



ECONOMICS CELL
BHARATIYA JANATA PARTY

Development v/s Displacement

Land Acquisition Issues



Economics Cell - BJP

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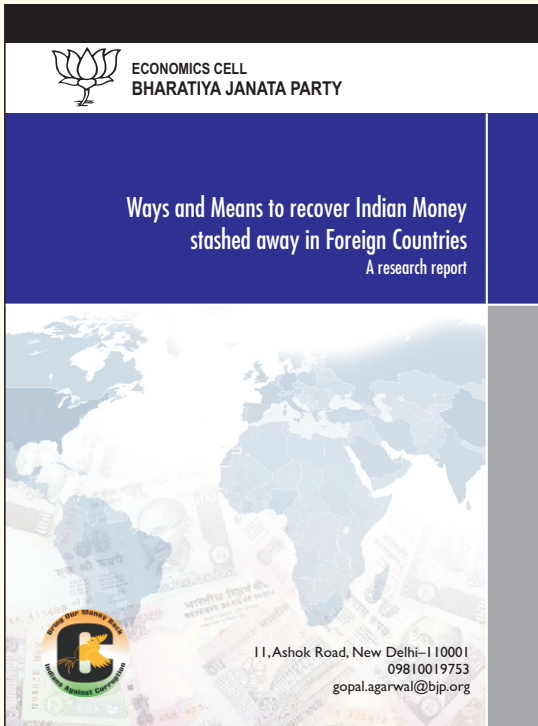
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Activities

Our past activities included a seminar on the issue of corruption where a research report, 'Ways and Means to Recover Indian Money Stashed Away in Foreign Countries' was released by the party president *Shri Nitin Gadkari*. Following



and later introduced in the both the houses of Parliament as a private member's bill by party leaders. During this program we also discussed the concept of **Floating**



initial commitment, in another program, a bill drafted by us 'Prevention of Bribery in Private/NGO Sector Bill' was discussed



Warrant developed by us, to recover illegal moneys from tax havens and Coal Gate Scam. We had guest speakers from many professional and business organizations like ANMI, ASSOCHAM, ICAI, ICSI, PHD, BVSS etc.

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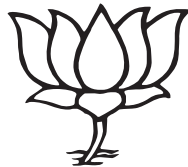
Acknowledgement

Our cell had earlier organized a conference of professionals on land acquisition issues. We thank all the stakeholder organization like ASSOCHAM, ANMI and Bhatiya Kisan Sangh's representatives who presented their viewpoint at the conclave. In this conference Shri Arun Jaitley released a discussion paper on 'Development v/s Displacement', while appreciating the effort he suggested us to prepare a detailed document on the subject.

Over the last few months in our effort to understand the issues relating to this important element, we came across a plethora of stakeholders without whose active encouragement, guidance and constructive interaction this document would not have been possible.

My special acknowledgement goes to Shri Sambhrant Krishna who assisted me in all the research and documentation work, Shri S.P. Ketkar who contributed the chapter on 'Our experience with land acquisition', Shri Anil Sharma who authored the chapter on Real Estate (Regulation and Development) Bill and Shri S.P. Pal for his valuable suggestions. All the Organizing Committee members also deserve a special mention for their support and guidance in organizing this National Convention.

Party president Shri Nitin Gadkari has always been asking me to take up research and documentation in all my endeavors. His continuous encouragement has given me the confidence to work on my mission.



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Voluntary Contribution : Rs. 100/-

1. Foreword

Land is an important resource for the economic development of the country. The key challenge in the development of infrastructure in India is the acquisition of land for the projects. Land acquisition is a complicated process. It involves a large number of stakeholders, often with conflicting interests. This increases the complexity of the whole process leading to excessive litigations under the current laws at every stage. Besides these issues all stakeholders need a platform to voice their concerns and grievances so that proper Social Impact Assessment can take place. This platform can help in education and awareness about the industries' potential to create and sustain well-paying jobs and explain that every successful project brings allied investment in the surrounding areas starting development of the region as a whole.

All this is possible only when our planners internalize the process of social policy making by recognizing social development as an explicit primary goal, rather than subservient to the national economic development plans. A National Regulatory Commission for land can achieve our objectives in a focused and an independent way. It is unfortunate that the paradigm of development has changed over the period but the land acquisition laws remain the same.

There are diverse groups which consider the existing laws weak and argues that the procedures required to be followed are cumbersome, costly and often lead to inordinate delays in land acquisition. They believe that appropriate governments must have full powers in determination of public purpose and their decisions should not be contestable in courts. These groups also argue that the techniques currently used for valuation of property are flawed and concepts like 'potential value' and 'opportunity value' of the property allow the landowners to demand higher prices, which lead to a strain on public finances and restrict developmental projects.

On the other hand, there are groups which claim that several corporates and developers misused the draconian act to usurp prime properties at below market rates; even when the 'public purpose' of such projects was always a suspect. These groups further argue that even in case of projects for genuine public purposes, rates offered to land owners have been considerably lower than the fair market values of those properties and the provisions of the Act for Resettlement and Rehabilitation of the displaced population are grossly inadequate.

We need to move forward in the background of all these conflicts. Land acquisition has to take place if the economy has to grow. The single most important consideration in land acquisition laws is the concept of 'Eminent Domain'. There can be no disagreement that the interest of an individual is subservient to that of the society. This provides the state (which supposedly acts for and on behalf of the community) with the power of eminent domain where it can acquire the property of an individual even without his/her consent provided it is in the public interest. The problem arises because there is no consensus on whether a given project is in the larger interest of the community or not. There is a small minority that even argues against the doctrine of eminent domain. Thus for any land acquisition act to be successful there should be no ambiguity about the definition of public purpose. In case the legislature finds it difficult to define it as has been the

experience worldwide, an exhaustive list of projects should be declared to come under 'public purpose', specifically for the private projects.

England despite being a more densely populated country than USA sees less frequent use of eminent domain for private projects because there are sufficient safeguards against the misuse of this power. Whether a project is for 'public purpose' or not is determined by an independent body and not by an executive decision. A vague or all encompassing definition confers arbitrary powers on the executive, which can be generally exercised in favor of the acquiring group. Justifiability of public purpose is an issue.

Even when the public purpose of a project is unambiguously clear there would be resistance to land acquisition. Land in India not only provides a sustainable source of livelihood to a vast majority of the people but also acts as a safety net in times of need and provides social standing. Therefore there is considerable attachment to land. While the losses as a result of land acquisition for these people are direct and immediate, the proposed benefits are too distant in the future which, by definition, is uncertain. Any economic betterment can only partially mitigate the traumatic experience of being forced to give away land and severing all communal ties.

The focus should therefore be on promoting voluntary transaction in land. But the Private promoters/investors cannot rely only on a series of voluntary transactions in free market, to mobilize large stretches of land required for big industrial projects. Therefore, even the highly market-oriented nations have seen government intervention for large land acquisitions imminent.

To promote satisfactory compensation based on official records, efforts should be taken so that these records of transactions reflect the true market value of land. High stamp duty and use of black money in buying and selling of land have led to a gross understatement of the actual figures. Compensation based on these 'market rates' has led to widespread discontent among the farmers. It requires a strong determination to curb the parking of black money in land transactions; but the governments can reduce stamp duty on buying and selling of agricultural land.

'Land Use Classification' (LUC) is another issue in land administration. There is no problem with the idea per se; in fact it is advisable that land is used in compliance with zoning laws to avoid haphazard development. The problem is with the way it is operated in India. The change in LUC is discretionary and it gives the state government wide powers to influence transactions in land, especially when it involves a change in land use.

The experience till date has not been very happy one for the land losers as the state has intervened mostly on behalf of the industrialists. One of the reasons for opposition to land acquisition irrespective of the compensation is the failure of R&R in the earlier projects, whether for dams or for industries. These were plagued by corruptions and most of the promised benefits never materialized.

The people who are likely to be affected by the project should be an integral part of the process, right from the planning to its execution and further follow up. No project should be presented as 'fait

accompli'. This applies not only to land acquisition but to other projects as well. An independent body should carry on a social and economic audit of all the projects involving land acquisition beyond a threshold limit in the last few years. This should help in devising a better policy response to the problem of land acquisition.

Recognizing the complexities of the problem Economics Cell of BJP had organized a program on the issues of 'Development V/s Displacement'. It provided a single platform to all the stakeholders—from industries and developers to investors and farmers.

The current document on land acquisition is the culmination of our efforts over a long period of time. The focus of the document is LARR Bill, 2011. One of the crucial sector that is witnessing frequent problems in land acquisition process is the real estate sector. It is a big industry today and there are other issues as well that require urgent attention apart from the land acquisition. We, therefore, thought the inclusion of the suggestion on the draft 'Real Estate (Regulation and Development) Bill, 2011' would be very relevant and has thus been included as a part of **Way Forward**.

I have been particularly working on three important segments of the economy namely Land, Water and Minerals resources. Now a day long national convention is being organized on the theme of '**Socio-economic Development - Allocation of National Resources**' with three specific sessions on land, water and mineral resources with participation from academicians, intellectuals, professionals, social activist, journalists and research scholars from all parts of the country to brainstorm on these important segments of the economy. I hope that this document and the national Convention will help us understand the problem and the way forward.

2. History of land rights in India

The issue of land acquisition is a question of ownership of land. The bundle of rights in property (selling, leasing, mortgaging etc) has changed over the centuries. Looking back we find that the Vedic people who were mainly pastoralists did not own land as an asset. With the development of agriculture and consequently permanent human settlements land started commanding value.

In the post Vedic period the community owned the land. The law recognized that in case of '*terra nullius*' (nobody's land) the person who made an effort to bring it under cultivation or habitable became its owner. Clearing of forest and making it suitable for agriculture generally required the collective effort of the whole community. The people of the village had right in the produce of the land but not in land itself. Gradually, however, the families acquired rights over the land they were allotted in the village and these could pass through succession. Buying and selling of land, however, was not to be seen. In cases where such land was the result of the efforts of an individual, the land belonged to him.

Kautilya in Arthashastra says that the King exercises control over all the lands in the kingdom but he stopped short of declaring him the owner of all lands. The king had authority to collect tax as he provided security and maintained law and order in the area and he could evict a farmer on non-payment of the tax. The Gupta period witnessed the rise of the idea of king as the ultimate owner of all lands in the kingdom. He could now demand payment not only as the provider of security but also because he owned the land. During this period the kings/rulers had started the practice of giving land grants. So in a sense personal ownership began from this period itself. Gupta period's administrative and bureaucratic structure was not suitable to bring vast areas under cultivation. The policy of giving grants helped them in overcoming this weakness. But this practice led to the weakening of rulers' sovereignty and rise of feudalism. There was, thus, concurrent ownership in land.

By the time of Sultanate period the institution of individual ownership of property (land) was firmly entrenched. The state also came to acquire large tracts of lands which were either directly cultivated or donated to the clergy and the officials. Akbar made certain changes to the land revenue policy. Tax liability of each cultivator was expressed in monetary terms and it was based on the average yield and not the actual yield.

The British administration in India brought far-reaching changes in the land revenue system, especially in areas with permanent settlement. The Zamindars, who were responsible for tax collection in these areas, had full powers to evict tenants from land in case they failed to pay their taxes. Thus the status of the farmer changed from owner-cultivator of the land to that of a tenant-cultivator. This system led to a large-scale eviction of farmers from their lands and was one of the most important reasons for rural poverty and lop-sided land holding.

With the abolition of Zamindari system in the post-independence era the cultivator of land has been reinstated as the owner of the land. Security of tenancy has been provided to farmers who cultivate

the lands of other people. Thus the individual ownership of land has been restored to a large extent.

Property rights' in the post independence era can be divided into two broad phase: pre and post 1978 (Neelakantapillai, Vysnavi). The Indian constitution originally contained certain provisions, which strengthened the property rights, including those over land. Right to Property was made a fundamental right (Article 19(1)(f) and Article 31).

Article 19(1)(f) gave the right to acquire, hold and dispose of property.

The 44th Amendment to the Constitution (1978) repealed Article 19(1)(f) and Article 31 and added Article 300A which read as '*No person shall be deprived of his property save by authority of law*'. Thus the status of right to property was reduced from fundamental rights to that of a legal right as a consequence of which it could now be violated on a larger ground. The affected party could no longer move the Supreme Court under Article 32 or the High Courts under Article 226 in case of violation of his property rights.

The land acquisition act (1894) passed by the colonial government recognized the concept of eminent domain. This recognized the Government's power to acquire land even compulsorily if it was for 'public purpose'. This act was not repealed in the post independence period but was modified from time to time.

3. Our experience with land acquisition

3.1. Evolution of the Land Acquisition Act

The British enacted the first regulation relating to land acquisition in India in 1824 to empower their government to acquire immovable property at fair and reasonable prices, for construction of roads, canals and for other public purposes. The regulation was initially made applicable to Bengal province in 1824 and relevant provisions were later extended to Calcutta in 1850 (IIR, 2009). Separate Building Acts were introduced in 1839 and in 1852 to obviate the difficulties faced in particular cities of Bombay and Madras respectively. At that time, Railways were being developed and a need for legislation was felt for acquiring land for expansion of rail network.

Act VI of 1857 repealed all previous enactments relating to land acquisition and constituted the first full enactment that applied to whole of British India. Even that act had the drawback of protracted arbitration and legal wrangling leading to delays and heavy costs. Subsequently, Act X of 1870 came in to effect and it was later replaced by a well-defined, self-contained Land Acquisition Act 1894 that continues to govern all land acquisitions in India, even during the year 2012.

In accordance with the provisions of the 1894 Act, union government or the state government is free to acquire any land, provided it is for a 'public purpose', covering projects related to defense, infrastructure, exploration, mining etc. Government can actually overrule the land owners on grounds of 'public purpose' and owners at the most can challenge only the compensation fixed by government. In spite of its several amendments in favor of land-owners, it has not been able to provide the desired relief to poor farmers and to people who get displaced due to land acquisition. The archaic Act retains its fabric of administrative procedures of the colonial era and is considered grossly inadequate for handling the current complexities. Besides the Act of 1894, government also makes use of several other laws of the central government, for acquisition of land for highways, SEZs, defense, railways etc.

Our experience with land acquisition act shows that governments have often taken too long in declaring the 'public purpose' behind notified acquisitions. Such delays meant that landowners were compensated as per the market rates prevailing on the day of notification but were actually paid after declaration of the purpose of acquisition. This was partly addressed by an amendment in 1967, when the period for justifying the public purpose was fixed as three years. Later, in 1984, perhaps due to the pace of industrialization and growth of urbanization, parliament felt that three-year period was not justified and slashed that period to one year (Report on Amendment to Section 6 of the Land Acquisition Act, 1894). Accordingly, for any delays beyond one year, compensation is to be reworked using the new prices and is to be paid with interest, calculated at revised rates.

After the 1984 amendment, government came up with SEZ Act 2005. The stated objectives of SEZ Act were to generate additional economic activity, create employment opportunities, boost infrastructure development, attract investments, and promote exports. The Act was expected to correct the inadequacy of earlier policies and deliver a few SEZs (special economic zones or self-sustaining industrial townships) with vibrant manufacturing activity to raise exports. It was meant

to attract private sector investment in large projects and it implied government support for land acquisition. The initiative seemed to work initially but later on it took shape in the form of real estate development projects with likely diversion of domestic industries to SEZs, imminent tax losses from fiscal incentives etc.

After the SEZ Act 2005 as a special route; Land Acquisition (Amendment) Bill, 2007 was the government's next attempt to amend the archaic 1894 Act. It intended to expand the rights of those displaced by land acquisition and limit the ability to acquire land for public purpose. The Bill was also to establish the Land Acquisition Compensation Disputes Settlement Authority at the national level and at state levels to arbitrate all disputes resulting from land acquisition proceedings. This Bill was introduced in conjunction with the Rehabilitation and Resettlement Bill, 2007 to address land acquisition, compensation, and resettlement of displaced persons. The Bill was pushed through Lok Sabha on the last day of the Budget Session in 2009 but it lapsed with the dissolution of the 14th Lok Sabha.

Thus the earlier Land Acquisition Act continues with its colonial legacy and the imperial traditions of British India. National policy on rehabilitation and compensation is considered inadequate as full rights and entitlements of the affected are not legally enforceable. At the same time, delay in implementation of several large projects and failure of SEZ policy in creating special zone(s) of any economic significance; underline the need for robust land acquisition legislation (Mega Project Development: Issues in Land Acquisition). The Land Acquisition Rehabilitation and Resettlement Bill, 2011, now open for discussion is another attempt by the government to address the important issue of Land acquisition.

3.2. Past experience in different sectors

It is well known that compulsory acquisition of land for implementation of development and infrastructure projects displaces people from their homes, land, and/or their means of livelihood and it also has psychological and socio-cultural consequences. Therefore, successful resettlement and rehabilitation program must ensure active participation of the people affected by a project and should effectively address the issues relating to compensation for loss of land and associated assets, as well as the loss of livelihood and rehabilitation.

A recent review of the 'delayed projects' indicated that 70 per cent of the 190 projects studied were delayed, primarily due to land acquisition related issues. The study listed 40 road projects of National Highways Authority of India (NHAI), 60 projects under implementation by the Railways and 28 power projects in different parts of the country that were facing time overruns (IIR, 2009). Following examples relating to projects in different sectors bring out the multiple dimensions of the problem of land acquisition.

3.2.1. Dams

India is the third largest dam-builder country in the world with over 3,000 large dams and these dams have been the single largest cause of displacements accounting for nearly 60% of

displacements in India since independence. A review by the World Bank posits that at an average 13,000 people are displaced by each new large dam. By this estimate, Indians displaced by the country's 3000+ large dams would number over 39 million (SANDARP – South Asia Network on Dams, Rivers and People). There are other studies that arrive at much higher figures for the average number of people displaced per dam. This shows that the government claims of two million displaced on account of all dam projects is grossly inadequate.

The Tehri dam on Bhagirathi River in the Garhwal region of Uttarakhand was conceived in 1949 and sanctioned in 1972. Because of the project, 39 villages of 3,355 families were estimated to submerge totally and another 72 villages with about 2,074 families were to submerge partially (wwfenvi Factsheet). Construction started in 1978 but was immediately stopped by the residents who were concerned about their lives and livelihoods due to the imminent displacement. A committee was formed in 1980 to look into the environmental implications and it took several rounds of discussions and debates on safety of the dam, before the project got a go-ahead from the Union Ministry of Forests and Environment in the year 1990. Later, Supreme Court cleared the legal hurdles for construction of the controversial project in September 2003. Even after that people were very upset over the unrealistic amount of compensation, as the rehabilitation package was made in 1976. Besides, the cutoff date of 1976 for compensation, the right to compensation rested to owners long dead and gone. The package did not factor in claimants who were minors then.

Amongst the 30 large dams planned over river Narmada, Sardar Sarovar is the largest. With a proposed height of 136.5 m (455 feet), it is the focal point of the dam-builders as also of those opposing it through Narmada Bachao Andolan. The Government claims that the multi-purpose project would irrigate more than 1.8 million hectares and quench the thirst of drought-prone areas of Kutch and Saurashtra. The opponents of the dam counter that these benefits are grossly exaggerated and would never accrue to the extent suggested by the government. Instead, the project would displace more than 320,000 people and affect the livelihood of thousands of others (Acquisition of land for 'development' projects in India – Research Foundation for Governance). Overall, due to displacements related to the canal system and other allied projects, it was estimated that at least 1 million people would be affected by the complete project and this resulted in series of agitations and blockades in project implementation.

Not all dam projects could be executed successfully. Some of them had to be shelved due to intense opposition from the project-affected peoples. Koel- Karo multi-purpose project is one such plan.

3.2.2. Mining

It is an activity that is different from other activities requiring land in a major way. While the location of most of the projects can be changed according to the availability of land, excluding linear projects like railways and highways, no such leeway is possible in the mining projects. A mineral would be mined at the exact location where it is available. The only option with the extractor is whether to go for underground mining or open-cast mining. The latter requires the removal of top-soil and everything attached to it and thus is more damaging environmentally. It also involves a large scale

displacement of people. A miner would always be tempted to go for open cast mining wherever feasible as the cost is low.

Mining has been an important industry in India providing large-scale employment to unskilled and semi-skilled people. A peculiar feature of mineral distribution in the country is its concentration in few pockets. These areas are also rich in forest wealth and are inhabited by aboriginal tribes.

According to an estimate, Central Coalfields acquired 1,20,300 acres and Eastern Coalfields acquired about 30,000 acres of land during 1981 to 1985 in Jharkhand and that led to the displacement of more than 32,750 families. But Coal India could offer jobs only to 11,901 displaced people. Further, Piparwar open pit mine started in January 1990 is estimated to have displaced nearly 15,000 people from 14 villages and Damodar Valley project (DVC) alone is known to have displaced 93,874 persons from 84,140 acres of land in 305 villages of Jharkhand (Economic and Political Weekly, 1996).

Bharat Aluminum Company (BALCO) initiated a project in 1983; to tap the huge bauxite reserves in Orissa and it was scheduled to be completed by April 1985. However, due to mass agitations by the tribals, raising their displacement and rehabilitation concerns, the project came to a grinding halt and was shelved (IIR, 2009).

Recently Vedanta had to give up on its bauxite-mining project in Odisha (Niyamgiri hills) as the hills were considered sacred by the primitive tribal residing in the area. There was local opposition to the project and demonstrations were held against the company HQ in London also forcing the Church of England trust to sell its stake in the company.

The extremely poor rehabilitation and resettlement associated with these mining projects have led to a widespread dissatisfaction and are said to be one of important reasons for the growth of Maoists in some of the areas like Odisha, Chhattisgarh and Jharkhand.

3.2.3. Railways

Over the years, Indian Railways (IR) has been acquiring land for operation of its trains and it had 4.3 lakh hectares of land as on 1 April 2006 (it is one of the biggest land holders in the country). Section 11 of the Railways Act, 1989 provides the authority to Indian Railways to execute works for provision of railway lines and related installations (IIR, 2009).

Ministry of Railways decided in 1984 to take up engineering-cum-traffic survey for a stretch of Konkan rail project from Mangalore to Margao. In 1985 the scope of survey was extended to include the route from Margao to Roha. The survey report was completed in 1988 and the Konkan Railway Corporation Limited (KRCL) was incorporated as a public limited company 1990. However, land acquisition related problems ensured that the service was operational only in 1998.

According to IIR, 2009, Haridaspur–Paradip Line was an 82-km-long port connectivity project meant to provide railway connectivity to the iron-ore mines in Banspani area, to enable export of iron-ore from India. The project involved acquisition of 270 acres of government land and 1440 acres of private land. Rail Vikas Nigam Limited (RVNL) was awarded the contract for construction of this

line for the entire project in May 2007. However, villagers in the area are highlighting that the rates paid for state government land are 10 to 20 times higher than those paid to them and are not permitting contractors to undertake construction. Consequently the project has not made much progress.

3.2.4. Urban infrastructure

The World Bank estimates that India adds an average of 15 million to its population putting further pressure on country's urban infrastructure in addition to largescale migration from rural areas. Indian cities face one major issue in the urban areas, relating to disparity between the landowners whose land is 'acquired' and those who do not have to part with their land but are located in the vicinity of that project. This arises because the displaced owners are compensated at rates that do not take into account the potential increase in valuation of the property resulting from that project. However, those in the vicinity of the project stand to gain from increase in value of their properties, without having to face any hardships of displacement (Mega projects in India, IIM-A).

As one of its initiatives for infrastructure and urban development, Uttar Pradesh government constructed 'Yamuna Expressway' connecting Noida with Agra. The 'Yamuna Expressway' authority began functioning in 2007 and notified 133 villages for land acquisition purposes. The difficulties surfaced when the police fired at Bhatta Parsaul farmers protesting against forced acquisition of their land. Agitation turned violent, leading to the death of four people including two policemen and exposed the dirty approach to 'forced land acquisition' in the name of urban development. This whole problem has multiple dimensions. These farmers had already taken compensation but later on started demanding additional compensation. On the other hand when the situation got out of control of the government and the courts intervened to cancel several residential projects along the expressway, large number of people, who had invested in these projects lost their life-savings.

3.2.5. SEZs, Industrial units

On the basis of 577 SEZ approvals granted by mid-2010, 1,14,000 farming households and additional 82,000 farm worker families, adding up to 1 million people primarily dependent on agriculture for their survival, were estimated to be displaced. Although government had been promising relief and rehabilitation for all its acquisitions prior to the SEZ policy, compensation was always meant for landowners only.

The fact that landless farmers and families, who depended on the acquired land for livelihood, far outnumbered those who owned the land was never given the consideration that it deserves. Naturally, land acquisition by the governments for SEZs to be developed by private sector players, was vehemently opposed by farmers and several SEZs projects could not take shape due to inability of the promoters to acquire the requisite land.

In terms of industrial units, violent protests by farmers in Singur, their opposition to the Tata's project and the politico-legal battle for land finally sent out the Nano Car out of West Bengal. Other

projects of POSCO, Arcelor-Mittal, Essar Steel, Jindal Steel are all known to have suffered serious delays on account of land acquisition. In fact, according to an assessment report released by Indian Steel Ministry, 22 major steel projects in the country worth USD 82 billion were held up largely because delays in land acquisition. ASSOCHAM study also quoted that land acquisition issues were threatening investments worth USD 100 billion in the near term.

The above chapter clearly shows the complexities of the problem. Land is a major requisite for economic development but if the affected are not satisfactorily compensated they are bound to agitate and the whole process gets derailed. The review of our experience with land acquisition brings to focus the inadequacies of existing laws, the processes and institutions to deal with the problems of rehabilitation/resettlement of the affected people on one hand and determining 'fair compensation for land acquired' on the other. The next Chapter examines the adequacies and effectiveness of various provisions of the LARR, 2011 in dealing with the complexities of defining the 'public purpose rule' and determining fair compensation and rehabilitation and resettlement.

4. Land Acquisition, Rehabilitation and Resettlement Bill, 2011 : A Critique and Way Out

The land acquisition bill (along with some other important bills) has been unconscionably delayed without much justification. Lack of clarity on land acquisition has emerged as probably the biggest roadblock in the process of industrialization of the country.

4.1 Public Purpose : The basic problem with land acquisition is the implementation of 'public purpose' clause. The bill continues to obfuscate on the definition of Public purpose. Will an industrial plant like Posco in Odisha or Nano in Singur come under the ambit of public purpose? How would it be determined if it is in the larger interest of the people? Is the requirement of 80% mandatory consent of the project-affected people in cases of projects for public purpose by private sector justified? Does it not mean that the public purpose of the government is different from the public purpose of the private sector? If the land acquisition for Nano at Singur was for public purpose then presumably all industrial projects would come under public purpose. The current provisions of the bill go against the spirit of level-playing field when the private industrial sector is competing with the public sector enterprises in many industries. If an electricity producer in the private sector is subjected to the provisions of this bill there is no reason why NTPC should be exempted from such obligations.

Talking about the land acquisition by the state for private enterprises the Standing Committee of Parliament on Rural Development in its report says,

Since there is no question of the State acquisition of labour or capital, even at the margin, why should the State at all be involved in acquiring land, which is the most precious and scarce of the three factors for production, for private enterprises, PPP enterprises or even public enterprises? When in the developed Countries like USA, Japan, Canada, etc, land is purchased by such enterprises rather than acquired by the State, why should India in the 21st Century persist with this anomalous practice? Therefore, "public purpose" in the draft Bill should be limited to linear infrastructure and irrigation, including multipurpose dams, and social sector infrastructure, such as schools, hospitals and drinking water/sanitation projects constructed at State expense, as defined in Clauses 3(o)(i)-(iv) and 3(za)(i)-(vi)(A), but not left open-ended as provided for in Clauses 3(o)(v) and 3(za)(vi)(B) and (vii), as well as in Clause 2(1)(b) & (c) and 2(2)(b).

The Committee disapproves those sub-clauses of Clauses 2 and 3 that place wide discretion in the hands of the executive to define "public purpose" and "infrastructure projects" for for-profit enterprises. Accordingly, Clauses 2(1)(b) & (c), 2(2)(b), 3(o)(v), 3(za)(vi)(B) and (vii) may be deleted. However, all cases of land acquisition must entail obligations for adequate compensation, rehabilitation and resettlement to all land losers and other affected persons.

Doing away with the executive say in deciding public purpose would no doubt reduce the scope of corruption and state's involvement in land acquisition for 'for-profit' enterprises but its role cannot be completely wished away. Holding out, meaning that, a seller would intend to be the last one to sell out in order to capture the maximum possible value and since every seller would think along similar lines there would be a market failure even when it was a feasible transaction in the beginning, is bound to create serious problems. It should be legitimate for the state to enter into the picture under

such circumstances. The scope of 'public purpose' needs to be confined but denying any role to the state in the acquisition of land for the private sector is not feasible.

4.2. Market Price: The bill proposes to use 'market price' as the benchmark for determining the value of land. Probably accepting but not recognizing explicitly that official market price understates the actual it proposes to double it. While there are evidences to show that the declared land price understates the true value, it is difficult to say if the understatement is around 50% in rural areas so that doubling the value would bring it closer to the true market price. It would have helped if the bill disclosed the reasoning to arrive at this multiple of '2' for the urban areas and '4' for the rural areas including the solatium.

The Standing committee while accepting that the price multiples have been arrived at without any justification, does not offer any alternative. Instead it says:

With a view to ensure that the land losers get their due compensation and to avoid pit falls of authority of one designated Officer, the Committee recommend that after Clause 29(1), the following Sub-Clause may be added:-

"(2) The appropriate Government shall constitute multi-member land pricing commission or authority to finalise cost of land acquisition/compensation State-wise/area-wise as determined under Clause 29(1) read with Schedule I to Bill."

But if the compensation is still to be based on the 'market price' which to be arrived at by the methodology prescribed in the act it is not clear how this multi-member commission is going to be of any help.

Since the market for land is very different from the market of undifferentiated goods, a comparison with alternative methods to discover value like auctions should have been explored. The basic idea should have been to devise a scheme where there are willing sellers of land. This would have made 'public purpose', at the root of most of the disputes, somewhat redundant. Some experts have also suggested bringing down the transaction cost of selling land in rural areas by reducing stamp duty, which would bring the official market price closer to the actual market price. This being a state subject is outside the purview of this act but can be considered as a desirable goal to be promoted by the central government.

4.3. Rehabilitation and Resettlement (R&R): Another contradiction in the act is regarding the land acquisition upto 100 acres by a private enterprise in the rural areas and up to 50 acres in the urban areas. This would not require the application of R&R provisions but if the private company approaches the government for partial acquisition of land for public purpose the provisions of R&R would apply. So we might as well have some cases where the provisions of R&R are applicable in acquisitions for less than 100/50 acres in rural/urban areas.

According to the Committee since the sale and purchase of land is a State subject (entry 18, list II of the 7th Schedule to the Constitution), the states should have the power on whether or not there should be any R&R provisions and if so then the conditions for its applicability.

Keeping aside the constitutionality of the provision a better option would be to make the R&R provisions applicable based on either the number of families affected or when the total area acquired is more than a given threshold.

4.4. Multi-cropped land: A complete ban on the acquisition of irrigated multi-cropped land can become counter-productive. This ban would have severely affected land acquisition in the states like Punjab, Haryana and Western UP where most of the land is irrigated and multi cropped. For cities like Chandigarh and suburban areas like Gurgaon and Noida it would put an effective ban on any further expansion of the area as these are surrounded by irrigated multi-cropped land. The bill has allowed an acquisition of multi-cropped land subject to the limitation of maximum 5% in a district. This provision has been enacted with an eye on food security and has nothing to do with the protection of the interest of the farmers. A ceiling on the acquisition of multi-cropped land would interfere with the property rights of the landowner. The Committee takes a different view:

“.....the concept of food security in Clause 10 of the Bill is totally resting on multi-cropped irrigated lands alone ignoring the basic primordial importance of safeguarding and enhancing output in rain fed areas as a crucial component of the nation's food security..... While the LARR Bill provides for multi-cropped irrigated land to be acquired only as a last resort, food security cannot only be limited to rice and wheat in the face of the imperative need for more nutritional coarse grains, pulses and oilseeds. The Committee, therefore, recommend that in Chapter III, all provisions regarding “irrigated multi-cropped land” be replaced by “any land under agriculture cultivation” so as to ensure safeguard for food security in a full measure.”

The committee also suggests that the state governments should fix this limitation and they should have the freedom to fix it either at the district level or at the state level.

We agree with the stand of some of the state governments that the 5% limit on the acquisition of multi-cropped land is not feasible. A wider discussion is required before such a limit is imposed. Real-estate developers and some ministries of the Central government have also opposed this provision.

4.5 Exemption of other land acquiring Central Acts : According to clause 98 of the bill the proposed act should not apply to land acquisition processed under Acts in the forth schedule to the bill. There are 16 such acts including the most notorious The Special Economic Zones Act, 2005, therefore about 95% of the land acquisition by the Central Government would be outside the scope of the bill. **Such a wide exemption defeats the whole purpose of the proposed Act. Though clause 98(3) empowers the government to notify provision of the act relating to determination of compensation and R&R and can be made applicable to any of these exempted acts.** The exemptions also raise matters relating to discriminatory treatment to states vis-à-vis the centre. None of the state land acquisition laws have been exempted. The government should have applied the same yardstick in exempting similar state laws.

The committee recommends, “...There is no need to exempt any of these Central Acts from the purview of LARR Bill and the Fourth Schedule and Clause 98 be deleted. To bring these 16 Central Acts at par with LARR Bill, these Acts will require amendments. The Committee, therefore, recommend that along with the passage of LARR Bill, necessary amendments should also be made in these 16 Central Acts, particularly for the purpose of land compensation, provisions of R&R entitlements and provisions of infrastructural facilities to the land owners/affected families.”

4.6. Forms of Compensation: The bill allows compensation to be paid in the form of shares upto 25 percent of the total compensation. If the promoter wants to win over the goodwill of the people the shares should be given over and above the statutorily mandated compensation and not as a part of it. Allocation of shares would also make the PAPs stakeholder in the successful execution of the project.

Compensation payments should be appropriately indexed to preserve their real value. The Committee has also suggested this.

Reservation of developed land for land-owning project affected families when it is acquired for urbanization purposes is a welcome step- though 20% is on the higher side. A very big reason for the reluctance of farmers to part with their lands is the future income uncertainty. Land is a tangible asset and the government should try to replace it with another one wherever possible. A problem might crop up when the land is acquired for highways, railway lines etc. In such cases commercial plots developed along the highways or the nearest railway stations might be given to them to compensate for the loss of income.

4.7. Land Acquisition, Rehabilitation and Resettlement Authority : The bill provides for an independent quasi-judicial land acquisition, rehabilitation and resettlement authority which would be headed by person with judicial background. This is a welcome provision as it is expected to provide a cheaper and a quick grievance redressal mechanism.

4.8. Temporary Occupation of Land : Chapter XI provides a method to bypass the process of land acquisition by allowing for a temporary occupation of land for a period upto three years (clause 75). The government would be required to acquire the land if it is damaged during its temporary occupation (clause 76). The bill should have provisions so that the power to occupy land temporarily is invoked only in rarest of rare cases.

4.9. Some of the other useful changes that have been suggested by the committee are:

- i) inclusion of 'forest rights' along with 'Patta rights' in the definition of land owner in Cl. 3(r)(ii),
- ii) inclusion of President or nominees of Panchayats in Social Impact Assessment teams at all levels involved in the acquisition.
- iii) the word 'consultation' should be replaced by 'consensus' or 'consent' wherever they occur in reference to local bodies or Sixth Schedule areas.
- iv) amendment of the provisions of the Act through legislative process and not by notification as currently provided under Cl 99.

Considering the fact that the 1894 Act was promulgated for a very different set of objectives by the colonial government, any new land acquisition act can be expected to look less draconian and farmer friendly. This is true with the LARR, 2011. Everybody should realize that land acquisition in India has got entangled into multiple litigations despite the powerful LAA 1894. Therefore only a neutral act taking care of the aspirations of all the stakeholders would be effective in accomplishing the desired goal.

5. The way forward

5.1 Proposed changes in the bill

Following are some of the suggestions that would take care of the shortcomings in the bill:

5.1.1. Restrict the use of 'public purpose': Currently 'public purpose' is what the government declares it to be (Ray and Patra: IIR, 2009). This wide power with the government has been severely misused. The problems would persist as long as 'public purpose' would be used as an excuse to affect compulsory property transfer from one group to another. Since the expropriation of private property is a violation of the rights of the individual it should be resorted to only in the cases where the test of 'public purpose' is unambiguously met.

5.1.2. Remove the shackles of legislations that put downward pressure on land prices: Since the compensation for land acquisition continues to depend on the market price of the land, it is of utmost importance that they reflect the true underlying value of land. The land administration in the country, however, puts downward pressure on the land prices. Provisions like ex-post change in land use classification, high stamp duty, lack of clarity on the titleholder etc are the reasons for the divergence between the actual and official value of land.

5.1.3. Encourage voluntary transactions: In the cases of projects requiring land there are a few voluntary transactions. The promoters find it cumbersome to deal with a large number of landholders especially when the title to the land itself is not clear in most of the cases. Land acquired under the Act by the government is free from any encumbrances and the compensation outgo is expected to be lower. The restriction of the scope of public purpose should be accompanied by steps that make voluntary transactions feasible. An area, which calls for urgent reforms, is land administration. Land records in the country are inaccurate and out of date. It is next to impossible to find a plot of land that has a clean title or is not being litigated upon. The Registration Act, 1908 records only the transaction and not the validity of it. Thus the land titles in India are inconclusive. Since it's the buyer that carries the risk in case the title is not valid, he is not willing to pay the true price of the land. The GoI took a decision to move towards title registration in 2008 under 'National Land Records Modernization Program (NLRMP) but the progress does not seem to be satisfactory (the website of Ministry of Rural Development still shows links to 'Computerization of Land Records' and 'SRA & ULR' and no information on NLRMP under which the earlier two schemes were to be merged). It is true that most aspects of land administration come under the power of state government the central government can incentivize by tying up grants with specific milestone.

5.1.4. Reduce the number of exempted Acts : The modified LARR should provide the overarching framework under which other land acquisition acts should function. There is no justification for the exemption of other acts when LARR itself has provisions for temporary acquisition, emergency clause etc. LARR, 2011 exempts 16 central land acquisition acts from its purview.

5.1.5 Provide equity form of additional compensation: Equity in the land requiring project should be given as additional compensation. Even when the compensation was satisfactory to start with the land-losers are left bitter once the price of land in the vicinity of the project starts zooming. Since the value of equity would appreciate with time the land-losers would gain from such a form of compensation. Share of developed land for land acquired for urbanization projects is thus welcome. It should be extended to other projects as well.

5.1.6. Set up land regulatory commission: Land regulatory commission would ensure a systematic and holistic development of the whole process. Such a commission should maintain a database of the land available for projects and facilitate the acquisition process by reducing the misinformation campaigns by the project opponents. The currently fragmented land administration under various departments could also come under it.

5.1.7. Fix city master plans: Fixing master plans and strict adherence to it would have dual benefits. It would stop unplanned development in urban areas and prevent associated problems of slums, congestion, lack of public spaces etc. It would also lead to an escalation in the prices of land that would come under the master plan. The landholders would thus become a participant in the fruits of development and would no longer remain a mere bystander. Prof Ram Singh in his paper (Inefficiency and Abuse of Compulsory Land Acquisition) has called for transparent, objective and ex ante zoning regulations, setting different zones for different activities and that the state should have no subsequent role in further governing of land transactions as long as the land is used for the purposes permitted by these regulations.

5.1.8. Alternative employment to displaced persons: Alternative employment to people displaced by the project would reduce future uncertainty about their economic status. Skilling and training should be made mandatory and not remain a part of the corporate social responsibility (CSR) of the companies.

4.2. Comparative chart of the views of the Standing Committee of Parliament on Rural Development on some important provisions of land acquisition bill, proposed changes thereafter and our suggestive views for discussion

	LARR Bill 2011	Standing Committee recommendation	Proposed changed in the bill (according to media reports)	Suggestive view for discussion
Participatory approach (involving local self-governing bodies)	'Consultation' with the project affected families.	The word 'consultation' to be replaced by 'consent'.	It continues to be 'consultation'.	'Consent' of the project affected families.
Applicability of certain provisions with retrospective effect	Yes	Agreed	Not agreed	Yes
Exemption	16 Central Acts	No exemption	13 Acts still exempted	Only in case of strict applicability of 'public purpose'.
Consent for private and PPP projects	80% of the project affected people (PAP).	No role for the government in land acquisition for private projects.	Reduced to two-thirds of the land-holders.	80% of the PAPs.
Unused land	Land not used within 10 years to be returned to the state.	Land not used within 5 years to be returned to the original owner.	Land not used within 5 years to be returned to the state.	Land not used within 5 years to be returned to the original owner.
Threshold for application of R&R provisions	Applicable in acquisition cases of more than 100 acres in rural areas and 50 acres in urban areas.	The power to determine the threshold for the applicability of R&R provisions should be with the states.	Agreed with the Standing Committee recommendation.	Agree with the recommendation of Standing Committee. It should be mandatory if the area acquired or the families affected are beyond the statutorily fixed limit.

Preserving the real value of R&R package	Only the annuity payment was linked to price index.	Specific provision to link all the amounts to CPI.	Agreed with the Standing Committee recommendation.	Agree with the recommendation of Standing Committee.
Share of future benefits (developed land or equity)	The bill makes it mandatory to give back 20% of the land in urban projects and an option of 25% of the compensation in the form of equity.	Does not discuss the specific provisions.	No information.	Compensation in the forms of shares should be over and above the statutorily fixed compensation. 20% share in the developed land in the case of urbanization seems to be on the higher side.
Restriction on 'Public Purpose'.	There is a scope for abuse of 'public purpose'.	Should be limited to linear infrastructure projects, multipurpose dams and social sector infrastructure constructed at State expense.	No information.	'Public purpose' is open to misuse. The scope should be severely restricted but be allowed in some private projects also.
Multi-cropped land	Not more than 5% of the total irrigated land in a district should be acquired.	The restriction should be extended to single crop land as well and the power to define the threshold should be with the state government.	The power to define the limit given to the states.	Agree with the proposed change
Market price	The compensation would be based on the market price.	A multi-member committee should determine the market price.	The compensation continues to be based on the market price. A sliding scale would be used to arrive at the actual compensation.	The land administration should be reformed so that the market price is not artificially depressed as is the case now.

4.3. Real Estate (Regulation and Development) Bill, 2011: Some observations and suggestions

Presently, the real estate sector especially, housing is not governed by any regulations. This has resulted in total anarchy and chaos in this sector. There are a large number of stories of mal practices prevalent in this sector such as exorbitant prices, price rigging by developers, overcharging on account of premium locations, parking and common facilities etc., charging interest at a very high rates for delay in payments by buyers but denying payment of interest at par in case of delay in construction on time, charging price based on super areas determined on undisclosed basis, handing over lesser area than promised, low quality construction, denial of providing post sales warranties and charging exorbitant rates for maintenance and provision of essential services. The real estate sector is also infested with malpractices of other kind such as heavy cash involvement in transactions, absorption of black money, extensive benami transactions etc.

The reasons for such anarchy and lack of transparency in this sector is due to various factors including lack of coordination between the Union Government and State Governments as this sector falls in Concurrent List except agricultural land which is exclusively with states. With massive demand for housing in the country, the real estate sector is poised for very high growth rate therefore it requires immediate attention of the government to put in place appropriate regulatory framework.

The Ministry of Housing and Urban Poverty Alleviation, Government of India has formulated a National Urban Housing and Habitat Policy 2007 and this policy intends to promote sustainable development of habitat in the country with a view to ensure equitable supply of land, shelter and services at affordable prices to all sections of society. Given the magnitude of the housing shortage and budgetary constraints of both the Central and State Governments, it is amply clear that public sector efforts will not suffice in fulfilling the housing demand.

The Policy document, inter alia, provides that in view of the fact that 50% of India's population is forecasted to be living in urban areas by 2041, it is necessary to develop new integrated townships. These green-field townships should generally be located on comparatively degraded land excluding prime agricultural areas growing more than one crop with the help of assured irrigation. These green-field townships should be located at a reasonable distance from medium or large existing towns.

The Policy Document further provides that a Citizen's Charter should be developed to safeguard the interests of customers vis-à-vis housing schemes offered by both the public and private sectors.

In the back ground of National Urban Housing and Habitat Policy 2007 , the Ministry of Housing and Urban Poverty Alleviation, Government of India made an attempt to address various issues involved in the real estate sector by drafting a Model Real Estate (Regulation & Development) Bill, 20XX in September , 2009 to establish a Regulatory Authority and an Appellate Tribunal to regulate, control and promote planned and healthy development and construction, sale, transfer and management of colonies, residential buildings, apartments and other similar properties, and to host and maintain a website containing all project details.

Another attempt has now been made by the Ministry as they have come out with another draft Bill namely The Real Estate (Regulation and Development) Bill, 2011 in December, 2011 and has invited comments from the stakeholders again.

The Bill by the Central Government mandates all state governments to set up regulatory machinery for the real estate sector, adjudication machinery for grievance redressal in the respective states.

The salient features of the Bill are as under:

1. Registration of real estate project with Real Estate Regulatory authority prior to development and/or construction/alternation and obtaining a certificate of registration from the Authority
2. Obligations of the promoter to enter all prescribed details of the proposed project on the website of the Authority and its periodical updation.
3. Issuing of advertisement inviting booking only after receiving the Certificate of Registration and advertisement to include all the prescribed information.
4. Acceptance of deposit only on entering into an agreement of sale and providing prescribed documentation to the allottees.
5. Adherence to approved plan and project specification by the promoters.
6. Establishing the Real Estate Regulatory Authority and its composition, its functions and other related matters.
7. Establishing the Real Estate Appellate Tribunal to adjudicate dispute between a promoter and a allottee, a promoter and Authority and between Appropriate Government and the Authority, its composition and other related matters.
8. Establishment of Central Advisory Council, to advise the Central government on all matters concerning implementation of the Act, policy framing, protection of consumers' interest and for foster the growth and development of real estate sector.
9. Offences and penalties for failure to comply with various provisions of the Act.
10. Powers to make rules and regulations for implementation of various provisions of the Act.

However, the perusal of various provisions of the Bill clearly establishes that it is only a half-hearted attempt to address the various issues involved in this sector. The Bill has been criticized by the developers being very harsh on them and by the general public for being very casual and weak to protect their interests.

The following changes are suggested to make the Bill more effective and useful for the regulation and development of the real estate sector:

- 1) The Bill does not define the terms 'real estate sector' and 'consumer', which may leave scope for misinterpretation. It is suggested that these terms may be defined.
- 2) In Clause 2 of the Bill the following changes are suggested:

- i) Definition of 'Promoter' in 2(ZC) may be expanded so as to include change in ownership during construction period
 - ii) PPP projects (where Housing Board or Development Authorities get the houses constructed through third party) should also be covered in 2(ZC)(iii)
 - iii) 'Development authority' may be included in the definition of 'Person' (2)(Z) instead of in the definition of 'Company' (2)(k).
- (3) A list of all the 'Permissions and requisite approvals' as required in Clause 3(b) may be made part of the clause itself.
 - 4) In Clause 3 in sub clause (a) of first Proviso area of 4000 sq. mtr. may be removed. Alternatively, cost of project may be the deciding factor for registration of the project with the Authority.
 - 5) In Clause 3 the requirement and process of Initial Registration by 'Promoters' (refer 2nd & 3rd Proviso) and Registration of their 'Projects' to be segregated and any new 'Promoter' may also require to be registered first and for that purpose some pre requisites (including a particular net worth) may be specified. This provision shall weed out casual and unscrupulous promoters.
 - 6) Provision should be added in Clause 3 to cover existing projects also which requires the promoters to start development of any immovable property only after getting the registration with the proposed Real Estate Regulatory Authority.
 - 7) In Clause 4 requires the promoters to submit certain information/ documents to the Regulatory Authority for registration of their project(s). It is suggested that in Sub- clause (3), in addition to copies of approvals, Sanctions and declaration, a copy of Joint development agreement between developer and land owner(s) may also be required to file, wherever applicable.
 - 8) It is suggested that the declaration to be made by the promoter may also include a para "that necessary financial arrangements have been made by the promoters to execute the respective projects."
 - 9) In Clause 4(3)(b)(v) the words 'cost of real estate project' may be replaced with the words "Cost of that real estate project only" to ensure that collection of one project is not mixed with another project being executed simultaneously.
 - 10) Clause 4(6) may be deleted. Alternatively, the applicant should be required to mention the fact that project is yet to get the registration from Authority along with entry of project on the web site.
 - 11) Clause 4(4) time limit of thirty days for scrutinising the project by the Authority is very short. Practically it may not be achievable. It is suggested to increase the period to two months.
 - 12) Clause 4(9) requires the promoter to upload the details of the proposed project as submitted by the promoter to the Authority. It is suggested that a third party may be assigned this job rather than permitting the promoter to fill the information to avoid any discrepancy in the information.

- 13) The steps after the registration of the project is revoked in Clause 6 are not exhaustive. Issues such as recovery of funds collected by the promoter from the allottees need to be addressed.
- 14) Explanation to Clause 7 defines the term 'unfair practice'. It is suggested that the same may be modified to include other unfair practices namely 'false claim that project sold only few units left' when actually not so. In the Explanation, along with 'services' the words 'and 'facilities' may be added.
- 15) Definition of 'Advertisement' at Clause 2(a) may be modified to exclude the words 'described or issued as advertisement' from it.
- 16) Definition of 'allottee' at Clause 2(b) may be modified so as to include parties who have deposited money with the Promoters in relation to a real estate project but the specified allotment of units has not been made.
- 17) Sub-clause (2) of Clause 8 of the Bill requires the promoter to enter the details of the documents and information as listed. It is suggested that sub-clause (2) may be restructured so as to contain two parts:
 - a) One relating to Permanent Information of the promoter and the project (s) and
 - b) Other relating to Information on working/ progress of the project(s).

Working file shall be required to be updated periodically including information mentioned at Clause 8(2) (g), and changes in 8(2)(1) and (m), if any.

In the Working file, some more information should also be included, namely:

- i. Percentage of likely variation in carpet area
 - ii. Program of the project as compared to the planned time line.
 - iii. Rates per unit or per Sq ft /Sq mtr of carpet area.
 - iv. Name, Contact details of compliance officer and grievance Redressal officer to be specifically appointed in this regard and details of complaints pending.
- 18) Clause 12 provides for the obligations of the promoter towards allottees. It is suggested that it may be amended or redrafted to cover stage wise action points:
 - i. At the time of booking,
 - ii. During Construction period,
 - iii. On completion and
 - iv. Post Completion.

Cancellation of allotment should be comprehensively dealt with.

- 19) In Clause 13 requires promoters to adhere to approved plans and project specifications. Sub clause (2) requires the promoter to rectify major structural defects or deficiencies in the project developed by him for a period of one year. It is suggested that period of one year may be

increased to three years and the words 'within reasonable time' may be further qualified by adding the following words "not exceeding three months".

It is noticed that the Bill does not include/ address some very important aspects involved in the real estate development. These are required to be included in the Bill suitably and comprehensively to make it an effective law. These aspects are listed below:

- 1) Provision on consumer education and advocacy
- 2) Provision on ' class action suit'
- 3) Provision on prohibiting cartelization and price rigging by the promoters.
- 4) Powers to the Authority to investigate matters including special audit of accounts in case of complaint of diversion of funds to other projects by the promoters.
- 5) Provision on price escalation by the promoters
- 6) The Authority may be required to frame Regulations relating to and for:
 - Model Agreements
 - Content of Advertisements
 - Discount & Commission rates to agents
 - Charges for premium locations
 - Holding charges
- 7) Pre-approval booking, assured return packages, barter deals should be dealt with appropriately.
- 8) In appropriate cases there should be provision for public hearing.
- 9) The Authority may be asked to assign the rating to the promoters based on well-defined parameters including their past performance and history of complaints.
- 10) There may be provision for registration and regulation of real estate agents.
- 11) There may be provision for safety of construction labour, provision of their temporary but clean and safe dwelling arrangement and facilities for school for their children.
- 12) There may be suitable oversight mechanism to ensure that Regulatory authority does not become another place for corruption.
- 13) A consensus must be arrived at amongst all the states for enacting such law in their respective states so as to ensure uniform application of such provision in the entire country.

It is further suggested that the developers associations such as CREDAI may take initiative of inculcating awareness amongst its members to comply with various obligations towards their allottees even before such Bill takes the shape of an Act. This shall not only bring more customers for them but would also helpful in attracting more investments and finances in the sector.

Annexure

Land Acquisition : The process in some select countries

A comparative study of the land acquisition laws and processes in other countries should help us in understanding the advantages and disadvantages of alternative approaches to land acquisition. This should help us in coming up with a better land acquisition law.

1. South Korea

- Two major schemes under which land was made available for urbanization, industrial development etc are Land Readjustment (LR) projects and Publicly Managed Development (PMD) projects.
- Under Land Readjustment small parcels of land were pooled together and developed and the land holder received a part of the serviced land. This method was used for urban projects till the end of 1970s.
- Due to the shortcomings of LR it was jettisoned in favour of Publicly Managed Developed (PMD) projects where the compensation was paid according to the existing use of land unlike LR. Though compulsory acquisition was a part of the scheme negotiated settlement was the favoured method.
- In the last 30 years about 93% of the total area for all public projects has been acquired by negotiated settlement.
- The government can use the power of 'eminent domain' for the acquisition of land for 'public works' as defined in the Land Acquisition and Compensation Act, 2002. In recent years, private developers have been given the power to acquire land of minority owners by majority owner, if the project is serves a public purpose.
- Apart from monetary compensation, preferential hiring and reservation of sites for commercial buildings or stores in commercial buildings subject to certain conditions (since 1989).
- Government introduced the systems of Basic Land Prices (BLP) and appraisal by certified private sector appraisers. This system has now developed into Officially Assessed Real Estate Price system (2005).
- Relocation measures seek to restore the original status of the displaced persons' living conditions. Livelihood rehabilitation is also provided. Vocational training and preferential hiring in urban development projects.

2. China

- Under the People's Republic of China Land Administration Law (PRCLAL) the State owns all urban lands and the farmers collective owns all the rural lands. What is acquired is the 'Land Use Rights' and not the ownership of land.

- Compensation is payable according to the original use of the acquired land. For arable land the compensation is based on 6-10 times its average production value in the past three years prior to acquisition. A settlement subsidy is also paid.
- The total payment for land compensation and settlement subsidy shall not exceed 30 times the average production value of the acquired land in the past three years prior to acquisition.
- In case of acquisition of urban properties, no compensation is paid for illegal structures or temporary structures if they have exceeded the permitted period.
- The whole land acquisition and compensation scheme is designed keeping the interest of acquiring bodies than the land and property losers. The whole exercise is characterised by lack of justness or transparency. The options of grievance redressal are also limited.
- Land acquisition is a source of great discontent in the country.

3. United States

- The Constitution places an obligation on the State that land can be acquired for 'public use' only after the payment of a 'just compensation'.
- 'Public use' is considered to be more restrictive as compared to 'public purpose'. This, however, is truer theoretically than in actual practice.
- Compensation is based on market price of land acquired.
- Supreme Court judgment in the famous 'Kelo V City of New London' in 2005 allowed the acquisition of private property with the sole aim to increase the tax base of the municipal authority.
- Post 'Kelo case' the government has been using the power of eminent domain to acquire land for 'economic development, notwithstanding the 'public use' test. The majority judgment had a debilitating effect on the property rights in United States.
- A number of states have tried to undo the damage by curtailing the power of the states to acquire private land.

4 Malaysia

- Most of the land required is acquired compulsorily using the Land Acquisition Act, 1960 which allows acquisition for public purpose, economic development etc.
- Section 3E(2) of the Act says that 'the State Authority shall not approve the application for the acquisition of land for any purpose larger in area than that needed for that purpose'.

- Thus financing an infrastructure project by commercial real estate development on the land acquired for the project is not allowed. There is, however, a difference of opinion on this with the government believing that such extra acquisitions are not prohibited.
- The compensation paid is to be 'adequate' (which has not been defined). This 'adequate compensation' is paid in monetary terms and therefore on the basis of 'market value' of land.
- The adequacy of the compensation is the main issue in the country and not the compulsory nature of the acquisition. No solatium is paid to mitigate the effects of compulsory acquisition.
- Comparable sales method is used to determine the value of land.

5. France

- The 'Declaration of Rights of the man and of the Citizen' which is considered to be the most important result of the French Revolution regards property rights as being sacred and inviolable.
- An individual can be denied of his property on in the case of public purpose by a legally constituted authority.
- Acquisition can take place only after the payment of a just compensation.
- In the case of large projects a declaration of public utility has to be made before the acquisition can take place.

6. Ghana

- The power of eminent domain can be used in public interest.
- Such acquisition can be made by government either for public bodies and statutory corporations or for private enterprises guided by profit motive provided the project is in public interest.
- The Constitution provides that any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.
- Where the property is not used in the public interest or for the public purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition shall be given the first option for acquiring the property.
- The land acquisition provides for prompt payment of fair and adequate compensation.
- The wide definition of public purpose is open to misuse by the authorities.
- Customary authorities and State together own around 98% of the total land (78% and 20% respectively).

7. Indonesia

- Land is to be acquired through negotiated settlement with the land holder and the government acquires land through compulsory acquisition only as a last resort for 'public purpose' only.
- In the case of compulsory acquisition the 'form' and the 'amount' of compensation is fixed by the Presidential decree on the recommendation of a committee of experts.
- The Act states that the compensation should be based on the real or actual value of the land which might not be equal to the market price as that could be 'profiteering' price.
- Generally, the land acquired for public purpose gets a lower compensation than land acquired for commercial purposes. The compensation issued may be subject to appeal but not the act of appropriation.
- Land acquisition is a very complicated and time consuming process. Government has used the emergency powers under the act to appropriate land for 'sports stadia and city markets'.
- There are consistent reports of intimidation and deceit accompanying negotiations over proposed land acquisitions (Daniel Fitzpatrick: Beyond Dualism).
- A new land acquisition bill was passed by the Parliament in December 2011 which is expected to speed up the acquisition process.

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TEHRIDAM, UTTARANCHAL; wwfenvis Factsheet

Contd. from Inside Front Cover...

Shri Ravi Shankar Prasad released another booklet on 'Guidelines for Prevention of Corruption in Private/NGO Sector'.



where Shri Arun Jaitley released a discussion paper on 'Development v/s Displacement'. All stakeholder




presented their viewpoint. We had strongly demanded setting up of a Real Estate Regularity Authority and promised to publish a booklet on the issue incorporating all deliberations. The document is now ready for publication.



We also organized a professional conference on land acquisition issues




organizations like ASSOCHAM and ANMI and Bharatiya Kisan Sangh represent-atives



**ECONOMICS CELL
BHARATIYA JANATA PARTY**

**Guidelines for
Prevention of Bribery in Private/NGO Sector**



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भू संपदा

वर्तमान विकास की बहस में भूमि अधिग्रहण एक महत्वपूर्ण विषय है। भू-स्वामी सहित परियोजना-प्रभावित लोगों को यह विश्वास है कि अधिग्रहण प्रक्रिया उनके अस्तित्व को प्रभावित करती है। और इसीलिए ये लोग इसके विरुद्ध प्रदर्शन कर रहे हैं। कई परियोजनाओं का भविष्य भूमि अधिग्रहण के कारण अनिश्चित है। यही कारण है कि ज्यादातर योजनाओं में देरी और लागत में बढ़ोत्तरी हो रही है। इसके साथ पर्यावरण, वन-क्षेत्र, खाद्य सुरक्षा इत्यादि से संबंधित बहुत सारे मुद्दे जुड़े हुए हैं। नये भूमि अधिग्रहण अधिनियम के अन्तर्गत, सर्वोपरि अधिकार (Eminent Domain), सार्वजनिक प्रयोजन (Public Purpose), पर्याप्त क्षतिपूर्ति, पुनर्स्थापना एवं पुनर्वास, भूमि नियामक आयोग और रियल स्टेट नियामक प्राधिकरण जैसी जटिल समस्याएँ चिंता को और बढ़ा रही हैं। सबका मानना है कि सार्वजनिक बहस के अभाव में यह महत्वपूर्ण विषय लंबित हो रहा है।

खनिज संपदा

राज्य प्राकृतिक संसाधनों का संरक्षक है और यह उसका न्यायिक कर्तव्य है कि इन संसाधनों की वो सुरक्षा करे। संसाधन सार्वजनिक उपयोग के लिए बने हैं। अभी तक ऐसा कोई भी व्यापक कानून नहीं बना है जो खनिज संपदा सहित प्राकृतिक संसाधनों को परिभाषित कर सके। और ना ही उसके संरक्षण के लिए ऐसा कोई ढांचा बना है। इन संसाधनों के संरक्षण एवं उचित तरीके से आवंटन में निजी एवं सार्वजनिक क्षेत्रों की भागीदारी, पारदर्शिता, समुचित उपयोग इत्यादि बड़े महत्वपूर्ण मुद्दे जुड़े हैं। प्राकृतिक संसाधनों के उपयोग एवं अधिकार को लेकर प्रभावी एवं समुचित विधान बनाने हेतु आज व्यापक सार्वजनिक मंथन की आवश्यकता है।

जल संसाधन

जल, वायु, अग्नि, आकाश और पृथ्वी ये जीवन के पाँच मूल तत्व हैं। ये प्रकृति ने हम सभी को समान एवं निर्बाध रूप से प्रदत्त किये हैं। पानी मनुष्य के अस्तित्व के लिए आवश्यक है। इस महत्वपूर्ण तत्व के स्वामित्व के प्रश्न पर मानवता का भविष्य टिका हुआ है। पानी के प्रबंधन एवं वितरण के व्यवसायीकरण के साथ ही यह मुद्दा और जटिल हो गया है। निःशुल्क, साफ एवं सुरक्षित पेयजल के अधिकार की संवैधानिक गारंटी प्रदान करने में सरकारी असफलता भी एक महत्वपूर्ण चिंता का विषय है। दूसरी तरफ हम सभी लोगों की लापरवाही के कारण बड़े पैमाने पर इस संसाधन के संरक्षण एवं संवर्द्धन का ह्रास हो रहा है।

... .. who owns National Resources, particularly Land, Mineral and Water? Broadly there are three forms of ownership: individual/private, state ownership or no body.

Our Constitution guarantees the Right to Use and acknowledges that the state is a TRUSTEE of all Resources.

It recognizes the doctrine of EMINENT DOMAIN under which the State can usurp the rights over the resources in the larger interest of the community for PUBLIC PURPOSE. But the corruption in the State has started defining all kind of activities as public purpose; from making of cycles to shoes etc. When individual resources or Common Properly Resources are lost on above pretext, it is bound to agitate everyone.



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Invitation BROCHURE



National Convention **Socio-economic Development Allocation of National Resources**

Saturday, 6th October, 2012

NDMC Convention Centre
Near Jantar Mantar, Sansad Marg, New Delhi

Chief Guest

SHRI NITIN GADKARI
National President, BJP

Guest of Honour

SHRI RAJNATH SINGH, M.P.
Former President, BJP

Convener

SHRI GOPAL K AGARWAL
National Convener, Economics Cell - BJP

Programme

Saturday, 6th October 2012

- 09.00 - 09.30 a.m. : Breakfast & Registration
09.30 - 11.30 a.m. : **Session 1 - Land Resources**
11.30 - 12.00 noon : Tea Break
12.00 - 01.00 p.m. : **Chief Guest Address & Interaction**
01.00 - 02.00 p.m. : Lunch
02.00 - 03.30 p.m. : **Session 2 - Mineral Resources**
03.30 - 04.00 p.m. : Tea Break
04.00 - 05.30 p.m. : **Session 3 - Water Resources**
05.30 - 06.15 p.m. : **Valedictory Address**

Organiser

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Our economy is passing through a very difficult phase. Economy cannot run on adhocism, there has to be long-term perspective coming out of a clear vision for the country's future. Socio-economic development can take place only after proper and justified allocation of national resources. The flaw at the policy level cannot be overcome through administrative mechanism. If the policy were right the administration could be held accountable. Considering the above facts Economics Cell has been recently working on three important segments of the economy.

Session-1 : Land Resources

Land acquisition has emerged as one of the most important concerns in the current growth debate. Project-affected people (PAPs) including landowners have reason to believe that they have been at the receiving end of the acquisition process and have been protesting against it. The fate of a number of projects is uncertain due to problems associated with land acquisition. It is the reason behind most of the project delays and cost overruns. There are issues related to environment, forest, food security etc. A new land acquisition act that takes into account the concerns like eminent domain, public purpose, adequate compensation, resettlement and rehabilitation (R&R), Land Regulatory Commission and Real Estate Regulatory Authority of all the stakeholders has been overdue for quite some time now but is getting delayed without much justification.

Guest Speakers

- **Smt. Sumitra Mahajan**
MP & Chairperson, Standing Committee of Parliament on Rural Development
 - **Shri Devender Sharma**
Eminent Thinker & Journalist
 - **Prof. Milindo Chakrabarti**
Sharda University
 - **Shri M.R. Madhavan**
Director, Center for Policy Research
 - **Shri Subhash Aggarwal**
Chairman, Cap. Mkt. Comm., ASSOCHAM
 - **Varghese Thodu Parambil**
Chief Org., Karshak Munnettam
- Competing uses of land and its impact analysis on human, biological and physical subsistence.
 - Mode/models of prioritization of land use.
 - Pricing, regulatory mechanism/creation of institutions to foster development.
 - Land Acquisition and Rehabilitation and Resettlement Bill, 2011.
 - Development v/s Displacement - A Research Document

Session-2 : Mineral Resources

The State is a trustee of all natural resources and has a legal duty to protect them. The resources are meant for public use. No comprehensive legislation has yet been enacted to

define natural resources, including minerals, and a framework for their protection. The important issue in allocation of these resources for productive and fair manner is the participation of public and private sector, degree of transparency, its captive use etc. A wide public debate is required for an effective legislation that ensures right of people over their natural resources.

In each of these above sessions we are inviting experts in the respective fields from different parts of the country, to present papers and express their views on the subject. We will be circulating draft document on the subjects in the form of a discussion paper. Each session will also have a Keynote Speaker, a Chairman, a Convener and an open house discussion.

Guest Speakers

- **Shri Prakash Javedekar**, M.P & Spokes-person, BJP
- **Prof. Samar K. Datta**, IIM, Ahmedabad
- **Dr. Jyoti Kiran Shukla**, Prof. Economics
- **Shri Anil Sharma**, President, BVSS
- **Dr. Jagdish Shettigar**, Prof. Economics, BIMTECH

- Existing legal/regulatory framework for mineral resources .
- Critical analysis of MMRD Bill, 2011.
- Comment on the 'Report of Working Group on Mineral Exploration and Development for the 12th FYP'.

Session - 3 : Water Resources

Jal, Vayu, Agni, Akash & Prithvi are the five elements of life. Water symbolizes human existence. The ownership of this important element has a large-scale implication on the future of humanity; the issue becomes more complicated with commercialization of management and distribution of water. The failure to meet the Constitutional guarantee to the Right to clean and safe drinking water is an important area of concern as is the large-scale depletion of this resource due to negligence of one and all.

Guest Speakers

- **Dr. Bharat Jhunjunwala**, Formar Prof. IIM Bangalore
- **Shri Gopal K. Agarwal**, President, Jaladhikar
- **Prof Prem Vashishtha**, Director,
South Asia Global Water Partnership
- **Shri Diwan Singh**, Yamuna Bachao Andolan
- **Shri Raghu Yadav**, Nayak, Jal Yuddh
- **Shri R.K. Jain**, NWDA

- Water as a natural element/marketable commodity.
- Ownership of water resource in India.
- Availability, accessibility and affordability.
- Privatisation of Water - the inside story.

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