

## The Social Cost of Land Acquisition: Fundamental Concerns Neglected in the Bill

By Arjita Bhalla

Mr. Jairam Ramesh, the Hon'ble Union Minister for Rural Development, calls the Land Acquisition, Rehabilitation and Resettlement Bill, 2011 (hereinafter "the Bill") - in its current form- as one which is meant to prima facie serve the 'perspirational' classes, rather than serving for the 'aspirational' classes.<sup>1</sup> The message that he tries to put across is that the legislative intention behind the Bill is to work for the benefit of the displaced, the worst affected people upon acquisition, by giving their interest over-riding priority over expectations of the well-off strata of the society.<sup>2</sup>

One of the objectives of the Bill is the improvement in their post acquisition social and economic status<sup>3</sup> of the affected persons. An important prescription to ensure that such aims are achieved is the conduct of a Social Impact Study to assess the adverse social implications of the acquisition. A Social Impact Assessment is required to assess, *inter alia*, the nature of public interest involved, socio-economic impact on the affected families, whether bare minimum area of land is acquired, whether alternate sites have been considered and found feasible, etc.<sup>4</sup> The current short report analyzes the form and procedure of conducting Social Impact Assessment (SIA) study as envisaged in the current Bill. The report shall examine the technical, economical factors in SIA and shall propose certain changes in the SIA principles to better address the concerns of the society.

The first procedure for impending acquisition is conducting social impact assessment (SIA) study by the Appropriate Government in consultation with the Panchayat, Municipality or Municipal Corporation in the affected area.<sup>5</sup> A public hearing is held with the affected families in the affected area.<sup>6</sup>

The second stage of the process is the evaluation of the SIA Report by an 'Expert Group' under Clause 7 of the Bill. This expert group will evaluate the SIA and examine whether it serves any public purpose and whether the potential benefits outweigh the adverse social impacts. The expert group gives its recommendation based upon the above grounds whether the acquisition should continue or not. Lastly, the Appropriate Government considers the SIA Report and the recommendations of the Expert Group. Based on such perusal, the Govt. recommends acquisition of such land.

The Procedure and considerations for SIA, in the current Bill suffer from certain technical and economic lapses. The report shall proceed to dwell upon these:

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<sup>1</sup> Economic Times , 'Proposed Bill is for masses, not aspirational classes: Jairam Ramesh' Available at [http://articles.economictimes.indiatimes.com/2013-03-12/news/37651172\\_1\\_land-acquisition-bill-livelihood-losers-land-deficit-country](http://articles.economictimes.indiatimes.com/2013-03-12/news/37651172_1_land-acquisition-bill-livelihood-losers-land-deficit-country) last accessed April 8, 2013

<sup>2</sup> *Id.* He says, "I think the aspirational classes as you put it can certainly afford to pay more for land so that the concerns of land and livelihood losers are fully met."

<sup>3</sup> Preamble of the Bill

<sup>4</sup> Clause 4(4) of the Bill

<sup>5</sup> Clause 4(1) of the Bill

<sup>6</sup> Clause 5 of the Bill

## 1) Principle of Minimization of Social Costs

Public interest shall only be served if an acquisition ultimately results in societal benefit, after accounting for the social cost from acquiring that specific land.<sup>7</sup> The Bill should provide such grounds for acquisition that the specificity of the land acquired for attaining the public benefit should justify the acquisition of land.<sup>8</sup>

The Principle behind accounting for the SIA is flawed in so far as it seeks to minimize social costs and maximize benefits. The current set of guidelines proposed focus solely on outweighing the social costs of acquisition with the potential benefits.<sup>9</sup> It has been argued that implicit in the principle to outweigh social cost with potential benefits is the element of minimizing social costs and maximizing benefits.<sup>10</sup> The Government, being the final authority for ordering compensation, can recommend acquisition of such area of land to ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individuals affected.<sup>11</sup> However, it should be noted that such decision of the Government is based recommendations in the Report of the Expert Group as explained earlier. The Expert Group on SIA doesn't base its recommendations upon minimizing social costs. As such, the absence of any such grounds is likely to result in unnecessary and avoidable displacement.

The above approach is based upon the ideology that acquisition must be avoided at all costs and social costs must be minimized as far as possible. This principle is also epitomized in the World Bank and the UN Principles on Internal Displacements.<sup>12</sup>

The Narmada Dam dispute is a case in point. It has been estimated that increasing the dam height by 17 metres would only marginally effect power generation and would have no effect on capability to meet irrigation and drinking water targets.<sup>13</sup> On the other hand, not raising the dam height further would spare approximately 150,000 people from being displaced. It is clear that implementing the social costs minimization principle would have avoided unnecessary displacement in this case.

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<sup>7</sup> Nihal Joseph & Shrinidhi Rao, 'The Land Acquisition Bil, 2011: One Step Forward And Two Steps Back' 5 NUJS L. Rev. 219 (2012)

<sup>8</sup> Sebastian Morris, Ajay Pandey, 'Reform of Land Acquisition Framework in India' 42(22) EPW 2083 (2007).

<sup>9</sup> Clause 7(5) provides that the Expert Committee while analyzing the SIA study shall recommend the acquisition if, *inter alia*, it finds the potential benefits outweigh the social costs and adverse social impacts

<sup>10</sup> David Pearce, *Methodological Issues in the Economic Analysis for Involuntary Resettlement Operations* in *The Economics of Involuntary Resettlement: Questions and Challenges* 50, 51(1999).

<sup>11</sup> Clause 8(2) of the Bill

<sup>12</sup> UN Guiding Principles for Internally Displaced Persons; 2a, World Bank, Operational Policy on Involuntary Resettlement, OP 4.12, 2001(2001), Principle 7, available at <http://go.worldbank.org/GM00EIY580> last accessed April 8, 2013

<sup>13</sup> International Rivers, *New Independent Review Documents Failure of the Narmada Dam*, June 11 2008, available at <http://www.internationalrivers.org/blog/peter-bosshard/new-independent-review-documents-failure-narmada-dam> last accessed April 8, 2013.

## **2) The Over-Riding discretion of Appropriate Government over SIA Recommendations**

The latest amendments to the Bill adopt a particularly draconian clause which gives power to Appropriate Government to disregard the recommendations of the expert group on SIA, and proceed with the acquisition of the land irrespective of any negative recommendations by the expert group.<sup>14</sup> It should be further noted that such power of the Government is not subject to any pre-existing conditions, viz. existence of National Emergency or other urgencies. Such power can be exercised by the Government by merely attributing reasons in writing for doing the same. Such unfettered authority threatens to subject the entire SIA study and recommendation to the whims and fancies of the Government.

The short report above highlights two of the concerns with Land Acquisition Bill in its present form. There is no doubt that the Bill is a big step forward in ensuring that the Fundamental Rights of the displaced are secured to a large extent. To this extent, it represents a paradigm shift- a step forward- from the archaic philosophy of the Raj. However, a few remaining concerns threaten to reduce the Bill to another foot-note in the infamous history of acquisition of land in India. Unless the same are addressed in a progressive manner, the Bill shall not be anything more than a case of '*One Step Forward, Two Steps Backwards*'.

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<sup>14</sup> Second Proviso to Clause 7(4) of the Bill