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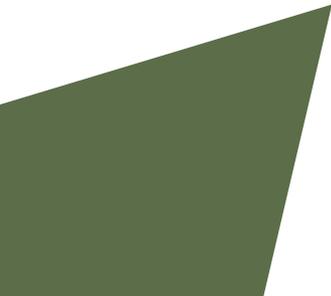
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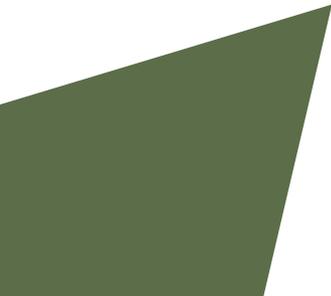
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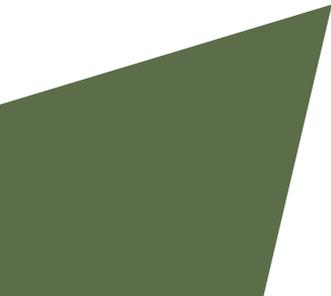
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**LARR, 2013: Critiquing the new Equivocal land acquisition Act**

**Harshita Pareek**

## INTRODUCTION

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The intent of the preamble of the Land Acquisition, Rehabilitation and Resettlement Act 2013<sup>1</sup> is to acquire land for industrialization, development of essential infrastructural facilities, urbanization and to make adequate provisions for rehabilitation and resettlement of those whose land has been acquired or are affected by such acquisition and also to ensure that they become part of the development in such a way that that their socio-economic status improve as compared to the status before acquisition. After heavy protests and opposition like those against Sardar Sarovar dam in Gujarat, Tata Motors plant in Singur ,bauxite mining plans in Niyamgiri and Posco's steel project in Jagatsinghpur the legislature came up with a new legislation, The Land Acquisition Act of 1894<sup>2</sup> was replaced by Land Acquisition, Rehabilitation and Resettlement Act, 2013. The new legislation was brought to discourage the legislature from acquiring land. The act introduced the concept of Social Impact Assessment (SIA). SIA provided for proper identification, analysis, and assessment of land before it is acquired by the government. The act aims to provide better compensation and take into consideration consent of the landowners before acquiring land. It imposed a check on eminent domain defense government is been using to acquire land by unfair means. The new act is not a bad law on the face of it, but the way judiciary has interpreted it and government has fashioned it to its own benefit, the law cannot be called a good law. In his book *The Price of Land*, Sanjoy Chakravorty<sup>3</sup> discusses how the state give the land and takes away the land given to the marginalized in the name of public purpose, he writes, "So the state gives land with one hand and takes it away from another," This article discusses about the loopholes in the new legislation and suggest a few suggestions to make the act more efficient.

## LOOPHOLES OF LARR 2013

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One of the loopholes is that Section 24 of the LARR deals with conditions under which a land acquisition proceeding shall lapse. The provision was not clear on a lot of aspects and thus a lot of controversies took place, the Supreme court finally intervened and held in the case of *Indore Development Authority vs Manoharlal And Ors*<sup>4</sup>. that the land acquisition proceeding can lapse only when developer fails to take the possession within 5 years and not because failure on the part of government to pay compensation. The court also held the condition of compensation is met by the government by tendering compensation and not when it is deposited in the landowners

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<sup>1</sup> Land Acquisition, Rehabilitation and Resettlement Act, 2013

<sup>2</sup> The Land Acquisition Act of 1894

<sup>3</sup> Sanjoy Chakravorty, *The Price Of Land* (Oxford University Press 2013).

<sup>4</sup> *Indore Development Authority vs Manoharlal And Ors*, 2020 SCC OnLine SC 316

account. This decision gave a free hand to the government to exploit the landowners as the government officials take years to pass the compensation tender and even when passed it lays in the government treasury for years before actually reaching or in some cases not reaching at all to the landowners. The government officials sit on file for years fearing media trials and judicial activism.

Another loophole is that Land acquisition is a concurrent list matter. This means with the recourse to Article 254 (2), which states that the state legislature can pass an amendment and if that amendment is repugnant to the central law, it will have to go to the President for assent<sup>5</sup>. Since the BJP government is at the center and majority number of states are governed by BJP led government amending the acts by states becomes an easy task. For example: According to section 31 (1) read with the Schedule I of the act multiplying factor for computing compensation for the land acquired is 2 for rural areas and 1 for urban. Government of Haryana, Chhattisgarh and Tripura fixed it 1 and government of Telangana 1.5 instead of 2 for rural areas. The government of Gujrat and have exempted the five types of projects mentioned in the ordinance from consent and Social Impact Assessment.

Several state governments like that of Karnataka and Tamil Nadu made an exception in Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act (RFCTLARRA), 2013<sup>6</sup>. According to the exception, Resettlement and Rehabilitation provision does not apply when private companies acquire land under 100 acers and 50 acers in rural and urban areas, respectively. The problem with this amendment is that private companies try to acquire large tracts of land in parts through its subsidiaries such that each subsidiary acquire land below the RR requirement.

Definition of “affected family” in section 3 (c) (i) includes a “family residing on any land in the urban areas for preceding three years prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land.” Since India adopted De-Soto model of formalization of title, according to which one way poor can be made rich is by simply formalizing informal (or extra-legal) property rights. The acts is ambiguous on the whether the property rights, is a necessary pre-requisite for residence-for

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<sup>5</sup> G Seetharaman, 'Land Should Be Bought, Not Acquired: Jairam Ramesh Read More At: [https://EconomicTimes.Indiatimes.Com/Opinion/Interviews/Land-Should-Be-Bought-Not-Acquired-Jairam-Ramesh/Articleshow/65639448.Cms?Utm\\_Source=Contentofinterest&Utm\\_Medium=Text&Utm\\_Campaign=Cp-pst](https://EconomicTimes.Indiatimes.Com/Opinion/Interviews/Land-Should-Be-Bought-Not-Acquired-Jairam-Ramesh/Articleshow/65639448.Cms?Utm_Source=Contentofinterest&Utm_Medium=Text&Utm_Campaign=Cp-pst)' (2018) <<https://economictimes.indiatimes.com/opinion/interviews/land-should-be-bought-not-acquired-jairam-ramesh/articleshow/65639448.cms?from=mdr>> accessed 1 September 2018.

<sup>6</sup> Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act (RFCTLARRA), 2013

any benefits of LARR to go to the urban poor, in the event the land they occupy is acquired or would mere proof of use suffice. Would hawkers on the street whose primary livelihoods are affected stand on a better footing under the LARR Bill than others who squat on public lands whose primary livelihoods are not affected<sup>7</sup>.

The SIA does not take into consideration of the impact it would have on the women as the land generally is in the name of men, though before acquisition both contributed equally to the land. The act compensates the family and provide new livelihood to the owner of the property but neglects the women whose livelihood is also lost. The impact is far more serious than just the loss of livelihood as the women loose the livelihood she also loses the position of bread earner and starts living off at the man's earning which makes the man more powerful and the difference creeps in.

Under Section 10 (2) of LARR act the adivasi's multi cropped land must not be acquired as far as possible. But if the acquisition is done it will be only based on "demonstrable last resort". But the act does not specify what would constitute demonstrable last resort. The act also fails to recognize the adivasi population not mentioned in the fifth schedule which acquire 50-70% of such land according to National Advisory council. The Given official estimates that 90% of India's coal reserves are located in adivasi areas, as are 50% of other key minerals and prospective dam sites, it is easy to envisage governments and elites continuing to deploy the "national interest" argument to jettison adivasi interests for such projects<sup>8</sup>.

LARR provides for better compensation, SIA and better rehabilitation and resettlement but the prevailing old laws hinders the fair process of the land acquisition. For example, during the monsoon, in Korba district of north Chhattisgarh, South-Eastern Coalfields Limited (SECL), a subsidiary of Coal India Limited, one of the world's largest coal producers, was forcibly evicting people of the vulnerable Korwa tribe, whose lands it had acquired on paper in the 1990s. In the adjoining district of Sarguja, SECL has been suing adivasi farmers for 37 lakh rupees in damages, citing protests by villagers that had led to the mine being shut for a day. In a district court, the SECL lawyer has argued in an affidavit that provisions of the 1996 Panchayats (Extension to

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<sup>7</sup> Sazzad Parwez and Vinod Sen, 'Special Economic Zone, Land Acquisition, And Impact On Rural India' (2016) 2 Emerging Economy Studies.

<sup>8</sup> Chitragada Chaoudhury, 'Adivasis And The New Land Acquisition Act' (2013) 48 Economics & Political weekly <<https://www.epw.in/journal/2013/41/web-exclusives/adivasis-and-new-land-acquisition-act.html>> accessed 9 October 2013.

Scheduled Areas) Act specifically, its clause that says adivasi villagers must be consulted before their land is acquired do not apply to the mining public sector undertaking (PSU)<sup>9</sup>.

### **CRITIQUING EQUALITY UNDER LARR 2013**

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The process of land acquisition is economically distorted as the transaction costs involved in it violates the core principle of being Pareto Optimal. An acquisition is made by making one person better off by making other person worse off and landowners are at the worse off end in almost all the cases as proved above. Mostly what happens is that the landowners hold out land and not accept the compensation to get at the better off part. But the land acquisition work on the liability rule for protection of entitlement which in this case is land of the owners. Liability rule is applied in cases where transactions are compulsory as it violates the initial entitlement of the dispossessed and in order to protect the entitlement the role of the state is crucial. Government intervene through LARR according to which displacement has to be done for a greater public good and the greater public good in almost all the cases is at the cost of economically, socially and political marginal category of the population. This legislation could be called unequal because of its nature of creating two classes and working for advantage of only one of them.

Judiciary is been using the test of reasonability to determine if a provision fulfill the constitutional basis of equality or not. So, by applying the reasonability test would help us gain a better insight of the act. The first point to be analyzed is if there is equality engaged in the act. The act is engaging equality on the formal grounds, but it is indirectly discriminatory to the to the land holders. On Ground level implementation of the act landowner is worse than the gain to the society or the developers. As in almost all the cases SIA and mandatory requirement have been removed and where the requirement exists private companies find a way to mold it and benefit from it. The differentia of the act is between the landowners and the land developers. The objective of the differentia is to develop the society and make the landowners better off. The differentia is invalid as it does not support the objective of the act. The objective and the preamble of the act aims to develop the society and make the socio-economic condition of the landowners better but the decision of court in Indore development authority case regarding section 24(2) tells the story otherwise. The act also lacks proportionality as section 24(2) puts landowners in worse off position, but the act aims to put the landowner in better condition than they were before acquisition. The act clearly fails the reasonability test. A few amendments to the act would make the act more equal and better functional.

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<sup>9</sup> Choudhury, "Adivasis and the New Land Acquisition Act"

## SUGGESTION

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We have seen a significant number of amendments to land acquisition laws in past. This and all the criticism discussed above conveys that land laws in India cannot be considered good and stable laws. Bringing a new law is not a viable option because it hinders the economic growth, require huge expenditure for implementation and leads to wastage of resources which have been put to use for the old law.

One way to make the law efficient is if government appoint a parliamentary committee which would work with the aim of improving the existing law. Here are some suggestions the committee could work with:

1. The consent clause must be more unequivocal. One of the pre-requisites of the consent is that it must be credible and free from any bias. Since the landholders in most cases are illiterate, they fail to weigh down merits and demerits of giving consent. So before taking consent the landowners must be made fully aware of the pros and cons of giving consent and this must be done on fair grounds by a government official. There must be a discrete provision as how will be consent gathered in cases where property is held in common and whether women and other vulnerable groups will be given the option of giving consent. Also, the consideration must be given to the consent of the hawkers whose livelihood indirectly depends on the land.
2. The SIA must take into consideration concepts like gender, people indirectly getting affected like hawkers and the impact on the family income due to damage of the affected area.
3. The pre-existing laws which still works on the colonial philosophy must be amended and struck down to bring a uniform regime that unequivocally complaint with LARR. Also, the states must be discouraged to make laws that dilute the protection given to the landholders under LARR.
4. For better implementation of the act mainly three categories of people must be made aware and informed. The first category is the administration of different district working towards acquiring the land and there must be regular check on their working. The second category is the developer and private enterprises which already see the law of land acquisition in a scornful way. This category is of the view that the act is against the development and a hurdle in profit earning. They must be informed that the view of the act is to work as a tool for forestalling conflicts and benefit all the stakeholders. The third category is the landholders that has lost all the trust in the system due to repetitive exploitation over years.

5. An estimated 7.7 million people in India are affected by land conflict over 2.5 million hectares of land, threatening investments worth \$ 200 billion.<sup>10</sup> Systematic efforts must be made to know the nature of land conflicts in different states and districts.
6. The laws talk about the implementation process but have no measures to keep check on the functioning. Thus, the act must come under RTI act.
7. All states may not have enough resources and may not be able to conduct SIA efficiently. Center must put in efforts to strengthen such states.
8. The land must be purchased and not acquired. So, state must make systematized land records to facilitate direct purchase of land by private industries.

## **CONCLUSION**

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Land Acquisition, Rehabilitation and Resettlement Act, 2013 has to some extent solved problems that land acquisition act 1894 had. Like it gave a broader meaning to public purpose with leaving the scope for interpretation to support the dynamic environment. It introduced innovative and efficient concepts such as SIA and resettlement and rehabilitation. This proves that we have made progress but still have a long way to go by making the act more equal and unequivocal not just formally but also in real practice.

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<sup>10</sup> Namita Wahi, “Center for policy research,” <https://cprindia.org/policy-challenge/7872/regulation-and-resources>, (June10 2019)