

# Land Acquisition, Rehabilitation and Resettlement

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*LARR is only one part of a much larger strategy of how to ensure that affordable housing for all is implemented across the country. Affordable Housing Zones as part of a larger strategy for new planned development, is necessary in peri urban and expanding city development. At the same time, more critical attention needs to be paid on how efforts by existing dwellers to improve their units, especially in inner city areas receive enabling policy attention and encouragement*

**T**he linkages between Land Acquisition, Rehabilitation and Resettlement (LARR) and Housing for All (HFA) assume significance primarily in the context of scarcity of land for planned development and the overwhelming shortage of adequate, affordable housing in India.

According to last official estimates, India has a shortage of nearly 19 million housing units in urban areas (Kundu Committee, 2012).<sup>1</sup> About 80 per cent of this shortage (around 15 million units) pertains to inadequate but existing units, and not to homelessness, reminding us that our housing shortage in urban areas is one largely of inadequacy rather than the absence of housing. In response, the Government of India's Pradhan Mantri Awas Yojana (PMAY) aims at building 20 million new units by 2022. At the same time, about 56 per cent of rural India or a staggering number of over 10 crore rural households is landless.<sup>2</sup> It is important, as is rarely done, to constantly read these two empirics together. The historical failure of ensuring land reform in India is also the context within which the fractured politics of rural-urban and land acquisition have played out.

How should we assess the considerable policy attention now directed at affordable housing in urban areas? Three parameters stand out for scrutiny. The first two—Adequacy and

Affordability—have entered the policy discourse with discussions on how “low-income” households should be defined, what the size and cost of an affordable house is, and what services and materials define adequacy. A third, however, has remained unaddressed or has received scant policy attention. This crucial parameter—‘Viability’—relates to the location of affordable housing. Viability can be understood as the ability to meaningfully make a life in housing created or enabled by policy action. ‘Viability’ thus exceeds just the policy attention to costs or benefits. If the Centre or state aims to improve currently deeply insufficient occupancy rates (mostly, only one in three houses built under previous policies are effectively occupied), it is viability that needs to be looked at.

For low-income groups, three aspects of what constitutes Viability are imperative: a) linkages with employment and livelihood (i.e. people live where the jobs are); b) connectivity (largely in terms of access to public transport) and c) access to physical and social infrastructure (i.e. community, schools, hospitals, and so on).<sup>3</sup> If these aspects are not considered, especially the connection to jobs and livelihoods, no affordable housing policy will reach its intended results. Ignoring location or geographical contiguity means ignoring the actual nature of what makes a “house” into “housing”

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and not just a "unit." It is here then that the importance of examining land acquisition to ensure affordable housing becomes pivotal. If LARR is just used as a cynical measure to relocate low income urban populations to peripheral areas transitioning from rural to urban, it would mean that a larger question of how to ensure higher occupancy rates or ensure planned rural, urban and rural development, would remain unaddressed.

The critical question, therefore, is not just how to use the LARR Act to ensure redevelopment for affordable housing in urban areas but rather, how to meet the target of Housing for All, using land acquisition or pooling (as feasible) on the one hand, but also multiple other strategies such as in situ upgradation, credit-linked subsidies, enabling beneficiary led house enhancement and so on. This involves looking at both rural and urban areas, as a continuum.

First, let's look at what the LARR Act says.

The LARR Act does include in its definition of 'public purpose', acquisition for the following purposes:

- a) Project for housing for such income groups as may be specified from time to time by the appropriate government [S. 2(1) (d)]
- b) Project for planned development or improvement of village sites or any site in urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas [S. 2(1) (e)]
- c) Project for residential purposes for the poor or landless or for persons residing in areas affected by natural calamities or for persons displaced or affected by reason of implementation of any Scheme by Government etc [S. 2 (1) (f)].<sup>4</sup>

In other words, under the LARR Act, it is possible to carry out Eminent Domain type land acquisition for the purpose of ensuring affordable, adequate housing for all - in rural as well as urban areas. In all the above cases, the provisions of the LARR Act relating



to land acquisition, compensation and R&R shall apply. Further, where the Government acquires land for such purposes through PPP or private mode, the provisions relating to consent are also additionally applicable (70 per cent in PPP; 80 per cent in private companies), as would provisions on social impact assessment. This means that the process of land acquisition for such public purposes has to, by law, go through detailed processes. While it is laudable to see the definition of public purpose specifically include projects that could be for affordable housing, there is little history of successful land acquisition directed at affordable housing. Very often other public purposes such as infrastructure projects, strategic purpose projects etc predominate the policy implementation discourse.

Further, where land is being acquired under the LARR Act, the R&R provisions lay down minimum infrastructure facilities (including housing unit) that must be provided as part of R&R in case of displacement caused as a result of land acquisition under Eminent Domain. This pertains to those displaced by such acquisition, and is different from providing housing to urban low income groups or the rural landless. Even in the case of providing R&R to those displaced by land acquisition, a displaced landless family must first fulfill the definitional requirements of 'affected family' under the LARR Act, which includes not just owners but also those whose primary livelihoods stand affected.

This includes agricultural labourers, tenants, sharecroppers, artisans, forest dwellers and also urban dwellers living in that area for the last three years, whose primary livelihoods are affected. This is also not easy to do.

If the government proceeds with the alternative route of land pooling (i.e. not Eminent Domain type land acquisition), it is necessary to ensure that the redeveloped plot of land has adequate provisioning for EWS/LIG/affordable housing, with infrastructural amenities and employment opportunities. However, this is very difficult to carry out in practice, because of the political economy surrounding land pooling or acquisition efforts, where often the very marginalised get little in return. In addition, in land pooling, only the owners of land ultimately get a portion of the redeveloped land. For the landless to get any benefit of affordable housing from land pooling, there must be a specific policy in addition, which ensures that the common areas after redevelopment in land pooling contain portions for such affordable housing.

Two challenges are thus before us. One, we should be pragmatic about the difficulty in using LARR and instruments of land assembly for affordable rural and urban housing till now and thereby highlight the need to create housing policies that accounts for this gap. Two, it is necessary to challenge this historical reluctance to use LARR's provisions for affordable housing.



It is against these challenges then that we must understand what kind of measures the PMAY promotes and what it doesn't. The PMAY focusses on the following four areas: a) redevelopment using private developers using land as a resource, where extra TDR/FAR can be provided to the private sector to make such projects financially viable; b) credit linked subsidy for weaker sections as a way of promoting affordable housing; c) affordable housing in PPP mode, with Central Assistance where 35 per cent of constructed houses are for EWS category; d) subsidy for beneficiary led individual house construction.<sup>5</sup> This means that while the public purpose provisions of the LARR Act can theoretically be used for affordable housing, these must fulfill requirements of consent, R&R, compensation, social impact etc, that pertain to displaced/affected families. Further, the particular public purpose, i.e. affordable housing,



needs to be actually achieved (i.e. land should not be diverted for private purposes or for change in purposes). A reliance on addressing housing shortage through building new units returns us to the original concern of this essay. If LARR and land assembly have not been historically well used to find land for affordable housing, then

the locations of built units will remain peripheral, in the geographical sense. Such locations return us to the viability challenge that we outlined above, and underlie the poor occupancy rates of built housing from previous housing policies.

The alternative is to use the land on which existing but inadequate housing

### LARR - Some Highlights

- The Land Acquisition bill has been renamed as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013. The new act replaces a nearly 120-year-old law enacted during British rule in 1894. It lays emphasis on Rehabilitation & Resettlement
- The new act concerns only such cases where the land will be acquired by Central or State Authorities for any public purpose.
- It calls for taking the consent of 80 per cent of land owners for acquiring land for private projects and of 70 per cent land owners for public-private projects.
- It also tries to lay down a transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization by giving adequate financial compensation to the affected people.
- It gives priority to the interests of the farmers, landless labourers, dalits and tribals.
- Multi-crop irrigated land will not be acquired except as a demonstrably last resort measure. Wherever multi-crop irrigated land is acquired an equivalent area of culturable wasteland shall be developed for agricultural purposes. States are also required to set a limit on the area of agricultural land that can be acquired in any given district.
- It also provides for leasing of land to developers, instead of sale, so that the ownership will remain with the original land holders and they can also have a regular income by way of lease rent; the terms of lease to be laid down by the State Government according to type of land, location, market rates etc.
- The Act clearly enunciates the issues relating to acquisition, award, compensation and rehabilitation and also curtails the discretionary powers of the District Magistrates.
- 13 Central Acts which are outside the purview of the new Act have to conform to the provisions of compensation and Rehabilitation and Resettlement package within one year of the coming into force of the legislation.
- Where land is acquired for urbanisation, 20 per cent of the developed land will be reserved and offered to land owning project affected families, in proportion to their land acquired and at a price equal to cost of acquisition and the cost of development.

The Consent of Gram Sabha is mandatory for acquisitions in Scheduled Areas under the Fifth Schedule referred to in the Constitution.



already exists. Here, the PMAY offers a model but, critically, frames it as in-situ redevelopment instead of in-situ upgradation. Theoretically, the basic difference between the two is that the former involves removing existing structures and building anew with new infrastructure while the latter does not envisage removal of existing structures but enables improvements with basic services and infrastructure. In-situ redevelopment cannot hold the densities of existing low-income housing, implying that without upgradation, the need to find new land will remain. Further, the PMAY excludes families that own a pucca house (or an all-weather dwelling unit) from receiving its benefits.<sup>6</sup> In other words, incremental upgradation of pucca house – for enhancement or in situ upgradation (not redevelopment) will not be eligible for the benefits under PMAY.

Many states have sought to compensate for these shortcomings by widening their own state housing policies with different and more diverse approaches. Numerous examples from various states provide illustrations of how the goal of ensuring affordable and adequate housing for all could be realised. For example, Karnataka's Affordable Housing Policy of 2016 provides for seven models: a) beneficiary led house enhancement; b) beneficiary led new house construction; c) *in situ* upgradation; d) *in situ* redevelopment; e) plotted development and sites with house and services; f) group housing and township projects and g) affordable group housing in partnership.<sup>7</sup> Of these seven, PMAY benefits could pertain only to d), f) and g) of the above.

How then should we proceed? It has become necessary to anticipate India's urban housing crisis, not just in metropolitan areas but crucially in newer small towns and cities which are expanding. This could be done not just through LARR efforts but also by redirecting existing land uses in an equitable and efficient manner. The notion of reserving a certain percentage of housing units for affordable housing in existing/ new projects is an old one, which needs better implementation.

More significant, could be the policy of creating Affordable Housing Zones within new city plans, which would ensure that a reasonable percentage of such land is not diverted for other uses. In these, mixed housing would ensure that affordable housing is not spatially segregated. Rajasthan has, for example, in Kota and Jodhpur, implemented under its Affordable Housing Policy (2015), a model where the private developer constructs affordable housing units in 75 per cent of a land parcel currently vacant/unused, in return for 25 per cent of the land to be developed for free sale units. The Ranchi Master Plan 2037 has notified proportionate portions of land for affordable housing zones. The distinction between Ranchi and Jaipur here is reservation of land at the city level versus reservations in projects. Both can be pursued simultaneously but it is necessary to recognise that without directing the use of land at city-region scale, the impact of project-based reservation will be limited.

The use of the LARR Act for affordable housing purposes needs to be understood from this overall context. While R&R provisions in the LARR Act attempt to ensure adequate rehabilitation for displaced rural families, a more concerted affordable housing policy would attempt to go beyond providing R&R for displaced families to accommodating those from urban areas who are in need of affordable and adequate housing. However, keeping the location viability parameter in mind, if planned development is indeed the intended overall goal of LARR efforts, it is imperative that such development must create new jobs, and substantially improve basic infrastructure facilities, without which acquisition efforts would largely work in isolation.

The dire condition of the rural landless needs urgent attention. The LARR Act can be used as a legal instrument to provide for affordable housing (or a homestead) for the rural landless. However, there is little history of any such Eminent Domain acquisition for such public purposes as it virtually amounts to a historical redistributive measure, perhaps in the same vein as land reform. Madhya

Pradesh is a notable exception in attempting to provide for a Housing Guarantee Law (including homestead for rural areas). This is a welcome new development.

In other words, it is clear from the above, that LARR is one part of a much larger strategy of how to ensure that affordable housing for all is implemented across the country. Locational issues predominate in goals to improve occupancy rates of new units, especially those pertaining to livelihood opportunities. Affordable Housing Zones as part of a larger strategy for new planned development, is necessary in peri urban and expanding city development. At the same time, more critical attention needs to be paid on how efforts by existing dwellers to improve their units, especially in inner city areas receive enabling policy attention and encouragement. The existing record of using Eminent Domain type land acquisition or pooling type land assembly for the purposes of affordable housing is sobering. Given the stark realities, this is one public purpose which needs to stand out for policy attention and implementation.

#### Endnotes

- 1 Kundu, A. (2012). *Report of the Technical Group on Urban Housing Shortage 2007-12*. New Delhi: Government of India.
- 2 Socio-economic and Caste Census 2011, Ministry of Rural Development, Government of India. Available at: <http://secc.gov.in/reportlist> Content
- 3 Deb, A. (2016), Viability of Public Private Partnership in Building Affordable Housing in India, HUDCO-HSML, Vol. 17, No. 1, Shelter
- 4 See the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
- 5 PMAY Scheme Guidelines, Government of India March 2016
- 6 PMAY Scheme Amendment, Government of India, June 27, 2017
- 7 Karnataka Affordable Housing Policy, 2016, Department of Housing, Government of Karnataka

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