

# Land Acquisition in Developing and Developed Countries: An Overview

S. Yadav, I.P. Singh, M. Jain\*

Department of Architecture, National Institute of Technology, Hamirpur (H.P.), India

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## Abstract

*In this study the causes, important aspects and historical background of Land Acquisition in India and global level has been studied. The paper includes the important Land Acquisition aspects in developing countries and the different possible techniques that can be adopted for efficient implementation of Land Acquisition in these countries. In addition, various Land Acquisition interventions in India have been discussed, highlighting the latest provisions as per Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, (RFCTLARR) 2015. At last, analysis of points for efficient implementation of Land Acquisition in India has been made.*

**Keywords:** barter and exchange, land acquisition, leasehold, rehabilitation, resettlement

**\*Corresponding Author**

**E-mail:** jainminakshi@gmail.com

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## INTRODUCTION

The role of government in the regulation of land use is undergoing a profound change throughout the world. Although the project authorities plan financial and technological aspects meticulously but make little effort to understand problems of the people affected by the project or plan for their resettlement. The poor displaced are left to fend for themselves.[1] The financial stakes involved in land use decisions are so high that they heighten the sense of conflict. In each case, there is a winner and a loser. Researchers have found latter to be true in virtually every major city of the developing countries; when urban land values are increasing faster than inflation rates generally.[2] In the past decade an area of land eight times the size of the UK has been sold off globally as land sales rapidly accelerated. Klaus Deininger *et al.* studied that in poor countries, foreign investors have been buying land area equal to the size of London every six days.[3] In 2007, Indigenous people in West

Kalimantan, Indonesia complained to the World Bank that a palm oil company which world bank supported had cut down their forest and forced them out from their land. The matter was investigated by bank and discovered serious systematic problems, as a result of which Bank standards had been contradicted and Bank staff had been able to claim (incorrectly) that the project would have minimal, or no direct, adverse social or environmental impacts.[4] The American Law Institute Model Land Development Code permits a public agency to acquire land without disclosing to the seller the purchaser's public identity.[5] In Thailand the land acquisition programmes are not yielding desired results, as all the programmes are largely depended on the voluntary sale of land. The land is acquired through public bidding by National Housing Authority (NHA). The voluntary tenders are invited for the land required to be acquired. The final amount to be paid to the landowner for the land takes months or even years before it is finalized. In the meantime the

landowners renew its demand for more money based on the escalation. This has resulted in less number of people showing interest in the NHA invitations.[6]

In contrast, many countries are actively encouraging the private sector to sell land to the public sector. In Sweden, where the vast majority of land comes into public ownership through voluntary purchases, a complicated array of legal and tax-relief mechanisms make such purchases possible.[7] Norway taxes land sales heavily unless land is sold to the public, in which case there is no tax. In India, one percent transfer tax due on the private sale of land is waived when the public is the purchaser. In Guatemala, tax authorities engage in an unusual fiction to reduce the tax bill of a private seller when the sale of land is to the public: The taxpayer's tax basis is recalculated, simultaneously with the sale, so there is no gain or loss on the sale.[8]

The Cook Islands, Papua New Guinea, Fiji, and Tuvalu governments often acquire customary land through the use of leases.[9]

The global economy is set to be tripled by 2050, demanding ever more from scarce natural and agricultural resources. To take the example of just one commodity, the area used for oil palm cultivation has increased nearly eightfold over the last 20 years to an estimated 7.8 million ha in 2010 and is expected to double again by 2020.[10] Land resources, already under pressure from climate change, water depletion and the need for conservation, will be increasingly in demand for a range of economic uses: biofuel production, non-food crop, timber and speculative investment. The population growth needs more land and all these issues confront the need for more land. The overall increase in the food prices has resulted in the mass acquiring of the land by the rich countries which are entirely depended on the food

imports such as Gulf countries to meet their domestic food requirements. This leads to land becoming more important and lucrative asset.

## RESEARCH SIGNIFICANCE

### Land Acquisition

As per the law it means acquiring the land for public purpose by government/government agency as authorized by the law, from the individual landowner(s) after paying a fixed compensation in lieu of losses incurred by land owner(s) due to surrendering of his/their land to the concerned government agency. Due to fast industrial and urban growth in all the cities has increased the demand to acquire land for executing infrastructure projects by the government. The inadequacy of proper legal regime on compensation and rehabilitation part for such land acquisitions has faced a considerable opposition from landowners and farmers, which finally resulted in delayed execution of projects.

Land use policy is critical for reducing conflicts in India where pressure on land is high. The country accounts for about 2.4% (328.73 million hectares) of the world's geographical area but supports about 17% of the world's human population and 15% of the livestock. The fragmented land, coupled with degraded natural resources has severely intensified the pressure on this land resource which raises the concerns for climate change. India opened its economy in 1990s which changed the land use of vast pieces of lands from agriculture to industries. This change in land use had effected food and environment need of people and subsequently large scale violent conflicts and migration.[11]

This study attempts to examine the historical background of Land Acquisition. More specifically, the study will answer the following questions

1. What are the socio-economic and environmental impacts of the large scale land acquisition on local communities' means of living?
2. What are the coping strategies adopted by local communities in response to the lost opportunities due to the large scale land acquisition?

### **LAND ACQUISITION TECHNIQUES IN DEVELOPING COUNTRIES**

All developing countries have some laws and procedures for the public acquisition of privately owned land. But a few have genuinely comprehensive laws and procedures and still fewer have institutions and trained personnel to administer the laws they possess. Three types of acquisition are generally considered

1. Acquisition for specific projects.
2. Excess acquisition in connection with a specific purpose.
3. Advance acquisition of large land reserve as a part of land banking plan.

Those countries that have been comparatively successful in land acquisition generally have a broad variety of compulsory and non-compulsory powers at their disposal. Some may rely heavily on compulsory powers, as India and others, like Singapore, on voluntary purchases.

Rapid urbanization in developing countries over the next few years will have a profound effect on attitudes towards public land acquisition.

Various Land Acquisition techniques that are adopted by the developing countries are listed.

#### **Voluntary Bargain and Sale**

In an ideal system, 90% of all public land acquisition is on a voluntary basis. Voluntary bargain-and-sale transactions tend to minimize administrative cost and ill will. Developing countries with

relatively free market systems prefer this non-compulsory method and undoubtedly this will continue to be the practice.

#### **Public Acquisition of Leasehold Interests**

Public acquisition of Land may be facilitated if the government acquires something less than full fee-simple ownership. Instead of purchasing outright, government may wish to acquire leasehold interests. Private sellers may also find this more acceptable. The advantage to the government is that it can acquire needed land from current operating budgets without paying excess lump-sum sale prices that require extraordinary appropriations. Acquiring a leasehold interest is particularly useful if the purpose of acquisition is short term, as for example, in temporary refuge and relief programs. The government could sublease and the owner-leaser could hold the land or sell the land to third persons subject to the government's lease. The owners of land so leased would have the security of knowing the land will ultimately return to them and their heirs. This perspective would help to overcome the reluctance by landowners.

#### **Acquisition Through Barter and Exchange**

In many instances, land acquired in developing countries is appreciated so rapidly that sums received from the government cannot be reinvested easily in as profitable an asset. Resistance to public acquisition then can seriously hamper the ability to acquire land. As a means of compensation, prior-owned government land can be offered in barter. The countries like Peru, Romania, Chile, Canada, India, Mexico, Egypt and Hong Kong all have been using this practice successfully.

#### **Land Readjustment**

It involves organizing a voluntary association of local landowners, often

under the leadership of a district official acting as executor, who would pool landholdings and give public use a small share (up to 10–15%). Under this arrangement, each participant would get back consolidated land, usually rectangular in shape, with access to a farm lane that connects to an all-weather rural road. Land for school, police stations, temple sites, and the like would also be included in the small percentage of land taken from each plot holder. Cash payments by landowners to the executor and by the executor to landowners, could also be used to even out any slight discrepancies in the readjustment process.

Land readjustment has been used by a number of Korean municipalities to acquire land for major roads and more recently to develop land previously designated as agricultural but changed to urban residential under the city master plans. The problems of land-readjustment methods might adversely affect its attractiveness. Cohesiveness and cooperation between the private sector and the government are essential. The technique has been used with varying degrees of success in a number of countries, including India, Korea, Japan, Taiwan, Australia, Canada and West Germany.

Land readjustment has following prerequisites

1. National provincial and local support is essential.
2. Key ministries must be sympathetic.
3. In most countries, major new enabling legislation is required.
4. A country must possess an efficient system of cadastration or title registration.
5. An additional corps of well trained, objective appraisers of real property is necessary.
6. Highly skilled negotiators and administrators are essential.[12]

Because of these requirements, many countries may give land adjustment a low priority. Trained personnel, particularly at the municipal level, are one of the great shortages in developing nations.

### **Nationalization**

Some developing countries have sought to control land use through the nationalization of all land. Nationalization is accomplished through general laws which transfer broad categories of land to government ownership. There is no evidence that nationalization across the board has solved land-control problems in countries like Tanzania, Ethiopia, or Zimbabwe. Illegal land invasions appear to occur with the same frequency as in neighboring countries where nationalization laws are not in force.[13]

### **LAND ACQUISITION IN INDIA**

Land acquisition is experienced since British government rule in India. British government acquired land for their presidencies in Bengal and Madras in early 1824. Over the next half a century, they expanded the scope of these laws to rural and forest area and consolidated them in a single act, the land acquisition act 1894. The Land Acquisition Act of 1894 is a legal Act in India which allows the Government of India to acquire any land in the country. This Act failed to address the balance between the interest of landowners and industrialization growth of country. Thereafter, The Land Acquisition (Amendment) Bill 2007 and The Rehabilitation and Resettlement Bill 2007 were introduced in Lok Sabha in 2007, but got lapsed on dissolution of 14th Lok Sabha. Again on 7th September 2011, The Land Acquisition, Rehabilitation and Resettlement Bill 2011 was introduced in Lok Sabha, which was finally approved by Indian Parliament on 5th September 2013 with some amendments under the name of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill

(RFCTLARR) 2013. The 2015 Law has tried to address the concerns of the industry by reducing the rigor of some of the provisions of the 2013 Act. As per this Act, The land will be acquired for the purposes of five specified sectors, namely: (i) National Security and Defense, (ii) Rural Infrastructure including Electrification, (iii) Industrial corridors,

(iv) Affordable Housing and housing for the poor and (v) Infrastructure and Social infrastructure projects, including PPP projects where ownership of land continues to be vested with the government. Various interventions in the Land Acquisition Act are summarized in Table 1.

**Table 1. Interventions in the Land Acquisition Act (India).**

Interventions	Process	Compensation option
Land Acquisition act (LAA) 1894	This was taken from an English law with a concept of “law of compulsory purchase”. This gave the states an extraordinary power to acquire land with notifications.	This was the most efficient instrument in the hands of government by this they were able to compel owner to handover their land for public purpose.
		This law did not propose any compensation for the loss of assets of owner and also did not put any emphasis on livelihood.
LAA, 1894 (as amended in 1984)	Acquisition process was as per LAA, 1894.	This amendment also gave the participation to private sector.
		Though State played an eminent role in the process yet there was no emphasis on livelihood.
LAA Bill, 2007 and National Policy on Resettlement and Rehabilitation NPRR, 2007	Narrow down the concept of ‘public purpose’.	This compensation was tried to be in the form of new and improved livelihood as compared to traditional one.
Land Acquisition and Rehabilitation & Resettlement Bill (LARR) Bill, 2011	This is the first National/ Central Law on the subject of Rehabilitation & Resettlement of families affected and displaced as a result of land acquisition.	Wherever multi crop irrigated land is acquired an equivalent area of cultural wasteland shall be developed for agricultural purposes.
		Two time sale deed of registry during the preceding three years, where higher price has been paid.
		Value of the assets attached to the land.
		80% of the affected families gave prior informed consent to the proposed acquisition.
Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation Resettlement, (RFCTLARR), 2013	A transparent process, where the role of stakeholders is important at the time of acquisition and implementation of the project.	Conduct Social Impact Assessment
		Compensation decided on the basis of urban area and rural area.
		Affected families included not only land owners as well as laborers and others whose livelihood depend on them.
		80 percent of affected families consent required in case of Private Projects and 70 percent consent required for PPP projects.
(RFCTLARR), 2014-Ordinance	BJP government introduce ordinance to fasten the growth of delayed projects.	Compensation same as in RFCTLARR-2013.
		Consent of affected families and Social Impact Assessment is removed in five different categories i.e. – national security, rural infrastructure, affordable housing, industrial corridors and Social Infrastructure (PPP projects).
		Compensation in accordance with the First Schedule rehabilitation and resettlement specified in the Second and Third Schedules of the Act is sought to be extended to the acquisition under thirteen Acts mentioned in the fourth schedule of the act.



## HIGHLIGHTS OF THE RFCTLARR-2015 BILL ARE AS UNDER

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, gave its approval to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015. Changes in the provisions of the Act facilitate farmers to get better compensation and rehabilitation and resettlement benefits in lieu of land compulsorily acquired by the appropriate Government.

The Bill amends the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013). The important changes brought about by the amendment are

- [1]. The land acquired for Private hospitals and private educational institute has been exempted under the public purpose.
- [2]. The following five categories projects have been exempted from Social Impact Assessment (SIA), limits on acquisition of irrigated multi cropped land and Consent Provision. These categories are: Defence, Rural Infrastructure, Affordable Housing, Industrial Corridor, Physical and Social Infrastructure.
- [3]. The government will conduct a survey and maintain the record of the wasteland, arid land as prescribed by the govt.
- [4]. At least one member of the family will get employment under the rehabilitation and resettlement award,
- [5]. The Land Acquisition, Rehabilitation and Resettlement Authority (LARR) will be established and unsatisfied person under rehabilitation and resettlement award can approach it. 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.

- [6]. The Bill states that if an offence is committed by a government employee he cannot be prosecuted without the prior sanction of the government, as provided in Section 197 of the Code of Criminal Procedure, 1973.

## CONCLUSION

The land in the developing countries especially in India is a prized possession; which nobody wants to do away with. The land is considered as a regular source of income to the families from the past to the future generations. The Land acquisition Act that will provide the regular income will fairly have the chances of getting positive response from the Landowners. The land pooling/readjustment are another method of land acquisition which has shown a good response in some of the states in India. Ideally, developing countries should have laws that permit the use of all the land-acquisition techniques. This would require extensive law revision in most countries. The law should provide a broad range of options to officials seeking to acquire land. It is recommended that legislative revision should go forward at the same time, a land-policy debate is occurring. By the year 2020, the needs for land acquisition will be markedly different from the needs of today. Those countries best prepared to meet the needs of tomorrow will be those that act today to establish a broad array of legal tools and procedures.

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