

## **Implementation Challenges of Land Acquisition Act in Nepal**

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*Land Acquisition Act 2034, which was formulated in 2034 B.S. (44 years ago), is still in execution in Nepal. The insufficient provisions of act have created numerous social problems, like: public are not supporting land acquisition process; land owners are reluctant to receive compensation. This is the major reason for delay in large infrastructure including hydropower transmission line construction in Nepal. Landowners always analyze the procedure for land acquisitions, compensation rates, risk measures, health and safety aspects to identify whether they can be benefitted or not from the construction of transmission line. On the other sides the authority always follows the law and its provision and procedure to implement the construction and development works. The Major implementation challenges of land acquisition act 2034 are insufficient provisions to overcome the demand of landowners in terms of fixing the land price as per the quality and facility of the land. The fixation committee of land acquisition determines the land price with the reference of recent land buying selling price, bank loan tendency, market price, government record. There is no uniformity on the rate on land value. The committee determines the average value for different quality and plot of the land, whereas the landowner*

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*compares the price and demand more value for their land. In this regard, landowner demands for scientific land fixation system to determine the value of land. However, there is no appropriate system as practiced by government of Nepal.*

[**Keywords** : Land Acquisition Act, Landowners, Challenges, Policy, Compensation]

## **1. Introduction**

According to Land acquisition act 2034 B.S. the government can take land of private or public for welfare by providing appropriate compensation following the given procedures. In Nepal, the government or authorities acquire the land through the legal process for large infrastructure development. Lack of adequate information and lack of discussion and coordination with landowners often lead to disputes between government officials and local landowners. Generally, land compensation is paid in cash as per the law. Landowners cannot buy another land and house if the cash compensation is not used properly. Generally, they use the compensation cash for the children education, for the health treatment of their family, repaying debts, social and religious activities, festivals and wedding ceremonies and for extravagant activities such as alcohol and gambling.

In this article, I have included the theoretical debate, study methodology, social problem created by the land acquisition act, implementation challenges of the act, role of political streams for the endorsement of new land acquisition act in Nepal.

## **2. Ideas or Interest Matters in Policy Making Process!**

There was big debate whether Ideas or self-interest which play major influential role in policy making process. However, it is true that both ideas and self-interest do not come in vacuum. It comes from cognitive paradigm, world view, norms, frames and policy program. Similarly, it comes because of socialization process from national and international context. In the policy making process sometimes ideas matter and sometime interest matter. Those ideas and interest can look differently but sometimes come together. (Campbell, 1998). However, it seems that this opinion of Campbell might be fit for developed nations. The opinion does not fit for developing country like Nepal. Interests matter more than ideas in Nepal. Nepal has been implementing ancient policies since a long

time without amending them. Similarly, in the creation and endorsement of public policies, issues get on the decision agenda and get converted into public policy when all three of these streams (problem, policy and politics) come together (Kingdon, 1984). However, Kingdon has not mentioned the major influential and powerful role of politics streams for policy making process. Politics streams can formulate policy within couple of months through the process if they are interested.

### **3. Social Problem Created by Land Acquisition Act**

The act has created numerous social problems. The policy has created a lot of problem like : many publics are not supporting land acquisition process; Land owners are reluctant to receive compensation. This is the major reasons for delays of large infrastructure construction including road construction building construction for public welfare, expansion of industrial area and industries and hydropower transmission line development. On the other hand, in some part of the country, the transmission line authority has to bear protest, disputes, politics in land, less participation of landowner and public reluctant to receive compensation of land. For e.g., Bharatpur-Bardaghat 220 kV transmission line project, being built under the multimillion-dollar Nepal India Electricity Trade and Transmission Project, has been struggling to achieve 80 percent progress even in 11 years. The major reasons for delaying the construction are public disputes with transmission line project. Mainly, the reason is focused on land acquisition and reluctant public in receiving land compensation provided by the authority to public. Similarly, the under-construction 132 kV Thankot-Chapagaun-Bhaktapur transmission line, intended to strengthen the Kathmandu Valley's power supply system by eliminating voltage fluctuations and ensuring proper load management, has been a work in progress since 2004 with locals of Lalitpur unwilling to give up land and right of way at the proposed rates. Residents are demanding 100 percent of the land value in compensation for easement rights while the compensation practice says they will get 10 percent. (Rijal ,2019)

### **4. Methodology of the Study**

This article is a product of my research study for my dissertation conducted between 2018 to 2021 that I had undergone during my

fieldwork. This paper is an extract of my empirical representation from the large set of data that I had gathered during my stay in the field. Then I used tools for research including survey, interview and other required technique of the selected field area and scenario of landowners and their social positions and social structure have been presented. The Interpretivism perspective has been adapted to explain and analyze meaningful past and present interpretations of landowner's dissatisfaction with transmission line projects. As Max Weber (1864-1920) suggests that in the human sciences we are concerned with understanding in comparison to process rather than facts. I have applied interview method (Qualitative) to describe the phenomena of landowner's dissatisfaction from the perspective of concerned authority and stakeholders. Similarly, the researcher has conducted household survey (HH survey - Quantitative) to identify the causes of dissatisfaction of landowners. In this study both quantitative and qualitative approaches (Mixed methods) have applied in the field of study. Especially quantitative approaches have been used to find the answer of the first research question why the landowners are dissatisfied with hydropower transmission line development and construction. To find the question of this answer survey method (household survey) has been applied. Similarly, to find out the question of the second research question "gaps in land acquisition act 2034 qualitative interview has been adapted. The non-structured questionnaire format has been developed and open answer of the related people's interview have been entered. Total 40 landowners are directly affected by the Balefi Corridor Transmission line located in between Jugal Rural Municipality and Barabise Municipality situated in Sindhupalchowk district. Census survey of 33 Household (HHs) was carried out to collect information, dissatisfaction and social structure of the affected landowners.

## **5. Implementation Challenges in Land Acquisition Act 1977 (2034 B.S.) in Nepal**

### **5.1 Gaps in the Preamble**

Reviewing the preamble of this land acquisition act, it seems that this act was endorsed in 2034 BS in the active regime of Late King Birendra with the advice and consent of the then Rastriya Panchayat. Therefore, this act has become very old to keep pace with the changed social, cultural, economic context of the country and the

development of various social organizations and the impact of international organizations and globalization. This act did not cover the social situation of Nepali society that has been changed and the aspiration of landowners after the advent of the republic in the country.

### **5.2 More Focus on Cash Compensation**

In article 3 of the act, the provision clearly states that, the government can take any land by paying compensation as per the Act. However, only compensation (cash model) has been provided for the acquisition of the land. In some cases, the government has to provide another piece of land to the landowners for taking their land. The settlement has to be relocated and a new place of residence has to be arranged. But this Act has not given priority to the wishes, desires and participation of the local affected landowners. Only the government can take any land at any time if authority wants. The landlord cannot demand anything else other than cash compensation.

### **5.3 Debates on What is Public Welfare!**

With the restructuring of the local level, voices have been raised that it is the right of the local government to decide on the local land and dissatisfaction has also been seen. With the changing environment and the country moving towards federalism, there are also dissatisfactions that it is not justifiable to give authority to the District Administration Office and the Chief District Officer for land acquisition. The question arises as to what kind of action is in the public interest against the provision that the government can provide land for the public interest. If there is a need to open liquor industry, cigarette factory, cement factory and acquire land for the development of the economy, it may not be beneficial for the general public and locals in terms of health and environment. But the government has been acquiring the land. Therefore, it is not clear in this act which things are in the public welfare and public interest.

### **5.4 Local Level Participation has not been given Importance**

The Council of Ministers is needed to decide whether the land is to be acquired for the purpose of the organization or not. But the land acquisition process has become long due to this lengthy process. In the provision, the head of the office can also take preliminary action if

there is no gazette third class officer to take preliminary action. However, the stakeholders have expressed dissatisfaction over the fact that the educational qualifications and experience of the preliminary action officer have not been included in the provision. There are also complaints that the officer conducting the preliminary action did not post the information in the place specified by the act for the information of all concerned. Within 3 days of the posting of the notice, the landlord's house and the land used by the officer or his team have the right to go and survey, test samples of soil and stones, dig pits, dig boreholes, bury sand forts, etc. It seems to have fallen. The law does not give much importance to the participation of the local level leadership and the people's representatives in conducting the initial action by informing the landowners about the land acquisition process through mutual coordination.

### **5-5 Lack of Coordination between Authority and Public**

Lack of adequate information and deficiency of discussion and coordination with landowners often lead to disputes between government officials and local landowners. Sometimes a lot of damage can be done on the land of one's rightful owner or on the guardian who is planting it, even if the initial officers test various samples or carry out a simple check. Although there is a provision to compensate for the damage, most of the landowners are not happy with the compensation of the damage. Most landowners do not even understand the reason for land acquisition. Some landowners are far away from their place of birth due to employment and opportunities. When the people of the concerned organization enter their land and abolish the plantation, they get angry. Therefore, this dispute eventually reaches its climax and no matter how much compensation they get, they do not satisfy with it and as per the rules, they reach the Chief District Officer with a complaint. As per the rules, a complaint can be lodged with the Chief District Officer within 15 days if he (landowners) is not satisfied with the compensation. Local landowners say this time is not enough.

### **5-6 Errors in the Published Reports of Authority and Local's Dissatisfaction**

The information issued by the local authority is based on the report given by the preliminary action officer. Errors in reports are sometimes published directly as information. In which the name of

the land owner, address, area of land, lot number and other details etc. are published incorrectly as information. As a result, there is dissatisfaction among the local landowners and the incompetence of the local authorities and the authorities to take preliminary action on the land is questioned. Local landowners have complained that the law only gives priority to publishing information. There is an allegation of landowners that they do not give priority to discussions, meetings, etc. with local landowners. The process of land acquisition has not been as easy in Nepal without the participation of the people and without consultation with the people. The main reason for this is due to many weaknesses and old provisions in the Land Acquisition Act.

### **5.7 Lack of Scientific Record of Landownership**

Disputes between landowners and land tenant are one of the major reasons claiming rights over land and leading to delay in the process of land acquisition. There is no problem in claiming the rights over the land of the officially registered land tenant. But the land tenants who have used the land but are not registered in the land revenue office as a land tenant have a dispute with the landlord for compensation. This process takes a long time for land acquisition. It is the responsibility of the government to keep official records of the rights and ownership of the land in their office. The government also has a major responsibility to update its data. But in most Land Revenue Offices, Survey Offices there is no scientific records of land rights, occupations, ownership. On the other hand, certificates are not updated. The landowners are not given enough time to demolish the structures on the land or to install the guardians. For example, maize, paddy, millet, etc. are planted on the land. The officials give information for destroying the newly grown crops with appropriate compensation. However, the farmers and landowners have an intimate and close relationship with their crops, hard work and that fruit. Due to which they became angry with the government's decision and complain that the government has not informed them on time.

### **5.8 Partial Compensation to the Landowners**

As per the provision mentioned in Article 12 of the Act, in case of acquisition of a house with land, the landlord has to relocate to another place if s/he is living in a house with land. On the one hand, with 50 percent of the compensatory money, they do not have enough

budgets to buy another house, due to which they have to live in rent. Landowners have to pay for the rent during the whole process. On the other hand, the grounds for giving advance amount in case of non-determination of land price have not been disclosed. In some cases, 50 percent of the money taken by the landlord is spent on weddings, banquets, religious functions, and other family activities. Due to which the concerned land owner cannot buy another land and house and even the family is found to be upset. Therefore, if the concerned organization had to take the land with the house, the local landowner seems to want the provision of the house compensation. Although government-owned or public land can be provided to the affected landowners but generally landowners do not seem willing to take government-owned land as a compensation.

#### **5.9 Question on Effectiveness of the Land Fixation Committee and Utilization of Compensation**

On the other hand, there are complaints that the people's representatives and other stakeholders are not adequately represented in the committee for determining compensation. It is blamed from the locals that the committee headed by the Chief District Officer, head of the Land Revenue Office, the head of the project concerned and the head of the concerned village or municipality cannot lead the issues of related landowners. In some cases, this assessment committee gives the responsibility of determining the compensation to the sub-committee and also makes a decision based on the report given by the sub-committee. In some cases, the assessment committee has shied away from its responsibilities. Similarly, the land owners have demanded that the ward chairpersons of local villages and municipalities should also be included in the committee. Due to the large structure of the village municipality and rural municipality, in some cases their chiefs and deputy chiefs are ignorant of the prevailing price of the land around them and do not show much interest, so at least the ward chairman is in the fixation committee of the compensation. Dissatisfaction has increased among the landowners regarding the determination of the amount of compensation due to the provision that the price of the same land may be different for the more land and the less land.

Since land compensation is usually paid in cash as per the law, landowners cannot buy another land and house if the cash compensation is not used properly. Generally, they use the



compensation cash for the children education, for the health treatment of their family, repaying debts, social and religious activities, festivals and wedding ceremonies and for extravagant activities such as alcohol and gambling.

#### **5.10 Deficiency of easy way for Allotment of other Land for Exchange**

In fact, society is more dependent on the land of individuals and families. By using the same land, the person is taking care of the family and running the livelihood. Therefore, even if he gets the compensation of the land he wants in cash, he will eventually become landless and in a way, he may be despised by the society. Such compensated individuals and families are treated by the local society with the feeling that the person or family no longer lives in this place, but move elsewhere. Some landowners dream of becoming very rich after getting the compensation cash given by the government, which is also normal. Therefore, some landowner invests the compensation cash in business. However due to the growing capitalist system and competitive market, some people cannot succeed in new business and bare loss and at the end some of them have to fall to zero. In this case, there will no more houses, no land, and no property. Government acquires all the land from the landowners and gives 100% cash. It is also important to think about how the landowner manages the cash, and what the management options might be. On the other hand, if the landowner demands land as an alternative, according to the provisions of the Act, the government can only give government land / public land to the landowners. Generally, landowners wish that the government would buy the private land near their area. However, for that to happen, the government process is not easy and the staff involved in the compensation and the determining committee do not have the will. This is another big challenge of the Act.

#### **5.11 Discriminatory consideration for Public and Private Sectors in the Act**

There are different provisions and consideration for the land to be acquired for the Government of Nepal and its agency and other agency. In order to acquire land for government ownership, the government has given more priority to the land compensation guidelines and what kind of loss or suffering the local landowners have to suffer due to their settlement.

On the other hand, in order to acquire land for other agency, more priority has been given to the value of the land. Thus, when the government acquires land for a local body or a government-owned entity, the current value of the land is not given much priority. Land Revenue Office records, recent sales records become a source for pricing. However, it is the practice of our Nepali society to keep the price of land very low for both land buyers and sellers to pay less tax. On the one hand, if the market value of the land is 100, then the value of the land in the Land Revenue Office is less than 50, which means less than half. In this case, in order to determine the price, it is necessary for the concerned committee to survey the documents of land or private sector government land, the recommendation of the ward office, the evaluation documents of the insurance committees and the current value. Therefore, even when acquiring land for both government and private institutions, same priority has to be given.

### **5-12 Ignorance on the Rights of Landowners**

Article 25 provides that the government of Nepal may order local authorities to take action to protect against natural disasters and to protect public property or to acquire land in the event of an emergency. This section of the act does not give any importance to discussion and coordination with local landowners. The government has the right to acquire land whenever and wherever the government decides. This provision gives the authority the extraordinary right to decide on land acquisition directly, even if the necessary procedures are not followed in some cases.

As a result, the rights of the local level and local landowners have been violated. There is no provision to file a complaint in the court if the decision of the government is not correct or if the decision of the government regarding land acquisition is not correct. Complaints can be register only if the landowner is not satisfied with the amount of compensation. There is a provision that even if a complaint is register to stop the land acquisition process, no complaint can be register against government. There is a provision to register a complaint with the ministry of home affairs if the government of Nepal is not satisfied within 15 days of the issuance of the notice of compensation. But in that case, the decision of the Ministry of Home Affairs of the Government of Nepal is final. There is no provision for landowners to go to other judicial bodies for justice if they are not satisfied with the decision of the home ministry.

Normally authority says it takes six months to complete the entire work of land acquisition process. Many of the landowner expects to get compensation within a year. They make a family plan and solve their family problem after the money which they get as a compensation of their land. But it takes several years to receive the compensation.

## **6. Interest matter more than Idea in Policy making process in Nepal**

Numerous problems have been faced by people because of the insufficient provisions from the land acquisition act. The government can take any land at any time if authority wants. The landlord cannot say that; they cannot give the land in a cash compensation basis to the government. The law does not give much importance to the participation of the local level leadership and the people's representatives in conducting the initial action by informing the landowners about the land acquisition process through mutual coordination. Lack of adequate information and deficiency of discussion and coordination with landowners often lead to disputes between government officials and local landowners. There is a binding provision in this act that the concerned landowner has to take compensation in any way within the period issued by the government or within a period of 3 months to understand the amount, compensation or indemnity. If no compensation is taken, the amount will be deposited in the reserve fund of the Government of Nepal. Some landowners even have to come to the local authorities from abroad to get land compensation. It costs them a lot of money. In some cases, due to special personal and social reasons, the concerned land owner may not come to receive compensation for the land. In such special cases, the local landowners have to make provision for direct deposit in the bank account in the name of the landowners whose land has been acquired by the local authority. The government runs by the people's representatives and aspiration of the people. Therefore, the local landowners argue that the government should move forward in a more liberal and supportive way and process to solve the problems of the local landowners. However, there are not rational provisions on the act to solve this problem. On the other hand, the government of Nepal has not been endorsed new acquisition act even landowners and people are facing many

problems. There is no lack of experts and idea for policy formulation but lack of interest from politics streams. In this regard, I think Campbell ideas does not fit in developing countries like Nepal, where interest matters more than idea.

## 7. Conclusion

The Major implementation challenges of land acquisition act 2034 are insufficient provisions to overcome the demand of landowners in terms of fixing the land price as per the quality and facility of the land. The fixation committee of land acquisition determines the land price with the reference of recent land buying selling price, bank loan tendency, market price, government record. There is no uniformity on the rate on land value. The committee determines the average value for different quality and plot of the land, whereas the landowner compares the price and demand more value for their land. In this regard, landowner demands for scientific land fixation system to determine the value of land. However, there is no appropriate system as practiced by government of Nepal.

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