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The Land Acquisition Stalemate: Contentions & Solutions

Niranjan Sahoo
Samya Chatterjee

Proceedings of a seminar organised
by
Observer Research Foundation

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Executive Summary

Land remains at the heart of India's many predicaments. A day does not pass without some agitation or stray violence over land acquisition. Many major projects today are stuck due to problems related to land acquisition. According to an estimate by ASSOCHAM[1] (The Associated Chamber of Commerce and Industry of India), the country's leading business association, projects worth US$100 billion are at stake—many of them critical infrastructure projects linked to railways, national highways, ports and power plants. Why has land acquisition become such a controversial issue in India today? Why do farmers and other landholders vociferously resist selling their land even after being offered high compensation? Can the proposed land acquisition legislation address the issues and challenges raised by various stakeholders? What is the way forward?

To deliberate on some of these contentious questions, the Observer Research Foundation organised a "Discussion on Land Acquisition, Rehabilitation and Resettlement Bill" on November 9, 2012. The objective was to present opinions across the spectrum. The round-table was attended by Mr. Surendra Singh (former Cabinet Secretary and Advisor to ORF), Mr. Arun Maira (Member, Planning Commission), Dr. Ram Singh (Delhi School of Economics), Dr. Parikshit Ghosh (Delhi School of Economics), Mr. S.V. Goyal (Senior Vice President, Reliance Industry Limited), Mr. Manoj Kumar (Senior Advocate, India Strategy Group), Mr. T.K Arun (Opinion Editor, The Economic Times), Mr. Mohammed Ali Khan (OSD to the Minister for Rural Development, Government of India) and Mr.

1. ASSOCHAM Report, http://www.assocham.org/prels/shownews.php?id=2191

Randhir Singh, Former Director, HSIIDC. The following are some of the main observations that emerged from the conference:

Issue of Consent

`Consent' to sell—both in government and private and public-partnership projects (PPP)—is among the most contentious issues in land acquisition. Should consent be from 67 percent (two-thirds) or 80 percent of the landowners? Should consent be required from all land users (e.g. those dependent on land like agricultural workers, wage labourers, artisans and landless peasants) or only from the land losers? Industry representatives stated that consent from the affected families was risky as often there were no land records. The panellists felt that it would be appropriate to seek consent from both the land losers and also those dependent on the land. The question of `67 per cent or 80 percent', it was felt, should be decided by Parliament and the affected families should come under purview of rehabilitation and resettlement as proposed in the bill.

Compensation

The current scheme of compensation that the bill has laid down is two times the market price for urban areas and four times the market price for rural areas. There is no rationale as to how these figures were arrived at. Another criticism is that these numbers have been tampered with: the initial draft of the National Advisory Council proposed six times the market price for rural areas. The "top down" approach in evolving the formula has also not gone down too well. While top officers are busy devising formulas and local government officials are calculating the market price, the affected people have no say on any aspect of the transaction—whether they want to give up the land or what would be a fair price. The government's position on this is that the market values are notoriously low representations of the

actual price of land and need to be enhanced. The Rural Ministry's formula is to take the highest previous sale transactions in an area and add a multiplier. In its view, four times the market price in rural areas would be a fair price.

Institutional Support

In order to understand the position of stakeholders, their needs and explore fair solutions, a three-tier institutional structure was mooted: institutions for suggesting proposals, institutions for dialogue and institutions for decision-making. Institutions for proposals would include think-tanks or academic research organisations which use data, analyse it and make recommendations. Institutions for dialogue would bring stakeholders together to deliberate on their respective positions. Finally, institutions for decision-making would be given the authority, constitutionally or organisationally, to finally take decisions.

Definitional Issues

The experts felt that the bill does not clearly define what constitutes `rural' and `urban' areas. This omission is bound to lead to litigation. It is essential to plug this loophole. However, this may prove to be a difficult task for the Central Government, given that each state has its own laws on development. The panellists recommended that the bill should provide that the definition of "rural" and "urban" be defined by the concerned governments.

Efficiency

The panellists stressed the need for transparency, process efficiency and viability. Transparency would entail evaluation, selection and determining

the market price for land as well as sharing the incremental gain from land development with land losers. Process efficiency implies clarity in legislation which would result in less litigation and realistic deadlines for all parties involved. On viability, it was felt that there is a need to reach a common ground between the acquirer's right to profit and compensation rights. The experts held that companies acquiring land for public-private partnerships should be given limited control rights.

PROCEEDINGS OF SEMINAR

Opening Remarks by the Chair

Mr. Surendra Singh

All of you are involved in some capacity with the business of land acquisition. Therefore, I need not go into too many details about the passage of this bill, particularly about the last five years since it was conceived in 2007. The process of implementing the amendment of the Land Acquisition Act of 1894—under which land acquisition proceedings take place—is becoming highly contentious; it is a very important issue as in our country about 60 percent of the population is engaged in agriculture though it contributes only about 15 percent of the GDP. Obviously there is a need for people to move away from agriculture to something more productive. Only the manufacturing sector can provide employment opportunities and enable people to move from rural areas to a better livelihood. While the process of industrialisation is facing many problems that need to be addressed, the problem of land for industry is among the most serious. The fact is that people do depend on land—not only title holders but large number of other people such as landless labourers and share croppers. Often, their land is taken away without adequate compensation or without adequate opportunities for them to grow and resettle with dignity: this is inhuman and will lead to all kinds of contentious issues that we have seen around the country in the last few years, including many cases of violence. This is an important issue as there is need of land for both industrialisation and urban development. As more and more people move into cities, a trend that cannot be stopped, there has to be proper town planning and proper growth of our urban centres—a process that will increase the importance of land.

I will just very briefly recapture the debate since 2007 when the government began to seriously consider the amendment of the Land Acquisition Act, 1894. In 2007, then again in 2009, a land acquisition amendment and resettlement and rehabilitation bill was proposed providing amendments to the definition of the term 'public purpose' to provide a statutory framework for rehabilitation and resettlement and expanding the definition of interested parties, including tribals, those dependent on the forest for their living and persons other than land holders.

The ambit of the public purpose of the bill was sought to be expanded to include acquisition of land for private companies. After some debate, another draft was put up, the 2011 draft of the Land Acquisition, Rehabilitation and Resettlement Bill, which was a formal legal response to the articulation on the concerned political, economic, social and environmental issues. This is the first time that the land acquisition bill has merged rehabilitation and resettlement and land acquisition into one bill; a significant innovation is that the introduction of rehabilitation and resettlement is sought to be a matter of right and not just a matter of public policy by the government. The public purpose has also been revised: strategic interest, national security, infrastructure, etc. are there, but it has also been expanded for new uses, including land for resettlement and facilitation of companies in public interest for manufacturing and services.

This bill restricts the use of the urgency clause, confining it to defence, national security or emergencies arising out of natural calamities. Regarding acquisition for private companies, it has been stated that the company must secure 80 percent of the land by private acquisition. Only then will the rest of the land be acquired by the government from unwilling landholders. So, very broadly speaking, this is the sketchy background of what has been discussed in the last few years in the standing committee and in the ministries and departments. The bill was renamed as The Right to

Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2012 in order to emphasise the government's commitment towards securing legal guarantee for the rights of those individuals and families affected by the process of land acquisition; strengthening the rights-based approach has now become the key element along with ensuring greater transparency in the land acquisition process. According to the amendments, it is sought to be prescribed that this act will determine the minimum compensation, but states may set up land pricing commissions in order to top up this amount.

So, this is generally the background against which we thought it will be useful to have a discussion among all the stakeholders, so that various points of view can come before us and we at the Observer Research Foundation could provide a balanced analysis and advice to those whose business it is to consider this particular enactment and be of benefit to our legislators when they consider this bill in Parliament.

We are privileged to have with us Mr. Arun Maira, member of the Planning Commission of India. He has a very distinguished background in Boston Consulting Group and other important organisations. We look forward to him beginning the proceedings and give us some ideas about how he, in his capacity as a member of the Planning Commission and advisor to the government, views this matter. We will then have presentations from the various stakeholders present here.

Mr. Arun Maira
Member, Planning Commission

My work in the Planning Commission involves some principle responsibilities for industry and urbanisation. Both these sectors are hungry for land as the country needs more industries and more

urbanisation. We are in some ways the bad boys for the people who have the land, especially the small land owners. While large tracts of land are required for building infrastructure, we must continue to have adequate land for agriculture because we all live on food.

There are lot of contentions for this limited fundamental resource—land—at this stage of our country's progress. Some areas of our economy—like infrastructure and urban industry—have not yet developed enough to provide the needs of the people. For the welfare of all concerned, we need urbanisation, industry and infrastructure, but the required land is owned by some people. There are some large land holders and, in the discourse that takes place amongst industrial organisations, the government and builders of infrastructure, they have their lawyers to help them. They can make the contracts, frame the debate, and so on. But the interests of small land owners are not sufficiently recognised nor represented in the usual discourse. 'Usual' from our perspective means the discourse that takes place when we try and find solutions for matters in which many parties are involved. The small land owners come to us in the Planning Commission complaining about their problems and go away very disappointed. Generally, their plea is that they need their small piece of land for three reasons: One is for livelihood. The second is that the land provides a secure habitation—be it a hut or some make-shift structure. If their land is taken away, where would they sleep at night? Thirdly, the land provides security—an assurance that that when their children marry, the land can fetch them some money. For them, the issue is of fundamental importance and has nothing to do with the general discourse about the need for development, industrialisation and urbanisation.

So, there are many stakeholders with different requirements. The issue primarily revolves around what is for public purpose and how to reconcile it with what is of private, individual interest; the latter cannot just be

brushed aside. The arguments mainly deal with whether you should give private land for a public purpose. The act of transferring for public purpose results in a considerable increase in the value of the land; since it is transferred to a private corporation or for private ownership, the value lies in private hands. So, what was done in public interest becomes a private game; you have transferred the land from a poor person to someone who is already very rich, knows how to manoeuvre the system; you take land from people who really need it the most give it to those who already have plenty and can through this process acquire much more. All this in the name of public purpose and interest!

Having outlined the contentions around this issue, we also face problems in terms of understanding who the stakeholders are, what are their needs, how to ensure that no one is seriously hurt, that there is fairness in the solution we have proposed with respect to water, etc. The people who depend on land for their livelihood need to be heard. They need the continuity of the little income they get every month to sustain their families' basic needs, for their children's' school fees, medical expenses and so on. Such basic issues are brushed aside by many saying: "Don't you think that if you had flexibility, there will be more investment and therefore you will get more jobs?" But that is no answer to the problem faced by the poor people. We discuss issues like health and education vis-à-vis public investments. We have not been able to come to an agreement about the role private investments and private talent can play for the public good.

Having been in the Planning Commission for the last three years, I have found that what is missing is an institutionalised and more effective way for all stakeholders to feel included and understand the problems to work out solutions together which would be fair to all. As a Planning Commission member, I listen to discussions on many matters, and observe how we are going about understanding, agreeing or disagreeing--and then taking

decisions. It is like designing a traffic system—if you don't design a good traffic system, reaching the destination becomes difficult.

This "traffic system" in the sphere of land acquisition, in my view, consists of three sets of institutions. Firstly, institutions for sense making, which could be think-tanks or academic research organisations that take data and make sense out of it for everybody. Do we have good ones? Do we have enough? Do we have unbiased ones? Secondly, we need institutions for initiating dialogue, for bringing all the stakeholders together to understand each other and the whole situation to prepare a plan that can be implemented more easily and more quickly.

Finally, we need decision-making institutions which give someone the authority, constitutionally or organisationally, to sign the decision. No doubt the authority to pass a law rests with Parliament. But if you just leave it to Parliament to make sense of the whole issue, especially since the Members are not in the habit of even listening to each other, we may not get very far on such a serious matter.

Today we have deficiency of institutions required for sense-making dialogue. The existing ones do not have the capacity for delivering what the country needs today. I am not saying Parliament or the ORF are good or bad. On the whole, what we have is inadequate. What happens is when things have to be done in conditions of inadequacy, we tend to stridently express our own perspective—hoping that people would side with us. Then, this is how it goes—to help people understand your perspective, you just listen to people who are supporting your view, backed up by data. You listen to think-tanks and the academics talking about your views and so you think you have a strong case, while those who disagree are getting into another conceptually gated community—that of the TV channels they watch and the newspapers they read. The issue could be discussed

rationally, but the discourse, publicly and politically, does not allow people to converge because the consequences of being seen on the other side are too high.

Chair: Mr. Maira has laid out the perspective of the institutions for enabling proper dialogue, stakeholder consultation and proper institutions for decision making. This will be of considerable help in our dialogue as we move forward. Now, we have eight panellists. May I request Dr. Ram Singh to make his presentation?

Dr. Ram Singh
Faculty of Economics, Delhi School of Economics

Mr. Chairman and Mr. Maira have summarised various issues that compulsory land acquisition entails. What stands out in the summaries and the delineation by Mr. Maira are two issues—first is the need of land for industrial and infrastructure development and the second is the consequences, involving in particular the issue of compensation. I will express my opinion on these two issues, namely compulsory acquisition of land for industrial or other private purpose activities and the issue of compensation.

In principle, I am against compulsory acquisition of land for private purpose activities, including industrialisation. Several problems will arise if we allow compulsory acquisition for private purpose activities. These problems and the abuses of the existing law have been documented by electronic and print media extensively. *The Economic Times, The Hindu* and other newspapers have also done commendable work in showing how state governments have been misusing acquisition laws and divesting farmers and other land owners of their only source of livelihood in the name of public purpose.

Some of these abuses can be attributed to political interests, industries or private interests 'capturing' the government; however, the very nature of compulsory acquisition laws is such that there are inherent problems. These arise precisely on account of what Mr. Maira pointed out: that for many people the land counts for key reasons: it is the only source of livelihood and it is their only asset. Keeping ground realities in mind, it is almost impossible to make an objective and dispassionate assessment of these issues. It is also impossible to make an objective assessment of the worth of the land holding; and if we get things wrong at the start, there are two immediate implications.

Firstly, compensation will not be equal to what the land is worth to the owner. That means the compensation will not be fair. Secondly, the issue of efficiency. If compensation cannot be equal to the owner's estimate, then, at times land will be acquired when it should not be acquired and the alternative activities will serve a lesser purpose; in other instances, land will not be acquired when it should be acquired. These are inherent problems; besides, compulsory acquisition laws are vulnerable to political abuses. However, acquisition opponents like me do need to ponder about the future of industrialisation. If you do not allow compulsory acquisition then how will industries grow and how will infrastructure development take place? Since Independence it has been a widely shared view that industrial and infrastructure development in the country have been less than what they have been in other countries with similar problems. Is this underdevelopment attributable to lack of land or the government's inability to acquire land for private activities? No, not at all.

So far, we have had fairly liberal laws for acquiring land for private purpose activities, yet industrialisation has lagged behind. It is clear that land is not the only determinant and deterring factor for this poor show. But is it the dominant factor that has withheld industrial and infrastructure

development? Maybe. But land has been acquired for all sorts of activities, including for setting up swimming pools and air conditioner manufacturing plants, yet industrial development is less than what it could have been or what it should be.

The history of land acquisition shows that flexible laws for compulsory acquisition of land for companies will not guarantee industrial development or infrastructural development. Even with flexible compulsory acquisition laws, two developments have taken place: On the one hand, land has been acquired for activities which cannot even remotely seem to be serving public purpose; on the other hand, for genuine industrial development projects, acquisition of land has been difficult without persuading or bribing the authorities. This persuasion or bribing is due to other regulatory structures that govern land use laws. To undertake any other activity on agricultural land, land use clearance rules need to be changed. This would increase the cost of development activities, limiting the scope of industrial development and, consequently, the land market.

Therefore, my submission is that instead of having liberal laws on private purpose acquisition, we should address the issues related to regulatory land use structure. There are other problems as well. Poor land records hamper private or voluntary transfer of land from agricultural to industrial development activities. Regulations are arbitrary and it is up to the authorities to grant change in land use (CLUs). Enforcement is another problem. Many times, once an activity has been started, it becomes very difficult to find out whether CLU has been granted. To counter this, zoning regulations can be executed beforehand. As long as the activity undertaken is within the list of activities that are permitted, government should have no role in terms of CLUs, etc. It should be left to the owners and potential buyers. The zoning activities have the additional advantage of being easy to enforce. If the zone is marked as an agricultural zone but somebody starts some other activity, it would get noticed immediately.

I would like to cover two more points. The first is related to infrastructure development. It has so far been publicly funded and undertaken by the central or state governments. But now increasing number of infrastructure projects are being undertaken through public-private partnerships. The Planning Commission's 12th Five-Year Plan estimates that at least 50 percent of funding of public goods and services will be channelised through public-private partnerships. There seem to be some misgivings on PPPs. PPPs in India have become a catch-all term. For example, PPPs by National Highways Authority of India and the one on the Delhi-Agra Expressway are treated at par. These two PPPs, though primarily in the road sector, are very different. PPPs under NHAI have no real estate component. They give only finite duration and limited control rights to the private investors, for example the Delhi-Gurgaon Expressway.

On the other hand, the Delhi-Agra Expressway PPP combines infrastructure, which is building roads, with real estate development. Whenever real estate is clubbed with any other project, industrial or infrastructure, the process becomes risky and vulnerable to corruption. Compulsory acquisition of land for infrastructure projects through PPPs should be allowed only if there is no real estate component and only if it gives finite duration and limited control rights to the investors. In some situations, compulsory acquisition of land would be inevitable.

In such cases, the question is what kind of compensation should be granted to owners. So far, compensation losses have been vulnerable to litigation. There are two types of litigation over land; one is when owners approach the court and say that our land should not be acquired; these are civil writ petitions. The Indian judiciary has not entertained this type of litigation. The other litigation is over compensation which the courts have taken up.

Chair: Now we have Dr. Parikshit Ghosh from the Delhi School of Economics.

Dr. Parikshit Ghosh
Faculty, Delhi School of Economics

This is obviously a complicated problem, not just centred on one or two questions. Should eminent domain be there at all? This is an important question. There has been much discussion on what should be the scope of eminent domain. There are other issues: should multi-crop land be included in the law; should PPPs and private industry also fall under the ambit. All these are questions of scope. In my view, the entire controversy springs from one single issue: we are not being able to get the price right. How do we put a price or how does the government put a price on a piece of land which a person has to give up and has no option to refuse?

The current approach is fundamentally flawed. We will never get it absolutely right, but at least we can try to do a better job. The problem with the bill in its various versions is that it is basically putting a mark-up on the market price. The previous law stated that the market price has to be paid as compensation; now we are proposing it should be two times, four times, or some other multiplicative factor. I cannot see where these numbers are coming from; why just four times, why not six or more? I think the initial draft of the National Advisory Council said six times for rural areas. But these figures have no foundation: it may be over-compensation/under-compensation, we don't really know.

Another problem is that the formula is being dictated from the top while the assessment of the local market price will be done by government officials. So, essentially, the affected people have no say at all on any aspect of the transaction—whether they want to give up the land or not, and what

would be in their view a fair price. There is absolutely no input from their side.

For over half a century, the land has been under-priced. There has been enormous human suffering because land has been taken away from people in return for very little compensation. Worse, it has led to social problems, political resistance and violence. Eventually, all this comes back to haunt industry itself. The industry may be getting cheap land, but given all the troubles and the delays, it is not in the interest of industry to get cheap land. Over pricing may also be problematic as it may deter investment. Ultimately, the interests of the farmers would be hurt as agriculture sector returns are very low. So, it is important to get the right price—neither too high nor too low.

Using the market price as a benchmark is not going to help. There are a host of problems, including distressed sales and poor land records. Moreover, the market price would be assessed by a government official. The discretionary power given to the officials leaves room for corruption. So, if you have an imperfect market and you put a price on that imperfect market, I am not sure how credible that would be. The point that is sometimes missed is that market price is the price arising out of voluntary transactions; under the new law you would be applying it to forcible acquisitions.

In a paper I co-authored with Dr. Maitreesh Ghatak of the London School of Economics (published in the *Economic and Political Weekly* last year), we proposed a procedure which can help us arrive at the right price. The first step would be to expand the area: if there is a highway or factory project which requires 1000 acres, target that 1000 acres but also add land from the surrounding region, expanding the area of intervention to around 2000 acres. Then, the government can hold a land auction, ask the owners to submit bids or state the prices they are willing to accept in return for giving

up the land. These would be voluntary quotes coming from the owners themselves. Then the government can buy up the cheapest 1000 acres from these 2000 acres, from this expanded area, to create a land bank. Of course, this land bank of 1000 acres would consist of land which is scattered. It would not be contiguous and not suit the specifications of the project or where the highway is going to be built. That of course is a problem. But this proposal gives the option to people who have not sold their land in the auction to be compensated not with money but with land close by. Another moot point is that whoever the buyer is—whether it is the government or the government acquiring the land on behalf of some other private party—a reserved price has to be submitted, that is the maximum the buyer is willing to pay which would be binding.

What are the advantages? One is transparency. Auctions are popular now—especially with all the scandals doing the rounds and people asking, "Why didn't the government go for auctions?" Auctions would not allow officials to decide the compensation amount. The process would give farmers economic power and a role in shaping the acquisition price. Owners and buyers would also have the incentive to state their valuations properly in the face of competition. Of course, there are problems. There are more fertile and less fertile areas. A farmer may get resettled in a plot of land which may be less fertile or which may be farther from home. There are standing crops, assets which are lost while moving, besides the loss of homestead. These sundry losses would have to be compensated, with officials using their discretion to assess the damages.

Chair: Now, we will have two representatives from industry.

Mr. S.V Goyal
Senior Vice-President, Reliance Industry Limited (RIL)

We can keep discussing and criticising the provisions of the Bill but I believe the government has done a fair job—particularly on merging the R&R benefits, making it compulsory that the R&R benefits are paid upfront before the start of the acquisition proceedings or before taking possession. The bill is comprehensive and has taken care of the interests of all the parties. For the last 60 years, excess benefits were being enjoyed by land owners; probably, some of the provisions of this Bill now appear to be favouring the other side. We need to have a fair, transparent and balanced approach; while the provisions are well drafted, they require at some places a little tweaking and clarification. Therefore, instead of talking in general, I would come straight to my views, clause by clause, on where the Bill requires more clarity or where it requires amendment to the provisions.

Firstly, regarding the consent provision. It has been provided that the consent needs to be given by the affected families. We all know that the definition of "affected families" is very wide, as no records exist, and this provision could easily be manipulated. In this context, there are two groups involved: the land owners and the people termed direct workers or those on tertiary employment. We strongly believe that whatever percentage Parliament decides regarding consent should be fair, but this consent should be from land owners only and not the affected families, as otherwise this provision could be misused and manipulated.

Secondly, our suggestion is similar to what Dr. Ghosh prescribed: Make a larger pie of the land than required by the project and then have an exchange. We have in fact worked on the same guideline. If the requiring body has to develop a project over 1000 acres belonging to 1000 persons and has already purchased 600 acres from 600 persons on consent basis at market value, then to fulfil the condition of 80 percent the requiring body must get further consent from only 200 persons (to make up the 800 persons) and not 320 persons (80 percent of the 400 acres to be acquired

from 400 persons) These are our two major suggestions—whether the percentage should be 66 percent or 80 percent, we leave it to the wisdom of Parliament.

Another important suggestion is regarding the definition of rural and urban area. All the provisions have been based on whether the land is in "rural or urban area", but the Bill nowhere defines the terms. This may lead to a plethora of litigation. It is common knowledge and I know from experience in handling large land acquisitions that all the cases filed under Section 18 of the Land Acquisition Act (1894) in the Supreme Court run for years, if not decades. Therefore, this Bill should try to plug such loopholes. Even for the Central Government, defining 'rural-urban' would be a difficult task because each state has its own laws of development with their own definitions. Therefore, the definition of rural and urban should be oriented as per the need of the state government concerned. We should be more attuned to the local laws.

The other suggestion is on R&R benefits. The Bill provides that wherever the acquisition is for urbanisation, 20 percent of the land should be reserved for the land losers. Firstly, the term urbanisation has not been defined, and our request is that it should be defined. The question is, what does urbanisation constitute? Is land required for industrialisation urbanisation? Is land required for highways urbanisation? If that is the case, where will the 20 percent be provided from? Secondly, we believe urbanisation is mainly for habitation. In such a project, 50 per cent of the land goes for development purposes. If we say that 20 percent of the net developable land be given to the land losers, then 40 percent of the grassland will go to them too. Do they need that much? These issues need to be explored and we believe that there are two requirements: one is that the urbanisation should be defined and secondly, percentage should be looked into.

In Schedule II, clause 2 of Bill, three options have been mentioned with regard to R&R: Either you take employment or take one-time benefit: you cannot have both. Schedule-II is common to all—land losers and land owners. We firmly believe that the requirement of the land loser and other persons affected is different. Therefore, they should be treated differently and different provisions should be made applicable. We suggest that while we can give land losers or land owners annuity and employment or one-time benefit, this could cause problems because the land losers tend to spend up the money and then again come to your door. Land losers can be given these options: Family members of the land losers who are not themselves land losers but are totally dependent should be offered employment; it is a bigger challenge than giving them annuity because that would give them the option to stay idle. Those who are not directly affected, but employed on a tertiary or secondary basis, should be given further training.

This provision is necessary for making them employable because, as a state, we should work towards *sarve bhavantu sukihna*—but to what extent? Also, we have not estimated how many people will comprise project affected families in a state. Revenue wise, if there are 2000 people from whom you are acquiring 100 acres of land, my experience tells me all those 2000 will come and say that they are dependent on these 100 acres of land. Are we going to give benefits for those 100 acres of land which we want to acquire to all those 2000 families? Can the project afford it? We need to clearly work out how far we spread our arms for *sarve bhavantu sukhina*.

The Bill initially provided that if you are developing so many acres of land then you need to provide all R&R benefits. But now the Centre has said that it is leaving to the wisdom of the state government to decide on this matter. Since we have an open economy and democratic system, in which we deal with land on a "willing-buyer and willing-seller" basis and developing it,

there should not be any provision for R&R benefits. Not only will it create an economic burden, but will also delay the development process.

Chair: Now, I invite Mr. Manoj Kumar, the senior advocate and managing partner of Hammurabi & Solomon for his views.

Mr. Manoj Kumar
Senior Advocate, Hammurabi & Solomon, Delhi

The problem is we are trying to deal with the compensation and the development side at the same time. The key challenge is how to prioritise between development, rights of land owners and maintain the habitat. We are well aware of the challenges of increasing population. We definitely cannot treat development as a side-script. Without getting into the micro-detailing of the act and the sections, etc. I would like to limit my discussion to three points which I think are the key to the formulation of the land acquisition law that is acceptable to farmers and to all other stakeholders.

Transparency, process efficiency and viability are the three key issues from a micro-level perspective on land acquisition. Transparency is very important because all the experiences of the past apparently flow out of lack of transparency on valuation and selection of the land: which land to acquire and why, how the valuation is to be done, what are the vagaries of the market value, how the market value is incorrect, etc. Process efficiency is important for ensuring that we diminish vagueness which leads to litigation, political resistance and weakening of the ability of the authority to implement the acquisition process.

Viability requires acceptance, understanding and a mindset change from all perspectives—land owner, think-tank and industry. Development versus the rights of land owners to maintain the habitat and the acquirer's right to

profit versus the compensation rights of the land owners are matters we need to discuss and arrive at a common ground. The R&R policy is well laid out in the Bill, but when it pertains to development of private projects, it is for the government to decide whether it is a responsibility or a liability. We have the directive principles of the state policy set out in the Constitution which can be enforced only by the government and certainly not by private industries. However much the government would like to pass the R&R burden to the private industry, there has to be a middle ground where the government shares the burden of implementing the R&R policy plus the financial burden of the R&R.

As for auctions, the Supreme Court has said that it is not the only way a national asset can be given out to private hands for development. It is a matter of government policy and for good reason because the assumption is that the government of the day and Parliament has the interests of people in mind.

One needs to highlight the risk of litigation because it is the main reason causing delays in the land acquisition process. The Bill is vague in some areas. Valuation issues are far from being acceptable to land owners, industry and the government. As both the Centre and the states are entitled to make laws on R&R policies, there is a likelihood of duplication as well as competing stands.

Chair: I now invite Mr. T.K. Arun of Economic Times.

Mr. T.K. Arun
Opinion Editor, The Economic Times

I have slightly unconventional views on this matter. Most countries urbanised when democracy was non-existent. So taking land away from

farmers and closure, etc. was fairly straight forward. As a matter of fact, rights were not respected or honoured and they could convert land without much ado. In China, the situation is very similar; you don't have to respect anybody's right and you can take land away. In countries of Latin America or Africa, land is expensive. You can get unpopulated land without displacing people.

In India, things are different. Whether to build a road, to open a mine or to build a town, you might need to displace people or you might need to convert fertile crop land for other uses. How do we attach a value to ownership? I am from *The Economic Times*, so I should respect property rights, but ultimately human beings are one species which spread out from one corner of eastern Africa to all over the globe. Now they might claim to own a certain area on the surface of the planet, but what absolute right do they claim? Ultimately, it is the society as a whole or a larger group on whom the onus of land distribution should go to. In a state where no land reforms have taken place and one landlord lays claim to huge tracts of land, does he have the right to be compensated to the same extent as a number of similar holdings in another state where land reform has taken place? I think we need to have some innovative approaches on how we deal with this issue.

The principle on which this bill has been crafted is absolutely sound. Those who lose land should continue to have a stake in what comes up on their alienated land. In terms of sharing the land (whether the developed land is returned to the land loser, he gets an annuity or a job) the principle behind it is that he must have a stake in what comes up on what was his land. How this should be done is a challenge for policy. I would submit that we should think of ways apart from one-time alienation. Suppose you want 1000 acres, why can't you create a special purpose vehicle which takes the ownership of the 1000 acres wherein the farmers who lose land are given shares? They will have a steady lease income from this property—a sort of

kickback to the shareholders. They might be able to mortgage their shares or even sell them in case of distress as they used to do when they owned the land. You might give your first right of refusal to the project developer who finally occupies the land. Why not lease? I think we need to think of a variety of ways in which we can actually embody the principle that a farmer must continue to have a stake in the land he loses.

The law has to give greater flexibility to the principle rather than be mandatory: what, for instance, should be the minimum price offered? If a state government wants to implement a lease model, why not? In a lease model, the initial upfront capital cost for the project developer does not go up. Usually, five times the market value of the land is given to the farmer. What is the value for retaining the market price? In transactions, people register land at one-fifth the value at which a transaction takes place. That's not the only issue. If land is an agricultural land and its price is x, and it is converted to urban land for commercial use, its price is 20x. Now what value would be ascribed to this piece of land? If a farmer sells his land to a builder and it applies for conversion, the land value goes up 20 times. So, how does the farmer benefit by getting five times the market value So, one-time alienation is not a good idea.

Magarpatta is a small town that has come up in Pune. It was formed by a small community of Magar farmers. One of them was a contractor, Satish Magar. He saw that his community members were selling their land because of increasing demand in Pune and they were working as maalis on the land they sold. Their wives were working as maids in the new housing colonies that came up on the land they used to till. He thought this was terrible. He persuaded them to pool their land, create a company. They borrowed money and he built a township with lease land for schools, hospitals and software technology parks. The farmers are now crorepatis. This is an example of farmers losing their land and serving the purpose of

organisation, industrialisation, and service industry growth without suffering any of the pangs that people in Singur and now in Birbhum face. But this required exemplary entrepreneurship of farmers. The farmers cannot possibly do this on their own. But this 'lease model' will actually allow farmers to share in the increase of the value of their land over time as it happens through the project development. However, the law leaves no space for an innovation like this. I think one-time compensation and one-time alienation of land is a bad idea.

Farmers have agreed to accept some 13 percent of the land being given back to them in a developed form. If they develop a residential colony, they will get 13 percent of whatever land they sold. This is a good idea and it is embodied in the principle that they will continue to have a stake in what they gave up.

Chair: We have with us Mr. Mohammed Khan from the Ministry of Rural Development.

Mohammed Ali Khan
OSD, Union Minister for Rural Development.

I don't think I am qualified to speak for the government, but what I think I will do is try and answer some of the questions that have been raised today. I will begin with Dr. Parikshit Ghosh's presentation. The first question in his presentation was, "Should this bill exist at all?" I think that's a redundant question because the power of eminent domain already exists but in a very arbitrary form. The 1894 Act is, by and large, believed to be a bad law. It is not just me speaking; every single political party for the last 60 years has as part of their manifesto consistently promised to change this law. That's an acknowledgement of the fact that this is a bad law. Why are we doing this now? There are many reasons for this. Maybe this is an idea whose time has

come, maybe there are other factors that we simply could not afford to ignore anymore, and maybe the realisation dawned following the events in Bhatta-Parsaul about a year-and-a-half ago. In part what this law seeks to do is address the issue of eminent domain. It seeks to address historical injustices.

The point on compensation is valid: What is the foundation for compensation? Why four times, or two times the market price? As Mr. Manoj Kumar noted, any court will ask, "How did you arrive at this figure?" They will challenge you for non-application of mind. But there is a reason for this and we have spent the better part of one year trying to figure out this formulation. I will tell you how we came about this. As was rightly pointed out, market values are notoriously suppressed, especially in rural areas. In eastern UP and Bihar, the price of land is terribly undervalued. So we knew that the price had to be enhanced. But how?

We took the market value in the area, which of course was low. Then, we took the value of the private sales transactions that have taken place in the area. We took note of the highest sale transactions based on which we arrived at an average value. This may not be the best course, but it is a safeguard recommended by many people. But, we felt that was not enough either; so, we added a multiplier. We felt that in urban areas market values are fairly representative. They are more or less representative of the actual value, so urban areas we will not touch and we will leave the multiplier at one which is basically the value as it is. This is the problem when you are making a policy for a country as diverse as India; you are going to try and come up with a formula that makes everyone happy, but the best what you can hope for is to arrive at an approximation closest to the value of the land in question. We found that four times comes closest. That might be exorbitant in some areas, but that is the closest approximation we found. Secondly, if the value was found to be too low, we put in place another

mechanism: provision for a plea to the land pricing commission constituted by the state; the only power that the land pricing commission has is to increase the award and not reduce it. So, basically we guaranteed minimum compensation through this law.

We believe that the opinion and the consent of families who are losing land should be given priority over those who are not losing but are affected in some way The latter should be given R&R benefits, a certain amount of compensation, but don't bring them into the consent process. Regarding distinction between rural and urban areas, if there is a lack of clarity, we will look into it; but as the law currently stands, it relies on the state definitions of rural and urban.

Land rights in states are not properly defined, the only exceptions being Haryana, Karnataka and Gujarat. The problem is that land is a state subject. Entry 42A of the Concurrent List basically gives us the power to legislate in acquisition and requisitioning of property, which is why we can make this law, but we cannot make similar laws on land. In fact, right now, as we speak we are trying to work on a land titling bill. Those of you who are familiar with rural land rights will know that land titles in India are presumptive; we want them to move to conclusive title so that if you own a land no one can challenge that. We want to bring about laws that provide you with a more efficient land registration system, so that no one can dispute your claim over that land. These laws are actually drafted in consultation with the department of land resources. But the only thing that is holding us back is legitimacy of jurisdiction; we simply don't have the jurisdiction.

The proposed law is more R&R than acquisition. All the families displaced by the Narmada, Omkareshwar, Indira Sagar dam projects have still not been resettled; litigation is still going on in the Supreme Court. About 200 farmers came to us about two weeks ago. Some of them broke down; one

complainant said, "my grandfather had 33 acres, now I don't even have a place to stay. I was given a pitiful compensation." R&R has to be the heart and soul of this Bill because you are forcibly evicting people from their land. In such evictions, the last thing you should consider is the convenience of the evictor. It should be a secondary concern.

Chair: Now, we will have some discussion as well as the question and answer session.

Mr. Arvind Kaul
IAS (Retd.)
I want to raise a basic issue. It seems to me that this new bill is being prepared because we feel that the old land acquisition act has a lot of limitations. But at the same time this is a state subject. So, is it not possible to leave it to the states? You could repeal the Land Acquisition Act and have a new act which says that the state governments should enact legislation with certain guidelines because things are different in different states. Issues are different, so solutions need to be different. The land record system and the land ownership patterns are different. I don't think one size fits all and whatever new act is put in place by the Centre, it will increase rather than reduce litigation. We and the Government of India keep talking about decentralisation, but it seems to me that over the last 15-20 years, there has been greater centralisation rather than decentralisation. Now, the Planning Commission can easily be dispensed with, but then we seem to keep adding more people to it and it is becoming more of a think-tank now.

Mr. Abinash Chaudhary
Associate Fellow, ORF

I am pursuing my Ph.D on infrastructure, development and land related issues. First and foremost, in any discussion on land issue in North India,

land is not about a property, it about identity. When you say that farmers don't want farming, they may be willing to quit farming but they are not willing to dispose their land. What has happened in recent times is that land has become a mode of accumulation by dispossession. States have become brokers. I have travelled to almost all the disturbed areas where land is an issue; nowhere are people willing to give up land for development work. When I say development work it means railways, road, industries, etc. It is only in real estate, where you acquire land for SEZ, that the state government gets busy. That is why Chief Ministers like Mayawati and Mamata Banerjee (besides Nitish Kumar, who adhered to the rules) say they would not acquire a single unit of land. If people want to acquire land, they can go and acquire it themselves in the market. We saw 600 SEZs coming up within 15 months in 2005-2006. How can 600 SEZs be notified in 15 months? Does the government want to relook into that? No.

I think we are taking a step backward. With every one step that we take forward, we are taking 100 steps backward. We are looking at a development model which was good in 70s, 60, 80s—Taiwan's model, the Korean model, the ASEAN tiger's model. Today, the need is need to deepen our democracy. What I mean specifically is that we must invest in health, education, capability approach, as also in IT, where people grow from the bottom up and then they themselves will give you the land.

Mr. B.G. Verghese
Senior Journalist

What some have said and my friend here has just said worries me. One of the things that we have to guard against is nostalgia and I fear that we are getting stuck, not wanting to move forward. There is a fear of an uncertain future. But in the present, the prevailing idea is that we must have land, for land is identity. True, but at the end of the day you need more than that. In a

national sample survey around 2005 or 2006 it was revealed that about 40 percent farmers in the country, given the option, would leave the land because it is no longer an economic proposition. They were making it very difficult for people to leave the land. We are keeping them on the land. There is a sort of unwritten bondage that is taking place in our psychology to force the farmers to stay where they were. We need to add 10 million jobs per annum. Where do these jobs come from?

Well, inefficient agriculture is not the answer. Much more productivity on smaller acreages is possible. The question about land banks came up and sites like Raim as also Kalinga Nagar in Odisha were referred to. The State of Odisha had planned on several land banks for different kinds of activities. One was steel, mineral based activities in Kalinga Nagar. Land was acquired and until it was actually put to use by whosoever, farmers were allowed to stay on. Now, they are the demanding secondary compensation and so on. These are the problems.

If you don't have land-banks, then it makes great sense to create jobs in the infrastructure, which means railway, highway, cement, steel, aluminium, coal, power, may be water supply as also for irrigation. This should be the broad plan for the next 30 years. If you acquire land ahead of time and then have to reacquire it a second time and a third time, not because the farmers don't want to leave the land or politicians don't want to do something with the land, but because vote-bank politics has contaminated everything. This is where we need to be very careful. Someone asked why not leave it to the states.

That would not be a problem, but, as a speaker pointed out, this was supposed to be a sort of modern law in which the states were free to improve, but not at the risk of worsening the situation. This wisely sets a standard for the work to be done. It means just carry on with the work and

get it done. For 30 years, people have been calling the 1894 Act vicious and wicked. But we stuck with it because we don't want change. We continue to discuss issues ad nauseum, so that we become the problem and not the solution. We say 'don't make the better the enemy of the good. This is a good law, so carry on with it. Leave it open to the states to improve and the Centre in its wisdom may in due course find all the political parties agreed on the issues. When the shoe begins to pinch, we, the practical people that we are, can just simply amend the law. But that would not be getting on with the job. I quite agree that stakeholder participation is a must. But the more important thing is we must realise that our geography has been politically static since Partition, but the population of this democracy has multiplied three-and-a-half times. This creates enormous pressures and the parameters change.

Again when you say that consent must be given by 80 percent of the people, why? If you are getting high land use, higher value for land utilisation and if one-third of the beneficiaries are willing, then why not go ahead with it? Why allow the holdouts to blackmail us? That's where eminent domain came in: the state ultimately said: "I have the right and I shall acquire it." We need to be wary of politics because we cannot afford to lose time in the social dynamics as it is today. We just have to create jobs. Without them, there will be social explosions of every kind and this country will become ungovernable. We need to deal urgently, practically and generously with all those who lose their jobs and livelihoods. Land is just one of the several sources of livelihoods and not the only one. All things being equal, we have a fairly good bill to go ahead with and then let the states improve upon it. If Haryana has got a better bill, let that be a model for others, but let us not debate on it forever.

Mr. T.K. Arun

When you say industrialisation is a public purpose necessity, it is not necessary that this abstract principle be given a concrete shape by a government agency. An industry might be built by a private agency. I come from Kerala. More than 50 percent of the schools in Kerala are private schools. They were funded by the government, but the execution and delivery of education institutions were carried by private agencies; Public purpose is being served by a private agency. So to take a decision between public and private for using 'eminent domain' to acquire land would not be very appropriate: the basic criteria should be whether it is advancing public good. So whether it is the public agency or private agency should not be the main question.

Dr. Niranjan Sahoo
Senior Fellow, ORF

From these discussions, it seems that the right way to go is for the project sponsors to form provisions for 60 percent or 80 percent acquisition; the government acquires the rest of the land. The impression that the Bill leaves is that it is okay for the government to acquire land compulsorily; only the terms need to be tightened and made stricter. My submission is that this is misplaced belief. The best approach is that whenever a government has to come in even for private projects; a lease type of arrangement should be encouraged. I agree that it is not in the exclusive domain of the Centre to promote such leases, but it can encourage the arrangement by two means. One is to restrict the scope of compulsory acquisition; then, by implication, private sponsors are automatically encouraged to explore alternatives and leasing arrangements.

Mr. Mohammad Ali Khan

I will respond to the points in the order in which they were made. Firstly, you are right to regard land as a state subject. But entry 42A of the Concurrent List of subjects allows both the Centre and the states to have legislative powers of acquisition and requisitioning of property; so this law is primarily made under that power. Our friend made a point about identity being paramount and not property, which is a very good point. In Odisha, the Niyamgiri people were so attached to their land because of religious reasons; they worship the hill. It was not just about Vedanta group paying them the amount and taking over the land. So there is of course an identity attached to the land that you own and it is not just about giving the land losers alternative land.

Someone spoke about this era being one of indiscriminate industrialisation with SEZs coming up everywhere. When this Bill was first drafted, I am sure many of you will remember, out of the 16 legislations given in Schedule 4 which were exempted, the SEZ Act was one of them. But after deliberation and careful consultation with stakeholders, we decided to remove SEZs from the 4th Schedule and decided to apply the bill in all its provisions to SEZ activities. This did not make the commerce and industry ministry very happy, but we did it nonetheless because it was a recurring demand of the civil society. As Mr. Jairam Ramesh has noted, this bill is not designed to help you acquire land, it is designed to make it more difficult. We want to restrict acquisition so that acquisition should be your last resort and not be your first option. A good example is the Cochin Airport; Cochin needed an airport. So they could have just as easily asked the state government to acquire the land and give it to them. The state government refused to acquire the land. So, what they did was they went in for a process known as negotiated settlement where the government sat in the middle, the people who owned the land sat on one side and the people who wanted

the land on the other. The government just acted as an arbitrator and told them to come to an agreement "so that everybody gets a fair settlement".

So if you go to Cochin airport today you will find that many of the people who are employed in the airport, running various services such as taxis, kiosks, and baggage handlers, once owned the land they now work on. One of the IIMs has done a study on the case. This kind of deal needs to be encouraged. CII did an amazing mathematical study which showed that the cost of acquisition goes up 3.5 times in cases where R&R benefits are being paid. This is a good sign. It should be made more expensive to acquire land. If you have purchased land, go ahead, talk to the guy, engage in that process; but if you make the state use its power to force somebody off their land, it should definitely incur a heavy cost. That's definitely been one of our drafting objectives.

Chair: We can now bring this discussion to a closure. It has been a very useful. The ORF will draw the necessary conclusions and make it available to the government and other policy makers. We will share with all of you the details of the discussion.

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Observer Research Foundation
20, Rouse Avenue, New Delhi-110 002
Email: orf@orfonline.org
Phone: +91-11-43520020 Fax: +91-11-43520003
www.orfonline.org