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PEREGRINATION OF LAND ACQUISITION (AMENDMENT) BILL, 2015. WILL THE PROPOSED BILL PROTECT THE PEOPLE FROM THE NOTION OF EMINENT DOMAIN?*

ABSTRACT:

The objective of writing this paper is to shed some light on how the expedition of Land Acquisition Bill, 2015 has adversely affected the country in its entirety. A coherent policy response to the tough social questions raised by compulsory land acquisition in India is long overdue. I shall attempt to discuss that how Conflicts have escalated, while successive governments failed to enact a law protecting the livelihoods of affected people. Increasingly over the last few years there is a clamor for repealing or at least amending the land acquisition bill. Land acquisition in India refers to the process by which the union or a state government in India acquires private land for the purpose of industrialization, development of infrastructural facilities and provides compensation to the affected land owners and their rehabilitation. This paper focuses on various proposed amendments as well as pros n cons of the proposed bill. Further, the paper highlights various judgments of High Court and Apex Court in order to create the notion more lucid.

Keywords: *Land Acquisition, Industrialization, Rehabilitation, Policy, Eminent Domain.*

I. INTRODUCTION:

The Land Acquisition Amendment Act, 2015 is currently creating a lot of hassle in Parliament with the Lok Sabha session being adjourned for the same on February 24. With both opposition and ruling parties equally holding their leashes tight on the Land Bill, only time will tell if the amendments in the Land Acquisition Act will be passed or not and whether they will be truly beneficial. The political discourse over land acquisition has proceeded in binary terms industry versus farmer, growth versus no growth thereby obfuscating the real issue at the heart of the land acquisition debate: the fear of arbitrary exercise of state power in reshaping property relations in Indian society.

Instead of tweaking the 2015 land acquisition bill with a few amendments here and there to appease political allies and win over the Opposition, the government should use this opportunity to address the issue of land acquisition in a systematic and constructive manner. At a minimum, this requires three things.

The first is to rid the discourse of the confusion that surrounds the notion of eminent domain. The power of eminent domain allows the state to forcibly acquire land from private individuals only upon the satisfaction of three conditions. The acquisition must be pursuant to a validly enacted law, for a public purpose and upon payment of just compensation. Therefore,

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acquisition of land by the state for private industry must only be done upon the showing of a demonstrable public purpose in each case.

While drafting the Land Acquisition, Rehabilitation and Resettlement (LARR) Act, 2013, the UPA government had argued in favor of state intervention for land acquisition on behalf of private industry on the ground that in the particular circumstances of India, where land records are unclear and there is unequal bargaining power between land losers and gainers, state intervention is necessary to ensure ease of land acquisition for private industry and to safeguard the rights of land losers to just compensation and rehabilitation. However, given that one quarter of all of India's districts have ongoing political and legal conflicts over land acquisition, it is clear that neither purpose is being effectively served by state intervention. Therefore, we need to rethink what kind of state intervention is necessary to achieve these purposes.

The second is recognition that the way land acquisition is done in India is peculiar to our colonial history. It may have some similarities with the way land is acquired in other British colonies that inherited colonial laws, but is certainly not the way land was or is acquired in colonizing countries like the UK, France and Germany. Our British colonial masters instituted a very different legal regime governing the state's relationship to land in India as compared to what was prevalent in their own country, with lasting implications for conflicts over land throughout our post-Independence history. For instance, in the UK, there is no standing law that allows government to acquire land for private industry.

II. HISTORY OF THE BILL:

Land acquisition in India refers to the process of land acquisition by the central and the state government of India for various Infrastructures and growth initiatives. Several controversies have arisen with claims that land owners have not been adequately compensated.

Land acquisition in India by the Right to fair compensation and transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013, came into force from 1st January 2014. Till 2013, land acquisition in India was governed by Land acquisition Act, 1894. On 31 December 2014, the new government in India passed an ordinance with an official Mandate to meet the twin objectives of farmer welfare, along with expeditiously meeting the strategic and welfare need of the country. The government has passed Land acquisition amendment Bill in the lok Sabha on 10 March 2015.

III. MISUSED EMINENT DOMAIN: DISPUTES AND LITIGATION

3.1. Development Induced Displacement:

Eminent domain doctrine has been widely used in India with over 21.6 Million People in period of 1951-1990. They have been placed with large scale projects like Dams, Canals, thermal plants, sanctuaries, and mining. These occurrences are generally categorized as “**Development Induced Displacement**”.

The process of land acquisition in India has proven unpopular with citizen of India. The amount reimbursed is fairly low with regard to current price Index and people fails to find adequate employment.¹

¹ Allen, Tom (2008): “Controls Over the Use and Abuse of Eminent Domain in England: A Comparative View” in Robin Paul Malloy (ed.), Private Property, Community Development, and Eminent Domain (Hampshire: Ashgate Publishing), 75-100.

The draft of government national policy for rehabilitation states that a figure of 75% of displaced people since 1951 are still waiting for rehabilitation and this displacement covers only the direct displacement. This rehabilitation policy does not cover fisherman, landless laborers, and artisans etc. one in ten tribal's is a displaced person. Dam projects have displaced close to million Adivasis. Some estimates suggest that 40% of displaced people are of tribal origin. There have been rising number of political and social protest against the acquisition of Land by various Industries. They have ranged from Bengal², U.P, in recent past. The acquisition of 997 acres of land by TATA Motors in Bengal in order to set up factory for the cheapest car in India was protested (Singur TATA Nano controversy).

Similarly *Sardar Sarovor Dam Project* on the river Narmada was planned on acquired Dam though the project was later cancelled by the World Bank. The land acquisition Act 1894 allowed the government to acquire Private land. It is only legislation pertaining to land acquisition which is amended several times, has failed to serve its purpose. Under 1894 Act, displaced people were only liable for monetary compensation linked with market value of the land.

3.2. Inefficiency and Litigation under Eminent Domain

The history of eminent domain in India is a saga of unmitigated abuses of the law, which is the archaic and ambiguous LAA. Part VII of the Act allows acquisition for private companies, subject to restrictions imposed by sections 38-44 of this part. However, the states have repeatedly exploited ambiguities in the Act to acquire land for companies and the powerful. To illustrate, there is no provision for emergency acquisition under Part VII. Besides, acquisition for companies is restricted to only those activities from which the public can benefit directly, such as housing for workers, setting up of schools and hospitals, etc. Nonetheless, the states have acquired land for all sorts of activities of companies, including the ones that cannot even remotely serve any public purpose; for example, for setting up of shoe-manufacturing factories, air-conditioner- compressor plants, hotels and swimming pools!

Moreover, acquisition has largely been done using the infamous emergency clause. In order to circumvent the restraining provisions of Part VII, the states have instead used Part II to acquire land for companies.³ This part is meant for public purpose acquisitions, and does not impose the above restrictions. LAA is ambiguous as to when acquisition for companies can be undertaken under Part

II. Judicial interpretations of the Act have only aggravated its misuse. Since the 1960s, the judiciary has treated acquisition for companies as public purpose acquisition, as long as a part of the compensation cost is paid out of the state exchequer.⁴ Even worse, in *Indrajit C. Parekh v. State of Gujarat*⁵ the Supreme Court upheld an incredibly bizarre contention of the Gujarat government, which claimed that a contribution of even one rupee from the exchequer is Sufi client to validate the acquisition for companies under Part II! Since then, the states have been contributing nominal amounts towards the cost of acquisition, to justify acquisition for companies. Some governments have gone to the extent of contributing just Rs.100!

² Ghatak, Ashok Guha, Mukul Majumdar, Dilip Mookherjee, and Debraj Ray (2007): “*Beyond Nandigram: Industrialisation in West Bengal*”, Economic & Political Weekly, 42, 1487-89.

³ Aycock, S Alan, and Roy Black (2008): “Special Master Bias in Eminent Domain Cases”, Real Estate Issues, 33(2): 53-58.

⁴ See Smt Somawati & Others vs State of Gujarat (AIR 1963 SC 151) and Devinder Singh & Others vs State of Punjab & Others (2008(1) SCC728), among others. Since these judgments, courts have annulled some acquisitions, but largely on procedural grounds.

⁵ Indrajit C. Parekh v. State of Gujarat, AIR 1975 SC 1182.

Besides the direct acquisition for companies under Part II, there have been other abuses of the land acquisition laws as well. The notable ones include: acquisition of land citing some public purpose but covertly diverting it to private ends⁶; adoption of the pick-and-choose method for selecting a project site; and, the use of the de-notification clause to exempt land belonging to the powerful but simultaneously acquiring all neighboring properties. By now, these misuses of the law stand well documented in the literature.⁷

IV. LARR (AMENDMENT) BILL, 2015: PROPOSED AMENDMENTS

4.1. Change to public purpose:

- The Bill amends the Act to include acquisition of land for private hospitals and private educational institutions within the definition of public purpose.
- The amendments remove this provision of the Bill. This implies that acquisition of land for private hospitals and private educational institutions is no longer included within the definition public purpose.

4.2. Changes to five categories of exempted projects:

The Bill allows the government to exempt five categories of projects from: (i) Social Impact Assessment, (ii) limits on acquisition of irrigated multi-cropped land, through a notification, and (iii) consent provisions. These five categories are: (i) defense, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure and social infrastructure. The amendments make the following changes to this provision:

- ***Industrial corridors:*** The amendments clarify that land acquired for industrial corridors will be for industrial corridors set up by the government and government undertakings. Further, land can be acquired up to 1 km on both sides of the designated railway line or road of the industrial corridor.
- ***Social infrastructure:*** The amendments remove social infrastructure as an exempted category.

4.3. Changes to SIA and limits on irrigated multi-cropped land:

The Bill allows the government to exempt the above five categories of projects from SIA and limits on irrigated land, through a notification. The amendments add that before issuing this notification, the government must ensure that the extent of land being acquired is in keeping with the minimum land required for such a project.

4.4. Changes to application of 2013 Act:

The Land Acquisition Act, 1894 will continue to apply in certain cases, when an award has been made under it. The 2013 Act will apply in case an award has been made five years prior to the commencement of the 2013 Act but the physical possession of the land has not been taken or compensation has not been paid. The Bill states that in calculating the five year time period, any period where possession of land was taken but the compensation is lying deposited in a court or any account, will not be counted. The amendments change 'account' to 'designated account'.

4.5. PRO- FARMER STEP

⁶ Desai, Mihir (2011): "Land Acquisition Law and the Proposed Changes", Economic & Political Weekly, 46(26, 27): 95-100.

⁷ Gonsalves, Colin (2010): "Judicial Failure on Land Acquisition for Corporations", Economic & Political Weekly, XLV (32): 37-42.

The government has balanced out the ordinance by including 13 so far excluded Acts under the land acquisition Act. It is hailed as Pro- farmer steps as with this decision, rehabilitation, resettlement, and compensation provisions will be applicable for 13 existing center pieces of legislation.⁸ Till now land could be acquired under these Acts and there was no uniform central policy of rehabilitation and resettlement.

These Acts include coal Bearing Areas, Acquisition and Development Act, 1957. The national Highway Act, 1956, Land acquisition mines Act, 1985, Atomic energy Act, 1962. Indian Tramway Act 1886, Railway Act 1989, Ancient Monuments and Archeological Sites Act, 1958, Petroleum and mineral pipelines Act, 1962, Damodar Valley Corporation Act 1948 and Metro Railways Act, 1978 are also brought under the preview to provide higher compensation, rehabilitation and resettlement benefits to farmers whose benefits are acquired.⁹

V. WHY GOVERNMENT DID PASS THE ORDINANCE NOW?

The official reason given by the finance minister Arun Jaitley is that under section 105 of land acquisition Act on what provisions apply the aforesaid 13 legislations and it had done before 1st January, 2015. The political reason is that the government is looking to give a message to investors that they are trying their best to free up procedural bottlenecks which are almost a hallmark of any infrastructure investment India. The government is looking to boot up manufacturing to make Modi's ambition make in India project a reality and this is big bold step towards it. States like Assam, Haryana, and Himachal Pradesh felt that the definition of affected family is too broad on social impact assessment, Karnataka, Kerala, Maharashtra and Manipur demanded that it should be limited to large projects.

Other opposition like JD (U) and AAP has expressed their reservation about the ordinance. So it will be uphill task for the government to pass the bill. Thus in a way government went through broad consensus by making changes. Now it seen if they can get it passed in parliament and if the revised ordinance will indeed serve the purpose of bringing fresh investment and boost manufacturing sector without trampling on rights of poor.

After much heated debate and controversies that surrounded the right to fair compensation and transparency in land acquisition, on March 9, 2015. We saw U-Turn when the lok sabha gave the nod to the new land acquisition Bill on the account of nine amendments introduced by union government. It clarified that land acquired for industrial corridors will only be limited to one KM on either side of highways and railways lines. Land acquisition for private hospital and education institutions is no longer included in this. The bill introduced in December allowed the government to exempt the five special categories of land use from SIA and limited the use of irrigated land through notification.

These have been further additions in amendments before issuing notifications, the government need to insure that extent of land acquired is in keeping with minimum land acquired for such project. The new law has provided for compulsory employment to one member of the family affected and has proposed for hassle free grievance redressed machinery and when we have acquire tribunal land consent of panchayat should be there. These amendments will make it easier to expedite pending infrastructure projects. These changes have moderated some of restrictive provision in original law 2013 and will be very helpful in promoting business and shall reduce the cost for acquiring land for industry which was 40% of total cost.

⁸ Moreover, these measures will help small farmers by easing the credit-market frictions for them, and will enable better targeting of government welfare programmes.

⁹ See "*Farmers to Set Up Own SEZ Near Pune*", viewed on 28 November 2011 ([http://articles. Times of India.indiatimes.com/2008-01-19/india/ 27773144_1_sez-avasari-khurd-villagebarren- land](http://articles.Times of India.indiatimes.com/2008-01-19/india/ 27773144_1_sez-avasari-khurd-villagebarren- land))(Accessed on 25th June, 2015)

Land acquisition is central to the government trust on infra-structure development and government would find it execute its make in India programme aimed at providing a boost to manufacturing and Job creation with the objective of taking India Back to high growth trajectory.

VI. CONSEQUENCES:

The consequences of land acquisition in India are manifold. The empirical and theoretical studies on displacement through the acquisition of land by the government for development projects have so far focused on the direct and immediate adverse consequences of land acquisition.¹⁰ Most of the analytical as well as the descriptive accounts of the immediate consequences of land acquisition for development projects draws heavily from Michael Cernea's *impoverishment risk mode*, which broadly enumerated eight 'risks' or 'dimensions' of development-induced displacement. These eight risks are very much direct and basic in nature which is landlessness, joblessness, marginalization, loss of access to common property resources, increased morbidity and mortality, food insecurity, homelessness and social disarticulation.¹¹

Recently, *L.K. Mahapatra* has added 'loss of education' as another impoverishment risk in situations of displacement. But apart from these direct and immediate effects of land acquisition there are more subtle and indirect effects of this coercive and centralized legal procedure, which have a bearing on various decentralized and participatory democratic processes, and institutions of the state power. Land reforms and the Panchayati raj institutions are the two most important areas, which are being vitiated by land acquisition.¹²

VII. ALTERNATIVES:

One of the alternative proposals to land acquisition is leasing the land from landowners for a certain lease period. Proponents cite how land acquisition policies by Governments unwittingly encourage rampant land speculation making the projects expensive since huge portion of investment would be need to be allocated for land acquisition costs.¹³

Leasing land may also support sustainable project development since the lands need to be returned to the landowners at the end of the lease period in a condition similar to its original form without considerable environmental degradation.¹⁴

Some industries already follow the model of leasing lands instead of acquiring it. Energy development projects such as oil & gas extraction usually lease lands. Renewable energy projects such as Wind Power farms.

VIII. RECOMMENDATIONS:

The ordinance and amendment is more of a battle of perception. There is a need to engage farmers and explain the provisions in detail. Grievance redressal mechanism should be made

¹⁰ B. Terminuski, Development-Induced Displacement and Resettlement: Theoretical Frameworks and Current Challenges, research paper, Geneva, 2013.

¹¹ M. Cernea, 1991. Socio-Economic and Cultural Approaches to Involuntary Population Resettlement. Edited by Michael M. Cernea. World Bank, Oxford University Press.

¹² Guha, A. Land, *Law and the Left: The Saga of Disempowerment of the Peasantry in the Era of Globalization* (2007) pp. 259 + xxviii (index, glossary and references) Concept Publishing Company: New Delhi ISBN 978-81-8069-398-4

¹³ S. Swaminathan, 'Lease land, don't acquire it' <http://articles.economicstimes.indiatimes.com/2012-06-land-acquisition-bill-land-prices-conversion-of-agricultural-land> Economic Times, (Accessed on 20th June 2016.)

¹⁴ 'Why Land Tenure should be considered in Design of Projects' <http://www.fao.org/docrep/005/y4307e/y4307e06.htm>. (Accessed on 1st July, 2016).

available at the grass-root level. Only through development activities and building infrastructure in the villages (for which land is required), the higher value of land is unlocked.

Land Acquisition is in the concurrent list, so that the State Governments are free to implement the New Act or not. This scenario should be changed and the bill must be put in the State or Union List.

All the same, the bill fails to address the above discussed fundamental causes behind the disputes and litigations over compulsory acquisition. Moreover, it opens up several back doors for the state to favor companies at the expense of farmers' rights and the livelihood of forest dwellers. True, the bill drastically reduces the scope of the notorious emergency clause. However, the excessive use of the emergency clause is only one of the several abuses of the extant law.

IX. CONCLUSION:

Eminent domain is one of the most controversial and politically sensitive instruments of state power anywhere in the world. Depending on how it is used, it can clear the way for rapid economic transitions, technological progress and inclusive growth, or it can trample on property rights, the economic interests of poor and vulnerable groups, and fundamental principles of justice. Land acquisition is central to the government trust on infra-structure development and government would find it execute its make in India programme aimed at providing a boost to manufacturing and Job creation with the objective of taking India Back to high growth trajectory. Instead of tweaking the 2015 land acquisition bill with a few amendments here and there to appease political allies and win over the Opposition, the government should use this opportunity to address the issue of land acquisition in a systematic and constructive manner.

