

Presentation on “Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” (LARR Act, 2013)

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By

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Land Acquisition – International Outlook

UNITED STATES OF AMERICA

- Fifth Amendment - *Takings Clause*
- The Federal Government and each state has the power of ‘eminent domain’—the power to take private property for “public use”.

UNITED KINGDOM

- The Land Clauses Consolidation Act 1845,
- The Land Compensation Act 1961,
- The Compulsory Purchase Act 1965,
- The Land Compensation Act 1973,
- The Acquisition of Land Act 1981,
- The Town and Country Planning Act 1990,
- The Planning and Compensation Act 1991,
- The Planning and Compulsory Purchase Act 2004

ITALY

- *Esproprio*, or more formally *espropriazione per pubblica utilità* (literally "expropriation for public utility") takes place within the frame of civil law. The law regulating expropriation is the D.P.R. n.327 of 2001, amended by D.Lgs. n.302 of 2002

ISRAEL

- Land (Acquisition for Public Purposes) Ordinance (1943).
- Acquisition for Public Purposes (Amendment of Provisions) Law, 5724-1964.

History

- 1824 Regulation I – Applicable to Bengal Provinces. Acquisition for roads, canals & public purposes – at a fair and reasonable price.
- 1839 Building Act – for Bombay.
- 1852 Building Act – for Madras
- 1857 For the whole of British India

- 1870 For the whole of British India
- 1894 The Land Acquisition Act, 1894

“The Land Acquisition Act, 1894”

- 55 sections.
- Did not relate to Rehabilitation and Resettlement.
- Related only to acquisition, payment of compensation, temporary occupation and acquisition of land for Companies etc.
- Sec.3(f) - “Public Purposes” includes:
 - (i) Provision of village sites or extension, development or improvement thereof.
 - (ii) Provision of land for Town or Rural Planning.
 - (iii) Provision of land for Planned development and subsequent disposal by lease, assignment or sale.
 - (iv) Provision of land for Government Corporations.
 - (v) Provision of land for residential purposes to the poor or landless or to those affected by calamities etc.
 - (vi) Provision of land for education, housing, health or slum clearance scheme, by Government or local authority or registered Society or Co-operative Society with prior approval of Government.
 - (vii) Provision of land for any other scheme of development.
 - (viii) Provision of land for premises or building for locating a Public office.
- Sec.4 – Preliminary Notice of Survey then entered upon and survey and take levels of any land in such locality, etc.
- Sec.5A – Objections within 30 days from the date of publication of Notification.
- Sec.6 – After the hearing etc., Declaration that land is required for a Public purpose is to be made within one year from the date of publication of the Notification. (Formerly 3 years).
- Sec.8 – Collector to mark-out and measure the land and make a Plan of the same.
- Sec.16 – Afterwards, the Collector may take possession of the land which shall vest absolutely in the Government, free from all encumbrances.
- Sec. 23 – Matters to be considered in determining compensation:-
 - (i) Market value of the land on the date of publication of the notification.
 - (ii) to (iv) Damage sustained because of standing crops or trees, etc.
- Sec.23(1-A) – Interest at 12%.
- Sec.23(2) – 30% of market value (as solatium)
- Part VII – Acquisition of land for Companies.

- Sec.38A – An Industrial concern employing at least 100 workmen desiring to acquire land for the erection of dwelling houses or for amenities, is deemed to be a Company.
- Sec.39 – Acquisition of land for Company only after consent of Government.
- Sec.40 – Government to be satisfied that land is for residence for workmen or for construction of buildings or work of a Company or that the work is likely to prove useful to the Public.
- Sec.41 – Agreement between Government and the Company.
- Sec.44A – Restriction on transfer etc. A Company for which land was acquired shall not be entitled to transfer by way of sale, mortgage, lease or otherwise except with the previous sanction of the Government.

“Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.”

- 114 Sections and 4 Schedules.
- Chapter I - Preliminary
- Chapter II - Determination of social impact and public purposes.
 - A) Preliminary investigation for determination of Social Impact and Public Purpose.
 - B) Appraisal of Social Impact. Assessment Report by an Expert Group.
- Chapter III - Special provision to safeguard food security.
- Chapter IV - Notification and acquisition.
- Chapter V - Rehabilitation and Resettlement Award.
- Chapter VI - Procedure and manner of Rehabilitation and Resettlement .
- Chapter VII - National Monitoring Committees for Rehabilitation and Resettlement.
- Chapter VIII - Establishment of Authority.
- Chapter IX - Apportionment of compensation.
- Chapter X - Payment.
- Chapter XI - Temporary Occupation of Land.
- Chapter XII - Offences and Penalties.
- Chapter XIII - Miscellaneous.
- The First Schedule – Compensation for Land Owners
- The Second Schedule – Elements of Rehabilitation and Resettlement Entitlements for Affected Persons.
- The Third Schedule – Provision of Infrastructural Amenities
- The Fourth Schedule – Enactments regulating Land Acquisition

Sec.2 – Application of Act.

The Act shall apply when the Government acquires land for its own use including for a PSU and for Public purposes, and shall include the following purposes, i.e.

- a) For Strategic Defence purposes;
- b) For Infrastructure projects.
 - (i) All activities notified (excluding Private hospitals, private educational institutes and private hospitals);
 - (ii) Agro processing supply of inputs for agriculture, warehousing, cold storage marketing, infrastructure for agriculture, diary, fisheries etc.
 - (iii) Project for Industrial corridors, mining activities, national investment and manufacturing zones.
 - (iv) Project for water harvesting, water conservation structures and sanitation;
 - (v) Government administration and aided educational and research schemes or Institutions;
 - (vi) Projects for sports, health care, tourism, transportation of space programmes;
- c) Any infrastructure facility notified.
- d) Project affected families;
- e) Specified housing projects;
- f) For planned development or improvement of village or urban sites;
- g) Project for residential purposes to the poor or landless.

Sec. 4 – Preparation of Social Impact Assessment study.

- The Panchayat or Municipality shall be consulted. A SIA study shall be carried out.
- The Notification shall be published and upheld on the website.
- SIA study to be completed in 6 months.
- Report to be made available.
- SIA study shall include:
 - a) Whether the proposed acquisition serves a public purpose;
 - b) Estimation of affected families and those who will be displaced;
 - c) Extent of lands, houses and common properties likely to be affected;
 - d) The land should be the absolute bare minimum needed;
 - e) Alternate land should have been considered and found not feasible;
 - f) Study of social impact of the project and the nature and costs.

- g) Environmental Impact Assessment study shall be carried out simultaneously.
- h) SIA study should consider livelihood, public and community properties, roads, public transport, drainage, sanitation, drinking water, water for cattle, pond, grazing land, plantation, public utilities, such as post offices, shops and food storage godowns, electricity, healthcare schemes, parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.
 - A Social Impact Management plan is also to be prepared listing ameliorative measures.
 - Public hearing required and study to be published.
 - SIA Report to be appraised by an expert group.

Sec. 8 – Exemption of acquisition proposals and SIA Report by Government.

Sec. 9 – Exemption from SIA in cases of urgency.

Sec. 10 – Food security.

Irrigated multi-crop lands shall not be acquired except as a demonstrable last resort and the aggregate shall not exceed the limits notified by the Government.

NOTIFICATION AND ACQUISITION

Sec.11 – Publication of preliminary notification.

Sec. 11(4) – No person shall make any transaction or create any encumbrances on such land from the date of publication of the notification till proceedings are completed.

Sec.12 – Officers may carry out survey and dig or bore into sub-soil, set out boundaries, place marks etc.

Sec.14 – Preliminary notifications to be issued within 12 months from SIA Report of expert groups (or within extended period of 12 months) otherwise the fresh SIA to be undertaken.

Sec.16 – Preparation of R&R Scheme to be administered.

Sec.17 – Draft Scheme to be reviewed by Collector.

Sec.18 – Scheme to be made public.

Sec.19 – Publication of declaration and summary of R&R.

Sec.23 – Enquiry and Award by Collector.

(a) of the true area of land;

(b) Compensation as determined u/s.27 along with R&R Award.

(c) Apportionment of compensation amongst interested persons.

Sec. 24 – An Award under the 1894 Act shall continue to be valid.

If an Award has not been made u/s.11 of the 1894 Act, then the provisions of this Act relating to the determination of compensation shall apply.

Sec.24(2) – If an Award had been made under the 1894 Act 5 years or more prior to this Act, but physical possession has not been taken or compensation not been paid, then the proceedings shall be deemed to have lapsed.

If an Award had been made and compensation has not been deposited in the account of the beneficiaries then they shall be entitled to compensation under the new Act.

Sec.25 – Award to be made within 12 months (plus extension of 12 months).

Sec.26 – Determination of market value, the higher of :

- a) Reckoner value; or
- b) Average sale price in the vicinity.
- c) Agreed amount of compensation in case of acquisition for Private Companies or for Public Private Partnership.
- d) Date of Notification is the basis.

Sec. 27 – Value of assets attached to the land shall also be calculated.

Sec. 28 – To determine the compensation, the Collector shall consider the following:

- (i) Market value u/s.26 and award amount under First and Second Schedule.
- (ii) Damage on account of standing crops and trees taken.
- (iii) Damage by reason of severing such land from Owner's other land.
- (iv) Damage on account of effect on other property of Owner or his earnings.
- (v) Expenses for change of residence or place of business.
- (vi) Damage or diminution of profits of the land from the time of Declaration upto possession.
- (vii) Any other Grounds in the interests of equity and justice to the affected families.

Sec. 30 – Award of Solatium.

Solatium of 100% of the compensation amount. Interest at 12% on the Market Value from the date of publication of the Notification of the SIA Study till the Collector's Award or possession whichever is earlier.

REHABILITATION AND RESETTLEMENT AWARD

The Collector shall pass Rehabilitation and Resettlement Award for each affected family as set out in the Second Schedule.

Sec. 31(a) – Rehabilitation and Resettlement Award shall include:

- a) Rehabilitation and Resettlement amount payable;
- b) Bank Account details.
- c) Particulars of new site and houses to be allotted;
- d) Land allotted.
- e) Allowances and transporting allowances.
- f) Payment for cattleshed and petty shops.
- g) One time amount for artisans and small traders.

- h) Mandatory employment to be provided.
- i) Fishing rights, if applicable.
- j) Annuity and other entitlements.
- k) Special provisions for SC/ST to be provided.

The Government may by Notification increase the Rehabilitation and Resettlement amount on the basis of the price Index.

Sec.32 – Collector shall ensure the provisions of Infrastructure facilities and basic minimum amenities in every resettlement area.

Sec.38 – The Collector shall take possession after R&R Entitlements are paid. Full compensation is paid within 3 months of the Award and monetary part of R&R Entitlement paid within 6 months of Award. Infrastructure Entitlements shall be provided within 18 months from the Award. The Collector shall ensure that R&R process is completed in all respects before displacing the affected families.

Sec.39 – Additional compensation for second or successive displacements.

Sec.41 – Special provision for SC/ST.

Sec.43 – Administrator R&R.

Sec.44– Commissioner R&R.

Sec.45 – R&R Committee for project labour.

Sec.46 –

- Private Negotiations
- For more than a specified area shall apply to the district collector informing of intent, purpose and particulars of land
- Collector shall refer to commissioner for R & R
- Commissioner shall approve an R & R scheme
- Collector shall pass individual awards
- No land use change to be permitted if R & R is not complied with in full
- Any purchase of land by a private person without complying with R & R shall be void
- If any land has been purchased on or after 5/9/2011 and then acquired within 3 years from the date of this act then 40% of the compensation shall be paid to the original owners

Sec.48 – National Monitoring Committee for R&R.

Sec.50– State Monitoring Committee for R&R.

Sec.51 – Land Acquisition and R&R Authority.

Sec.69– The Authority shall take into consideration whether the Collector has followed the parameters.

Sec.69(3) – Authorities shall award a solatium of 100% over the total compensation amount.

Sec..81 – Temporary occupation of waste or arable land for upto 3 years.

Sec..96 – Exemption from Income-tax, Stamp Duty and fees.

“No Income-tax or Stamp Duty shall be levied on any Award or agreements made under this Act, except u/s.46 and no person claiming under any such Award or Agreement shall be liable to pay any fee for a copy of the same.”

Sec.100– No change of purpose to be allowed. However, if land is rendered unusable then Government may use such amount for any other public purpose.

Sec. 101 – Return of unutilized land.

- If any acquired land remains unutilized for five years from the date of possession, the same shall be returned to the original owner or legal heirs or to the Land Bank of the Government
- Land Bank means a Governmental entity that focuses on the conversion of Government-owned vacant, abandoned, unutilized acquired lands and tax-delinquent properties into productive use.

Sec. 102 – Sharing of appreciation.

- If land acquired is transferred within five years from acquisition without any development having taken place on such land, 40% of the appreciation shall be paid to the original owners. It shall only be in respect of the first sale of transfer after the acquisition.

Sec. 104.

- The Government may take land on lease instead of by acquiring, for a public purpose.

Sec. 108.

- If a State law provides for a higher compensation, or rehabilitation and resettlement facilities, then the affected persons may at their option opt to avail of such higher compensation or R&R facilities.

First Schedule – Compensation for land owners.

Rural Areas

The minimum compensation package shall be as under:

- 1) Market value.
- 2) Multiplication factor for rural areas.
Between 1 and 2 based on the distance of project from urban area.
- 3) Value of assets attached.
- 4) Solatium = 100% of (Market Value x Multiplication factor) + Value of assets.
- 5) Total Compensation= (Market value x Multiplication factor)+ Value of assets + Solatium

i.e. Compensation for rural areas can be up to four times the market value of the land plus twice the value of the assets.

Urban Areas

For urban areas, the multiplication factor is 1.

Therefore, compensation would be twice the market value of the land plus twice the value of the assets.

Second Schedule – Rehabilitation and Resettlement Entitlements.

- 1) Housing units in case of displacement in rural areas as per Indira Awaas Yojana specifications.
 - In urban areas not less than 50 sq.mts.
 - or a monetary compensation.
- 2) Land for land in case of an irrigation project.
- 3) Offer for developed land. 20% of developed land in the case of urbanization at a price equal to the cost of acquisition and the cost of development.
- 4) Choice of annuity or employment or Rs.5,00,000/- per affected family, or annuity policies of at least Rs.2,000/- per month per family for 20 years, with indexation.
- 5) Subsistence grant of Rs.3,000/- per month for one year.
- 6) Transportation cost for displaced families - Rs.50,000/-.
- 7) Cattle shed/petty shop costs. Minimum - Rs.25,000/-.
- 8) One time grant to artisans – minimum Rs.25,000/-.
- 9) Fishing rights where applicable.
- 10) One time resettlement allowance of Rs.50,000/-
- 11) Stamp duty and registration fee for allotted houses.

Timeline

- Proposal
 - SIA – 6 months
 - Environmental Impact Assessment – 6 months simultaneous with SIA
 - Evaluation by Expert Group – within 2 months from the SIA completion
 - Notification – within 12 months from Evaluation (could be extended for further 12 months)
 - Objections – within 2 months from publication of notification
 - Declaration – within 12 months from date of notification (could be extended for further 12 months)
 - Claim – 1 to 6 months from date of public notice
 - Award – within 12 months from date of declaration
- Normal Time could be between 50 months and 74 months.

Draft Rules for the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation & Resettlement Act, 2013

RETROSPECTIVE OPERATION

“Rule 23. Retrospective operation -The retrospective operation of the Act as prescribed in Section 24 of the Act will be deemed to have come into operation on and from the date on which the new law is notified in the Official Gazette.”

Section 24 of the LARR Act, 2013

(1) Notwithstanding anything contained in this Act. in any case of land acquisition proceedings initiated under the Land Acquisition Act. 1894,-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) ***

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act. 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.

Annexure IV –

C. List of socio-economic and cultural parameters to be covered by the SIA

- 1) Demographic details of the population in the project area
- 2) Poverty levels
- 3) Vulnerable groups
- 4) Kinship patterns and social and cultural organisation
- 5) Administrative organisation
- 6) Political organisation
- 7) Civil society organisations and social movements
- 8) Land use and livelihood
- 9) Local economic activities
- 10) Factors that contribute to local livelihoods
- 11) Quality of the living environment

Annexure IV –

D. Key impact areas

- Impacts on land, livelihoods and income
- Impacts on physical resources
- Impacts on private assets, public services and utilities
- Health impacts
- Impacts on culture and social cohesion
- Impacts at different stages of the project cycle
 - Pre-construction phase
 - Construction phase
 - Operation phase
 - De-commissioning phase
 - Direct and indirect impacts
 - Differential impacts
- Cumulative impacts

DISCLAIMER

The material contained herein is not exhaustive and contains certain generalizations.