



# National Conference on the **Five-Year Journey of** **THE RFCTLARR ACT, 2013** **THE WAY FORWARD**

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## **Background Note on 1<sup>st</sup> session: 'The RFCTLARR Act, 2013: state of the law'**

It has been five years since Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was enacted (hereinafter referred to as LARR Act). The objectives of the Act are indicated in the long title of Act itself. One of the defining features of the LARR Act is the emphasis on transparency, rehabilitation, and resettlement along with compensation. It enjoins upon the State to be fair, just, and transparent in the process of land acquisition and ensure rehabilitation and resettlement of the land owners, in addition to compensation.

Importantly, the Preamble to the Act envisages a humane, participative, and informed process to acquire land and to ensure persons affected due to the developmental compulsions are equal partners in the fruits of the development.<sup>1</sup>

In the following note the statutory provisions which enable these objectives shall be detailed. Along with them the legislative and executive interventions since 2013 and judicial pronouncements shall also be presented to provide a holistic view of the developments that have taken place in respect to the Act.

<sup>1</sup> See Preamble to The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act No. 30 of 2013 available at <http://www.legislative.gov.in/sites/default/files/A2013-30.pdf> last accessed on October 09, 2018.

## **Participative Process**

One of the foremost objective of the LARR Act is to make land acquisition process a participative exercise. The Act defines the 'Public Purpose' for which land can be acquired. The Act mandates that consent must be obtained from the land owners while acquiring land.<sup>2</sup> The acquisition of land for private companies for projects of public purpose is incumbent on the consent of 80% of land owners, consent of 70 percent of land owners is required in case of public-private partnership projects.<sup>3</sup> However, the requirement of consent operates only if the land being acquired is for private companies or public-private partnership projects. At the same time the definition of public purpose, defined in Section 2(1,) can be extended to private companies and public-private partnership projects, thus, making the scope of acquisition wider. It helps State to leverage upon strategic partnerships with private bodies for development of infrastructural and industrial capabilities without significant intervention of State.

In order to ensure that the process is participative and transparent, the Act mandates Social Impact Assessment and a public hearing at the conclusion of the study.<sup>4</sup> The purpose of Social Impact Assessment is aligned to the sustainable and participative development goals. The SIA reports must give a finding whether the project serves public purpose, the land required is the bare

<sup>2</sup> *Ibid.* Section 2 (2).

<sup>3</sup> See Supra note 2, Section 2(2) and Section 3(i), 3(v)

<sup>4</sup> See Supra note 2, Chapter II

minimum, alternate sites have been considered and it is the least displacing option. The SIA report will include details of Project –Affected –Families, the entitlements for compensation and R&R award. It must also include the Social Impact Management Plan (SIMP). The SIA report must be shared with the Affected Families in a public hearing during which their concerns and issues have to be addressed. The outcome of the public hearing must be incorporated in the final SIA report. The proceedings of public hearing must be video recorded and transcribed. The SIA report has to be appraised by an Expert Group which shall give a finding on whether the project serves public purpose and the potential benefits outweigh the social costs and adverse social impacts.

The necessity of the impact assessment report, prior to land acquisition, is an important marker of the objective of the LARR Act.<sup>5</sup> It compels the State to take an informed approach towards land acquisition and, at the same time, ensure the participation of affected communities in the acquisition process from the very beginning. It also helps all the stakeholders to understand each other's concerns and collectively move towards a solution oriented approach.

This feature of the LARR Act is in sharp contrast to the previous Land Acquisition Act, 1894. The 1894 Act did not provide for any kind of assessment reports or public hearing before the acquisition process began. Although objections were invited, but only after notification to acquire land was issued.<sup>6</sup> However, the LARR Act mandates that the notification to acquire land must include a statement of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment report and particulars of the Administrator appointed for rehabilitation and resettlement purposes.<sup>7</sup> A complete shift in the approach of the State can be seen here: land acquisition under previous law was *fait accompli* as far as the owners of the land were concerned, whereas, under the new law all the stakeholders have a chance to take part in the acquisition process.

## Compensation

The other significant aspect is the compensation for the

land acquired. The LARR Act is very categorical about the compensation that is to be awarded for loss of land, livelihoods, and any other losses that may arise due to the land acquisition and processes incidental thereto. Apart from compensation, the Act also provides for solatium and interest on the compensation amount. Solatium is an additional amount added to the compensation award and has been fixed at 100% of compensation. Similarly, an interest on the award of the compensation at the rate of 12 % per annum shall be paid for the period between the date of notification and date of actual payment of final award. The compensation for land has been fixed at four times the market value in rural lands and two times in urban areas. This ensures that substantial life sustenance resources are made available to the affected families who are displaced and help them in resurrecting their lives and livelihoods.

## Rehabilitation and Resettlement

One of the marked improvements of the LARR Act over the previous Land Acquisition Act, 1894 is the shift in focus from compensation to rehabilitation and resettlement. The earlier law was solely focused on providing compensation and, in some cases, a solatium. However, in the LARR Act, the focus has shifted to rehabilitation and resettlement of the displaced persons. The SIA reports, as discussed above, must include the impact of the acquisition on the lives and livelihoods of the affected families, their community and social life, infrastructure and public utilities. This makes estimation of rehabilitation and resettlement easier. Once the impacts of the acquisition on the affected families and communities are evident, the rehabilitation and resettlement plans can be made accordingly.

Secondly, Chapter V of the LARR Act mandates that the possession of the land can be taken only after the payment of full compensation and notification of rehabilitation and resettlement award. The Collector has been made responsible to ensure that the rehabilitation and resettlement scheme for each family is completed in all respects before the families are displaced.

Thirdly, the process of preparation of rehabilitation and resettlement scheme also includes notices for public hearings and public representations. Here again the approach of the law is to ensure that the relevant stakeholders are not left out of the process and have their say in the process. This provision empowers the Project-affected-Families to raise objections, submit

<sup>5</sup> There are certain exemptions that can be made by the Appropriate Governments under Section 9, however, those are to be exercised only in cases of urgency as specified in Section 40.

<sup>6</sup> See Section 4 and 5A of the Land Acquisition Act, 1984 available at [http://www.prsindia.org/uploads/media/Land%20Acquisition/bill167\\_20080311167\\_The\\_Land\\_Acquisition\\_Act\\_1894.pdf](http://www.prsindia.org/uploads/media/Land%20Acquisition/bill167_20080311167_The_Land_Acquisition_Act_1894.pdf) last accessed on October 10, 2018.

<sup>7</sup> See Supra note 2, Section 11.

claims for rehabilitation and resettlement and ensure that adverse social impacts are managed and the needs of the community are addressed.

### **Special provision for Schedule Tribes and Scheduled Castes**

The Act states that, as far as possible, land shall not be acquired in Scheduled Areas under the Fifth Schedule of the Constitution. If acquired, it should be a demonstrable last resort. The prior consent of the concerned Gram Sabha, Panchayat or the autonomous District Councils must be obtained even if the land is sought to be acquired under the urgency clause. In case of involuntary displacement of SC and ST families, a Development Plan shall be prepared incorporating measures safeguarding their special needs and interests.

### **Developments, post 2013**

The RFCTLARR Act, 2014 came into effect on 1.1.2014. The UPA Government that came to power in May 2014, soon felt the need to amend certain provisions of the Act, which, in its opinion, were cumbersome and stood in the way of speedy acquisition of land for industrial and infrastructure. An Ordinance was promulgated in May 2014 which, although, did not tweak the provisions of compensation, rehabilitation and resettlement, did away with the requirement for consent and social impact assessment for industrial corridors, defence projects, rural infrastructure, etc., and diluted the provision regarding the return of acquired land to the landowners, if the land remained unutilized beyond the stipulated period.

The 2014 Ordinance created a furore in the political arena and among the civil society members, forcing its withdrawal in 2015, after two re-promulgations. The Amendment Bill introduced in Parliament in Feb. 2015, to replace the Ordinance, was passed in the Lok Sabha in May, but due to the stiff opposition in the Rajya Sabha, was eventually referred to a Joint Parliamentary Committee. The report of the Committee is still pending. In August 2015, the provisions of The RFCTLARR Act, 2013 relating to the determination of compensation under the First Schedule, Rehabilitation and Resettlement under the Second Schedule and infrastructure amenities under the Third Schedule were extended to all cases of land acquisition under the 13 laws listed in Schedule IV of the Act.

### **Amendments by state governments**

So far seven states have enacted amendments to The RFCTLARR Act, 2013. These are Tamil Nadu, Jharkhand, Gujarat, Telangana, Haryana and Maharashtra. The Amendment Act of Andhra Pradesh has received the Presidential assent and is awaiting notification. The state amendments have incorporated the changes introduced by the Central Ordinances which had lapsed in 2015. The major changes are: exemption of social impact assessment study for certain category of projects; exemption from consent requirement for projects in public-private partnership mode and by the private companies; payment of lump sum amount instead of rehabilitation and resettlement award for certain specified projects; direct purchase of land from land owners; speedy payment of compensation amount by exemption requirements of enquiry for certain projects.

It has been contended by these States that the amendments were necessitated by the delays in the land acquisition process thereby making the investment by the private sector in the developmental projects of the State non-lucrative. Further, delays in land acquisition are also stated to be hampering the growth of public infrastructure like highways, road networks, airports, new cities, smart cities, ports, affordable housing etc.

Apart from formulating the Amendment Acts, states are using the delegated legislative powers under the LARR Act, 2013 while framing Rules for land acquisition and the processes involved therein. Some states have framed Rules which are markedly different from the provisions of the LARR Act. For example, the multiplier factor of compensation for rural land in Haryana, Chhattisgarh, and Tripura has been kept at 1.00, thus reducing the compensation amount for the land owners. Further, instead of returning the unused or unutilized acquired lands to their owners, some states are transferring them to land banks. Moreover, the land return policy, in some cases, is not in consonance with the intent of the Act. Karnataka, for example, requires that the landowner must pay the appreciated value of the land to the government for getting back the land.

### **Judicial Pronouncements**

After the LARR Act was enacted in 2013, more than 280 cases have been filed in the Supreme Court, challenging land acquisitions made under the previous law (Land Acquisition Act, 1894). 272 out of these 280 cases were

filed under Section 24 of LARR Act.<sup>8</sup> Section 24 of the LARR Act mandates that in cases where land acquisition made under the Land Acquisition Act, 1894:

- a. But an award of compensation had not been made, the provisions related to compensation under the LARR Act, 2013 shall apply
- b. The acquisition under Land Acquisition Act, 1894 shall lapse if the payment of compensation has not been or the possession of land has not been taken, though the award has been made in the preceding five years of the enactment of LARR 2013.
- c. If the majority of landowners whose land was acquired under the Land Acquisition Act, 1894 have refused to accept the compensation, they shall be entitled to compensation under the LARR Act, 2013.<sup>9</sup>

97% of the cases before Supreme Court involved Section 24 (2), i.e., where the award was made in the preceding five years but either the possession was not taken or the compensation was not paid.<sup>10</sup> In 83% of these cases, compensation had not been paid, in 11% neither the compensation was paid nor the possession of land taken, and in 2% cases possession of the land was not taken.<sup>11</sup> In 95% of the cases the Supreme Court ordered the earlier land acquisition proceedings to lapse, and in 2% of the cases the matter was remitted to the respective High Courts.<sup>12</sup> The trend in the judicial pronouncement seems to have been in favour of the land owners who lose their lands. The approach of the courts is clear from the judgment of the Andhra High Court barring

<sup>8</sup> Wahi, Namita, Bhatia, Ankita (*et. al*), *Land Acquisition in India: A Review of Supreme Court cases 1950-2016*, Centre for Policy Research, New Delhi, 2017, pp. 37-38.

<sup>9</sup> See Supra note 1, Section 24.

<sup>10</sup> See Supra note 9, pp. 37-38.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

Telangana Government from purchase of land under GO 123 dated 30.7.2015. It shows that courts are not ready to let the executive trample upon the rights of the 'landless' through legislative innovations.<sup>13</sup>

In the case of Pune Municipal Corpn. and Anr vs Harakchand Misrimal Solanki and Others the Supreme Court held, in 2014, that compensation would be deemed to have been paid if it was first offered to the land owners and then deposited in the treasury<sup>14</sup>. However, in the case of Indore Development Authority v Shailendra (Dead) Through LRS and Others, the Supreme Court decided, in Feb., 2018, that once the compensation is tendered unconditionally, but rejected by the landowner, it is not necessary that it must be deposited in the Court and hence, proceedings under the Land Acquisition Act, 1894 cannot be construed to have lapsed. The conflicting judgements, both by three-member Bench, will have a cascading effect on pending cases. In March 2018, the issue has been referred to a Constitution Bench.

Another case of far reaching implication is the Gujarat High Court judgement of Nov., 2017 in the case of Reliance Industries Ltd. Vs Union of India wherein the Court has held that once the company had deposited the compensation amount in the government treasury, the acquisition would not lapse if the government had not paid the compensation to farmers or taken possession of the land. The appeal against the judgement is pending in Supreme Court. The outcome of the appeal will determine the fate of similar cases challenging the retrospective applicability of the new land acquisition law.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors*, Civil Appeal no.877 of 2014 before the Hon'ble Supreme Court.