

# Analyzing the effectiveness and drawbacks of current land



Most of the prevailing laws or bills regarding land acquisition, resettlement, compensation, and violation seem inadequate and sources of a lot of discordance. This research proposal seeks to analyze the impact of such acts and the reasons of protest and agitations by the affected people. It also aims to find out alternative solutions for such critical issues. In this research study the stakeholders are identified along with their stakes and various literatures are analyzed to suggest a methodology for further research and to propose a common ground for amicable discussion and understanding of individual interests.

**Keywords** Land acquisition, rehabilitation, resettlement, consent, compensation, voluntary acquisition, eminent domain, replacement value, public purpose, land valuation, market pricing

**4 page Problem Description**  
The 2011 Land Acquisition and Rehabilitation and Resettlement Bill, though well-intentioned, was seriously flawed. It attached an arbitrary mark-up to the historical market price to determine compensation amounts.

This will guarantee neither social justice nor the efficient use of resources. The Bill also placed unnecessary & strict conditions on land acquisition, like restrictions on the use of multi-cropped land and insistence on public purpose, all of which would hinder the pace of development though promoting the interests of farmers. Many such flaws are tried to be addressed in the right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013.

While the process of industrialization is facing many problems that need to be solved, the problem of land for industry and urban development is the

most critical one. The fact is that people depend on land not only as title holders but also as landless laborers and share croppers, for natural resources and cultural inputs, for preservation of artisans and age old technologies, for community and family congregation. Often land is taken away without adequate compensation or without adequate opportunities for affected people to grow and resettle with dignity.

This is inhuman and leads to all kind of contentious issues that have surfaced within the people move into cities, a trend that cannot be stopped, there has to be proper town planning and proper growth of our urban centre? a process that will increase the importance of land. 5 Page Problem Structuring

Definitional Issues The experts felt that the bill does not clearly define what constitutes 'rural' and 'urban' areas. This omission is bound to lead to litigation. It is essential to plug this loophole. The law still does not define or elaborate ? public purposes and again gives the State a free hand on this.

Without defining the term ? urgency it makes special provisions for compensation if land is acquired under the ? urgency" provision. Also terms like ? eminent domain] (vests sovereign ownership of all land and natural resources embodied in the state, facilitating compulsory takings), ? replacement value], ? willing/unwilling seller] are ambiguous. Consent

Consent' to sell? both in government and private and public-partnership projects APP)? is among the most contentious issues in land acquisition.

What percentage of landowners consent is required?

Should it be required from all land users (e. G. Those dependent on land like agricultural workers, wage laborers, artisans and landless peasants) or only

from the land losers? Compensation The current scheme of compensation that the bill has laid down is two times the market price for urban areas and four times the market price for rural areas. These figures were arrived at without any rationale, from a ? top down approach. Affected people have no say on any aspect of the transaction? whether they want to give up the land or what would be a fair price.

Institutional Support To understand the position of stakeholders and their needs in order to devise a fair solution, a three-tier institutional structure was mooted: one for suggesting proposals, one for dialogue and another for decision-making. First one would include think-tanks or academic research organizations which use data, analyse it and make recommendations. Second one would bring 6 Page stakeholders together to deliberate on their respective positions. Finally, the last institution would be given the authority, constitutionally or organizationally, to take final decisions.

Transparency would facilitate better evaluation, selection and determination of the market price for land as well as sharing of incremental gain from land development with affected people. Process efficiency implies clarity in legislation which would result in less litigation and realistic deadlines for all parties involved. On viability, there is a need to reach a common ground between the acquirer's right to profit and compensation rights. The experts held that companies acquiring land for public- private partnerships should be given limited control rights. Stakeholder map Farmers / Residents Politicians Media

Share croppers Fisherman/ boatman Agricultural laborers Land acquisition for industrial/ developmental/ mining projects Tribal Environmental activists Industrialists Local population Citizens Government 71 page Specific stakeholder and Stake identification Stakeholders Farmers, Residents Stakes Lose the most, as they gives away their land, and don't get future benefits; farmers lose their basic earning activity With not enough land on their own, they need others' land for cultivation Termed as unskilled labor, their livelihood is at stake with decreased agricultural land, more so as they are mainly landless labors

Their whole livelihood and culture exist around the region they live, as they are mostly dependent on the natural resources; more ever they normally do not have title to land, thus losing out all the benefits Without land, they can't build new plant, also without mining they have to depend upon foreign industrialists Responsible for both growth & development with restrained inflation and preservation of environmental balance, ecology & citizens' rights Face maximum brunt of degraded environment, inflation, land scarcity Local population/ Directly impacted by industrial waste and effluence, restricted movement wrought land, absence of grazing ground/water body, increased land price Environment Worried with increased industrial waste & pollution and adverse effect on activist nature & biodiversity due to mass land acquisition for mining/industry Main source of information dissipation since internal and local information is seldom spread by industry or Gobo. Cross the county A major influence in creating public opinion on this issue, plus their vote banks can be determined by how they handle such cases 8 | Page Displaced people BOOT graph Pollution Amount Land price Industrial

growth Biodiversity Job for agricultural labor Time Literature review

Maturities Ghats and Apparatchiks Gosh, in an article (October, 2011) have analyzed the land laws and current situations and in their opinion the use of market price for voluntary transactions as a proxy for owners' value in forced acquisitions is measured by experts but rather a subjective quantity - it is whatever the owner deems it to be. They proposed an alternative approach allowing farmers to determine their land price, chose compensation in either cash or land and reallocate the remaining land in most efficient manner. It involves a land auction covering not only the project site but also the surrounding agricultural land.

The advantages they put forward is that it is less coercive, it gives strong incentive to bid truthfully, it allows farmers to incorporate their own estimates of future land price inflation into their bids, thereby minimizing the chance of losing out compared to the neighborhood farmers. It also provides an option to leave the land remain as agricultural one incase acquisition effort fails. 9 | Page Vanish Kumar in his June, 2011 article in PEP, has highlighted the violence in land acquisition by the government and UP government policy on this matter. According to him all episodes of agitation and demands are politicized and farmers find homeless entrapped in a situation where leaders encourage and support their agitations but do very little to tackle the problems. He considered State's role as a ? venture capitalist].

He cited the UP policy as best among existing in the country. It introduced a process of negotiations in Greater Oneida with the local farmers leading to signing of a deed. The new policy makes land acquisition more profitable for <https://assignbuster.com/analyzing-the-effectiveness-and-drawbacks-of-current-land/>

the farmer defining the State as a mere facilitator. He provided scope for improvement, especially as small farmers and agricultural laborers have very little to gain in this whole procedure, but mentioned the fact that political parties have no intention to make consensus effort on this issue. Ashcan Inhaling and Edit Was (August, 2011) mentioned the fact that often land-titles are unclear and identifying parties eligible for compensation is rendered difficult.

All across the world, the state is gifted with the power to acquire land for public purpose by providing compensation to the landholders. This power directly vested in the constitution (in US, Australia and China) or, is specified in enacted legislation (in Hong Kong, Malaysia and Singapore). However the terms like 'public repose' are ambiguous. Countries like France, Japan, China, Mexico and India explicitly enumerate situations and projects under which land can be acquired or appropriated by the state for public use, whereas Malaysia, Brazil, US, UK and Singapore provide a more generic definition. Also the valuation and acquisition methods differ across the nations. In valuation, net income from land, original use, market value all such aspects are taken into consideration.

Countries like Philippines where legal systems are not robust, land market is not well developed, or active reliable information is unavailable, 101 page ? replacement value (amount it would cost to replace the asset with a similar asset) technique. It is not easy to discern a set of international best practices with respect frameworks and philosophies laid down in the statutes should be treated as guidelines, incorporating flexibility into the land acquisition processes. Also they mentioned about the delaying in payment of the <https://assignbuster.com/analyzing-the-effectiveness-and-drawbacks-of-current-land/>

solarium to affected parties, which leads to dissatisfaction and consequent protests. They proposed negotiation in valuation, compensation, partnering, pool together (land pooling though farmers) many such methods.

They cited the Pun example where 123 farmers pooled gather 400 acres of farmland along with a private limited company to build Magistrate city. Here the farmers continue to own the land, own shares in the company and collect dividends on these shares as well as rents from the tenants in the city (Magma, 2008). In an Editorial ? , Economic & Political Weekly] (PEP, August, 2011), the editor cited farmer agitation and state atrocities regarding land acquisition in Maharajah's. Farmers here had given land for Pun-lambi express highway and similar projects in past, but they have grown steadily distrustful of the government's intentions due to unfulfilled promises.

The state government's mishandling of the Naval farmers' agitation and the subsequent police firing causing death of three farmers was exceptionally inept. In Naval, they fear that they will no longer get water from the Pain dam which irrigates their land. Greater the fear about water meant for agriculture being diverted to industry or urban areas is also root-cause of their protests against the Sophia power project in Martial, which requires large amount of water from the Upper Ward dam. Going by the past record of most governments, people have a reason to be distrustful. Voluntarily surrender land for rejects provide no tangible benefits to them. A credible alternative to protect their livelihood and a proper compensation plan must be at place. 1 Page Augusta Marti (December, 2010) attempted to solve a key economic problem regarding land acquisition deals using some

mathematical models incorporating the logic of an ? annuity or a ? royalty]. It <https://assignbuster.com/analyzing-the-effectiveness-and-drawbacks-of-current-land/>



has to do with the claim of the landowner over the future value of land once it is sold and put to alternative use. It also addressed to the adaptation of the so-called " Harlan" model that relies on predetermined annual payments to the farmers. His argument is that the government will tax a portion of the increased value from the buyer and redistribute it to the landowner acting as a legal taxing authority and not as a negotiator. In this case though the seller will forfeit his property right to the buyer, but will have a rightful claim on the capital gain tax.

He also proposed to make this 'claim paper' as traceable in market. He suggested for using a part of the taxation infrastructure at the central level for evaluating capital-gains on land and creating accounts exclusively for this purpose taking the buyer, the seller, the government and the option trader into confederacy to ensure that funds raised do not go towards other kinds of fiscal replenishments. Also one can track the transactions between the seller and the option trader. This option as a traceable instrument can satisfy the poor farmers without binding the buyers of land. Stowage Karakas (October, 2011) has seen the market exchange process acting as the main domain of mediating social relationships.

He deciphered three interrelated problems with this political/policy position: absence of market for a particular land, non-availability of quantitative standard or reference to measure against Just and fair imposition, consent is not always a natural will as it has political significance beyond liberalism.

According to him state must stay away from creating political condition to receive individual consent, rather it should accept the limitations of law and

policy in resolving certain contentious issues, and remain open to <https://assignbuster.com/analyzing-the-effectiveness-and-drawbacks-of-current-land/>

contingency, by conferring priority to the democratic values of disagreement, dissent and 121 page plurality of modes of existence, only then it will learn to withdraw from prior commitment to any particular rationality and ideology. Ram Sings (May, 2012) has focused on laws that govern the acquisition and transfer of agricultural land for other purposes.

He cited the history of eminent domain in India as unmitigated abuses of the law, which remains archaic and ambiguous. Also the callous approach taken by land acquisition collectors (LAG) to determine compensation is a point of discordant. In current situation lot of institutional hurdles like change-in-land-use (CLUB) clearance from the state government, other regulatory clearances from local authorities are there that thwart voluntary transactions. He argued that this is the reason the project developers are better-off bribing the powers that get them to acquire the needed land. He also mentioned poor land records and high transaction cost of individual land transfer.

He suggested collective bargaining with the owners or their representatives, cost of compensation be paid by the entity benefiting from the acquisition, initial compensation itself should be determined in light of all of the relevant information, such as type of land, its future value, records of the sale deeds etc. He also argued for the reduction of compulsory acquisition. Colic Gonzales (August, 2010) has indicated the states' prerogative in becoming an estate agent of the companies for acquiring land for them. He analyzed land acts and the outcomes in chronological phases. According to him the Judiciary appears to have misread the mood in the country, providing \_

public interest' the widest possible scope. Instead of mass protest, superior  
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Judiciary remained unmoved, stuck to their notions of development unresponsive to the distress of farmers, tenants and agricultural laborers.

According to him, the way forward for Judiciary is to hold that irrespective of the contribution by government, all acquisitions for companies must follow Part VII of the Land Acquisition Act (ALA), which is 131 page acquisition for a company. This is understandable since State governments have come under total corporate control that their first priority is to spend large sums of state funds to assist corporations in the acquisition of lands using the Act. Cantata Lair-Duty, Raddi Krishna, Ensnare Mad (February, 2012) in an article in owned companies for resource extraction in Shorthand and sighted that cosmetic changes in mineral governance laws are inadequate to protect the interests of the poor.

Granting of mining blocks to private companies for [captive] coal mining has thoroughly neglected the rights of the tribal. The state equates coal with national placement, energy security and hence strategic sovereignty to avoid the moral quandary. By virtue of Coal Bearing Areas (Acquisition and Development) Act (CUBA), coal mining generally supersedes the community rights. Thus states change to [broker states from the old developmental state. Coercion by both company representatives and state agencies is a characteristic of land acquisition in Shorthand. Apart from changes in land-use pattern and the creation of wastelands, mining causes large number of physical and occupational displacement, a fact that state seldom document correctly or address.

Environment impact assessment (EIA) remains a toothless safeguard, not documenting possible impacts on local water availability nor assessing the ground-level impact of air pollution on surrounding communities and vegetation. The procedure never takes into account the tribal history, identity and livelihood entwined with the land. It has pushed many tribes into the verge of extinction. According to the authors, only a convoluted logic can equate coal mining by private companies with public purpose or national interest. They asked for a new mineral extractive paradigm, one that does not inflict deep wounds on nature and people. They also asked for the consultation with gram Kasbah and consent of tribal communities for any mining project, 141 Page with the view of optimizing the level of royalties and consequent benefits to impacted communities.

OSHA Rampant (November, 2011) has observed that by beginning with the premise that acquisition is inevitable and priority for industrialization, arbitration and infrastructure development, the LARK Bill 2011 has neglected the interest of the land losers. She raised question about state's legitimacy in facilitating the land rangers the way it does. She questions state's relationship with the land, whether it is a landlord, an owner, a trustee, a holder of land, a manager or what? She argued for the 'affected families' who are dependent on forests or water bodies and which includes gatherers of forest produce, hunters, fisheries and boatmen and (those whose) livelihood is affected due to acquisition of land. Infant families who got land under any government scheme are also included.

She also cited the effect of diluting 'The Forest Rights Act 2006' which helps in land acquisition through change of public repose -where acquisition is <https://assignbuster.com/analyzing-the-effectiveness-and-drawbacks-of-current-land/>

based on one purpose but it is used for another purpose. Another bill, 'The Land Titling Bill 2011' shifts the onus of keeping the records updated, even loss of acknowledgement of title to the land or interest in the land from the state to the individual. According to the author this bill is an attempt at communications of land, making it traceable in the land market. Michael Levine (March, 2011) has highlighted the controversies over Sees and large private mining projects in eastern India. According to him, the proposed amendments to the Land