Infopack

EDITORIAL

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Land Acquisition, Rehabilitation & Resettlement Bill 2011
Much Ado About Nothing

- Piyush Pant

Observations from close quarters make it amply clear that the UPA- II government is suffering from a kind of governance related amentia. Though it looks keen to serve the interests of the corporate sector, yet it is forced, under public pressure, to backtrack and take up policies and programmes that give an impression of serving the interests of the poor, tribal and the farmers. In the ensuing melee it lands itself in a soup, giving the impression that it is suffering from inertia and loss of direction. Be it the Food Security Bill, the Communal Violence Bill or the Land Acquisition, Rehabilitation and Resettlement Bill, the government is always caught on the wrong foot. Apparently trying to pose as a benefactor for the masses and sensitive to the public suggestions, it ends up bringing mere cosmetic changes in the proposed bills by keeping those provisions intact that provide leeway to the corporate interests.

For instance, the draft National Land Acquisition, Rehabilitation and Resettlement Bill 2011, which proposes to amend the Land Acquisition Bill 2007 to make it more friendly towards the displaced persons, in fact ends up, in its present form, in worsening the displacement of dalit, tribal and other backward communities. The Bill seems to be obsessed with the word "minimum" and uses it ad infinitum, be it the question of displacement or that of disturbance to infrastructure and ecology or adverse impact on affected people. But as the critics point out, the understanding of "minimum" in these contexts is highly subjective and has been left open-ended without defining the "minimum " displacement. They ask how to decide 'how much' is "minimum", particularly in the case of forests or damage to the rivers.

It is also being said that the Bill facilitates acquiring land, including commons, presently in the hands of small and marginal farmers from tribal, dalit and backward communities, under the pretext of an unspecified "public purpose' for "infrastructure development". This may well become part of future FDI in food and agriculture, and several related developments linking the global market to India. On the other hand the clause related to 'public purpose' is being connected to real estate development in urban areas in return for crumbs such as 'housing for the urban poor' schemes. Moreover, the Bill defines 'public purpose' very broadly and leaves it to bureaucracy to decide each case. Does it mean that any industry ipso facto serves a public purpose demanding acquisition of agricultural land? Again, under 'infrastructure' the Bill also includes tourism, which would allow acquisition of land for constructing Five Star hotels. Says journalist R Uma Maheshwari - 'The government is fast tracking into a future which facilitates transfer of land into the hands of the urban elite. Even if there is a caveat placed on R&R in case of acquisition up to 100 acres, there is no mechanism to stop the rich from taking an easy way out, opting for say 90 acres.'

The Bill has many other shortcomings as well, particularly in the matter of rehabilitation & resettlement. For instance, the rehabilitation package suffers from a number of lacunas. The principle of 'land for land' has been abolished. It has been only mentioned in context of the irrigation projects, and there too the Bill envisages one acre per family instead of two acres as was the case in the Sardar Sarovar Project. The critics point out that it is not clear why the Bill specifically mentions irrigation projects only while hydro-electric projects and flood control also have the same impact as the irrigation projects, and many projects are usually 'multi-purpose' projects.

In this issue of **INFOPACK** documents discussing the plus and minuses of the **Land Acquisition, Rehabilitation & Resettlement Bill 2011** and the wider question of land acquisition all over the world have been summarised.

India Land Policies for Growth and Poverty Reduction

By:

Agriculture and Rural Development Sector Unit

India Country Management Unit

South Asia Region Document of the World Bank

July 9, 2007

Bird's Eye View

Including Appendix, this 74-page document in divided into nine chapters. Besides these 74 pages, this document also contains extra 9-page Executive Summary.

Chapter I refers to **Introduction**; Chapter II talks about **Land Administration: Structure and Key Challenges**; Chapter III refers to **Improving Textual Records: Examples and Potential**; Chapter IV refers to **Improving The Status of Spatial Records**; Chapter V deals with **Towards Greater Tenure, Security**; Chapter VI discusses **Land Ownership Reform**; Chapter VII talks about **Land Lease Market**; Chapter VIII refers to **Improving Land Access by the Poorest**; Chapter IX refers to **Towards An Integrated Land Policy**.

In the **Introduction,** the document says that in India, land continues to be of enormous economic, social and symbolic relevance. The ways in which access to land can be obtained and its ownership documented is at the cost of the livelihood of the majority of the poor, especially in rural and tribal areas and determine the extent to which increasingly scarce natural resources are managed. Land policies and administration are critical determinants of the transaction cost associated with and modalities to access land for business and residential use and, through the ease of using land as collateral for credit, the development of the financial sector. Land also continues to be a major source of government revenue and a key element for implementing government programmes. This implies that land policies and institutions will have a far-reaching impact on the ability to sustain India's current high rate of growth, the extent to which such growth reaches the poor, and the level and spatial distribution of economic activity.

The document further says that the goal of this report is to draw on recent empirical evidences, to assess the extent to which land-related institutions have improved in individual states and the impact of a range of modern technology and the convergence of interests visible in recent initiatives such as the National e-Governance Programme, can be most effectively utilized. In the case of land administration a review is being drawn on land records, survey and settlement, and land registration in 14 states while a nation-wide survey that spans the 1982-99 period provides the basis for an assessment of land policies. Chapter two describes the origin, nature, and main functions of current institutions and the ensuing problems for secure tenure and easy transferability of land. Chapter three identifies elements of a 'best practice' approach to improving textual data (records and registration) and, based on a review of states' experience, identifies the associated benefits. Chapter four reviews the extent to which lessons from improving textual records could help to give a boost to improvement of the spatial database for land administration, an area that has thus far been largely neglected but that will require urgent attention if initiatives to have a system providing higher levels of tenure security are ever to bear fruits. Chapter five concludes the discussion on land administration by assessing the scope for title registration to help improve tenure security in India and by identifying that need to be discussed. Chapter six highlights that land reform has helped increase accumulation of physical and human capital but that the impact is declining over time. It therefore explores a range of alternative ways to increase land ownership by the poor. Chapter seven explores the functioning of land lease markets, and the extent to which restrictions on land leasing reduce the scope for productivity- and equity enhancing transfers through such markets which could be particularly beneficial for women. Chapter eight reviews the operation of land sales markets and suggests alternative approaches for preventing land loss by tribal people and chapter nine concludes with series of policy

recommendations.

Institutional Structure and Challenges

Under this title, the document points out that most of the institutions and processes for administering land in India were adopted from the British at Independence and have been modified little since. Their main purpose was to raise resources. But their main focus was on productive rural areas leaving behind the urban and 'marginal' rural areas. Their operations were found to be archaic in three respects.

First, and most importantly, any piece of rural land that had been transacted sale at any point after 1882 thereby entered the land registry system, implying that records about it are maintained not only by the revenue but also the stamps and registration department. This duplication of institutions increases transaction costs for land owners without providing commensurate benefits but, more importantly, introduces a major source of tenure insecurity and even fraud because, for a variety of reasons, the records maintained by both institutions may well be inconsistent. While the most radical solution, which indeed has been mooted in policy circles, would be to merge the two departments, thou doing so may encounter strong bureaucratic resistance.

Second, rural areas at the urban fringe have increasingly become subject to urbanization. Although this is associated with a significant increase of land values that would require a more precise survey, in many Indian states the result of this process was that the survey department's responsibility for maintaining an accurate spatial record of land ownership lapsed and responsibility for doing so was de facto transferred to municipal corporations who were interested in maintaining special records only for tax purposes.

Last, but by no means least in importance, even revenue lands that had previously been waste and thus were not subject to settlement surveys have increasingly been brought under agricultural cultivation. It implies that one of the key challenges from a poverty perspective is to extend land administration to the areas that have been left out. Doing so will require clarification of the interface with the forest department and a broadening of tenure choices that can be accommodated within the land administration system to include, for example, forms of communal ownership. Given the large number of land and people involved, and the high concentration of poverty in these areas, settling these issues is of very high priority for poverty reduction and will require major policy decisions. Some of these decisions are currently under debate in the discussion of the Forest Rights Bill.

Improving Textual Land Records

Under this title, the document says that review of states' experience with initiative to computerize revenue records and land registries, spearheaded by Ministry of Rural Development (MoRD) and Ministry of Information Technology (MIT) respectively, allows identifying best practices for this process, the benefits from doing so, and the challenges that remain to be addressed.

It further says that computerization of land records, which is now fully or partly operational in Karnataka, Gujarat, Rajasthan, Madhya Pradesh, Maharashtra and Tamilnadu, has yielded four key benefits. First, it has simplified the system and significantly reduced petty corruption that was traditionally involved in getting access to land records. A survey from Karnataka estimates that computerization in this state saved Rs. 80 crores of bribe and 6.6 crores in waiting time per year. Second, computerization improved the quality with which government services are delivered and is generating large surpluses from user fees in the states where it has been rolled out and manual records been abolished. Third, computerization helped to improve credit access.

The impressive success of some leading states in shifting from manual to electronic records should not conceal the fact that, in many instances, large amounts of money have been spent on initiatives to computerize land records with as yet little impact on the ground, implying that there is considerable scope to re-orient or accelerate ongoing programmes to enhance their effectiveness.

Computerizing registration of deeds which is fully completed in Andhra Pradesh, Karnataka, Maharashtra, Rajasthan and Tamilnadu, has also helped to realize large benefits. One is that, in a number of states, computerization has been associated with a significant increase in the number of registered land transfers and increased revenue from duties even though duty rate in some cases been substantially reduced. This suggests that more transparent processes for registration and property valuation increased the usefulness of services to customers and that demand for registration is price elastic. In addition, the fact that in some states encumbrance certificates for a significant length of time are available helps to increase tenure security. Being able to obtain these electronically via the internet implies a significant reduction in the transaction costs for sellers and purchasers as well as banks although evidence regarding its impact on credit market activity is still limited.

The document points out that a number of policy issues need to be addresses even in more advanced states. First, even though some states have moved to reduce high levels of stamp duty that tended to drive transaction

into informality, the taxes levied on property transfers in India, in contrast to land taxes, remain among the highest in the world. Unless they are reduced, even the best technical solutions for improving land records are unlikely to be sustainable. Second, it will be important to ensure completeness and consistency of revenue and registry records. This will require regulatory changes to ensure that mutations, e.g. through succession, that did not need to be registered in the past, will be registered automatically and free of charge, which that will not be difficult if the systems are linked electronically. Third, the lack of a consistent reference to spatial parcel identifies in the registry is one of the key sources of incompleteness and insecurity and needs to be tackled. Finally, there is a strong perception about registry officials lacking accountability. This issue can be addressed once these officials have easy access to the information needed to perform basic checks on the transaction that are offered to them for registration. While none of these issues poses insurmountable difficulties and many of them will require only small administration across states is likely to have an important role, especially if it is linked to the provision of finances.

Improving the Status of Spatial Land Records

The document says that regarding spatial data, there is consensus on three issues. First, establishment of a comprehensive, reasonably accurate, cost-effective and affordable spatial framework will be a key element of any strategy to improve India's land administration system. Second, due to a long neglect and gaps in institutional responsibilities, the quality and reliability of existing spatial data is much inferior to that of the textual database and neither simple digitization of existing data nor attempts to resurrect the tradition of revisional surveys that had been established by the British will be sufficient to address the problem. Third, there is an urgent need to develop viable and replicable models to improve and maintain spatial records, along the lines of what was achieved for textual records. This is more difficult because of the highly specialised nature of surveying, the presence of strong vested interests pushing for technically sophisticated rather than economically viable options, and the fact that surveying costs tend to increase exponentially with precision.

Putting the Elements Together: Towards Greater Tenure Security and Easier Transferability of Land

The document says that from the very start, the goal of efforts to modernize land administration in India was to increase tenure security and reduce the cost of transferring land. While modernization of textual and spatial records is a necessary condition for this, it will be fully effective only if accompanied by an appropriate legal and regulatory framework. In this context, a key concern that is widely debated in policy circles, has been whether, and if yes when and how, India should make the transition towards a system of title registration, often also referred to as a Torrens system.

Once this is done, the decision on whether to make the transition towards a full title registration system will hinge on three factors. First, there needs to be sufficient political support to make legal and institutional changes needed by a system of title over and above one of deeds registration. Second, even if the capacity to run a title registration system is available, a consensus on the desirability of incurring these costs needs to be reached. Finally, an important decision relates to the establishment of a guarantee fund that is essential for a system of title registration in contrast to merely an improved deeds system.

A better understanding of the magnitudes involved in the Indian context would be critical to reach an informed decision on whether or not to go for a title registration system. Close monitoring of efforts to move towards title that have been initiated in Andhra Pradesh is likely to yield important insights for other Indian states faced with similar questions. Comparing the experience of England and Scotland, two countries which, starting from a basis that was much superior to that encountered even in the most advanced Indian states, made a successful transition from deeds to a title system over a period of decades with that of less successful experiences of developing countries trying to make such transitions without having in place the infrastructure to support such system or being aware of the complex issues involved suggests that trying to fast-track these processes carries a significant risks.

A more immediate goal, to be accomplished at least in the medium-term is to functionally integrate the different databases used in land administration so as to be able to provide land owners with certificate - which can even be called a "Torrens title" - that combines relevant and current information pertaining to a plot (i.e. ownership status, transaction history, current and past mortgages and liens, and a map that allows identification of neighbours and general boundaries) irrespectively of the government department maintaining the information. If combined with options to maintain spatial data at low cost and regulations to ensure that any changes in either textual or spatial records will automatically be effective throughout the system and to require registry officials to perform at least basic validity checks before registering a document, this would allow to realize 90% of the benefits from a title registration system at a fraction of the cost - while at the same time providing a more appropriate basis to

decide whether transition towards full title will be desirable.

Land Ownership Reform

The document says that policies of land reform, through abolition of intermediary interests, tenancy legislation, and land ownership ceilings have formed the core of Government of India policies to improve the land ownership structure. Empirical evidence from a nation-wide survey spanning the 1982-99 period is being used to assess whether such reforms have been associated with higher levels of investment in physical and human capital, growth, and how their impact has evolved over time. Results from doing so suggest that transferring land ownership may have been quite effective, although limited variation in land reform implementation has to be taken into account in interpreting them. Although they were worse off, households in states that had higher levels of reform effort saw their welfare and investment improve more than those in states were land reform implementation remained lacklustre. This is supported by econometric evidence which points towards a positive, significant, and quantitatively important contribution of land reform to investment and growth with an overall effect that compares favourably to other forms of social spending. At the same time, econometric evidence suggests that the positive impact of land reform legislation has been declining over time and actually risks becoming negative, something that would be consistent with the notion that land reform legislation is no longer very effective in transferring new land to the poor but continues to affect the efficiency with which land is used by land reform beneficiaries as well as land owners targeted by land reform due to the fact that these may take preventive measures to escape this threat.

The document further points out that where large amounts of land continue to be held by government, regularization should be much easier. Potions to provide secure access and title to such land include a variety of tenurial instruments such as transfer of government wasteland to private parties, long-term leases, of occupancy rights, and formal recognition of communal tenure. These include long-term leases, extension of survey to a specific area, possibly with the option of opting for communal land ownership, or transfer of government wasteland on an ad-hoc basis. Evidence from AP highlights not only that there is a considerable amount of land that does not have clear title but also that providing a clear certificate (patta) can significantly increase land value, by 15% to 20% for privately owned and by 30% to 45% for assigned or occupied land. Moreover, having a clearly defined right also increases the probability of a plot of land being rented out, thereby providing indirect benefits to the poor. Finally, the considerable potential to improve the welfare of women who depend on agriculture by giving them land rights of ensuring that they can inherit such land has often been neglected in the past.

Land Lease Markets

The document says that although land rental markets in India remain highly regulated, empirical evidence on the functioning of land lease markets or the impact of such regulation on poor peoples' ability to access land or use it productively remains limited. Rental market participation in India has declined continuously since independence, despite the fact that in India land rental provides virtually the only option for accessing land by large pool of landless.

The document further says that use of nationally representative data provides four important insights. First, land rental markets contribute to greater equity and productivity of land use by allowing the "productive poor" and landless to access land and obtain returns to their labour that are significantly higher than what they would be able to obtain in casual labour markets. Second, contrary to hypothesis of 'reverse tenancy' according to which the majority of land entering rental markets is supplied by small and marginal farmers in a situation of relative duress, households with higher levels of education supply rent to the market, presumably to take up more lucrative employment in the non-farm economy. Third, state-level land rental restrictions reduce the ability of the poor to access land and also have a negative impact on productivity, implying that eliminating such restrictions could help to improve both equity and efficiency. Finally, wage rate in casual labour markets for both agriculture and non-farm activity discriminate strongly against women even though there is no evidence to suggest that women are less productive than men in agricultural self-employment. This suggests that the relative benefits from being able to access land through rental markets would be larger for women than for men, implying that freeing up land rental markets could have a positive gender impact.

To reap the potential benefits from land rental, it will be important to (i) make land leasing legal in states where it is not; (ii) explore options to allow sitting long-term tenants (e.g. bargadars in west Bengal) to acquire full ownership of all or part of the land they occupy; (iii) replace rent ceilings and other limitations on land leasing with a more enabling legislation such as dissemination of standardised contracts for longer term, local help in conflict resolution, etc.

Land Sales Markets

The document under this title points out that the above suggests that land rental is an important mechanism to increase efficiency of land use. However, policy makers have often been concerned that in rural areas where, as a result of credit markets imperfections, households are not able to fully insure against shocks, distress sales may have a negative impact on both equity and efficiency. In other words, farmers would be forced to sell their land, often to usurious moneylenders or other unscrupulous persons, at bargain prices that are well below the productive value of the land just to ensure their survival in the face of a shock. As they will not be able to re-acquire the land through purchase once prices return to normal, this would leave them permanently landless. Indeed, historically, distress sales were a major factor that led to the accumulation of large amounts of land by powerful landlords and moneylenders.

The document further says that a number of interesting findings emerge. First, even though the land sales markets provide less opportunity for land acquisition than land rental markets and the fact that participation requires higher levels of assets, markets constitute a more promising avenue to land access for the landless than non-market channels. Second, there is clear evidence for draught shocks to increase activity in land sales markets, supporting the notion that involuntary distress sales by the poor continue to be an important phenomenon despite legislation to the contrary. Third, consistent with the notion that credit market imperfections are at the root of involuntary land sales, availability of safety net programmes (employment guarantee scheme) and access to banks significantly reduce the propensity to sell, especially during droughts whereas greater inequality contributes to an increase in land transactions. Presence of banks helps activate land sales markets in general but reduces the tendency for land sales to occur in drought years. Finally, SCs and STs are less likely to sell or purchase land even after household and village characteristics are controlled for.

While this suggests that restricting land sales by tribals may have some effect, it leaves open the question whether a prohibition on land sales and rentals is needed and whether other policies allowing tribals to utilize land more productively may be a more appropriate policy. Regarding the first issue, international experience points towards a number of mechanisms, including a right of first refusal, the requirement of obtaining community permission for land transfers, the need for a community decision to allow land sales in general, or an involvement of the community in land sale negotiations that can achieve the same goal but foreclose less options for tribals to benefit from productivity-enhancing transfers. As to the second issue, there is little doubt that firmly establishing and documenting tribals' property rights to the land they cultivate will be more effective to provide them with incentives to manage such land in a sustainable fashion than a prohibition on land sales. While large-scale initiatives to do so on land that is currently classified as forest will have to await passage of the Tribal Land Bill, there are many situations where, for a variety of reasons, tribal land rights on revenue land are unclear from a legal perspective or not well documented in the applicable records. Immediate action to redress this situation will be critical and needs to accompany any efforts to prevent involuntary land alienation by tribals.

In fact, there are many examples from other countries where emphasis on safety nets, together with providing an overriding right to the community, was much superior approach to avoiding undesirable land alienation than prohibition that will not prevent those in dire need from selling their land - but reduce even further what they can get for it.

Towards an Integrated Land Policy

The document, under this title, states that although land administration and policy in India are complex subjects, with a bewildering amount of detail and variation across states, a number of key messages and priority actions emerge from. First, trying to compartmentalize the administration into different 'boxes' that are unconnected to each other (either registry or records or survey or rural-urban) will not help to improve the overall performance of the system. At the same time, improving spatial records is much more complex and trying to fix spatial records in an environment where issues relating to textual records are not sorted out may be risky. MoRD's efforts to improve the land administration system, and the effectiveness of GoI support to such efforts, could be improved, if a clear policy to lay out these issues were available and used to guide allocation of funds to, and reporting on the use of these funds from, individual states. Second, policy makers underestimate the intimate links between land administration and policy at their peril. Although land administration it highly technical, no amount of technical sophistication will neutralize the impact of adverse policies that push the concerned households into informal systems. Similarly, land administration provides important tools to implement policies. In fact, one reason why India has no shortage of bold land policy initiatives for the poor which look very attractive on paper but could not be implemented in practice, is the fact that its land administration system is weak in general and often non-existent or dysfunctional in the areas where the poorest live. This implies that there are a number of

property actions in administration and policy. These are:

Expand computerization, integration, and use of textual records to ensure full coverage: Even though states that successfully computerized textual records benefited significantly form doing so, many progress remains slow at best in others.

Provide a basis for state-wide spatial coverage: Large amount of money have been, and continue to be, spent on surveying pilots with ill-defined objectives, the results of which are rarely subject to a rigorous evaluation.

Pilot ways of improving textual and spatial records for well-defined situations: In line with the ultimate goal of the land administration system, the purpose of piloting should be to establish processes that can be scaled up rapidly to improve the overall record and formulate regulations that can help to do so, possibly by sub-contracting to the private sector.

Allow private sector participation in surveying, focusing government on a regulatory role: Given the size of the gaps in spatial data and the limitations that make it difficult for the public sector to address them comprehensively, the almost complete prohibition of private participation in survey is surprising and inconsistent with international best practice and India's own experience in computerizing textual records.

Reduce stamp duty rates and explore the scope for replacing them with a land tax: There is little doubt that the high rates of stamp duty currently assessed upon registering land transfers push people into informality while reducing government revenue. Reducing these rates, which are very high by international standards, is likely to be necessary to ensure the sustainability of any improvements made in land administration. To make such a step revenue-neutral, it may be useful to consider combining it with an increase in the land tax for specific groups, possibly to be shared between states and local governments. While such a decision will not be easy politically, it is likely to have a more profound impact on India's land administration system than a transition toward a title registration system.

Eliminate restrictions on land market: All over the world, land rental markets allow rural dwellers to join the rural non-farm economy in a way that provides those who stay back with access to additional productive resources. Indian evidence shows that rental restrictions reduce equity as well as efficiency. It will thus be desirable to (i) make leasing legal where it is currently prohibited and replace rent ceilings with regulations to facilitate rental markets instead of constraining them; (ii) allow transferability of land by land reform beneficiaries at least through lease and explore options for making the gains from such reform permanent; (iii) drop restrictions on sale of land to non-agriculturalists and subdivision which have little economic justification; and (iv) review legislation on compulsory land acquisition and, subject to the prevention of undesirable externalities, allow farmers or their representatives to negotiate with and if desired transfer land directly to investors rather than having to go through government and often receive only very limited compensation.

Provide options for a wide range of ownership patterns: Although expansion of survey coverage will be critical to ensure that poor people in marginal areas will be able to gain secure land rights, in many of these situations, award of individual title may not be most appropriate option; indeed some observers have linked such individualization with the break-up of traditional community structures and widespread land transfer. To prevent these, it will be important to have a menu of tenure options, including communal ones, available and to allow groups to choose freely and depending on their specific needs, with possibility of making the transition to individual holdings at a later stage if desired.

Complement restrictions on tribal alienation with flexible mechanisms providing them with property rights: While there is little doubt that alienation of lands through distress sales is an extremely undesirable outcome that should be avoided, increasing rates of tribal landlessness suggests that regulations are often not effective in preventing it. In the short term, the most promising way to prevent tribal land alienation is likely to be effective safety nets, something that could possibly be combined with mechanisms for communities to have a greater say whether or not land should be transferable such as a right of first refusal or community consent for sales. Providing tribals with real property rights, either individually or as a group, would in the long term make a more important contribution to their productive development and thus the avoidance of distress sales. Therefore, the long-term goal should be to implement systematic programmes that would recognize tribal land rights - and resolve whatever conflicts exist as a result of past alienations in contravention of the law according to accepted principle policies.

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011

By:

Government of India, New Delhi

Bird's Eye View

The document says that this Bill will be enacted by Parliament in the Sixty-second Year of the Republic of India. The objective of the Bill is to ensure a humane, participatory, informed consultative and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement thereof, and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

The 55-page document is divided into thirteen chapters.

Chapter I: Preliminary; Chapter II: Determination of Social Impact and Public Purpose; Chapter III: Special Provisions to Safeguard Food Security; Chapter IV: Notification and Acquisition; Chapter V: Rehabilitation and Resettlement Award; Chapter VI: Procedure and Manner of Rehabilitation and Resettlement; Chapter VII: National Monitoring Committee for Rehabilitation and Resettlement; Chapter VIII: Establishment of Land Acquisition, Rehabilitation and Resettlement Authority; Chapter IX: Apportionment of Compensation; Chapter X: Payment; Chapter XI: Temporary Occupation of Land; Chapter XII: Offences and Penalties; Chapter XIII: Miscellaneous.

In **Chapter I**, under the title 'Preliminary', the document says that this Act may be called the Land Acquisition, Rehabilitation and Resettlement Act, 2011, and would extend to the whole of India except the State of Jammu and Kashmir.

This Act will come into effect on such date provided that the Central Government shall appoint such date within three months from the date on which the Land Acquisition, Rehabilitation and Resettlement Bill, 2011 receives the assent of the President, by notification in the Official Gazette.

The document further points out that the provisions of this Act shall apply, when the appropriate Government acquires land for its own use, hold and control; or with the purpose to transfer it for the use of private companies for public purpose (including Public Private Partnership projects but not including national or state highway projects); or on the request of private companies for immediate and declared use by such companies of land for public purposes: provided that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of the law relating to land transfer, prevailing in such Scheduled Areas.

The provisions relating to this Act shall also apply in the cases where a private company purchases or acquires land, equal to or more than one hundred acres in rural areas or equal to or more than fifty acres in urban areas, through private negotiations with the owner of the land as per the provisions of section 42; also when a private company request the appropriate Government for acquisition of a part of an area so identified for public purpose.

In this chapter, the document also gives a list of some important definitions related to this Act. These are:

"affected areas" means such areas as may be notified by the appropriate Government for the purposes of land acquisition;

"affected family" includes -

i) A family whose land or other immovable property has been acquired or who have been permanently displaced from their land or immovable property;

ii) A family which does not own any land but a member or members of such family may be agricultural labourers, tenants, share-croppers or artisans or may be working in the affected areas for three years prior to the acquisition of the land is dependent on forest or water bodies and gatherers of forest produce, hunters, fisher folks and boatmen whose primary source of livelihood stand affected by the acquisition of land;

iii) Tribals and other traditional forest dwellers who have lost any of their traditional rights recognised under Scheduled Tribes and other Traditional Forest dwellers (Recognition of Forest Rights) Act, 2006 due to acquisition of land;

iv) A member of a family who has been assigned land by the State Government or Central Government under any of its schemes and such land is under acquisition; "agricultural land" means land used for the purpose of:-

  i) agriculture or horticulture;

  ii) dairy farming, poultry farming, pisciculture, sericulture, breeding of livestock or nursery growing medicinal herbs;

  iii) raising of crops, trees, grass or garden produce; and

  iv) land used for grazing of cattle;

" cost of acquisition" includes -

i) amount of compensation which includes solatium, any enhanced compensation ordered by the Land Acquisition and Rehabilitation and Resettlement Authority or the Court and interest payable thereon and any other amount determined as payable to the affected families by such Authority or court;

ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition;

iii) cost of acquisition of land and building for settlement of displaced or adversely affected families;

iv) cost of development of infrastructure and amenities at the resettlement areas;

v) administrative cost for acquisition of land, including both in the project site and out of project area lands, not exceeding such percentage of the cost of compensation as may be specified by the appropriate government; and for rehabilitation and resettlement of the owners of the land and other families affected by such acquisition; cost of undertaking 'Social Impact Assessment study;

"person interested" means -

i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

ii) tribals and other traditional forest dwellers, who have lost any traditional rights recognised under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;

iii) a person interested in an easement affecting the land;

iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and

v) any person whose primary source of livelihood is likely to be adversely affected;

"public purpose" includes -

i) the provision of land for strategic purposes relating to naval, military, air force, and armed forces of the Union or any work vital to national security or defence of India or State police, safety of the people; or

ii) the provision of land for railways, highways, ports, power and irrigation purposes for use by Government and public sector companies or corporations; or

iii) the provision of land for project affected people;

iv) the provision of land for planned development or the improvement of village sites or any site in the urban area or provision of land for residential purposes for the weaker sections in rural and urban areas or the provision of land for Government administered educational, agricultural, health and research schemes or institutions;

"Requiring Body" means a company, a body corporate, an institution, or any other organization for whom land is to acquired by the Appropriate Government and includes the Appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land in public interest to the company, body corporate, an institution, or any other organisation, as the case may be, under lease, licence or through any other mode of transfer of land; "small farmers" means a cultivator with un-irrigated land holding up to two hectares or with an irrigated land holding up to one hectare, but more than the holding of a marginal

farmer.

In **Chapter II**, the document talks about preparation of Social Impact Assessment Study. It says that whenever the appropriate Government intends to acquire land for a public purpose, it shall carry out a Social Impact Assessment Study in consultation with the Gram Sabha at habitation level or equivalent body in urban areas, in the affected area in such manner and within such time as may be prescribed.

The Social Impact Assessment Study, amongst other matters, includes all the following, namely: -

a) assessment of nature of public interest involved;

b) estimation of affected families and the number of families among them likely to be displaced;

c) study of socio-economic impact upon the families residing in the adjoining area of the land acquired;

d) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;

e) whether land acquisition at an alternate place has been considered and found not feasible;

f) study of social impact from the project, and the nature and cost of addressing them and their impact on the overall costs of the project and benefits.

The document further says that while undertaking a Social Impact Assessment study, the appropriate Government shall, amongst other things, take into consideration the impact of the project likely to have on various components such as public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.

It also says that whenever a Social Impact Assessment is required to be prepared, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report.

The appropriate Government shall ensure that the Social Impact Assessment study report is prepared and published in the affected area, in such manner as may be prescribed, and uploaded on a website created especially for this purpose, and a copy of this report shall be made available to the Social Impact Assessment Agency authorised by the Central Government to carry out environmental impact assessment.

While talking about the appraisal of Social Impact Assessment report, the document points out that the appropriate Government shall ensure that this assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it.

If the Expert Group is of the opinion that, --

1. the project does not serve the stated public purpose; or
2. project is not in the larger public interest; or
3. the costs and adverse impacts of the project overweigh the potential benefits.

It shall make a recommendation to the effect that the project shall be abandoned forthwith and no further steps to acquire the land should be initiated in respect of the same; it shall also make specific recommendations whether the extent of land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing option available:

Provided that the grounds for such recommendations shall be recorded in writing by the Expert group giving the details and reasons for such decisions.

Where land is proposed to be acquired invoking the urgency provisions under section 38, the appropriate Government may exempt undertaking of the Social Impact Assessment study.

In **Chapter III**, the document refers to Special Provision to Safeguard Food Security. It says that no irrigated multi-cropped land shall be acquired under this Act.

Such land may be acquired subject to the condition that it is being done under exceptional circumstances, as a demonstrable last resort, where the acquisition of the land, in aggregate for all projects in a district, in no case exceed five per cent of the total irrigated multi-crop area in that district.

Whenever multi-crop irrigated land is acquired, an equivalent area of culturable wasteland shall be developed for agricultural purposes.

In case not falling under multi-crop land, the acquisition of the land in aggregate for all projects in a district in which net sown area is less than fifty per cent of total geographical area in that district, shall in no case exceed ten per cent of the total net sown area of that district:

Provided that the provisions of this section shall not apply in the case of projects that are linear in nature such as those relating to railways, major district roads, irrigation canals, power lines etc.

In **Chapter IV**, the document says that whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be required in rural and urban areas shall be published in the following manner, namely: --

a) in the Official Gazette;
b) in two daily newspapers circulating in the locality of such area of which one shall be in regional language;
c) on the website of the appropriate Government in public domain;
d) by making available a copy of the notification for inspection by persons affected, at the collectorate and tehsil office and at the concerned gram panchayat or urban local body office;
e) the Collector shall also cause public notice of the substance of such notification to be put up at convenient and conspicuous places in the said area.

The document further says that no notification shall be issued unless the concerned Gram Sabha at the village level and municipalities, in case municipal areas and Autonomous Councils in case of the Sixth Schedule areas have been consulted in all cases of land acquisition in such areas as per the provisions of all relevant laws for the time being in force in that area.

The notification issued shall also contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement under section 39.

No person shall make any transaction or cause any transaction of land from the date of publication of such notification till such time as the proceedings under this Chapter are completed.

After issuance of notice, the Collector shall, before the issue of a declaration, undertake and complete the exercise of updating of land records as prescribed.

It further says that any person interested in any land which has been notified as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, to object to -

a) the area and suitability of land proposed to be required;
b) justification offered for public purpose;
c) the findings of the Social Impact Assessment report.

Every objection shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendation on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government. The decision of the appropriate Government shall be final.

Upon the publication of the preliminary notification by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families. The Administrator shall, based on the survey and census prepare a draft Rehabilitation and Resettlement Scheme, as prescribed which shall include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihood are primarily dependent on the lands being acquired and where resettlement of affected families is involved -

i) a list of Government buildings to be provided in the Resettlement area;
ii) details of the public amenities and infrastructural facilities which are to be provided in the resettlement area.

The draft Rehabilitation and Resettlement Scheme shall include time limit for implementing Rehabilitation and resettlement scheme.

The draft Rehabilitation and resettlement scheme shall be made known locally by wide publicly in the affected area and discussed in the concerned Gram Sabhas or Municipalities.

A public hearing shall be conducted in such manner as may be prescribed, after giving adequate publicly about the date, time and venue for the public hearing at the affected area.

The Administrator shall, on completion of public hearing submit the draft along with a specific report on the claims and objections raised in the public hearing to the Collector.

The Administrator shall cause the approved Rehabilitation and Resettlement Scheme to be published in the Official Gazette, and make available in the affected areas and also display a copy thereof on his website.

The document points out that when the appropriate Government, after considering the report, if any, feels that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the 'resettlement area' for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorised to certify its orders.

Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language.

The Collector shall publish the public notice on his website stating that the Government intends to take possession of the land, and that claims to compensations and rehabilitation and resettlement for all interests in such land may be made to him.

The public notice shall state the particulars of the land so needed, and require all persons interested in the land to appear personally or by agent or advocate before the Collector at a time and place mentioned in the public notice not being less than thirty days after the date of publication of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, their claims to rehabilitation and resettlement along with their objections.

In case any person so interested resides elsewhere, and has no agent, the Collector shall ensure that the notice shall be sent to him by post in letter addressed to him at his last known residence, address or place or business and also publish the same in at least two national daily newspapers and also on his website.

The document further says that notwithstanding anything contained in this Act, in any case where a notification under section 4 of the Land Acquisition Act, 1894 was issued before the commencement of this Act but the award under section 11 thereof has not been made before such commencement, the process shall be deemed to have lapsed and the appropriate Government shall initiate the process for acquisition of land afresh in accordance with the provisions of this Act.

Where possession of land has not been taken, regardless of whether the award under section 11 of the Land acquisition Act, 1894 Act has been made or not, the process for acquisition of land shall also be deemed to have lapsed and the appropriate Government shall initiate the process of acquisition afresh in accordance with the provisions of this Act.

The Collector shall make an award within a period of two years from the date of publication of the declaration under section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:-

a) the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area, whichever is higher.

The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land.

In **Chapter V**, the document refers to Rehabilitation and Resettlement awards for affected families by Collector in terms of entitlements.

The Rehabilitation and Resettlement Award shall include all of the following, namely: --

a) rehabilitation and resettlement amount payable to the family;

b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred;
c) particulars of house site and house to be allotted, in case of displaced families;
d) particulars of land allotted to the displaced families;
e) particulars of one time substance allowance and transportation allowance in case of displaced families;
f) particulars of payment for Cattle shed and petty shops;
g) particulars of one-time amount to artisans and small traders;
h) details of mandatory employment to be provided to the members of the affected families;
i) particulars of annuity and other entitlements to be provided;
j) particulars of fishing rights that may be involved;
k) particulars of special provisions for Scheduled Castes and Scheduled Tribes to be provided.

Every displaced family shall be resettled in a resettlement area.

In every resettlement area, the Collector shall ensure the provision of all infrastructural and basic amenities.

The document further says that for the purpose of enquiries under this Act, the Collector shall have the power to summon and enforce the attendance of witnesses, including the parties interested of any of them, and to compel the production of documents by the same means, and in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

The appropriate Government may at time before the award is made by the Collector call for any record of any proceedings for the purpose of satisfying itself as to the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit.

The document says that the Collector shall keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired under this Act on the website created for this purpose.

The Collector shall ensure that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements commencing from the date of the award made.

On the fulfilment of the condition, the Collector shall take possession of the land acquired, which shall, thereupon, vest absolutely in the Government, free from all encumbrances

In case of urgency, whenever the appropriate Government so directs, the Collector, though such award has been made, may, on the expiration of thirty days from the publication of the notice, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

In **Chapter VII**, the document refers to establishment of National Monitoring Committee for rehabilitation and resettlement. It says that The Central Government shall constitute a National Monitoring Committee for reviewing and monitoring the implementation of rehabilitation and resettlement schemes or plans under this Act.

The States and Union Territories shall provide all the relevant information on the matters covered under this Act, to the National Monitoring Committee in a regular and timely manner, and also as and when required.

In **Chapter VIII**, the document further says that the appropriate Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, establish by notification, one or more Authorities to be known as "the Land Acquisition, Rehabilitation and Resettlement Authority" to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

The Authority shall consists of one person only (hereinafter referred to as the Presiding Officer) to be appointed, by notification, by the appropriate Government.

The Authority shall, for the purposes of its functions under this Act, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: --

a) summoning and enforcing the attendance of any person and examining him on oath;
b) receiving evidence on affidavits;
c) discovery and production of any document or other material object producible as evidence;
d) requisitioning of any public record;
e) issuing commission for the examination of witnesses;

f) reviewing its decisions, directions and orders;

g) any other matter which may be prescribed.

The Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made thereunder, the Authority shall have the power to regulate its own procedure.

The Authority shall, after receiving reference and after giving notice of such reference to all the parties concerned and after affording opportunity of hearing to all parties, dispose of such reference within a period of six months from the date of receipt of such reference and make an award accordingly.

All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Authority shall be deemed to be civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

No civil court (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter.

Any person interested, who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under chapters V and VI or the apportionment of the compensation among the persons interested.

The Authority shall thereupon cause a notice specifying the day on which the Authority will proceed to determine the objection, and directing their appearance before the Authority on that day, to be served on the following persons, namely:--

a) the applicant;

b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

Every such proceeding shall take place in public, and all persons entitled to practice in any Civil Court in the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

In determining the amount of compensation to be awarded for land acquired under this Act, the Authority shall take into consideration the market value as determined under section 26.

In addition to the market value of the land, the Authority shall in every case award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the preliminary notification in respect such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning clause (2), and clause (9) respectively, of section 2 of the Code of Civil Procedure, 1908.

In **Chapter IX**, the document points out that when the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority.

In **Chapter X**, the document refers to the payment of compensation or deposit of same in Authority. It says that on making an award, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by some one or more of the contingencies.

If a person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Authority.

If any money is deposited in the Authority concerned and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Authority concerned shall:-

a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of

ownership as the land in respect of which such money shall have been deposited was held; or

b) if such purchase cannot be effected forthwith, then in such Government of other approved securities as the Authority concerned shall think fit, and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such money shall remain so deposited and invested until the same be applied i) in the purchase of such other lands as aforesaid; or ii) in payment to any person or persons becoming absolutely entitled thereto.

When any money shall have been deposited in the Authority concerned under this Act for any cause other than the causes mentioned above, the Authority may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and paid in such manner as it may consider will give the parties interested therein the same benefit from it as they have had from the land in respect whereof such money shall have been deposited.

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from time of so taking possession until it shall have been so paid or deposited.

In **Chapter XII**, the document talks about Offences and Penalties. It says that if a person, in connection with a requirement or direction under this Act, provides any information or produces any document that the person knows is false or misleading, he shall be liable to be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one lakh rupees, or with both.

Any rehabilitation and resettlement benefit availed of by making a false claim or through fraudulent means shall be liable to be recovered by the appropriate authority.

Disciplinary proceedings may be drawn up by the disciplinary authority against a Government servant, who if proved to be guilty of a malafide action in respect of any provision of this Act, shall be liable to such punishment including a fine as the disciplinary authority may decide.

The document further says that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, secretary, manager or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Where an offence under this Act has been committed by any department of the Government, the head of the department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

No Court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the first class shall be competent to try any offence punishable under this Act.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence under this Act shall be deemed to be non-cognizable.

No Court shall take cognizance of any offence under this Act which is alleged to have been committed by a Requiring Body except on a complaint in writing made by the Collector or any other officer authorised by the appropriate Government or any member of the affected family.

In **Chapter XIII**, the document talks about Miscellaneous.

It says that if the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate, he shall apply to a Magistrate or to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the surrender of the land to the Collector.

The service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice, by the officer therein mentioned, and in the case of any other notice, by order of the Collector.

The appropriate Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

Whenever the appropriate Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably

incurred by him in the prosecution of the proceedings under this Act relating to the said land.

No provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or other building shall be so acquired.

Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Requiring Body, the charges of land incidental to such acquisition shall be defrayed from or by such fund or Requiring Body.

No award or agreement made under this Act shall be chargeable with stamp duty, except under section 42, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

No suit or other proceeding shall be commenced against any person for anything done in pursuance of this act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amendments.

When any land or part thereof, acquired under this Act remains unutilised for a period of ten years from the date of taking over the possession, the same shall return to the Land Bank of the appropriate Government by reversion;

Whenever the ownership of any land acquired under this act is transferred to any person for a consideration, without any development having taken place on such land, twenty per cent of the appreciated land value shall be shared amongst the persons from whom the lands were acquired or their heirs, in proportion to the value at which the lands were acquired.

The provision of this Act shall be in addition to and not in derogation of, any other law for the time being in force.

The document further points out that the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

The Central Government may, by notification, amend or alter any of the Schedules to this Act.

A copy of every notification proposed to be issued shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

Nothing in this Act shall prevent any state from enacting 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.

Subject to other provisions of this Act, the appropriate Government may, by notification, make rules for carrying out the provisions of this Act, provided they are agreed upon by both the Houses of Parliament.

If any difficulty arising in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty. Provided that no such power shall be exercised after expiry of a period of two years from the commencement of this Act.

The document declares that the Land Acquisition Act, 1894 is hereby repealed.

Save as otherwise provided in this Act the repeal shall not be held to prejudice or effect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeals.

The Land Acquisition Bill: A Critique and a Proposal

By:

Maitreesh Ghatak, Parikshit Ghose

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Bird's Eye View

In the Introduction, this eight-page article states that land acquisition has become a most vexing problem for policy-makers in India. Names like Singur, Nandigram, Kalinganagar, Jaitapur and Bhatta Parsaul have entered the laxicon as poignant metaphors of social conflict. It also says that the 2011 Land Acquisition and Rehabilitation and Resettlement Bill on land acquisition tabled in Parliament is well intentioned but seriously flawed. The Bill closely follows the recommendations of the working group of the National Advisory Council (NAC, 2011), though it differs on some key points. The post-liberalisation economic boom continues to create a voracious appetite for space to meet the demands of industrialisation, infrastructure building, urban expansion and resource extraction.

Unfortunately, the proposed Bill's good intentions are not matched by sound economic reasoning. Its principal defect is that it attaches an arbitrary mark-up to the historical market price to determine compensation amounts. This will guarantee neither social justice nor the efficient use of resources. The Bill also places unnecessary and sever conditions on the use of multi-cropped land and insistence on public purpose, all of which are going to stifle the pace of development without promoting the interest of farmers. The writers outline, instead, a procedure based on a land auction, covering both the project area and surrounding farmland. If properly implemented, this procedure will allow farmers to choose compensation in either land or cash, determine their own price instead of leaving it to the government's direction and relocate the remaining farmland in the most efficient manner. It will not only protect the interests of landowners and reduce political resistance to industrialisation, it should also render some of the stringent restrictions in the Bill (e.g., conditions on using multi-cropped land and stringent criteria to meet the standards of "public purpose") unnecessary.

Diagnosing the Problem

The article says that the overwhelming question that lies at the centre of the land acquisition issue is: how should landowners be compensated when the State seizes private land for development projects? As often it is heard that the government's compensation package in Singur or Noida or Kalinganagar was "not enough", without a clear statement of a general principle as to how much is "enough". Surely, the answer would depend on local conditions like soil fertility, access to irrigation, cost of living, alternative employment opportunities and so on, and there cannot be a magic number that will work for every region of the country.

The Land Acquisition Act of 1894 lays down such principle compensation should be equal to the local market price for land. This is viewed by many as inadequate compensation. Attempts to remedy the perceived shortfall usually involve slapping as ad-hoc mark-up on the market price, and this is the approach adopted in the NAC's recommendations and incorporated in LARR, 2011. Here the writers' view is that the use of historical market price even for benchmarking purpose should be abandoned altogether.

The document further says that some problems with the market price are easy to see. In many regions, transactions are few and not well documented, leaving considerable room for officials to manipulate the figure by use of selective sampling or fake deals. Distress sales constitute a bulk of the transactions, and the full value is often concealed to escape stamp duty. Furthermore, any industrial or development project will cause significant appreciation of real estate prices, making impossible for displaced farmers to buy back land with compensation money if they so

wished.

There are, however, secondary concerns. The use of market price for voluntary transactions as a proxy for owners' value in forced acquisitions is so fundamentally flawed that it is a surprise it has been taken seriously at all. The value of a piece of land to its owner is not some tangible attribute that can be objectively measured by experts but rather a subjective quantity - it is whatever the owner deems to be.

The fact of the matter is that the current legal formula for compensation is seriously flawed and would be reason enough for disaffection even if it were assiduously implemented by honest bureaucrats and politicians.

If the land market works well enough, the displaced farmer's subjective valuation of land should be irrelevant because a compensation set equal to market price will allow him to repurchase land in the neighbourhood. One common criticism of cash compensation is that it replaces a familiar asset (land) with an unfamiliar one (paper asset), destroying the value of the farmer's asset-specific skills and leaving him vulnerable to bad investment or self-control problems associated with liquid wealth (Banrji and Ghatak 2009). This criticism implicitly assumes that various forms of wealth are not easily convertible, which seems reasonable in the context of rural India. The market price may be a good compensation benchmark for people who lose homes to make way for infrastructure projects in big cities because the urban real estate market is relatively well developed. The asset market for agriculture land in India is extremely thin, fragmented and riddled with frictions of all sorts. Once someone loses some arable land, it may be very difficult to buy it again even if the dispossessed is endowed with a bundle of cash.

The article further points out that if the diagnosis is correct, any workable solution to the land acquisition problem must have two essential features. First, it must come up with a formula for determining a compensation amount that reflects the dispossessed owners' own valuation of their assets. This method should be transparent and non-manipulable, and should leave no room for discretion in the hands of the state, its officials or appointed experts. Furthermore, the method must be such that landowners are incentivised to reveal the true value of their plots in their own estimate. The problem with the market price is that it underestimates the owners' valuation, and the problem with the negotiated price is that owners have every reason to make exaggerated claims. Second, the acquisition process must also make up for the absence of well-functioning land markets in the area. Whenever an large chunk of arable land is diverted to other use, economic efficiency dictates that the ownership pattern on the remaining land must be reshuffled so that those who place the greatest value on land end up remaining owners even if their previously held plots are seized for non-agricultural use. For example, if a land-hungry peasant's plot is eaten up by an industrial plant while an absentee landlord's farm remains untouched by virtue of falling outside the project site, there will probably exist room for a further transaction that should make all parties better off - resettle the displaced peasant on the absentee landlord's land and pay compensation to the latter instead of the former. The role of a land market is to achieve precisely this sort of real location, and in its absence, the land acquisition process should aim to fulfil this role. That will go a long way towards promoting efficient land use, minimising the compensation bill, keeping agricultural productivity high and ensuring social justice.

A Proposed Compensation Policy

Under this title, the article outlines the main proposal in the Bill regarding a compensation policy for displaced landowners. The highlights of the proposed solution are: (a) the transfer price is determined by a land auction and not left to the State's discretion, (b) displaced farmers get on option to choose compensation in cash or compensation in land, and (c) the area of intervention is extended beyond the project area to surrounding farmland. The basic idea is very simple. The government should hold an auction and buy up the cheapest land on offer at the project site and its surrounding region. Land owners whose plots fall within the project site, but who have not sold in the auction, can then be compensated with equal sized plots of land acquired outside the site through the auction.

The article points out that as noted by many commentators, a major problem faced in the last several years has been that various state governments have engaged in fierce competition to attract investment to their states, with the attendant promise of industrialisation and employment generation, if not opportunities for kickbacks to politicians and public officials. This has generated a race to the bottom where most of the surplus generated from land conversion has gone into the pockets of capitalists instead of landowners, the local population or taxpayers. For example, West Bengal's disastrous experience in Singur probably owes much to the fact that the CPI (M) government, in its desperation to reverse the deindustrialisation of the state, offered land to the Tatas at throw-away prices (Sarkar 2007), leading it to skimp on its compensation

offers since the state exchequer had to pick up the tab. There is an obvious need for a central law that prohibits subsidies and curbs the economically ruinous competition among states for investment and capital. Since land is on the concurrent list, this involves legal and jurisdictional issues that need to be sorted out.

The writer further says that their auction-based approach has several advantages, which now discussed in detail:

1) The single most significant feature of the proposal is that it is considerably less coercive. The existing law of eminent domain leaves the landowner powerless in every dimension. Not only does the State compel him to surrender his land, it reserves the right to name its own price. Legally stipulated compensation formula such as market price or a mark-up over market price plus stipends (as specified in the LARR 2011), ties the hand of the State to some extent but uses no input at all from the affected parties. In contrast, this proposal offers the farmer choice in the form of compensation - it can be taken either in cash or land. Moreover, the amount of cash compensation is derived entirely from the asking prices submitted by the landowners themselves, and is designed to exceed, not fall short of, the bid on every plot of land that is acquired against cash. This approach should shut down two of the most common complains heard about land acquisition in India - that displaced farmers have not received enough compensation, and those who are highly dependent on land have been deprived of an asset that is central to their lives. A farmer who does not want to give up cultivation can quote a high enough bid, and then settle for compensation in land in the surrounding area. The process still contains a small degree of coercion, because farmers who insist on not merely holding land but holding particular plots (perhaps due to the sentimental value of ancestral property) have to be forcibly moved if their preferred plots fall in the core area. The only way to make it less coercive is to eliminate any role for the state and rely entirely on open market purchases, an option feasible only for private projects.
2) Their proposal gives the farmer a strong incentive to bid truthfully, i.e, ask for a compensation amount for which he is truly willing to part with his plots, instead of strategically inflating his asking price. The auction is set up in way such that a uniform price is applied to all plots for which compensation is to be paid in cash, and this price is equal to the lowest losing bid. This means that by varying his bid, an owner cannot affect the compensation he will receive, only the probability that he will be paid in cash instead of land. Since it is better for him to receive cash compensation if only if it exceeds his true valuation for land, it is best for him to bid his true value.
3) One of the common complaints heard about the current acquisition process is that it prevents owners of acquired plots from reaping the benefits of appreciated real estate prices that come in the wake of industrial and commercial development of the area. Anyone who is compelled to sell now will lose out in comparison to his neighbour whose land lies outside the project zone, since the latter can wait and sell his property when the real estate boom fully arrives. This is economically crushing for farmers who would like to buy back land and continue cultivation, and is aggravating even for those who are happy with cash and not particularly committed to farming. The writers proposal removes this arbitrary source of inequality by treating all local landowners (those owning plots in the project zone as well as outside) at par, allowing farmers to incorporate their own estimates of future land price inflation into their bids. It also eliminates the problem of hold-up often associated with private acquisitions - an owner who holds out till the end, while neighbouring plots are bought up, gives himself a very strong bargaining position. Many of these problems arise from the sequential and staggered nature of the acquisition process.
4) Finally, the proposal has a provision for the acquisition effort to fail and for land to remain in agricultural use. This will happen when the price in the auction ends up above the reservation price set by the government. It is generally assumed that the value created by industrial use of an ace of land is orders of magnitude higher than what can be generated by crop cultivation. This is probably true in most cases, but there is no reason to see why the acquisition process should take this for granted instead of putting it to the test. Industrialisation is not an article of faith; it should proceed only where it demonstrably increases the size of the economic pie. The onus should lie on industry to demonstrate this by competitively bidding for the scarce economic resources it wants to divert from agriculture.

Many Challenges

The article says that the focus has been given on heterogeneity among farmers in terms of dependence on land and ignored heterogeneity in land quality, implicitly assuming that all plots of the same size are perfect substitutes. In reality, there will be differences arising from soil quality, gradient, access to water sources, sunk investments like pump sets, etc. Farmers must receive supplementary payments to account for these

factors, as well as relocation costs, distance-from-home issues, plot fragmentation, etc. These additional awards can be covered by adhoc payments similar to those in LARR, 2011, or customised based on assessment of individual circumstances, as determined by the District Collector. In some cases, the proposed project may have an environmental impact that reduces yields and lowers the value of surrounding farmland. The auction price will not recover these damages, since competitive bidders will shade their bids to reflect the reduced potential of their land.

The article further says that Auctions have proved very effective in several countries in recent times, albeit for much more hi-tech allocations like spectrum licences. They are also widely employed in procurement of foodgrains by the Food Corporation of India as well as in private wholesale trade. Had the task been one of acquiring a thousand acres from the vast sea of agricultural land stretching across the country, it would have been cheapest, most efficient and least contentious to do it through an auction. The problem at hand is more restrictive - the acquisition must be a specific thousand acres of contiguous territory. It has been argued that with only slight modification, essentially the same principles can be applied to this more constrained problem. The proposed method is designed to kill two birds with one stone. First, it determines a fair price not through the government fiat but through a participatory process of competitive bidding where farmers are free to name their own price and choose their form of compensation (cash or land). Second, it fills in for missing or imperfect land markets in the region by reallocating the remaining farmland to those who place the highest economic value on such asset.

The Proposed Bill: Additional Critique

The article says that the main criticism of LARR, 2011, is that it relies on arbitrary pricing, which will neither ensure that farmers are adequately compensated for their lost assets, nor guarantee that a scarce resource like land will be put to its most productive use. The Bill has other questionable features. These provisions have little merit when combined with the adhoc compensation rates, and will be determined when the compensation is determined through competitive bidding.

Public Purpose: The article points out that the public purpose clause features in most eminent domain legislation not just in India but internationally. The Land Acquisition Act, 1894, stipulates a public purpose behind acquisition (part II, Section 6) but also provides for acquisition on behalf of companies for the purpose of residential construction for its employees (part VII, Section 40).

The writers think that the entire focus on public purpose is misplaced, not merely because of the difficulties of enforcement, but due to a conceptual blurring of utilitarian and right-based perspectives. It is inconsistent to stick to both principles, and the attempt to combine strong protections for private property with a narrow public purpose requirement leads to either a contradiction or a redundancy.

They also need to clarify what they see as the government's role in the exercise of eminent domain. One view is that of a utilitarian social planner. Under such a view, the State can sit in judgment about the merits of alternative uses of land and take compensation obligations lightly. An alternative view is that the State's role is to facilitate complex economic transactions,, reduce transaction costs and safeguard the interests of the weak. Under this view, the State's efforts should be concentrated almost exclusively on securing adequate compensation for those who have to give up land. The writers favour the latter view. If properly implemented, it should promote both economic efficiency and social justice. It is worthwhile to keep in mind that some of the worst human suffering in independent India has been inflicted in the cause of public projects like large dams, Nehru's temples of modern India. On the other hand, farmers have reportedly become rich in places like Gurgaon by selling their land to private property developers for housing projects. The time has come to see the farming community not as perennial victims of modernity but as potential stakeholders and beneficiaries of economic development by virtue of the valuable assets they own. These assets should not be zealously locked away for traditional use but should serve as keys to the vault where much of India's newly generated wealth is being stored.

Multi-cropped Land: The article says that the draft Bill previously circulated by the Ministry of Rural Development (MRD 2011) simply declared all irrigated multi-cropped land off limits, which was in line with the sentiments expressed by Mamata Bannerjee's government as well as some commentators on the issue. The version tabled in Parliament (LARR 2011) relaxes this constraint somewhat by allowing the acquisition of multi-cropped land under "exceptional circumstances" and up to a cumulative ceiling of 5% of such land in the district. It also waives the requirement for "linear projects" like railways, highways and power lines.

The writers further say that the thinking behind such a proscription is difficult to understand, and its contradictions

are similar to those of the public purpose clause. If the concern is that farmers may be given a raw deal, what matters is not whether the land grows one crop or three, but whether the compensation paid is enough to cover the value of the crop that will be lost. Since farmers in single-cropped regions are generally poorer and more economically vulnerable, the first egalitarian instinct should have been to erect a protective legal fence around their property instead of rushing to quarantine relatively prosperous multi-cropped land. The restrictions clearly reflect a concern not for the affected farmers' welfare but aggregate food production and prices.

That industrialisation may lead to food shortages is an alarmist view. The fraction of agricultural land required for industrial production is too small to make more than a dent on overall food production. For this reason, the literature on economic development has paid almost exclusive attention to the transfer of labour from agriculture to industry along the path of development, and has neglected the issue of land altogether. Infrastructure projects and urban expansion are likely to shrink agricultural land to a greater extent, but even there the demand is going to be quite small relative to total availability.

At any rate, the price mechanism provides a check on economically injudicious use of agricultural land.

They also say that another point which is important in this context is that the economic value of an industrial plant can also be highly sensitive to its location, depending on factors such as access to water, electricity, road and railways networks, skilled labour, etc. This is why industrialists will typically have a preference for locating factories close to major urban centres and connecting highways. Since acquiring fertile, multi-cropped land will be more costly for industry than single-cropped or fallow land, there is no reason why it would want to do so unless it anticipates enough additional benefits. The insistence on protecting multi-cropped land is baffling and counter-productive.

Other Remuneration: Under this topic, the writers point out that the draft Bill previously circulated contained as extensive R&R package. Its rigid requirements included various mandatory benefits other than lump sum cash payments, including employment guarantees, annuities, company shares, land-for-land, a share of appreciated land value after resale, and replacement of lost homestead. This was a recipe for increasing administrative costs, jeopardising enforceability and compensating affected families in highly inefficient ways.

The Bill introduced in Parliament has commendably moved away from the earlier draft in this respect and has introduced a lot more flexibility into the package. Recipients will now have a choice between an annuity (Rs. 2000 per month per family for 20 years), a job and a lump sum payment of Rs. 5 lakh. Share of profits from resale has been restricted to cases where the property has remained undeveloped. In the case of urbanisation projects, land-for-land provisions are not compulsory but an option that can be exercised against an appropriate deduction from the cash award.

The writers further say that as Banerjee et al (2007) point out, receipt of a large amount of cash as the main source of livelihood may be problematic for people who lack investment expertise or even access to sophisticated financial instruments. The solution is to provide the farmer more options, not a rigid, one-size-fits-all portfolio of assorted non-farm assets. In other words, as a default, farmers should be offered compensation entirely in the most fungible form, together with access to banking services, investment advice and a choice of various financial instruments that poor peasants may be otherwise unaware of or find difficult to access. Their proposed method explicitly adds a critical asset (land) to the menu of choices because of market imperfections - namely, land in rural India is difficult to buy and sell. LARR 2011, has rightly increased farmers' choice in its design of the R&R package, but has left out the most important asset that farmers will possibly care about i.e. land for cultivation. This is a major defect of the Bill.

Acquisition for Industry: The writers say that the previous draft Bill allowed government to acquire land for private use (industries, SEZs, etc.) provided that least 70% of the total area needed for the project had already been purchased through the market. The Bill before Parliament, however, has no such provision and allows acquisition on behalf of private companies only if the project serves a public purpose, as specified in Section 2 (companies are still liable for R&R for large scale projects even when the land is acquired through private negotiations).Interpreted literally, LARR, 2011, has restricted the scope of eminent domain, though it may be argued that the definition of "public purpose" is still kept vague enough to allow government acquisition on behalf of industries.

The article further says that if only one believes that the new laws can make the State work in the interest of the poor, it is only logical to bring all kinds of land transactions within its ambit rather than restrict its scope. The desire to curtail the State's role betrays a lack of faith in the legislation's professed ability to achieve its objectives.

The writers also think that the single most important reason the State's participation is essential in large-scale land acquisition for industry has to do with reduction of transaction costs and expedition of the process. The market often works well in arranging bilateral transactions, but its effectiveness drops exponentially as the number of parties to the transaction grows large, especially in a country like India where property rights are poorly defined, land records are fizzy and courts work at a glacial pace.

The advantage of bringing all the land under eminent domain is that private disputes can be processed in parallel, without holding up project itself. While it is important to pay attention to equity and justice, there is substantial common interest in seeing socially useful projects that generate economic surplus come to a quick fruition. In a poor nation where a bulk of the population lives on the brink of subsistence, a strident egalitarianism that is utterly indifferent to increasing the size of the pie is ultimately a disservice to the poor.

Compensating Livelihood Losers: The writers say that under LARR (2011), families who "do not own any land" but whose "primary source of livelihood stands affected" are entitled to an R&R package (Section 3 (c)). The intended beneficiaries appear to be primarily tenants, sharecroppers and agricultural labourers who worked on the seized property. It is commendable that the new law seeks to go beyond formal property rights and protect the interests of all persons affected by economic change. However, its attempts on this front are afflicted by the same problem that characterises its choice of compensation amounts - an unwillingness to take into account the role of prices and market responses.

Trying to reach all affected parties raises difficult issues of identification and damage assessment. As a general approach, the writers see much merit in a strategy of investment in the local economy to raise general living standards and opportunities, instead of trying too hard to provide targeted entitlements to specific groups. These measures might include National Rural Employment Guarantee Act style employment guarantee programmes, infrastructure creation, and job retaining. For the sake of credibility of delivery, these programmes should be in place before the acquisition process gets under way, instead of being dangled as empty promises for the future.

In the of the article, the writers say that eminent domain is one of the moat controversial and politically sensitive instruments of state power anywhere in the world. Depending on how it is used, it can clear the way for rapid economic transitions, technological progress and inclusive growth, or it can trample on property rights, the economic interests of the poor and vulnerable groups, and fundamental principles of justice. The Land Acquisition, Rehabilitation and Resettlement Bill, 2011, is clearly a long overdue attempt to address the inadequacies of the colonial Land Acquisition Act, 1894, which has been merrily exploited by commercial interests, corrupt politicians and an indifferent State to promote widespread land grab at the expense of the poor. Despite its good intensions, the Bill, in its current form, misses out on an opportunity to promote growth and prosperity while protecting the vulnerable.

The Draft National Land Acquisition and Rehabilitation and Resettlement Bill. 2011 (LARR)

A Critique by:

SANGHARSH

Bird's Eye View

This 12-page document takes the support of following observations made by the Supreme Court to make its own comments on the LARR Bill, 2011.

The Supreme Court observations were: the Act which was enacted more than 116 years ago for facilitating the acquisition of land and other immovable properties for construction of roads, railways canals etc., has been frequently used in the post independence era for different purposes like laying of roads, construction of bridges, dams and buildings of various public establishments / institutions, and for developing residential colonies / sectors. However, in the recent years, the country has witnessed new phenomena. Large tracts of land have been acquired in rural parts of the country in the name of development and transferred to private entrepreneurs, who have utilized the same for construction of multi-storied complexes, commercial centres and for setting up industrial units. Similarly, large scale acquisitions have been made on behalf of the companies by invoking the provisions contained in Part VII of the Act.

The resultant effect of these acquisitions is that the land owners, who were doing agricultural operations and other ancillary activities in rural areas, have been deprived of the only source of their livelihood. Majority of them do not have any idea about their constitutional and legal rights, which can be enforced by availing the constitutional remedies under Articles 32 and 226 of the Constitution. They reconcile with deprivation of land by accepting the amount of compensation offered by the Government and by thinking that it is their fate and destiny determined by God.

Under the title **Applicability and Public Purpose**, the document says that the draft Bill envisages the government acquiring land for itself or with the ultimate intent of transferring it to private companies for public purposes (including PPP projects) or for immediate use by private companies for public purpose with the rider that the latter two forms of acquisition would be done only with the consent of 80% of the affected families.

It is reiterated that under no circumstances can lands be acquired for private companies even under the garb of public purpose hence sections 1A (b) and (c) need to be removed. Moreover, the question of consent still remains and it is demanded that the 80% consent proviso be retained in regard to acquisition of land by the government.

Further the applicability of the proposed statute needs to be retrospective and provisions for the same to be made.

It also says that there are three concerns that need to be addressed here. These are: (a) acquisition for private companies (b) definition of public purpose, and (c) consent.

While talking about **Acquisition of Land for Private Companies**, the document says that the introduction of acquisition of land for private companies including for PPP projects, for stated public purpose, is a dangerous development that is unacceptable and under no circumstances must acquisition of land for or on behalf of private companies be permitted.

The document further says that in a more recent judgement, the Supreme Court has made some insightful and telling observations on the 'development paradigm' being forced on the people, while analyzing the reasons for the growth of armed struggles across the country. It quotes this Supreme Court observation... "The culture of unrestrained selfishness and greed

spawned by modern neo-liberal economic ideology, and the false promises of ever increasing spirals of consumption leading to economic growth that will lift everyone, under-gird this socially, politically and economically unsustainable set of circumstances in vast tracts of India in general, and Chhattisgarh in particular... The justification often advanced, by advocates of the neo-liberal development paradigm, as historically followed, or newly emerging, in a more rapacious form, in India, is that unless development occurs, via rapid and vast exploitation of natural resources, the country would not be able to either compete on the global scale, nor accumulate the wealth necessary to tackle endemic and seemingly intractable problems of poverty, illiteracy, hunger and squalor. Whether such exploitation is occurring in a manner that is sustainable, by the environment and the existing social structures, is an oft debated topic, and yet hurriedly buried. Neither the policy makers nor the elite in India, who turn a blind eye to the gross and inhuman suffering of the displaced and the dispossessed, provide any credible answers. Worse still, they ignore historical evidence which indicates that a development paradigm depending largely on the plunder and loot of the natural resources more often than not leads to failure of the State; and that on its way to such a fate, countless millions would have been condemned to lives of great misery and hopelessness." \to make it clear that it would do the government good if it paid heed to this scathing reflection of its policies of the governance and abandon the provision of acquisition of land for private companies.

The document also points out that the acquisition of PPP projects has also been brought under the purview of this Bill, which is equally unacceptable especially since the private companies are in these arrangements purely with a profit motive.

It says the Bill makes provision for private projects that comply with its broad ambit of public purpose without addressing its fundamental premise: When private parties undertake all projects for private profits, and public purpose is supposed to be for the development and welfare of citizens, how can these essentially divergent motives be conflated? Further, when acquiring land for private purpose, land can only be acquired when 80% of the project affected families give consent; there is no clear procedure as to how this consent is to be ascertained. Will they hold a referendum? Public hearing with their well-established flawed track record of assent by supports of a project who clearly stand to benefit from it very often do not reflect the opinions of those affected. Further, Gram Panchayat resolutions find no legitimate space in the consent process envisaged in the Bill.

Referring to the **Definition of Public Purpose**, the document says that the definition of "public purpose" in the draft Bill is one that is unacceptable. It further says that it may be recalled that the National Advisory Council in 2006 had recommended that "public interest" will have to be determined not by who or how many have access to it but in terms of a) its overall costs, who it benefits and to what extent and b) whether the new use to which the land is intended to be put actually serves public interest in a greater way than in the manner in which it is currently being used. The NAC-1 had further argued that, as is the practice in several countries including USA, there be an established practice that determined public purpose/interest through legislative action rather than executive discretion and in all cases it be subject to judicial review.

Applicability of Provisions Relating to Rehabilitation and Resettlement (R & R)

Under this title, the document points out that section 1A(2) extends the operation of the provisions relating to R & R when private companies either purchase/acquire more than 100 acres of land or approach the government for partial acquisition.

Further, given that the acquisition of land takes place by various several Central (Coal Bearing Act, Highways Act, etc.) and state statutes (Karnataka Industrial Areas Development Act for instance) in addition to the Land Acquisition Act, 1894, the operation of this act has to be extended to acquisitions under these statutes as well.

It must also be clarified that, where the policy/statute in operation entitling the affected persons to R&R entitlements beyond those mandated in the draft Bill, the operation of the same shall mandatorily continue.

Free Prior Informed Consent

The document says that the draft Bill adopts the language of 'consent', 'consultation' and 'discussion' in its text that goes against the norm of "free prior informed consent' as demanded by the movements. For example, it is mandated that the 'consent' of 80% of the affected families is required where lands would be acquired for or on behalf of private companies (proviso to section 1A(1). Section 3(1) provides that the Social Impact Assessment study would be carried out in 'consultation' with the Gram Sabha/equivalent body in urban areas

as does the proviso to section 9(1), while section 12(4) refers to discussions with these bodies in regard to the R&R scheme.

The document demands that the principle of "free prior informed consent" be the basis for any process of engagement with the affected families/communities and the same necessary at every step of the acquisition and R&R process.

At the beginning of the process, the affected people will tell the stakeholder forum how they will express their consent to decisions including endorsement of key decisions. An independent dispute resolution mechanism should be established with the participation and agreement of the stakeholder forum at the outset.

Necessity for Including the Issue Around Displacement in Urban Areas

Under this title the document says that urban infrastructure projects including transportation projects, establishment of industrial estates, schools, hospitals, ports, and the construction of communication and transportation networks, result in the displacement of a wide range of urban communities and irreversibly impacts their livelihoods. Most urban development projects typically would require acquisition of the private properties, government land and notified/un-notified slums. In addition to impacting the shelter of these categories of persons, it also affects the pavement dwellers too. Further, it seriously impacts the right to livelihood of street hawkers, roadside cobblers, street-side shops, besides displacement of auto/taxi stands.

While referring to **Land-for-land** the document says that rehabilitation and resettlement implies the social, economic and cultural resolution and is possible only by the replacement of livelihood, which means that for agriculture-based communities, there is no alternative but land-for-land. In the draft Bill, affected families are entitled to minimum of one acre land only in irrigation projects while adivasis are entitled to land in all projects. In other projects the affected families would be mandatorily entitled to one job per affected family or Rs. 2 lakhs in lieu of such job.

The document further says that this is a complete dilution of the principles of R&R including that the family should at least regain if not better their standard of living on resettlement. The bitter experience has been of inadequate compensation and frittering away of cash compensation leading to pauperization and destitution of affected families.

This, in fact, was the observation of the Supreme Court in the Sardar Sarovar dam case.

Hence, that every displaced family (in rural areas) where agricultural land is acquired, land-owing or landless, adivasis or dalit or any other community should be entitled to and provided land-based rehabilitation is non-negotiable. Further, the minimum entitled must be at least 5 acres of irrigated land of his/her choice. Further, the land that would be allotted should be on a unconditional and with permanent title.

Multiple Displacements

The document points out that the reality of multiple displacements has not been dealt with in the draft Bill. It has been the experience that multiple displacements take place in at least two ways. Firstly where people have been evicted due to two or more projects over a period of time and, secondly, that lands are acquired from oustees for two components of the same project (eg. SSP land acquired for submergence and for establishment of R&R sites from the same families).

The draft Bill has to incorporate a provision prohibiting multiple displacements of families.

(a). Repository of Acquired and Unutilized Land

Under this title, the document says that the Parliamentary Standing Committee on the Land Acquisition Bill 2007, has made an important observation that the large tracts of acquired land remain unutilised and hence it made the recommendation that the appropriate Government should make a clear list and repository of land unutilised and before making notification for acquiring land in every case the respective Government should be required to certify that no acquired land at that particular time was available in that area for the particular project.

It is also important to note that even previously the Standing Committee of Defence, in its 13th report, has taken note of the fact that lands that were acquired are actually lying unused, and hence recommended that a High Level Group be constituted by the Ministry of Defence to review the same and assess the possibilities of re-allocating the surplus land to the affected persons.

While talking about Social Impact Assessment (SIA), the document says that the draft Bill provides for a Social Impact Assessment study when the government intends to acquire more than 100 acres of land, in

consultation with Gram Sabha/equivalent body in urban areas. The Bill also provides for public hearings to ascertain the views of the affected families to be recorded and included in the SIA report.

The Expert Group to be constituted for appraisal of the SIA report and the committee to examine the proposals for land acquisition and SIA report should also consist of members recommended by the affected families and representatives of the affected families including the organisations of the affected persons. Further all their meetings and deliberations must be intimidated to the affected families and their organizations and should be open to public.

No Acquisition of Irrigated Multi-crop Land

The document says that one of the most important provisions of the draft Bill is that no irrigated multi-crop land will be proposed for acquisition under any circumstances. To actuate this provision, it would be necessary to ensure that the revenue records are up-to-date and status of irrigated vis-a-vis lands are accurately entered in the records. However, given the paucity of the agricultural land and keeping in mind growing population and food security, single or multi all kinds of agricultural land must not be acquired.

Process of Land acquisition and R & R Scheme

Under this title, the document says that the draft Bill contemplates the acquisition and R&R process to proceed simultaneously and for the purpose had provided for the Collector to be the authority in regard to land acquisition and the Administrator for R&R purposes.

While talking about **land acquisition** the document says that it envisages, the pursuant to the preparation of the SIA report there would be the publication of a preliminary notification similar to section 4 of the LAA, 1894. However, it is provided that such notification shall not be issued unless the concerned Gram Sabha/ equivalent body in urban areas or Autonomous Councils in VI Schedule areas have been 'consulted' or given 'consent'.

It further says that prior to the consultations all the relevant records and information must be made available easily, for their asking and in the local language.

Similar to section 5A of the LAA, 1894, there is provision for the affected family to file objections within 60 days, in regard to the extent and choice of land, justification offered for public purpose and findings of SIA report and the same would be heard and the Collector would file a report to the government thereafter.

The document says that it is necessary to include herein the provision that a copy of the report of the Collector and the record of the proceedings are also furnished to the concerned affected family when the same is being submitted to the government.

Moreover, it must be stipulated that the acquisition of land cannot commence until and unless all environmental clearances and other statutory permissions/approvals are received for the project.

(b). R & R

The document points out that the Administrator is mandated to conduct a baseline survey and undertake a census of the affected families once the preliminary notification has been issued. However, it feels that one glaring gap in the draft Bill is the linking up of the SIA with the process of preparation of the R&R scheme and this has to be rectified. Further, it says that they welcome the provisions in section 29, which clearly lay down that possession of acquired land would only be taken after full payment of compensation and completion of all R&R process are welcomed. However, it needs to be clarified that neither symbolic nor actual possession would be taken until and unless the full and complete rehabilitation of the affected family is carried out and all compensation due has been paid to him.

Further, the provision of post-implementation social audit is laudable except that the draft Bill is completely silent on the modalities, time-frame, process, etc. and it is preferable that these are laid down in the draft Bill itself.

So it is seen that the draft Bill envisages the finalization of the land acquisition proposal and the R&R scheme simultaneously resulting in the publication of the draft declaration. Thereafter the Collector conducts the enquiry and passes as award in regard to the compensation and R&R entitlements. The draft Bill provides that the said award shall have to be passed within 2 years from the date of publication of the preliminary notification.

R & R entitlement

The document says that provision is made for provision of housing units to house-owing affected families.

While the same is extended to those without homestead land as well, it is qualified with the condition that the said family should have been residing in the area for a period of not less than three years preceding the date of notification. This need to be reduced to a period of one year and it must be clarified that the entitlement is extended to tenants and homeless persons as well.

It also says that the fishing rights in the case of irrigation or hydel projects must be allowed to the affected families and this change has to be incorporated in the draft Bill. Similar provisions be made in regard to the affected families who are dalits (scheduled castes), especially in view of their disproportionate displacement due to existing projects and, due to their vulnerable social and economic conditions.

Providing Amenities in the Resettlement Area

The document points out that Section 23 of the draft Bill provides that when more than 100 families are displaced then the Collector shall ensure provision of all infrastructural and basic amenities as listed in Schedule III of the draft Bill.

This section needs to specify several crucial aspects that are presently glaringly missing. It must be stated that the agricultural land would be provided within 2-3 kms of the resettlement area. Secondly, it is rural displacement-centric and it is necessary that a similar schedule be introduced in regard to the resettlement area in urban areas and the infrastructural and basic amenities to be therein. Lastly, and also importantly, the minimum of 100 affected families needs to be reduced in view of the fact that in urban areas, there is the every possibility that less than 100 families would be affected even by large infrastructural projects and in hilly areas too since size of the villages are small and social and economic life are very different.

Monitoring Authorities

Under this the document points out that the draft Bill should provide similar Committees like National Monitoring Committee for R&R at the taluk, district and state levels as well. It has also been demanded earlier that the new Act must set up a National Rehabilitation Commission which will address the claims of not only those who will face voluntary displacement but also the R&R claims of those Project Affected Families which has not been settled by the project authorities or governments in ongoing projects or completed since independence and reiterate the same.

Appellate Authorities

The document says that the draft Bill establishes a Land Acquisition R&R Dispute Settlement Authority for State and Centre having jurisdiction over land acquired by the State and Centre respectively. It further provides that a reference to the authorities can be made by the Collector on receiving a written application from the affected person.

It is important to note that the provisions restrict this reference solely on the compensation aspect, which needs to be corrected to also include grievances regarding the R&R entitlements. Further, there is a very serious problem in as much as that when lands are acquired by the Centre then the appellate jurisdiction rests with the National Authority and there is no clarity as to where it would be seated. This is bound to cause very serious problems of access. Moreover, an appeal from an award of the National Authority would lie with the Supreme Court as per section 68 of the draft Bill. This denies the affected family the right to approach the High Court and forces them to approach the Supreme Court, which will again cause the grave problem of access.

Withdrawal from Acquisition

Section 61 of the draft Bill stipulates that the government has liberty to withdraw from acquisition of any land for which possession has not been taken and that the owner would be entitled to damages.

Return of Unutilized Land

The draft Bill has introduced an important provision in regard to the returning of acquired land to its erstwhile owner if it remains unutilized for a period of five years from the date of taking possession.

However, it also permits the transfer of land for another public purpose. This particular clause is not acceptable and has to be removed from the draft Bill.

Interpreting the Land Grab

By:

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Published by:

Transnational Institution for
Land Deal Politics Initiative (LDPI)

Bird's Eye View

Besides Introduction and Conclusion, this eight-page document talks about Financialization and Land Grab and The Land Grab and development.

In the introduction, this document talks about 'global land grab' which continues the historic process of land enclosures described by Sir Thomas More in Utopia "sheep eating men", when English peasants were evicted from the commons to make room for private estates. Colonialism extended the enclosure movement as lands and habitats were commandeered for export monocultures and/or settled by colonists at the expense of indigenous peoples - a practice continued during the mid-twentieth century development era as new states sought to secure national territory and export revenues. The subsequent neo-liberal project of global development intensified market-driven enclosure for mineral and agro-exporting as indebted states submitted to structural adjustment. Now in the twenty-first century, enclosure by "land-grabbing" is driven by a combination of the food, energy, climate and financial crises. With rising energy and food prices, land has become the object of speculative investment and a hedge against food and fuel supply shortfalls.

The document further points out that in its 2009 report titled Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits? the World Bank notes that global investors acquired 111 million hectares of agricultural lands over four years, 75 per cent of which were in Africa. In 2011, the Bank reported a 12-fold increase in the amount of agricultural land acquired by foreign investors. China and the Middle Eastern countries were the first players in the land rush. Since 2008, land grabbers include China, Saudi Arabia, Egypt, Bahrain, the Gulf countries, Jordan, Kuwait, Libya, Qatar, United Arab Emirates, India, Malaysia, Japan and South Korea.

Financialization and the Land Grab

Under this title, the document says that by the twenty-first century, a notable consequence has been the decisive shift of investment capital into speculative ventures in land, food and biofuels - thus, between 2004 and 2007, venture capital investment in biofuels increased by 800 per cent (Holt-Gimenez 2007, 10). International capital markets gravitated towards agriculture as a relatively safe investment heaven for relatively quite a long term. Most notably, in 2007 "soft" commodities (renewable crops) overtook "hard" commodities (non-renewables, such as oil and metals) as "prime performers" in the commodities investment markets. In addition to food futures and crops, land and agriculture have constituted a new investment frontier in recent years, with returns of up to 25 percent.

The document further says that rising food prices, peaking oil production, emission mandates, and stalled investment funds find material resolution in the land grab, accompanied by an ideology of enclosure in the name of humanity (food) and the environment (green fuel). Whether agricultural investments can resolve the profitability crisis of capital in general is in question, but the short answer may be that the logic of financialization is to privilege futures over productivity gains.

The document also says that large-scale land enclosure threatens the livelihoods of countless rural inhabitants who depend on common lands, which are routinely classified as "idle land" allowing large-scale dispossession. Enclosure of common lands has a long lineage. The modernist narrative identifies such land as undeveloped, invisibilizing subsistence and pastoral cultures for which "low input" land use serves

multiple functions (fuel, grazing, water, medicines, dietary diversity) including fallowing to manage soil fertility.

A new twist in the twenty-first century involves land grabbing in the name of conservation and global planetary health, facilitated by the carbon market {soon to be deepened by Reducing Emissions from Deforestation and Forest Degradation (REDD) protocols}. Thus, in a recent case, the UK-based New Forests Company, which grows forests in Africa for carbon credits (under the Kyoto Protocol) and whose investors include the World bank and HSBC, was granted a 50-years lease by the Ugandan government in 2005 to grow pine and eucalyptus trees, displacing 20,000 inhabitants (Kron 2011).

Under these circumstances, land is rendered cheap as a subsidy to investors by governments trading away social reproduction rights of smallholders, and transforming them into a labour force. The real costs include the rights of small producers to ancestral lands, food insecurity arising from the conversion of food-producing land to food or fuel-crop export agriculture, environmental deterioration resulting from industrial agriculture, and increased greenhouse gas emissions. Each of these issues eventually become monetary (and opportunity) costs, associated with human displacement, food shortage, and ecological disruptions.

The Land Grab and Development

Under this title, the document says that Africa is the target of half the land grab projects, followed by Asia, Latin America and Eastern Europe. According to GRAIN (2010), the source of the World Bank report on large-scale land acquisitions, by the end of the first decade of the new century, there were 389 land deals in 80 countries, where the 'bulk (37% of the so-called investment projects are meant to produce food (crops and livestock), while biofuels come in second place (35%)'. The global land grab combines the domestic construction of land rents with new mercantilist food security practices, as foreign governments sponsor offshore agriculture in the interests of national food and energy security. Assisted by World Bank policy, land development is defined by productivity gains and employment. Such development enables indebted governments in the global South to receive foreign investment and hard currency from conversion of their land and forests into agro-export platforms.

The document further points out that the World Bank's report titled Rising Global Interest in Farmland views large-scale land acquisition as a vehicle for poverty reduction via rural employment, contract farming, and selling or renting. Tania Li critiques these claims with World bank's own data. For example, on employment, while the report claims oil-palm employs 1.7-3 million people on 6 million hectares, 'field data indicates that an established plantation uses only one worker per four to ten hectares of land, depending on the efficiency and stage of production' (2011, 284). For fuel crops, other estimates are that in tropical regions: '100 hectares dedicated to family farming generates 35 jobs per 100 hectares, all poorly paid. Hundreds of thousands (of smallholders) have already been displaced by the soybean plantation in the "Republic of Soy" a 50 million hectare area in southern Brazil, northern Argentina, Paraguay, and eastern Bolivia' (Holt-Gimenez 2010, 10).

It says that Fuel crops such as oil-palm deplete soil and compromise local food availability by displacing farmers and food crops, as reported in Land is Life (published in 2007 by indigenous organizations).

The document further points out that the people first found out the oil-palm scheme when workers started work on their lands, clearing the lands which included rubber trees and fruit trees belonging to the indigenous communities. As the oil-palm land clearing work continued, the rivers that supplied water to the people and fish folk stock were affected. In addition to the crops, and polluted rivers, the people's burial ground and farm lands were also destroyed. People were then unable to hunt for the game which is an important element in their diet. There was no more rattan to harvest either, the raw material for handicrafts which had provided extra cash income to the communities. Jungle food sources, like vegetables, were also destroyed (Colchester, et al. 2007, 54).

It further says that international development and financial institutions are working behind the scenes on privatizing land relations to enable and attract foreign investment in land. US investment, for example, is encouraged by the US government's Millennium Challenge Corporation (MCC), which disburses money in the form of grants to particular countries on condition that they meet certain neoliberal economic criteria. Most MCC Compacts signed with African countries focus on agriculture, with a central land privatization component, supporting 'market-based solutions to food security''. Such provisions include certifying out-growers for food exports, constructing infrastructure to gain access to world markets, and partnering with The Alliance for a Green Revolution in Africa (AGRA) to provide inputs to farmers to draw them into commercial markets (GRAIN 2010). The Gates Foundation (financing AGRA) suggests that enabling the commercial development of Africa agriculture 'will require some degree of land mobility and a lower percentage

of total employment involved in direct agricultural production' - suggesting an eviction trajectory (quoted in Xcroc 2008).

The document concludes by saying that the land grab is not new, and it is not a single phenomenon. It is the medium through which development agencies can renew their legitimacy via land "improvement" with codes of conduct ostensibly to protect inhabitants but practically to protect investments. The land grab includes plans to incorporate southern peasants into the World Bank's new initiative of "agriculture for development". And it serves revenue interests of host states and the security interests of investing states -anticipating food, water and fuel shortages.

Since peasants constitute the majority of the world's food producers, and provide the majority of the world's staple foods, there is rising concern about the long-term impact of the land grab. Land consolidation and/or agro-technologies not only portend a deepening of the homogenization of landscapes with ecological implications, but also redirects food resources away from local communities - whether as commercial foods for distant consumers, or as agrofuel.

Land Acquisition, Eminent Domain and the 2011 Bill

By:

Usha Ramanathan

Economic and Political Weekly

November 5, 2011

Bird's Eye View

In this paper the writer, Usha Ramanathan says that the Land Acquisition Act 1894 (LAA 1894) has influenced the expansion of the power of the State to acquire and take over land. It has helped institutionalise involuntary acquisition. Premised on the doctrine of eminent domain, it presumes a priority to the requirements of the State which, by definition, is for the general good of the public, over the interests of landowners and users. The doctrine of eminent domain invests power in the state to acquire private land for public purpose on payment of compensation. The language of "public purpose" has lent a touch of public morality to involuntary acquisition and dispossession which, especially since the 1980s has been facing serious challenge. Mass displacement posed an early threat to the legitimacy of the project of development. This phenomenon defied the logic of eminent domain in demonstrating that the link between "public purpose" and acquisition was incapable of acknowledging the thousands, and hundreds of thousands, who would stand to lose their livelihood, security, support structures when land was acquired and whole communities uprooted. The LAA, 1894 was trained to acknowledge a "person interested" in the land who could, therefore, become a "claimant". Even this limited right did not vest in the wider multitude that would face the consequent forcible eviction.

Unresolved Question

Under this sub-heading, the writer refers to few questions aroused after Independence when laws were passed to dispossess zamindars. These are: What is the relationship of the state with land? Is it a landlord? A super landlord? An owner? A trustee? A holder of land? A manager? Even as this remains in the realm of debate, the state has, among other roles, emerged as an agency that facilitates the transfer of land to companies in their pursuit of projects and profits. This has been the second, dominant, challenge to the legitimacy of involuntary acquisition. In 1984, when the Land Acquisition Act (LAA) 1894 went through elaborate amendment, the role that the State had taken on in acquiring land for companies was reinforced. The neo-liberal agenda, or the reforms agenda as some term it, forged a partnership between the state and companies. The state casts itself in the role of a facilitator; as the "public" in public-private partnerships (PPP); as party to contracts with corporations where

it guarantees certain conditions and terms that would make projects friction free while guaranteeing profits; as agents in procuring land and providing clearances; as disinvestors, through which process the transfer of assets would occur. The alignment of state interest with corporate interest, which has the state acquiring and transferring land to corporations, has had dispossessed and displaced persons and communities seeing the state as adversarial to their interest. In 1984, the Statement of Objects and Reasons (SoR) of the Amendment Act referred to the "sacrifices" of the affected population. "The individuals and institutions who are unavoidably to be deprived of their property rights in land need to be adequately compensated for the loss keeping in view the sacrifice they have to make for the larger interests of the community", the SoR read. The widening rift in the meaning accorded to "the larger interests of the community", and the determination not to become "sacrifices" in the interests of the corporatisation of resources has become the theme song of the past decade and a half.

The writer further says that a model of development that requires extraordinary sacrifices, that is ecologically and in socio-economic terms of questionable repute and which is linked with such phenomena as marginalisation, exclusion and impoverishment has not been able to cross the credibility barrier to convince those who are sometimes referred to as "victims of development". Macroeconomic projections of growth and prosperity have not succeeded in convincing the project affected that their sacrifice has value that they must respect; and this is in evidence in many sites of pitched conflict and resistance where projects venture. A challenge to the development paradigm has in addition emerged from concerns that the avidity with which choice land is being handed over to corporations to be diverted from its designated use would compromise food security, with agricultural land disappearing into domains of non-agricultural uses.

Laws and Policies

Under this title the writer says that laws and policies that dealt with rehabilitation have been around since 1960s and 1970s. The T. N. Singh formula of a job to each family displaced to make way for public sector mines and industries is of 1967 vintage. Since 1976, Maharashtra has had a law on rehabilitation which in its current form is the Maharashtra Project Affected Persons Rehabilitation Act. The most discussed is the 1993 draft policy put together by the Ministry of Rural development, States and public enterprises have sporadically produced policies. It was not till February 2004 that a National Policy on Resettlement and Rehabilitation 2003 was notified, to be replaced in 2007 by the National rehabilitation Policy on Resettlement 2006. "Retrospectivity", which acknowledges displacement through decades past, has been a crucial element in the validation or unacceptability, of law and policy.

The writer further points out that there has been an escalating demand to replace the LAA, 1894 with law that recognizes the perils of mass displacement, accounts for those who have been dislodged and dispossessed through the decades, restrains companies from benefiting from involuntary acquisition and forced eviction, and reconsiders a model of development that could demote agriculture and consequently, threaten food security. The Land Acquisition Rehabilitation and Resettlement Bill (77 of 2011) (LARR 2011) introduced in the Lok Sabha on 7 September 2011 will have to be tested to see if it meets these expectations.

Lexical Priority

In this section, the writer says that there is a problem even at the outset. A "Forward" to the draft bill that Union Minister for Rural Development Jairam Ramesh displayed on the ministry's website on 27 July 2011 begins with these words: "Infrastructure across the country must expand rapidly. Industrialisation, especially based on manufacture, has also to accelerate. Urbanisation is inevitable. Land is an essential requirement for all these purposes." Having set these out as priorities which the law is to adopt, it is then said: " In every case, land acquisition must take place in a manner that fully protect the interests of landowners and also those whose livelihoods depend on the land being acquired". This sets up a lexical priority for industry, urbanisation and infrastructure, and introduces pragmatism into issues of displacement and rehabilitation. This approach runs through the entire LARR 2011. In the bill introduced in the Lok Sabha, the preamble uses adjectives such as " humane", "participatory", informed", "consultative" "transparent", but the juggernaut of "development" is not to be slowed down; the process of dealing with its wake may be modified.

The writer further says that the attempt to reconcile conflicting interests has, however, produced some interesting elements. So,

- The idea of "legitimate and bona fide public purpose for the proposed acquisition which necessitates acquisition of the land identified" (Clause 8(2)(a));
- That "only the minimum area of land required for the project" can be sought to be acquired (Clause 8(3));
- That "minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum

adverse impact on the individuals affected" should be ensured (Clause 8(3)).

These capture some of the causes of discontent. Yet, these are not justifiable standards but indicators to be used by an expert committee in its appraisal of the social impact assessment which is to be carried out as a prelude to acquisition.

The LAA 1894 was concerned exclusively with acquisition; it was innocent of the need for rehabilitation. In 1984, "public purpose" was redefined to include the provision of land for residential purposes "to persons displaced or affected by reason of the implementation of any scheme undertaken by government" (Section 3(f)(v)). There was no procedure prescribed, and no entitlement created. It was among the purposes for which the state had the power, under the Act, to acquire land.

Beyond the 1894 Act

Under this title, the writer states that the LARR 2011 has had to move beyond the perimeters of the LAA 1894. Since the mid-1990s, the demand has been for any law of acquisition to include within it provisions that ensure rehabilitation. That explains the move from a "Land Acquisition Act" to a "Land Acquisition, Rehabilitation and Resettlement Bill". The applicability of the law accordingly extends to situations where land is acquired for purposes connected with the government and private companies including public-private partnership projects.

Diluting Forest Rights Act

Under this sub-heading, the writer says that The Forest Rights Act 2006 was an outcome of concerns about the increasing insecurity of tribals, forest dwellers, and forest dependent communities. The threat of eviction, or alienation, from the forest was looming in the early years of the first decade of this century. That tribals and forest dwellers had no legally ascribed rights, and this was making them vulnerable to exclusion from their habitat. The Forest Rights Act 2006 was not about vesting property rights in the individual; it was about protecting the interests of the tribals and forest dwellers in relation to their habitat. It was not about creating rights; it was about recognising rights. In including the rights created under the 2006 Act among those that may be "acquired" through what, at its root, is a coercive law, it reduces the Act to merely creating transactable property rights. The LARR 2011 does carry a caveat: that the law relating to land transfer in scheduled areas shall be followed. The weakness of this protection is revealed when we consider that the transfer of land from a tribal to non-tribal in scheduled areas is generally overseen by a collector, or some agent of the state, whose job it is to ensure that the interests of the tribal is protected. If the state is itself to be acquiring the land, then the protection is diminished to that degree. If the state is legally permitted to acquire the land to be handed over to a private company, that dilutes the protection further.

The writer further says that bringing forest areas, and Fifth and Sixth Schedule areas, within the law of involuntary acquisition does not conform to the hard-fought norms recognised in the Samatha Judgment. The idea of recognising rights so that they can be monetised and taken over could be viewed as amounting to a fraud on the tribals and forest dwellers. If land has to be diverted for the purposes of industry or infrastructure in scheduled areas and in areas in the Fifth and Sixth Schedules, some route other than the coercive power under the land acquisition law will have to be found.

There are provisions that have been introduced in the LARR 2011 which have drawn on the debates and disputes around displacement. Change of public purpose - where acquisition is based on one purpose but it is used for another purpose - has been among the practices that brought coercive acquisition into disrepute. It revealed casualness about state power. The LARR 2011 reads: "No change from the purpose or related purposes for which the land is originally sought to be acquired shall be allowed" (Clause 93). "Or related purposes" does allow for some leeway, but it still becomes a qualified power. Transacting on land and on projects between corporations has raised questions which, in part, are addressed in clause 94: "No change of ownership without specific permission from the appropriate government shall be allowed". Importantly: "No land use change shall be permitted if rehabilitation and resettlement is not complied with in full" (Clause 42(4)). There is no clarity on what would constitute such compliance, and setting that out would be necessary prerequisite to this provision acquiring meaning.

A government, embarrassed at being seen as an agent for corporations, has stepped aside and is seen to be encouraging corporations to buy land from landowners, with the State stepping in when a substantial portion - LARR 2011 sets it at 80% - has been bought. The Rehabilitation aspect of LARR 2011 would apply where the State steps in, and also where a project exceeds 100 acres in rural areas and 50 acres in urban areas, whether or not the state has had a role in the purchase of land.

Few Rights

While talking about few rights that local people have, the writer says that for years now, "market value" as a basis for compensation has been sought to be replaced by "replacement value". LARR 2011 falls far short of considering that standard, even as it provides the calculus that will increase the total amount received as compensation. The possibility of other forms of compensation, such as shares in the enterprise for which the land is being acquired, is built into this bill. But land for land, jobs in the enterprise, annuities, fishing rights are alternatives only as the rehabilitation authority deems practical. There are few rights and entitlements in this construction of the law. The retention of the "urgency" clause is inexplicable. It is true that there is a significant contraction in the LARR 2011 of the reasons that can provoke the use of the urgency power. Unlike the LAA 1894 which vests vast discretion in what is considered urgent, and which has resulted in indiscriminate use of this power,4 the LARR Bill 2011 restricts it "to the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities". These situations may require immediate possession, but the permanent severance of the relationship between the land and persons interested in the land is excessive. "Requisitioning" land or property,5 and taking it free of all encumbrances, are two distinct processes. This power does not belong in a land acquisition law. Clause 59 of the 27 July draft allowed for imposing a penalty for obstructing acquisition of land with imprisonment that could extend to one month or a fine of Rs 500 or both. This provision, which was a carry-over from LAA 1894 (Section 46) fortunately finds no place in LARR 2011. In another context, the 27 July draft had provided for the "return of unutilised land" and this seems to have quietly slipped out of the LARR 2011. This is a significant omission, which has been replaced by the idea of a "Land Bank" (Clause 95). The perception of the state as a rightful holder of land is in evidence not only in this notion of the land bank. Clause 2(1) (a) recognizes an interest in the government to acquire land "for its own use, hold and control" - each of these terms recognize an extraordinary interest, and power, in relation to land which conflicts around this power have sought to tame. The LARR 2011, in reinforcing this broad sweep of power and interest, keeps the conflicts alive. Fuelling the conflicts further is the expansion of this law to give priority to "use of private companies for public purpose (including public-private partnership projects)...", and acquisition "on the request of private companies for immediate and declared use by such companies of land for public purposes" (Clause 2(1) (b) and (c)). The prioritising of infrastructure projects, which is then defined to include "educational, sports, healthcare" and even "tourism" are unlikely to lull the fears of those who anticipate large-scale transfer of land to follow if this bill were to become law. More bluntly stated, these are likely to draw the lines of conflict more sharply still. There is an interesting departure from the LAA 1894 in Chapter XII which attempts to set out "offences and penalties". Producing a false document, making a false claim for rehabilitation are made punishable. In a departure from common practice, the LARR 2011 suggests that "disciplinary proceedings" may be drawn up against a government servant who "if proved guilty of a mala fide action in respect of any provision of this Act, shall be liable to punishment". This, and other provisions in this chapter, though, are non-specific and, so, not likely to be enforceable as they now read. Clause 79, for instance, provides a punishment "if any person contravenes any of the provisions relating to payment of compensation or rehabilitation and resettlement". It is not clear if this refers to officials, affected families or any others; or whether it will cover such acts as "overacquisition". Considering the serious consequences of involuntary acquisition and forced eviction, "offences" are a component that can usefully have a place in this law; but it clearly needs inputs assisted by imagination and experience. A special mention of the diversion of land from multi-cropping to other uses employs the language of " exceptional circumstances" and "demonstrable last resort" when such diversion is to occur, and percentages prescribed for the maximum extent that may be allowed (Clause 10).

Land Titling Bill

Under this title, the writer points out that there is another bill which must be seen in conjunction with the LARR 2011. The Land Titling Bill 2011 which has been released by the Ministry of Rural Development in draft form, connected law. That bill is an attempt at commoditisation of land, making it tradable in the land market.

The writer further says that the law is to create a "conclusive property titling system". It is to "prepare a record of all immovable properties". It shifts the onus from the state to the individual to keep the records updated on pain of punishment, and even loss of acknowledgement of title to the land or interest in the land (Chapter VI, "Compulsory Intimations to Land Titling Authority"). Clause 36(3) cautions: "All persons are deemed to have notice of every entry in the Register of Titles". Indicating that the purpose of the bill is simplifying transactions on land, it says: "Any title recorded in the Register of Titles in accordance with the

provisions of the Act, shall be considered as evidence of the marketable title of the landholder" (Clause 41).

Indemnification in transactions on land is an idea that is undertaken by insurance companies as part of their business activity: they indemnify land titles and bear the cost of litigation and ancillary matters if they were to arise. The idea of introducing an "indemnification" clause, where the government indemnifies a person who acts on the basis of the title as it is recorded in the Land Registry (Clause 42), is a case of the government taking over the role of an insurance company. They indemnify land titles and bear the cost of litigation and ancillary matter if they were to arise.

In the conclusion, The draft Land Titling Bill is not about updating land records. It is not about the accuracy of land records, but about its finality for purposes of determining encumbrances and saleability. It is about deciding on a means by which land may be easily dealt with in the market. The displaced, project affected and dispossessed and their advocates have been campaigning long and hard for a law that will limit the coercive power of the state in taking over land. The LARR 2011 adopts some of the language and concerns from the sites of conflict. But, in beginning with the premise that land acquisition is inevitable and that industrialisation, urbanization and infrastructure will have lexical priority; the LARR 2011 may have gained few friends among those whom involuntary acquisition has displaced, and those for whom rehabilitation has been about promises that have seldom been kept.

Legal and Policy Frameworks for Land Acquisition and Resettlement in India

IInd chapter of the document titled 'Capacity Building for Resettlement Risk Management'

Handbook on Resettlement for Highway Projects in India

November 2007

Bird's Eye View

1. Introduction

In the introduction the document says that until 2003, the only legal framework governing resettlement applicable to all sectors at the national level was the Land Acquisition Act, 1894 (amended in 1984), which was an enabling legislation for land acquisition and not for resettlement. In 2004, the National Policy on Resettlement and Rehabilitation for Project Affected Families (2003) was published in the Gazette of India, Extraordinary Part I, Section I, dated 17 February 2004. The policy applies to projects where 500 or more families have been displaced en masse in plain areas and 250 families or more in hilly areas mentioned in Schedule V and Schedule VI of the Constitution. The benefits under the policy are applicable to all project-affected families - those living below the poverty line and others. The policy states that rehabilitation grants and other monetary benefits are minimum and that State Governments and project proponents are free to adopt packages higher than this.

The document further says that the positive feature of the policy is an acknowledgement of the fact that displacement results in "state-induced impoverishment". It also recognizes that "no developmental project can be justified if a section of society is pauperized by it". Thus, the policy for the first time made an attempt to correct the shortcomings of the existing legal regime by proposing pro-poor development in line with the Constitutional aspirations of social justice, in contrast to the Land Acquisition Act which only focuses on statutory compensation.

The document says that the existing legal provisions relevant to land acquisition and resettlement include:

- The Land Acquisition Act, 1894
- The National Highways (NH) Act, 1956
- National Policy on Resettlement and Rehabilitation for Project-Affected Families, 2003
- Policies of State governments and parastatal agencies.

A. Land Acquisition Act, 1894

The document says that for any development project, land is acquired

through the omnibus Land acquisition Act, 1894. Development authorities are dependent on state government revenue departments for acquiring land.

The Land Acquisition Act, 1894 provides three methods for arriving at the value of land, which are (a) government-approved rates; (b) capitalised value of average annual income from the land; and (c) prevalent market rate based on the average price paid in land transactions in the locality in recent times. These procedures consider land only as a commodity generating income. However, when a family is settled on a piece of land not only does it earn its livelihood from it but it also has a whole social network, and the Land Acquisition Act does not address these wider impacts of land acquisition.

B. The National Highways (NH) Act, 1956

The document points out that for the purpose of development, maintenance, and management of national highways, a special law, The National Highways Act (NH Act), 1956 has been promulgated. This Act provides for acquiring land through a "competent authority", which means any person or authority authorized by the Central Government by notification in the official Gazette to perform functions of the competent authority for such areas as may be specified in the notifications. For land acquisition (LA), the Act defines the various procedures as (i) section 3A - intention of Central Government to acquire land, (ii) 3B - power to enter for survey, (iii) 3C - hearing of objections, (iv) 3D - declaration of acquisition, (v) 3E - power to take possession, (vi) 3F - power to enter into the land where land has vested in the central government, (vii) 3G - determination of compensation, and (viii) 3H - deposit and payment of the amount. The Act requires that the processes must be completed within a year from 3A to 3D. Although the NH Act significantly reduces the timeframe for acquisition, the rules and principles of compensation have been derived from the LA Act of 1894. The Act covers only legal titleholders and provides for compensation based on (i) market value of the land; (ii) additional payments for trees, crops, houses, or other immovable properties; and (iii) payments for damage due to severing of land, residence, or place of business.

C. National Policy on Resettlement and Rehabilitation (NPRR), 2003

The document says that the policy establishes a framework for extending additional assistance to project-affected families, over and above the compensation for affected assets provided under the Land Acquisition Act. While the policy has a number of useful features based on established good practice, some key gaps remain between the policy and the approaches and standards of funding agencies related to involuntary resettlement.

The key point of divergence between the Government of India's and funding agencies' (ADB and World Bank) approach to resettlement issues is a government focus on compensation versus funding agencies, concern for sustainable restoration of incomes of affected persons (in case of very poor people, the improvement of incomes). The Government of India is using a legal framework driven by a concern to compensate for lost assets while funding agencies, as development institutions, approach resettlement as a development opportunity and strive to reinstate or improve the income base of affected persons (APs).

One way of rectifying this fundamental divergence is to supplement compensation for lost assets with existing government development programmes or projects to improve income and living standards for all categories (owners, squatters, tenants, etc.) of project-affected persons. Another method is to identify gaps between the two approaches on a case-by-case basis and fill the gaps in the context of a given project to assure compliance with both Indian laws/regulations and funding agencies' policies.

D. Policies of Selected State Governments and Parastatal Agencies

The document says that some state governments (Orissa, Madhya Pradesh, Maharashtra, Karnataka) and parastatal organizations (National Thermal Power Corporation [NTPC], The National Hydel Power Corporation [NHPC], Coal India) have their own resettlement and rehabilitation policies. Gujarat initially followed Maharashtra's land-for-land scheme for compensation and later passed several Government Orders (GOs). The best-known package emerging from GOs was that for Narmada. But Gujarat does not have a state policy on rehabilitation. Andhra Pradesh, Tamil Nadu, and Rajasthan have passed several GOs, most of them in connection with World Bank-assisted projects, but have no policies of their own. Similarly, National Highways Authority of India (NHAIPWD) also has policies on a project-by-project basis for highways projects funded by bilateral and multilateral agencies.

2. Limitations of State Policies

The document points out that in Maharashtra (The Maharashtra Project Affected Persons Rehabilitation

Act, 1986)

i. The preparation of rehabilitation is left entirely to the discretion of the District Collector. He is not accountable to Affected Persons (APs).
ii. No definite time limit is fixed for the completion of resettlement and rehabilitation.

In Madhya Pradesh (Madhya Pradesh Pariyojana Ke Karan Visthapit Vyakti [Punasthapan] Abhiniyan, 1985)

i. The term 'displaced person (DP) has been defined as any tenure holder, tenant, government lessee, or owner of other property who, on account of the acquisition of his land or other property, has been displaced from such property. There is no clarification of the status of major sons or daughters. Hence, there is the risk of omission and deprivation of many APs.
ii. The provision to make forestland available for cultivation violates the provisions of the Forest Conservation Act, 1980 later amended in 1988. It prohibits the diversion of forestlands for non-forest use.
iii. Section 17(2) of the Act provides for the compulsory acquisition of land for the purpose of resettlement, but subsequently in section 17(4), states that excess land in the benefited zone in the command area of irrigation projects should be acquired as far as practicable.
iv. Section 18 provides that compensation for the land acquired will be paid according to the provisions of the Land Acquisition Act, 1894 and will be adjusted toward the market value of the land allotted to AP. This is against the interests of tribal APs, who generally reside in remote areas and whose land has little market value.

In Karnataka (Karnataka Resettlement of Project Displacement Peoples Act, 1987)

i. The state government has the sole discretion to decide on the application (through a Gazette notification) of the provisions of the enactment for resettlement of Displaced Persons (DPs). No objective criteria exist to decide on the issue.
ii. It aims only at resettlement, not rehabilitation. The Act provides for payment of compensation, resettling DPs at a new site, finding a house plot, agricultural land, etc. However, the civic amenities to be provided are not clearly defined, other than the reservation of land for threshing and for cremation or burial.
iii. According to the Act, there is no provision for ensuring the involvement of APs at any stage. The informed consent of APs for their displacement and resettlement is not an issue of concern in the Act.
iv. The resettlement and rehabilitation activities are to be planned and implemented by the administration with practically no role for any other agency, including local bodies.

In Orissa (The Orissa Resettlement and Rehabilitation of Project Affected Persons Policy, 1994)

i. The policy is limited to water resource projects and not to all types of development-induced displacements. However, there is a note that "Government by notification may also include any other work/project of public utility for adoption of this policy".
ii. In line with the provisions of the Land Acquisition Act, market value - and not replacement value-is the basis for compensation.
iii. All liabilities (mortgage, debt, or other encumbrances) on the land held by APs at the time of acquisition are deemed to be transferred to the land allotted to them at the rehabilitation site, thereby increasing the chances of impoverishment.

E. Policies of Funding Agencies: Asian Development Bank and World Bank

1. Asian Development Bank (ADB)

The document says that ADB's Policy on Involuntary Resettlement was adopted in November 1995. The main objectives and principles of the policy, related to income restoration or having bearing on it, are as follows:

(i) Involuntary resettlement should be avoided wherever feasible, and/or minimized. People unavoidably displaced should be compensated and assisted as per the resettlement plan/framework prepared for the project, so that their economic and social future would be generally as favourable as it would have been in the absence of the project.
(ii) Any involuntary resettlement should, as much as possible, be conceived and executed as a part of a development project or program, and RPs should be prepared as appropriate time-bound actions and budgets.

(iii) Resettlers should be provided sufficient resources and opportunities to re-establish their homes and livelihoods as soon as possible.

(iv) People affected should be informed fully and consulted on resettlement and compensation option.

Existing social and cultural institutions of resettlers and their hosts be supported and used to the greatest extent possible, and resettlers should be integrated economically and socially into host communities.

2. World Bank

While referring to the World Bank, the document says that the World Bank's Operational Directive OD 4.30 (June 1990) and OD 4.20, which remained the Bank's policy statement on R&R for several years, has now been replaced by Operational Policy (OP) and Bank Procedure (BP) 4.12 (December 2001) and OP 4.10, respectively. The OP and BP apply to all projects that have resettlement impacts. The key objectives of the World Bank's policy on involuntary resettlement are:

(i) Involuntary resettlement should be avoided, where feasible, or minimized, exploring all viable alternative project designs.

(ii) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programmes, providing sufficient investment resources to enable persons displaced by the project to share in project benefits.

(iii) DPs should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programmes.

(iv) DPs should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them as per the resettlement framework prepared for the project, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The document further says that the World Bank issued the guidelines in the Handbook on R&R for Task Managers (1996) and the Involuntary Resettlement Sourcebook (2004) for implementation of R&R in World Bank projects. The following points refer specially to income restoration:

(i) The standard of living of project APs to be restored to pre-project levels, or be improved.

(ii) In areas where APs were living below the poverty line prior to project implementation, post-project living standards to be brought above poverty line.

(iii) Preparation of income restoration programmes (IRPs) should be proceed exactly as it would for any other economic development programme.

(iv) It is important to design IRPs with reference both to the poverty profile of the affected villages and to the prospective host communities.

(v) To be effective, income restoration planning should began no later than 2 years before APs are to be relocated.

It also proposed that the following information related to income restoration would be part of a resettlement action plan:

(i) Existing AP skills and host area activities/demand patterns;

(ii) Feasibility analysis of menu of income restoration options, including assessment of time/cost of access to previous urban employment;

(iii) Training needs of APs;

(iv) Strategies or activities broken down by APs category and range of options;

(v) Timetable and budget for activities;

(vi) Institutional responsibilities for design and implementation; and

(vii) Provisions for handing over programmes from the project to local authorities.

F. Gaps in National Legislation and Policies

Under this title, the document says that though there are a number of legislative provisions and policies in India, most of them have limitations compared to the policies of multilateral agencies.

Both the Land Acquisition Act, 1894 and the National Highways Act, 1956 do not recognize non-titleholders. Though the LA Act adds a solatium (additional payment for injurious affection) to the compensation paid, the NH Act has no such provision.

Both Acts do not recognize loss of income due to the acquisition of immovable property, such as commercial establishments and agricultural land. The acquisition process under the NH Act is faster than that under the LA Act, but it applies only to national highways for the exclusive use of the central government.

Even though the National Policy on Resettlement and Rehabilitation (NPRR, 2003) focuses on compensation, it does not address sustainable restoration of income for APs. It uses a legal framework driven by a concern to compensate for lost assets rather than approaching resettlement as a development opportunity, to reinstate or improve the sustainable income base for APs. The key differences or gaps between the World Bank's/ ADB's resettlement policies and national resettlement policies are summarized below:

(i) The 2003 NPRR applies to projects if the number of families displaced are 500 in plain areas and 250 in hilly terrain, whereas ADB's and the World Bank's policies apply to projects with involuntary resettlement impacts, regardless of the number of persons displaced, although planning requirements vary with the scale and scope of impacts. If the provisions of the national policy are followed, there would be no assurance that the living standards of APs will be improved or restored in projects/subprojects that affect less than 500 families (or 250 in hilly regions).

(ii) The 2003 NPRR requires that APs should have been residents in the project area for at least three years prior to the date of notification of the project. However, under this provision, bona fide residents of the project area, who have purchased property less than 3 years before the date of notification, would be barred from receiving any additional assistance over and above compensation. Such people, therefore, will not be able to restore their standards of living after resettlement. This provision may be particularly problematic to implement in urban areas where land and housing is bought and sold frequently.

(iii) The 2003 NPRR is triggered only in situations involving land acquisition using the principle of "eminent domain" of the state, and it does not apply to restrictions of access to parks and protected areas. It is important to recognize this difference, especially since ADB's and World Bank's resettlement policies also address restrictions of access to legally designated parks and protected areas. Thus, in projects involving such restrictions, ADB and the World Bank will need to discuss and agree upon project specific mitigation arrangements consistent with their policies.

(iv) Most of the mitigation measures proposed in NPRR are based on cash compensation, which may not be sufficient for economic rehabilitation. In certain cases where agricultural land has been proposed, the area of agricultural land allocated for each affected family is quite low (maximum of one hectare of irrigated land and two hectare of rainfed lands). Such thresholds for allotment of agricultural land, combined with provision of insufficient amount of cash assistance, are unlikely to enable restoration of the standards of living of those who lose larger areas of land.

(v) While the preamble of the 2003 NPRR refers to the need to assist those without legal rights, there are no specific provisions on whether and how such assistance would be provided.

(vi) The provisions in the 2003 NPRR for linear resettlement for paying Indian rupees (Rs. 10,000, US$ 222) to each affected landowner without regard to the area lost, or the severity of impact of land acquisition on the respective landowner, are not adequate. The proposed lump-sum payment approach is not likely to help achieve the stated objective of the national policy - to improve the living standards of APs.

(vii) While the 2003 NPRR contains special provisions for tribal populations, most of the provisions pertain to payment of higher cash compensation to tribal APs than would be payable to non-tribal APs. Even on the issue of allotment of replacement agricultural land, which is a pre-requisite for the successful resettlement of tribal people, the policy only requires preference for tribal APs among the displaced population, but does not mandate any special efforts to provide replacement agricultural land to tribal APs.

(viii) Although the 2003 NPRR provides for preparation of Rehabilitation Plans (RPs) and their approval by appropriate authorities, the timing of preparation of the plans, or of their approval, has not been specified. It is important that the plans are prepared, reviewed, and approved before land acquisition is initiated and before any of APs are adversely affected.

(ix) The 2003 NPRR is targeted mainly at land acquisition and resettlement in the rural areas. It does not address important issues in urban resettlement, for example, the need to (a) relocate affected commercial properties to appropriate locations, (b) compensate for losses of income during transition, (c) provide alternative housing options to APs, and (d) compensate APs, if necessary, for increase in travel distance after relocation.

(x) Though the 2003 NPRR makes reference to the need to provide physical infrastructure in accordance with state regulations, it does not clearly state that physical infrastructure will be improved or at least maintained after resettlement. Also, the house plot size to be provided is extremely small (62 square meters for urban areas and 124 square meters in rural areas) and would not enable affected person with larger original holdings to improve their standards of living.

(xi) The 2003 NPRR does not provide for any linkage between the pace of land acquisition and resettlement and the pace of construction activities under the project. Unless the two are clearly linked in a way that construction on a particular piece of land is not initiated unless agreed resettlement measures with respect to the respective piece of land are completed, APs can be put through significant hardship and it may not be possible to achieve the objectives of the national policy.

(xii) It may not always be feasible to appoint an officer of the rank of DC to be in charge of resettlement for each project as required in the 2003 policy. Even in the cases where the DC is appointed for all projects in the district involving resettlement, it would be very difficult for the DC to devote adequate attention to resettlement issues. The incentive framework to complete a timely and effective resettlement needs to be further reviewed by agreement between the project agency and the district/state administration; there would be no pressure on the district administration to complete the resettlement process in a timely manner.

(xiii) The 2003 NPRR document assumes strong capacity to plan, implement, and monitor resettlement at the different levels, (district, State, and Ministry of Rural Development). However, it is not clear how and where the institutional details will be worked out.

Land Acquisition, Rehabilitation and Resettlement: Law and Politics

(A background paper for "Land Acquisition, Land Markets and Regulations". India Urban Conference, Mysore, November 2011)

By:

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Bird's Eye View

This 20-page working paper looks at the new Land Acquisition Rehabilitation and Resettlement (LARR) Bill, 2011 and explores key issues within the text of the Bill and the larger political context of land acquisition in India. In particular, it explores issues relating to Eminent Domain and 'public purpose,' rehabilitation and resettlement, compensation, safeguards for 'Project Affected Persons' (PAPs), processes (including the urgency clause), linkages with environment, applicability of the proposed enactment as well as crucial areas of non-applicability. In doing so, the paper also asks larger legal and political questions regarding land acquisition in the backdrop of constitutional debates pertaining to the Bill's implications for federalism and within a detailed analysis of the most recent pronouncements of the Supreme Court. On 'public purpose', the paper infers that even if the new Bill renders the concept less vague, it will still not stop the Judiciary from looking into questions of abuse in actual land acquisition or use of the land. What the LARR Bill could however do is allow a clearer legal framework within which the Judiciary could look into these questions in general, and on 'public purpose' in particular. The paper also looks at potential scenarios, and in particular, possible intended (or unintended) consequences of the enactment for future urbanisation patterns in India.

The paper says that land acquisition stands at the political fault line of a changing India, undergoing significant transitions: political, economic, social, environmental, spatial. There is keen contestation along a variety of fronts, actors, structures and visions, and with deepening democracy and a savvy 24/7 media, the salience and political articulation of such contestation has become more visible. These debates are part of a greater emerging story that engages not just with processes and governance deficits in the country, but one that also asks questions regarding the future of the country. It further says that the latest draft of the Land Acquisition Rehabilitation and Resettlement Bill, 2011 (LARR Bill) is a formal legal response to such articulations. Whether the law follows the politics or plays harbinger is a matter of debate, yet the task of reading specific issues within LARR,

and a detailed nitpicking of clauses, to find all known and unknown devils, will be rendered more comprehensive if such legalese were to be understood within the very complex socio-politics of land itself. This means the LARR Bill has to be read in the context of keen political contestation, a spate of recent decisions on the subject by the Supreme Court and the widely felt need for 'balance' among a wide diversity of voices and stakes. The LARR Bill aims at no less than altering the regulatory landscape and in doing so, may also indirectly unleash a range of other regulatory forces. As an unintended consequence, this enactment could unwittingly also decide future spatial patterns of urbanisation in India. This task of looking for everything under the political sun (and beyond it) calls for more detailed exploration. According to the writer of this paper, the history may help lend perspective, even as, and perhaps because, it repeats itself.

Land Acquisition Law, whether in 2011 or in 1894, are but links in the long chain of institutional arrangements and conveniences, to address the specific issues of the day. Some of these issues have not gone away in a century and a half, and hence the task of drafting new laws to address old issues in a variety of new and old ways. Tracing the background to the Colonial period, the paper says the legal trail goes back further than 1894 -to the Bengal Regulation I of 1824, Act I of 1850, Act XXII of 1863, Act X of 1870, the Bombay Act No. XXVIII of 1839, Bombay Act No. XVII of 1850, the Madras Act No. XX of 1852 Madras Act No. 1 of 1854 X of 1861, the Act VI of 1857 -all enacted by a colonial administration initially in the then Presidency towns and later spreading across the country, to facilitate the easy acquisition of land and other immovable properties for roads, canals and other "public purposes" with compensation to be determined by arbitrators appointed for the purpose. These enactments built the bulwark of the colonial administration after the Crown re-established control subsequent to the events of 1857. By then, strategic interests such as cantonment areas, garrisons, telegraph, railways and in turn, their feeder links, pre-dominated the colonial administration's imagination. One way of ensuring greater control and preempting a repeat of 1857 was through the administration's control over land as well as through public infrastructure and defence systems built on the land. There was also the obvious economic utility to be achieved through productive uses of the land itself and its uses for revenue-whether for irrigation, canals, roads, and the like. Some 'Rule of Law,' as variously interpreted, was needed to provide the administrative foundations of Empire.

Little surprise then, that none of these legislations had provided for an opportunity to object to the acquisition of land itself, while allowing the opportunity to raise issues regarding compensation. The paper emphasizes that, in fact, the debate on Compensation has never been a settled issue because' market value' remaining a term as amorphous as 'public purpose' in the 19th century as well. Even in the late 19th century, allegations of inadequacy, corruption and misconduct were rife. The Land Acquisition Act of 1894, meant to bring some uniformity to the Empire (now that the Empire had more firmly established its hold in the thirty seven years after 1857), was clear in the narrowness of its aims. It meant to 'amend the law for the acquisition of land for public purposes and for companies and to determine the amount of compensation to be made on account of such acquisition'. This meant a single law for the control of a single administration - the whole of the colonial empire - where land and its uses became essential to the administration's fortunes now that land revenue itself had become an important part of the Empire's coffers.

The paper says that it was only in 1923, after the Non-Cooperation movement became a part of the nation's history and Indian national leaders began to make their first in-roads into Local Administration, that the amendment of Section 5A to the 1894 Act was introduced: one that allowed the possibility of raising objections, albeit with a warning on its limitations. In other words, the idea of objection was introduced while leaving open the possibilities for interpretation of such objection, and in a manner that did not obstruct land acquisition itself. In short, a road block, for want of a better metaphor. Land acquisition strategy for the colonial administration was rooted in the socio-economic context of extracting the maximum value from land, in a country that was predominantly agricultural.

Even after independence and the adoption of the Constitution of India, the 1894 Act continued to be in force, albeit with periodic amendments. It further says that 'Eminent Domain' theory or the justification of State's acquisition of land, even if involuntary, for 'public purpose' and for 'compensation' continued as an essential attribute of sovereignty itself. In this light, the rhetoric of 'commanding heights of the State', dams as the 'temples of modern India', the State's predominant role in national development, and the relative deference paid by the early Judiciary to questions of the Executive's determination of what constituted 'public purposes', were all part of this ubiquitous discourse of 'nation-building'. At the same time, while the land acquisition law did not undergo significant changes even after independence, the political context, and the frame within which the debate centered, was changing. India was an independent country now, governed by its own

Constitution, a democracy with universal adult suffrage (not just for the propertied), with features of federalism and guaranteeing basic fundamental rights to its citizens.

Land Acquisition, in the new Constitutional scheme, was soon rendered a Concurrent list subject, with power to both Centre and States to make laws on 'requisition and acquisition of immovable property'. The right to property too was initially considered a fundamental right. It was therefore only inevitable for an institutional clash between the specific ability of a colonial land acquisition law and the broader demands of a polity which also included a newly independent Nation State. The State itself was beginning to show its first signs of internal differentiation in the form of the independent Judiciary. Article 141 of the Constitution stated that the law laid down by the Supreme Court was the binding law of the land. The battle lines between the Executive and the Judiciary were first drawn over the right to property (in Kameshwar Singh's case) in 1951 itself, finally requiring a somewhat innovative heuristic in the form of 'the basic structure' doctrine (i.e. a broad compendium of elements considered essential to a functional democracy, which Parliament, could not abridge) to resolve matters.

Subsequently, after the end of the Emergency and the installation of a new Government at the centre, the right to property was changed from a fundamental right to a legal one (through the 44th Amendment in 1978) and no one could challenge an acquisition of private property on grounds of violation of Fundamental Rights. The document says that the Land Acquisition Law of 1894, in other words, could continue to effect land acquisition, so long as Eminent Domain requirements were fulfilled. In other words, 'public purpose' and 'compensation' continued to be the elements for scrutiny in matters of legalese, on matters challenging the validity of acquisition itself. However it says that murmurs about the inadequacy of rehabilitation and resettlement gradually grew louder though, with particularly disenfranchised margins that seemed to bear the brunt of the nation's costs of development. The Nation State itself was becoming a more complex structure, its hitherto largely unquestioned verdict on development beginning to be gradually taken with a little pinch of salt.

The paper points out that in the last twenty-five odd years, democracy has deepened, bringing new actors in the scene (marginalized castes, regional parties, classes, civil society, political society, newer private industry). Within each segment, where coalition politics is now also acknowledged as a political reality, there are a plethora of voices, interests and visions. The State too is far from a uniform behemoth: apart from the Executive, Legislature and the Judiciary as mandated in the Separation of Powers theories, there are numerous centre-state (and now local), debates around federalism. It says that in such a political framework, debates around land acquisition too have gradually shifted to the states, which otherwise, through the State List, continue to have the political authority to decide on various matters regarding use of 'land', even after the 74th Amendment. There is increasing political babble and bluster, and as inevitable structural fallout, political parties also accuse each other of wrong-doing, depending on the particular state one finds oneself in.

It further says that since 1991, and particularly in the last decade, while the State, inspite of its various internal contradictions, has remained the predominant actor, there is an interesting new element in the discourse: the ability of the State to play the role of a facilitator in acquisition decisions, for private companies, for 'public purposes'. This too, is not a new phenomenon in itself (the 1894 Act itself envisaged such applications, such as the extensive use for railways) but it may be worth asking if the degree of such acquisitions has shown any significant increase over the last few years. Eminent Domain still holds in such cases: the acquisition has to be for a 'public purpose' and 'compensation' has to be paid. In such a scenario, it is little surprise that the Judiciary has become an even more significant player as arbiter among various stakeholders, and particularly regarding the uses of land acquired for ostensibly public purposes. In a political landscape comprising a multitude of competing voices, the term 'public purpose' too has become a subject of multiple renderings, where each voice has an opinion on what is 'public purpose' and perhaps more significantly, what isn't.

The paper points out that there is also a fiscal argument opening up, one that imagines the taxation and redistributive machinery (within the newer debates on fiscal federalism, such as the proposed Goods and Services Tax structure), to be tied to land use, and that in turn being possibly used to justify newer forms of 'public purpose' by newer private actors. Today's political landscape is indeed more variegated than before. Democratic constituencies are organized along multiple identities (with civil society, movements, protests, interest groups; strident questions about accountability and governance; various forms of collaboration and contestation). The significant rise of industry and enterprise and wider acknowledgement by the State of private enterprise's salient role in economic growth and nation building is a facet one cannot ignore. The rise of new SEZs (enclaves for high economic productivity enjoying numerous legal exemptions and carved

outside ostensibly even municipal governance) and the new industrial townships with its private utilities, gated communities and claims to world-class aspirations however vaguely articulated they may be (and without municipal governance) are also newer phenomena. Pitted with the State's determination to ensure industrialisation and 'modernisation' (through manufacturing and services) as the primary way of ending endemic poverty is the arrival of environmentalism as a legitimate discourse, no longer in marginal fringes and increasingly asking difficult questions on the ecological and economic costs of such industrialistion.

There are debates about the inequities of development as well as its fruits. There is the phenomenon of growing urbanization, with a third of the country living in a fraction of the country's land and producing two-thirds of the country's economic output. In the heady 'rural-urban' political rhetoric are also farmers (rich and poor, wealthy and landless) who are raising the acquisition stakes. Add to the mix the new reach of global capital flows in an increasingly inter-connected economy, along with a seemingly aspirational India, anxious to make its mark at the global stage, as well as at the national. All of these elements provide the perfect backdrop to understand why land acquisition is back as a prime fulcrum in the great and little Indian political game. With so many actors, interests and voices, what other choice does the Bill have, in seeking to provide 'balance' in this democracy? Coherence and clarity, through a well articulated law, is a need that stems from the various voices of the democracy itself. If 'balance' in land acquisition is indeed the crying need of the day, can balance ever be effectively ensured through law, in a fractious political landscape? This is a matter for debate.

The paper says that LARR Bill's aspirations are lofty: one look at its preamble removes any doubt about how high its aims are. This protean aim is a little different, at least on paper, from the 1894 Act's purpose. Formal law being the tip of the iceberg (acknowledging all questions and challenges regarding formalization and the informal economy, customary ownership, commons, lack of titles, inadequate records, near absence of land market for sufficient price valuation, and so on), it may be worthwhile to ask what the LARR Bill is about and if it would at all be effective in ensuring what its preamble sets out to do.

Comparative Evaluation of Land Acquisition and Compensation Processes Across the World

By:

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Bird's Eye View

The paper says that one of the key challenges in the development of infrastructure in India is the acquisition of land necessary for the projects. Land acquisition techniques adopted across a variety of other countries are reviewed in this paper. Although no single "best practice" exists, viewing land acquisition practices through a framework of principles, processes, and compensation mechanisms allows the writers to position the Indian experience within the international context.

The writers, in this paper, say that landownership confers tangible benefits such as shelter and livelihood, as well as intangible benefits such as security and a standing in society. Landowners are thus often reluctant to part with their land unless mutually acceptable terms for compensation are agreed upon. Problems arise when land is required for "public purpose" and the state can invoke laws that allow for compulsory acquisition through "eminent domain". Often, the land acquisition process is neither consultative nor transparent.

They further say that land-titles are unclear and identifying parties eligible for compensation is rendered difficult. Finally, the compensation, and resettlement and rehabilitation packages that are offered to the erstwhile landowners are often outdated, inadequate, based on artificially low land values and are thereby keenly contested.

The paper further says that this issue of compensation is multifaceted and is often the most widely debated. Most Resettlement Action Plans (RAPs) are not supported by an economic feasibility analysis capable of examining whether the rehabilitation promised by RAPs - including the establishment of alternative livelihoods - will or will not lead to economic recovery. Thus, the projects that forcibly dispossess people of vital productive assets and

dismantle their existing economic systems are seldom equipped by the project sponsors with sufficient financial and economic resources to rebuild the livelihoods they dismantle (Cernea 2008).

The value of land itself is difficult to determine. Government rates are often well below market rates and any compensation paid out is likely to be below expectations. Corruption further limits the actual compensation that affected parties. Further, in the case of infrastructure, land value increases substantially after acquisition, as the land use changes. Dispossessed landowners may see some of their own neighbours and private developers profiting from this turn of events which then serves to promote dissent and discord.

It is intuitively obvious that an alternative livelihood source must be established through strategies such as the offer of alternative land, or of a lump sum of cash for alternative land purchase, and/or through guaranteed access to employment for the economically uprooted families in the new enterprise being built (Hemadri 1999). In many cases, combinations of such strategies are required since cash payments once again can be easily squandered, leading to affected families becoming impoverished.

The writers say that much research has been undertaken on the subject of land acquisition, aimed primarily at reforming the process and existing inequalities and this paper aims to add to this body of knowledge by addressing three issues. First, they compare land acquisition practices across various developed and developing countries. Then they propose a framework through which land acquisition practices can be compared. Following this, they present case studies of land acquisition for infrastructure projects in India, and through an empirical analysis determine specific bottlenecks that arise in practice, as well as their antecedents that are rooted in the prevailing institutional environment.

Finally, the writers review some innovative solutions that have been implemented in India that can help overcome these issues and provide an indication of the way forward in managing the process of land acquisition. They say that, in general, land acquisition practices in various countries can be viewed along three axes - the principle of land acquisition, the process of land acquisition, and the method by which compensation for acquired land is arrived at. The writers now attempt to describe these three axes in greater detail, by drawing from international experience.

Land Acquisition Principles

The paper says that all across the world, the state is given the power to acquire land for public purpose, in lieu of a compensation that may be paid to the landholders. This power and the terms under which it can be exercised is either directly vested in the constitution, as in the case of the US, Australia and China, or, is specified in enacted legislation, as is the case in Hong Kong, Malaysia and Singapore.

However, the definition of the term "public purpose", and therefore the justification for acquiring land varies across countries. Several countries, France, Japan, China, Mexico and India among them, explicitly enumerate situations and projects under which land can be acquired or appropriated by the state for public use. In China for instance, land can be appropriated for public purpose for setting up public undertakings, such as national defence, transport, water conservancy, government agencies and so on, while in Mexico public purpose includes infrastructure development, conservation of history or culture, national security or public benefit projects, and projects that preserve the ecological balance and natural resources. Other countries, Malaysia, Brazil, US, UK and Singapore among them provide a more generic definition of the term "public purpose", which can therefore be subject to interpretation and potential dispute. In Singapore, land can be acquired by the state if it is for "public benefit or public interest projects", in Australia for "purposes that the Parliament has the power to define by legislation" and in the UK for "planning and public purposes if it is suitable for, and required for development".

The paper says that the principles or philosophies that guide land acquisition in most countries can be classified into three main categories - the "value to the owner" principle, the "just compensation" principle, and the "reasonable compensation" principle. The "value to the owner" principle aims at compensating landowners to the tune of the market value of the land together with other losses suffered by the claimant (Denyer-Green 1994). This principle is broadly followed in most Commonwealth countries and regions such as Australia (Rost and Collins 1984) and Hong Kong. For example, the Commonwealth government's Lands Acquisition Act of 1989 and the New South Wales government's Land Acquisition (Just Terms Compensation) Act of 1991 require compensation to be provided after an assessment of the market value of the land acquired as well as special values attributed to the land, severance payments, consequential financial losses, value loss to other retained land and a solatium (Chan 2003).

The "just compensation" principle aims at providing dispossessed groups with adequate financial compensation. This is best exemplified in the case of *Horn vs Sunderland Corporation* in the UK where the judgment held that a dispossessed person is entitled to compensation and to be put, "as far as money can do it, in the same position as if his land had not been taken from him....." (Valuation Office Agency 2000). The Constitution of the United

States requires "just compensation" for all takings of private property. Similarly, the Constitution of the Philippines requires that "payment of just compensation must be made". Brazil and Cambodia's constitutions also require fair and just compensation.

Finally, countries such as China and states like British Columbia follow a principle of "reasonable compensation" as stated in their constitutions. The guiding principle here is that landowners should be fully indemnified only for their direct losses.

The paper further says that British Columbia's Expropriation Act adopts the concept of market value as the basic measure of compensation and landowners are paid an amount strictly equal to the value of the land. China follows a similar philosophy. However, it has been noted that dispossessed landowners often suffer huge consequential losses from the sale of the land that are not compensated for (Chan 2003).

The "value to the owner" principle takes into account socio-economic considerations related to the acquisition of the land, and aims at compensating the landowners for the land value as well as tangible and intangible benefits that are attributed to the land, through monetary as well as non-monetary means.

The "just compensation" principle aims at providing the landowner with economic parity, primarily through monetary means such that the landowner is at an economically -comparable position post land acquisition. The "reasonable compensation" principle envisions the land acquisition process to be a financial transaction where the value of the land alone will be disbursed in the form of monetary compensation without considering any intangible value associated with the land. The Japanese constitution, for instance, decrees that, "the criteria of calculation of loss should be socially objective. Consideration should not\ be given to subjective or emotional losses" and "any development value or potential value of the property shall not be included in compensation".

Land Acquisition Processes

Broadly, land acquisition processes traverse a spectrum from compulsory acquisition procedures that forcibly procure land from landowners and provide them with a predetermined compensation package, to consultative processes that involve negotiations with stakeholders. The latter is particularly implementable when the land is not required for public purpose and if the developing agency has more than one option on which land parcel to acquire. In such cases, negotiation often leads to an economically- efficient and socially optimal solutions. However, even in cases where land acquisition is critical and for public purpose, countries such as Japan advocate the use of negotiation techniques in order to decide upon the compensation to be provide to stakeholders. Many countries combine these two approaches.

Singapore and the Philippines, for instance, recommend that Government agencies and developers first negotiate with stakeholders to arrive at a mutually acceptable compensation package that may include monetary as well as non-financial compensation for the property acquired. If such negotiations should fail, the state can then resort to compulsory acquisition based on predetermined formulae provided in-land acquisition acts. In China, Australia, New Zealand and India, however, compensation guidelines are often prescribed through set formulae, which are then enforced upon affected landowners.

Land Valuation Methods

The paper says that in general, there are four methods that are used the world over to value land and to arrive at appropriate compensation. These are (a) evaluating the market value of the land, (b) evaluating the net value of income from the land, (c) determining original land use value as set by the state, and (d) arriving at land values through negotiation.

The Asian Development Bank defines the fair market value of land as "the amount that the land might be expected to realise if sold in the open market by a willing seller to a willing buyer" (ADB 2007a).

A comparable sales technique is often used to determine the fair market value of the land. This method takes into account the sales of land in nearby areas over a recent time frame. From sales deeds of similar land transactions in the past, an average sales price is calculated that represents the market value of the land. Such a technique is expected to represent true market conditions. Among other countries, Malaysia, China, the US and India advocate following the comparable sales method for determining the value of land.

To be sure, there are disadvantages with this method. First, there can be cases where sales data on comparable tracts of land may not be available. Second, there are several cases in various developing countries where the registered value of the sale is kept artificially low for tax purposes. Finally, an open, reliable, fair market environment might not be available thus distorting the value of land. For instance, Great Britain uses the market value as a means to determine compensation.

However, in Great Britain, the market value of, say, an ancestral home is often much lower than the value attributed to it by the landowner. Another related method of land valuation is the "replacement value" technique.

Replacement value is the amount it would cost to replace the asset (land, in this case) with a similar asset. Replacement value includes not only the cost of acquiring or replicating the property, but also all the relevant costs associated with replacement. This bottom-up method of value calculation is used in the Philippines and in other countries where legal systems are not robust, where either the land market is not well developed, or does not provide active reliable information. Further the paper says that where the market for land is not developed or is not reliable the "net value of income from the land" can also be used to calculate the value of the land. This method has its greatest application in the appraisal of farmland. Using this method, the value of the property is taken to be the value of the expected economic income that could be earned through the ownership of the property. This method calculates the value of land as the present worth of future income from the land including streams of income during the lifetime of the property and from the sale of the property. Tanzania is one country where this method is used, primarily because the market is assumed to be inefficient.

However, the paper points out, this method has its own drawbacks. First, it requires accurate estimates of the total cost incurred by the landowner, the price at which the crops from the land are sold, the cost of inputs to land, etc. Second, the use of a discount rate or capitalisation rate gives rise to uncertainty in itself. Most importantly, the method does not account for non-income benefits of the land like the livelihood, social security, source of credit and so on.

The principle followed in China for rural lands is not based on market value but on original land use. The Land Act of China does not permit free transfer of rural land and on the basis that there is no active land market, the original use of land is used for compensation purposes (Chan 2006) with valuation mechanisms set by the state.

Further, in some cases, compensation is fixed purely on the basis of discussions with stakeholders. Peru follows a policy of compensation based strictly on negotiation with the affected parties. Singapore and Japan are other countries that endorse this approach. The paper says that as this discussion indicates, virtually every land acquisition technique has its limitations and runs the risk of incorrect or incomplete assessment of the land. Due to this reason, several countries also include non-monetary means of compensation and attempt to address the indirect costs of land acquisition. Land for- land transfers are one such mechanism used where a displaced landowner is compensated not by cash but by the provision of an alternative - a comparable plot of land. This method, however, is dependent upon the availability of such land. There are instances in China were replacement structures have been built on alternate land parcels and given to displaced parties.

Paper says that of the various types of indirect costs that are calculated during the land acquisition process, perhaps the most commonplace is the calculation of a "solatium". McGregor (1988) states that compensation which is granted as a substitute or solace for what has been lost would seem to comprehend the intangible loss of something that cannot be replaced. This is sometimes referred to as "householder's surplus", which reflects the value of ties with the area, friendships made, social relations, and so on - items which are difficult to value (Rowan-Robinson 1990).

Paper further points out that various factors are to be included here. The loss of shelter tends to be only temporary for many people being resettled; but, for some, homelessness or a worsening in their housing standards remains a lingering condition which leads to social deprivation. Marginalisation occurs when families lose economic power and spiral on a "downward mobility" path.

In Brazil, in addition to direct compensation for the land, a "social subsidy" is also given that allows a displaced party to buy replacement real estate. Great Britain provides for special compensation when expropriation of agricultural land disturbs a farmer's operations. Likewise, in Germany, when an appropriation divides or transverses agricultural land, the government must pay additional compensation based on the following:

(i) increased time required for the farmer's road travel and preparation of machinery;

(ii) damage due to detours;

(iii) damage due to increased boundaries on the land; and

(iv) damage caused by worsened alignment of the land (ADB 2007a). Similarly in Italy, a high level of compensation with additional incentives is provided in case of agricultural lands. The compensation is based on a combination of the market value of the land and the profits from the land.

International Practices and Implications

Paper says that one of the key insights that can be drawn from an analysis of international practices and experiences is that intangible costs associated with the loss of land must also be compensated for. Compensation for compulsory purchase must reflect the price which the claimant would have expected to have obtained for the property on a sale in the open market together with other consequential losses (Rowan-Robinson 1990). Further, as Bell (1980) points out, great benefit can be achieved by a measure of compensation which provides claimants with a small balance of advantages as compared to their expectations, thereby encouraging fewer objections and

speedier settlements. Despite this, worldwide experience shows that compensation provided, even when intangible costs are considered, is usually unsatisfactory either due to the time lag between determining compensation and resettlement, or due to a failure to adequately account for non-market values such as environmental services, cultural assets, social cohesion, psychological costs and market access (Cernea 2008). Worldwide experience also indicates that the policies, frameworks and philosophies laid down in the statutes are best treated as guidelines and some flexibility can be incorporated into the land acquisition processes. For instance, a negotiated settlement in lieu of a compensation formula enshrined in a land acquisition policy can be attempted to reach an amicable settlement. Furthermore, it is difficult to discern a set of international best practices with respect to land acquisition. Several approaches exist, each with their own limitations.

Various countries follow combinations of these approaches with differing levels of success. The writers of the paper say that the framework of looking at land acquisition through the lenses of the principles, the processes and the compensation mechanisms behind land acquisition, however, provide us with some insights on why land acquisition in India is particularly contentious. India does not have a clearly articulated land acquisition principle, and often tend towards providing landowners with only "reasonable compensation". The process of land acquisition is forced with little scope available for negotiation. Despite a solatium being calculated to address the intangible costs of losing land, the basis for calculating this solatium does not vary with respect to the context within which land is being acquired, and the process of acquisition itself is so slow that when compensation is paid, market values are higher than the value used to compensate the affected party (Morris and Pandey 2007; Debnath 2008). The combination of these conditions leads to widespread dissatisfaction among project-affected parties and consequent protests. A land acquisition policy that aims at providing "value to the owner", a negotiated settlement process, and a fair method of assessing land value based on the direct and indirect costs of the land acquired is a potential strategy that could minimise land acquisition risks. In this context, the paper says, it might be worth emulating the land acquisition models of the UK or Singapore that broadly follow these principles.

Case Studies of Land Acquisition in India

Paper says that data for these case studies was collected through primary, unstructured interviews with project officials, lenders, government officials and affected stakeholders. Furthermore, official project documents and records were also used as sources of information. Each case and its relevant findings are briefly described here.

Case: World Bank Guidelines: TNUDP Phase III Project in Tamil Nadu: The Tamil Nadu Urban Development Project (TNUDP) consisted of a combination of five roads in Tamil Nadu. The project was funded by the World Bank and coordinated by the Chennai Metropolitan Development Authority (CMDA) and the Department of Highways and Rural Works (DOHRW). Private land of 40.12 hectares needed to be acquired for this project, affecting 2,073 people.

After notifying the local population, an initial baseline survey was done by consultants and GOs to identify affected persons, who were issued with photographic identity cards. A negotiations committee was then formed that was constituted by the project implementation unit engineer, the special deputy collector, local representatives and deputy engineer highways of sub-projects. Affected stakeholders with and without legal titles were identified. The affected parties were offered compensation of between 142% and 150% of the prevailing guideline value of their land. In addition, a building allowance equivalent to 25% of the total compensation, a subsistence allowance at the rate of Rs 1,800 per month for six months, a shifting allowance of Rs 1,000 as well as replacement for lost assets were provided. In cases where payments were delayed, affected parties were paid interest at the rate of 12% on the compensation due to them. In the end analysis, there were no court cases against the compensation offered.

The constitution of an independent committee, negotiating with stakeholders and providing compensation for indirect losses as well as delayed payments are creditable interventions. Despite this, there were several procedural issues that arose. First, World Bank guidelines mandate a minimum compensation of 150% of the guideline value. Project officials however did not exceed this minimal value by arguing that similar projects in the vicinity had offered lower compensation amounts and it would be unfair to increase the compensation package merely for this project. The guidelines were, in practice, subverted. Also, guideline values of the price of land were often lower than the true market value of the property due to the tendency of landowners to record lower value of their sale of lands to save stamp duty. It can therefore be argued that true value to the owner was not provided in this case. Yet, project affected parties did not protest against the award since the process of award was open and transparent, and due to the apprehension that compensation awarded through the Land acquisition Act would be lower and would take longer to arrive.

Case: Land Acquisition Act 1894 under Conditions of Urgency: Indore Pithampur SEZ: Land covering 1,038.57 hectares needed to be acquired across six villages to develop an SEZ in Indore. The need for land was deemed as an urgent requirement, and this allowed authorities to reduce the duration of the land acquisition

process. As a result, early objections to the acquisition of the land were not entertained and the acquisition process was completed within 18 months between 2002 and 2004. In order to compute the value of the land, land sales registry records of transactions in the region from 2000 to 2003 were considered. A further premium was given to irrigated land. A solatium of 30% and a 12% interest rate for seven months (the time between notification of acquisition and takeover) were also applied to determine the final value of the compensation to be paid. This project encountered several protests. First, the guideline values in the land registry were held to be much lower than the actual "market" price of land transactions, and most of the people felt under- compensated. Second, landowners claimed that fertile land had been acquired for the project, even though adjacent barren lands were available. Furthermore, there had been no negotiations whatsoever with the stakeholders. Finally, several affected stakeholders held that the " urgency clause" had been incorrectly and unjustly invoked for a project which did not seem to be in the domain of public purpose. Writ petitions have been filed and cases are ongoing.

Case: Land Acquisition Act 1894: Outer Ring Road, Chennai: The Outer Ring Road (ORR) is a Rs 785 crore project undertaken by the CMDA that spans 62.3 km and requires 860 hectares of land. The process of land acquisition closely followed the 1894 Act. The initial notification was given in August 2000 and land acquisition was completed in May 2003. The land value for the project was fixed on the basis of comparable land sales over the past three years. Standing crops were taken into account. Apart from the compensation, 30% solatium and 12% additional interest was also given.Once again there were several protests relating to the low amount of compensation that was provided. In the case of *V Madhusudanan vs The Special Tehsildar LA*, the plaintiff claimed that the defendant had considered 1,152 sales deeds of transactions undertaken in the recent past, and had selected the lowest sale deed (which was 40 times lower than sales deeds of comparable plots) on the basis that the other sales deeds were highly priced or pertained to non-comparable plots of land. The court ruled in favour of the plaintiff and ordered a reassessment of the fair market value of the land as an average of relevant transactions. Furthermore, the court awarded a 10% increase in the value of the land upon consideration of the development potential of the adjoining area.

Case: Municipal Law - Bus Rapid Transit System, Indore: This Bus Rapid Transit System (BRTS) project aims to create a separate dedicated bus transit corridor in Indore. As a result, land acquisition was minimal due to the narrow carriageway and was done using Indore's municipal laws. The acquisition was forced in nature and no negotiation was carried out whatsoever. The land acquired was residential in purpose, and in most cases, only a part of owned land was acquired. No cash compensation was paid. Instead owners were given rights to further develop their existing plots to the extent of the floor area ratios that were taken away as a result of land acquisition.

However the landowners were unhappy with this arrangement and requested that transferable development rights be provided so that the landowners could either sell, or could use to develop built space elsewhere. This request was denied to the landowners, who, as a result, felt impoverished by the land acquisition process.

Land Acquisition Issues in the Indian Context

Paper says that as these studies indicate, the Indian Land Acquisition Act, local Acts and guidelines followed by multilateral agencies, all suffer from limitations in practical implementation, notwithstanding their theoretical commitment towards providing for a fair process of acquisition and just compensation. For instance, despite providing relatively liberal norms for compensation, the compensation actually provided in the TNUDP under World Bank guidelines was more or less commensurate with the compensation provided under the Indian Land Acquisition Act.

It further says that two key issues with land acquisition in India stand out across most of these cases. First, very little meaningful negotiation is undertaken. In four of the five cases, very little attempt was made to involve stakeholders in a consultative discussion in order to understand their concerns about land ownership and to decide upon an equitable and mutually acceptable compensation package. In the Pithampur SEZ case, negotiations were even pre empted by invoking the urgency clause under questionable grounds.

Second, the methods by which compensation is fixed are subjective and suboptimal. In several cases, guideline values in government registries were used. These values are often much lower than the actual "market values" since actual land transaction values are often under-reported for tax concessions. Where market transactions are considered, and where several transactions exist, government officials in charge of land acquisition almost unerringly choose the transaction with the lowest sale price as the basis for compensation. Government officials are often concerned about being investigated by anti-corruption agencies such as the Central Vigilance Commission (CVC) for paying extra compensation to landowners and choose to defend themselves by being as conservative in their calculations as possible.

In the end, the case studies show that the land acquisition process in India can be improved considerably to

deliver more equitable solutions and minimise protests. Indeed several potential solutions have been proposed and enacted in practice.

Potential Solutions to the Land Acquisition Conundrum

Paper says that in several projects, Government Orders (GO) issued specifically for a project have been used to circumvent bottlenecks in the land acquisition process, and to imbibe public officials with the confidence to sanction greater amounts of compensation. For instance, a government order was issued in the TNUDP projects in Tamil Nadu to constitute a committee to negotiate and assess land values. This order empowered the committee to go beyond guideline values, sale deeds and code provisions to determine the compensation to be awarded to affected stakeholders.

It further says that another instance of a government order streamlining a consultative and equitable land acquisition process can be found in the acquisition of 202 hectares of land for the Bangarmau Bypass by the Government of Uttar Pradesh. Through a GO passed in 2005, the government went through a negotiation with the landowners. The Resettlement and Rehabilitation Officer (RRO) in consultation with local NGOs calculated land values using the registered prices of land over the preceding five years, prevailing circle rates, and the agricultural productivity rate (with a multiplier for 20 years). The use of 20 as the multiplier was made possible by the GO. The highest compensation value was achieved through the agricultural productivity rate and was offered to the stakeholders (ADB 2007b).

Paper points out that a common cause of resentment with regard to compensation among erstwhile landowners is the increase in the value of the land post-acquisition and development, none of which accrues to the displaced landowners themselves, but could accrue to other landowners on the fringes of development. To combat this, land could be acquired in surplus to what is necessary for the project, and this excess land which is likely to be more valuable post-development could be reallocated to the displaced people (Dan et al 2008). This model, followed by the urban development and housing department of Jaipur can then allow landowners to benefit from an increase in land values (Gupta 2008).

Paper further says that another approach could be to consider this increase in land prices as an unlocking of land value due to development, and to then allocate this extra value between the landowners, the government and private developers.

In some cases, several potential parcels of land are chosen for a project, and project developers can negotiate with landowners to acquire some of these parcels for development. Should some landowners wish to retain their holdings, developers can move towards other parcels. Further, negotiations can proceed within a liberal, competitive framework, thus ensuring that sale prices are likely to closely reflect market realities. Transaction costs are likely to be reduced and displaced parties are likely to be happier.

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