

Current Land Issues in India: Puzzles and Possible Solutions

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Summary

The importance of improving land laws in India has gathered traction in the aftermath of the COVID-19 pandemic as a necessity to enhance India's attractiveness to global manufacturers and businesses. Among Indian states, Karnataka has amended its laws allowing industry to buy land directly from farmers. No other state, though, has so far acted decisively on land laws, which is somewhat surprising, given that many states are trying to amend labour laws.

This paper explores issues that complicate the prospects for amending land laws in India by the states. It particularly notes developments following introduction of the Land Acquisition, Resettlement and Rehabilitation Act of 2013 and how the states have been trying to work around the Act for facilitating acquisitions. The paper also explores how digitalisation and modernisation of land records by the states is beginning to put in place the fundamentals of an efficient land market in India facilitating price discovery and quick transactions.

Returns and Reforms

Factor market reforms in India are twinned with questions of inequality. India is a labour surplus economy. It is also somewhat land scarce. Both land and labour have been used sub-optimally due to rigid laws governing them. In the Indian constitutional structure, the central and state governments can write labour laws, while land can only be legislated upon by the states. Capital market laws are largely under the central government.

Due to rigidities in using labour, businesses have been forced to substitute labour with capital. As a result, India has far higher capital intensity in production than warranted by the availability of resources. On land, again, businesses have depended almost exclusively on the states for acquisition. The unusual pattern of factor use has impacted returns for each factor. Wages for workers have been stagnant due to the low utilisation of labour, which, in turn, has drawn wrong responses from state governments. State labour laws have become detailed and more inflexible, further narrowing incentives for entrepreneurs to employ labour. Estimates show labour intensity of production has fallen by a factor of five since 1980, as technological advances have improved capital productivity, while labour productivity has stagnated.¹

The returns on land have suffered similarly. Several businesses, particularly large ones, have exploited market imperfections to obtain land by paying less than the fair value. This has

¹ Sajjid Z Chinoy, "View: India has a labour productivity problem and it stands in the way of economic growth", *The Economic Times*, 17 August 2019. <https://economictimes.indiatimes.com/news/economy/policy/view-india-has-a-labour-productivity-problem-and-it-stands-in-the-way-of-economic-growth/articleshow/70705472.cms?from=mdr>.

been facilitated by their alignment with the state. The state has used the Land Acquisition Act, and the concept of 'public purpose', to acquire land at rates that clearly forbade price discovery. If a plot of land was to be acquired, and the value of adjacent plots arose in expectation of future acquisitions, the 'expected' rise in land value was discounted in computing the 'market' value of land. The returns to land, therefore, were crimped. For landowning small farmers, neither his physical labour nor the owned land were capable of earning decent returns. This was in contrast to the returns on capital, which were determined by market forces and also relatively higher, a difference that widened with respect to both land and labour as the economy expanded.

LARR Act 2013 and State Actions

Greater protection of land and labour has perversely affected industrial expansion. The most obvious example is the anti-Special Economic Zone agitation of 2008-09. Objections to sale of land by political parties were perceived iniquitous for landholders, particularly small and marginal farmers. In support of the latter, the central government legislated the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) Act 2013.² The Act mandated the acquisition of land for all private industrial projects, including infrastructure, to incorporate a mandatory Social Impact Assessment and consent of at least 80 per cent existing landowners.³

The LARR Act has since been the baseline legislation for states. The Act was implemented by the centre on the understanding that even though land is a state subject, the acquisition of property, besides the rehabilitation and resettlement of displaced people, is a joint responsibility of the centre and states stipulated by the Constitution. However, Section 107 of the Act confers the states the right to enact "any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act". As a result, 11 states have subsequently modified its application. Out of these, the modifications by Gujarat, Andhra Pradesh, Telangana, Jharkhand and Tamil Nadu are considered to have changed the basic structure of the Act, leading to challenges currently being reviewed by the Supreme Court of India.⁴

Karnataka moved to notify the LARR Act in 2017 with amendments. The bill is pending in the state assembly. Meanwhile, the operative law for land management in the state is the Land Reforms Act of 1961. This is the law under which it has recently allowed industry to buy land directly from farmers. It is interesting to note that neighbouring Tamil Nadu has not followed suit. In Tamil Nadu, when the LARR Act was notified, the separate and existing

² "The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013", *Legislative Department, Government of India*. <http://legislative.gov.in/sites/default/files/A2013-30.pdf>.

³ "The Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013", *India Code: Digital Repository of All Central and State Acts*. <https://www.indiacode.nic.in/handle/123456789/2121?locale=en> The consent is 70% for private-public-partnership (PPP) projects.

⁴ Priyanka, Mittal. "Supreme Court notice to 5 states on land acquisition law", *Livemint*, 10 December 2018. <https://www.livemint.com/Politics/GEHoD4a9VxR7RHORA3xneO/Supreme-Court-notice-to-5-states-on-land-acquisition-law.html>.

Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997⁵ was made applicable under the LARR Act. The state is, therefore, not bound by the LARR Act and can continue to employ the other legislation. Maharashtra has also followed the Tamil Nadu model.

All three states are heavily industrial and have found it useful to keep at abeyance the restrictive application of the LARR Act. The methods, though, have differed. Most states, especially those which have strong industrial base, have found the means to keep the LARR Act in abeyance.

This is also what was expected after the central government's experience in having taken the initiatives in 2013 and 2015 to reform land laws in India. In 2013, the LARR Act was passed, but in 2015, an ordinance to put the brakes on several sections of the Act could not pass the parliament. It is, therefore, clear that the onus of reforming land laws now rests on the states and they are, therefore, being proactive, such as Karnataka.

Difficulties in Reforming Land Laws

The patchy character of policy changes in India's land laws becomes evident when compared with similar changes in the financial sector, which were far more consistent.

Since India began liberalising in 1991, it became clear that financial sector reforms were necessary to ensure the risk-reward ratio is balanced for more supply of capital at reasonable rates. Financial sector laws incorporated this principle, the latest being the Insolvency and Bankruptcy Code, 2016.⁶ The law encourages banks to approach insolvency courts for recovering dues from stalled projects. With banks being able to recover bad debts as a result, the state has progressively withdrawn from most of the financial sector, leaving market forces to operate unhindered.

For labour and land, there have been noticeable market failures in determining risks and rewards, forcing the state to intervene in both spaces. The principle of risk-reward balance has been unclear, such as in judging if changes in labour laws would enable fair transaction between those offering work and those demanding it. As a result, the changes made have been confusing, creating more uncertainties.⁷

Land suffers from a similar problem. While it is recognised that land losers need to be compensated post-acquisition and at a far higher scale than provided under the older laws, the process is messy, creating high administrative costs. Rather than the state being the

⁵ "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act, 2014, Act 1 of 2014", *Tamil Nadu Government Gazette, Extraordinary*, 5 January 2015. https://prsindia.org/acts_bills/acts_state/files/pdf/tamil_nadu/2015/2015TN1.pdf.

⁶ "The Insolvency And Bankruptcy Code, 2016, No. 31 of 2016", *The Gazette of India, Ministry of Law and Justice*, 28 May 2016. <https://www.mca.gov.in/Ministry/pdf/TheInsolvencyandBankruptcyofIndia.pdf>.

⁷ The central government has been streamlining 40 labour laws into four codes (for example, wages, industrial relations, social security and safety, health and working conditions). Nonetheless, in recent past, and after the outbreak of COVID-19, some states (Uttar Pradesh, Madhya Pradesh and Assam) have suspended more than 40 of their labour laws through administrative notifications or ordinances. These moves, however, rescinds these laws temporarily, and do not assure permanency.

intermediary between buyers and sellers, economic efficiency rationalises the creation of land markets for easy transaction.

While there are no statistics on land acquired since passage of the LARR Act 2013, practically all acquisitions have been under carve outs created by states after modifying the mother Act. States, which have not done so, have not been able to make sizeable acquisitions.⁸

Prices, Costs and Reforms

There are no estimates of costs incurred by the Indian economy due to the lack of an efficient market for lands in India. The central government itself notes that such costs to be particularly high for the displaced tribal populations.⁹ While it is often argued that given the scarcity of land relative to the country's population, a market for land would exacerbate inequalities arising from the uneven distribution of land ownership, on the contrary, an efficient land market will lower transaction costs for those whose principle economic asset is a piece of land.

Data on land conflicts shows that most of these are about the rights on common land. Evidence from 289 land-related conflicts in India involving 1.2 million hectares till the end of 2016, points to 32 per cent involving common lands and 42 per cent both common and private lands.¹⁰ Thus, three-fourths of land conflicts are about common lands — areas which are either government-held or without any single property holder claiming the land.

Statistics on land-related cases brought before the Supreme Court shows most of those involving acquisitions to have been initiated during the period 1960-1989. Of these, more than 800 cases, accounting for roughly two-thirds of total cases, involved claims by land losers for more compensation under the existing Land Acquisition Act. The core interest of litigants was not in questioning the *locus standi* of either the central or state governments in acquiring land, but in the price it should fetch. The same focus is noticed in cases decided by the Supreme Court with more than 80 per cent involving instances where no compensations were paid to land losers.¹¹

As new initiatives like 'Make in India', high-speed bullet train corridors, smart cities and affordable housing for all begin escalating the demand for land, developing a land market enabling correct price discovery needs to be addressed urgently. This is imperative as fresh protests are affecting land acquisition by state-run companies. In West Bengal, the PowerGrid Corporation's acquisition plans for a sub-station led to dispute resulting in

⁸ In Bihar, for example, an Asian Development Bank-financed road project has been able to acquire only 62 per cent of the required land in four years. <https://www.adb.org/sites/default/files/project-documents/41629/41629-013-44425-013-smr-en.pdf>.

⁹ "Acquisition of Tribal Land", *Business Standard*, 12 March 2015. https://www.business-standard.com/article/government-press-release/acquisition-of-tribal-land-115031100905_1.html.

¹⁰ Ankur Paliwal, *Land Conflicts In India, An Interim Analysis* (Rights and Resources Initiative, Washington DC, United States & Tata Institute of Social Sciences, Mumbai), p 7. <http://bit.ly/2zo4yHx>.

¹¹ Wahi, N, Bhatia, A, Gandhi, D, Jain, S, Shukla, P, and Chauhan, U, *Land Acquisition in India: A Review of Supreme Court Cases from 1950 to 2016*, Centre for Policy Research, New Delhi, 2017, p. 34.

deaths;¹² in Tamil Nadu and Puducherry, exploration plans for gas by ONGC led to major protests by farmers.¹³ The proposed ambitious West Coast refinery in Maharashtra has been shelved and fresh sites are being discussed.¹⁴ Clearly, acquiring land for infrastructure building through “public purpose” – an old strategy of state-run companies – is no more acceptable to land losers.

Modernising Land Statistics and Records

The absence of scientific land records cripples the ability of small landholders to lease out land or sell the same in an informed market to the highest bidder. They are forced to depend on the state to obtain the best price for land through “acquisition” rather than the market. This role of the state in facilitating price discovery becomes ironical given that the state – particularly the central government departments and organisations – are the largest landowners. There is no publicly available inventory of central land holdings. However, studies point to such holdings being very large and under-utilised. The major port trusts of the country hold large chunks of land, along with the Airports Authority of India and Indian Railways. The Ministry of Defence also holds extensive land, particularly in cantonments, many of which are in prime urban areas.¹⁵

There is an urgent need to streamline existing land holdings of the central government by categorising its land banks into ‘non-productive’ and ‘productive’ categories, wherein the former could be land not required for providing public services. Since land acquisition disputes take almost two decades to navigate the courts,¹⁶ the government can utilise such land to create infrastructure or incentivise foreign manufacturers to set up units, particularly at a time when several businesses are looking to relocate parts of their supply chains out of China.

¹² Pooja Mehta, “West Bengal: Land acquisition for power substation turns violent, 1 dead”, *DNA*, 17 January 2017. <https://www.dnaindia.com/india/report-west-bengal-s-bhangar-on-boil-villagers-clash-with-police-over-power-grid-substation-2293381>.

¹³ Bilal Abdi, “Amid local protests against hydrocarbon projects, ONGC mulling drilling 104 wells in Cauvery asset”, *ET Energyworld*, 1 August 2019. <https://energy.economictimes.indiatimes.com/news/oil-and-gas/amid-local-protests-against-hydrocarbon-projects-ongc-mulling-drilling-104-wells-in-cauvery-asset/70480977>.

¹⁴ “Maharashtra to move planned Ratnagiri refinery after farmers protest”, *Livemint*, 18 February 2019. <https://www.livemint.com/industry/energy/maharashtra-to-move-planned-ratnagiri-refinery-after-farmers-protest-1550510108667.html>.

¹⁵ A pilot public land inventory for Ahmedabad estimates that the small, but very well located Ahmedabad cantonment, occupies around seven per cent of total developed and developable land in the city.

¹⁶ The Supreme Court has shot down most acquisition cases brought before it after the enactment of LARR Act 2013, reflecting a growing strict legal posturing on such cases.

Signs of Progress

There has been progress in land issues in other respects despite the shackles of the LARR Act. These include updating data on land across the country and making it available on digital platforms. The central government is working with states to improve land revenue records maintained by the state governments and prepare cadastral maps under the Digital India Land Records Modernization Programme of the rural development ministry. As of now, 90 per cent of the land records across states have been computerised and more than half of India's land mass has been surveyed by space technology and on ground matching.¹⁷ Moves are also being taken to overcome the problem of lack of land titles in India.

Land tenancy also requires major reforms. Offering farmers leasing rights can enhance the productivity of agricultural land. Common laws for legalising land leasing will secure both ownership and tenancy rights. There is also a strong ground for removing the conditions of 'adverse possession' in state land laws as they interfere with free functioning of land lease market.¹⁸ Indeed, the right to hold and sell agricultural land without any encumbrances by farmers is important in facilitating the functioning of a free land market. Advances made by many Indian states in mapping land holdings through digital technology are important. Around 20 states have computerised land records and facilitated sale digitally. This could be revolutionary in India's centuries-old convoluted land holdings system.

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¹⁷ Radheshyam Jadhav, "Land records in 90% of Indian villages have been computerized", *The Hindu BusinessLine*, 18 December 2019. <https://www.thehindubusinessline.com/economy/land-records-in-90-of-indian-villages-have-been-computerised/article30335779.ece>.

¹⁸ T Haque, "Report of the Expert Committee on Land Leasing", *Niti Aayog, Government of India*, 31 March 2016. http://niti.gov.in/writereaddata/files/document_publication/Final_Report_Expert_Group_on_Land_Leasing.pdf.