CHAPTER –IV
A STUDY OF GOVERNMENT POLICIES

4.1 Introduction:

Now-a-days, development induced displacement needs a follow up measure of resettlement and rehabilitation on number grounds. Hence, immediate relief and temporary resettlement is necessary for environment related refugees; after the calamity is over, people can go back to their original habitats. Violence induced displacement attracted relief measures from national and international agencies and foreign governments purely on humanitarian ground. Indian Government revolved a policy of resettlement to resettle the victims of partition of the Indian Sub –continents in 1947. That time people displaced due to various development projects and they are to be resettled and rehabilitated through an advance planning based on certain pre-defined policies or norms. This has not come under the internal or international relief measure.

Unfortunately, for a long period, even after independence, Government of India or any State Government could not evolve a suitable rehabilitation policy. The major problem of Resettlement and Rehabilitation have been well evoked by the remarkable studies on the gigantic Sardar Sarovar Project (Narmada) in Gujarat conducted by the Centre for Social Studies in Surat and the Lokayan Study on Srisailam. The issue can be summerised as under: Rehabilitation has always been considered an obstacle in implementing a project and an extra financial burden; the authorities exist to include even the barest arrangement for rehabilitation in projects plans and facilities provided differ from project to project.

For unsatisfactory record of the irrigations settlement scheme is the cause due to inability of the planners to take holistic view of the development process. Now, Social scientists have also observed that the resettlement schemes have been designed to be show pieces rather than to be a part of a comprehensive project development programme. Hence displaced people in most of the cases suffer much for generations.
4.2 The Land Acquisition Act

At the outset, the process of involuntary displacement is usually carried out through a legal act. To carry out this process of expropriation the state is well equipped with the Land Acquisition Act (LAA) 1884, as amended in 1984. “The British were all set to modernize the then capital city, Calcutta but they were ill equipped, without acquiring the state rights over individual land. The first All India Act VI of 1857 was passed where land owners may be required by the legislature to surrender some of their rights they possess over their land for a purpose of public utility. Subsequently, a well defined all Comprehensive land Acquisition Act (LAA) covering the whole of British India came into force on the first day of March, 1894 as the Act 1 of 1894. Till now with minor amendments this Act is being followed by the State as well as Government of India in the matter of Land acquisition and distribution of compensation to the oustee.

Land Acquisition implies transfer of land holding rights from individual landowners to the State; on the other hand it does not recognize the consequent mass displacement. “Public purpose emerges as the justification of the doctrine of ‘Eminent Domain’ gives to the state an enormity of control over land and related resources and so over the lives of the people: acquisition provides the process and compensation is the limited replacement of the rights of the displaced people. Here, the word ‘land’ under this act includes benefits arising out of land and things attached to the earth or permanently fastened to the earth.

The Land Acquisition Act is a statutory statement of the state’s power of eminent domain, which vests the state with ultimate control over land within its territory. It denies the persons, from whom land is acquired, the right to exercise choice or preference for parting with the land when acquisition is for a public purpose. It also denies the right to return in the event of failure/ closures of the projects. The Act has the provision for payment of monetary compensation for the acquired land to the legal land holders. The law simply allows payment of monetary compensation, but fails to recognize displacement and its adverse economic and social consequences. Therefore, makes no room for resettlement and rehabilitation measures in its legal framework. The law does not allow the right to return, once the acquisition is over the peoples are evicted out of their land for ever.
After minor amendments in 1914 and 1938, the LAA was amended substantially in 1984 to streamline the process of land acquisition. This act (LAA) was comprehensively amended in the year 1984, taking into consideration the recommendations of the Law Commission’s Land Acquisition Review Committee headed by A.N. Mulla, Member of Parliament as well as the suggestions of the State Governments and other quarters.

Land held without legal right title (Patta rights), including the Common Property Resources (CPR), are the State’s land and can be acquired without any compensation to the occupant. The white colonizers followed the principles of ‘terra nullius’, according to which land having no individual ownership documents ‘Patta’. belongs to none and hence it is the land of the state. It was followed in Australia, New Zealand, South Africa and America. This principle was declared invalid by the Australian Judiciary in 1993. But is continues to be followed in India, where, if a piece of land has no private ownership, the title/ownership belongs to the State.

The right to property enables the application of the principle of exclusion in the use of private property, I e, the non-owners are simply not allowed to use. Whereas it has inapplicable in case of Common Property Resources (CPR). “One possible definition of common property resources is resources accessible to the Whole community to which no individual has exclusive property rights…. A resource becomes common Property Resources only when a group of people who have the right to its collective use is well defined, and when the rules that govern their use of it are set out clearly and followed universally. In India, there are various types of CPR, such as land, water, pasture land, forests, rivers, ponds, tanks etc. to which the tribals and the village people have common access. With the acquisition of land of a particular area the people displaced thereof are forced to sacrifice their available CPR. It also provides substantial part of their economy and life support system. The oustees may face the problem of congestion or denial of the use of CPR in the host village or there may be lack of such provision in the new place of settlement.

4.3 THE NATIONAL HIGHWAY AMENDMENT BILL, 2017

The national highways network of India is a network of trunk roads that is managed and maintained by agencies of the government of India. As of June 2017, 23 km per day of highway construction has been grade roads whereas express highways,
commonly known as expressways, are controlled-access highways, mostly six-lane or above, where entrances and exit is controlled by the use of slip roads that are incorporated into the design of the highway. The at-grate national highways do not have shoulder lanes. The national highway system is that portion of connected main highways located within the state of Texas that are so designated by the Texas transportation commission and approved pursuant to united states code $103. While national highways constitute 1.8% of Indian roads, they carry 40% of the traffic. Some sections of the network are roll roads. Further to amend national highway Act, 1956.

4.3.1. THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) ORDINANCE, 2015

Promulgated by the President in the Sixty-Sixth Year of the Republic of India. An Ordinance further to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Whereas Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 to amend the right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement Act, 2013 (the RFCTLARR Act, 2013) was promulgated by the President on the 31st day of December, 2014; And Whereas the RFCTLARR (Amendment) Bill, 2015 was introduced on the 24th February, 2015 in the House of the People to replace the said Ordinance and the said Bill was passed along with amendments on the 10th March, 2015 in the House of the People; And Whereas the RFCTLARR (Amendment) Bill, 2015 as passed by the House of the People could not be passed by the Council of States and is pending in that House; And Whereas The Council of States is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action; Now, Therefore, in exercise of the powers conferred by clause (I) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance; - 1. Short title and commencement.– (I) This Ordinance may be called the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement (Amendment) Ordinance, 2015.
(2) It shall be deemed to have come into force on the 31st day of December, 2014.

Substitution of certain expression throughout the Act. – In the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the principal Act), for the words “private company” wherever they occur, the words “private entity” shall be substituted.

3. Amendment of section 2. In the principal Act, in sub-section (2) of section 2, after the second proviso, the following proviso shall be inserted, namely:

Provided also that the acquisition of land for the projects listed in sub-section (1) of section 10A and the purposes specified therein shall be exempted from the provisions of the first proviso to this sub-section.”.

4. Amendment of section 3. In the principal Act, in section 3, (i) in clause (j) in sub-clause (i) for the words and figures “the Companies Act, 1956”, the words and figures “the Companies Act, 2013” shall be substituted; (ii) after clause (y), the following clause shall be inserted, namely:

“private entity” means any entity other than a Government entity or undertaking and includes a proprietorship, partnership, company, corporation non-profit organization or other entity under any law for the time being in force;

5. Insertion of new Chapter IIIA. In the principal Act, after Chapter III, the following Chapter shall be inserted, namely:

CHAPTER IIIA Provisions of Chapter II and Chapter III not to apply to certain projects

10A. Power of appropriate Government to exempt certain projects. (1) The appropriate Government may, in the public interest, by notification, exempt any of the following projects from the application of the provisions of Chapter II and Chapter III of this Act, namely:

(a) such projects vital to national security or defense of India and every part thereof, including preparation for defense or defense production;
(b) rural infrastructure including electrification;
(c) affordable housing for the poor people;
(d) industrial corridors set up by the appropriate Government and its undertaking (in which case the land shall be acquired up to one kilometer on both sides of designed railway line or road for such industrial corridor);
(e) infrastructure projects including project under public-private partnership where the ownership of land continues to vest with the Government: provided that the appropriate Government shall, before the issue of notification, ensure the extent of land for the proposed acquisition keeping in view the bare minimum land required for such project. (2) The appropriate Government shall undertake a survey of its wasteland including arid land and maintain a record containing details of such land, in
such manner as may be prescribed by the appropriate Government. 6. Amendment of section 24.

In the principle Act, in section 24, in sub-section (2), after the proviso, the following proviso shall be inserted, namely: “Provided further that in computing the period referred to in this sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction issued by any court or the period specified in the award of a tribunal for taking possession or such period where possession has been taken but the compensation lying deposited in a court or in any designated account maintained for this purpose shall be excluded.” 7. Amendment of section 31. In the principle Act, in section 31, in sub-section (2), in clause (h), after the words “affected families”, the words “including compulsory employment to at least one member of such affected family of a farm laborer” shall be inserted. 8. Amendment of section 46. In the principle Act, in section 46, in sub-section (6), in the Explanation, in clause (b), the words “any person other than” shall be omitted. 9. Insertion of new section 67A. In the principle Act, after section 67, the following section shall be inserted, namely: “67A. Hearing to be held by Authority in districts to decide grievances. The Authority shall, after receiving reference under section 64 and after giving notice of such reference to all parties concerned of the hearing in the district where the notice of such reference to all parties concerned, hold the hearing in the district where the land acquisition takes place for settlement of the objection raised in thereference.” 10. Substitution of new section for section 87. In the principle Act, for section 87, the following section shall be substituted, namely “87. Offences by Government officials. Where an offence under this Act has been committed by any person who is or was employed in the Central Government or the State Government, as the case may be. At the time of commission of such alleged offence, the court shall take cognizance of such offence provided the procedure laid down in section 197 of the Code of Criminal Procedure, 1973 is followed.” 11. Amendment of section 101. In the principle Act, in section up of any project or for five years, Whichever is later,” shall be substituted. 12. Amendment of section 105. In the principle Act, in section 105, (i) for sub-section (3), the following sub-section shall be substituted, namely. “(3) The provisions of this Act relating to the determination of compensation with the Second Schedule and infrastructure amenities in accordance with the Fourth Schedule with effect from 1st
January 2015”, (ii) sub-section (4) shall be omitted. 13. Amendment of section 113. In the principle Act, in section 113, in sub-section (1), for the words “the provisions of this Part”, the words “the provision of this Act” shall be substituted; (ii) in the proviso, for the words “a period of two years”, the words “a period of five years” shall be substitute. 14. Repeal and saving. (1) The Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014, is hereby repealed. (2) Notwithstanding such said Ordinance, shall be deemed to have been done or taken under the principle Act, as amended by this Ordinance.

4.3.2. Department of Panchayti Raj and Community Development Director of Panchayats

Notification 19/DP/G.P./1/2015/3067 Whereas, the proposal of the Government to alter the name of Village Panchayat “Collem” as Village Panchayat “Collem-Sigao” was published in the Official Gazette, Series I No. 48, dated 26th February, 2015 as required by sub-section (3) of section 3 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994), inviting objection and suggestion on the said proposal before the expiry of fifteen days from the date of publication of said Notification in the Official Gazette; and whereas, the said Official Gazette was made available to the public on 26-2-2015. And whereas, no objection or suggestion have been received of the public on the said proposal, by the Government. Now, therefore, in exercise of the powers conferred by sub-section (3) of section 3 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994), the Government of Goa hereby alters the name of Village Panchayat “Collem” as Village Panchayat “Collem-Sigao”. Gurudas P. Pilarnekar, Director (Panchayats). Panaji, 1st June 2015. Notification No. 25/7/DEV/Vol/2015/4348 Read: (1) Notification No. 25/7/DEV/Vol/2012/5225 dated 03-09-2013 published in the Official Gazette, Service I No. 23 dated 5th September 2013. (2) Notification No. 25/7/DEV/Vol/2012/6359 dated 13-11-2014 published in the Official Gazette, Service I No. 34 dated 20th November, 2014. Whereas in exercise of powers conferred under section 244-A of Goa Panchayat Raj Act, 1994 (Goa Act No. 14 of 1994) the Government of Goa vide Notification No. 25/7/DEV/Vol/2012/5225 dated 03-09-2013 published in the Official Gazette, Service I No. 23 dated 05-09-2013 had framed The Deendayal Panchayati Raj
Infrastructure Development (Golden Jubilee) Scheme, 2013 (hereinafter referred to as said scheme) for upgrading the infrastructure in the rural areas of Goa. Now therefore, in pursuance of the provisions of the said section 244-A of the Goa Panchayat Raj Act, 1994 read with section 21 of the general Clauses, as under:

1. Amendment to clause 19. In clause 19 of the words and figure “rupee 1.5 crore”. Shall be substituted for the words and figure “rupee 1 crore”. 2. Insertion of new proviso to clause 19. The following provisos shall be inserted below clause 19 of the said scheme: “Provided that in deserving cases the one infrastructure project with prior approval of Finance Department:

Provided further that such cases shall not exceed more than 20% of the total consolidated proposals received under the Scheme.: 3. Deletion of proviso to clause 28. Both provisos to clause 28 of the said scheme shall be deleted. The above amendments shall come into force on the date of publication of this Notification in the Official Gazette. The amendment to the scheme are published with the concurrence of the Department of Finance, Government of Goa conveyed vide U.O.No. 523/F dated 4-3-2015. By order and in the name of the Governor of Goa. Gurudas P. Pilarnekar, Director & ex officio Additional Secretary (Panchayats).Panaji, 17th June 2015.

4.3.3. Department of Transport Directorate of Transport

Notification D.Tpt/EST/2305?2015?2020 The following draft rules future to amend the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, which the Government of Goa proposes to make in exercise of the powers conferred by sub-sections (1) and (2) of section 24 of the Goa, Daman and Diu motor Vehicles Tax Act,1974 (Act No. 8 of 1974) (hereinafter referred to as the “said Act”) are hereby published as required by sub-section (1) of section 24 of the said Act, for the information of all person likely to be affected thereby and notice is hereby given that the draft rules will be taken into consideration by the Government after the expiry of fifteen days from the date of publication of this Notification in the Official Gazette. All objection and suggestion to the said draft rules may be forwards to the director of Transport and ex officio Additional Secretary to the Government of Goa, Directorate of Transport, Junta House, Panjim-Goa, within said period of fifteen days so that they may be taken into consideration at the time of finalization of the said rules.
4.3.4. DRAFT RULES

In exercise of the powers conferred by sub-section (1) and (2) of section 24 of the Goa, Daman and Diu Motor Vehicles Tax Act, 1975 (Act No. 8 of 1974), and all other powers enabling it in this behalf, the Government of Goa hereby makes the following rules so as to further amend the Goa, Daman and Diu Motor Vehicles Tax Act, 1974, namely:1. Short title and commencement. (1) These rules may be called the Goa Motor Vehicles (Amendment) Rules, 2015 1974, namely:1 Short title. (2) They shall come into force from the date of their publication in the Official Gazette. 2. Amendment of rule 14. In rule 14 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, for words “fee of five rupee”, the words “fee one hundred rupees” shall be substituted. By order and in the name of the Governor of Goa. Arun L. Desai, Director & ex officio Additional Secretary (Transport).

4.3.5. Department of Tribal Welfare Directorate of Tribal Welfare

Order 1-20-2015-2016/ADMN/DTW/2924 Sanction of the Government is hereby accorded for creation of Dy. Director (Tribal Welfare), Group ‘A’ Gazetted post in the Directorate of Tribal Welfare in the pay scale of Rs. 15,600-39,100+5,400 G. P. with immediate effect. The expenditure towards the pay and allowances shall be debitable to the following Budget Head of Accounts. 2225 Welfare of SCs, Sts, OBCs; 02Welfares of Scheduled. This issue with the recommendation of Administrative Reform Department vide their U. O. NO. 376/F dated 23-3-2015 and concurrence of Finance (Rev. Cont.) Department vide their U.O. No. 1489002 dated 13-4-2015 and approval of Council of Ministers in its XIIth Cabinet Meeting held on 29-5-2015. By order and in the name of the Governor of Goa.Narayan Sawant, Director & ex officio Joint Secretary (Tribal Welfare).

4.4. THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (SECOND AMENDMENT) BILL, 2015

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ac, 2013 (herein referred to as Fair Compensation in Land Acquisition Act) was enacted to provide for just and fair compensation to the owners of the land and affected families for the land acquisition made under the said
Act and the 13 Acts specified in the respective Acts, in terms of the provisions made in the first, Second and Third Schedule to the Fair Compensation in Land Acquisition Act. In other words, the benefits of compensation, rehabilitation and resettlement provided in the Fair Compensation in Land Acquisition Act is proposed to extended in cases of land acquisition made under the Acts specified in the Fourth Schedule. 2. In view of the deadline provided in Section 105 of the Fair Compensation in Land Acquisition Act and the necessity of extending the enhanced compensation, rehabilitation and resettlement to land acquisitions under thirteen Acts of the Fourth Schedule and to make necessary provision for infrastructure projects the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 was promulgated on the 31st December 2014. On the 24th February 2015 a replacement Bill was introduced in Lok Sabha. The Bill was passed by Lok Sabha with some amendments on the 10th March 2015.

Notice for Motion for consideration and passing of the Bill as passed by the Lok Sabha was given in Rajya Sabha on the 13th March 2015 However, the Bill could not be taken up for consideration in the Rajya Sabha as the Rajya Sabha was prorogued on the 28th March 2015. 3. Section 105 of the Act of 2013 as amended by the Right to Fair (Amendment) Ordinance, 2014 extends the benefit of enhanced compensation in case of land acquisition in Land Acquisition Rehabilitation and Resettlement (Amendment) Ordinance, 2014 provided to extend the benefit of enhanced compensation in case of Land Acquisition made under the thirteen Acts listed in the Fourth to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 provided to extend the benefit of enhanced compensation, Rehabilitation and Resettlement in case of land acquisition done under the 13 Acts listed in the Fourth Schedule, of the Act. With a view to give continuity to the provision of the said Ordinance, it was necessary to repromulgate the Ordinance and get the said Ordinance, it was necessary to repromulgate the Ordinance and get the same replaced by the Replacement Bill in Parliament so that enhanced compensation and Rehabilitation and Resettlement made available through the provision of earlier Ordinance continue to remain in force in cases of land acquisition made under the thirteen Acts listed in the Fourth Schedule to the Act of 2013. 5. As the Council of States was not in session and immediate action was required to be taken by the Central Government to give continuity to the
provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 and to expedite the process of land acquisition, the Right to Fair Compensation and Transparency in land Acquisition Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (No. 4 of 2015) was promulgated on 3rd April 2015. The Ordinance contains enabling provision necessary to expedite the process of land Acquisition for strategic and development activity to expedite the process of land Acquisition for strategic and development activity, such as, national security or defense of India including preparation for defence and defense production; rural infrastructure including electrification; affordable housing and housing for poor people; industrial corridors set-up by the appropriate Government and its undertaking (in which case the land shall acquired up to one kilometer on both projects designated railway line or road for such industrial corridor); infrastructure projects including projects under public private partnership where the ownership of the land continues to vest with the Government, it is proposed to continue with the “Consent” clause provided under sub-section (2) of section 2 of the Fair Compensation in Land Acquisition Act in case of the Acquisition provided in the Act except in cases provided above.

7. Future, to ensure the growth and development of the country, while safeguarding the welfare of farmers, it is proposed to empower the appropriate Government to exempt them from “Social Impact Assessment” and “Special Provisions for Safeguarding the welfare of farmers, it is proposed to empower the appropriate Government to exempt them from “Social Impact Assessment” and “Special Provisions for Safeguarding Food Security” provisions acquisition keeping in view the bare minimum land required for such project. The appropriate Government shall undertake a survey of its wasteland including arid land and maintain a record containing details of such land, in such manner as may be prescribed by the appropriate Government. 8. It is proposed to make consequential amendment by substituting the “Companies Act, 1956” with the “Companies Act, 2013” where the word “Company” has been defined. At present, the provisions of the Fair Compensation in Land Acquisition Act extend to “private company” thereby excluding others like public company, proprietorship, partnership, nonprofit organization, etc. Therefore, in place of the term “private company”, the term “private entity” is proposed to be substituted and defined accordingly. 9. It is proposed to
exclude all such period, that is the period during which the proceeding for acquisition of the land have been held up on account of any stay or injunction issued by any court, or the period specified in the award of a Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a court or in designated account maintained for this purpose, in calculation of five years period as specified in sub-section (2) of section 24 of the Fair Compensation in Land Acquisition Act, arising out of the Land Acquisition Act, 1894. 10. Section 31 of the Act is proposed to be amended so that in the Rehabilitation and Resettlement Award passed by Collector for affected families, compulsory employment to at least one member of such affected family of a farm labourer is also include. 11. Section 46 is proposed to be modified so that the Rehabilitation and Resettlement Authority shall hold the hearing in the district where the land acquisition takes place for settlement of the objections raised in the reference under section 64 of the Act.13. Section 87 is proposed to be amended in the Act in accordance with the procedure laid down in section 197 of the Code of Criminal Procedure, 1973.14. Section after 101 which deals with return of unutilized land is being amended to increase the period after which unutilized land will be reverted back to land owner or to Land Bank from “five years” at present to “a period specified for setting up of any project or for five years whichever is later”.

15. In section 113 of the Fair Compensation in Land Acquisition Act, the word “Part” has been inadvertently used instead of the word “Act” which needs to be rectified. Further, the period provided for removal of difficulties is being extended to five years.16. The Bill proposes to replace the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (4 of 2015).

4.5. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014

On December 31, 2014, President Pranab Mukherjee promulgated the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014. The ordinance amended Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RECTLARR). This ordinance has been provided in Exhibit 1. The RECTLARR was
passed by the parliament on September 5, 2013 and came into force on January 1, 2014. The Act overrode the colonial Land Acquisition Act (LAA), 1894 which had been criticized for giving both the Government of India (GoI) and for State Government absolute power to acquire private land in the name of public purpose ‘and for promoting an unfair compensation policy. The 2013 Act, for the first time, integrated land Acquisition, Rehabilitation and Resettlement (R&R) and Social Impact Assessment (SIA). As per Section 105 of the Act, the provisions of the Act did not apply to 13 Central Acts which acquired land under special provisions specific to their domain, considered critical for development. However, the GoI could issue a notification and direct any provision of the Act, relating to compensation and R&R, to be made applicable to these 13 Acts within a year of its approval. The Act faced stiff opposition from the industry and the State Government. The industry raised concerns regarding the stalling of projects due to large consent requirement, compulsory SIA, increased project costs due to high compensation, R&R package for displaced families, and retrospective implementation of the Act. The State Government were also of the similar view. Therefore, the NDA Government, which came to power in May 2014, decided to amend RECTLARR, 2013. The notification with respect to Section 105 provided a limited time frame for the amendment. The GoI had not been able to place the notification before the parliament during the monsoon session of the Parliament due to the paucity of time. In the case a notification was not issued before Act provisions.

After the washout of the winter session of the Parliament, the GoI decided to take the ordinance route to amend Section 105. On December 31, 2014, the last day for the notification, the ordinance applied all the compensation and R&R provisions of RECTLARR to the 13 exempted laws. The ordinance also relaxed the requirements of consent and SIA survey for projects in the areas of defense and defense production, rural infrastructure, affordable housing, industrial corridors and social infrastructure projects which included Public Private Partnership. In India, the Land Acquisition Act (LAA) 1894 had served as the basis for all Government of India (GoI) and the state Government absolute power to acquire private land in the public purpose. ‘and for promoting an unfair compensation policy. The 2013 Act, for the first time, integrated land acquisition, rehabilitation and resettlement (R&R) and social Impact Assessment (SIS). As per Section 105 of the Act, the provisions of the
Act did not apply to 13 Central Acts which acquired land under special provisions specific to their domain, considered critical for development. However, the GoI issued a notification and directed any provision of the Act, relating to compensation and R&R, to be made applicable to these 13 Acts within a year of its enactment. The notification had to be placed before Parliament for a period of 30 days for its approval. The Act faced stiff opposition from the industry and the State Government. The industry raised concerns regarding the stalling of projects due to large consent requirements, compulsory SIA, increased project cost due to high compensation, R&R package for displaced families, and retrospective implementation of the Act. The State Government were also of the similar view. Therefore, the NDA Government, which came to power in May 2014, decided to amend RECTLARR, 2013. The notification with respect to Section 105 provided a limited time frame for the amendment. The GoI had not been able to place the notification before the parliament during the monsoon session of the Parliament due to the paucity of time. In the case a notification was not issued before the end of the year, the 13 Acts would have continued acquisition as per their respective Act provisions. After the washout of the winter session of the Parliament, the GoI decided to take the ordinance route to amend Section 105. On December 31, 2014 the last day for the notification, the ordinance applied all the compensation and R&R provisions of RECTLARR to the 13 exempted laws. The ordinance also relaxed the requirements of consent and SIA survey for projects in the areas of defense and defense production, rural infrastructure, affordable housing, industrial corridors and social infrastructure projects which included Public Private Partnership. In India, the Land Acquisition Act (LAA) 1894 had served as the basis for all Government acquisition of Land for public purpose.

The first land acquisition law enacted during the British Raj in 1824, which underwent several modifications and was finally replaced by the LAA, 1894. The GoI in 1947 adopted the LAA 1894. The land acquisition process as per the LAA 1894 is given in Exhibit 2. The Constitution of India placed Acquisition and requisitioning of property ‘as Entry 42 in the Concurrent List. This meant that both the Centre and State could make governing land acquisition. However, in case of a conflict between the central and state law, the central legislation would prevail.

The Act was reviewed by various committees appointed by the GoI. In 1967, a committee was appointed by the GoI to study, consult and recommend principles to
amend the 1894 Act. As a result of such reviews, the LAA 1894 was amended 17 times, after independence in 1947, by various elected government. The major amendments to LAA 1894 are described in Exhibit 3. Various State government also amended the Act in order to respond to the local demand, like in the state of Karnataka. This paper capture the policy processes leading to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RECTLARR) Ordinance, 2014. It maps the role and the influence of the three primary stakeholders – Government, industry and landowners – at various stage of the evolution of the land acquisition law in India. Land acquisition has remained a controversial issue in India resulting in conflicts between social, economic and political structures. The RECTLARR Act 2013 was an attempt by the earlier Government to provided a fair deal to the landowners who had suffered due to the weak framework of the Land Acquisition Act, 1894. The Government also had one year until December 31, 2014 to decide on whether 13 Special Acts which had land acquisition privileges should come under this Act or be exempted. However, the Act soon faced resistance from the industry due to the impact of clauses like social impact assessment, rehabilitation and resettlement, and consent requirements on projects done in public interest. After constant pressure from the industry and consultations from the State Government, the new Government finally brought in amendments to the 2013 Act. Given the one year deadline and washout of the winter session of parliament, it brought in the amendment through an ordinance.

4.6. THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2012.

In May 2011, the National Advisory Council recommended combining the provisions of Land Acquisition, Rehabilitation And Resettlement (R&R) within a single Bill.

In this direction, the Right Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement Bill, 2012 (formerly known as the Land Acquisition, Rehabilitation And Resettlement Bill, 2012) was introduced in Lok Sabha and on 5 September 2013 in Rajya Sabha. In the next few months, the Centre will be framing rules under the Act and it would be notified early next year 18.
The landmark Bill on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation And Resettlement 2013 bring an end to the era of forced land acquisition. Integrating land Acquisition with Rehabilitation And Resettlement and bringing transparency in the process of acquisition, compensation, and rehabilitation as a matter of right is a historic step. It was important to have a law to prevent forcible land acquisition which have increased during the last few decades due to big industrial and developments projects, displacement, deprivation, and disentitlement to the resources of livelihood. Some salient features of the Bill are as under.

4.7. The Land Acquisition, Rehabilitation And Resettlement Bill, 2011

Highlights Of The Bill

1. The Bill provides for land acquisition, rehabilitation and resettlement. It replaces the Land Acquisition Act, 1894.
2. The process for land acquisition involves a Social Impact Assessment survey, preliminary notification stating the intent for acquisition, a declaration of acquisition, and compensation to be given by a certain time. All acquisitions require rehabilitation and resettlement to be provided to the people affected by the acquisition.
3. Compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in case of urban areas.
4. In case of acquisition of land for use by private companies or public private partnership, consent of 80 per cent of the displaced people will be required. Purchase of large pieces of land by private companies will require provision rehabilitation and resettlement.
5. The provisions of this Bill shall not apply to acquisition under 16 existing legislations including the Special Economic Zones Act, 2015, the Atomic Energy Act, 1962, the Railway Act, 1989, etc.

Key Issues and Analysis

1. It is not clear whether Parliament has jurisdiction to impose rehabilitation and resettlement requirements on private purchase of agriculture land.
2. The requirements of a Social Impact Assessment for every acquisition without a minimum threshold may delay the implementation of certain government programmes.

3. Project involving land acquisition and undertaken by private companies or public private partnership require the consent of 80 per cent of the people affected. However, no such consent is required in case of PSUs.

4. The market value is based on recent reported transactions. This value doubled in rural areas to arrive at the compensation amount. This method may not lead to an accurate adjustment for the possible underreporting amount. This method may not lead to an accurate adjustment for the possible underreporting of prices in land transactions.

5. The government can temporarily acquire land for a maximum period of three years. There is no provision for rehabilitation and resettlement in such cases.

PART A : HIGHLIGHTS OF THE BILL

Land acquisition refers to the process by which government forcibly acquires private property for public purpose. The Land Acquisition Act, 1894 (1894 Act) governs all such acquisition. Additionally, there are 16 Acts with provisions for acquisition of land in specific sector such as railway, special economic zones, national highway, etc. the 1894 Act does not provide for rehabilitation and resettlement (R&R) for those affected by land acquisition. Currently, the R&R process is governed by the National Rehabilitation and Resettlement Policy, 2007. In 2007, two Bills ware introduced in the Lok Sabha: one to amend the Land acquisition Act, 1894, and the other to provide statutory status in 2009. In May 2011, the National Advisory Council recommended combining the provision of land acquisition and R&R2 within a single Bill. In July 2011, the Draft Land Acquisition and Rehabilitation and Resettlement Bill was published by the ministry of Rural Development for public comments. In September 2011, the government introduced the Land Acquisition and Rehabilitation and Resettlement Bill in the Lok Sabha. This Bill will replace the 1894 Act. The Bill specifies provisions for land acquisition as well as R&R. Some of the major change from the current provision are related to (a) the process of land acquisition; (b) right of the people displaced by the acquisition; (c) method of calculating compensation; and (d) requirement of R&R for all acquisition.
Public purpose

1. Land may be acquired only for public purpose. The Bill define public purpose to include defense and national security; roads, railways, and ports built by government and public sector enterprises; land for the project affected people; planned development; and improvement of village or urban sites and residential purposes for the poor and landless, government administered schemes or institutions, etc. this is broadly similar to the provisions of the 1894 Act.

2. In certain cases consent of 80 per cent of the project affected people is required to be obtained. These include acquisition of land for (i) use by the government for purposes other than those mentioned above, and (ii) use by public-private partnership, and (iii) use by private companies.

Process of land acquisition

1. The government shall conduct a social Impact Assessment (SIA) study, in consultation with the Gram Sabha in rural areas (and with equivalent bodies in case of urban areas). After this, the SIA report shall be evaluated by an expert group. The expert group shall comprise two non-official social scientists, two expert on rehabilitation, and a technical expert on the subject relating to the project. The SIA report will be examined further by a committee to ensure that the proposal for land acquisition meets certain specifies conditions.

2. A preliminary notification indicating the intent to acquire land must be issued within 12 months from the date of evaluation of the SIA Report. Subsequently, the government shall conduct a survey to determine the extent of land to be acquired. Any objections to this process shall be heard by the Collector. Following this, if the government is satisfied that a particular piece of land must be acquired for public purpose, a declaration to acquire the land is made. Once this declaration is published, the government shall acquire the land. No transaction shall be permitted for the specified land from the date of the preliminary until the process of acquisition is completed.

3. In case of urgency, the above provisions are not mandatory. The urgency clause may be used only for defense, national security, and in the event of a
natural calamity. Before taking possession of land in such cases, 80 per sent of the compensation must be paid.

**Compensation to the land owners**

The compensation for land acquisition is determined by the Collector and awarded by him to the land owner within two years from the date of publication of the declaration of acquisition. The process of determination of compensation is given below.

1. First, the market value of the acquired land is computed as the higher of (i) the land value specified in the Indian Stamp Act, 1899 for the registration of sale deeds; or (ii) the average of the top 50 per cent of all sale deeds in the previous three years for similar type of land situated in the vicinity.
2. Once the market value is calculated, it is doubled for land in rural areas. There is no doubling of value in urban areas. Then, the value of all assets attached to the land (three, buildings, etc) is added to this amount. On this amount, a 100 per cent solution, (i.e., extra compensation for the forcible nature of acquisition), shall be given to arrive at the final compensation figure.
3. Land owners whose property is acquired the urgency provisions shall be given an additional 75 per cent of the market value of the land.

**Process of Rehabilitation and Resettlement**

1. The Bill require R&R to be undertaken in case of every acquisition. Once the preliminary notification for acquisition is published, an Administrator shall be appointed. The Administrator shall conduct a survey and prepare the R&R scheme. This scheme shall then be discussed in the Gram Sabha in rural areas (equivalent bodies in case of urban areas). Any objection to the R&R scheme shall be heard by the Administrator. Subsequently, the Administrator shall prepare a report and submit it to the Collector. The Collector shall review the scheme and submit it to the Commissioner appointed for R&R. Once the Commissioner approves the R&R scheme. The government shall issue a declaration identifying the area required for the purpose of R&R. The Administrator shall then be responsible for the execution of the scheme. The Commissioner shall supervise the implementation of the scheme.
2. In case of acquisition of more than 100 acres, an R&R Committee shall be established to monitor the implementation of the scheme at the project level. In addition, a National Monitoring Committee is appointed at the central level to oversee the implementation of the R&R scheme for all projects.

3. In case the land is being privately purchased (100 acres in rural areas and 50 acres in urban areas), an application must be filed with the collector who shall forward this to the Commissioner for approval. After the application has been approved, the Collector shall issue awards as per the R&R scheme.

Rehabilitation and Resettlement entitlements

1. Every resettled area is to be provided with certain infrastructural facilities. These facilities include roads, drainage, provision for drinking water, grazing land, banks, post offices, public distribution outlets, etc.

2. The Bill also provides the displaced families with certain R&R entitlements. These include, among other things, (i) land for a house as per the Indira Awas Yojana in rural areas or a constructed house of a least 50 square meters plinth area in urban areas; (ii) a one-time allowance of Rs. 50,000 for affected families; and (iii) the option of choosing either mandatory employment in project where jobs are being created or a one-time payment of Rs. 5 Lakh or an inflation adjusted annuity of Rs. 2,000 per month per family for 20 years.

Other provisions

1. A land acquisition Rehabilitation and Resettlement Authority shall be established for settling any disputes relating to the process of acquisition, compensation, and R&R.

2. There shall be no change of ownership of acquired land without prior permission from the government. Land may not be used for any purpose other than for which it is acquired.

3. Acquired land which has been unused for 10 years from the date of possession shall be return to the Land Bank of the government. If any unused acquired land is transferred to another individual, 20 per cent of the appreciated land value shall have to be shared amongst the original land owners.

4. The government may temporarily occupy and use any piece of waste or arable land for a public purpose. This occupation may be for a period of not more
than three years. The compensation of such land may be decided mutually by the owner of the land and the Collector. Any disagreement on matters relating to compensation or the condition of the land on being returned shall be referred to the Land Acquisition and R&R Authority.

5. In any district, land acquisition will be restricted to a maximum of five per cent of irrigated multi-crop land.


**Requirement of consent from the project affected people**

The Bill requires consent to be obtained from 80 per cent of the project affected people. This means group other than owners such as agriculture laborers and sharecroppers may also be required to give their consent. This provision differs from other existing laws such as the Industrial Disputes Act, 1947, and the Companies Act, 1956. In all these Acts, in the case of closure or change of ownership of the company, consent is required to be obtained only from the owners although the livelihood interest of all the employees is protected. The Land Acquisition (Amendment) Bill, 2007 (which lapsed in 2009) required consent to be obtained from 70 per cent of the land owners and not the affected people.

**4.8. GOVERNMENT OF GOA LAW COMMISSION**

Amendment of Land Acquisition Act 1894 to enable the Collectors to award compensation at market rates and other benefits according to Rehabilitation and Resettlement Policy of the Government. Report No. 14 May 2011.

Indian is galloping towards a new horizon of wealth and prosperity. It is looking forward to a day when it will emerge as the Super power. Its growth engines are showing admirable outputs. Per capita incomes are booming. Socio economic indicator of health, wealth and infrastructure are constantly on the rise. Population no doubt is growing but so too is the middle income section of the population. Infant mortality rates have come down drastically. Average life span has increased to almost 70 years. Sparkling new Airports, Metros, highways and Urban Conglomerates now define the life style at least of the urban Indians. Fashion and design now dictate food
habits, clothing, housing, education and white goods of every kind are now available off the shelf. In short, Indian is on the has taken a toll of the rural landscape. Pristine agricultural land is being invaded to satiate the appetite for change and development. The farmer is being uprooted to provide the infrastructure needed for growth. The common method of taking over land for public purposes is the age old land Acquisition Act enacted way back in the year 1894. The methodology is simple.

The process is set rolling by declaring government’s intention to acquire land for a public purpose through a notification under section 4 of the Land Acquisition Act 1894. The land in question is surveyed, mapped and measured. Compensation to be paid to the land holders is determined by the Collectors on the basis of local enquiry. Price of similarly situated lands in the vicinity on the date of the first notification declaring government’s intention to acquire the land is taken into consideration. Objections to acquisition are brushed aside under a spacious plea that public purpose overrides all other concerns. Claims for higher compensation as well as disputes regarding apportionment of the compensation awarded are referred to the District Courts for decision under section 18 of the Land Acquisition Act. Simple it may sound. But the entire methodology adopted by the bureaucracy is time consuming, apathetic and harsh upon the landholder. Land acquisition is in fact land confiscation for the crime of holding rights in the land fancied by the authorities as most suitable for the so called “ public Purpose”. Years pass between the date of first notification and date of actual disbursement of compensation. Quite often the land holder loses both his shelter and means of livelihood. Compensation awarded is so abysmally poor that it defies even the definition of the word compensation. The scale of injustice meted out to landholders in the name of public purpose define all logic. No wonder that at times the pent up anger of the land losers manifests in violent agitations as witnessed in recent years in places like Singur and Nandigram in West Bengal, Noisa in Uttar Pradesh and Gurgao in Haryana. It is therefore time to take a hard and close look at the process of statutory land acquisition and ensure adequate and efficacious compensation to the land holders whose land is acquires and guaranteeing simultaneously alternate shelter and means of livelihood in appropriate cases. Ms Sonia Gandhi, Chairperson of UPA in one of her recent reactions to agitations by farmers has set out a road map for land acquisition. She said, If farmers are of necessity deprives of their land based livelihood, they must be provided with adequate
compensation and alternate occupation. “This principle must also be extended to non farmers who lose their shelter or livelihood or both. The logic is simple. The land holders in the neighborhood of projects set up on acquired land they reap dividends for all times to come while the land loser is left cursing his fate and of course the power that be responsible for his loss. This unjust system must be done away with forthwith. Fortunately, free consultancy in this regard is available. Government of Haryana is now the Role Model for the entire Nation. They have unveiled a fair, just and equitable land acquisition policy.

They have hiked the compensation payable to the farmer and laced it with inflation linked royalty payable for 33 years at the rate of Rs.21000/- to Rs.42000/- per year which is linked to inflation and is increased every year by Rs.750/- to Rs.1500/- depending upon the land acquired. They have fixed floor rate of land at prices ranging between Re.12 Lakhs to Rs.42 Lakhs per acre depending again on location of land and its potential for development. In addition, a no litigation incentive at the rate of 20% of the compensation in addition to interest and solatium is offered to the land holders if they agree not to take the matter to the courts. If the land is acquired for a private developer, floor rates and annuity rates are still higher. Residential plots, business premises and a job per family are additional aspects of the Rehabilitation and Resettlement policy (R & R policy) of the state of Haryana. It is a comprehensive policy under which the land oustees are entitled to free technical tube well and other irrigation facilities, a special fund for community development, exemption from Capital Gains Tax, preference in allotment of residential, commercial and industrial plots etc are available. It also provides for Dispute Resolution Mechanism. Scenario in Goa is far from satisfactory. Large tracks of land are being acquired for Mopa Airport and Sports City in pedne. Existing Industrial Estates are being extended; new estates are being set up in different parts of Goa. SEZs were permitted in large tracks of land. Rajiv Gandhi IT habitat occupies prime land where the land prices are upwards of Rs.50000/- per Sq.mt. NH4 A and NH17 are being widened. Railways, ports and Defense authorities also want land. Demand for land is even increasing. Farmers affected by land acquisition for the Mopa Airport and Sports City are up in arms. Those likely to be affected by the new alignments of NH4A and NH17 have flexed their muscles. They and their sympathizers have held a massive rally panaji and Porvorim and blocked all roads for almost half the day.
Communidade of Verna have registered their opposition to additional land acquisition by the Industrial Development Corporation for extension of Verna Industrial estate. Farmers form Mapusa have started mobilizing against the new Outline development plan of the Mapusa town which earmarks large tracks of private land for projects like bus and taxi stands, parking lots, gardens, government and municipal buildings, schools and colleges, playgrounds and joggers parks as well as commercial complexes like markets, offices, malls and multiplexes. Land holders form and around other town like Margao, Ponda, Vasco, etc are likely to rise in revolt sooner than later. We think the Goa Government must act at the earliest if it wants to offset the likely backlash.

The Government of Goa must adopt its own R and R (Rehabilitation and Resettlement) policy which should earmark among others such minimum price per acre/per sq. Mt. And such rates of annuities as may be commensurate to the market conditions prevailing in Goa. The section 11 of the land Acquisition Act 1894 relates to inquiry and award by the Collector for the land to be acquired. The award to be prepared under this section provides for”1. The true area of the land 1. The compensation which in the opinion of the Collector should be allowed for the land 3. Apportionment of compensation among all person having interest in such lands. We are of the opinion that section 11 of Land Acquisition Act needs to amended appropriately to empower the Collector to provide fair compensation as per prevailing market rates and such other facilities/amenities including annuity, house site, commercial space, industrial plots, etc. As may be provided by the Government thr4ought its R and R policy notified from time to time. The Law Commission therefore, proposes that section 11 of the Land Acquisition Act 1894 be amended in the manner set out in annexed Draft Amendment Bill (Annexure A). The Law Commission encloses herewith salient features (R and R policy of Haryana (Annexure B) for the guidance of the Government of Goa. The Law Commission also encloses herewith comprehensive R and R policy of Government of Haryana which can be used as by the State Government as a guide for framing its own policy (Annexure C). The Government of Goa had constituted a Committee comprising of the following Officers to discuss the Land Acquisition policy for the State of Goa.

1. Chief Secretary
2. Finance Secretary
3. Law Secretary
4. Secretary (Revenue)
5. Collector (North)
6. Collector (South)

The Hon’ble Revenue Minister and the Hon’ble Chairman Law Commission were invited to attend this meeting. The first meeting of this Committee was held on 1st December 2010 at 10.30 a.m in the Secretariat. It was presided over by the Hon’ble Chief Minister of Goa. If constituted a sub committee comprising of the following Members:

1. Chairman of Law commission......................Chairman
2. The Law Secretary.................................Member
3. The Collector (North).............................Member
4. The collector (South)..............................Member
5. The joint Secretary (Finance)......................Member
6. The State Registrar-cum-Head
   Of Notary Services.................................Member

This sub Committee was directed to suggest minimum floor rates for different types of lands in the towns and villages of Goa. This Committee met on 10/12/2010 and directed the Collectors to compile the data regarding market price of different types of land of different towns and villages of Goa. This was a strenuous job which has been satisfactorily completed by Collectors of North and South of Goa. They submitted their Report on 28/04/2011. The Law Commission appreciates the work of Collectors and their subordinates. The statistical data is also annexed to this Report (Annexure D).

**Recommendation:**

Considering the above, the Law Commission is pleased recommend as follows

1. The Government of Goa may expeditiously frame its own R and R policy preferably on the lines of R and R policy of state of Haryana.
2. The states of Goa may expeditiously adopt the minimum floor rates for different types of land in different parts of Goa. In fact, village wise rates be notified every year which can also be used for the purpose of Stamp Duty.
3. To enable the Collectors to award compensation as per the R and R policy of Goa Government.
4. The Land Acquisition Act may be amended as per the Draft Amendment Bill annexed hereto.

Annexure A

Land Acquisition (Amendment) Act 2011

An Act to amend the law for determination of fair compensation and for grant of allied benefits to persons affected by the land Acquisition. Whereas, it is expedient to amend the law for acquisition of land needed for public purpose and for determination of amount of compensation as per prevailing market price and for providing such other benefits to the affected person as per Governments policy of Land Acquisition, Rehabilitation and Resettlement of affected person. Be it enacted by the Legislative Assembly of the State of Goa in the year of the Republic as under-

1. Short title, extent and commencement:

(1) This Act may be called as Land Acquisition (Amendment) Act 2011.

(2) It extends to the whole of Goa.

(3) It shall come into force with effect from such date as may be notified.

2. In section 11 of the Land Acquisition Act, sub section (1) sub clause (ii) be substituted by the following:

The compensation which in his opinion should be allowed for the land and which shall not be less than the compensation determined in terms of notification issued by the Government fixing the minimum market value of similar lands and such other benefits as may be permissible under any Land Acquisition, Rehabilitation and Resettlement policy notified by the Government from time to time.”

Statement of Object and Reasons

Amount of compensation paid by the Government for land acquired for public purposes is usually much below the market price. Usually land acquired is under specific land use but is put to better use on acquisition. For example, land under agriculture is acquired and put to use for settlement or commercial or industrial purpose. The acquiring departments/ companies earn much money in the more money in the process. Besides, the landholder loses valuable source of income. This
leads to objections to land acquisition, litigations as well as morchas, hartals and other types of agitations. Government of Haryana, Uttar Pradesh and some other states have formed Rehabilitation and Resettlement policies for the benefit of land oustees which provide for a fair market price, annuities for farmers for sufficiently long periods, allotment of house sites, commercial spaces and industrial plots, etc to the affected persons. Government of Goa desires to similar benefits to land oustees. Hence, this enabling amendment.

**Annexure B**

*Rehabilitation and Resettlements policy of Haryana-Salient Features*

1. Market value as compensation for land acquired. Minimum floor rates prescribed. Land price fixed between 12 Lakhs to 42 Lakhs and more acre.  
2. Annuity for 33 years at Rs.2100/- to Rs.42000/- per year with annual increment of Rs.750/- to Rs.1500/-  
3. No litigation incentive equal to 20% of the basic rate of land plus solatium and interest payable under law.  
4. Residential plots where self occupied house is acquired for unavoidable reasons.  
5. Commercial sites/industrial plots where 75% and more revenue estate is acquired.  
6. One job per affected family in group C and D categories and preference in jobs to the dependents.  
7. Alternate Electricity connection.  
8. Alternate irrigation facility including tub wells  
9. Exemption from stamp duty and registration charges if the outtee invests his compensation in agricultural land within 2 years.  
10. Special scheme even to agricultural labourers and artisans dependent upon land acquired for their livelihood.  
11. Free technical education and Community infrastructure facilities for the benefit of oustees.  
12. Creation of social and Community infrastructure facilities for the benefit of oustees.  
13. Exemption from capital Gains tax on compensation.
14. Investment Advisory services to oustees to help them invest compensation profitably.

15. Grievance/dispute resolution Mechanism

4.9 National Policy on Resettlement and Rehabilitation of project Affected persons, 2004

February 2004, Ministry adopted a National policy for Resettlement and Rehabilitation. It was stated in the preamble that there is need to minimise large scale displacement and to handle the issues related to resettlement and rehabilitation with utmost care. Intention of the policy is ‘to impart greater flexibility for interaction and negotiation so that resultant package gains all round acceptability in the shape of a workable instrument providing satisfaction to all stakeholder/ requiring bodies.’ The policy resolution is an improvement over the earlier ones. However, it did not mention the need to amend the Land Acquisition Act to bring it in line with the policy.

4.10 The Land Acquisition (Amendment) Bill, 2007

The acquisition of land by governments for development and industrialization has become a contentious political issue in recent years. Many have criticized the Land Acquisition Act, 1894, as a draconian piece of legislation which has been used to forcibly acquire land without paying adequate compensation.

Give the increasing chorus of protests over such issues as displacement and rights over land, the government is planning to introduce an amendment to the 1894 Act. The Land Acquisition (Amendment) Bill, 2007 was passed by the LokSabha on 25th February 2009 (the last day of the session) but the bill lapsed with the dissolution of the 14th LokSabha. The Amendment attempts to expand the rights of those whose land is being acquired while restricting the types of projects for which governments can Land. It also provides for a separate authority to settle disputes over land acquisition. A companion piece of legislation (the Rehabilitation and Resettlement Bill, 2007) attempts to specify the benefits that displaced people will receive.
Highlights of the Bill

- The Land Acquisition (Amendment) Bill, 2007 amends The Land Acquisition Act, 1894.
- For acquisition resulting in large-scale displacement, a social impact assessment study must be conducted. Tribals, forest dwellers, and those with tenancy rights are also eligible for compensation.
- Acquisition costs will include payment for loss or damages to land, and costs related to resettlement of displaced residents.
- While determining compensation, the intended use of land and value of such land in the current market is to be considered.
- The Bill establishes the Land Acquisition Compensation Disputes Settlement Authority at the state and central levels to adjudicate disputes resulting from land acquisition proceedings.

Key Issues and Analysis

- The Bill bars the jurisdiction of civil courts on all matters related to land acquisition. It is unclear whether there is mechanism by which a person may challenge the qualification of a project as ‘public purpose.’
- The settlement Authority is a judicial body but could be entirely staffed by members without judicial qualifications or experience.
- When acquired land is resold, the original acquirer is to distribute 80% of the capital gains to the original owners or their heirs. This implies that every acquirer must track the original owners and their heirs in perpetuity. Also, the resale price of land may be difficult to compute when it is part of larger in which a company is taken over.
- Companies have to offer part of compensation as shares or debentures. Unlike shares, debenture do not provide the land owner with a share of the profits of the project.

The Bill makes special provisions for compensation if land is acquired under ‘urgency’. The term ‘urgency’ is not defined.
Highlights of the Bill

Land acquisition refers to the process by which the government forcibly acquires private property for public purpose without the consent of the land owner, which is different from a market purchase of land. The land Acquisition Act, 1894 addresses the process of land acquisition in India and was last amended by the Land Acquisition Amendment Act, 1984. The Act takes a broad definition of ‘public purpose’ permitting a diverse range of projects. A number of supreme court cases have highlighted concerns related to compensation, valuation of land, definition of ‘public purpose’ and other issues to land Acquisition. Citing problems with the principal Act, the government recently introduced the land Acquisition (Amendment) Bill, 2007. The land Acquisition (Amendment) Bill, 2007 amends the land Acquisition Act, 1894. It expands the rights of those displaced by land Acquisition, and limits the ability to acquire land public purpose. The Bill also establishes the Land Acquisition Compensation Disputes Settlement Authority at the state and national 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. For issues to the Rehabilitation and Resettlement Bill, 2007 see our compensation Legislative Brief.

Public purpose:-

- The principal Act permits land acquisition if the land is to be used for a ‘Public purpose’ project. ‘Acquisition’ refers to forcibly to obtaining land without consent of the owner. ‘Public purpose’ includes land needed for village-sites, town or rural planning, land for residential purpose for poor or displaced due to natural calamities, land for planned development (including education, housing, health and slum clearance), or land needed by a state corporation. The Bill changes ‘Public purpose’ to allow land acquisition only for (i) strategic naval, military, or air force purpose, (ii) public infrastructure projects, or (iii) for any purpose useful to the general public where 70% of the land has already been purchased form willing sellers through the free market.
The Bill defines ‘infrastructure’ as any project relating to electricity, construction of roads, highways, bridges, rail, mining activities, water supply, sanitation and sewerage, and any other notified public facility.

Currently, private land may be acquired on behalf of a company for a ‘Public purpose’ project. The Bill prohibits land acquisition for companies unless they have already purchased 70% of the land needed.

Social Impact Assessment Study

If land acquisition results in the displacement of 400 families in the plains or 200 families in the hills or tribal areas, the government must conduct a social impact assessment. The study will include the effects of displacement, a Tribal Development plan, and provisions for infrastructure development in resettlement areas.

Process for Land Acquisition

‘Appropriate government’ is determined by the location of the acquired land and the intended project. The principal Act gives jurisdiction over land acquired for union purposes to the central government and for any other project to the state government. This Bill includes multi-state land acquisition projects, as central government jurisdiction.

To identify land needed for a public project, the government must issue a notification. The notification must be published in the Official Gazette and in two daily newspapers circulating in that locality. After a notification is published, the government authorized to conduct work on the land to determine its suitability for an intended project. Any objections must be registered with the collector’s office.

If the land is suitable, the government must issue a declaration stating the land will be used for public purpose. The declaration must be issued within one year of notification; otherwise a fresh notification cannot be made for an additional year. If this time expires again, notification cannot be issued for five years. No individual shall make transactions or encumbrances on notified land until the declaration is made or compensation is paid.
• The Bill states acquisition costs will include suffering or loss, payment for damages to the land during acquisition, cost of land needed for displaced residents, cost of infrastructure development at resettlement sites, and administrative, costs of acquisition and resettlement. These costs must be borne by the entity acquiring the land.

• The collector must make details of the land acquisition process, including compensation amounts, publicly available.

Assessing Market Value of the Land

• In the principal Act, the Collector only needs to determine the current price value of the land for compensation amounts. The Bill requires the collector to take the highest value of: (i) the minimum land value for the area as specified in the India stamp Act, 1899; (ii) the average sale price of at least 50% of the higher priced sales of similar land in the village or vicinity; or (iii) the average sale price of at least 50% of the higher priced land purchased for the project. The value of trees, plants, or standing crops damaged must also be included.

• In the event that a price is not available or or the land is in area where land sales have been previously restricted, the state government shall set the floor price per unit of land. This price will be determined by average prices of at least 50% of the higher priced land in the vicinity.

• While determining compensation, the collector must also factor in the intended use of the land and the value of such land in the current market.

Compensation

• In the principal Act, the term ‘person interested’ includes those who are claiming land compensation and those interested in an easement (limited right of use of the land) on the land. The Bill proposes to expand the definition to include tribal and other traditional forest dwellers who have lost any traditional rights as well as individuals with tenancy rights under state law.

• In addition, if any damages are incurred on land excluded from acquisition proceeding, the appropriate owner must be compensated within six months.

• Payment for acquired land must be made within one year from the date of the declaration. The collector can extend this time limit by six months with a
penalty of 5% per month. If payment has not been made within one year nor has collector granted an extension, the land acquisition proceedings shall lapse.

- After the compensation amount is determined, the Collector must ensure that payment occurs within 60 days. Possession of land shall not be taken unless full compensation is paid or tendered to the land owner.
- Land owners whose property has been acquired under urgency shall be compensated an additional 75% of the market value of the land.
- If the acquisition is for a company, shares or debentures of 20-50% of the compensation amount must be offered through these options. The interested person may either accept this offer or opt for a full cash settlement.

**Restrictions on Acquired Land**

- Land acquired can be transferred only for a public purpose and with prior approval from the appropriate government.
- Acquired land that is unused for 5 years from the date of possession shall be returned to the appropriate government.
- Whenever acquired land is transferred to another individual, 80% of the difference between the consideration received and the original acquisition cost shall be shared among the original land owner and their heirs.

**Land Acquisition Compensation Disputes Settlement Authorities**

- Currently, all land acquisition cases are referred to civil courts for a decision. The Bill establishes the Land Acquisition Compensation Disputes Settlement Authorities at both the state and national levels to adjudicate all land acquisition disputes within six months. The Bill gives these Authorities the same powers as a civil court and deems proceedings of the Authorities as judicial proceedings. The government may form more Authorities benches.
- In the event of a dispute, the land owner must file a written complaint with the Collector. The Collector shall refer any dispute cases to the Authority within 15 days from the receipt of the complaint. If the Collector fails to act, the land owner may petition the Authority directly to request the Collector to file the reference within 30 days.
If the Authority decides in favour the land owner, they shall award compensation for (i) market value of the land, (ii) property damages, (iii) damages to the land owner, (iv) damages to the land owner’s salary, movable, or immovable property, (v) expenses incurred by the owner for change or residence or business, and (vi) any damages resulting in a loss of profit from the time of declaration to possession of the land. In the Act, the Authority awards a sum of 12% of market value from the publication of notification to the date of possession or compensation paid. Furthermore, the land owner receives an additional sum of 30% of the market value. The Bill increases this sum to 60% of market value.

4.11. New Land Acquisition Bill finalized

Written by Sandip Das | New Delhi | Updated: Jul 28 2011, 07:01 am hrs to take on the discontentment against land acquisition process, rural development minister Jairam Ramesh has cleared a draft bill for public comments. The minister’s land acquisition and rehabilitation bill will be up on the ministry website just a fortnight into his term at Krish Bhawan.

The Bill proposes a compensation of more than six times the circle rate of land, acquired for industrial and real estate projects. This is in line with the recommendations of the National Advisory Council but given the time constraint is unlikely to be cleared by parliament in the monsoon session. The Bill sticks to the NAC script in its other major recommendations which is mandatory consent for at least 80% of the affected people as a pre-requisite for commencing land acquisition. Since land is a concurrent subject, the Act will however have only an advisory status unless accepted by the state legislatures. It would be the state government who would decide on whether the private sector or the state government, who would initiate land acquisition drive, an official said. The new bill also propose compliance with all existing laws on tribal welfare. The bill also suggests inflation linked annuity to those who had given up their land. The bill also suggests that if the acquired land belongs to a person, then an additional compensation would have to be worked out. Besides the Bill would also have separate norms for land acquired around urban and rural areas. After a final meeting with National Advisory Council (NAC) members and other key ministry officials on Wednesday, Jairam gave the final touch to the bill which for the
first time combines both land acquisition land rehabilitation under one law. This would be the second attempt by the UOA government to formulate a national policy on land acquisition after series of violence protests against forceful occupation of land for industries were reported from Uttar Pradesh, Orissa, West Bengal, Maharashtra and other state in the last few years. Earlier the National Rehabilitation and Resettlement Policy, 2007 were passed by the Loksabha in February 2009 and had been tabled in the RajyaSabha subsequently. However, both bills lapsed with the dissolution of the 14th LokSabha

4.12. New Land Acquisition Rehabilitation Bill: ample Leeway for Corporate Land Grab

This January market two years of the Kaliganagar massacre and one year of the first assaults on the peasants of Nandigram. In the ensuing period, Kaliganagar and Nandigram have multiplied, even as ruling parties of all hues are united in their policy of SEZ, corporate land grab and state repression on movements, and the people and peasantry are united in their determination to intensify their resistance. In the first week of January this year, Congress Digambar Kamat Government in Goa was forced to bow to overwhelming public opinion and people’s movements and scrap all SEZs in Goa;

Congress in fact has blamed the SEZ lobby for trying to destabilize its Goa Government! In the same week, Union minister for Commerce kamal Nath sent a detailed report to the PM, extolling the success stories of the SEZ policy which is set to complete two years of its enactment soon.

As life and death battles being waged across the length and breadth of the nation on the issue of land acquisition, and as the policies of corporate land grab stand thoroughly exposed and discredited, government have been brutally dealt through police firings in Nandigram, singur, Dadri and innumerable other places and simultaneously attempts are made are made to contain the anger by offering a new Land Acquisition Amendment Bill and the National Rehabilitation and Resettlement Bill, to be introduced in the winter session of the Parliament. The state objectives of these bill are to “strike a balance between the need for land for development and other public purposes and protecting interests of the persons whose lands are statutorily
acquired.” However, on a close examination of the provisions of the amendments one realizes that the balance is heavily tilted against the “affected persons.”

The Land Acquisition Bill 2007, in the statement of object and purposes, admits that ‘public purpose’ for which land is to be acquired has to be defined. However, it very categorically enlarges the scope of ‘public purpose’ clause to include a huge swathe of public facilities, from electricity, communication and water supply to mining. The admission of mining as a category in infrastructure projects for public purpose is particularly dangerous given the fact that mining-related project in the last decade have proved to be crystal clear examples of corporate loot. Mining projects include captive mines of private steel/power companies and 100% export mines and mining SEZs, the latest case in point being the POSCO project in Jagatsinghpur in Orissa. On the second anniversary of Kaliganagar massacre, which serves as a ‘warning’ to tribal poor of the consequence of resisting land grab in Orissa, it is nothing but an irony of sorts that mining projects have been include in the public purpose clause. The public purpose infrastructure clause goes on to include “Any other public facility as may be notified by the Central Govt” which leaves ample scope for land acquisition for any purpose which may or may not be in public interest. The 1894 Act had a provision for the state acquiring land private companies. The 2007 amendment bill in its statement of objects mentions that “it is desirable to omit the (this) provision of the act” in the interest of a “fair arrangement of willing buyer willing seller” though the willing seller willing buyer” arrangement might not always be “fair” given the muscle power private companies wield. However, the new bill talks of state intervention for land acquisition for private companies to a “limited” extent of up to 30 per cent.

At present, the bill, and the policy on land acquisition announced by the Union Government earlier, state that the state government can acquire up to 30 percent of the “total area required” for reasons of contiguity. For this, in practice, letters of intents from neighboring landowners are to be produced for the state to start notifying acquisition of land for unwilling landowners identified by the private company. This is an obnoxious practice as moneybags can easily obtain fake Lois to get the state acquire any amount of land they require from unwilling landowner. Moreover, private land mafia and goons and powerful politicians are being deployed by them in numerous instances to coerce the landowner to sell their land under force, for instance
in cases like Kakinada SEZ and in for SEZs in Sriperumpudur, at Pallikkaranai near Chennai IT Corridor and in Anantapur in AP or Nandagudi near Bangalore. Very clearly the state would intervene not be protect the vulnerable land losers but state power would be used to force unwilling landowner to surrender their land. This 30 per cent leeway given and government to acquired land has come as a sigh of relief for private investors and promoters as there has been land acquisition by the state has been forced on the back foot since April last year following violent protests by farmers.

In the ‘Notes on Clauses’ in the Land Acquisition (Amendment) Bill 2007, it is mentioned that “Clause 4 seeks to insert new section 1A to provide for application of provisions of Rehabilitation and Resettlement Bill 2007 for land acquisition under this act”. Interestingly, the Rehabilitation and Resettlement Bill 2007- which has been made applicable for cases of land acquisition under this proposed act for land acquisition-defines the party for which the land is being acquired thus: “‘requiring body” means a company, a body corporate, an institution, or any other organization for whom land is to be acquired by the appropriate Government, and includes the appropriate Government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land in public interest to a company, body corporate, an institution, or any other organization, as the case may be, under lease, license or through any other mode of transfer of land’ [3 (t)].

If both the bills are to be applicable simultaneously for all projects then it is quite evident that land wound be acquired by the state for a government body/joint sector promoters and can be handed over on sale or lease to private companies given the fact that Build-Operate-Transfer (BOT) is the new mantra for “development” today. The “restriction” on private companies would hold no meaning in such cases.

Infrastructure and amenities to be provided in the resettlement site have not been specified in the Bill. Only some unspecified amount of profit of the requiring body is to be spend on vague developmental activities in the resettlement area which is left to be the discretion of the Government. Experiences of the ousters of almost all developmental projects in the last fifty years are a pointer to the dismal record of government in providing even minimal facilities like drinking water, school, proper housing facilities etc. one has to only to take a round of ‘vasavats’ in Narmada Valley
or resettlement sites of Hirakud project affected people to see this; the story of denial of rehabilitation is same everywhere.

The Rehabilitation Bill does not provide any guaranteed land-for-land compensation which has been one of the major demands of all movements against land acquisition all over the country and was also admitted by the Apex court in case of Narmada Bachao Andolan as “the principal” of compensation. Employment to one person of each displaced “may be” given, provided he/she meets necessary skills etc. it is not obligatory on the part of land grabbers. It is evident that farmers who stand to lose their only source of livelihood in the form of their land do not possess necessary skills to be employed either as automobile engineers in Ratan Tata’s car factory or chemical engineers Reliance’s petro-chemical project. This vague clause absolves of any responsibility to provide any alternate sources of livelihood to the oustees. Any claim for employment can be turned down using the skills shield.

There is no explicit provision in the Bill to give it retrospective to make it applicable to all cases of land acquisition of the past. Though the UPA leaders including the prime Minister and all other concerned minister have gone on record that this bill was being brought in because of resistance to SEZs, there is no clear-cut and categorical Provision that this Bill, when enacted, would be applicable in all cases of SEZs even if their approval and notification had preceded the passage of this Bill. The UPA Government’s proposed amendments to the Land acquisition Act of 1894 and its proposed R&R Bill are likely to be welcomed by the CPI (M) which has deen demanding such enactments for long; but it is clear that these pieces of legislation are intended to smooth the way for land grab by giving it a veneer of respectability and restraint-rather than to protect the peasant from land grab. For the peoples movements waging struggle armed with the legacy of kalinganagar and Nandigram, the UPA Government New Year gifts are a monkery. Nothing shot of scrapping of the Land Acquisition Act 1894 and SEZ Act 2005 can be acceptable to the peasants resisting land grab.

4.13. Land Acquisition Amendment Act 1954

The definition of – Company which was a company registered under the Indian Companies Act, 1882, or under the English Companies Act, 1862 to 1890, or incorporated by an Act of Parliament or of the Governor General in Council, or by
Royal Charter or Letters Patent ‘ was extended to include a society registered under the Cooperative societies Act, 1912’,

4.14. Land Acquisition Amendment and Validation Act 1967

The Act validated the Acquisition initiated under the Land Acquisition ordinance 1967. In cases where the final declaration of intended Acquisition was made after three years of expiry of the preliminary notification, the compensation award was to include a six percent interest on the market value of the land.

4.15. Land Acquisition Amendment 1959

Local authority include a town planning authority set up under any law. Company meant i) a company defined under companies Act 1956 ii) societies registered under the Societies Restriction Act, 1860 iii) A cooperation society within the meaning of any law relating to cooperation society

4.16. Land Acquisition Amendment 1958

Acquisition of land for Companies was extended to include acquisition needed for the construction of some building or work for a Companies which was engaged or was taking to steps for engaging itself in any industry or work which was for public purpose.’

4.17. Land Acquisition Amendment 1957

Acquisition of land for Companies was extended to include industrial concern, ordinarily employing not less than one hundred workman owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workman employed by the concern or for the provision of amenities directly connected there with.

4.18. Land Acquisition Amendment 1956

Any person interest in any land which had been include in the preliminary notification could, within thirty days, after the issue of notification, object to the acquisition of the land or of any land in the locality to the Collector in writing. The Collector was required to submit the report containing his recommendation to the local Government.
The valuation of the land was to be done as on the date of the publication of preliminary notification.

4.19. Land Acquisition Amendment 1955

The award declared for the claimant by the Collector was given the status of a decree and the statement of the grounds of every such award a judgment.

4.20. State Rehabilitation Council

The 1998 Amendment changed the state Rehabilitation Advisory Council’s name to the State Rehabilitation Council (SRC). Before appointing members to the SRC. The Governor must solicit recommendation for council members from a wide variety of organization interested in individual with disabilities. Minority populations must be represented on the SRC to the greatest extent possible. The SRC must also jointly develop, review, and approve state and goals and priorities in providing VR service.
References:


