

# Policy of land acquisition in india economics essay



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Land Acquisition has been a burning issue in the domain of public policy of independent India . though it never left the realm of public attention and academic discussions, it enjoyed increased public attention in the last few years. It is in this context that government decided to introduce Land Acquisition Rehabilitation and Resettlement Bill 2011(LARR 2011) in place of Land Acquisition Act of 1894.

Land acquisition by the state rides on the principle or doctrine of eminent domain. The doctrine of eminent domain is not new to the history of mankind; one of the earliest examples comes from bible when king Ahab of Samaria offered compensation to Naboth for Naboth's vineyard. Coming to modern times, as importance of land as a factor of production increased exponentially, states began to increasingly employ eminent domain to carry out its goals. It equips the state to take over private property without owners consent for a public purpose. By this state is given an additional power that is not available to private parties. It can forcefully purchase the private property for public use. This ability to undertake condemnation with payment forms the backbone of policy of land acquisitions across the globe.

When the state takes up land based on eminent domain the major economic problem that arises is that it contradicts the notion of property as a source of individual autonomy with the power of state to regulate use and disposition of property. To overcome this the government acquire and take over land when it feels there is a ' public purpose' which is of higher priority than the lands present use for the general good of public. This is the same logic that drives the policy of public purpose in India. The removal of ' the right to property' which was originally part of constitution under article 19 by 44th

amendment act should be viewed in this context. This re ascertained the state's ability to employ eminent domain efficiently.

Land Acquisition Act of 1894 was very much in colonial in nature. Though tailor made to serve the colonial interests, this has remained the primary tool for land acquisition in India even after independence. This act has been amended in years 1919, 1921, 1923 and 1933 before independence and in the years 1962, 1967 and 1984 after independence. It has been argued that ' the history of eminent domain in India is a saga of un mitigated abuses of the law, which is the archaic and ambiguous LAA.... the states have repeatedly exploited ambiguities in the act to acquire land for companies and the powerful.'[1]Post independence Indian economy, in spirit with the Nehruvian vision of development, witnessed a number of developmental projects. Most of these projects undertaken to construct the so called ' modern temples of India' resulted in huge mass displacements. The premise of ' public purpose' was extensively used by the government to justify these displacements. ' Mass displacement posed an early threat to the legitimacy of project of development. This phenomenon defied the logic of eminent domain in demonstrating that the link between acquisition was incapable of acknowledging the thousands and hundreds of thousands who would stand to lose their land.'[2]In the last three decades state appeared more as an agent to facilitate to transfer land to companies. In 1984, when the act was elaborately amended to deal with the short coming, it was seen as an attempt to reinforce states role in acquiring land for companies. Allegations of similar kind were reinforced by the neo liberal reforms which raised the demand for spaces substantially. Land acquisition became a burning issue.

Projects of multinationals in various areas met with protests which received wide attention. Singur, Nandigram, Jaitapur, Bhatta-Parsaul, Kalinganagar.... the list of conflict zones goes on. A national policy on rehabilitation was notified only in 2004 and was replaced by National Rehabilitation policy in 2007. It is in this background that the Land Acquisition Rehabilitation and Resettlement Bill were introduced by the government. ' It is quite evident that the Bill is an attempt to gain control over the conflict and violence associated with land acquisition and respond to the resistance movements against land acquisition across India.'[3]

### **Policy of Land Acquisition in India: A Peep into the LARR 2011 & LAA 1894.**

To understand how the policy has evolved over the period we will undertake a comparative analysis. We would be looking at the key features of LARR 2011 Bill and contrast it with LAA 1894 or its subsequent amendments.

LARR 2011 is a combined law. It deals with not only land acquisition but also rehabilitation and resettlement(R&R). Currently R&R is undertaken as per the ' National Rehabilitation and Resettlement Policy, 2007'.

According to the LARR, when the appropriate government intends to acquire land for a public purpose a social impact assessment(SIA) study has to be undertaken. SIA is done in consultation with gram sabha in the rural area or an equivalent body in the urban area. This SIA is then evaluated by an ' independent -multidisciplinary group' and is passed to a C S committee who examine the legitimacy of ' public purpose' and SIA. Once the required surveys and public hearing is done, government makes the declaration to

acquire the land. This process varies substantially with the 1894 act, which is more unilinear and collector centric. In crude terms, whenever it appears to the Government that the land in any locality is needed for any public purpose, the district collector studies the proposal and notifies acquisition. Objections are invited from the concerned parties and a report is submitted to government who will finally declare the land for acquisition. The land is then measured, compensations are calculated and awarded.

Compensation to the affected is another area of marked difference. In the LAA, the compensation was based on the market price based on the sale deeds. The damages sustained (if any) by the land owner are also taken into consideration. If the person interested has protest with the compensation, the issue is settled in court (section 23, LAA 1894). In the LARR, First, the market value of the acquired land is computed as the higher of (1) minimum land value specified in the Indian Stamp Act, 1899 for the registration of sale deeds in that area; or (2) the average of the sale price of similar type of land in the adjoining areas calculated from top 50 percent sales in last three years. Once the market value is calculated, it is doubled for land in rural areas. Then the value of all assets attached to the land (trees, buildings, etc) is added to this amount for total compensation.[4]

About the definition of ' public purpose' both remain broadly same. The only marked difference is that the requirement of 80% people affected by the project in certain cases. This is required when Land acquired by the Government for purposes other than specified or for public sector companies or for PPP projects for the production of public goods or the provision of

public services. This is also applicable for private companies acquiring land for the production of public goods or provision of public services.

Another crucial change in the current bill is the incorporation of Rehabilitation and Resettlement package to the affected families. The collector shall pass the entitlements to the affected families as per the second schedule of the act . the term affected as defined in the bill includes not just land owners but also those who are dependent on the affected area for livelihood. This brings a wide array of persons under the ambit of law. Along with land owners who would lose their land, others like right holders under forest rights act 2006, agricultural labourers and tenants whose livelihood depends primarily on the land being acquired(over the last three years), forest gathers, fisher folk etc dependent on the water bodies or forests when they are acquired .

Following is a table comparing some key features between 1894 ACT and LARR Bill.[5]

Issue

1894 ACT

LARR 2011 BILL

Public Purpose

Includes several uses such as infrastructure, development and housing projects. Also includes use by companies under certain conditions.

No significant change.

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Consent from affected people

No requirement

Consent of 80 % of displaced people required in case of acquisition for private companies and public-private partnerships.

SIA

No Provision

SIA has to be undertaken in case of every acquisition.

Compensation

Based on Market Value

Market value doubled in rural areas and not in urban area.

Market Value

Based on the current use of land. Explicitly prohibits using the intended use of land while computing market value.

Higher of: (a) value specified for stamp duty, and (b) average of the top 50% by recorded price of sale of land in the vicinity.

Solatum

30%

100%

## Resale of Land

No provision

Prior permission of the government required.

## Sharing of Profits

No Provision

If the acquired land is unused and is transferred, 20% of the profits shall be shared with the original owners.

## R&R

No Provision

R&R necessary for all affected families. Minimum R&R entitlements to be provided to each affected family specified.

Source- <http://www.prsindia.org> .

## **LARR 2011- A CRITIQUE**

As evident from our discussion so far LARR is a remarkable move away from the inefficiencies of LAA. While it has been lauded for its comprehensive approach by many, some called it ' well-intentioned but seriously flawed.'[6]A close look at it will give a better picture of the nature of public policy of Land Acquisition in India.

One of the many issues suggested is that of compensation. The bill tries to solve the problem within the logic of market. This is difficult due to various



reasons. ' The use of market price for voluntary transaction as a proxy for owner's value in forced acquisition is fundamentally flawed.'[7]Proponents of this argument maintain that valuation of land is a subjective matter and not a tangible attribute that can be objectively measured. Dispossessed owners valuation could be different from what market seems to be fit. The problem aggravates when there the land market is imperfect. In most areas the transactions are few and not transparent leaving enough room for bureaucratic manipulation. The price reflected might not be in agreement with the actual value. To overcome this shortfall, LARR proposes an arbitrary markup over market price. While market price itself is not a good indicator for compensation, arbitrarily increasing it is bound to bring in more inefficiency. Counter argument for this maintains that this is acceptable as scientific calculation of value is cumbersome and often not practical. But almost everyone seems to agree that the signals given by market price are highly flawed due to the above mentioned reasons.

Another issue connected with the problems of compensation is that the bill is that it is prone to excessive litigation. Litigation over compensation has always been a feature of compulsory land acquisition and that continues here also. There is hardly anything proposed in the bill to avoid this vicious cycle that causes huge wastage of resources. A solution for this might not be easy as it is an inherent shortcoming of using eminent domain doctrine.

Speculative transactions which drive up the land prices are also a vexing problem. Though the LARR tries to prevent it by freezing land transaction after notification, this alone might achieve the objective. There is a possibility that the time gap between SIA notification and the land

acquisition might drive up compensation amounts. Notification of SIA could fuel the transactions in the land market raising the prices.

LARR allows compensation by way of shares and debentures as part of compensation. It stipulates that such compensation should not exceed 25% of market value of land. This is in contrast to the view held by parliament standing committee which maintained that it is not practical and should be over and above admissible compensation. This triggers the debate of how efficient is cash transfers to people who lack investment expertise or access to financial instruments. LARR has rightly increased farmer choices in design of R&R. The problem is that the bill does not make it explicit the nature of land for land compensation. In short, the word arable which has huge connotations for an Indian farmer is missing in the bill.

The definition of public purpose was always been a vexing issue in the history of land acquisitions. The good point about the LARR is that it restricted the scope of emergency clause which has been widely misused by state governments. Unlike the LAA bill, LARR restricts it “ to the minimum area required for the defense of India or national security or for any emergencies arising out of natural calamities’ (LARR 2011). the bill also allows land acquisition land acquisition by government on behalf of private companies only if it serves a public purpose. This is a marked deviation from the LAA, where government could acquire land for private use provided 70% of total area has already been purchased through market. In spite of all these as mentioned earlier almost all encompassing definition of public purpose still retains the criticisms it has been carrying historically.

The bill makes it mandatory for all private purchases through private negotiation to undertake R & R if land purchased is over 100 acres in rural areas and 50 acres in urban areas. This raises two issues (1) the jurisdiction of parliament to make laws on the purchased land and (2) possible circumvention of the R&R provisions. The ambiguity with regard to parliament arises as the 'the transfer and alienation of agricultural land' falls in the state list while power to make laws on 'acquisition and requisition of property' is under concurrent list. So it highly depends on the interpretation of the nature of transfer. The companies also have many loopholes available to override R&R responsibilities through multiple purchases, binami deals etc which is not dealt with seriously.

Another argument rallied against LARR is that it leads to differential treatment between PSU's and private companies. When land is acquiesced for projects like port, highway, power irrigation etc, requirement of consent from project affected people is applicable only to private companies and not PSU's. This is viewed as an anomaly as it gives undue advantage to a PSU over a private company.

States commitment to industry has always been a hot topic when it comes to debates related to land. Examining the merit and demerit of this would be beyond the scope of this paper. From recent experience it appears that the state can no longer be viewed as a neutral party to the conflicts arising out of land acquisition by private players. Policy reforms and governance seems to move in different directions. Informal tactics, coercion, violence etc continues to be a problem.

The most glorified feature of LARR2011 is undoubtedly the provision for SIA. There is agreement on the fact that something is better than nothing, the question remains whether that something is powerful enough to deliver. Currently a part of environment impact assessment, SIA is no more than a formality fulfilled in Indian contexts. Kuntala Lahiri-Dutt and team who studied land acquisition and dispossession by private coal companies in Jharkhand doubts the ability of SIA to deliver. ‘ As compared to other mining countries, where detailed ethnographic, cultural and social information on the village gathered by SIA experts, the SIA sections of Indian EIA’s do not offer much more than names of affected villages and some census data on the socio economic characteristics of affected villages.’[8]While these problems have been partly looked into in the LARR, there is a need for better guidelines. At present most of the decisions pertaining to SIA and other related matters has been left to state level officials whose previous performance leaves much to be desired (Ram Singh, 2011).

It is quite clear that India cannot do away with land acquisition. The demand for land in the path of capitalist expansion is bound to increase. LARR2011 is a major policy framework in spite of its short coming. Its remarkable departure from the ambiguity and inefficiencies of LAA 1894 is undisputed. But the picture is not yet clear. Numerous doubts rose regarding the ability of bill to address the wide array of problems in the Indian context is yet to be seen. Utilitarian bias that is predominant in the present policy paradigm has to be reworked so as make it more efficient and just.