

ORF OCCASIONAL PAPER #28

DECEMBER 2011



In Search of a Model Land Legislation

The New Land Acquisition Bill and its Challenges

Niranjan Sahoo

OBSERVER RESEARCH FOUNDATION

In Search of a Model Land Legislation

The New Land Acquisition Bill and its Challenges

Niranjan Sahoo

OBSERVER RESEARCH FOUNDATION
NEW DELHI

About the Author

Dr. Niranjana Sahoo is a Senior Fellow at Observer Research Foundation. His interests include diverse but interrelated policy issues concerning governance reforms (service delivery, corruption, electoral reforms with specific reference to campaign finance, land acquisition, R&R) equity and social exclusion. He has written a book, *Reservation Policy and its Implementation Across Domains in India*, published by Academic Foundation.

A recipient of the 2009-10 ASIA Fellow Award, Dr. Sahoo recently served as Visiting Asia Fellow with the Faculty of Economics and Administration (FEA), University of Malaya, Kuala Lumpur. As a part of the ASIA Fellowship, he undertook a research study on *Private Sector Participation in Affirmative Action in Malaysia: Lessons for India*.

Dr. Sahoo holds Ph.D and M.A. degrees in Political Science from the University of Hyderabad, Andhra Pradesh. His doctoral dissertation was on *Judicial Activism and Environmental Debate in India*. He can be reached at niranjansahoo@yahoo.com

In Search of a Model Land Legislation The New Land Acquisition Bill and its Challenges

Abstract

The draft Land Acquisition and Rehabilitation and Resettlement Bill, which was introduced in the Lok Sabha on September 7, 2011 is one of the most important legislations waiting for Parliamentary approval. In its present form, the bill is a major improvement over the archaic 1894 land law that has contributed to the impasse over land acquisitions across the country. The bill makes a genuine push for a better land acquisition regime in the country by doing three things: combining both compensations, resettlement and rehabilitation (R&R) into a single bill; raising the prospects of better compensation and R&R for millions of land owners and other project stakeholders; and reposing some faith in participatory grassroots institutions such as Gram Sabha in the acquisition process. On the other hand, the proposed legislation fails on many fronts to address some of the vexed issues on land acquisition. It fails, for example, to read the land market which is witnessing a major transformation due to rapid changes in the economy, industry and urbanization in the country. Even as the government resolves some of these policy loopholes and contradictions, the new legislation faces an uncertain future for a wide variety of reasons. The key objectives of the new law would remain nothing more than rhetoric in the absence of accompanying administrative and structural changes in the nature of governance system and systemic efforts to clean the land market and free it from the influence of parties with vested interest, particularly the political class, officials, and the land mafia.

Keywords: Land acquisition, R&R, political economy, land markets, implementation challenges.

Introduction

Land acquisition remains at the heart of India's current developmental predicaments. In this country, hardly a day passes without a report of an agitation or some incident of violence over land acquisition. Nearly all major projects today are being held up by one or another problem related to land acquisition.² If these problems are not addressed soon, the land issue has the potential to disrupt not only the economic story of India, but also its political stability. (Sathe, 2011) In response to the rising tide of resistance and protests against present practices of land acquisition, governments at the Centre and state levels have been announcing all kinds of sweeteners such as attractive compensation packages, a variety of rehabilitation schemes including jobs, annuity, equity participation, developed plots, among other things. The same states which used to be indifferent to pressing issues of land acquisition are now competing with one another with their packages and a host of other benefits to smoothen the process.³ By introducing a comprehensive draft bill in the last session of Parliament, the Centre too has joined the race against state governments, albeit belatedly.

New Law, New Promises

The Draft National Land Acquisition and Rehabilitation & Resettlement Bill (LARR) 2011 proposed by the Minister of Rural Development, Mr. Jairam Ramesh, on 7 September 2011, is long overdue.⁴ It could not have been timed better, given the alarming trend of violent protests and an ever-expanding list of stalled projects due to messy land acquisition processes. If the contents of the bill (and the Minister's own signals) are to be the gauge,⁵ the Centre is keen to travel a few miles more than the states to resolve this

issue. Since this is a central legislation which would replace the colonial-era land legislation of 1894 with wider ramifications, this Bill is being closely monitored by people across sectors.

How do the key provisions of this draft fit into the current political economy of land? Does the proposed bill adequately capture the broad political economy that surrounds this volatile sector and suggest appropriate legal framework and institutional mechanisms to correct the existing maladies in the land sector? What challenges are likely to be faced by the proposed land legislation in the near and long terms, with regard to its realisation? This paper will attempt to enumerate some of these key challenges.

A cursory glance at the various provisions of the new bill shows that it is an immensely improved version compared to the 2007 draft. By combining compensations, rehabilitation and resettlement into a single bill, the government has finally recognized that this neglected but most critical component of land acquisition plays a huge role in fueling protests and agitations across the country. A significant departure over the previous draft, for example, is the insertion of a clear provision of executing R&R package before land is acquired.

Moreover, if enacted in its present form, the bill would significantly bring down the prevalent pattern of involuntary acquisition. The proposal makes it mandatory to obtain consent from 80 per cent of the affected people before any acquisition notice is issued; thus significantly reducing the chances of forcible acquisitions. Stringent restrictions on the most misused 'urgency' clause to national security and natural calamities has also reduced chances of involuntary acquisition. However, the 'public purpose' clause—

which can be considered the 'mother of all controversies' around land acquisition—largely remains the same, thereby leaving enough scope for its misuse.

Third, the new legislation guarantees a higher compensation for land owners (four times the market price for rural and two times for urban areas, respectively). Theoretically, this is a major improvement over the existing land law; however, such a pricing formula is riddled with complications. (The subject is discussed in the next section). In addition, certain alternative forms of compensation, such as allocation of shares of developed land and annuities, can go a long way in persuading reluctant sellers, but their execution is going to be a real challenge.

Fourth, for the first time the bill recognizes the claims for compensation of those affected by land acquisitions (including: agricultural and non-agricultural labourers; rural artisan or self-employed persons; and landless labourers). This is the most radical departure from the current land acquisition regime. If implemented seriously, it can significantly lessen the ongoing impasse over land acquisitions.

Fifth, it is the first of its kind land legislation that unequivocally recognizes the role of Gram Sabha in the acquisition process. This has been done to comply with other laws particularly the Panchayat (Extension to the Scheduled Areas), Act, 1996 and the Forest (Dwellers) Rights Act, 2006. A pre-notification consultation with Gram Sabha is a procedural innovation that could, hopefully, reduce litigation and help accelerate the process of acquisition through a new participatory framework.

Lastly, notwithstanding many limitations, the new proposal to create an elaborate dispute and grievances settlement mechanism is a significant step towards ensuring due fairness to people who are parting with their land titles. This could create a legal framework for the governance of land acquisition processes.

To sum up, the proposed legislation is a vast improvement over the colonial-era 1894 Land Acquisition Act as it contains various provisions that can facilitate smoother land acquisitions. The new law would significantly improve the fortune of land owners and even those who are distantly connected with these lands.

But key questions remain: Will the proposed legislation significantly alter the messy political economy of land in India? Does it contain serious doses of reform that can address some of the intractable challenges that permeate this critical sector?

Drawbacks of the Bill

Even with its innovative features and promises, the proposed legislation still contains some serious flaws and policy contradictions which can potentially derail its good intentions (Ghatak and Ghosh, 2011; Desai, 2011). For one, the view of economy and society presented by the LARR bill is static. This is evident from some of its policy ambivalence (e.g., public purpose, partial acquisition of land for private industry) and policy prescriptions on issues of arbitrary price fixing (four times of market price for rural and two times for urban areas), and blanket ban on acquisition of multi-crop agriculture land. Let us look in more detail at some of these policy contradictions and challenges.

First, consider the case of 80 per cent formula for private-sector acquisition. The new bill proposes for government intervention in land acquisition in cases where 80 per cent of the land area has been acquired by a private party provided it serves public purpose. Implicitly, it puts restriction on use of 'eminent domain'.⁶ What is the rationale behind the 80 per cent limit? Does this guarantee justice and fairness to every landowner or is it merely a utilitarian proposition where a few would have to sacrifice for the interest of the majority? In the context of imperfections in land markets that result in huge asymmetry of power between the buyers and sellers (Bardhan, 2009), the state was supposed to play a far bigger role in reversing the current unhealthy trends in land acquisitions. For example, the market most often works well in arranging bilateral transactions.

The same market, however, becomes ineffective as the number of parties swells. In a country of India's complexity that has a poor property rights regime, defined inadequately and with extremely unclear or doubtful records—coupled with a judicial process which is painfully slow—land acquisition purely by private entities is a herculean, time-consuming task. There is little doubt that legal problems will keep cropping up even after the private sale has been completed. Since legal cases in India can take years to find a resolution, the logic of allowing the private sector to acquire land on its own, could delay most of the projects.⁷

The clearest reminder of this was Singur, where thousands of acres that were acquired came in such small parcels; there were nearly 12,000 owners. (Ghatak et al., 2011; Debroy, 2011). Given the kind of numbers involved in Singur and many other areas, most of the projects would get into all kinds of complications without active government involvement in land acquisition. While on one hand this would have serious consequences for the country's

critical infrastructure, urbanization, and industrialization projects, on the other it would also cause severe negative impact on farmers and other deserving landowners in many ways (Kumar, 2011).

Second, while the new bill has the admirable intention to protect and safeguard the interest of farmers and other landowners, the formula in which it does this (four times of average transacted price of land in rural and two times in urban areas) betrays a lack of understanding of the broad political economy in which India's land markets function. The bitter reality is that in most parts of rural India, a land market is non-existent. Very few land transactions happen at the scale of villages, even in the supposedly active land market of Bengal (Bardhan, et al 2011). Similar conclusions were reached by an earlier study by Sarap of rural land market in Haryana (1996). Of the transactions that happen, a significant proportion are in the form of distress sales (Chakravorty, 2011). Added to this is the common trend of lowering the transaction price in order to avoid high stamp duty.

Although this practice would most likely change with the new proposal (four times over market price), getting in the way is the existing information asymmetry and other forces. Therefore an arbitrary guaranteed minimum price formula may not be beneficial in those most backward regions or deep rural pockets. What is worse about such a blunt pricing formula is that it would have serious unintended consequences for otherwise smooth land transactions.

For example, the new pricing formula has the potential to exponentially increase land prices in some areas. This is largely due to the fact that acquisition price in the first round in a particular area will double or quadruple in the next round. This may rise in geometric progression in the

following rounds, theoretically setting up astronomical figures for acquisition prices. Effectively this would remove most desirable land from the market, that in the metropolis or near urban areas (Chakravorty, 2011). The most serious unintended consequence of such pricing formula would be that it will surely create a strong incentive for speculative activities around land. The pricing formula which is likely to raise land prices astronomically in some locations will encourage vested interest parties, particularly those connected to key government officials, to buy up land cheaply from those areas where the government plans to buy land in the future and then sell the same at a much higher price (Banerjee, 2011). Since there is assured fixed pricing, they would surely make a lot of money from the initial investment. The proposed bill does not deter such speculative activities.

Ironically, it offers speculators protection against this kind of worrisome outcome because, in effect, it allows them to set their own sale price. Speculators can happily pay high amounts over the current rate while buying as they are assured of being able to sell the same land at a much higher price.⁸ In short, the proposed pricing formula would defeat the purpose of protecting the interest of poor farmers and other landowners as the transaction process is likely to be captured by vested interest players.

The third and most critical issue is the ban on multi-crop agriculture land. This is based on some dogmatic or ideological considerations rather than on a realistic regard for the economic and demographic changes that India is currently witnessing. This ban would effectively render about 55 million hectares or 40 per cent of arable land out of the scope of acquisitions (Kumar, 2011). Although the bill in the last minute has made some room for their sale (allowing five per cent of such land on condition that the state

develops the same quantity of wasteland for agriculture use), this would still not address the challenges arising from the ban.

The decision to ban such land is based again on utilitarian concerns (such as food security) which goes against those 'willing' farmers who would like to sell their piece of land for a higher price or opt for alternative livelihoods. In other words, such a ban on irrigated multi-crop land would put those interested farmers in a disadvantaged position as it would block their chances to leave agriculture for other vocations (Mehta, 2011; Kumar, 2011). While all care should be taken to stop the indiscriminate acquisition of fertile agriculture land for pure commercial ventures, the bill should have taken cognizance of India's fast-changing demography, its economy, and society.

The fact of the matter is that India's growing young population is desperately seeking their futures in non-agricultural occupations.⁹ Needless to say, a vast chunk of employment has to be generated outside the agricultural sector. There would be heavy pressure on land and given India's very low land-man ratio (which will be 0.2 hectares by 2020), the country has little choice but to fall back on multi-crop land, wherever feasible (Debroy, 2011).

Moreover, from a practical, industrial and entrepreneurial point of view, the preference is for land near urban settlements or land connected to highways for setting up of commercial ventures. In many instances (e.g., the Yamuna Expressway covering fertile land, or Singur with its proximity to Kolkata and Durgapur Expressway) fertile land in an urban vicinity will have to be acquired for infrastructure, industry, urbanization, and other critical

projects. Thus if the industry or other parties are ready to pay full compensation for the value of the lost agricultural output and livelihoods, there is no reason why location preference should not be taken into account (Ghatak et al., 2011).

There is a need to set up a proper compensation price for such land which would create disincentives for their acquisition, rather than impose an arbitrary ban which will only be counterproductive.¹⁰ So, this is another provision which for all practical purposes will remain in the realm of rhetoric as it would be highly difficult to enforce. Such a provision, however, would prove to be a big boon to NGOs, professional litigants, and so-called public interest individuals, thereby making land acquisition an even messier process.

Fourth, the proposal to clean up the mess in the processes of land acquisition that lack transparency and credibility is inadequate and largely misreads the enormity of challenges that would emerge because of massive administrative and implementation costs. (This is analysed in greater detail in a latter section.) For instance, under Section 21 (1), the proposed Bill continues its faith on the judgment of the District Collector to determine the 'market value of land'. According to past experience, however, this is one institution which lies at the centre of many land controversies.

Stories abound about District Collectors organizing fake Gram Sabha meetings or coercing ill-informed and disempowered villagers into submission with regard to land acquisitions. Similarly, the provision of a Committee under the chairmanship of Chief Secretary with regard to land acquisition for public purpose, puts the onus on the same unreliable

bureaucracy. Thus, the bill would cause fundamental changes in the current political economy around land, even as the governance issues remain ad hoc and unchanged.

Finally, there are procedural and governance issues that the bill fails to adequately address. For instance, despite provisions for National Land Acquisition Dispute Settlement Authority and State Land Acquisition Rehabilitation and Resettlement Dispute Settlement Authority, this would still be inadequate to address post-acquisition pangs and delays that result from subsequent court battles. What the new law needs to appropriately consider is an empowered and independent regulator (including members of civil society and other non-bureaucratic spheres) both at the central and state levels to oversee and monitor or regulate the land acquisition process with the given framework. Such a body could significantly reduce judicial delays and political interferences.

To sum up, despite making significant improvement over the 1894 Act, the proposed bill fails on many fronts. Most of its core provisions fail to address the vexed political economy issues with regard to involuntary acquisition, land market distortions, pricing criteria and governance instruments.

Between Promise and Actual Delivery: Key Implementation Barriers

While these flaws and policy contradictions would hinder the positive spin-offs on the land acquisition process, there are even bigger questions about actual implementation. Can the new legislation overcome the resistance from the unholy nexus of vested interest groups which includes politicians, officials, corporate, real estate and land mafias, and lobbyists? Do the states and their institutions have the capacity and resources to enforce various

provisions as prescribed in the proposed land legislation? Has the present bill taken into account the enormity of challenges that would come from the issues of implementation and the kind of capacity building and resources needed at state levels to realize the key objectives of the new legislation? Or will the proposed legislation remain more as a set of platitudes, as has been the case with other landmark legislations in recent memory? Following is a summary of key challenges that the new legislation would have to negotiate.

As stated above, drafting a model legislation is an important first step in ending the impasse around land acquisition. However, an enormous amount of effort is needed in order to see its realization. Given India's uninspiring record in adhering to its commitments, including the implementation of statutes and promised state obligations, there is sufficient reason to be skeptical about the future of the proposed land act. There is a long list of states becoming selective or completely overlooking constitutional promises on duly enacted laws. Consider a few illustrations in this regard: the case of the controversial 1894 land acquisition law; regardless of its colonial mooring and many serious drawbacks, the 1894 act is reasonably clear about the applicability of 'public purpose'. In the case of 'public purpose', the 1894 Act (after 1962, 1967 and 1984 amendments of the Act) under Clause 3 (f) defines it as "...provision of village sites", planned development using public funds "in pursuance of policy of government", "provision of land for residential purposes to the poor or landless". In other words, the state is debarred from acquiring land for private companies.

However, states (as well as the Central Government) have bypassed this restrictive clause in hundreds of cases of land acquisition for private companies that hardly serve the stated public purpose (NAC, 2011; Pant,

2011). In fact, according to one estimate, private sector accounts for only 10 percent of the total acquisition, while Indian state accounts for the rest (Chakravorty, 2011¹¹). Ironically, such violations of 'public purpose' clause have been supported by the Supreme Court in several of its judgements (Gonsalves, 2010).

Similar is the case with the use of the 'urgency' clause. Section 17 (2) of 1894 Act specifically mentions the cases where urgent acquisition is applicable, including: “maintenance of railway traffic, irrigation, water supply, road communications and electricity”.

While there is absolute clarity in land laws, this has been grossly overlooked by states in the past six decades (Pant, 2011). The most vivid display of non-adherence to 'urgency' clause was seen in the case of Singur and Nandigram (West Bengal) and more recently in the case of Yamuna Expressway project of Uttar Pradesh.

While the present government under Ms. Mayawati claimed to have brought out one of the best Land Acquisition (AL) policies that land cannot be acquired without the consent of landholders (70%), it used “urgency” clause to acquire extra land to facilitate shopping and real-estate townships around the Yamuna Expressway. The fact that recent verdicts by the Allahabad High Court and the Supreme Court set aside all the recent land acquisitions undertaken by the UP government is a clear vindication of deliberate misuse of the 1894 Act.¹²

The State failure in keeping its promises is even more visible in one of the most contentious areas of land acquisition—rehabilitation and resettlement (R&R). Only in few cases, public sector units or private farms have fulfilled

their promises of providing alternative employment to the displaced population (Appu, 1996; Sardana, 2010). According to a well-known scholar on the issue of displacement, between 1951-2004, around 55 million people have been forcibly evicted from their land; of these, tribal communities constitute 40 per cent (nearly 22 million). Out of them, only 18-20 per cent have been properly resettled and rehabilitated (Fernandes, 2008; Bandyopadhyay, 2008; Sardana, 2010). This is so despite a plethora of some 26 constitutional schemes and laws that are designed to protect the adivasis from land alienation.

In other words, the state's patchy records in implementing key provisions of the 1894 Act makes one cynical about the future of the new legislation (no matter how comprehensive it may be).

What further reinforces such cynicism is the government's recent track record (against mounting public pressures to honour these commitments) of executing two historic legislations that promise a new charter of hope for millions of adivasis and other excluded groups. These two landmark legislations are the Extension of Panchayats (Extension to Scheduled Areas) Act (PESA), 1996 and the Forest (Dwellers) Rights Act (FRA), 2006. Between the two, PESA is the singlemost important statutory instrument for protecting and promoting tribal rights (control over natural resources including minor forest, mines, land), and involvement of tribals in local government. About 15 years have passed since PESA was enacted but even now it has not been implemented in letter and spirit. While all nine PESA states have passed their conformity legislations, implementation of core provisions has remained half-hearted. Most states have failed in issuing executive orders for implementation of PESA, thus making it ineffective.¹³

Some Central government policies also violate PESA.¹⁴ Even today most laws and policies related to natural resources in Scheduled Areas remain centralized (State of Panchayati Raj Institutions, GOI, 2007). In short, PESA has been implemented more in the breach (Aiyar, 2010). Similarly, the Forest Rights Act, 2006¹⁵ which for the first time recognized tribals and other traditional forest dwellers' rights over land under their occupation as well as customary land, is yet to witness any momentum. Several Indian states with substantial tribal populations have been resisting adherence to the central legislations. Besides this, key features of this legislation have been undermined by a combination of official apathy and 'sabotage' during the process of implementation (CSD Report, 2011).¹⁶ Both central and the state governments have actively pursued policies that are in direct violation of the letter and spirit of the Act. In other words, mere enactment of legislation does not necessarily guarantee its implementation in letter and spirit.

State Capacity and Implementation Issues

Among the key reasons behind non-compliance of many of the state commitments are the archaic governance structures and inadequate state capacities (especially among service delivery institutions) to enforce these state obligations. The hard reality is that states in India are in the habit of creating new laws or rights without making adequate provisions to ensure their execution (Mehta, 2009). Mere promulgation of rights will remain hollow if the delivery structure for implementation remains weak and corrupt (Bardhan, 2011). Given our past record, the new land law would create the same paradoxical situation as has been in the cases of PESA and FRA, two of the most radical legislations in recent times.¹⁷

To take a reasoned view of the implementation challenges, let us do a small re-check of the present state of land administration in the country and the volume of tasks to be performed in the event that the proposed land bill is passed. For instance, the proposed land law envisions a major overhaul in the present system of determining and awarding compensation and rehabilitation, including employment guarantees, annuities, company shares, land-for-land, share of appreciated land value after resale, and replacement of lost homestead, disputes and grievance resolutions. Notwithstanding inherent challenges in the realization of many of these promises, the major problems coming from these new schemes and provisions are that they would increase the pressures on an already overburdened land administration system. Even though the land bill makes provision for the creation of several new institutional structures such as Monitoring Committees and Dispute Settlement Tribunals at different levels to handle range of functions, much of the administrative burden will be passed on to the existing land administration.

It cannot be overemphasized that India's land records remain in quite a poor shape and there is maximum litigation in the rural areas about ownership. Barring a few, the majority of the states in India are yet to undertake a conclusive survey of land records; computerized land records, digitized land deeds, and a proper land registration system to ensure transparent land transactions (MoRD, 2009) remain a far cry. These tasks are a crucial prerequisite for an efficient land market envisioned by the bill. Delivering these tasks would require massive manpower, huge budgets, and enormous amounts of technical and technological support. Just for illustration, the much talked about Bhoomi (land) programme which only digitizes cadastrals and does not measure land records, could take off because of big funds from multilateral donors and a sizeable manpower (MoRD, 2009).

Given the enormity of challenges, the key question remains: Can the present land administration across the country fulfill the obligations as envisioned in the new bill?

A reality check with the present land administration and its capacity to deliver such challenging tasks would give us some hint as to the direction of the proposed bill. For all its critical roles, the land administration in the country is very much wrapped up in the colonial mooring in terms of its objectives, orientation, and attitudes (MoRD, 2009).¹⁸ Most of the institutions and processes for administering land in India were adopted from the British at Independence and have been modified only slightly through various land reform laws.

The administrative structure and processes to perform these new responsibilities have been left untouched even after 20 years of economic reforms and rapid changes in the country's land markets. While the land administration institutions are tasked with judicial, regulatory, fiscal, cadastral, and conflict-resolution functions, they hardly function, if at all (Hanstad et al. 2004; Deininger 2007; MoRD 2009). Despite its mandate to perform very critical functions of implementing land reforms, land survey and mapping, maintenance of clear land records and disputes settlement, the land administration continues to be placed under non-plan expenditure.

In many ways, this serves as a constraint in its expansion and technical capabilities (MoRD, 2009). Institutions fail widely to deliver on their tasks, and do not function well as a result of weak technical and human capacities, as well as outdated equipment and limited spatial coverage.¹⁹ Third, while the land administration everywhere is overburdened with its primary jobs, it is also routinely given other tasks such as elections, local civic activities,

population census, welfare-aid distribution and other developmental works undertaken by the provincial government (MoRD 2009).

Finally, the most important challenges with regard to land administration is the issue of corruption. As with other institutions in India, land administration has little accountability mechanisms to make it responsive and people-friendly.²⁰ With wide discretionary powers and the presence of weak accountability and transparency mechanisms, the officials in charge of land administration have historically colluded with powerful groups.

For instance, Andhra Pradesh and Bihar are classic examples: most of the legislation preventing land alienation has become defunct largely owing to non-adherence to the rule book and the revenue administration siding with the non-tribal landlords and other powerful groups. The states also suffer from vested interests, rent-seeking behaviour, and corruption, compounded by the use of land as a tool of political patronage. No wonder, most surveys find land administration as one of the most corrupt areas in the country, third only after the police and courts.²¹ In India, bribes paid annually by users of land administration services are estimated at \$700 million (Transparency International, 2006), three-quarters of total public spending on science, technology, and environment.

Without a clear roadmap on overhauling an ailing land administration, many core components of LARR would either be delayed or never realized at all. Since reforming land administration comes under the purview of the state governments, this would further derail the core objectives of the LARR Bill. This is because even proactive incentives for administrative reforms from the Centre with specific focus on land administration (computerization of

land records, digitization of records, etc) have not delivered much as many of the states are yet to make a genuine beginning (MoRD, 2009). Fully funded central schemes on digitizing land registration are yet to gain a momentum among states.

In short, without comprehensive administrative reforms and visible transformation in the manner public service is delivered, particularly by those agencies dealing with land related issues, there will be very little movement on the ground despite the best of legislation.

At best, the new law will create fairness and transparency in compensation but it would not solve all major issues related to land acquisition. As aptly observed: “Our governance structures, including land administration and urban zoning, are still antiquated and have little capacity” (Mehta, 2011). Without simultaneously initiating progressive institutional change in land sector agencies, enactment of land legislation—no matter how comprehensive and bold it may be—would only fall short.

Political Economy of Land: Laws, Discretionary Powers and Political Class

The administrative challenges noted above, however, would pale in significance to the kind of resistance that the proposed land legislation would face from the powerful political constituency whose financial interests and political fortunes are intimately linked to maintaining status quo of this sector. It is because of strong political interests that land remains one of the least reformed sectors of the Indian economy. While economic liberalization in the 1990s effectively ended “License Raj” by barring politicians and officials from exercising a number of discretionary powers, it

did not touch government's clout in several key areas of the economy, particularly land and labour (Mehta, 2010).

The government's involvement in land acquisition—using the principle of 'eminent domain'—has increased several notches since the 1990s; politicians of every hue are in collusion with officials in making huge amounts of money by facilitating the transfer of land to selected private sector players. Apart from eminent domain, politicians and officials use “regulatory” and “information” arbitrage (by virtue of advanced knowledge of which parcels of land will be opened up where for development or will be acquired by the government or an entrepreneur) to benefit from this lucrative sector (CLSA, 2010). This vicious trend in the land sector has been aptly summed up by noted economist Raghuram Rajan (2010): “You may be wondering why the government has not hastened land reforms.

Unfortunately, powerful interests who thrive on such murkiness of land rights never want any reforms to see the light of day. This group of powerful 'insiders' includes corrupt politicians, well-connected industrialists, developers and the mafia. They control much of the lucrative land market and make enormous monopolistic gains. As a result, land acquisition for outsiders becomes extremely slow and difficult”.²²

If recent incidents are an indication, state governments are quietly turning into a bunch of property brokers: buying land cheap and selling it at higher prices. This was amply shown in the case of the stalled Yamuna Expressway project of UP. As has been widely reported in the press and other forums, the UP government allegedly made a profit out of land deals between farmers and private real estate players (Kumar, 2011).

Most entrepreneurs, aware of the government's power over land, cultivated political parties and state governments to get undue access. Land deals as such spelt corruption/ kickbacks and crony capitalism.²³ Experts have noted: “Several astonishing companies have arisen, on seemingly nothing but their ability to manipulate the political process” (Mehta, 2010). Using their access to power, families of ministers and heads of state governments belonging to various political parties have illegitimately bought land and houses at below-market prices. Powerful business families have also procured mining rights in a corrupt manner (Sinha and Varshney, 2011).

Some of the biggest players in land ownership and townships in recent times are politicians. The media and related forums reveal stories about powerful politicians promoting swanky new townships (Lavasa), SEZs, and other mega projects carried out by the private sector. The recent Nira Radia Tapes controversy provided the public with vivid details of how some senior politicians in the country have been currying favours to benefit from business deals, in telecommunication spectrum and land.²⁴ To cite a recent example on how deep the political interest is in land, Mr. Sharad Pawar, Nationalist Congress Party chief and Union Minister of Agriculture in a rare confession said that the idea behind the highly controversial Lavasa township in Pune was his own.²⁵

There is no need, however, to single out one powerful politician. Politicians belonging to ruling governments at the state levels are reportedly benefiting by acquiring large tracts of agriculture land bordering cities or places to be declared as new cities/townships/projects (including airport, IT hubs, expressway, and industrial corridors) through forcible means using the urgency provision in the name of 'public purpose'. As has been extensively

reported, politicians belonging to Dravida Munnetra Kazhagan (DMK) party amassed large tracts of land in every major district of Tamil Nadu using state powers.²⁶ Similarly, politicians belonging to the Nationalist Congress Party (NCP) have acquired huge tracts of land in Pune and other places using the same discretionary powers. In Hyderabad, for instance, it is well known that political parties, particularly Congress and Telugu Desam Party (TDP), have taken over lands from middle-class owners using all means at their disposal. It is therefore no surprise that the stamp of political patronage is most widespread in this area and all political parties including the Left have acquired vested interests in keeping alive conflicts over land.

Another strong evidence of entrenched political interest in this sector comes from the growing number of scams around land acquisition in recent times. Some of them are highly sensational and have rocked the nation, such as Adarsh Society, Army land scam, and Lavasa township. The resignation of Mr. Yeddyurappa, the former Chief Minister of Karnataka indicted by the Lokayukta Report over illegally allotting land to his family members, is proof of the deep political interest in the land sector.²⁷ There have been a series of land grabbing incidents involving top politicians in Tamil Nadu.²⁸

The vested interests of politicians in the land sector was recognized by Ms. Sonia Gandhi, President of ruling Congress Party, At 125th Congress Plenary session in 2010, when she noted that land has emerged as one of the most corrupt sectors in the country because of the vast discretionary powers that rest with politicians and officials.²⁹ Allowing reforms to work in this critical sector means losing big money which is a key source of party funds.³⁰

Land as Prisoner of Vote Bank Politics

Apart from its potential as a revenue machinery for politicians, land acquisition and conflicts around it provide fodder for political parties to embarrass the ruling party and gain rich political dividends (Pai, 2011). Political parties compete with each other to gain an electoral upper hand by keeping this issue on boil. Given land's centrality to the average Indian in terms of livelihood (nearly 60% depend on it) and perhaps for its sheer emotional quotient, it does not require much effort to 'manufacture' a movement and milk the electoral gains. The role of opposition in fueling major conflicts over land acquisition across the country has been documented in detail.³¹

The most recent evidence of strong political interest in keeping the land acquisition issue alive was seen in the case of Trinamool Congress's massive victory in the West Bengal Assembly elections. Mamata Banerjee's overwhelming victory could largely be attributed to the Nandigram and Singur land acquisition blunders of the Left government in West Bengal.³² It is ironic that the same Left Front government which initiated Operation Barga and land reforms in West Bengal, lost power because of its botched up attempts at leasing out a few hundred acres of land for industrialization. Political interest in land acquisition was recently highlighted with the Congress upping the ante on the Yamuna Expressway, especially in the light of the upcoming UP election in 2012.³³

To sum up, while there may be a desire for transformative reforms in the land sector, there is a powerful constituency—the political parties—which has vested interest to ensure that reforms are not implemented or, at best,

become selective. Therefore, it is pertinent to see if the new legislation can answer some of these challenges around land acquisition, the most important of which is how to break the nexus of government, politicians and other vested interests. Unfortunately, the mere enactment of progressive legislation would not help undo such unhealthy trends.

Vested Interests and Land

Other than political resistance, the stiffest obstacle to clean up the country's land mess comes from a deeply entrenched vested interest group that has formed a strong nexus around this lucrative sector. Of late, a deep nexus has been formed between the real estate mafias, officials, politicians, and criminal elements, to monopolise this sector and make a killing. Of course, this nexus is not new and has been in existence since Independence; land has remained a prisoner to politics and vested interest lobby. For instance, in the 1950s and 1960s, the nexus of big farmers/zamindars-officials-politicians worked against any major land reforms in many states, particularly UP and Bihar which had most unequal land rights (Bhatia, 2005; Bandyopadhyay, 2008, MoRD, 2009). In Bihar, UP and other states, any hint of land reform was quickly stifled by a powerful nexus of zamindars/rich landowners in collusion with politicians. They never allowed any meaningful land reforms to take place. Today, with prices soaring, the opposition to reforms in the land sector is far more intense from vested interest groups³⁴ comprising real estate magnates, land speculators, local mafia, and their political patrons and collaborators (Bardhan, 2010). This is probably more evident in the urban land segment. In the last few years, with the burgeoning real estate sector, a strong nexus has emerged between builders and politicians which acts as a bottleneck to reforms.

It has been extensively documented how the land mafia, in collusion with politicians and revenue officials, is opposed to reforms in the areas of land usage policy, floor space index, etc. (Raja and Datta, 2011). Not surprisingly, the urban land market is the most distorted, with prices often shooting through the roof. Recent studies and reports have listed real estate as one of the most corrupt sectors in India.³⁵ Abuse of discretion is common as the administration and management of land belongs to the domain of government authority. Formal decisions are necessary to register property, to grant mortgage, impose or lift restrictions, and allocate a certain land use, which implies discretionary powers of the public sector. Corruption is rampant in registration of property rights, registration of change of title, acquiring land information, cadastral land survey and land use planning.³⁶ Besides, buyers are short-changed by developers in collusion with officials and local leaders. A Bill to codify customer rights and offer recourse through the creation of a regulator has been pending for a decade. Developers are vehemently opposing it and political leaders are in no hurry to upset them (Malik, 2011; Raja and Datta, 2011). Thus, vested interests would play a spoilsport in realizing the key provisions of the land bill.

Perception Issues

Many of the current challenges facing land acquisition are closely related to 'perception' issues. Unlike in the previous decades in which the public at large was convinced that the state was acquiring land for the 'noble' cause of national development, the same public (farmers and other landholders) now thinks that the land acquired by the state authorities for 'public purpose' is no longer meant for larger national interests. The landowners now increasingly believe that unimaginable amount of profits are being made by

the private companies from their land through SEZs, real estate projects, industries and infrastructure ventures (Pai, 2011; Prasad, 2011; Sathe, 2011). What has further strengthened or reinforced such perception is the skyrocketing of urban and semi-urban land prices due to speculative activities around land. Compared to the pre-reforms era in which land was hardly a speculative asset, in the post-liberalisation period—thanks mainly to the pouring of global investment into a rapidly expanding real estate sector in the background of rapid industrialization and urbanization—land prices have escalated in several places.

In effect, speculative activities around land assets have also grown. There are also reports of how land values drastically rise in certain areas once a big project is announced and how private companies that purchased land for measly sums are raking in astronomical profits. (Rajan, 2010; Mehta, 2011; Varshney and Sinha 2011). There is a growing perception among the landowners/sellers, even after receiving high compensations, that they have been short-changed. (Mishra, 2009) This altered 'public perception' about land did not emerge on its own or because of market economy alone.

A number of forces and their convergence seem to have aided this 'changed perception'. The most important factor may be the spread of awareness among ordinary peasants and other unsuspecting landowners due to the expansion of information and communication technologies (ICT). Print and visual media today bring news to millions of homes detailing stories of real estate profits and dubious land deals with farmers and other landowners as victims. There has been a tremendous information boom as a result of the legislation of the Right to Information. It has empowered ordinary citizens to obtain details of land transactions and post-land-acquisition deals. Such movements have been further strengthened by a vibrant civil

society: NGOs are today at the forefront of many land battles that poor landowners are waging against big corporations and other powerful entities.

Today farmers and other landholders are aware of speculative gains from land that prospective buyers are going to make. Earlier, landholders, particularly marginal farmers and tribal communities, had little information about the manner in which they were short-changed in compensation for their land, much less of the post-acquisition profits that companies made. They are far more aware of these aspects today, largely due to their own expanding access to information, as well as the assistance of vibrant civil society groups.

Conclusion

The land bill is one of the most important pieces of legislation to be introduced in recent times. The Bill in its current form is a major improvement over the 1894 land law that has contributed to most of the impasse over land acquisitions. By combining both compensation and rehabilitation, and resettlement into a single bill, the government has finally made some honest efforts to recognize the neglected aspects of land acquisition which are the key reasons for protests and opposition by farmers and other landowners across the country. Having inserted a clear provision of executing R&R package before the land is acquired is a significant improvement over the previous draft.

Other additional features make the bill more holistic: equity participation; annuity; and, most importantly, providing compensation and R&R benefits for other stakeholders who are dependent on land for their livelihood. Having reposed some faith in participatory grassroots institutions such as

Gram Sabha and proposing a legal and institutional framework for dispute settlements, the bill provides for a better land acquisition regime in the country.

Despite its various improved features and new institutional and governance architectures, the proposed law still fails to address many of the vexed issues related to land acquisition. It fails to read the land market which is witnessing major transformation, thanks to rapid changes in the economy, industry and urbanization in the country. The new bill makes little effort to address the contentious issues of 'public purpose', compensation (pricing formula and institutional mechanisms to determine the amount), regulatory features, among others. Its other proposals—such as arbitrary ban on multi-crop irrigated land—are fret with serious negative consequences that if unaddressed can further vitiate the political economy around land.

Even as the government attempts to clear some of these policy loopholes and contradictions, the new legislation would find it difficult to see the light of day as it would face uphill challenges from many fronts. Major challenges emanate from the State's poor track records of implementing key legislations. In the absence of strong doses of administrative and structural changes in the nature of a governance system, the new law would remain without teeth. Today, despite many promises (including the publication of Second Administrative Commission report 2007), many of the structural issues including transparency and accountability are yet to be addressed at both state and central levels. Most of the service delivery institutions either compete or work at cross purposes and are often without a 'head' that can control the body.³⁷

These institutions still remain very much in colonial moorings and would fail to capture the good intentions of this important legislation. Unless there is a paradigm shift in the State's approach and legal framework (including judicial reforms) in addressing various contentious issues relating to land acquisition, the issue will continue to simmer and obstruct India's crucial transition from an agrarian society to a genuine industrial power. Moreover, with land assuming the role of a critical asset in the changing political economy, it has increasingly come under the radar of politicians, businessmen, officials, and other interest parties. The new legislation would face major opposition from these groups. To reiterate: unless there is fundamental transformation in the way the State runs its administrative apparatus and delivers services, and unless concerned officials at the local level are sufficiently sensitized and tuned to the new reality of pro-people governance—and unless this critical sector is freed from the clutches of political control and official discretions—even the best of legislations would not help to break the logjam in the ongoing land impasse.

References

- Aiyar, Mani Shankar (2010), "Missing the woods, the trees", The Hindustan Times, May 24.
- Appu P.S. (1996), Land Reforms in India, Delhi: Vikas Publishing House.
- Bandyopadhyaya, D (2008), The relevance of land reforms in Post-Liberalisation India, Info-change, <http://infochangeindia.org/agenda/battles-over-land/the-relevance-of-land-reform-in-post-liberalisation-india.html>
- Banerjee, Abhijit (2011), The Plots thicker, The Hindustan Times, 19 September.
- Bardhan, P, M Luca, D Mukherjee and F Pino (2011), "Evolution of Land Distribution in West Bengal 1967-2004: Role of Land reforms", paper presented at the WIDER Conference on Land Inequality.
- Bardhan, Pranab (1986). "Land Reforms in India: An Analysis," Economic and Political Weekly, XXI, 25/26.
- , (2009), "The real issues behind land acquisition", The Hindu, August 1.
- , (2010), "An Uneven Field", The Hindustan Times, September 23.
- , (2011), Our Self Righteous Civil Society, Economic & Political Weekly, July 16, Vol. XLVI, No. 29
- Bhatia, Bela (2005), Naxalite movement in Central Bihar, Economic and Political Weekly, 9 April.
- Burns, Tony (2007), "Land Administration Reform: Indicators of Success and future challenges", Agriculture and Rural Development Discussion Paper 37, The World Bank 2007.
- Chakravorty, Sanjoy (2011), A lot of skepticism and some hope, Economic and Political Weekly, Vol. XLVI, No. 41.
- CSD Seminar Report "Implementing Forest Rights Act (FRA), 2006", Social Change, Vol. 41, No.1, March 2011.
- Dandekar, A and C. Choudhury, (2010) "PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts." A study commissioned by Ministry of Panchyati Raj, Baroda: IRMA.
- Debroy, Bibek (2011), "Electing Corruption", The Financial Express, November 23.

Deininger, Klaus (2007), "A Strategy for Improving Land Administration in India, Agricultural and Rural Development Notes: The World Bank, Issue 33.

Desai, Mihir (2011). "Land Acquisition Law and Proposed Changes", Economic & Political Weekly, No. 46.

Fernandes, Walter (2008), "Sixty Years of Development-induced Displacement in India" in HM Mathur (ed.), India Social Development report 2008: development and Displacement, New Delhi: Oxford University Press.

Ghatak, Maitreesh and Parikshit Ghosh (2011), "The Land Acquisition Bill: A Critique and a Proposal, LSE Working Paper, 2011.

Gonsalves, Colin (2010), "Judicial Failure on Land Acquisition for Corporations", Economic and Political Weekly, Vol. XLV, No. 32.

Government of India, (1894), The Land Acquisition Act, Ministry of Rural Development.
-----, (1996), Panchayat (Extension to Scheduled Areas) Act, Ministry of Panchayati Raj.

-----, (1988), National Forest Policy, Ministry of Forest and Environment

-----, (2002), Ministry of Forest and Environment.

-----, (2002), National Water Policy, Ministry of Water Resources.

-----, (2003), National Mineral Policy, Ministry of Mines.

-----, (2006), The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, Ministry of Tribal Affairs.

-----, (2007), Report on Status of Panchayati Raj Institutions, Ministry of Panchayati Raj.

-----, (2009), "Report on Land Alienation", Ministry of Rural Development.

Hanstad T, Nielsen R, Bown J (2004), Lands and livelihoods: making land rights real for India's rural poor, LSP paper (Rural Development Institute, USA), FAO May 2004.

Kannan Kasturi (2007), "Land Acquisition from Colonial Times to the Present", Ghadar Jari Hai, vol.2, No.1.

Kothari, Smitu (1996): "Whose Nation? Displaced as Victims of Development", Economic and Political Weekly, Vol. XXXI, No 24, 15 June.

KPMG Bribery Survey on Bribery and Corruption, 2010, http://www.kpmg.com/IN/en/IssuesAndInsights/ThoughtLeadership/KPMG_Bribery_Survey_Report_new.pdf

Kumar, Avinash (2011), "The Battle for Land: Unaddressed Issues", *Economic and Political Weekly*, Vol. XLVI, No. 25.

Kumar, Rajeev (2011), Land Bill will act as a drag on Industry, *Business Line*, 17 September.

McKinsey Report (2010), India's urban awakening: Building inclusive cities and sustaining economic growth, link: http://www.mckinsey.com/mgi/publications/india_urbanization/index.asp

Malik, Ashok (2011), How Corruption has been eating into our Land, *Daily News and Analysis*, April, 18.

Mander, Harsh (2011), Let's have a fair deal, *The Hindustan Times*, 15 June.

Mehta, Pratap (2009), "Sizeable Matters", *The Indian Express*, 9 December.

-----,(2010), "Its Land stupid", *The Indian Express*, 19 August.

-----, (2011), "Too many sub-plots", *The Indian Express*, August 10.

Misra, Udit and K.P Narayan (2010) "2011 West Bengal Election impact on Land Reforms", *The Forbes*, February 4.

Mishra, Jaideep (2009), "Rework Land Acquisition R&R Policy", *The Economic Times*, 3 August.

National Advisory Council (NAC) Discussion Paper on Land Acquisition and R&R Bill, 18 August, 2011.

Pai, Sudha (2011), "Our Land of Discontents", *The Indian Express*, May 20.

Palit, Amalendu and Bhattacharjee (2008), *Special economic Zones in India: Myths and Realities*, Delhi: Anthem Press.

Pant, Manoj (2011), "Land Violence: Law not at fault", *The Economic Times*, May 30.

Raja, John Samuel and K. Datta (2011) "What's wrong with the real estate sector in India", *The Economic Times*, 9 June.

Rajan, Raghuram (2010): 'License raj has been replaced by land mafia raj, Interview in *Daily News & Analysis*, October 30.

Sanjukta Ray and S. Patra (2009), "Evolution of Political Economy of Land Acquisition", India Infrastructure Report 2009, Delhi: Oxford University Press.

Sardana, MMK (2010), "Land acquisition Issues", ISID Discussion paper, August 2010.

Sarap, K (1996), "Land Market Transactions in Rural Haryana", Economic and Political Weekly, 31 (39).

Sathe, Dhanmanjari (2011), "Political Economy of land and development in India", Economic and Political Weekly, Vol. XLVI, No. 29.

Sinha, Jayanta and Ashutosh Varshney (2011), "It is time for India to rein in its robber barons", The Financial Times, 6 January.

Transparency International India (2005), "Indian Corruption Study 2005", New Delhi: Transparency International.

Endnotes:

1. Author gratefully acknowledges the valuable comments and suggestions offered by Mr. Surendra Singh, IAS (retd.) former Cabinet Secretary, Government of India, to improve this paper.
2. According to an estimate by the country's leading business association, ASSOCHAM (The Associated Chamber of Commerce and Industry of India) projects with over US \$ 100 billion of investment are at risk because of land-acquisition issues. Many of them are critical infrastructure projects like railways, national highways, ports, and power plants. See the report, <http://www.assochem.org/prels/shownews.php?id=2191>
3. Beginning with Haryana, a number of states have come out with very competitive compensation and R&R policy to woo the farmers and other landholders, including Orissa, Gujarat, Karnataka, and in recent times the Uttar Pradesh (UP) government under Ms. Mayawati. States like Haryana and UP not only promise highly attractive compensation packages (UP now promises to pay farmers at market rate, floor price determined), they have also gone to the extent of paying annuity for 20 years (i.e., UP will give 23,000 per acres for 33 years compared to Haryana's 20,000 for 33 years), and a job to one of the members of the family by the private party. In short, it's raining goodies for new land acquisitions (For more on this, see India Infrastructure Report, 2009).
4. While the steps to amend the 1894 land act began in 1998, the Bill was introduced as late as 2007. Even after it was cleared in Lok Sabha in February 2009, it was not introduced in Rajya Sabha for political reasons, mainly due to the opposition by Trinamool Congress chief Ms. Mamata Banerjee.
5. Although LARR Bill received bi-partisan thumping of desks at the Lok Sabha at the time of its introduction, Mr. Jairam Ramesh clarified that he did not believe in bipartisan nature of the motivation behind this important bill. While addressing a press conference after introducing the Bill in the Lok Sabha, he said, "I am a political animal. One important motivation of this Bill is the recent protests against land acquisition in Uttar Pradesh. It is in the political context of Mr. Rahul Gandhi's padayatra (in UP) this Bill has been brought. It is a political response to a political problem,". See <http://www.indianexpress.com/news/jairam-tables-new-land-bill-credits-it-to-rahuls-padayatra/843302/>.
6. For a detailed critique of 'public purpose' in new land bill, see Ghatak et al, 2011; Sathe, 2011.
7. For instance, according to Ghatak et al., (2011) state withdrawal from land acquisition would have serious negative consequences on land market. Suppose that any particular private transaction has a 1% chance of facing a court challenge, causing significant delays. A single or a handful of such transactions (say, the kind of numbers needed for a housing project) has a very good chance of proceeding without a glitch. Simple calculations show that the probability of at least one such legal snag developing (and a single dispute is enough to hold up the entire project) rises to 63% for 100 plot sales, and 99.99% for 1,000 plot sales.
8. For a very incisive analysis of this, see Abhijit Banerjee's analysis in Hindustan Times, September 19, 2011.

9. According to McKinsey Report 2010, with rapid changing demography and 'youth bulge' that the country would have by 2025, some 40% of Indians will be living in cities.
10. For example Ghatak et al., (2011) argues that since acquiring fertile, multi-crop land will be more costly for industry than single-crop or fallow land (assuming the compensation system has been set up right), there is no reason why it would want to do so unless it anticipates enough additional benefits.
11. According to Chakravorty (2011), contrary to have projected in the public sphere that most of the reckless acquisitions are because of greedy private sector industry, 90% of acquisitions and displacements have occurred because of reckless acts of Indian states. This has happened under six decades of land acquisitions by Indian state, that has paid minimal prices and provided little rehabilitation. To author, dams, irrigation projects and other infrastructure facilities have contributed by far the largest quantities of acquisitions and displacements. Transportation, environment, power and defense are other major categories that have contributed to significant displacements.
12. For instance, in the case of recent UP land imbroglio, both the Supreme Court and the High Court have given damning verdicts against present practice of forcible land acquisition (using urgency provision). In a recent judgment (July 7, 2011) dealing with Shabheri village with regard to controversial Noida extension, the Supreme Court set aside the land acquisition of 156.3 hectares of land by the UP government. The Allahabad High Court has similarly set aside acquisition of 170 hectares at Gulistan village, Greater Noida. See the link to know the details of the judgment, read full India Today story : <http://indiatoday.intoday.in/site/story/sc-cancels-noida-extension-land-buy/1/143905.html>
13. According to a MoPR sponsored study by IRMA, while PESA confers power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant, the state excise officials are reluctant to cede authority to an assertive village community. For details see: Dandekar and Choudhury, 2010.
14. According to the mid-term review of Ministry of Panchayati Raj (MoPR), these include the National Policy on Resettlement and Rehabilitation 2003, National Water Policy 2002, National Minerals Policy 2003, National Forest Policy 1988, Wildlife Conservation Strategy 2002 and the National Draft Environment Policy 2004. Unless these Acts are revised confirming with PESA, this excellent legislation will remain as dead letters.
15. The United Progressive Alliance (UPA) government passed the Scheduled Tribes and Other Traditional Forest dwellers (Recognition of Forest Rights) Act in 2006. The Act provided for recognizing thirteen different rights that are central to the lives and livelihoods of tribals and other forest dwellers across the country. These rights included rights to land under occupation as well as customary land, ownership of minor forest produce, rights to water bodies, grazing areas, habitat of Primitive Tribal Groups (PTGs), conversion of all types of forest villages/settlements to revenue villages, the right and power to protect, conserve and manage community forest resources, and so on. All these rights were denied to them for various reasons.
16. According to a seminar report prepared by Council for Social Development (26-27 April 2010), in several major states, implementation of the FRA has hardly taken place. All

states have largely failed to respect the Act's historic provisions with regard to the role of Gram Sabhas. For example, not only have Gram Sabhas been constituted at the wrong level, they have been bypassed and officials, Forest Department and Joint Forest Management (JFM) committees have been empowered in violation of the law. Such violation include constitution of Forest Rights committee (FRCs) and deliberate efforts to use JFM to divide villages and substitute Forest Department controlled JFM committees for community bodies. Besides, there are reports of large-scale interference by the forest Department in the rights recognition process. For instance, Forest officials often demand that claimants (adivasis) produce fine receipts or primary offence reports prior to 1980. Demands are made that claimants should be on Forest department 'encroacher lists'. More importantly, there is still the continuing trend of evictions of adivasis and forest dwellers in total violation of the 2006 Act. Importantly, Ministry of Tribal Affairs, the nodal agency to ensure its smooth implementation, has shown no seriousness or commitment in addressing issues and challenges in implementation. For details, see CSD Seminar Report "Implementing Forest Rights Act (FRA), 2006", Social Change, volume 41, No.1, March 2011.

17. PESA was enacted in 1996 without creating an overarching architecture for its implantation. There are now specialized institutions nor have existing officials been adequately sensitized to enforce/respect this seminal law affecting millions of adivasis in 11 Indian states. In addition, there have been no efforts to bring about necessary amendments among the existing legislations (i.e.; Mines, Forest, Environment acts). See CSD report 2010.
18. The land administration systems in India are strongly based on those implemented by the British and are mainly manual. For instance, outdated survey techniques introduced by the British in the 1860s continue to be used, and old paper records are still stored in cloth bundles.
19. For instance, most of the land departments in India have very weak spatial framework for the land records for agricultural land. The original data has low accuracy, the maps are not up-to-date, there are long delays in subdivision surveys, and changes in land records are being recorded without surveys. There is a lack of both map and textual information in urban areas. The deeds registration system does not include the adjudication of rights or the resolution of disputes, and does not ensure the validity of a transaction. The system is not map-based and there are poor descriptions of property. While the project to computerize land records in Karnataka (Bhoomi) has been successful, it is essentially a computerization of a very old land revenue system. A number of issues arise, including inconclusive records and cumbersome procedures. For details, read Burns, 2007.
20. The State Reports of the NIRD, D. Bandyopadhyay Committee Report and the Koneru Ranga Rao Committee Report point to the lack of adequate supervision from superior officers in revenue administration as well as the failure of the internal control mechanism.
21. The India Corruption Study (TI, 2005) says that 79% of those interacting with the Land Administration Department in the country view that there is corruption in the department. Merely 5% of respondents felt that there is no corruption in the department. Of those who paid bribes, more than 36% had paid money to department officials, whereas 33% had paid money to middlemen like document writers, property

dealers etc. to get their work done. Work for which bribes were paid, concerned 39% property registration, 25% mutation, 12% land survey and 4% obtaining property documents. (1) institutionalize user surveys in order to enhance the influence of public feed back to the policy environment, (2) strengthen accountability in order to close the 'accountability vacuum', (3) set norms and standards in order to make officials accountable for the service delivered, and (4) enhance citizen participation in governance in order to mobilize the role of civil society as a force for improvement of services (see Transparency International, 2005)

22. See Raghuram Rajan's interview in DNA: http://www.dnaindia.com/opinion/interview/licence-raj-has-been-replaced-by-land-mafia-raj_1459666
23. According to Jayanta Sinha, the predominant sources of this mega wealth creation in India today are not the software billionaires who have made money the hard way. It is those people who have access to natural resources or to land or to particular infrastructure permits or licenses. In other words, proximity to the government seems to be a big source of wealth. For details see his interview in Outlook, March 28, 2011, <http://www.outlookindia.com/article.aspx?270945>
24. Famous Niira Radia tapes which is a secret records of the conversations between corporate lobbyist Ms. Niira Radia with a number of high-profile politicians including alleged kingpin of 2G Spectrum scam, A. Raja, Corporate czar Ratan Tata, on a host of issues including the alleged distribution of spectrum and fixing key portfolios in UPA-II.
25. There are allegations all around the press that Mr. Pawar has a huge financial stake in this billion-dollar township. See story by Joyeeta Basu, <http://www.scribd.com/doc/6237552/The-Wealth-of-Sharad-Pawar>
26. See the elaborate news story in Business Standard, <http://businessstandard.com/india/news/the-land-question/437107/>
27. A series of land scams, for example, were allegedly constructed via the Chief Minister's office. He is accused of freeing up or de-notifying land acquired cheaply for public projects; this prime property was then made available to his children and their companies, say his critics. Read more at: <http://www.ndtv.com/article/india/unanimous-decision-to-remove-yeddyurappa-says-bjp-he-doesn-t-budge-122616&cp>
28. See DNA story on Tamil Nadu, August 6, 2011 : http://www.dnaindia.com/analysis/comment_in-tamil-nadu-dmks-sons-of-soil-land-party-in-trouble_1573030
29. "We have ample evidence that all discretionary powers, particularly in land allocation breed corruption," said Ms. Sonia Gandhi at the time. "I would like all Congress chief ministers and ministers to set an example by reviewing and relinquishing such powers." – Party's anniversary session in December 2010.
30. Large-ticket corruption results from discretion in land, real estate, building and awarding of government licenses and contracts. This is used to finance elections (see Debroy, 2010).
31. For a detailed picture on some of the conflicts over land see Special Issue on land acquisition by India Infrastructure Report, 2009. Also see CLSA Report 2010 on land acquisition.

32. See the detailed story by Udit Misra and KP Narayan from The Forbes: <http://business.in.com/printcontent/9702>
33. The Union Minister of Rural Development openly confessed that one of the key motivation for new land acquisition bill is forthcoming UP election. For details see Outlook story, September 7, 2011: <http://news.outlookindia.com/item.aspx?733956>
34. As reported on 24 June 2011, a bungalow in Mumbai is believed to sold for 350 crore. Runwal Group, a 2048 sq land which has projects largely in the eastern suburbs, bought Nepean Grange, the two-storey bungalow constructed in 1918, from the Kapadia family. Property sources said this could probably be the highest price paid for a bungalow in the city. See: <http://timesofindia.indiatimes.com/city/mumbai/South-Mumbai-bungalow-sold-for-record-350-crore/articleshow/8970921.cms>
35. According to a survey of corporate India by auditors KPMG, real estate and construction is the most corruption-prone sector in India, followed by telecommunications. Based on the responses of 100 Indian and foreign multinational corporations, 32 per cent of respondents named real estate and construction as most prone to corruption. This was followed by the telecom sector, with 17 per cent naming it the most corrupt. Corruption and bribery are considered an endemic scourge in Indian society. As per latest Transparency International's global corruption perception index, India's public sector ranked 87th out of 178 countries. For corruption in the private sector, India came 19 among 22 countries.
36. See for details: The Economic Times story: <http://economictimes.indiatimes.com/opinion/editorial/Governance-reform-needed-to-boost-economic-reforms/articleshow/9366323.cms>
37. According to Pritchett, an academic from Kennedy school, Harvard University, India's governance system can be rightly called a 'Flailing' one. Revealing its inability to provide and maintain basic infrastructure like sanitation. A flailing state is a nation-state in which the head—that is, the elite institutions at the national (and in some states) level—remain sound and functional but is no longer reliably connected via nerves and sinews to its own limbs. In many parts of India in many sectors, the everyday actions of the field level agents of the state—policemen, engineers, teachers, health workers—are increasingly beyond the control of the administration at the national or state level. See Pritchett, <http://dash.harvard.edu/bitstream/handle/1/4449106/Pritchett%20India%20Flailing%20State.pdf?sequence=1>

Observer Research Foundation is a public policy think-tank that aims to influence formulation of policies for building a strong and prosperous India. ORF pursues these goals by providing informed and productive inputs, in-depth research and stimulating discussions. The Foundation is supported in its mission by a cross-section of India's leading public figures, academics and business leaders.

₹ 195/-



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