

## Land Acquisition Policy in India: An effective Inclusive Planning or Exclusive Planning Policy?

*Bikram Kumar Dutta*

(Bikram Kumar Dutta, Associate Manager, IL&FS Transportation Networks Ltd, L-30, Delta II, Greater Noida, Uttar Pradesh, bikramdutta@hotmail.com)

### 1 ABSTRACT

India is a developing country and it requires fast space quality infrastructure development, which is the need of current times. For any development, land is required and the land belongs to the people. Government is acquiring land for “Public Purpose”. Government of India (GoI) has substantially increased its focus towards infrastructure development, over the last few decades which lead to economic growth of the country.

A preliminary assessment of Five Year Plan (FYP) of Planning Commission suggests that investment in infrastructure during the Twelfth Plan (2012-17) would need to be of the order of about Rs. 4099240 crore (US \$ 1025 billion) to achieve a share of 9.95% as a proportion of Gross Domestic Product (GDP). This would have to be a key priority area in the Twelfth Plan in order to sustain and support the targeted growth. Based on the Eleventh Five Year Plan (2007-12), the Planning Commission has assessed the investment in infrastructure is Rs. 2054205 crore. The investment in infrastructure was likely to rise from 5.15% of GDP during the Tenth Plan to about 7.55% during the Eleventh Plan, as against a target of 7.60%. This constitutes a significant shift in favour of investment in infrastructure.

Acquisition of land for public purpose displaces people, forcing them to give up their home, assets and means of livelihood. The GoI recognizes the need to minimize large scale displacement to the extent possible and, where displacement is inevitable, the need to handle with utmost care and forethought issues relating to Resettlement and Rehabilitation (R&R) of Project Affected Families (PAF) and formulate R&R Policies under Land Acquisition Act, 1894 and National Resettlement and Rehabilitation Policy 2007 has been replaced by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013. The ground reality differs from it.

Under Section 4 of Land Acquisition Act, 1894 land can be acquired only for a “Public Purpose” where as per the new The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 government will define itself the term “Public Purpose” to include projects such as mining, tourism, sports, etc. Thus virtually everything is covered. The concept of public receives its meaning or definition within the given context of economic changes and the related “developmentalism”. This means that in a case where urbanization is required to rehabilitate large labour population, the public purpose will be construction of housing or improvement of village site to accommodate this additional population. The definition of “Public Purpose” is deficient, as it has been argued that land being acquired and handed over to a private developer as ‘Public Private Partnership (PPP)’ model by development agencies for creation of public utilities be considered as public purpose. The courts have allowed for this loose interpretation by adopting a hands off attitude and consistently holding that it is entirely State to decide whether a public purpose will be met by a given acquisition, as the courts are not competent enough to enter into the issue of whether a purpose is a public purpose or not. Thus interpretive liberties have been taken by government while operationalising the concept (Ghatak & Ghosh, 2011). Planned development in India immediately after independence, 1947, especially the growth of core sectors such as power, mining, heavy industry and irrigation, displaced at least 30 to 50 million people; only about 25% of this number was resettled and the rest either died or took the road to poverty. If urban dislocation is included, the figure would increase further (Fernandes and Paranjpye 1997:6); and all this took place in the name of the national interest and ‘for the ultimate good of all’.

The importance of land policies and state control over urban development had always been a political and economic imperative. Historically it has been an instrument of exerting political controls. Today in democratic set up, it is a geographic and locational dimension of social and economic development and distribution of the resources. Land and society are profoundly linked: development and evolution of societies is expressed as corresponding to spatial organisation.

## 2 INTRODUCTION

All strategic interventions on human development, spread across all social issues, need directives of policies and legal support to operationalise the appropriate actions. These policies and legislations help to overcome the constraints and support administrator, implementer, community and individual in delivery of justice in case of fast space quality infrastructure development, which is the need of current times. For any development, land is required and the land belongs to the people. Government is acquiring land for 'Public Purpose'. Government of India has substantially increased its focus towards infrastructure development, over the last few decades which lead to economic growth of the country. At the same time, there are national policies and legislations on some relevant issues like R&R, indigenous or tribal population, cultural properties etc.

Government of India comes up with new law for land acquisition which is the RFCTLARR Act, 2013. The new law replaces Land Acquisition Act, 1894 and National R&R Policy, 2007. The Act claims to better reflect Government's commitment towards securing a legal guarantee for the rights of project affected, and ensuring greater transparency in the land acquisition process. It is also claimed that this act will ensure, in concert with local institutions of self-government and Gram Sabhas established under the constitution, a humane, participative, informed, consultative and transparent process for land acquisition. This act is applicable in whole of India except J&K (The State Land Acquisition Act, 1990).

To tackle the issues on infrastructure development, industrialization and urbanization there is a need to provide right laws and procedures for the land acquisition. The balancing is tough, as on one hand, there is an urgent need for development, while on the other hand to safeguard the interest of the land owners/users and farmers are an important issue. There is a debate whether the new land act, as proposed, is a political attempt to appease a large vote bank and is, therefore, not balanced from the perspective of the development plan. The case can be argued from both sides equally. One of the objectives of the new land act is to make the process of land acquisition easy, transparent and fair for both sides. However, a perusal of the act shows that this objective is extremely difficult to be achieved as the procedure involved is quite lengthy, cumbersome and in some situations impractical. The historical incident, where the manufacturing unit of "Nano" shifted from West Bengal to Gujarat, manifests the importance of land acquisition as well as political will.

If the land is made available for development, it brings prosperity to the state, generating large volumes of employment opportunities; development of ancillary manufacturing units; manufacturing plant itself, increase in the production and the related trade and commerce as well as bringing revenues to the government under multiple heads of direct and indirect taxes. The procedure spelled out in the new land act and the nature of compensation to be given appears to be lopsided and may not give the right impetus to the new act for various reasons. The new land act enjoys primacy over other stabilized legislations that are currently in force and the provisions are in addition and not in derogation of the existing safeguards provided for in 13 other laws for the land acquisition (like highways, defense, railways etc). Now the question does the new land act a comprehensive solution?

## 3 REQUIREMENT OF NEW LAW

- Public Concern: Public concern on land acquisition is highlighted (inclusive planning), absence of national law for R&R and absence of compensation for loss of livelihoods (exclusive planning).
- Outdated Law: While multiple amendments have been made to the century old original act, the principal law continues to be the same, and
- Need for Balance: Addressing concerns of farmers loss of livelihoods while facilitating land acquisition for industrialization, infrastructure and urbanization.

### 3.1 Applicability

Both land acquisition and R&R provisions will apply when (1) government acquires land for its own use, hold and control; (2) government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose (including PPP projects); and (3) government acquires land for immediate and declared use by private companies for public purpose.

Public purpose inclusive planning once stated cannot be changed. Where the land acquisition is for private companies, 80% of the project affected families must give consent to the proposed acquisition. Where the land acquisition is for PPP projects, the prior consent of at least seventy per cent of those affected families is required.

### **3.2 Only R&R provisions will apply when**

Private companies buy land, equal to or more than as may be prescribed by the appropriate government, on their own. The limit though originally suggested under the act was 100 acres, but now this has been left to respective governments, however, it is expected that minimum limit of 100 acres would be adopted.

Private company approaches government for partial acquisition for public purpose. The land acquisition and R&R apply only in the situations which are contemplated in the new land acquisition act. Where the land being acquired by any individual or a private company or a society is less than the minimum limit, the provisions of R&R are not applicable. This puts to rest concerns of the individuals and the companies buying and acquiring agricultural lands below the minimum limit, as the provisions of the act will not apply to such acquisition.

As a natural corollary there can be an abuse to this process as large track of lands can be acquired by an interested party by buying land below the prescribed minimum limit, in the name of different family members/different companies. Therefore, to what extent this concern can be mitigated is anyone's guess. As per the provisions any multi cropped irrigated land cannot be acquired for public purposes. This is to ensure that the land under cultivation which can yield multi crop should not be touched.

### **3.3 Cost of acquisition and it is been defined in Section 3(i) which includes**

- Compensation award amount by the competent authority and or the High Court;
- Demurrage to be paid for damages caused to the land and standing crops during the process of acquisition;
- Cost of acquisition of sites which are out of project land for settlement of displaced or adversely affected families;
- Cost of development of infrastructure and amenities at resettlement areas;
- Cost of R&R as per the act;
- Administrative cost of acquisition of land including both in project site and out of project area lands;
- Other administrative costs and;
- Cost of undertaking social impact assessment;

As is evident from the above there are several heads on compensatory packages and, therefore, cost of acquisition is going to be extremely high. More than that the procedure prescribed for acquiring the land and ascertaining the various costs/compensations in other parts of the act are quite cumbersome leaving ground for disputes and uncertainty.

### **3.4 Minimum Compensation for land**

The compensation package includes:

- (a) Market value of land to be assessed as per the formula in the act;
- (b) Value of the asset attached to land; and
- (c) Solatium which is 100% of total compensation arrived at by adding (a) & (b).

So far as the rural areas are concerned the market value so calculated shall be multiplied by 3. This means that for urban areas, the award amount would be not less than twice that of the market value determined, whereas in rural areas it would be not less than six times the original market value. This compels one to think if the compensation is more than liberal or wherever the compensation, R&R time to be consumed, procedure can be a death knell to any public or PPP project.

### 3.5 Minimum R&R entitlements

#### 3.5.1 For Land Owners:

- (a) Subsistence allowance at Rs. 3000 per month per family for a year;
  - (b) Rs. 2,000 per month per family as annuity for 20 years, with appropriate index for inflation;
  - (c) If house is lost, a constructed house of plinth area of 150 sqm. of house site in rural areas or 50 sum. plinth area in urban area;
  - (d) One acre of land to each family in the command area, if land is acquired for an irrigation project;
  - (e) One time transportation cost of Rs. 50000;
- (a) Where land is acquired for urbanization, 20% of the developed land will be reserved and offered to land owners, in proportion to their land acquired;
- (b) Upon every transfer of land within 10 years of the date of acquisition, 20% of the appreciated value shall be shared with the original owner whose land has been acquired;
- Mandatory employment for one member per affected family or Rs. 200000 if employment is not offered;
  - Offer of shares up to 25% of the Compensation amount.

#### 3.5.2 For Livelihood losers (including landless)

- Subsistence allowance at Rs. 3000 per month per family for a year.
- Rs. 2000 per month per family as annuity for 20 years, with appropriate index for inflation;
- If homeless, a constructed house (plinth area) on 150 sqm. of house site in rural areas or 50 sqm. in urban area, provided free of cost;
- A one-time resettlement allowance of Rs. 50000;
- Rs. 50000 for transportation;
- Mandatory employment for one member per affected family or Rs. 200000.

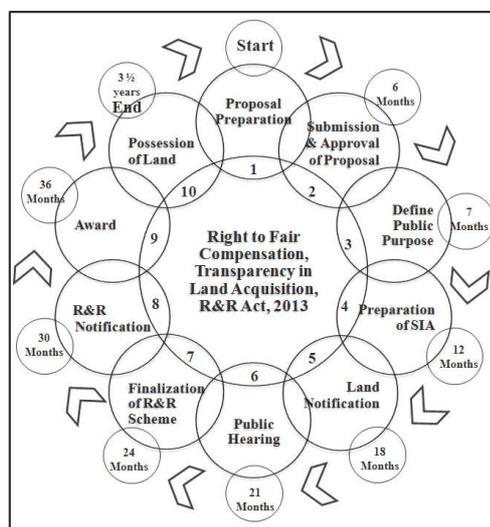


Fig. 1: Activities & Time Frame Required under RFCTLARR Act, 2013

#### 3.5.3 Special Provisions for scheduled tribes:

- One acre of land to each scheduled tribe family in every project;
- One time financial assistance of Rs. 50000 for scheduled tribe families;
- ST families settled outside the district shall be entitled to an additional 25% R&R benefits (one-time payment of Rs. 50000) to which they are entitled in monetary terms;
- Payment of one third of the compensation amount at very outset to scheduled tribe families;

- Preference in relocation and resettlement in area in same compact block;
- Free land for community and social gatherings;
- In case of displacement of 100 or more scheduled tribe families, a tribal displacement plan is to be prepared;

### 3.6 Procedure

There is an exhaustive procedure spelled out under the act wherever any proposal is received by an Appropriate Government to acquire Land equal to or more than 100 acres for a public purpose (The process details in fig. 1).

### 3.7 Pre-Notification

(a) A social impact assessment shall be carried out in the affected areas in consultation with Gram Sabha. The social impact assessment will include assessment of nature of public interest involved, estimation of affected families, social economic impact, the families left behind.

(b) The appropriate government is to ensure that a public hearing on the report on social impact assessment is given in the affected area.

(c) The social impact assessment report shall be appraised by an independent multi-disciplinary expert group, which shall necessarily include the following persons:

- Two non-official social scientist;
- Two experts on rehabilitation; and
- A technical expert in the area relating to the project.
- If the government evokes urgency provisions social impact assessment will not be required.

Where the acquisition involved “any extent of land” a committee shall be constituted to examine proposals for land acquisition and social impact assessment report under the chairmanship of chief secretary and various other departments to ensure that there is a legitimate and bona fide public purpose behind public acquisition. The committee shall examine the report of the collector and the report given by the expert committee. The decision of the committee shall be made available in the public domain. The committee will also ascertain as to whether the consent of 80% of affected families have been obtained where the land is being acquired for the use of private companies for stated public purposes.

### 3.8 Notification, Award & Authorities

(a) Whenever the appropriate government is convinced that any area is required for public purpose, it shall appoint an administrator for R&R. Notification to the said affect along with details and the land to be acquired in rural and urban areas shall be published in the prescribed manner. It is important to note that if the preliminary notification is not published within 12 months from the date of appraisal of social impact assessment report by the expert committee, it shall be deemed to have lapsed and afresh social impact assessment will be required to be initiated. The process of notification as per Section 11 is quite exhaustive:

- Objections can be filed to any notice issued in connection with acquisition for public purpose within 60 days from the date of publication of the notification of the notification. The objections can be on:

(a) Extent and choice of land proposed to be acquired;

(b) Justification offered for public purposes;

(c) Findings of the social impact assessment report; and

(d) The collector is required to give an opportunity of being heard to the objector and, thereafter, the collector is expected to give his report to the appropriate government. The decision of the appropriate government on the objections shall be final.

- The administrator is expected to prepare R&R report after the publication of preliminary notification. For this purpose the administrator shall conduct a baseline survey and undertake a census of the affected families.

- As per Section 17 the R&R scheme to be prepared by administrator is expected to quite exhaustive and shall be time consuming. The draft R&R scheme is required to be given by publicity in the local area, followed by a public hearing. The scheme is to be submitted along with specific report on the schemes and objections received by the administrator to the collector. The R&R scheme is to be published in the official gadget by the administrator and made available in the affected areas. The collector shall review the scheme and submit the same with his remarks to the commissioner R&R for approval.
- (b) Where the appropriate government is satisfied after considering the report on the need of a particular land to be acquired for public purpose the declaration shall be made to that effect. Along with declaration an area identified as the “resettlement area” is also to be declared for the purpose of R&R of the affected families.
- (c) The collector is required to publish a summary of the R&R scheme along with draft declaration. Before the declaration is published the amount prescribed for the cost and acquisition is to be deposited.
- (d) The declaration is to be published in the final gazette and papers giving the full publicity as prescribed in Section 20.
- (e) After a declaration the land proposed to be acquired is to be marked, measured and planned. Further, notices are required to be issued to the interested persons regarding the government’s intention to take possession of land and to enable the concerned persons to receive compensation and benefits of R&R. The interested persons are interested to file their details, claims and objections not less than 30 days and more than six months.
- (f) The collector shall look into the objections received from any person and then pass an award.
- (g) It is important to note that the collector is required to make an award within a period of 12 months from the date of publication of the declaration under Section 20 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.
- (h) While making the award the collector is expected to determine the market value as per the detailed mechanism provided in the act. He is also expected to include the asset attached to the land for the purpose of valuation which may be in the nature of building, trees, plants, standing crops etc. The collector is required to pass R&R awards in terms of mandatory entitlements provided in the schedule II of the act and in accordance with Section 27 of the act. The award given by the collector shall be filed in his office and shall be final and conclusive evidence of the award and the proceedings.
- (i) The collector has been made responsible to ensure that R&R process is completed in all respects. The compensation is paid within a period of 3 months and the monetary part of R&R entitlements are handed over within a period of 6 months from the date of award. Only thereafter, the collector shall take possession of the land so acquired.
- (j) R&R package in the second and third schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award. (Section 39)
- (k) special powers including power to take possession, publish without going through the process. However, these are rarest of rare situations like national security act.
- (l) The act also provides for appointment of administrator for R&R if the appropriate government is satisfied that there is likely to be involuntary displacement of persons due to acquisition of land.
- (m) The central government is expected to constitute a national monitoring committee for reviewing and monitor the implementation of R&R schemes or plans under the act. The states and union territories shall provide all the relevant information on the matters covered under this act, to the national monitoring committee in a regular and timely manner, and also as and when required.
- (n) Part VI of the act provides for establishments of Land Acquisition, Rehabilitation and Resettlement, Dispute Settlement Authority for Centre and State. It is provided, inter alia that:
- Any person interested who has not accepted the award may, within the prescribed time, by written application to the Collector, require that the matter be referred by the Collector for the determination of the State or central authority, as the case may be,

- The Collector shall, within a period of thirty days from the date of receipt of application, the applicant make a reference to the appropriate authority.
- Where the Collector fails to make such reference within the period so specified, the applicant may apply to the State of Central Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

Undoubtedly a bold attempt has been made under the act to protect the interest of persons impacted by land acquisition. However, duty time will tell on its actual efficacy for following reasons:

- The act seen is an attempt on the part of Government to appease a large vote bank and the intent is more political in nature than actual development in mind;
- Where private parties acquire land below the minimum limits by forming cartels or otherwise, this act is not applicable so it is doubtful if the interest of small farmers/land holders/users is actually protected;
- Act is not comprehensive and is to be read with several other acts in force on the land laws;
- The acquisition process pre-notification and post-notification is highly bureaucratic; time consuming and expensive;
- The compensation and R&R provisions sound exorbitant and prone to objections and legal disputes at different stages and before different authorities. Too many checks and balances have been provided which may lead to delays and prohibitive costs;
- Act has a socialist intent at heart and capitalist desire to achieve. How this hybrid mechanism will work is a million dollar question.

In the name of public purpose, the state should not be forcibly acquiring any land for the private corporation or their PPP project. Consent by majority of Gram Sabha members (or equivalent body in urban areas where these have been constituted) should be obtained in all matters pertaining to the act. There is no need to exempt any of the central acts used for land acquisition from the purview of the new act and to bring those at par with the new act, government should carry required amendments. Any unutilised land shall return to the land owners. 'Land bank of un-fertile, waste-lands' for use by the industry or infrastructure projects should be prepared by the government not with the land remaining unutilised.

### 3.8.1 Applicability of the Law

The standing committee had recommended that all 16 central acts, used for land acquisition, should be brought under the purview of the new act, to make all equal before law (Article 14 of the Constitution). However, Section 105, Schedule IV excludes crucial 13 Central Acts including Industrial Development Act, Land Acquisition (Mines) Act, National Highways Act and others from the purview of the new act. This means that 90% of the land acquired as on today will continue with injustice and force used, with no change at all. It provides for issuing of notification mandating application of Schedule I and II within a year bringing all the acts, but the process based process of land acquisition will not be applied to them and arbitrariness and forced acquisitions will continue. RFCTLARR also mandates that the provisions of R&R under this act shall apply to acquisitions for private corporations, partial or full, and to purchase of land by private corporations beyond a certain limit, to be fixed by state governments, Section 2.3.

## 4 PUBLIC PURPOSE

Section 2 of RFCTLARR Act has an expansive definition of public purpose and infrastructure and also a clause which leaves the discretionary power to declare anything as infrastructure and of public purpose. Infrastructure has been equated with public purpose, which is ironic, given that expert committee is to make a decision about the public purpose. We must realise that every land to be acquired is serving public purpose of one kind or the other, single or multi crop land is also serving public purpose, hence a limited definition of public purpose was required, not an all encompassing, including even private profit projects.

### 4.1 Acquisition for Private and PPP Projects

The most regressive step in the RFCTLARR Act is the role of government in acquisition for private and PPP projects, which are for profit and not for public purpose, Section 2.2. In this era of neo-liberal economic

reforms, private projects with corporate investment and interests are taking a much larger toll of land and other rich natural resources as also uprooting by killing communities which are generations old. This must come to an end and the same can happen only with stopping the State playing a role of facilitator and land dealer. At the cost of the livelihood of the nature based sections and working class section of society, the state can't transfer the most valuable livelihood resources such as land, water to the profiteering bodies in the garb of 'public interest' and 'public purpose'.

Provisions of free prior informed consent and consultation of local self Government institutions, one of the key features advertised in favour of the RFCTLARR Act is the 70% consent of land owners for PPP projects and 80% consent of the land owners for the private projects, Section 2.2.b. However, as we said that even with consent, government has no business acquiring land for the private corporation's profit, in the name of public purpose. Except for scheduled areas, Section 41.3, RFCTLARR Act mandates no consent of the Gram Sabha in government developed PPP. This is completely unacceptable given that post independence maximum acquisitions were done for the public sector companies leading to massive displacement.

Role of Gram Sabhas and other local self government institutions have found mentions at different places, Section 4, Section 5 (SIA); Section 16.5 (preparation of R&R scheme); Section 41.3 (Consent of Gram Sabha in SAs); Section 45 (Gram Sabha members in R&R Committee). In addition, provisions for two public hearings have been made, for preparation of SIA report and to prepare R&R Scheme. To its credit, RFCTLARR Act mandates publication of all the necessary information in the local language and made available to the Gram Sabha, Panchayat, Municipality and Municipal Corporation and also to project affected families.

#### **4.2 Social impact assessment and determination of public purpose**

One of the demands made by us was for compulsory social impact assessment to evaluate the extent of impact on various sections of society affected by displacement, given massive impoverishment and unnecessary acquisition of extra land and forcible acquisition without any options assessment. This has been incorporated in RFCTLARR, with exception of irrigation projects, for every project; Section II A, Section 4. Contrary to EIA the SIA report will be prepared by appropriate government in consultation with the Panchayat, Municipality and Municipal Corporation. A Public Hearing is also mandatory in the affected areas to ascertain the views of the affected families and included in the SIA report, Section 5. The expert group for appraisal of SIA report and to decide upon the nature of the public purpose, after consistent pressure, now has representatives of the democratically elected local self government institutions and non-official social scientists, expert's etc Section II B and Section 7. This is an improvement from the provisions of the earlier act where there was no process or provision for consulting or seeking consent of the people.

#### **4.3 Food security and agricultural land acquisition**

It is an irony that while food processing and other agriculture related secondary and tertiary sector industries have been brought in the public purpose definition but agriculture itself has not been considered a public purpose, something which would have meant no acquisition of agricultural land. The decision on quantum of agricultural land to be acquired has been left to State governments to decide, Section 10. However, the provision for development of an equivalent amount of culturable wasteland for agricultural purposes in lieu of land diverted is a welcome move, made possible by plea for ensuring food security, Section 10.3.

#### **4.4 Return of unutilised land to farmers**

Section 101 recommends that the land, if not used till 5 years, from the date of taking possession, it should be returned to the original land owners or to their heirs or to the land bank. We welcome this but the ownership over the land is of those who till it and if not used and unutilized then it must be returned to the owners or distributed amongst the project affected people. We oppose any such feature which will promote land bank, since it has promoted large scale acquisition in the past and later illegally transferred the same land to corporations for real estate and other purposes.

#### **4.5 Retrospective application of the law**

Section 24 deals with the retrospective application of the R&R provisions and the RFCTLARR Act and ongoing acquisitions under Land Acquisition Act, 1894. The act mandates only application of provisions of compensation, not of R&R scheme, in cases where the award under Section 11 of the Land Acquisition Act,

1894 has not been made. In case, the Award under Section 11 of Land Acquisition Act, 1894 has been made but possession not taken or compensation amount not deposited in majority cases then government may start fresh acquisition processes under the new act. It needs to be noted that nearly 100 million people have been displaced since independence and with a dismal 17 to 20% rate of R&R we had suggested that not only the retrospective application of the provisions of the new act but a National R&R Commission be established to deal with the claims of the projected affected people from various projects. Also the Land Acquisition Act, 1894 need to be repealed completely, two acts dealing with the land acquisition will bring in legal challenges and also negate the whole purpose of bringing in a new legislation with focus on process and consent based land acquisition process.

#### **4.6 R&R Benefits**

In terms of the R&R benefits, Section 26 to 30, schedule II, promote the principle of cash compensation rather than livelihood based R&R. It is a retrogressive step since it negates the land and employment based R&R as mandated in the Narmada water dispute tribunal award, and various other projects. The proposed provisions of compensating employment with money and high rates for land acquired will only lead to speculative land market and will destroy the fragile economy of the rural hinterland which will lead to further urban migration. Land for land provision is limited to one acre for general category farmers and two and a half acre for scheduled cast and scheduled tribe families in case of irrigation projects alone. By its own definition, marginal farmers are those who have one hectare of un-irrigated or half hectare of irrigated land, the provision of one acre land in command area is nothing but a cruel joke to farmers.

#### **4.7 Compensation for Land**

Section 26 to 30 and schedule one deals with the various provisions of calculation of compensation for land acquired but the power remains with the collector. It would have been fair to set up a land price determination commission which would have had participation of affected communities and also taken in account the various factors. Much hype has been generated that two times and four times of compensation amount would be paid in urban area and rural area, respectively. However, schedule one, mentions of a sliding scale, to be fixed by the State governments, which will mean that farmers in rural areas won't get four times the market price of the land.

#### **4.8 Urgency Clause**

Section 40 of the act restricts the use of urgency clause to defence of India or national security or emergency arising out of natural calamities. However, the provisions of social impact assessment, consultations and consent of Gram Sabha or project affected families, or public hearings will not be applicable, except for the scheduled areas, but that too can be waived by the appropriate government. On one hand restricting the urgency provisions is welcome but expanding it to include anything related to defence or national security is unacceptable, since peace time operations and requirements doesn't need urgency, and such projects must follow due process of law. Activities like constructions of cantonments, housing units, golf courses, play grounds, firing ranges etc for defence and security forces during the peace time need not apply urgency provisions of the act.

#### **4.9 Urban Eviction**

The act almost totally excludes and have unaddressed the situation in the urban areas, where there is no land acquisition, but eviction, brutal and unjust, for any and every elitist real estate development to infrastructure without guaranteeing right to shelter, right to life and livelihood. The silver line though is, Schedule II.3 provision of making available for purchase 20% of developed land for land owning families in urbanisation projects, and Section 3.c.vi where definition of project affected families includes, "a family residing on any land in the urban areas for preceding three years or more 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".

"Requirement of separate land acquisition act for J&K State". Due to article 370 of the Indian Constitution: Temporary provisions with respect to the State of J&K. Not with standing anything in this constitution, (a) The provisions of article 238 shall not apply in relation to the State of J&K; (b) The power of Parliament to make laws for the said State shall be limited to (i) Those matters in the union list and the concurrent list

which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the dominion of India as the matters with respect to which the dominion legislature may make laws for that State, and (ii) Such other matters in the said lists as, with the concurrence of the Government of the State, the President may by order specify. Explanation for the purposes of this article, the Government of the State means the person for the time being recognized by the President as the Maharaja of J&K acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948; (c) The provisions of article 1 and of this article shall apply in relation to that State; (d) Such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify: Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) Of sub-clause (b) shall be issued except in consultation with the Government of the State:

(1) Provided further that no such order, which relates to matters other than those referred to in the last preceding proviso, shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second provision to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take there on.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

Due to this article the Land Acquisition Act, 1894 vis-a-vis RFCTLARR Act, 2013 is not applicable in the state of J&K. The State has its own Land Acquisition Act, which comes into existence in the year 1990. Which is different from Land Acquisition of 1893 (which is applicable in the rest of India) Thus the Land Acquisition process in both areas different from each other.

## 5 THE STATE LAND ACQUISITION ACT, 1990

The J&K Land Acquisition Act has been adapted from the Land Acquisition Act, 1894. The sections under the act which are changed for J&K keeping the requirements of the state in mind which are as follows:

- Section 11A deals with the correction of clerical or arithmetical errors etc. However, the Land Acquisition Act, 1894 of India under Section 11A dealt with period shall be which an award within made. The Land Acquisition Act, 1894 of India Section 13A dealt with the correction of clerical or arithmetical errors etc.
- The Land Acquisition Act, 1894 of India Section 15A dealt with power to call for records, etc. has been deleted in the Land Acquisition Act of J&K.
- The Land Acquisition Act, 1894 of India Section 17, which deals with Special Powers in case of Urgency (sub-section 2), has been deleted.
- The Land Acquisition Act, 1894 of J&K in Section 19A has been added.
- The Land Acquisition Act, 1894 of India Section 23, which deals Matters to be considered on determining compensation sub-section (1A), has been deleted from the Land Acquisition Act of J&K.
- Land Acquisition Act of J&K Section 25 on rules as to amount of compensation have been dealt in detail and it has been divided into three sub-sections.
- Land acquisition act of J&K Section 41 on agreement with the Government sub-section 4A deleted.
- Land Acquisition Act, 1894 Section 44 on how agreement with Infrastructure Company may be proved has been deleted from land acquisition act of J&K.



- Land acquisition act of J&K Section 52 on delegation have been added specifically to cater to the requirement.

The State of J&K is guided by the State Land Acquisition Act. According to this act also the collector will be the responsible person to acquire the land under the act for infrastructure development projects, to oversee distribution of the compensation and address to the grievances.

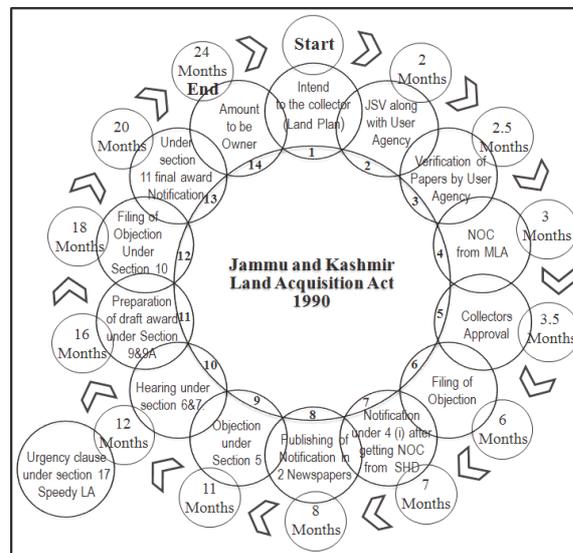


Fig. 2: Activities & Time Frame Required under J&K LA Act, 1990

### 5.1 Statement for Land Acquisition in J&K State (the process detailed in fig. 2):

(1) Intend to the collector: With site plan

- Where the certificate to be given to prove;
- Land is not engaged in other state/local level purposes;
- The land used for public purpose and
- Funds are available with the department who is acquiring the land.

(2) Spot location of land by the concerned department to update on the revenue records which are:

- Tatima Sajra (Revenue Map);
- Field Book (Land Measurement);
- Khasrs (Revenue Record)
- Gridarway (Record of land under cultivation)
- Jamabandi (Revenue Records of Past and Current year)

(3) The concern party who is acquiring the land will verify the papers, which will be passed over to the interesting party by the collector office.

(4) No objection certificate will be required from the local minister of state legislation (MLA) if the central government is taking the land.

(5) The collector will give his recommendations.

(6) The collector will send it to the home department of the state for taking no objection certificate.

(7) After collecting no objection from the home department the collector will issue notification under Section 4(i).

(8) The gazette notification shall be published in 2 local newspapers.

(9) If somebody has some objection he will file the objection under Section 5 of land acquisition act of J&K.

(10) Under Section 6 and 7 this process will take place and if the concern party wants a speedy process they can apply it by Section 17 of land acquisition act of J&K.

(11) Notice of land acquisition will be under Section 9 & 9a of J&K land acquisition act.

(12) Anybody wants to object it he can do it under Section 10 of J&K land acquisition act.

(13) Under Section 11 the drafts will be awarded.

(14) Compensation (in which upto 10 lacks: The collector will award the process of land acquisition, from 10 to 30 lacks: District Commissioner will award the process of land acquisition and from 30 to 50 lacks: Divisional Commissioner will award the process of land acquisition).

## 5.2 The J&K Land Revenue Act, 1996

It is an act to amend, consolidate and re-enact the J&K Land Revenue Regulations No. 1 of 1980. It is measure to consolidate, amend and declare the law in force in J&K State with respect to the making and maintenance of records-of-rights in land, the assessment and collection of the land revenue and other matters relating to land and the liabilities incident thereto. Provisions under the act:

- Section 24 describes the making of that part of the annual record, which relates to landholders, assignees of revenue and occupancy tenants;
- Section 25 deals with the making of that part of the annual record which relates to the other persons;
- Section 26 mentions determination of disputes;
- Section 27 provides restriction on variation of entries in records;
- Section 29 details the penalty for neglect to report acquisition of any right referred to in Section 24;
- Section 30 deals with obligation to furnish information necessary for the preparation of record;
- Section 41 to 53 gives details about the procedure of the assessment and
- Section 93 to 103 deals with the procedure of land revenue survey.

When the land is acquired for the infrastructure development projects (PMGSY) the records have to be updated and survey has to be conducted with the revenue department. The lists of PAPs are prepared from the land survey conducted by the revenue department.

## 6 CONCLUSION

There are many more detailed points in the act which need our attention, but overall, the act doesn't protect land rights or deals with the historic injustices committed in the name of development and public purpose for inclusive planning. It is solely aimed at facilitating land acquisition for coporarates without any stock taking of the land acquired, used or lying vacant and so on. The rapacious use of Land Acquisition Act, 1894 by the government to secure land for 'development projects' has caused over 100 million people to be displaced from their land, livelihoods and shelters. The country is dotted with communities resisting State sponsored land grab which resonate the demand for a just law to ensure that there is no forced acquisition of land and resources, including minerals and ground water. The government must respond to the voices from movements across places such as Narmada, Koel Karo, Singur, Nandigram, Sonbhadra, Chindwara, Bhavnagarm, Kalinga Nagar, Kashipur, Raigarh, Srikakulam and mining areas in central India with genuine efforts to address the longstanding crisis concerning land acquisition and R&R.

If the political parties are serious about addressing the conflicts over the land and other natural resources then they must listen to the voices of those struggling or else it will only aggravate these conflicts all across the country. The need of growth, infrastructure and urbanisation can't be fulfilled on the graveyard of millions. A pro-people development planning act with complete participation of the Gram Sabha will go a long way in stopping the massive corporate corruption and lead to decentralization of power having an overall impact on the politics of the country.

## 7 REFERENCES

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