

**Indian legal system-** “an alien legal system which is expensive, exotic, extravagantly paper-logged and imperiously unapproachable to the large numbers living below the poverty line” at Page-3 THE FINAL REPORT OF LAW REFORMS COMMISSION KERALA presented By its Chairman Mr. Justice V. R. KRISHNA IYER on 26th January, 2009

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## **Land Acquisition and Rehabilitation & Resettlement Bill 2011**

### **A Break with colonial LA Act 1894 or a more draconian law?**

#### **(Some Notes for discussion on Bill’s institutional mechanism)**

**1. Invitation to a Public Debate:** The newly sworn-in Union Rural Development Minister Jairam Ramesh put on the internet the Bill (National Land Acquisition and Rehabilitation and Resettlement Bill 2011) on Friday 29<sup>th</sup> July 2011 for inviting public comments thereon within 31<sup>st</sup> August 2011. Mr. Ramesh took this step after the Draft Bill received clearance from the National Advisory Council. After receiving the comments of the public the Ministry of Rural Development, GoI the nodal Ministry for the purpose shall give final shape to the draft bill and then get the revamped Bill vetted by the Ministry of Law before putting it forth before the Cabinet for latter’s approval. Then the Draft Bill so approved shall be introduced in the Parliament and that too, going by the Union Minister’s assurance, before the scheduled closure of the monsoon session on September 8.

**2. Constitutional Provisions:** To start with, the Constitution of independent India proclaimed in 1950 put the Right to Property (Right to acquire, hold and dispose of property) as a Fundamental Right under Article 19(1)(f) at equal par with other Rights i.e. to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, to practise any profession and to carry on any occupation, trade or business. Besides, it had to be read along with another provision made under the self-same Part-III (Fundamental Rights) of Constitution, i.e. Article 31, which inter alia maintained, "no person shall be deprived of his property save by authority of law." But as a result of the Forty-Fourth Amendment 1978, the Right to Property was removed from the list of fundamental rights and a new article inserted in Part-XII as 300A, which reads, “No person shall be deprived of his property save by authority of law”. It means that Right to Property is no longer an inviolate fundamental right, but a constitutional right of the citizens, which the State can subject to its ‘eminent domain’ by way of framing laws in respect of acquisition of property and compensation for the acquired property.

It also needs to be remembered that the subject relating to land and its management is under the State List, while the acquisition and requisitioning of property falls under the Concurrent List of the Constitution.

**3. LA Act 1894 :** Though every State has some or other piece of legislation on land acquisition by the Government, the ‘The Land Acquisition Act 1894’ remains to this day the

most effective law used by both Centre and State Governments in respect of land acquisition by the Government for public purposes or for companies. The LA Act was promulgated on the first day of March, 1894. The Act has been amended in the years 1919, 1921, 1923 and 1933 before independence and in the years 1962, 1967 and 1984 after independence.

**4. Recent Efforts at amendment to LA Act:** In recent past, as a precursor to the present draft bill, intense efforts at Government level have gone into the issues around radically amending or replacing altogether the colonial LA Act 1894. The erstwhile Standing Committee on Urban and Rural Development examined the various provisions made under the Principal Land Acquisition Act of 1894 in consultation with the State Governments and made exhaustive observations/recommendations in the Eighth Report (Tenth Lok Sabha), presented to Parliament on 15 December, 1994. Since then efforts have been continuing to enact fresh laws on both land acquisition and resettlement and rehabilitation. Land Acquisition (Amendment) Bill, 2004 was submitted to the Cabinet Secretariat on 29 January, 2004 for approval of the Cabinet. But the Cabinet Secretariat deferred it till the formation of the 14th Lok Sabha. The Land Acquisition (Amendment) Bill, 2007 was introduced on 6<sup>th</sup> December 2007 in the 14th Lok Sabha. Next day it was referred to the Standing Committee on Rural Development (2007-2008) for examination and report. The term of the Committee (2007-2008) however expired on 4 August, 2008 and the Committee (2008-2009) was constituted w.e.f. 5 August, 2008. The Bill formulated by the Committee was presented to Lok Sabha. Meanwhile, the National R&R Policy, 2007 was published in the Official Gazette and came into force w.e.f. 31st October, 2007. The R&R Bill, 2007 was proposed so as to give a statutory backing to the R&R Policy. Both Bills were passed by the Lok Sabha on 25.02.2009 and tabled in the Rajya Sabha on 26.02.2009. However, both bills lapsed with the dissolution of the 14th Lok Sabha.

Due to fierce resistance to the separate Bills on land acquisition and R&R package from within the UPA, the Central Government decided to combine both elements in a single Bill, and the current Draft Bill on Land Acquisition and Rehabilitation and Resettlement 2011 is outcome of that decision.

**5. Land Acquisition and Rehabilitation & Resettlement Bill 2011-** As its PREAMBLE reads, the Draft Bill aims at balancing the need for land acquisition for developmental purposes with the concerns of farmers and those whose livelihoods are dependent on the land being acquired; preventing the human and social suffering caused by involuntary displacement, minimizing the displacement of affected persons and mitigating the adverse impacts on people and their habitats; and comprehensively defining and identifying project affected persons/families to ensure that they are provided with a just compensation and rehabilitation and resettlement package; ensuring a humane, participatory, informed, consultative and transparent process; and ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development.

#### **6. Layout of the LA&RR Bill 2011**

The Draft Bill Consists of 74 Sections arranged in 10 Parts and 3 Schedules.

## ARRANGEMENT OF SECTIONS-

**Part -I :** Preamble and Preliminary (Sections 1 and 2)

**PART II:** DETERMINATION OF SOCIAL IMPACT AND PUBLIC PURPOSE (Sections 3 through 7)

**PART III:** NOTIFICATION AND ACQUISITION (Sections 8 through 30)

**PART IV:** REHABILITATION AND RESETTLEMENT (Sections 31 through 33)

**PART V:** NATIONAL MONITORING COMMITTEE FOR REHABILITATION AND RESETTLEMENT (Sections 34 through 35)

**PART VI:** ESTABLISHMENT OF LAND ACQUISITION REHABILITATION AND RESETTLEMENT DISPUTE SETTLEMENT AUTHORITY FOR STATE AND CENTRE (Sections 36 through 47)

**PART VII:** APPORTIONMENT OF COMPENSATION (Sections 48 through 49)

**PART VIII:** PAYMENT (Sections 49 through 53)

**PART IX :** TEMPORARY OCCUPATION OF LAND ( Sections 54 through 56)

**PART X:** MISCELLANEOUS (Sections 57 through 74)

List of 3 Schedules-

**Schedule-I:** Compensation for Land owners

**Schedule-II:** List of Rehabilitation and Resettlement Entitlements for all the affected families (both land owners and the families whose livelihood is primarily dependent on land acquired) in addition to those provided in Schedule I.

**Schedule-III:** Provision of Infrastructural Amenities.

### **7. R&R Administrator/ Commissioner (Sections 31 & 32)**

As per Section 31, State Govt shall appoint in respect of a Project of Central or State Govt an officer not below rank of Addl. Collector (In Orissa ADM) or equivalent official of Revenue Dept to be the Administrator for R&R. Subject to the superintendence, directions and control of the Appropriate Government and the Commissioner for Rehabilitation and Resettlement, the formulation, execution and monitoring of the Rehabilitation and Resettlement Scheme shall vest in the Administrator for Rehabilitation and Resettlement. As per Section 32 the State Government shall appoint an officer of the rank of Commissioner or Secretary of that Government to be called the Commissioner for Rehabilitation and Resettlement. The Commissioner shall be responsible for supervising the formulation of R&R schemes and plans

and for proper implementation of such schemes or plans, and also for post-implementation of social audit.

**8. Rehabilitation and Resettlement Committee (Section 33)**

where land proposed to be acquired is equal to or more than one hundred acres, the Appropriate Government shall constitute a Committee under the chairmanship of the Collector to be called the Rehabilitation and Resettlement Committee, to monitor and review the progress of implementation of the Rehabilitation and Resettlement scheme and to carry out post-implementation social audits in consultation with the village panchayat in rural areas and municipality in urban areas. This Committee shall include apart from officers of the appropriate Government, a representative of women, a representative each of the SC & ST, a representative of a voluntary organization, a representative of a nationalised bank; the Land Acquisition Officer of the project; the Chairpersons of the panchayats or municipalities located in the affected area, MP, MLA of the concerned area; a representative of the requiring body; and Administrator for Rehabilitation and Resettlement as the Member-Convener.

**9. National Monitoring Committee for Rehabilitation & Resettlement (Sec 34 & 35)**

As per Section 34 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 Committee may, besides having representation of the concerned Ministries and Departments of the Central and State Governments, associate with it eminent experts from the relevant fields. The procedures to be followed by the Committee and the allowances payable to the experts shall be such as may be prescribed. The Central Government shall provide officers and other employees to the Committee necessary for its efficient functioning. As per Section 35 (Reporting requirements) the States and UTs shall report all relevant matters to the National Monitoring Committee in a regular and timely manner and also as and when required. From this it appears that this apex body shall be under the full control of the Central Government, leaving no space for its democratic, participatory management by the representatives from all stakeholder groups.

**10. Establishment of State Land Acquisition Rehabilitation and Resettlement Dispute Settlement Authority (Section 36)**

As per Section 36, the State Government may constitute for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, Rehabilitation and Resettlement establish an Authority to exercise the powers to be conferred on it with regard to acquisition of land by the State Government. Such Authority shall consist of at least 3 members including Chairperson to be appointed by the State Govt. and a person shall not be qualified to be a Member of the Authority unless he is or has been (i) A judge of the High Court of the State; (ii) An officer of the State Government not below the rank of district collector; (iii) An officer of the State Government in the Law Department not below the rank of Director. The terms and conditions of service shall be those as prescribed from time to time in Rules framed under this Act by the State Government. Given such terms of composition and management of the State Authority, it shall work as a subservient instrument in the hands of the State Government to justify all its acts in respect of acquisition of land and related matters.

**11. Establishment of National Land Acquisition Dispute Settlement Authority (Sec 37)-**

The Central Government shall, for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, Rehabilitation and Resettlement establish an Authority for the Centre to be known as the National Land Acquisition Dispute Settlement Authority to exercise the powers to be conferred on it with regard to acquisition of land by the Central Government. Such Authority shall consist of at least 3 members including Chairperson to be appointed by the Central Govt. and a person shall not be qualified to be a Member of the Authority unless he is or has been (i) A Chief Justice of High Court or a Judge of the Supreme Court; (ii) An officer of the Indian Administrative Service having sufficient knowledge of land acquisition and has held the post of Collector of a District; (iii) An officer equivalent to that of a Joint Secretary in the Government of India. The terms and conditions of service shall be those as prescribed from time to time in Rules framed under this Act by the Central Government. Given such terms of composition and management of the National Authority, it shall work as a subservient instrument in the hands of the Central Government to justify all its acts in respect of acquisition of land and related matters.

#### **12. Reference to Authority by Collector (Section 38)**

Any person interested who has not accepted the award may approach the Collector for referring his case to the State or Central Authority, as the case may be, for the determination of such issues, 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 or the apportionment of the compensation among the persons interested. In case where the Collector fails to make such reference within the stipulated period, the applicant may apply to the State or Central Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days. It means that the grievances of the 'persons interested' remain endlessly circulating within the authorities functioning under the control of Central or State Government. Besides, in comparison to the provisions of Land Acquisition Act 1894, where its Part-III (Section 18 through 28A) inter alia required the Collector to make the reference to the Court (a Civil Court) which is independent of the executive and bound him to execute the order of the concerned Court, the provision of the draft bill keeps the whole reference business confined to two Government authorities i.e. Collector to State or Central Authority, and back from State or Central Authority to the Collector.

#### **13. Confusing provision: "Proceedings to be in open Court" (Section-46)**

As regards the cases referred to national or state authority, the draft bill says, "Every such proceeding shall take place in open Court, and all persons entitled to practice in any Civil Court in the State shall be entitled to appear, plea and act (as the case may be) in such proceeding. The expression 'Open Court' is not applicable here, since Central or State Authorities constituted by the Government, to whom references of grievances shall be made, are not courts in proper sense of term, but quasi-judicial bodies set up as extension of the Governmental system itself.

#### **14. Penalty Provisions (Sections 58 and 59):**

Sections 58 and 59 provide for penalty against persons belonging to both 'persons interested' and Government servants, though the extent and nature of punishment differs from one group to another. As per Section 58-1 (Punishment for false information, mala fide action etc), if a person, 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. As per Section 58-2, 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. As regards the punishment to the Government servant, Section 58-3 provides, "Disciplinary proceedings may be drawn up by the disciplinary authority against a Government servant, who if proved to be guilty of a *mala fide* 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 Section 59 (Penalty for obstructing acquisition of land) which exclusively targets the anti-acquisition protestors says, "Whoever willfully obstructs any person in doing any of the acts authorized by section 9 or section 15, or willfully fills up, destroys, damages or displaces any trench or mark made under section 15, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding five hundred rupees, or to both".

#### **15. Contradictory provisions on overriding effect of the Act:**

As regards the overriding effect, the Draft Bill contains mutually conflicting provisions. On one hand, Section 73 captioned as 'Act to have overriding effect' says, "The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this law", but on the other, Section 71 (Provisions to be in addition to existing laws) says, "The provisions of this law are in addition to and not in derogation of, any other law for the time being in force". If we want the new Act to be overriding in nature vis-à-vis the rest of laws and instruments in force as stated by the Section 73, then its anti-thesis i.e. Section 71 needs to be deleted.

Indian legal system- an alien legal system which is expensive, exotic, extravagantly paper-logged and imperiously unapproachable to the large numbers living below the poverty line, Page-3 **THE FINAL REPORT OF LAW REFORMS COMMISSION KERALA presented By its Chairman Mr. Justice V. R. KRISHNA IYER on 26th January, 2009**

L A and R&R Bill 2011

The Rural Dev Minister Jairam Ramesh put on the internet the Bill (National Land Acquisition and Rehabilitation and Resettlement Bill 2011) on Friday 29<sup>th</sup> July 2011 for inviting public comments thereon within 31<sup>st</sup> August.

The draft Bill proposes that the consent of 80 per cent of the project-affected families will be mandatory if the government acquires land for use by private companies for stated public purpose or PPP projects other than that for national highway.

The much-awaited Bill, which has been put in public domain, says 'in case of urban areas, the award amount would be not less than twice that of the market value determined whereas in rural areas it would be not less than six times the original market value'.

It also states that the public purpose once stated cannot be changed.

Ramesh makes it clear that in every case, land acquisition must take place in a manner that fully protects the interests of land-owners and also of those whose livelihoods depend on the land being acquired.

He also stresses that land markets in India are imperfect and hence the government is stepping in to enact this law.

In his forward to the draft Bill, Ramesh made it clear that 'the issue of who acquires land is less important than the process of land acquisition, compensation for land acquired and the Rehabilitation and Resettlement process, package and conditions'.

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The National Land Acquisition and Rehabilitation and Resettlement Bill, 2011, as recommended by the National Advisory Council, will make it mandatory that gram sabhas are consulted and the R&R package is executed before the acquired land is transferred.

West Bengal Chief Minister Mamata Banerjee, is opposed to the assignation of any role for the State governments in matters of land acquisition.

The drafting of a new legislation on these issues was taken up by a Group of Ministers in May 2007.

The Ministry has given the public time till August 31 to send their comments and it is anybody's guess if the Ministry will be able to finalise the Bill, get it vetted by the Ministry of Law, have it approved by the Union Cabinet and introduce it in Parliament before the scheduled closure of the monsoon session on September 8.

Under the proposed law, the R&R package would necessarily have to be executed for land acquisitions in excess of 100 acres by private companies. The law also prohibits private companies from purchasing any multi-cropped irrigated land for public purposes.

While the State government would not have any role in acquisition of land, it would come into the picture if the private companies petitioned for such an intervention. The government would do so only if the acquisition would benefit the general public.

To safeguard against indiscriminate acquisition, the Bill requires States to set up a committee under the Chief Secretary to approve that the acquisition is of "public purpose" and the social impact assessment for the land in question. If the acquired land was not put to use for within five years of the acquisition, it would be returned to the original owner.

For the first time, the government has acknowledged the role of the gram sabha in the process of land acquisition, stressing that they would have to be "consulted". This has been done to comply with other laws, such as the Panchayat (Extension to the Scheduled Areas) Act (PESA), 1996; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; and Land Transfer Regulations in Schedule V (Tribal) Areas. The Ministry of Panchayati Raj had opposed the earlier draft, stressing that the approval of the gram sabha was necessary for land acquisition under PESA.

The draft Bill will enjoy primacy over 18 other laws pertaining to land acquisition (SEZs, High way, Defense etc.). Its provision will be in addition to and not in derogation of the existing safeguards currently provided for in these laws.

Both the land owners and livelihood losers will have to be paid compensation. In rural areas, the compensation will amount to six times the market value of the land while in urban areas it would be at least twice the market value. Apart from this, the landowners will be entitled to a subsistence allowance of Rs.3,000 per month for 12 years and Rs.2,000 as annuity for 20 years, with an appropriate index for inflation.

In the cases of land acquired for urbanisation, 20 per cent of the developed land would be reserved and offered to the land owners in proportion to the acquired land. In addition, every affected family would be entitled to one job, else Rs.2 lakh.

Those who lost their house in the land acquisition process would be provided a constructed house with, in rural areas, plinth area of 150 sq. m, and 50 sq. m in urban areas, as well as a one-time resettlement allowance of Rs.50,000.

If the land acquired is for an irrigation project, one acre of land would be provided to each affected family in the command area.

Livelihood losers would get a subsistence allowance of Rs.3,000 per month per family for 12 months and Rs.2,000 per month for 20 years as annuity, factoring in inflation. Scheduled Caste and Scheduled Tribes would get a special package wherein each family was entitled to one acre of land in every project. Those settled outside the district would be entitled to an additional 25 per cent of R&R benefits. The draft envisages that ST families be paid one-third of the compensation amount at the very outset.

They will also have preference in relocation and resettlement in an area in the same compact block and free land for community and social gatherings.

If 100 or more ST families are displaced, a Tribal Displacement Plan would be put in place. It would include settling land rights and restoring titles on alienated land and development of alternate fuel, fodder and non-timber forest produce.

STs and SCs would also get, in the resettlement area, the reservation and other benefits they were entitled to in the displaced area.

The resettlement area should provide at least 25 infrastructural amenities including schools and playgrounds, health centres, roads and electric connections, assured sources of safe drinking water for each family, panchayat ghars, fair-price shops and seed-cum-fertiliser storage facilities, places of worship and burial and cremation grounds.

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In the Constitution land is a State subject but land acquisition is a concurrent subject.

Limits the **urgency clause** to rarest of rare cases.

Land acquisition necessary for infrastructure building, industrialization and urbanization.

Constitution of a National Monitoring Committee in respect of R&R package  
State to set up Land Acquisition Dispute Settlement Authority

Centre to set up National Land Acquisition Dispute Settlement Authority

Violation of Section 9 or 15 punishable

Land Transfer fund to be shared among the original land owners

No provision for deduction of income tax.

No time limit for disposal of compensation cases.

Govt should pay compensation instead of leaving it to private companies.

Usually the enhanced compensation awarded by courts is received by the dispossessed after more than 10 years. By then the value of land acquired would have increased several fold and the claimant would have died. Had the full value been received at the time of dispossession, it would have fetched cumulative returns even from bank deposits. Specific provisions may therefore be incorporated in the Proposed Bill, compensating for such delay and for bringing clarity to the mode of computation of compensation. Therefore : In Section 43 (2) of the draft Bill ♦ After the words ♦ award an amount calculated- the words - on yearly capitalised cumulative basis shall be inserted. In Section 43 (3) of the draft Bill - After the words - of the land as above provided - the words and figures - including Section 43(2) shall be inserted. In Sections 46 and 53 of the draft Bill ♦ Before the word ♦ interest- the words yearly compounded shall be inserted wherever applicable. After section 74 of the draft Bill, the following section shall be inserted, namely: ♦ 75. Where a reference under Section 18 of the Land Acquisition Act, 1894 or an Execution Petition thereon, is pending at any stage or an award under Section 26 thereon remains unsettled at any stage under the Act, on the date of commencement of the NATIONAL LAND ACQUISITION AND REHABILITATION & RESETTLEMENT BILL, 2011, then the amount of compensation payable to the entitled person shall be determined on the basis of the provisions of the draft Bill.”. Explanation. - In computing compensation payable under this sub-section, Sections 23(1), 23(1-A), 23(2), 28 & 34 of the Land Acquisition Act, 1894 shall be substituted respectively by Sections 43(1), 43(2), 43(3) , 46 & 53 of the NATIONAL LAND ACQUISITION AND REHABILITATION & RESETTLEMENT BILL, 2011.

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There are ambiguities in the draft bill on five issues:

- 1- Definition of public purpose is not clear. Public purpose should be defined irrespective who acquires and develops it.
- 2-Urgency Clause for land acquisition is not clear. It can lead to politics of urgency situation creation to acquire land.
- 3-Also blanket no to double cropped agriculture land may pose threat to contiguous expansion of cities and may lead to fragmented cities and development, which is more harmful to environment than compact development on double cropped land. This must be seen in the light of if no other options are available to expand the city in energy efficient and contiguous manner.
- 4-Idea of 100 acre for SIA may lead to lot of 99 acre projects which are contiguous and sanctioned as separate projects. Some solution must be found for this to avoid such continuous development under 99 acre projects
- 5-Currently there is a problem of protecting natural areas due to expanding cities/ development which are under private ownership, often such land are not acquired to protect the environment and often become cases for development if acquired by a public or private agency. Land acquisition must be done for protecting environment if it is under private ownership and threatened due to land use change. This aspect should be one of most important public purpose. Acquiring land to develop a water body to

recharge ground is securing water for future.

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