

Improving an unworkable law

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For the land-acquirer, the land act ordinance tries to lessen the indirect price of acquisition and transaction by diluting requirements for social impact assessments and referenda. For the land-loser, it not only retains all forms of compensation and rehabilitation, but also grows the number of those eligible for lucrative pay-offs

The government of India continues to search for the right way to do land acquisition. Last week, the Union Finance Minister announced an ordinance to amend the Land Acquisition Bill that his party, the Bharatiya Janata Party (BJP), had helped vote into law a mere 15 months ago. It had been in force for less than one year. That law, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR), had been pushed through by the United Progressive Alliance (UPA) in its dying days. It had many detractors. Private industry said that it was the biggest obstacle to growth. Most State governments, including several Congress-led ones, thought it was unworkable. I wrote that embedded in LARR were the seeds of its own destruction.

That LARR would be changed was obvious in the first weeks after the BJP stormed to power at the Centre. There were whispers and much speculation, but nothing official. Now, it is out in the open and we can pass judgement. So, what does this ordinance reveal about the thought processes of the leaders of the Modi government? Is this a new approach? Is it any better than the old one? What could have been done differently?

Focussing on the land-loser

We need to ignore the predictable noises being made by the usual suspects. The pro-business crowd, from Goldman Sachs to Dalal Street, can barely suppress its elation. Several pro-farmer groups, especially significant non-governmental organisations like the National Alliance of People's Movements, whose ideas had formed the initial blueprint of LARR, have called this a giveaway to the corporate sector. Anti-BJP political parties like the Congress, the CPI(M), the Samajwadi Party and the Trinamool Congress have vowed to fight these changes with all their might. All these people cannot simultaneously be right.

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To get analytical clarity, we need to start from basics. LARR was meant to make the acquisition process just. It was designed in the mode of the Congress's other landmark laws on information, education, and food — using a rights-based approach — where the primary objective was to deliver “fairness” to the people affected by land acquisition. LARR expanded the definition of project-affected people and expanded the rights,

protections and compensations for people who lose land or livelihood as a result of acquisition. All these were laudable and necessary. But LARR was also a purely political and fundamentally bureaucratic approach based on little or no recognition of some simple economic principles — on land markets and on transaction and opportunity costs. The underlying presumption was that the price of land matters to the land-loser but not to the land-acquirer; as a result, LARR raised the price of land acquisition to unsustainable levels.

Price matters to acquirer and loser

This price is not simply the money paid for acquisition and rehabilitation and resettlement. That is just one component of price, its direct component. There is a second component, an indirect price. This includes (a) transaction costs, which include the cost of doing social impact assessments, conducting referenda, running the massive new multilayered acquisition bureaucracy, etc. and (b) opportunity costs, which arise from the time taken to conclude an acquisition — doing social impact assessments, conducting referenda, etc. — time during which capital is not invested, infrastructure is not created, and production does not take place. If all the steps defined in LARR were accomplished in the allotted time, each acquisition would require about five years; in practice, it could take a lot longer.

The Modi government's ordinance — unlike the UPA government's law — is based on the principle that price matters to both the land-acquirer and the land-loser. Their interests are opposed, because the land-acquirer would like to pay the least he or it can get away with, and the land-loser would like to get the most he or it can manage. So, how does the ordinance solve this problem? Quite simply, as a matter of fact, by splitting the direct and indirect prices for acquisition and keeping the direct prices unchanged while attacking the indirect prices.

For the land-acquirer, the ordinance tries to lessen, as much as it can, the indirect price of acquisition, the transaction and opportunity costs that have been listed. This it does by weakening or removing the requirements for social impact assessments and referenda. For the land-loser, the ordinance not only retains all forms of compensation and resettlement and rehabilitation, but also grows the number of land-losers eligible for these lucrative pay-offs by bringing into the ambit of LARR, 13 categories of acquisition that had been excluded earlier. These include the Land Acquisition (Mines) Act, the Atomic Energy Act, the Railways Act, the National Highways Act, and the Metro Railways (Construction of Works) Act. These inclusions were indicated in LARR, but are accomplished in this ordinance.

The reason this ordinance is likely to work in the short term and the reason it may run into trouble in the long term is the same — the underlying land market in India. Land prices in India are now the highest in the world (with the possible exception of China, where, for approximately the same reasons as in India, prices have reached unprecedented levels). For most pieces of agricultural land, these market prices are several times higher than the possible returns from keeping the land in agricultural use. When these very high prices are quadrupled or doubled, it creates a windfall for land-losers, a fortune they could never earn from agriculture. The Modi government is betting that the vast majority of people will be dazzled by the money and will acquiesce to acquisition. And by vastly increasing the scope of LARR, by bringing under its ambit several more types of acquisition and many more people, the government and the BJP can claim to be as pro-farmer as anyone else (even if the enlargement had been envisaged in the original law).

For the land-acquiring interest — be it the private or public sector — reducing the time for acquisition by several years, and thereby reducing the opportunity cost, is a huge benefit. When this is topped up with the reduction or removal of the cash cost of social impact assessments and referenda, it becomes a windfall for the acquirers too. LARR had placed an impossible double-burden on land acquirers: pay double or quadruple the highest prices in the world, and wait for several years to begin work on the ground. The first burden remains and its consequences are grave. What those consequences may be must be carefully worked out by people competent to do so. But

the second burden has been mitigated by this ordinance. It should make life easier for the land-acquirer.

Price factor

What, aside from partisan politics, could go wrong? There are many things, but I will mention just three. First, the assumption that everyone responds to price is incorrect in India. There are priceless pieces of land that no amount of money can buy. The Niyamgiri hill region in Odisha where the Vedanta mining project ran aground is an example. Without referenda it may be very difficult to identify priceless land; which means that deadly face-offs over acquisition will continue to flare up. Second, the social impact assessment was meant primarily to take stock of the non-land-owning project-affected population. Compensating non-owners is a vital and non-negotiable element of LARR. How that will be achieved without the social impact assessments remains unclear.

Third and most important: the price of peri-urban land has reached such levels in the most dynamic urban regions of the country, that just doubling it (even without the added transaction and opportunity costs) may make many public projects unaffordable and private projects uncompetitive (especially in a globalised economy). The blunt instrument of acquisition is already inappropriate in many such settings; using LARR, even after the ordinance, it may be impossible. New, creative methods that make stakeholders out of landholders must be devised, perhaps by following the better outcomes of some of the experiments being attempted in some States.

Is this ordinance a better way than LARR? Yes. Is there a better way than this? Very much so, and it is based on finding State-level solutions rather than these top-down, one-size-fits-all strategies devised by the Centre. And above all, as a friend says, what we need are good intentions combined with clear analysis and hard, detailed work. Unfortunately, all these are in short supply.

(Sanjoy Chakravorty is the author of The Price of Land: Acquisition, Conflict, Consequence.)