



Submission of Comments to Joint Committee on 8th June, 2015

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015

I. Background

India is a land scarce country and issues of forced acquisitions, eminent domain provisions, meagre compensation, land mafia, non-utilisation of acquired land, absence of compensation to households dependent on the land, lack of adequate resettlement and rehabilitation have resulted in extensive **trust deficit** in the country. India had been operating under the regressive Land Acquisition Act, 1894 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act 2013) attempted to right some of the wrongs by working on the principles of consent, compensation, social impact assessment, resettlement and rehabilitation among others. However, it appears to have gone overboard by creating a **complex system** which could significantly increase the time and cost of any project, thereby delaying the benefits to all. Most state governments ruled by different parties have expressed their problems and sought a better law. Thus, a **balanced system** keeping in mind the requirements of all relevant stakeholders needs to be established under the new law. There is rarely a regulation acceptable to all and the key is to strike a balance given the resources and conditions of the country and the most **acceptable solution to all groups** is the right answer.

The present government has introduced the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015 to deal with the complexities. However, there is a lack of political consensus, which may perhaps be due to politics rather than reason. A Joint Parliamentary Committee of both the Houses has been constituted under the Chairmanship of Shri S.S. Ahluwalia for comprehensive review and examination. Further, the Joint Committee, in order to take into consideration views of various stakeholders, has invited comments/suggestions from interested stakeholders on the Bill.

Consumer Unity & Trust Society (CUTS, www.cuts-international.org) is a 30+ year old international non government institution working in diverse areas of public policy such as consumer protection, economic regulation, financial sector, competition, trade, and investment. CUTS' comments on the Bill are set out below:

II. Specific Comments

S. No.	Proposed changes in the Amendment Bill 2015	Suggested Changes	Rationale
1.	Substituting 'private	The word 'private	At present, it is defined as any 'any entity other than a

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	company' with 'private entity'	entity' should be clearly defined	Government entity' which widens the scope of organisations for which land could be acquired. This should be clearly specified to include or exclude certain institutions such as private hospitals etc.
2.	5 Categories mentioned in Section 10A. (1) exempt from consent clause, Social Impact Assessment (SIA) clause, and the food security clause	<p>Consent clause: Should be retained, however the proportion can be reduced for instance to 51 percent.</p> <p>Social Impact Assessment clause: Should be retained, however with the necessary amendments to the procedures to address the time and cost concerns</p>	<p>Forcible acquisitions have been a serious issue, especially under the 'eminent domain'. The LAAR Act 2013 aimed to address this concern by attempting to define 'eminent domain' as well as incorporating the consent clause for private (80 percent) as well as public private partnership (70 percent) projects. This was one of the issues flagged by industry houses which would significantly increase the time and cost to reach out to 70–80 percent of affected families as land records are often not available and this could probably give rise to land mafia working for this goal. The holdout problem i.e. a minority group of land holders may hold up the acquisition even when majority have agreed, is another issue which may emerge thereby, further disrupting the process.</p> <p>However, completely removing this provision would dilute the participatory approach of the bill and again limit the voice of the families most impacted by such acquisitions. That said, in this case the objective of the consent clause is the goal hence, different measures can be brought in to serve the purpose which would satisfy both parties. Innovative means can be adopted to not only simplify but also expedite the process. However, these changes need to be made keeping in mind the realities of our system.</p> <p>The objective of this clause was to understand whether the project serves any public purpose, the benefits of the project outweigh the social costs, determine any adverse social impacts, estimate the number of affected families, evaluate if the land to be acquired is the absolute bare minimum and there is no unutilised land previously acquired that lies in the area among others goals.</p> <p>The process of conducting a SIA was said to be time consuming and could place additional burdens of cost as well as time and with delays, would exceed the stipulated period of six months. Additionally, there were concerns regarding the lack of guidance and capacity among officials who were to undertake such an assessment.</p>

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			<p>The major concern is the implementation of the provision rather than the provision itself. Thus, perhaps this should have been corrected rather than an altogether removing the provision. With the inclusion of these categories as well as extending the scope of the Bill to 'private entities' there is a greater need to substantiate public purpose of those projects.</p> <p>The SIA should be carried out by independent consulting firms or research institutions in a time bound manner. This is because the government machinery is very slothful and hence the fear of this clause can be allayed.</p> <p>Example of Environmental Impact Assessment procedure can be a useful measure to import here. Here the investor draws up a TOR and gets the EIA done by themselves or a specialized firm and submits it to the State authorities which then conducts a public hearing.</p>
		<p>Food Security: The provisions of Chapter III should be applicable to the categories under Section 10A. (1)</p>	<p>This Chapter safeguards irrigated, multi-cropped land and food security as acquisition of these is not permitted. However, it does provide for its acquisition as an absolute last resort along with an equivalent piece of land being developed or deposited with the government for agricultural purposes. This clause also includes a provision of exemption for linear projects. Thus, if the necessity can be shown for projects under these categories it could be acquired and hence, these categories should not be exempt from this section.</p> <p>Further, good farm land can be classified as Special Agricultural Zones as suggested by the renowned agricultural scientist MS Swaminathan which would protect these lands as well as food security¹.</p>
3.	Section 10A: Survey and recording of wasteland and arid land	Positive addition. Additionally, utilisation of this land on first priority, before acquiring any additional land should also be included.	This will help evaluate the extent of wasteland and arid land in any region. This will help utilise this land as the first option and this also should be included in the Act. Further, the land lying vacant/unused of past acquisitions (for a certain period of time) as well as land lying vacant with the governments should also be surveyed and recorded and land banks should be established. Prior to further acquisitions, these should be utilised.

¹ http://articles.economictimes.indiatimes.com/2015-04-08/news/60943337_1_land-acquisition-law-farm-families-ms-swaminathan

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4.	Section 31, sub-section (2), clause (h): after 'affected families', the words 'including compulsory employment to at least one member of such affected family of a farm labourer' shall be inserted	Instead of farm labourer, affected family alone should suffice	Affected family includes farm labourers (Section 3, sub-section (c), clause (iii)) and LARR 2013 provides for mandatory employment to members of affected family (Section 31, sub-section (2), clause (h)). Thus, in the amendment since it provides for specificity in terms of number of members, the scope should be expanded and the term 'affected family' alone should suffice and the phrase 'of a farm labourer' should be deleted.
6.	Section 101, "a period of five years", replaced with "a period specified for setting-up of any project or for five years, whichever is later,"	A specific deadline should be included and not left open-ended.	There have been cases of acquired land lying unused thus, LARR Act 2013 provided for its return if not utilised within five years. However, this number was ambitious as the numerous processes coupled with delays in approvals can cause significant time extensions which could delay the start of the project. But any 'period specified at the time of setting-up' is vague and would not serve the objective of the clause; hence a specific number can be included. Alternatively, a period can be finalised at the beginning in consultation with the government and the developer. In case of extensions for any specific project related issues leading to delays, could be provided for as well.

III. Other Comments

The cost of land is expected to rise significantly due to the provisions of the LARR 2013 Act² as per some estimates. However, in a land scarce country no person can expect to purchase land at reduced prices. Nonetheless, land needs to be made available in the least possible time and at the lowest possible cost for crucial activities such as building infrastructure, supporting manufacturing etc. which are critical for the development of the nation. On the other hand, it is imperative to understand that a piece of land could mean livelihood for many, who need to be adequately compensated. Thus, as in any other deal, here as well both the buyer and the seller need to believe that they got the best possible bargain. It cannot favour one side over another.

The big challenge that India is likely to face in the near future is that new jobs will need to be created to provide opportunities to the youth. With around 12 million people entering the workforce each

² http://articles.economictimes.indiatimes.com/2014-03-17/news/48297612_1_new-land-acquisition-law-land-owners-resettlement-act

year³ the manufacturing sector also needs to be strengthened to provide additional avenues for gainful employment. The increasing migration to urban areas for better employment and the need for rapid urbanisation also requires attention. Efforts should be made to develop new habitats or factories away from existing cities, so that there is reduced concentration and newer development. For example, Jamshedpur city was developed in the wilderness rather than near any other city in erstwhile Bihar State.

There exist issues other than those mentioned which could be addressed through this Bill as mentioned in the section below:

Effectiveness of the Act: The LARR Act 2013, came into force only from January 01, 2014, thus, it is important to first evaluate the effectiveness or ineffectiveness of the Act prior to revising it. Few cases of the implementation of LARR Act 2013 could have been taken to better understand the bottlenecks and then accordingly strategise for those. Many projects are said to be stalled due to acquisition issues which necessitated the amendments to the Act. However, this fact is also contested by a section of people claiming land acquisition is not a major cause of stalled projects and there seems to be data to support both sides of the story⁴. Hence, it is critical to evaluate the effectiveness of this Act prior to making amendments in the LARR Act 2015 also.

Regulatory Impact Assessment (RIA): Regulations impact stakeholders in various ways and sub-optimal regulations have the potential to cause adverse impacts such as raise cost, increase timelines, raise complexities and uncertainties. Thus, only those regulations should be adopted which provide the maximum possible benefits at the minimum possible cost. One of the systematic approaches to critically assess the impacts is RIA. This is a tool used in many countries to identify and evaluate the impact of any regulation. It is a systematic process which helps identify the costs and benefits of the said regulation (or selected provisions of the regulation) and alternatives, to all relevant stakeholders, to select the most optimal solution. This could be conducted to understand the costs and benefits of this regulation and make the necessary amendments to ensure adoption of an optimum regulation.

Compensation: Due to absence of adequate measures to establish accurate market rates, the factors of two and four times was applied to urban and rural areas respectively. These were included to attempt to bring the prices at par with market prices since the price registered in a sale deed is usually lower. However, no clear explanation has been provided for arriving at these figures. This methodology does not adequately address the issue of determining the accurate market rate and the registered values are often under-represented⁵. Alternatively, one suggested mechanism was holding auctions where farmers could state the asking price based on current rates as well as future inflation levels. Another way is to allow leasing of the land, instead of acquisition, from the farmer for a fixed period of time, say 33 or 50 or 99 years with an annual rent to be paid to the landholders.

³ <http://thediplomat.com/2014/02/why-india-must-revive-its-manufacturing-sector/>

⁴ <http://economictimes.indiatimes.com/news/politics-and-nation/cant-blame-upa-land-acquisition-bill-for-stalled-projects-rti/articleshow/47077042.cms>

⁵ <http://blogs.worldbank.org/endpovertyinsouthasia/how-fair-fair-compensation-under-india-s-new-land-acquisition-act>

Regulator for Land: There is a need for an independent regulator for land both at Centre and State level which would act as a facilitator rather than having a control structure. There is a need to build trust between buyers and sellers and have an arm's length relationship with legislative and executive bodies. They should act as an interlocutor between buyers and sellers of land. The same body could also regulate any other form of land transfer such as leasing.

Analysis of best practices from other states: There exist examples of fair practices and workable models for land acquisition within Indian states itself which can be reviewed for best practices. The Uttar Pradesh government recently simplified the land acquisition process which can now be done through a mutual agreement between the buyer and the seller. A study by Accenture on 'Best Practices to Improve the Business Environment across States/UTs in India', mentions the Gujarat model of land acquisition which has simplified the process and minimised government intervention⁶.

Building capacity of officials: Clauses such as SIA need to be implemented in a specific manner as proposed above. Many state officials may not have the necessary skills and capacity to undertake the review as required. This too needs to be addressed through adequate capacity building of officials to ensure that the provisions of the Bill are effectively undertaken.

Manipulation of Clauses: The Act leaves room for manipulation in some cases. For instance, it states that private players would have to undertake resettlement and rehabilitation if the acquired land is greater than a specified area. However, in such cases the company can purchase smaller areas of land under several associates⁷. Thus, such provisions need to have some safeguards to restrict misuse.

There are some critical issues that the law-makers should keep in mind while amending the Act to ensure that all the key concern areas have been addressed:

- Often, the land owners and other affected families do not have proper information and clarity regarding the need for acquisition and benefits to them. How can greater information be provided to ensure trust is maintained and the process functions smoothly? Ineffective communication to stakeholders and lack of public understanding regarding the benefits of a project or reforms can significantly impair the process⁸.
- There are issues of the acquired land not being used for the said purpose. How can the issue of misuse of acquired lands be addressed? Also, how does the policy address the issue of speculative hoarding of land?
- The timelines for land acquisition are said to have been extremely stretched through the LARR Act, 2013⁹. Can these be reduced without diluting the provisions and objectives of the Act?

⁶ Best Practices to Improve the Business Environment across India, Accenture, May 2014

⁷ http://www.cuts-international.org/pdf/CUTS_International_Comments_on_Land_Reform_Bill.pdf

⁸ http://articles.economicstimes.indiatimes.com/2007-04-14/news/27686795_1_delhi-airport-new-airport-reforms

⁹ <http://www.prsindia.org/theprsblog/?tag=land-acquisition>

IV. Conclusion

There is a need for innovative thinking to develop mechanisms which would address both sides of the problem, such as making those parting with the land partners in the project or long-term lease based approach. It is important to assess whether the underlying objectives are still as important as they were while drafting the LARR Act 2013. If so, then any amendments made should ensure that these issues are not side-lined while attempting to simplify the process. The objective is critical, the solutions to address these could be many and if the current provisions are not satisfactory, others need to be designed to serve the same purpose. The key is to ask the right questions and given the state of government machinery evaluate what would be the most optimum solutions.
