownership and Property have been a long discussed concept in the legal arena. According to Salmond, ownership denoted the relationship between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against the entire world and not merely against specific persons. Austin on the other hand defined ownership or property as the right to use or deal with some given subject, in a manner, or to an extent, which, though is not unlimited, is indefinite. The State, be it corporeal or incorporeal property has always played a material role in protecting the interest of individuals against their personal property. The taking away of such property by the State, with a welfare motive from persons for the greater good of the rest of the society is also not an alien concept. The practise is done keeping in mind the state practices, economy structure and the pace of societal growth. Systems of Land Administration are not an end in themselves. The design and development of those systems find their rationale and justification in the broader framework of land policy and land management. The way governments intend to deal with the land issue in their society, determines the requirements to the institutional and operational set

up of land administration systems.<sup>3</sup> The Constitution and other legislations are modified keeping in mind all of the eventualities.

The Right to property, found its place as a fundamental right under the Indian Constitution until it was finally repealed.<sup>4</sup> Before the said amendment in 1978, Article 19(1)(f) and Article 31, guaranteed safeguard of interest to defenseless individuals against their property. The object behind such amendment was to surcease the accumulation of land holdings in the hands of zamindars and rich individuals. However, since the said objective has been achieved the viability of the said amendment is again in question.

The right to property is now a statutory right. Article 31 now finds its place under the Indian Constitution as Article 300A. This transfer justifies the *doctrine of eminent domain*. The doctrine absolves the acquisition of land by State, provided it is for public purposes and adequate compensation is given in this regard. Therefore, property of an individual is acquired, except by authority of law. In the case of *State of Bihar Vs. Kameshwar Singh*<sup>5</sup>, Supreme Court defined *eminent domain* as “the power of a sovereign to take property for public use without the owner’s consent upon making just compensation.” After the said series of amendments, Articles 31A, 31B, 31C and 300A provide protection against hostile property legislations.

The constitutionality of 31A, 31B & 31C have been now and again challenged on the grounds of being opposed to the basic structure of the Constitution. The Supreme Court upheld the constitutionality of clause (a) of Article 31A (1) on the test of basic structure<sup>6</sup>. In *Minerva Mills v Union of India*, the Court held that the whole of Art. 31A is unassailable on the basis of stare decisis, a quietus that should not allowed to be disturbed. The Apex Court has also affirmed that 31B does not destroy the basic structure<sup>7</sup>. After a lot of legal clamor, Article 31C has two prerequisites

- A law for giving effect to the policy of the state to implement a Directive Principle in Article 39(b) or (c).

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<sup>3</sup> Paul Van Der Molen, Eugene. H Silayo, Arbind M. Tuladhar on “A Comparative study of Land Policy in 9 countries in Africa & Asia” available at [https://www.fig.net/resources/proceedings/fig\\_proceedings/fig2008/papers/ts06b/ts06b\\_04\\_vandermolen\\_etal\\_3037.pdf](https://www.fig.net/resources/proceedings/fig_proceedings/fig2008/papers/ts06b/ts06b_04_vandermolen_etal_3037.pdf), last visited on, 28<sup>th</sup> July, 2016.

<sup>4</sup> Omitted by the Constitution (44<sup>th</sup> Amendment) Act, 1978, S.6 (w.e.f. 20-6-1979).

<sup>5</sup> *State of Bihar v. Kameshwar Singh* 1952 1 SCR 889.

<sup>6</sup> *Ambika Mishra v State of UP*, 1980 AIR 1762.

<sup>7</sup> *Waman Rao v. UOI*, 1980 SCC (3) 587.

- The Legislature making a declaration to that effect.

But the question that whether the act is intended to secure the object contained in Article 39(b)-(c) does not depend upon the declaration made by the legislature but upon the contents of the act as found by the court.<sup>8</sup>

Much important litigation in Constitutional law has arisen in the field of property rights because of the large legislation enacted by the state and the central governments to control the property rights. The most important question in these controversies was the payment of compensation for the property rights acquired. Important constitutional battles have been fought around this question and the constitution has been amended several times to get over some inconvenient judicial rulings.<sup>9</sup> Such struggle paved way not only for Article 31A, 31 B, 31C and 300 A but subsequent Land acquisition bills and legislations which have been dealt with in the paper.

### **INDIA'S 200 YEARS OF STRUGGLE WITH LAND ACQUISITION LAWS**

The Controversies pertaining over the land acquisition bill in India is not new. Its existence can be traced back to over 200 years now. The timeline for the same is as follows:-

- **1824:** The British government in India enacted the first land acquisition legislation<sup>10</sup> that applied to the entire “Bengal province subject to the presidency of Fort William.” The law allowed the government to obtain land or other immovable property required for roads, canals or other public purposes “at a fair valuation.”
- **1839:** The Bombay presidency enacted an act similar to the Bengal Resolution I which included parts of the present-day states of Maharashtra, Gujarat, and Karnataka.
- **1850:** The British government then enforced Act XLII of 1850 in the country to acquire land for the purpose of building a rail network.
- **1852:** The Madras presidency passed an act<sup>11</sup> in order to facilitate the acquisition of land for public purposes which included the present-day states of Tamil Nadu and Andhra Pradesh, parts of Odisha, Kerala, and Karnataka, and Lakshadweep.

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<sup>8</sup> Laxman, “*Emergence of Articles 31A, 31B & 31C*”, available at <http://www.legalservicesindia.com/article/article/emergence-of-article-31-a-b-and-c-and-its-validity-1435-1.html>, last visited on 29<sup>th</sup> July, 2016.

<sup>9</sup> *Ibid.*

<sup>10</sup> Bengal Resolution I of 1824.

<sup>11</sup> Act XX of 1852.



- **1857:** The government enacted legislation that brought the whole of British-ruled India under one uniform land acquisition law<sup>12</sup> that stroke out all the previous enactments relating to land acquisition. Under this act , the collector had the power to fix compensation for the acquired land, while disputes were referred to arbitrators whose decision was final.
- **1861:** The 1857 legislation was amended owing to the “unsatisfactory settlement,” “incompetence” and “corruption.”
- **1870:** A new act was implemented that replaced arbitrators with civil courts for resolving disputes.
- **1894:** The act of 1870 was found to be unsatisfactory, therefore it lead the government to pass the Land Acquisition Act, 1894 . This act permitted the government to forcibly acquire land from private landholders for projects of public purpose. The price for the land was determined by the government.
- **1948:** The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, adopted the Land Acquisition Act, 1894 after replacing the words “the whole of British India” with “all the provinces of India.” The British-era act was used in the same form for several decades.
- **1998:** The Bharatiya Janata Party proposeD to amend the existing land bill.
- **2007:** The Congress party-led United Progressive Alliance (UPA) government decided to amend the land acquisition act and introduced a bill in the parliament. The bill a mandated the social impact assessment and also proposed that the government, while acquiring the land, had to pay for losses or damages caused to the land and to provide compensation as per prevailing market prices. A Land Acquisition Compensation Disputes Settlement Authority was also to be constituted at the state and central levels.
- **2008:** The bill was subsequently referred to a standing committee on rural development and was cleared by the group of ministers, set up by the UPA government, in December 2008.
- **2009:** The Lok Sabha passed the 2007 amendment bill as the Land Acquisition (Amendment) Bill, 2009 in February. The government introduces the bill in the Rajya Sabha but was unable to ensure its passage and it lapsed with the dissolution of the 14th Lok Sabha.

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<sup>12</sup>Act VI of 1857.

➤ **2011:** After winning the general elections in 2009 once again, the UPA government introduced the Land Acquisition Rehabilitation and Resettlement Bill, 2011—a new bill which traced its roots to the 2009 version.

➤ **2013:** The bill was passed.

➤ **Jan. 2014:** The bill comes into effect.

➤ **Dec. 2014:** After winning elections in May 2014, the Narendra Modi government made changes the land acquisition rules by an ordinance.

According to the amendment, the consent clause and the social impact assessment were not necessary if land was acquired for national security, defence, and rural and social infrastructure. “Such projects are vital to national security and defence of India including preparation for defence and defence production,” India’s finance minister Arun Jaitley says on Dec. 29.

➤ **2015:** The lower house, where Modi holds a majority, passed the bill and the opposition parties including the Congress, the Trinamool Congress, the Samajwadi Party and the RJD walked out of the Lok Sabha.

The Lok Sabha refers the bill to a joint parliamentary committee consisting of 30 members from both the Lok Sabha and the Rajya Sabha in May. The committee is asked to submit the report during the monsoon session of the parliament.

The government once again promulgates the ordinance in June.

The joint committee, in July, seek a two-week extension for the submission of report.

A joint parliamentary panel, in August, suggested that the government should withdraw six key amendments, including the plan to remove the consent clause and the social impact assessment.

## **THE LAND ACQUISITION ACT, 1894**

The Land Acquisition Act of 1894, allows the Indian Government to acquire the private land in the country. Under this Act, “Land Acquisition” means acquiring land for any public purpose by government or its agency, as authorized by law, from the individual land owners after paying a fixed compensation in lieu of losses incurred by these land owners due to surrendering of their land to the concerned government agencies.

According to this Act, the state has power to exercise its right of eminent domain wherein it is the ultimate owner of all the Land which it can acquire for public purposes after paying full compensation calculated on the basis of market value. Despite numerous amendments of the Act after independence, the two basic principles of land acquisition, that is, a). Public purposes and b). Compensation on Market Value remains unchanged.<sup>13</sup>

Although the Central Government determines the content of the law, but there can be regional variations in the procedural matters. As Land is a scarce resource and always has various holders claiming ownership, this Act provided a set of rules for convenient settlement of such disputes. As per the 1894 Act, land can be acquired either under Part-II or Part-VII of the Act. While the former is used when acquiring body is the central or state government or companies that are either owned, partly owned or controlled by the State, the latter is used in case of private companies. Another important aspect is that, while land acquisition under Part-II is entirely for “Public Purpose”, acquisition under Part-VII can be for both “Public Purpose” and “Non-public Purpose”, although the scope for “Non-public Purpose” is very limited.

### **LAND ACQUISITION UNDER PART-II**

Under this part, acquisition process involves the following steps:-

#### 1. NOTIFICATION<sup>14</sup>

The land acquisition process starts with issuing of a preliminary notification in the Official Gazette in two locally circulated newspapers. Also the collector is to ensure the “public notice of substance of such notification” to be given at a convenient place in the locality.

This notice:

- Makes it lawful for an authorized officer to enter and inspect the land specified in the notice without the owner’s permission
- Alerts the owner not to invest any money or labour on any improvements to his land without the Collector’s consent and
- Informs the public not to acquire any interest in such land.

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<sup>13</sup> Nandal Vikas, “*Land Acquisition Law in India: A Historical Perspective*”; Vol.3 Issue 5, 2014 *International Journal of Innovative Research and Studies*, Pg 468.

<sup>14</sup> Section 4(1), Land Acquisition Act, 1894.

## 2. FILING OF OBJECTIONS<sup>15</sup>

Owners and the people who have interest in the land are then required to file their objections (if any) within 30 days of the issuing of the notice. These objections are to be submitted to the collector and the collector shall give opportunity of being heard to all those people who raise objections. After hearing these objections the collector submits a report to the government which contains all his recommendations and all the records of the proceedings. Then the government takes a decision of acquisition based on the collector's report. The right to file objections is regarded a substantial right when a person's property is threatened against acquisition.<sup>16</sup>

## 3. DECLARATION

After the government takes the decision, a declaration is issued under Sec 6(1) and this declaration must be given equal publicity as the preliminary notification. According to this Act, this declaration shall be issued within one year from the date of issuing of preliminary notification.

## 4. NOTICE TO INTERESTED PARTIES

After the declaration the notified land is planned and measured as per Sections 7 and 8 of the Act. A notice is issued by the collector to all the land owners and the parties having interest in that land to inform about government's intention to acquire their land and also to call for claims for compensation.<sup>17</sup>

## 5. ENQUIRY AND AWARD

After the notice is issued, collector conducts an enquiry on the objection raised and accordingly an award is given.<sup>18</sup> The award contains area of the notified land, compensation payable and the share of all the interested persons in the compensation. This award should be made within two years from the date of declaration or else under Sec 6 the acquisition proceedings will lapse. Any appeal against the award can be made by filing an application to the collector who shall then refer the matter to the court. The

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<sup>15</sup> Section 5-A, Land Acquisition Act, 1894.

<sup>16</sup> *Nandeshwar Prasad v. U.P. Government*, AIR 1964 SC 1217.

<sup>17</sup> Section 9(1), Land Acquisition Act 1894.

<sup>18</sup> Section 11, Land Acquisition Act, 1894.



interested parties cannot file a suit in the ordinary civil courts to establish their claims. The award must be made within the stipulated time period of 2 years under Section 11A. The period of stay if any to be excluded from time fixed for passing the award.<sup>19</sup>

#### 6. ACQUISITION

After the award is made the government acquires the land and immediately takes the possession of the land after paying appropriate compensation.

#### 7. COMPENSATION

The compensation should be based on the market value of the land. If the payment of compensation is delayed even after acquisition of the land then an interest of 12% per annum shall also be given. In addition to that, a *solatium* equivalent to 30% of the market value shall also be given. The recent judicial trends have also seen refund of compensation at specific interest rate if the acquired land is not used for the desired purposes.<sup>20</sup>

### LAND ACQUISITION UNDER PART VII

Under part VII, land can be acquired for non-governmental companies. Unlike Part II, where compensation is granted wholly or partly, but under Part VII, a company is bound to pay the entire amount of compensation for the notified land.<sup>21</sup> The term “company” includes companies as defined under the Company’s Act 1956, societies registered under Societies Registration Act 1860, Co-operative Societies and industrial establishments either owned individually or through partnership.

Basically, the process of land acquisition under Part VII is similar to that Part II, but there are two major exceptions. The exceptions are related to the company in following ways:

- Getting government’s consent under Sec 6 (1)
- Entering into an agreement with the government before the declaration is issued under Sec 6(1)

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<sup>19</sup> Special Leave Petition (crl.) 3229 of 2000.

<sup>20</sup> *Balbir Singh v. Union of India & Ors.*: 39 (1989) DLT 233.

<sup>21</sup> *Devinder Singh v. State of Punjab* 2008 AIR 261

### **MAJOR DRAWBACKS OF THE LAND ACQUISITION ACT 1894**

There were many factors that lead to the inapplicability of the Land Acquisition Act 1894, the major drawbacks being:-

- The Land Acquisition Act 1894, though provided reassurance to the land owners, it was totally unsympathetic towards the people who earned their livelihood from those lands. India being an agro-based country, where more than 60% of the population is still dependent on agriculture, the interest of the labourers working on the land cannot be completely overlooked. Moreover, ages of working on land renders them such perfection in agriculture that it becomes difficult for them to adopt some other occupational means for their survival.
- Under the Land Acquisition Act 1864, the government can take over land of private land owners only for “public purposes”. But this term “public purposes” has been given a very wide definition under this Act and it includes
  - Any extension or improvement or development of existing infrastructure
  - Any rural town or city planning
  - Any development in pursuance of any scheme or policy of the government.
- According to the Land Acquisition Act 1894, the compensation to be given to the land owners is to be in accordance with the market value. But this Act does not provide for any guidelines to assess this market value. Hence, the calculation of compensation becomes really difficult. The Supreme Court in 2012 directed the government to increase the compensation to the highest market value of the land, in the basis that someone who is compelled to surrender his land should be able to claim a higher compensation than what a similar land owner would receive if he would sell his property willingly.
- Moreover, the rehabilitation and resettlement provisions for the displaced people that includes allotment to government land, grant for house construction and other substantive allowances are completely impractical in nature. This

renders the appropriate government to rehabilitate the displaced people in a proper manner.<sup>22</sup>

The government was driven by the above mentioned drawback to take necessary measures to overcome the defects faced by it in enforcing the Act. Due to this reason the UPA government came up with the amendment bill in 2007. Again in 2011, it introduced the Land Acquisition, Rehabilitation and Resettlement Bill.

### **THE LAND ACQUISITION BILL 2015: CURRENT SCENARIO**

The current BJP government 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 for any public purpose and endlessly delays infrastructure projects. While the amendments were passed in the lower house of the parliament where BJP enjoys the vast majority, it has been unable to pass this in the Rajya Sabha. Instead, it took recourse in an ordinance to pass the amendment to the bill in December 2014.<sup>23</sup>

### **SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:**

- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in the Lok Sabha by the Minister for Rural Development, Mr. Birender Singh on February 24, 2015. The Bill amends the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013)**.
- The Bill replaces the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014.

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<sup>22</sup> Saxena K.B. (2011); *"Rehabilitation and resettlement of displaced persons"*. Chapter 3 in Development-Induced Displacement, Rehabilitation and Resettlement in India

<sup>23</sup> Basu Indrani, *"What exactly is the contention about the land acquisition amendment?"*, 24 Feb 2015 (Tuesday, *The Huffington Post*).

- The LARR Act, 2013 outlines the process to be followed when land is acquired for a public purpose. Key changes made by the Bill 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 (that is, by January 1, 2015), through a notification. The Bill 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 Bill 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 Bill exempts the five categories mentioned above from this provision of the Act.
- In addition, the Bill permits the government to exempt projects in these five categories from the following provisions, through a notification: (i) 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. (ii) The LARR Act, 2013 imposes certain restrictions on the acquisition of irrigated multi-cropped land and other agricultural land. For example, irrigated multicropped land cannot be acquired beyond the limit specified by the appropriate government.
- Return of unutilised land: The LARR Act, 2013 required land acquired under it which remained unutilised for five years, to be returned to the original owners or the land bank. The Bill states that the period after which unutilised land will need to be returned will be: (i) five years, or (ii) 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 Bill 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 Bill removes this restriction. While the LARR Act, 2013 was applicable for the acquisition of land for private companies, the Bill 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.
- 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 committed without his knowledge, or that he had exercised due diligence to prevent the commission of the offence. The Bill 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.<sup>24</sup>

This bill not only provides for land acquisition but also for rehabilitation and resettlement (R&R). The provisions of this bill shall be applicable where the government acquires land either for its own use or for the use of any private company for public purposes. The earlier Act only allowed land acquisition by government for government owned companies as well as schemes run by societies/authorities/co-operative societies while the new Bill allows acquisition for public purpose by private companies and Public Private Partnership (PPPs) apart from government controlled organizations. According to this bill the private companies are entitled to provide rehabilitation and resettlement if they acquire land through private

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<sup>24</sup> "Bill Summary The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015", available <http://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/Bill%20Summary%20-%20LARR%20Bill%202015.pdf>.



negotiations. R&R shall be equal to or more than 100 acres in rural areas and 50 acres in urban areas.

As per this bill, the term “public purpose” includes

- National security and strategic defence purposes
- Roads, railways and ports built by government and PSEs
- Project affected people
- Planned development or improvement of villages
- Residential purposes for the poor
- Government projects benefiting public.

This Bill creates five special categories of land use which are exempted from certain provisions.

This includes:-

- Defence
- Rural infrastructure
- Affordable housing
- Industrial corridors
- Infrastructure projects including PPP projects

However, under the LARR Act 2013 land could be acquired for all these purposes only when 80% of the project affected people give their consent. But this bill exempts the above mentioned land uses from this consent clause. This bill apart from limiting government’s involvement in acquisition and required consent of affected people, it also talks about the return of the acquired land after a period of 5 years or any period specified at the time of setting up of the project, whichever is later if left unutilized. But no mechanism has been provided for this.<sup>25</sup>

The Bill provides the need for a Social Impact Assessment (SIA) by the gram sabha or an equivalent body in urban areas for preliminary enquiry for land acquisition. This SIA will examine the licitness of public interest involved.<sup>26</sup> The SIA will be appraised by an Expert

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<sup>25</sup> Sharad Sheetal, Jain Shubham & Inmadar Rohit, “*Impact Analysis: New Land Acquisition Bill*”, available at <http://www.icra.in/Files/ticker/new%20land%20acquisition%20bill.pdf> accessed on 21<sup>st</sup> July 2016.

<sup>26</sup> “*All you wanted to know about Land Acquisition Bill*”, available at <http://www.livemint.com/Politics/FXZ9CrJApXRowyzLd8mb2O/All-you-wanted-to-know-about-new-land-acquisition-Bill.html>, last accessed on 21<sup>st</sup> July 2016.

Group (EG) which will consist of two non-official social scientists, two representatives of Panchayat, Gram Sabha (GS), Municipality or Municipal Corporations as the case may be, two experts on rehabilitation and a technical expert in the subject relating to the project. After this the R&R Scheme will be formulated by a designated administrator which will again be reviewed by the Collector and Commissioner (R&R). The maximum time line for SIA is six months from its commencement and two months for EG. The process will lapse in case no land acquisition notification is brought after twelve months of the EG report. This Bill shall be applicable to sixteen existing legislations which provide for land acquisition that were excluded under the 2013 Act. These include the Atomic Energy Act 1962, the National Highways Act 1956, SEZ Act 2005, the Railways Act 1989, the Land Acquisition (mines) Act 1885.

Moreover, to protect food security, this Bill limits any acquisition of irrigated multi-cropped land only for exceptional circumstances. In such an acquisition an equivalent area of culturable wasteland has to be deposited with the government. This Bill stipulates the appointment of an R&R committee to review R&R progress in case where land acquired is 100 acres or more for public purpose.

### **OBJECTIONS RAISED**

The amended Act does not require consent from 80% of the land owners if the purpose is for five special categories:- (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure projects including Public Private Partnership (PPP) projects. SIA is also not required for these projects. This would mean that now only land owner would be compensated and those people who depend on the land are now being done away with.

Government could acquire land for its own purpose and then change their mind and hand it over to the private company. Hence, under the amended bill the intention of the government at the time of acquisition could change afterwards.

While the 2013 Act stated that land can be acquired for private companies, this bill replaced it with private entities. A private entity is an entity other than a government entity and could include a proprietorship, partnership, company, corporations, etc.

If an offence is committed by a government official or head of the department then he or she cannot be prosecuted without prior sanction of the government.<sup>27</sup> The members from Congress another opposition parties have opposed this bill calling it “anti-farmer” and aimed at “benefiting corporates”.

## CONCLUSION

An act that was born in a different context, amended under various compulsions, and continues to be in conflict with sundry other laws. While the demand for the land continues to increase, its supply is fixed. In order to meet the rising demand of the land, it has to be acquired and its use pattern has to be changed along with various policies implementation. However, the requirement and availability between lands continues and it has lead the successive governments at the centre look into the Land Acquisition Act, 1894 time and again in order to find solution to this problem. The major question today is that whether changing a specific law could overhaul the system of overlapping laws which has allowed the misuse of limited land resources?

The current BJP government however has completely denied the allegations that the amended bill is anti-poor and anti-farmer. The efforts of the government in power to bring about the changes in LARR Act are commendable. Though the need of the hour for the developing country of ours is to expand its infrastructure and welcome the technological advancements with open hearts in order to bridge the gap between developing and developed countries, still the major factor that India is an agricultural based country cannot be ignored.

The initiatives by Modi government is praiseworthy as land acquisition hurdle creates much delay and obstacle in completion of even public welfare projects i.e. metro, railway, roads etc. The approach of exempting 13 sectors from the strictures governing land acquisitions is in right direction but along with this government need to also take into consideration of land owner's interest. The government needs to compensate as per growing valuation over time instead one time settlement that too based on governmental valuation which always remain much lesser than market valuation. The recent proposals regarding compensation based on lease or annuity is worth consideration.

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<sup>27</sup> Rathi Priyanka “*Land Acquisition Bill: The Main Points Of Debate And Controversy*” 25<sup>th</sup> February 2015 (Wednesday, *IBN Live*) available at <http://ibnlive.in.com/news/land-acquisition-bill-the-main-points-of-debate-and-controversy/530572-3.html> accessed on 22nd July 2016.

At the same time it is also suggested that leasing a land could be a viable option but for that the government has to behave like private entrepreneurs. They need to be flexible in their approach and commitments must be honoured. There must also be an exit clause and the land holder should be able to encash his or her share.

No doubt the passing of this bill will surely create great hue and cry amongst the farmers of the nation but none the less the duty to protect the interest of these people lies in the hands of the government.

Amidst all these challenges and controversies faced in the passing of the bill, one cannot deny that this bill has its own pros and cons. None the less it will be interesting to see whether this bill will be accepted open-heartedly by the Council of the States or would be rejected out rightly. The fate of the much debatable topic of the session is yet to be decided and its consequences for the agro based society of India rests with the States after its withdrawal from the Rajya Sabha. This monsoon session will decide the futurity of Land Acquisition act in India.