Chapter 3

Legal and institutional mechanisms of Land Acquisition policy in India

In this chapter there will be a brief discussion about the formulation of the land acquisition policies in India during the colonial period and the extent of transformation that has occurred in the policy in the post-colonial period. The chapter not only details the evolution of the Central Act of land acquisition but also its salient features so as to provide an understanding of the processes and procedures involved during land acquisition. The evolution of the legal and institutional structure of the land acquisition policy and the rehabilitation policy is under exploration here. The criticisms raised by the land acquisition Act and the rehabilitation policies are also explored briefly. A detailed analysis of the recent Land Acquisition and Resettlement & Rehabilitation Bill is included to understand the current legal scenario. Since understanding the Kerala context is relevant for the study undertaken, the adaptation of the Act in the State over the years is also detailed. In addition to this, other central and state policies which are directly or indirectly linked to the land acquisition policy through their course of action, have also been briefed, to understand the inter-linkages and intricacies involved, when a land acquisition process is undertaken.

History of the laws on land acquisition in India

The history of the land acquisition laws started with the year 1870, i.e. 140 years ago during the colonial period when the Land Acquisition Act 1870 was formulated with the intention of making land available for execution of public works. The number of litigations and acquisition expenses were high under this Act which forced the authorities to formulate a new Act in 1894 which vested more powers on the Collector. The intention was to reduce the time and money spent for litigation purposes. The new Land Acquisition Bill formulated in 1894
was passed on 2\textsuperscript{nd} February 1899 and came to be known as the Land Acquisition Act 1894 (LAA 1894). It came into force on 1\textsuperscript{st} March 1894. This act was used for acquiring lands for public works during the colonial period. India gained independence from the British rule in 1947, but the Indian state continued to use the Act for acquiring land for development purpose without making any significant changes in the basic philosophy of the Act. Minor amendments were made in 1919, 1921, 1923, 1933, 1962, 1967, 1984, and 2007. A comprehensive amendment came in 1984, based on the recommendations of the Law Commission with the intention of ‘strengthening the rights of the individual and guaranteeing a modicum of public accountability’ (Sinha 1996. 1453), but the governing principles continued to remain the same. The amendment of the 1894 Act in 1984 permitted the state to acquire additional land for those who get displaced in the project and also increased the percentage of solatium. The additional acquisition of land was not binding and depended on the interest of the state.

In addition to the LAA 1894 there were other acts through which land could be acquired depending on the nature of the project. The differences in legislative provisions followed by various state governments causing ‘selective justice’ resulted in a recommendation in 1989 by the Conference of the Revenue Secretaries of the State that all lands should be acquired under LAA 1894 alone (ibid). But this remained as a recommendation and still projects continues to be acquired under different legislative provisions, though LAA 1894 remains the principal act for land acquisition in the country. A Land Acquisition Amendment Bill which raised significant questions on the condition of resettlement and rehabilitation was introduced in the Parliament but it got lapsed without discussion in 2009. This was despite the Supreme Court special order for undertaking prompt measures for rehabilitation in the event of acquisition of agricultural lands in large scale from farmers (Patnaik 2009). Further, the definition of public purpose was vague even under the new amendment Bill. The Bill also was not modified to include compensation for those dependent on the land acquired for livelihood (Saxena 2009). Draft Resettlement and Rehabilitation Policies were formulated in 1985, 1993, 1994, 1998, 2004 and 2007 in the backdrop of increasing protests against the land acquisition policy of
the state which resulted in extensive displacement, loss of livelihood and
destruction of common property resources across the country. But the policy was
never provided with a legal status. Recently in 2011 a shift occurred in the land
acquisition policy when the Land Acquisition Act was combined with the
Resettlement and Rehabilitation policy of the country to formulate the Land
acquisition and Resettlement & Rehabilitation Bill. It claimed to be progressive
with regard to consultation with the people, transparency of acquisition process,
acquisition of agricultural lands as well as issues related to rehabilitation and
compensation. But the new Bill raised controversies over the explicit stand taken
by the state in facilitating excessive land acquisition in the name of
industrialisation and infrastructure development without considering the socio-
environmental implications.

The Central Act - The Land Acquisition Act 1894

The Central Act for land acquisition formulated in 1894 remains to this day as
the major Act for supporting the state acquisition of land. It was formed with the
intention of acquisition of land needed for public purposes and for Companies. It
extends to the whole of India except Jammu and Kashmir. It has remained as the
Central Act though state amendments have come in across the years from the
period of its formulation. But the basic philosophy of the Act remained the same
irrespective of the changes made by the state. In the Act the term Public Purpose
4 denotes the following:

i) The provision of village-sites, or the extension, planned development or
improvement of existing village-sites
ii) The provision of land for town or rural planning
iii) The provision of land for planned development of land from public
funds in pursuance of any scheme or policy of Government and subsequent disposal
thereof in whole or in part by lease, assignment or outright sale with the object of
securing further development as planned
iv) The provision of land for a corporation
v) The provision of land for residential purposes to
the poor or landless or to persons residing in areas affected by natural calamities,
or to persons displaced or affected by reason of the implementation of any scheme
undertaken by Government, any local authority or a corporation owned or
controlled by the state.
v) The provision of land for carrying out any educational,
housing, health or slum clearance scheme sponsored by Government, or by any
authority established by Government for carrying out any such scheme (or a local
authority or society)
vi) The provision of land for any other scheme of development

4 The Land Acquisition Act 1894
sponsored by Government or, with the prior approval of the appropriate Government, by a local authority. viii) The provision of any premises or building for locating a public office.

From the above, it is clear that the LA Act was formulated with the objective of acquiring land predominantly for public sector undertakings and other development programmes. The principle of public purpose rests upon ‘the famous maxim salus populi est suprema lex which means that the welfare of the people or of the public is the paramount law, and also on the maxim necessitas publica major est quam private which means, “public necessity is greater than private” (LAA 1894). But as per the principle of acquisition even if the state is vested with the right to appropriate land for public utility ‘it is not deemed politic to confiscate private property for public purposes without paying the owner its fair value. Hence the law of compensation is inseparably connected with the law of acquisition’ (ibid). But the concept of compensation confined itself to a narrow definition of monetary compensation and did not develop into the concept of rehabilitation till the beginning of the 1980s. Also the concept of public purpose in the recent decades, especially after India adopted neoliberal reforms largely included acquisition of land for private companies as well.

**Major steps in land acquisition as per the Land Acquisition Act 1894**

This section provides a glimpse into the processes and procedures for land acquisition as stipulated in the Act and the major stakeholders involved in the process.

**i. Preliminary Survey**

The Act provides legal permission to the appropriate authority to carry out preliminary survey of the land once the 6(1) notification as per the Survey and Boundaries Act is published in the official Gazette and the local newspapers. It gives permission to the officials mainly

- To enter upon and survey and take levels of any land in such locality
- To mark such levels

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To do all other acts necessary to ascertain whether the land is adequate for such purpose

ii. Publication of preliminary notification

The preliminary notification or the 4(1) notification as it is generally known is published in the official Gazette and the two dailies, one of which should be in the regional language. This gives legal validity for any official authorised by the Government mainly

- To enter upon and survey and take levels of any land in such locality
- To do all other acts necessary to ascertain whether the land is adapted for such purpose
- To set out the boundaries of the land proposed to be taken and the intended line of the work proposed to be made
- To mark such levels, boundaries and line by placing marks and cutting trenches

In Kerala, the responsibility of preparing 4(1) notification with the survey details vests with the Land Acquisition Tahasildar’s office, which is sent to the Collector for approval. The Collector forwards it to the approval of the Revenue Department. With the approval of the Revenue department as well as the Collector the 4(1) notification is sent for publication by the concerned Land Acquisition Officer.

iii. Hearing of objections

The hearing of objections or the 5(A) hearing is held with the intention of hearing any objection or complaints with regard to the acquisition of land. The person affected can give the objection in writing to the Collector within 30 days from the publication of the 4(1) notification. The Collector or any person authorised by him can hold the 5 (A) hearing following which the reports are sent to the appropriate Government. In Kerala the 5(A) hearing is usually held in the Land Acquisition Tahasildar’s office, following which the report is sent to the Collector which is further forwarded to the Revenue Department. Whatever
be the nature of the objection, the Act mandates that the decision of the appropriate Government will be final.

iv. Declaration that land is required for public purpose (Draft Declaration or DD)

Draft declaration is the final step following the acquisition of land to be initiated by the Government. The declaration should be published in the official gazette as well as in two daily newspapers, one of which should be in regional language and also public notices of the same should be issued. It should mention the ‘district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected’ (LAA 1894). The declaration is considered as the ‘conclusive evidence that the land is needed for a public purpose’ (ibid.) The Government is free to acquire the land once this notification is declared.

v. Process of acquiring the land

The Collector is vested with the power to move on with issuing orders for the acquisition of land, land measurement if required and issuing public notices on or near the land for the sake of all those who are interested in the land with regard to compensation requirements or objections if any in measurement. The Collector after looking into the objections if any, value of the land and the respective interests of the people can proceed with the formulation of the Award. The Collector is liable to declare the Award within two years from the date of publication of the declaration. The Award thus declared is proclaimed to be final. Any calculation errors in the Award have to be corrected within six months from the date of the declaration. The Collector is vested with the power to call for documents or records in connection with the Award and then to take possession of the land. In case of urgency the appropriate Government can publish the Draft declaration at any time after 4(1) notification is published. In emergency situations, the Government is not bound to do the 5(A) hearing and can do away with the procedure. Even if award is not declared the Collector can acquire land on the expiration of 15 days of the public notice after the draft
declaration is published. The Collector is bound to inform the evictees about the acquisition at least 48 hours before the procedures start and is supposed to pay at least 80 percent of the compensation amount before acquisition.

vi. Reference to Court

Any person with objection to ‘the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the parents interested’ (LAA 1894) can take the matter to the court. The process is known as 18 (1) reference. Application to the Collector for Court reference can be done within six weeks of the receipt of the notice from the Collector or within six months from the date of the Award.

Determining the compensation and mode of payment

The compensation amount is determined according to the market value of the land at the time of publication of the 4(1) notification. The Act mandates that while determining compensation matters like damage caused to standing crops if any, damage caused by the severing of land from the rest of the land if any and the damage caused to other movable or immovable property needs to be considered. The Government is also bound to pay the shifting charges in case of change of residence. Also the damage resulting from the diminution of the profits from the land from the period of declaration and taking possession of the land has to be paid. In addition to this Court can award an amount at the rate of 12 percent of the market price per annum from when 4(1) notification was published to the date of the Award or the date of taking possession of the land. The Court shall also award 30 percent of the market price in addition considering the compulsory nature of the acquisition. If there is any existing dispute with regard to the compensation amount the Collector has the right to deposit the amount in the Court till the dispute is sorted out. If the compensation amount is not paid or deposited on or before taking possession of the land an interest at the rate of 9 percent per annum has to be paid from the time of taking possession till the amount is paid. Also if the compensation is not paid even after one year of taking possession then an interest rate of 15 percent per annum has to be paid.
The Act mandates that the Court shall not take into consideration certain factors while determining compensation. Few significant factors among them in the backdrop of the study include

- The degree of urgency behind acquisition
- Any damage which is likely to be caused to the land acquired, after the publication of the declaration, or in consequence of the work done on it
- Any increase in value of the land as a consequence of the work done on it

These three factors mainly contribute to the difficulties raised with regard to availing proper compensation by the affected people. Though these factors are significant in determining the valuation of land and property they are negated in the first run to avoid provision of more compensation to the affected.

**Resettlement & Rehabilitation (R&R) Policy in India**

In 1967 the Ministry of Food, Agriculture, Community Development and Cooperation brought out a Report which was published by the Department of Agriculture. The following observations (cited in Guha 2005) were made such as i) administrative inaction leads to delay in projects ii) acquisition of good agricultural lands should be avoided as far as possible iii) action to restrict the requisition agency from taking up extra land than required iv) the state has the moral responsibility to rehabilitate the displaced people.

In 1985 the first draft of the National R&R policy was prepared. It was prepared by a committee appointed by the Ministry of Tribal Welfare when it was found that above 40 percent of the displaced people from the 1950s belonged to tribes. In 1986 a decision was made by the Bureau of Public Enterprises to attach a rehabilitation cell to each land acquisition unit to address the issues of the displaced people, but the rehabilitation assistance provided was rather limited (Sinha 1996). Second and third drafts came in 1993 and 1994, both brought out by Ministry of Rural Development. The policy of 1994 had in it

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5 Report of the Group of experts on land acquisition
many significant suggestions like organisation of displaced persons, land for
land basis rehabilitation, facilitating purchase of private lands, provision of
resettlement grant, job planning, employment in collateral sectors, technical
education and training, formation of cooperatives, provision of civic amenities
etc. Seeing that the landless population was kept out of the purview of the
rehabilitation policy, the draft policy of 1994 envisaged that ‘a national policy on
resettlement of project-affected persons should cover not only those who hold
land titles but also tenants, sharecroppers, landless labourers, and those who
carry on any trade, occupation or gainful activity in the affected areas and who
are deprived of their livelihood’ (ibid: 1455). The draft policy was referred to 15
ministries and departments and the state governments. It also claimed to
incorporate the policy recommendations formulated by the National Working
Group which consisted of activists like Medha Patkar and academicians like
Smithu Kothari. An alliance of researchers, activists and displaced and affected
persons were formed to study the policy and they submitted an alternative policy
to the Department of Rural Development.

Another draft came in 1998, but did not get the approval of the Alliance
since amendments of the Land Acquisition Act of 1894, brought in 1998, acted
in principle against the policy directives. So by 2000, different policies were
formed by different ministries (Ministries of Tribal Welfare, Rural Development,
Water Resources development) but without any conclusive effect. A National
Policy of R&R for Project Affected Families was formulated in 2004 by the
department of land resources of the Ministry of Development. On a critical
review of the policy and considering the practical issues faced during land
acquisition, the policy was reframed and the National R&R Policy was
formulated in 2006. The R&R was the first of its kind formulated after the Land
Acquisition Act in 1894 with the objective of critically reviewing the project to
understand its social impacts and take precautionary action. It was introduced in
Loksabha on 6th December 2007 to provide for ‘the rehabilitation and
resettlement of persons affected by the acquisition of land for projects of public
purpose or involuntary displacement due to any other reason’ (The R&R Bill
The Bill mandated that a Social Impact Assessment (SIA) be held in cases where there is involuntary displacement of 400 or more families in plain areas and 200 or more families in tribal areas. It stipulated that SIA should be done along with Environment Impact Assessment (EIA) in case EIA becomes a mandate for the project as per existing regulations. Those projects which are urgent in nature are avoided from the mandate of SIA. Institutional structures - Administrator and Commissioner for Rehabilitation and Resettlement, Ombudsman, Rehabilitation and Resettlement Committees at Project level, District level and state level, National Rehabilitation Commission – were envisaged as per the Bill. Survey of affected families, draft plans for rehabilitation and resettlement has to be made in prior to displacement. The affected families should be provided with land, transportation costs, financial assistance for employment generation, employment and skill development opportunities, subsistence allowance for a prescribed period, monthly pension for vulnerable persons etc.

The Supreme Court through its various directives from 1980s had called for the effective rehabilitation of the displaced people before they were evicted out of their land and property. The debate gained significance in the wake of increased sensitivity towards human rights. International funding agencies like the World Bank had also started demanding proper SIA before providing funds or according sanction to infrastructure development projects from the beginning of the 1990s.

**Various Criticisms and Reflections regarding the land acquisition Act and rehabilitation policy drafts**

The attempt in this session is to highlight the various major debates and suggestions that had come up with regard to the Land Acquisition Act and the various R&R policy drafts at various stages. Goyal (1996) puts forward the following criticisms against the LA Act 1894. They included the oft-quoted criticism of the vagueness of the term ‘public purpose’, restriction of entitlements for the displaced to monetary compensation, indirect impact caused to people outside the project area and the right to compensation only to those
who legally own the titles. The definition of public purpose is affected by ‘class bias’ (Pati 2012: 11) which approved only those with land rights and title and refused to acknowledge those which are directly or indirectly linked to land in terms of livelihood or culture. The cash for land approach ‘identifies one particular dimension of deprivation (land dispossession) and proceeds to put a price on it, which is market-based. In a sense, it is the narrowest interpretation of loss, and completely eschews structure and process’ (Goyal 1996: 1464). The process of commodification of land gets complete here. Low investment for R&R and treating rehabilitation as an ‘externality’ were other major features of the land acquisition policy according to Goyal. Ramanathan (1996: 1488) criticized that ‘the meaning given to compensation has been dominated by its equation with the market value, or the notional value in the market. This treats the displaced person as a willing seller. It does not account for the part that coercion plays in the law’. What she highlighted here was the ‘eminent domain’ features of the state which enabled it to acquire land from its subjects as and when required even without consensus.

Another factor was the focus of the LA Act on individual, forgetting the mass nature of displacement. The land acquisition Act 1894 is ‘essentially concerned with the acquisition of rights over land from individuals who have legally recognised, and compensable, rights. These conservative notions of individual ownership and state acquisition have been stretched unrealistically to envelop the displacement of whole communities’ (Ramanathan 1996:1486). Even the 1984 amendment ignored the existence of displaced communities when it focused on persons displaced or affected by projects. Also displacement as such was not questioned, though the state had tried to incorporate the concept of rehabilitation in its policy modifications. Laws only intend to provide

*a process for the exercise of the eminent domain power. Unintentionally perhaps, yet inexorably, the law has been activated to effect mass displacement in the cause of development, what is compendiously termed the national interest, economic imperatives of the state and planned growth. With the restricted meaning imported into compensation, displacement has not been a legally recognised cost (ibid: 1489)*

The amendment Bill in 2009 suggested that companies should be permitted to buy land directly from the land owners through negotiation. The Government
need to step in for the remaining 30 per cent land acquisition only after 70 per cent acquisition of the land is done by the Companies. In the Bill, there was no indication as to the R&R benefits to the people, from whom the 70% land gets acquired.

The draft R&R policy of 1994 was concerned only with improving the circumstances of involuntary resettlement (Sinha 1996). The policy did not have an exact focus on complete rehabilitation. Parasuraman (1996) demanded the modification of the R&R policy of 1994 to incorporate provisions which will encourage the affected people to invest the compensation money in productive assets. Along with this was the suggestion to provide loans and subsidies to augment the compensation money for suitable investment. Provision of employment to the evictee family was another suggestion. The gender aspect of rehabilitation also became a focal point of discussion in which women oriented rehabilitation through skill development was suggested. Both land-based and non land-based rehabilitation was suggested in addition to the redefinition of the term public purpose in the name of which land gets acquired. Also the acquisition of extra lands even if not necessary was questioned.

Critics said the rehabilitation policy formulated in 2004 seemed to be ‘more concerned with protecting the interests of the big business than the livelihood interests of the displaced’ (Fernandes 2004: 1194). The major reason for this criticism was that this policy was applicable only in those projects where atleast 500 families are displaced in the plains and 250 families in hill areas (ibid.). Another criticism (Guha 2005) was that the policy mandated a survey to identify the beneficiaries for resettlement and rehabilitation only after draft declaration of acquisition gets published, which was contradictory to the objective of the policy that efforts will be taken to reduce displacements and alternatives will be sought. Lack of compensation for acquisition of common property resources was also criticised. One positive aspect in the policy was the incorporation of agricultural labourers as holding entitlement for compensation.

The institutional structures in the R&R policy of 2007 were mainly designed for projects displacing more than 400 families in the plain or 200 families in the
hills regions respectively. The increase in the number of stipulated families is to be noted since the 1994 draft had suggested that the rehabilitation policy can be applicable if 50 families or 200 persons or more get displaced. The draft of 1994 had also mentioned that it can be applicable in the case of less than 50 families too, if the state Government decides so. In the 2004 policy the family threshold became 500 in the plains and 250 in the hill areas which evoked wide criticism. This provision was deleted and the threshold of families was fixed to 400 families and 200 families for plains and hills respectively when the policy was formulated in 2007. But the Bill failed in explaining the consequence in those cases where families less than 400 are displaced i.e. the benefits for small scale displacement was not clear. Another major flaw with the Bill was that no clear time frame for rehabilitation was stipulated in it. Throughout, the Bill used a non-binding language which makes it unclear whether the benefits were mandatory. Also the evictees were eligible for compensation only if they have lived in the place for at least 5 years. Further the Bill did not refer to cases of double displacement within a period of 5 years in case of a resettlement area. The Bill spoke largely of rural displacement and indications of urban displacement were completely missing from the Bill. Further the National Advisory Council which had put forward a draft rehabilitation policy in 2006 to the Central Government had recommended consultation with Gramasabhas for acquiring consent for the project from the people affected but when the Bill came the consultation was reduced to only the Scheduled areas under the 5th Schedule. For the rest of the people the provision was to file a complaint with the Collector within 30 days of the notification (PRS Legislative Research 2007).

Sinha (1996) vouched for creating a perfect information flow during land acquisition and thus avoid speculative price rise, empowerment of project affected persons, encouraging the involvement of NGOs as watchdogs, encouraging group decision on the use of compensation payments, enhancement of human capital, provision of project employment, land for land rehabilitation in case of tribals and social rehabilitation. Fernandes (2004) criticised the nature of language used in the policies. The policy document used non-binding language such as ‘may give’ or ‘as far as possible’ when it comes to providing
benefits which the officials bend to their interests to avoid giving the provisions. The criticism was also against the extent of land being acquired by the state for private ventures. The free market theory was continuously proposed from various sources who proclaimed that the communities under displacement have the right to bargain for monopoly prices but the present legislation prevents them from doing so. Sinha criticized the free market theory and vouches for ‘need based land acquisition’ (Sinha 1996: 1456) where only sufficient land will be acquired for the project. Ramanathan suggested legal reforms to curb state powers in the matter of land acquisition and give tangible rights to the potential victims. Formulation of the policy without a proper database on the evictees was another matter of criticism.

The Narmada struggle for rehabilitation had generated wide discussion on the rights of the evictees, especially the indigenous populations. This resulted in the formulation of at least draft rehabilitation policies by the end of 1980s and the beginning of the 1990s in India but it remained to be just a framework of action or a broad guideline lacking specific and genuine interest without a legal backup. The major criticism that arose against the rehabilitation policies was also that without legal binding various state governments may refrain from its actual implementation. Ramanathan (1996) criticised that the distinction between policy and law makes it non-binding to the state to perform as per policy guidelines in the context of displacement. In the absence of law it is not a statutory right.

Statute law, where it defines (or denies) rights, is binding. Policy, on the other hand, has at best a persuasive value. Courts are bound by the statement in the law, but are free to be guided by policy, or to ignore it...Where displacement is enabled by law, and rehabilitation is sketched by policy, the inequality in the two instruments gives the compulsion of acquisition a status that rehabilitation does not possess... (ibid.1489)

A policy is meant to improve the accountability of the state to its people (Goyal 1996) but this accountability is complete in its real sense only when the policy becomes a legal statute. Till then as Guha (2005) says they are mere policy documents which boost the image of the government and attract international funding agencies which mandates R&R for potential investments. Menon &
Saravanan (1996: 2854) says there are four fundamental problems with such draft policies.

First, as the drafts are policy documents, they carry no legal weight which compels the state to rehabilitate those affected. Second, the drafts assume displacement to be inevitable and therefore do not address in any detail possibilities of adopting strategies which can minimise displacement. Third, while the drafts recognise the importance of common property resources (CPR), they make no attempt to understand the specificities of these resources or the legal complexities involved in addressing the alienation of them. Finally, the draft policies have no mention of involving local people or the public at large in the decision-making process.

Absence of legal backup, lack of critical evaluation of the concerned project, lack of a socio- ecological perspective and lack of transparency are the major features that run the stage during land acquisition for the implementation of a project. Most often forgotten in the debate regarding land acquisition is the subject of land which suffers alteration and mutation in the process of development. Parasuraman (1996) says ‘most of the development projects drastically redefine the land use pattern’. Mostly the loss of land or the livelihood attached to it due to acquisition and its inherent ecology is the cause of ‘post-displacement impoverishment’ (ibid: 1529) for many. But even after 27 years of the first draft policy, rehabilitation and environmental consideration still remain outside the purview of law. The LA Act, its amendments and even the new LA &RR Bill that came up recently not only ignore the existence of displaced communities but also forget the environmental significance of the land being acquired and treat land as a uniform entity without regional peculiarities.

**Land Acquisition and Resettlement and Rehabilitation Bill 2011 (LARR 2011)**

The LARR Bill which was introduced in the Parliament in September 2011 as an alternative to the infamous and colonial Land Acquisition Act of 1894 has its good elements like merging the concept of land acquisition with R&R and offering much more in compensation to the people. But it makes no attempt to hide the obvious priority of the state to use land for industrialisation and urbanisation than for agriculture purposes and the free ride it offers to the private

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7 In 2013 the Land Acquisition and Resettlement & Rehabilitation Bill 2011 is yet to be passed
players for further exploitation. The State advocated that the Bill seeks 80 percent consent of the project affected before acquisition, entails the provision of R&R with several benefits, offers better market price and special allowances for the Scheduled Tribes (ST) and the Scheduled Castes (SC) and refrains from acquiring any irrigated multi-crop land etc. They are true to an extent, but do not embody the whole truth. An attempt is made here to look into the features of the new Bill in the context of Kerala.

**Defining public purpose**

The ambiguities of the term ‘public purpose’ continue to exist in the present Bill. Or rather it is exactly this ambiguity which is made use of by the state as a weapon to justify any act of land acquisition. The following categories are considered as public purpose – 1) Strategic purposes, 2) Infrastructure development, 3) Land acquired for project affected people, 4) Development of village or urban sites for residential, health and education purposes and 5) Land for people affected by displacement or natural calamities. In addition to this the Bill mentions that the state can also acquire 6) land for purposes with public benefits other than those covered above, 7) for public private partnership projects and 8) for private companies for public purpose. Out of this, the last three are ambiguous and are strategically placed to facilitate acquisition of land for private forces. In his definition of governmentality, Foucault presents one of its essential functions as that of ‘disposing things: that is…employing tactics rather than laws, or even of using laws themselves as tactics’ (Foucault 2002:211 cited in De Angelis 2005: 244 ). Here the state by maintaining the ambiguity that has been the constant source of dispute regarding land acquisition and adding clauses that add to the ambiguity resorts to employing tactics rather than laws. Once approved, these tactics function as laws which will be the tool used by the state to push forward its interests. Even in the current scenario the private ventures are often passed off as public purpose initiatives by offering employment opportunities to the locals and highlighting regional development. Cases like Cochin International Airport Ltd with marginal state Government share, where Golf course and multiplexes are being built in the agricultural land acquired in the name of the airport and the Smart City in Cochin (IT park) where
only 50 percent of the acquired land need to be used for industrial purposes show how land acquired in the name of public purpose and with public money is exploited for private interests. Further even in the present Bill acquisition for public purpose does not address any kind of public concern for environmental imbalance arising out of the process. The land acquired in the name of public purpose may defy the same ‘public’ by destroying the ecological security of the region.

**Conduct of Impact assessment**

The Bill mandates that Social Impact Assessment (SIA) should be done by the appropriate Government in the pre-notification stage. The main flaw in the process is the reduction of the concept of land to a social entity devoid of its ecological and productive properties. The focus of the SIA as detailed in the policy has its focus on socio-economic and institutional impacts. The draft says that the SIA report will be made available when EIA is conducted in a later stage. What is actually required is a multi-impact assessment which will look into the social, institutional, environmental, livelihood and food security impacts that will affect the region in the pre-notification stage. The significance of Environment impact assessment before acquiring a wetland in Kerala is not negligible considering the aspects of water conservation, food security and ecological balance. But even as per the present laws of the state, EIA is not mandatory before land acquisition in all cases and need to be conducted only once the land is acquired and reclaimed and is made fit for industry.

**People’s consent for land acquisition and the shortcomings in the provision of R&R**

The consent of the project affected families does not count when the state acquires land for its own use, hold and control as per the Bill. Consent of atleast 80 percent of the people for acquisition is applicable only for those acquisitions where land is being acquired for public private partnership projects, private companies or state acquisitions for any other requirement than the specified public purpose requirements. This decision is in complete negation of the people’s right to informed consent when the situation is that majority of the land
acquisitions are done for state sponsored projects, especially in Kerala. The Bill opens up the land market further by stating that private companies or individuals can directly buy land from farmers and others. R&R package is offered to the people whose lands are bought by the private firms with the partial support of the state or if hundred or more acres are acquired in rural areas and 50 acres or more in urban areas. But the package is not mandatory in those cases where land is directly purchased by private firms and if the extent of land falls below the mentioned ceiling. The Bill is silent about a situation in which less than 100 acres is acquired by a private firm in a rural area, but which may affect more than 100 families. The application of a standard norm across the country in terms of extent of land rather than the density of population can be a risky affair. In a state like Kerala which is densely populated, acquisition of even 10 acres of land may lead to the eviction of a considerable number of families. In this context a ceiling of 100 acres of land or more can be disastrous to the people affected. Also it is a probability that two or more private entities may come together and buy land separately keeping the land ceiling of 100 acres intact and use it finally for the same project. There is ambiguity regarding the R&R of the people evicted in this situation. Further there is no mention of additional acquisitions which is usual in the case of development projects where the notification for acquisition is issued in different stages as the work progresses. The cumulative increase in the acreage and the resultant eviction is out of the R&R loop.

The Bill also remains silent about the variations in compensation that may come up even within the same district when different private and public agencies are involved in acquiring the land. Further the compensation for the land being acquired will be fixed from the average of the sale price for fifty percent of the sale deeds in the preceding three years. The market value so calculated will be multiplied by two in rural areas to which the value of assets and a solatium of 100 percent will be added. While the calculation seem to be appreciable it can be misleading since the price quoted in the sale deeds are most often low to evade the stamp duty during the transactions. Also it falls short of assessing the speculative price rise with an impending development project in the locality. Added to this is the time gap between the publication of notification and distribution of the Award due to red tapism, conflicts regarding land price fixing
and delays in court procedures. The Bill does not take into account the sub-
transactions that may happen in the locale in connection with the development
project that is coming in, the consequent rocketing of prices and the resultant
land inequality that may ensue in the area.

In the case of displacement of SC and ST families, the benefits in the Bill
include land up to 2.5 acres, development plan for SC and ST evictees,
consultation with the local Self Governments, advancing 1/3rd of the
compensation of the eviction etc which seem to be positive elements. But there
is no mention whether such a development plan will be made even when the
evictee families are less than 100 in number. Only the land and monetary
benefits to the evictees are highlighted here and the policy stops short of
assessing the nature of land, the extent of land being acquired and the need for
the same, especially in a situation when forest lands are being converted in large
scale circumventing all the existing laws for forest conservation. The loss is
calculated in financial terms and not social or ecological terms. The issue is
relevant in the context of large scale conversion of forest areas for mining
projects and alienation of the tribal community from their livelihood sources in
several regions in India.

**Acquisition of agricultural land**

One thing specifically mentioned in the Bill is that Government will acquire
irrigated multi-crop land only in exceptional circumstances and the acquisition
of the land, in aggregate for all projects in a district will not exceed five percent
of the total irrigated multi-crop area in that district. Also it is mentioned, when
such area is acquired equal area of cultural waste land should be developed for
agricultural purposes. Another point mentioned is when the net sown area in a
district is less than 50 per cent in a district; acquisition in aggregate, for all
projects should not be more than 10 per cent of the net sown area. The
conditions seem unfeasible since the number of projects in a district is not static
and so the aggregate is not calculable in the manner specified. Further it is also
mentioned that these provisions are not applicable in case of linear projects like
‘railways, highways, major district roads, irrigation canals, power lines and the
like’. Any attempt to protect multi-cropped lands through provisions of policy is thwarted by the same policy. The Bill mandates that the *Appropriate Government* shall constitute a committee including representatives of various state departments and experts to examine proposals for land acquisition. The involvement of the Agricultural department is not specifically mentioned here inspite of the fact that agricultural lands are notified in mass for acquisition. The Agricultural department in the district, state or national level does not have a say in the acquisition of agricultural lands and conversion for other purposes. A complex regime of power is at play here which treats laws as tactics for furthering the development discourse, and for the purpose attributes power to certain agencies while delimiting others from taking action.

The LARR Bill 2011 does not maintain a balance between the need for ecological or food security and the need for industrialisation which would have been a more ideal position. While it is true that the Bill does have indications of being more humane, participatory, consultative and transparent compared to the existing Land Acquisition Act of 1894, the nature of development envisaged by the policy makers and the extent of partnership offered to the stakeholder is still problematic. The political issue of land use is dealt as a case that can be solved through monetary compensation in the Bill. Only the social security aspect of the land owners is focused here, though not completely, while the ecological and food security aspects remain unaddressed.

**Land Acquisition Act in Kerala**

Kerala, at the time of its formation as a state in 1956 did not have a uniform law for land acquisition. The laws relating to compulsory acquisition of land in force in the Travancore and Cochin areas of the state were contained in the Travancore Land Acquisition Act 1089 (1914) and the Cochin Land Acquisition Act 1070 (1895) respectively. In the Malabar area of the state, the law of land acquisition was contained in the Land Acquisition Act 1894, which is the Central Act. The Kerala Land acquisition Act 1961 was formed with the objective of forming a uniform legislation in the matter of land acquisition which is applicable to the whole of state of Kerala and was formed in the period of the second Kerala
legislative assembly (1960-1964). The said act formed in 1961 basically followed the principles of the Central Act or the LAA 1894.

The Kerala Land Acquisition Act 1961 is referred to as the principal Act for land acquisition in Kerala. Certain amendments have happened over the years but without significant changes to the basic concept of the Act. The amendments that have been made served only to provide more powers to the Government during the acquisition of the land. For example the 1966 Act brought in an amendment to the 1961 Act that the declaration should be done within 2 years of the publication of the preliminary notification issued by the Government and if not done the notification would be considered void. The 1980 amendment during the sixth Kerala legislative assembly (1980-1982) increased the period to 3 years increasing the time gap between the preliminary notification and declaration which only served to meet the interests of the Government (The Kerala Land Acquisition (Amendment) Act 1980). In between, the Kerala Land Acquisition (Amendment and Validation) Bill was introduced in 1968 during the third Kerala legislative assembly (1967-1970). The Land Acquisition (Kerala Amendment) Bill 1985 introduced during the seventh Kerala Legislative Assembly (1982-1987), defined the Board of Revenue or the Collector as the Appropriate Government vested with powers for acquiring the land. A major document, The Land Acquisition (Kerala) Rules was published in 1990 as per Government order with the objective of explaining the various rules, process and procedures to be followed by the Appropriate Government during land acquisition.

The Land Acquisition (Kerala Amendment) Bill proposed by the Law Reforms Commission under the leadership of Justice V R Krishna Iyer in 2009 proposed two major changes in the existing legal provisions, while acquiring the land. One was to provide a compulsory rehabilitation package which includes land and residential accommodation and to proclaim the right of the evictee to claim for the same. Another right sought was the return of the land to the evictee in case the land acquired is not used for the mentioned purpose within 10 years of acquisition.

8 The Kerala Land Acquisition (Amendment) Act 1966
In November 2011 Kerala announced a new R&R policy which in par with the Central LA &RR Bill offered different benefits in the context of displacement. The objective of the policy was to provide the project-affected persons with a just and reasonable compensation to maintain their socio-economic status through transparent procedures. The policy mandated disbursement of all forms of compensation before taking possession of land. As per the policy a high level committee headed by the Chief Secretary will coordinate land acquisition proceedings at the state level and the Collector or an officer designated by him in the district level. The High level committee will consist of the Chief secretary, Revenue secretary and Secretary of the Administrative Department. A District level Purchase Committee (DLPC) will decide the value of the land to be acquired. The DLPC consists of District Collector (Chairman), concerned Revenue Divisional Officer (RDO)/Sub collector, Finance officer from Collectorate, Representative of the Requisitioning Agency and the Deputy Collector in charge of Land acquisition. A State level empowered committee (SLEC) consisting of Chief Secretary (Chairman), Revenue Secretary, Secretary of the Administrative Department, Law secretary, Finance secretary will approve the value fixed for land. The policy highlighted the following significant points

- A clear definition of public purpose is mandatory
- The compensation would be paid as per fair value or the market value
- Depreciation would not be taken into account while assessing value of buildings
- Provision of alternate land of up to 3 cents to people if their annual income is less that Rs 75000 and are landless and homeless with no salaried income
- Social impact assessment of the land acquisition to be done
- Employment to at least one member of the evictee family to be considered if it is a public sector undertaking

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Order issued by Revenue (B) department G.O (Ms) 419/2011/RD dt.15.11.2011 formulating Rehabilitation and Resettlement Policy of Government of Kerala 2011
- Rent to be provided to evictee families till they build alternate accommodation or at least for six months

The policy also came with a suggestion of providing redeemable infrastructure bonds to evictees for the value of land but was kept in abeyance for expert decision which has not materialised till date. Provision of land-based rehabilitation and social rehabilitation was still at stake as per the guideline. The focus was still confined to social impact and was silent about the ecological or food security impacts.

In 2012 the Revenue Department of the Government of Kerala brought out comprehensive guidelines for land acquisition, R&R package and the constitution of institutions to facilitate land acquisition. The institutional provisions as explained above in the R&R package of 2011 were sustained through the present Order. The Order decreed many conditions for getting sanction for acquisition of land, of which few relevant ones are cited below.

- Any LA should be for a declared, defined and established public purpose
- The extent of land required should be justified
- All statutory clearances or exemptions from any Acts or Rules like Wet land Paddy Land Act, Environment Clearance etc. shall be obtained by the Administrative Department before the proposal is sent to Revenue Department.
- The R & R package issued in the G.O (Ms) 419/2011/RD dt.15.11.2011 will be applicable to all cases of LA.

The positive features were that the Government recognised the need for a clearly defined public purpose and seeks justification for the extent of land requested for. To what extent this will be implemented is a matter to be experienced. The major negative aspects are that the Order, just like any other Act, Bill or Policy that had come up in matters of land acquisition and rehabilitation was silent about the ecological or agricultural significance of the land in question and continued to treat land as a uniform entity. As per the language in the Order, the

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11 Government Order on Land Acquisition for public purpose, R&R package etc - G.O.(Ms) No. 182/2012/RD, Revenue (B) Department, dated 3rd May 2012
concern was confined to getting a ‘clearance’ or ‘exemption’ from the Wetland Conservation Act or the Pollution Control Board. The regional and geographical peculiarities of the land in question were not deemed to be significant. The checklist provided with the Order for the approval of the High level Committee of land acquisition had a question in it whether the land belongs to Coastal Zone Regulation (CRZ) area, ecologically fragile or paddyland/wetland category. The follow up question was not on the impact of the project on such areas, but only whether clearance had been obtained to acquire such an area. Here the environment angle was treated as an externality to the whole process of land acquisition. Another negative feature was that though R&R was made applicable to all LA cases the scope of R&R was limited in terms of land-based and social rehabilitation. Further the Order mandated that the R&R package will be applicable only to those land owners who agree to reach a negotiated settlement of land value.

**Significant policies, Bills and legal statutes in relation to the Land Acquisition Act**

**Land reform laws in India**

The land acquisition, especially of agricultural lands for infrastructure and development projects should also be seen in the light of the land reform initiative in India which the Indian government tried to enunciate through legislations and various plan documents from 1950s. The objective of land reform laws through ceiling of land holdings and consolidation of land holdings were to abolish landlordism and provide ‘land to the tiller’. Flaws in policy, lack of political will, lack of proper land records, indifferent implementation, loose administrative machinery etc resulted in an ineffective land reform across the country. The absence of effective land reform invited widespread unrest in the 70s, which also saw the spread of Naxalism in certain parts of the state against the inequalities in land ownership. The presence of vested interests in the ruling class and bureaucracy who aligned themselves with the landed classes had prevented the effective implementation of the Land Reform laws in the country. But few Left-ruled states like West Bengal, Kerala and Tripura made
considerable strides in implementing the land reform laws. In Kerala, the land reform Act of 1970 nearly put an end to the feudal system ensuring the rights of the tenants of land. Though the Kerala land reform is widely hailed for its success, it also invited criticism since the agricultural labourers especially those belonging to the marginalised sections were kept out of the purview of the act causing a dent in the equal distribution of land. Also the cash crop plantations were out of purview of the Act which resulted in a situation in which extensive areas, especially in the tribal belt were outside the limits of the land reform initiative.

The land reform initiatives were seen to be a part of the policy reforms at least till the beginning of the 1990s when India opted for the new economic policy. Land reform became a purposefully forgotten agenda to appease the votaries of capitalist reforms.

Marketeers dominated all the segments of governance. It was repugnant to them to talk about land reform or to mention it in their polite society just in case the investors and other big operators in the market got frightened by any government intervention in the land/lease market. They were finding the existing land reform laws that were enacted on the basis of the central guidelines in the early 1970s not only unwanted road blocks but also obnoxious to the free play of capital in the land/lease market. Hence a strong lobby developed to scrap the ceiling laws, allow unfettered rights to lease markets open up the agrarian sector to the corporate bodies for capitalist farming and/or large scale contract farming, to move away from traditional crop husbandry to export oriented crop production and the like. In short, to do away with the peasantry and the peasant way of life. To many, land reform had become totally irrelevant, an undesirable anachronism in the days of liberalisation, privatisation and globalization (Bandhopadhyay 2008: 38-39)

The extensive land-grab without discretion in the name of development and infrastructure building that had rocketed in the last decade has legal backing, though it is bringing back a new form of landlordism where private interests rule the game. The most affected in this process are the *dalits* and *divasis* who are directly dependent on the natural resources like land for sustenance and livelihood. A major criticism posed by Guha (2005) was regarding the ignorance of the policies drafted on the impact of land acquisition on land reform. It is only ironical that the same state which provided a landless labourer with land is taking back the same land within 1-2 decades making the person landless again in the name of development. It is in the context of redistributive land reforms
which intended to bring upon land equality by introducing land ceiling on private land holdings and egalitarian distribution of land that the coercive acquisition without rehabilitation or environment concerns through land acquisition laws needs to be understood.

**The Kerala Industrial Infrastructure Development Act** ¹²

The Industrial Infrastructure Development Act introduced in 1993 soon after the neoliberal reforms in the beginning of 1990s gave the mandate that the Government can declare any area in the state to be an industrial area, for the purpose of the Act, by a notification in the Gazette. Tragically there existed no law to demarcate agricultural land from the purview of this Act. Also being a land-deficient state, Kerala was often left with the option of converting agricultural land for industrial purposes. According to the Act, Kerala Industrial Infrastructure Development Corporation (KINFRA) was instituted to facilitate acquisition of land towards infrastructure development for industries. The Corporation constitutes members from different departments of Industry, Finance, Town Planning, Environment and Labour as its representatives but does not include any representatives from the Agriculture department though land acquired is predominantly agricultural land. The Corporation makes use of the Land Acquisition Act 1894 to acquire land for industrial development.

**Special Economic Zones (SEZ) Act** ¹³

The Special Economic Zones (SEZ) Act that came forth in 2005 gives power to the state for acquiring land in the name of “public purpose” and later transfer the land to private developers for the development of corporate zones. These zones become *foreign territories* within the country according to policy norms. Further the land acquisition for SEZ is free from the Environment Impact Assessment usually mandatory for large scale land acquisitions (Special Economic Zones Act 2005). In 2007, within 2 years of implementation of the Act 404 SEZs were approved which acquired 54,280 Hectares (Ha) of land (GOI 2007 cited in Sampat 2008). Up to 1000 Ha can be acquired for multi-product SEZ and up to

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¹² The Kerala Industrial Infrastructure Development Act passed 1993 by Government of Kerala

¹³ The Special Economic Zones (SEZ) Act passed in 2005 by Government of India
100 Ha for service sector SEZ as per the Act. In such cases the state’s responsibility for rehabilitation and the laws on land ceiling stands compromised. Also only 50 per cent of the land is to be used for the productive purpose for which it is acquired and the rest of the land can be used for real estate development. The approach is totally different from the Land acquisition Act and stand outside the concept of rehabilitation and environment conservation.

**Draft Real Estate (Regulation & Development) Bill Kerala 2011**

The Real Estate (Regulation and Development) Bill was formulated for the regulation of development of colonies and promotion of construction, sale, and transfer of residential buildings, apartments and other similar properties. The Bill proposed the formulation of a Real Estate Regulatory Authority which will act as the monitoring agency of all real estate projects. The development of and construction in any immovable property cannot be done without registration in the Authority. The draft was formulated in the context of burgeoning illegal real estate activities in the state, to help the business regain its credibility. Though not directly connected with land acquisition directives, a Real Estate Bill has much relevance when the subject of study is land acquisition. The real estate activities that flourish in a proposed land acquisition area for a development project before and after its announcement is a known fact. There are cases also where real estate transaction of land in a region in the end leads to the formulation of a development or industrial project in the area to serve the needs of those involved. Just like the land acquisition Act, the issue with the proposed Real Estate Bill is that it speaks of environmental clearances and sanctions only when a construction work has to be started in the purchased area. There are no restrictions as such in purchasing agricultural lands or other ecologically sensitive regions. The Bill also treats land as a homogenous entity. The Bill mandates that the permission of the Authority is not required for construction in up to one acre of land which can be manipulated by a single or multiple real estate agencies.

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14 Draft Real Estate (Regulation & Development) Bill Kerala introduced on 9th November 2011 by Government of Kerala; not yet passed
**National Highways Act** 15

The National Highway Authority of India (NHAI) acquires land for its road projects through the National Highways Act or commonly known as NH Act 1956. No aspect of the Land Acquisition Act is applicable in the case of NH land acquisition. The NH Act offers only monetary compensation to the evictees and the concept of rehabilitation is not included in the Act. Since the NH Act has no connection with the LA Act the policy modifications happening in LA Act in terms of R&R is not applicable to the NH projects as such. Any conflict with regard to the compensation amount is to be brought before the arbitrator appointed by the NH, who will most usually be the Collector who is also the main land acquisition officer. The contradiction in the matter stands obvious.

**The Kerala Conservation of Paddy land and Wetland Act** 16

The Kerala Conservation of Paddy land and Wetland Act passed in 2008 proposed to impose a fine of Rs 50,000 to Rs One lakh and up to 3 years of imprisonment if convicted of reclaiming paddy fields. But the same Bill also left a loophole for easy reclamation of paddy fields by placing a clause that the land could be reclaimed if needed for ‘public purpose’. It is this clause that is made use of by different land acquisitions as per LA Act or any other Act to get the environment clearance needed for acquisition. Further LA Act being a Central Act has overriding powers over the state Act adding to the vulnerability.

**The Railway Act** 17

The Railways Act 1989 and the Railways (Amendment) Act 2008 provided the Railways with maximum power for rail infrastructure development. The ease with which any rail project can be taken up is evident from the fact that they are free from the environment clearance procedures. A rail project need not have the environment impact assessment done or any public hearing held for getting sanction for moving forward with land acquisition. This exemption is based on

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15 The National Highways Act passed in 1956 by Government of India
17 The Railways Act 1989 and the Railways (Amendment) Act 2008
Government regulations alone and do not have the back up of a legal statute. Till 2008 there was no mention of rehabilitation for land acquisition and any such move depended on the will of the competent authority. But in the 2008 Amendment it was mentioned that the R&R policy formulated in 2007 can be applied for railway land acquisitions. But it is not mandatory since rehabilitation still remain a policy and not a statute. The situation would not change even if the LA&RR Bill is passed since the LA Act is not applicable for railway land acquisitions.

**Other significant Acts**

The Petroleum and Minerals Pipelines (Acquisition of Right of User in land) act formed in 1962 intended to avoid the time lag and resistance that accompanied the LA Act by only taking user right of the land to lay petroleum pipelines whereas the land will be continued to be used by the owner (Ramanathan 1996). But still the impact of double use of land for commercial and personal purposes is faced by the land owners and the complexities involved are not solved. The Environment Protection Act 1986, The Coastal Regulation Zone Act 1991 etc have regulative clauses in them, for the protection of environmentally significant areas, coastal areas and the like. But when land acquisition procedures are initiated in the region in the name of industrial and infrastructure development the concerned agencies who are supposed to implement these Acts are forced to be flexible with these laws.

**Conclusion**

Absence of legal statutes in R&R and absence of uniformity of rehabilitation policies across the states are major features of the land acquisition in India even after 65 years of independence. The compensation and rehabilitation measures taken up still depend on the bargaining and political power at hand of the communities being displaced, which continues to affect the marginalised sections, especially *dalits* and *adivasis*. The resettlement plans, even if formulated are adhoc in nature and are undertaken with no detailed study, which results in a compartmentalisation of issues and actions. In the absence of a national level legal statute, power is left with the state Governments and the
project authorities to make R&R plans. This reaffirms the state control over land legalising the concept of ‘eminent domain’. Also the existence of multiple Acts for land acquisition adds to the complexity of the issue of rehabilitation and environment conservation. The contradictions that emerge out of the situation are justified and considered to be unavoidable by various state and non state actors. Though various policy modifications have come over the years they are inadequate and lack an integrated vision in terms of social and ecological realities. It can also be argued that the policies are formulated within the neoliberal development framework delimiting social and environmental justice.