

## Role of Land Acquisition Act, 2013 in Infrastructural Development of India

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### Abstract

This research paper is aimed at finding a relationship between India's Land Acquisition Act, 2013 and Infrastructural development in the nation. This paper also explores various features and loopholes in the Act and how they affect the infrastructural development. Half of India's population lives in rural India and depends on agriculture for income, after the economic liberalization in the year of 1991, India witnessed remarkable economic progress, this fast economic growth led to an increase in demand of land, various sectors in India demand huge chunks of land one of it is the Infrastructure Sector. This sector is unique as along with the private entities, the government also takes part in it, either directly or through PPP. Infra sector solves a lot of social purposes, like generating jobs providing various necessary services like hospitals, transportation, roads, bridges, flyovers etc. For projects like this the preliminary and the most important step is "Land Acquisition". This research paper will try to explore how Land Acquisition has and will play a role in India's infrastructural development.

**Keywords:** aimed, Acquisition, population, Infrastructural, Land

### Introduction

Land Acquisition has always been a huge challenge for a country like India, being a democratic nation we always have to strike a balance between the interests of the nation and the interests of an individual. It's not a new thing for Infrastructure projects in our nation to suffer severe delays due to the cumbersome Land Acquisition process. The 120-year old colonial statute, The Land Acquisition Act, 1894 was replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act) for easy and timely possession of land.

Land acquisitions which were carried out before the 90s were explicitly for "public purposes" for example acquiring land for modern townships like Gandhinagar, Chandigarh etc., large projects aimed at improving irrigation, for public sector enterprises etc. these kind of projects had some credibility in the eyes of the public but after "Globalization" a lot of land acquisition was carried out by private entities for profit motives, these private sector acquisitions were not seen as things of "public interest" and hence people were not willing to give away the land or accept an unfair compensation, all this led to increased litigation and delayed possession of land.

The new act aims to introduce transparency in the process of land acquisition, to provide adequate urbanization without causing a lot of disturbance to the land owners, to give a fair compensation to affected people and also has provisions for rehabilitation and resettlement. In this paper we will explore various provisions in the New Land Acquisition Act which aim at promoting infrastructural development in the nation.

### The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in Lok Sabha in the month of September 2011 during the U.P.A -2 Govt <sup>[1]</sup>. The bill was

then passed by the Lok Sabha on 29<sup>th</sup> of August 2013 and by the Rajya Sabha on 4<sup>th</sup> of September 2013. The then President of India Dr. Pranab Mukherjee gave his assent to the bill on 27<sup>th</sup> of September 2013 <sup>[2]</sup>. The Act came into force from 1 January 2014 <sup>[3]</sup> It is considered as the biggest reform in "land governance", the act replaced the colonial Land Acquisition Act, 1894.

### Why was the new act Needed ?

The act aimed at giving the already-existing fundamental right to livelihood of citizens. The act makes sure that livelihood cannot be taken away unless:

1. It is in the interest of the public
2. The necessity and the effect of the said interest is seen by a social impact assessment
3. The affected citizens are given rehabilitation.

Under the 1894 act the consent of the land owner or the effects of acquisition on the owner were irrelevant once the acquiring authority decided to acquire a plot of land. No mechanism to stop or appeal the process of acquisition existed, apart from this the old act also had no provisions for resettlement and rehabilitation of those displaced.

**Urgency Clause under the 1894 act:** This was the most problematic and arbitrary clause as it did not define "What constituted an urgent need?" the power to decide whether an acquisition is urgent or not rested on the acquiring authority, hence making the clause arbitrary as any acquisition could invoke the "urgency clause".

### The need to acquire land for Infrastructure by the Government and its social implications

The government needs to acquire land for various *Infrastructural Projects* and also for public-private partnership projects, these projects have various kinds of social and economic effects on the society.

1. **To ensure livelihoods:** If any land is purchased then the livelihood losers who lose their source of income

- are not taken care of, these livelihood losers are in a greater number as compared to the land owners. This act has provisions <sup>[4]</sup> to make sure that these people are taken care of and they do not just get displaced.
2. **To safeguard small farmers from big corporations:** Unfair agreements take place when there is an inequality in terms of bargaining power, this is the reason why the government is required to step in and bring some balance into this relationship.
  3. **To build infrastructure:** Roads, schools, public transports and hospitals are important for the citizens and the economy, there is a legitimate need to acquire land by the state itself for building these, individuals or groups with vested interests can cause hindrance with land acquisition for these projects, hence a sovereign power is necessary to compel these individuals and groups.
  4. **Job Multiplier:** The Indian economy, which was already facing a slowdown before the Covid-19 pandemic heaped even further, experts believe <sup>[5]</sup> that construction of huge infrastructure projects like highways and railways could kick-start the economy and provide jobs to thousands even millions <sup>[6]</sup>. This shows us the potential of infra-sector and its ability to create work it also represents the importance of land acquisition as most of these projects require land to start the work and create jobs.

### Main Features of the 2013 Act

1) Defines “Public Purpose”

**Section 2(1)** of the act defines ‘public purpose’ as the projects which involve land acquisitions for strategic purposes or for things which cover the national safety of the country. This includes defence sectors like the navy, military, air force, and armed forces of the nation. Other things include <sup>[7]</sup>:

- “(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;
- (iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;
- (iv) project for water harvesting and water conservation structures, sanitation;
- (v) project for Government administered, Government aided educational and research schemes or institutions;
- (vi) project for sports, health care, tourism, transportation or space programme;
- (vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament”

2) **Emergency acquisition** <sup>[8]</sup>: Section 40 of the Land Acquisition Act has provisions for “Emergency Acquisition of land” Limitations of the act are given in 40(2) which read:

“(1) shall be restricted to the minimum area required for the defence of India or national security or for any

*emergencies arising out of natural calamities or any other emergency with the approval of Parliament”*

- a. **Consent Clause** <sup>[9]</sup>: According to section 2(2) of the Act it is important to take prior consent from at least 80% of the project affected families when the government acquires the land for private companies. The consent of the land owner is not required when the acquisition by the government is done for “public purpose”. Consent of at least 70% of the affected families should be taken in cases where the acquisition of land is done for public-private projects.
- b. **Resettlement and Rehabilitation.**: This is one of the most important and distinguishing features of this act, it links land acquisition act and the resettlement and rehabilitation of affected people <sup>[10]</sup>
- c. **Social Impact Assessment** <sup>[11]</sup>: The government has to carry out a social impact study along with consultation which should involve local authorities the Gram Sabha, Municipality, etc. like before starting the acquisition project.

The main purpose of this study is to inform the public and more importantly the land owners about the intended “public purpose”, the people who are affected and the extent of acquisition. The report is then submitted to an expert committee which can approve disapprove the project after due consideration. Although the government can override the disapproval of the committee.

### Role of the new Land Acquisition act in Infrastructural Development of India

The 2013 act will have a deep impact on infrastructural development in India, it cannot be predicted whether it will have a positive or negative impact in the long run as it's too soon to judge the act based on available information, we can only make speculations and analyze the provisions which this act offers. This act was enacted keeping in mind the “sentiment” of the people, it provides the land owners with adequate compensation but in a country where projects worth more than Rupees 7 lakh crore are still stuck due to various cumbersome government processes and unnecessary “red-tapism” because of the old act, the new act might just make the process lengthier.

There are various provisions in the new act which indicate that the process of land acquisition as per the new act will turn out to be lengthier than the old act which was already lengthy enough.

Various provisions like “social impact assessment” have a lengthy process involving various bodies like the *gram sabhas* etc. which might just add additional steps to the overall process. The consent clause which provides for consent of at least 80% of the land owners for acquisition of land for private purpose might affect the manufacturing industries in a negative way. Industries and the manufacturing sector need vast spaces of lands and the provisions of this act will make it hard for these industries to acquire land. Apart from the private sector land acquisitions, public sector projects might also face issues because of the cumbersome process, take for reference the “*Smart Cities Mission* <sup>[12]</sup>” by the Central Govt., this project requires huge patches of land within the cities, these cities are developed via the PPP (Public Private Partnership) model and for such projects consent from 70% of the land owners is required. From a practical perspective, getting consent from such

huge majority of people is almost impossible in most of the cases, not to forget that these kinds of projects once completed can be beneficial for vast number of people and create new opportunities with respect to jobs and social status. The enhanced compensation would increase the cost of the whole project and moreover ambitious thoughts like providing household to every person cannot be fulfilled because of these hindrances, this just shows that the act which was made keeping in mind the sentiment of the people might just have an opposite effect.

If we stop thinking about the negative aspects of the consent clause, we might see a ray of hope as pointed out by NC Saxena (Ex-IAS, former secretary of Planning Commission) in an article, he says:

*“The clause requiring consent of at least 70 per cent of the project affected people is highly welcome, and it should not scare the industry. Wherever the people are not willing to give their land or shift, it must be assumed that the fault is either in the package being offered, or in the progress of implementation or in the approach to the displaced communities. Alternatively, it could be because the implementation of resettlement and rehabilitation programmes in other cases has been so unsatisfactory that the affected people do not feel confident of receiving what they have been promised. In any case, this must be recognised as a failure of the rehabilitation process”<sup>[13]</sup>*

#### **A relief for the developers**

Section 24 of the Land Acquisition Act, 2013<sup>[14]</sup> has provisions to provide higher compensation to those people who got deprived of their land by the government for both public or private sector projects. The sections also mandated the consent of land owners and has the provisions of rehabilitation and resettlement.

#### **Section 24 (2) reads the following**

“(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act: Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

The situations where the acquisition process was “started afresh” were very cumbersome and problematic for the developers as in most of the cases farmers and the land owners refused the compensation, which adversely delayed the whole process of land acquisition.

In such cases the compensation was deposited into the government treasury and according to “one interpretation” the acquisition process was saved. If we see this from the perspective of “Infrastructural Development” then this

provision was not only acting as a huge hindrance but also benefitting the land owners only, as the developers had to pay additional higher compensation as per the fresh acquisition proceeding. In the case of *Pune Municipal Corporation vs Harakchand Misirimal Solanki, 2014*<sup>[15]</sup>, a three-judge bench held that

*“acquisition proceedings initiated under the 1894 Act, which were initiated five years before the 2013 law was enacted (in 2014), would lapse if the land in question was not taken control of or if compensation was not paid to displaced farmers.”*

This judgment came in as a relief for landowners however in the case of *Indore Development Authority vs Shailendra (D) Through LRS & Ors*<sup>[16]</sup> another three-judge bench declared the 2014 judgment “*per incuriam*”. The Supreme Court held the following:

*“land acquisitions could not lapse due to a land-owner's refusal to accept compensation within 5 years.”*

#### **It also held that**

*“once compensation has been tendered, but the person refuses to accept it, this amounts to a discharge of obligation under section 31(1) of the Land Acquisition Act, 1894”*

The 319-page judgment by Justice Mishra, however, said compensation **would be considered paid** if the amount is put in the Treasury Further, it was also said that Section 24(2) of the Land Acquisition Act, 2013 Act does not give rise to a “*new cause of action*” to question the legality of concluded proceedings of land acquisition and the proceedings will only lapse if the authorities have neither taken the possession nor paid the compensation to the landowner for 5 or more years prior to 1<sup>st</sup> of January, 2014. In this case Justices Mishra and AK Goel held the previous 2014 Pune Municipal Corporation Case judgment to be ‘*per incuriam*’, while Justice Shantanagoudar dissented. This judgement came in as a relief for developers.

#### **Real-life issues relating to Land Acquisition**

The bullet train project was given the nod by the Prime Minister of India, Narendra Modi, in 2014, the 508.17-kilometre long network will be passing through three major districts in Maharashtra that are Mumbai, Thane, and Palghar and through eight major districts in Gujarat that are Valsad, Navsari, Surat, Bharuch, Vadodara, Anand, Kheda, and Ahmedabad but it is the year 2020 and only 63 percent of the land has been acquired for the project, with 82 percent acquired in Gujarat and 23 per cent in Maharashtra. The Railways wants to open at least a small fraction of the proposed route before 2022, to coincide with 75 years of Independence but looking at the pace of Land Acquisition the hopes of it actually happening seem pretty low<sup>[17]</sup>. Though the pandemic is also to be blamed for slowing down of the project in overall but the blatant slow process of land acquisition is also visible.

The Airport project at Jewar (Uttar Pradesh) was going smoothly until the land acquisition process hit a roadblock, 3600 people were to be relocated under this project, 164 of the 224 plot owners raised objections, out of all these objections only “four” were said to be genuine concerns while the remaining were over compensation, instead of Rs 2,680 / sq.m the land owners demanded a minimum of Rs 3,180 / sq.m. The reason given for this was the additional Rs



500 / sq.m given to the residents of six villages affected by the project <sup>[18]</sup>. The demand of increased compensation might be genuine but keeping in mind the cumbersome land acquisition process various procedures would have to be followed again to meet the demands, even if the demands are deemed to be invalid on a later stage the time wasted on all this cannot be compensated. Justice is important but we need to strike a balance between justice and fast process for the betterment of the nation through these kinds of infrastructural projects.

In 2018 Minister of State for Road Transport and Highways Mansukh Lal Mandaviya told the Lok Sabha in a written reply:

*"Four hundred and thirty-five number of infrastructure and road projects are stuck and pending for completion and they are delayed mainly due to land acquisition, utility shifting, non-availability of soil/aggregate, poor performance of contracts, environment/forest/ wildlife clearances"*

Land Acquisition is not an easy task and from time to time it has led to massive protests against various projects. Farmers protesting against the UP Government's ambitious "Trans Ganga City" say they did not get the promised compensation, projects like Sardar Sarovar Dam in Gujarat, a SEZ in Nandigram and the TATA motors plant in West Bengal have all faced protests and had to be abandoned. Mega projects like these are very crucial for the economy keeping in mind the fact that these kind of projects from the very beginning can provide livelihood to thousands of people. The core problem lies in fragmented and disorganized landownership in most parts of India, private entities face a huge challenge to acquire land directly while the landowners have a fear of ending up with an unfair deal. It is not the question of who should be blamed but to see whether the system of Land Acquisition has loopholes or not, seeing the trends it is pretty clear that there are some loopholes which need to be addressed, though the new LA act is more "people friendly" it is still somehow not able to satisfy the needs of the landowners, they are still protesting and facing problems like they previously did due to the *Draconian 1894 Act*.

In the year of 2015 the newly elected BJP Government introduced 9 amendments to the Land Acquisition Act, 2013, its aim was to do away with the consent clause for five types of projects namely – rural infrastructure, affordable housing, industrial corridors, defence and infrastructure projects, including social infrastructure. This bill faced opposition from the parliament and hence was halted by a unified opposition in the Rajya Sabha, the opposition pointed out ambiguities in definitions and the dilution of protections available for landowners who are mainly farmers in India, the government later brought two ordinances, but did not increase their limit after they lapsed. Land is a state subject but land acquisition is present in the concurrent list. This is why the central law overrides the state law, states can amend the central laws but with the assent of the President, if provisions in the state law are in any way "repugnant" to any provision present in the central law.

After the Covid-19 Pandemic hit the world there was a strong opposition towards China and foreign companies wanted to shift their production from China to other

locations, as per the Ease of Doing Business rankings <sup>[19]</sup> India stood at 63<sup>rd</sup> spot while Vietnam which stood at 70<sup>th</sup> rank attracted more foreign investment than India, experts believe that strict Indian land laws could be one of the major reasons for this. India has access to technical expertise and financial capital but our land laws might be responsible for holding us back.

We also need to expedite the legal cases pertaining to Land Acquisition, setting up of tribunals to hasten these cases in almost every corner of the country is very important. This could also decrease the legal expenditure and the time delays for big infrastructural projects and manufacturing entities. The procedure of these tribunals should be designed in a way to quickly dispose of cases without compromising with the genuine demands of the land owners. The process of compensation and rehabilitation should also be looked after in a speedy way.

### Conclusion

It is clear that to achieve the level of development India desires we need to work on our infrastructure, the process of land acquisition should be made smooth keeping in mind that no injustice is made to the landowners. We should also not forget that private entities are needed to boost the infrastructure in such a massive country hence policies should be relaxed for PPP and private projects. Each land acquisition should be treated in a different manner and Social Impact Assessment can be avoided where the land has no worth or it is totally desolated and idle. There is a need to strike a balance of interest between the buyer and the seller for this the terms of compensation should be such that it benefits both the parties. The government can also consider approving projects after acquiring the land, this would drastically reduce the cost of projects.

Alternatively, if we talk about leasing the land instead of acquiring it, NC Saxena (Ex-IAS, former secretary of Planning Commission) rightly asks a question <sup>[20]</sup>:

*Why not Lease Land in Place of Acquisition? Section 105 of the new Act states that government is free to exercise the option of taking the land on lease, instead of acquisition. However, since this is a state subject, states should amend their tenancy laws to facilitate the entry of industry in the land market and promote willing buyer-willing seller transactions that will make the coercive provisions of the land acquisition law irrelevant.*

Delay in getting actual possession of land is the main cause of concern for the infra sector of our nation, by closely observing the act we could say that acquisition of a mere one-acre of land might take three to four years and the proposal will go through hundreds of hands. It will all start with Social Impact Assessment by an independent body then its report will be reviewed by an expert group, there would be an R&R Committee, State Level Committee and a National Committee for monitoring, any delay in any process or formality will not just delay the project but also the payment of compensation.

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