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## **Legitimate Concerns with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015**

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### **INTRODUCTION:**

Land is a scarce commodity with limited supply. It is therefore beyond doubt that the valuable rights of possession and ownership rights are sacrosanct. Notwithstanding this, there is a need from time to time to acquire land from private individuals to achieve a wider public good. Hence every State which aspires to a higher level of land development has some form of expropriation laws to achieve national objectives. India is no different and the powers for compulsory acquisition of private land are set out in the laws passed by the Indian Parliament from time to time.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in Lok Sabha on February 24, 2015 to replace an Ordinance in the backdrop of several large scale protests by farmers across the country. Developmental projects in India have displaced millions of people in spite of the truth that the judiciary has recognised the right to be rehabilitated as a fundamental right under Article 21 of the Constitution of India, the right was not granted in reality This paper discusses the legal framework relating to the power of acquisition under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 and argues that it suffers from shortcomings in not completely accounting for social costs and not ensuring a reasonable distribution of benefits. It neither recognizes all affected persons nor permit them to contribute in decision-making. Instead, it allows for a policy of targeted displacement of vulnerable groups. This paper aims to propose a solution to the present situation by suggesting that pragmatic approach should be adopted to arrive at some conclusion.

### **HISTORICAL BACKGROUND AS TO HOW THE LAND BILL CAME INTO FORCE.**

The British Government of India started passing various legislations to acquire urban property against the wishes of its owners for construction public buildings in Bengal and Madras Presidencies as early as 1824. Over the next half a century they expanded the scope of these laws to rural and forest areas and consolidated them into a single act, the Land Acquisition Act of 1894. The colonial government invoked the principle of eminent domain by which it claimed ownership of all public land, waters, minerals and mines as the property of the state, usurping the traditional rights of the Indian people over these. It did not make any bones about the fact that one of the primary objectives of Act was to assist companies in acquiring land for their business enterprise<sup>1</sup>.

Since the last two decades the government has been trying hard to open up the space for private capital to obtain the maximum returns. One of the initiatives of the government has been to allow huge number of privately owned Special Economic Zones or SEZs occupying 100s and even 1000s of hectares of land. However, to obtain large tracts of land, close to the urban centres became a huge problem in the face of popular resistance to cede their land for private profiteers. Government has attempted to pass amendments to the Land Acquisition Act, such as through the LAA Bill 2007<sup>ii</sup>. In the year 2007, Land Acquisition amendment Bill and The Rehabilitation & Resettlement Bill was introduced in Lok Sabha to amend the Act of 1894 Act. But in 2009, both the Bills were lapsed.

After about a period of two years combined Land acquisition & Rehabilitation bill was introduced in Lok Sabha in Sept, 2011 by the National Advisory committee set up by UPA Government. In 2012, Standing Committee of BJP headed by BJP MP and now speaker Sumitra Mahajan had submitted a report in detail & finally Parliament passed in May 2012.

In 2014, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated on December 31, 2014. The Ordinance amends the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. and finally; the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in Lok Sabha on February 24, 2015 to replace an Ordinance.

The Bill will replace the ordinance promulgated by the government in December 2014, which had brought changes in the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation (Amendment) Act passed in 2013 by the UPA government. If the Bill is not passed in this session, then the ordinance will lapse and cannot be introduced again.

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

Till now whenever the government acquires a land, it is done under the Land Acquisition Act 1894. In 2007, the UPA government brought in The Rehabilitation and Resettlement Bill to replace the Act of 1894. And finally the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation (Amendment) Act passed in 2013. After the Modi government took over in May 2014, it decided to make some amendments in the Bill which have become a bone of contention.

According to PRS Legislative Research these are:

- 1. Excluded Acts brought under the RFCTLARR Act:** According to the Act 2013, 13 Acts were excluded from the RFCTLARR Act but with the new ordinance they are now brought under its purview. Thus, it brings the compensation, rehabilitation and resettlement provisions of these 13 laws in consonance with the Act.
- 2. Removal of consent clause in five areas:** The ordinance removes the consent clause for acquiring land for five areas - industrial corridors, public private partnership projects, rural infrastructure, affordable housing and defence.

3. **Social Impact assessment exempted in five areas.** The ordinance also exempts projects in these five areas from Social Impact Assessment and acquisition of irrigated multi-cropped land and other agricultural land, which earlier could not be acquired beyond a certain limit.
4. **Return of unutilised land:** According to the Act 2013, if the land remains unutilised for five years, then it needs to be returned to the owner. But according to the ordinance the period after which unutilised land needs to be returned will be five years, or any period specified at the time of setting up the project, whichever is later.
5. **Time frame:** The ordinance states that if the possession of acquired land under Act 1894 is not taken for reasons, then the new law will be applied.
6. **Word 'private company' replaced with 'private entity':** While the Act 2013 stated that the land can be acquired for private companies, the ordinance replaced it with private entity. 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.
7. **Offence by government officials:** If an offence is committed by a government official or the head of the department, then s/he cannot be prosecuted without the prior sanction of the government.<sup>iii</sup>
8. **Irrigated multi- crop land:** The LARR Act 2013 imposes certain restrictions on the acquisition of irrigated multi-cropped land and other agricultural land. Irrigated multi cropped land cannot be acquired beyond a limit specified by the government. The acquisition of agricultural land for all projects in a district/ state must not exceed the total net sown area of the district/ state. The Bill allows the government to exempt projects falling under the five categories mentioned above from this provision, through a notification. Therefore this limit need not be adhered to if the government issues a notification stating this (on project to project basis). The Bill as passed by the Lok Sabha adds that before issuing the notification, the government must ensure that the extent of land being acquired is in keeping with the minimum land acquired.
9. **Other change:** The LARR Act 2013 excluded the acquisition of land for private hospitals and private educational institutions from its purview. The Bill removes this restriction.

## **THE CONTENTIOUS ISSUES AND THE WAY FORWARD**

Let us consider the various issues which have either been not properly dealt with or have been lost sight of by the Government, while preparing the Bill. With a view to expedite the process of land acquisition for strategic and development activities, such as, national security or defence of India including preparation for defence and defence production; rural infrastructure including electrification; affordable housing and housing for poor; industrial corridors; infrastructure and social infrastructure projects including projects under public private partnership where the ownership of the land continues to vest with the Government, it is proposed to continue with the 'Consent' clause provided under sub-section (2) of section 2 of the Fair Compensation in Land Acquisition Act in case of the acquisitions provided in the Act except in cases provided above. Further to ensure the growth and development of the country, while safeguarding the welfare of farmers, it is proposed to empower the appropriate government to exempt them from 'Social Impact Assessment' and 'Special Provisions for Safeguarding Food Security' provisions of the Fair Compensation in Land Acquisition Act.

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 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. 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. The LARR Act, 2013 imposes certain restrictions on the acquisition of irrigated multi-cropped land and other agricultural land. For example, irrigated multi-cropped land cannot be acquired beyond the limit specified by the appropriate government.

### **CONSENT CLAUSE AND THE SOCIAL IMPACT ASSESSMENT STUDY CLAUSE**

The most controversial issue is the decision to drop the mandatory consent clause and the Social Impact assessment study clause. In the above mentioned categories neither consent clause nor Social impact assessment will be applicable.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 had called for mandatory SIA and consent of 80 per cent of affected families in land acquisition for private companies and 70 per cent of affected families in land acquisition for public-private partnership projects. The process of obtaining consent was to be carried out along with the SIA study. The NDA government's ordinance, however, had expanded the list of projects exempted from these two requirements to include five new broad categories. Even for Constitutional Amendment two third majority is required. Even under this amendment Bill, 2015, we are doing away with 70% to 80% which was there in the Act of 2013. Why in case of Affordable Housing this kind of exemption clause is there. They are not having even 51% consent. For some areas Eminent Domain should prevail specifically for defence purposes. Undoubtedly this is good that the country is finally getting the land bill. The last was of 1894, taken 100 odd years, UPA's singular achievement was the Land act 2013. It is a fantastic Act but NDA brought 11 amendments out of which four are atrocious. It is ironical that this is nothing but going back to the British raj .It is unacceptable in any civilized society.

This government through its land bill ordinance – may have done away with the consent and social impact assessment clauses for rural infrastructure projects, but states implementing the World Bank-funded rural roads project will still have to adhere to guidelines on social and environmental safeguards. In a letter sent to all states implementing phase two of the project, the rural development ministry last month issued detailed guidelines “to ensure all significant environmental and social safeguard issues are given due consideration during project implementation”. As per the guidelines, states will have to undertake public consultations, identify environmental and social impacts, document forest clearances and log data on trees cut to make room for the project. They will also have to send monthly reports to the World Bank on issues concerning social and environment safeguards, including consent and forest rights violations<sup>iv</sup>. The main legitimate concern with the Bill here is as to why different standards are followed while acquiring the land under the Land Bill, 2015 The Social impact study is considered to be time consuming by the Govt. But. looking from this angle, even the justice system is also time consuming but that is only considered to be fair procedure and we

cannot do away with a fair and just procedure only because it is time consuming. Social Impact should be there but it should be time bound. When large acquisitions are there Social Impact Assessment must be there. Let us be with the facts. If some ones land is acquired, for greater good of Indian economy, there is no issue but proper procedure should be followed and Social Impact Assessment should be there. We should not also forget that India is signatory to the Rio Declaration. Even America, which is a capitalist economy, is following SIA for nuclear plants, for thousand of things, we can't say we cannot do this.

### **RETURN OF UNUTILIZED LAND**

Section 101 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, provides:

“When any land acquired under this Act remains unutilized for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the government”

Section 101 which deals with return of unutilised land is being amended to increase the period after which unutilised land will be reverted back to land owner or to Land Bank from 'five years' at present to 'a period specified for setting up of any project or for five years whichever is later'. In the principal Act, in section 101, for the words, "a period of five years", the words " period specified for setting up of any project or for five years, whichever is later," shall be substituted.<sup>v</sup> At least some time limit should be there if not five years.

### **RETROSPECTIVE CLAUSE**

Under the Act of 2013, the retrospective clause would apply to any acquisition where no awards have been made or where awards have been made five years or more before commencement of the new Act but no compensation has been paid or possession taken. In terms of interpretation of the five year period, the ministry clarified that in cases where compensation has not been accepted or physical possession not given for a period less than five years, and then the new law will apply only if pendency continues unchanged for five or more years. Further, in cases where compensation has not been paid or possession not taken because the acquisition process has been challenged in court, then the period spent under litigation would also be taken into account to determine the five-year period.<sup>vi</sup>

“It is also the admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested... We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed and any acquisition of the same land must be made under the provisions of the 2013 act,” the ruling said<sup>vii</sup>.

The retrospective clause says that steeper compensation provisions contained in the new law would apply if acquisition processes are delayed or compensation is not paid within five years of acquisition of land<sup>viii</sup>.

The ordinance had amended the retrospective clause of the 2013 legislation by excluding the period spent on litigation from the applicability of the retrospective clause. It is proposed to

exclude all such period, that is the period during which the proceeding for acquisition of the land have been held up on account of any stay or injunction issued by any court, or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in any account maintained for this purpose, in calculation of five years period as specified in sub-section (2) of section 24 of the Fair Compensation in Land Acquisition Act, arising out of the Land Acquisition Act, 1894. This change made in the Bill of 2015 would narrow down the scope of the retrospective clause and thus, reduce the number of beneficiaries. Land Acquisition Act, 2013 which makes provisions of giving compensation at the rate of four times to those land losers who have not received their compensation over the land acquired under 1894 Act. This provision will be now closed with amendment of the Act and the retrospective clause is now sought to be diluted. There, is therefore, need hat some pragmatic approach should be arrived at.

### **OFFENCE BY GOVERNMENT OFFICIALS**

Easing the burden on defaulting civil servants, the Bill says they can be prosecuted only after taking sanction from the government, as against the original Act which provided for provisions to penalize them in case of violations. “Where an offence under this Act has been committed by any department of the government, the head of department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly...,” the original Act states. The amendment, however, says “...no court shall take cognizance of such offence except with the previous sanction of the appropriate government, in the manner provided in section 197 of the Code of Criminal Procedure”<sup>ix</sup>. So somehow, through this provision we are trying to protect the defaulting government servant.

So there is a need to address all these legitimate concerns so that development can be made in true sense. More pragmatic approach should be adopted so as to arrive at some conclusion. Necessary changes are required to be made in order to make the bill not only pro development but pro farmer also.

### **ENDNOTES:**

<sup>i</sup> Available at <http://www.lokraj.org.in/>

<sup>ii</sup> *Ibid.*

<sup>iii</sup> Land Acquisition Bill: The main points of debate and controversy, Available at [ibnlive.in.com](http://ibnlive.in.com).

<sup>iv</sup> World Bank-funded rural roads project will have to adhere to social, environmental guidelines Available at <http://www.hindustantimes.com>.

<sup>v</sup> The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement (Amendment) Bill, 2015.

<sup>vi</sup> Govt to issue norms for ‘retrospective clause’ in Land Act, Available at <http://indianexpress.com>.

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<sup>vii</sup> Land acquisition: SC ruling clarifies retrospective clause available at <http://www.livemint.com>.

<sup>viii</sup> *Ibid.*

<sup>ix</sup>Section 87 of The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement (Amendment) Bill, 2015 provides:

"87. Where an offence under this Act has been committed by any person who is or was employed in the Central Government or the State Government, as the case may be, at the time of commission of such alleged offence, the court shall take cognizance of such offence provided the procedure laid down in section 197 of the Code of Criminal Procedure, 1973 is followed."

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