



**The Draft National Land Acquisition and Rehabilitation & Resettlement Bill, 2011 (LARR):  
A Critique by SANGHARSH**

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“The Act, which was enacted more than 116 years ago for facilitating the acquisition of land and other immovable properties for construction of roads, canals, railways etc., has been frequently used in the post independence era for different public purposes like laying of roads, construction of bridges, dams and buildings of various public establishments / institutions, planned development of urban areas, providing of houses to different sections of the society and for developing residential colonies/sectors. However, in the recent years, the country has witnessed a new phenomena. Large tracts of land have been acquired in rural parts of the country in the name of development and transferred to private entrepreneurs, who have utilized the same for construction of multi-storied complexes, commercial centers and for setting up industrial units. Similarly, large scale acquisitions have been made on behalf of the companies by invoking the provisions contained in Part VII of the Act.

The resultant effect of these acquisitions is that the land owners, who were doing agricultural operations and other ancillary activities in rural areas, have been deprived of the only source of their livelihood. Majority of them do not have any idea about their constitutional and legal rights, which can be enforced by availing the constitutional remedies under Articles 32 and 226 of the Constitution. They reconcile with deprivation of land by accepting the amount of compensation offered by the Government and by thinking that it is their fate and destiny determined by God.”<sup>1</sup>

The above observations of the Supreme Court serve as an ideal background to comment on the new National Land Acquisition and Rehabilitation and Resettlement Bill, 2011.

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<sup>1</sup> 2011(4)SCALE677 at paras 17 and 18

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**Title of the Bill:**

The Bill should be retitled as “Development Planning, Land Use Alterations / Acquisition, Just Resettlement and Rehabilitation Bill”

**Applicability<sup>2</sup> and public purpose<sup>3</sup>:**

The draft Bill envisages the government acquiring land for itself or with the ultimate intent of transferring it to private companies for public purpose (including PPP projects) or for immediate use by private companies for public purpose with the rider that the latter two forms of acquisition would be done only with the consent of 80% of the affected families.

It is reiterated that under no circumstances can lands be acquired for private companies even under the garb of public purpose hence sections 1A(b) and (c) need to be removed. Moreover, the question of consent still remains and it is demanded that the 80% consent proviso be retained in regard to acquisition of land by the government.

Further the applicability of the proposed statute needs to be retrospective and provisions for the same need to be made.

There are three concerns that need to be addressed here: (a) acquisition for private companies (b) definition of public purpose, and, (c) consent.

**(a) Acquisition of land for private companies:**

The introduction of acquisition of land for private companies including for PPP projects, albeit for stated public purpose, is a dangerous development that is unacceptable and we reiterate that under no circumstances must acquisition of land for or on behalf of private companies be permitted.

It must be remembered that in the existing LAA, 1894 even private companies may acquire land under the LAA. Though this power to acquire for private companies was initially limited to acquisition for construction of residences for workers employed by the company or providing amenities for workers such as sewerage or sanitation or for construction of some work that is likely to prove useful to the public, it was expanded through subsequent amendments. One may recall here that the Supreme Court in *R.L. Arora v. State of Uttar Pradesh* had strictly construed sections 40 and 41 of the LAA, 1894, which resulted in the subsequent amendments. In fact, the Court had held that Land Acquisition Act did not intend for the government to act as a general agent for the acquisition of land, in order to make profits.

In a more recent judgment<sup>4</sup> the Supreme Court has made some insightful and telling observations on the ‘development paradigm’ being forced on the people, while analyzing the reasons for the growth of armed struggles across the country. The Supreme Court observed that; “... *The culture of unrestrained selfishness and greed spawned by modern neo-liberal economic ideology, and the false promises of ever increasing spirals of consumption leading to*

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<sup>2</sup> Section 1A of draft Bill

<sup>3</sup> section 2(y) read with section 2(n) of draft Bill

<sup>4</sup> Judgment of the Supreme Court in regard to Salwa Judum

*economic growth that will lift everyone, under-gird this socially, politically and economically unsustainable set of circumstances in vast tracts of India in general, and Chattisgarh in particular.... The justification often advanced, by advocates of the neo-liberal development paradigm, as historically followed, or newly emerging, in a more rapacious form, in India, is that unless development occurs, via rapid and vast exploitation of natural resources, the country would not be able to either compete on the global scale, nor accumulate the wealth necessary to tackle endemic and seemingly intractable problems of poverty, illiteracy, hunger and squalor. Whether such exploitation is occurring in a manner that is sustainable, by the environment and the existing social structures, is an oft debated topic, and yet hurriedly buried. Neither the policy makers nor the elite in India, who turn a blind eye to the gross and inhuman suffering of the displaced and the dispossessed, provide any credible answers. Worse still, they ignore historical evidence which indicates that a development paradigm depending largely on the plunder and loot of the natural resources more often than not leads to failure of the State; and that on its way to such a fate, countless millions would have been condemned to lives of great misery and hopelessness.”* It would do the government good if it paid heed to this scathing reflection of its policies of the government and abandon the provision of acquisition of land for private companies.

Further, since the acquisition of PPP projects has also been brought under the purview of this Bill, which is equally unacceptable especially since the private companies are in these arrangements purely with a profit motive.

In NAC-2, some of the members have taken the position that land should not be acquired for private companies and argued that even the 1894 Act contained no such provision, and restrained the eminent domain of the State to projects of manifest public welfare and that it would be inappropriate for democratic India to make this change and that for-profit private companies must work within the market, and pay enough to land-holders for them to voluntarily sell their lands and the fears that this would leave great scope for their exploitation could be addressed by strict State regulation of this interface and not by the State compulsorily acquiring private land for private companies.

The Bill makes provision for private projects that comply with its broad ambit of public purpose without addressing its fundamental premise: when private parties undertake all projects for private profit, and public purpose is supposed to be for the development and welfare of citizens, how can these essentially divergent motives be conflated? Further, when acquiring land for private purpose, land can only be acquired when 80% of the project affected families give consent, there is no clear procedure as to how this consent is to be ascertained. Will they hold a referendum? Public hearings with their well-established flawed track record of assent by supporters of a project who clearly stand to benefit from it very often do not reflect the opinions of those affected. Gram Panchayat resolutions find no legitimate space in the consent process envisaged in the Bill.

**(b) Definition of public purpose:**

The definition of “public purpose” in the draft Bill is one that is unacceptable. We have previously demanded that whether a project is of ‘public purpose’ or not should be decided on the basis of a democratic process as defined in the Article 243 of the Constitution.

It may be recalled that the National Advisory Council in 2006 had recommended that “public interest” will have to be determined not by who or how many have access to it but in terms of a) its overall costs, who it benefits and to what extent and b) whether the new use to which the land is intended to be put actually serves public interest in a greater way than in the manner in which it is currently being used. The NAC-1 had further argued that, as is the practice in several countries including the USA, there be an established practice that determined public purpose/interest through legislative action rather than executive discretion and in all cases it be subject to judicial review. On this basis the NAC-1 had argued that:

- Given the challenges of defining public purpose and particularly public interest it is also worth considering a processual rather than a substantive definition.
- A project fulfils a public purpose and is in public interest when through a participatory and transparent process it is determined that:
  - The project will benefit the community as a body.
  - The project is directly related to functions of government.
  - The project does not have as its primary objective the benefit of a private interest.
  - The benefits of the project option outweigh the costs of loss of land, livelihood, shelter, habitat/culture, environment and other capital and operating costs incurred, and,
  - The public interest thus created outweighs any public interest value accruing from the existing use of the land and everything attached to it.

#### **Applicability of provisions relating to rehabilitation and resettlement:**

Section 1A(2) extends the operation of the provisions relating to R&R when private companies either purchase/acquire more than 100 acres of land or approach the government for partial acquisition.

This is a welcome step, though the minimum land needs to be reduced and in case of urban area it must be restricted to 20,000 sq meter built up area only, as applicable in EIA notifications.

Further, given that the acquisition of land takes place by various several central (Coal Bearing Act, Highways Act, etc.) and state statutes (Karnataka Industrial Areas Development Act for instance) in addition to the Land Acquisition Act, 1894, the operation of this Act has to be extended to acquisitions under these statutes as well.<sup>5</sup>

It must also be clarified that, in projects where the policy/statute in operation entitling the affected persons to R&R entitlements beyond those mandated in the draft Bill, the operation of the same shall mandatorily continue.

#### **Free prior informed consent:**

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<sup>5</sup> Section 73 of the Draft Bill is an overriding section provided in the Bill, nevertheless it is imperative that the explicit operation of these provisions for acquisitions under any other centre/state statute has to be made.

The draft Bill adopts the language of ‘consent’, ‘consultation’ and ‘discussion’ in its text that goes against the norm of ‘free prior informed consent’ as demanded by the movements. For instance, it is mandated that the ‘consent’ of 80% of the affected families is required where lands would be acquired for or on behalf of private companies [proviso to section 1A(1)]. Section 3(1) provides that the Social Impact Assessment study would be carried out in ‘consultation’ with the Gram Sabha/equivalent body in urban areas as does the proviso to section 9(1), while section 12(4) refers to discussions with these bodies in regard to the R&R scheme.

It is demanded that the principle of “free prior informed consent” be the basis for any process of engagement with the affected families/communities and the same necessary at every step of the acquisition and R&R process. Free, prior and informed consent of peoples is conceived as more than a one time contractual event and is rather a “continuous, iterative process of communication and negotiations spanning the entire planning and project cycles.” Progress to each stage in the cycle should be guided by the agreement of the potentially affected peoples. Prior, informed consent should be broadly representative and inclusive. How it is given or expressed will be guided by customary laws and practices of the people and national laws.

At the beginning of the process, the affected people will tell the stakeholder forum how they will express their consent to decisions including endorsement of key decisions. An independent dispute resolution mechanism should be established with the participation and agreement of the stakeholder forum at the outset.<sup>6</sup>

#### **Necessity for including the issues around displacement in urban areas:**

The draft Bill appears to be informed by the lessons learnt from the experiences of rural displacement primarily due to irrigation projects.

Urban infrastructure projects including transportation projects, establishment of industrial estates, schools, hospitals, ports, and the construction of communication and transportation networks, result in the displacement of a wide range of urban communities and irreversibly impacts their livelihoods. Most urban development projects typically would require acquisition of the private properties, government land and notified/un-notified slums. In addition to impacting the shelter of these categories of persons, it also affects the pavement dwellers too. Further, it seriously impacts the right to livelihood of street hawkers, roadside cobblers, street-side shops (pan shops, etc.), besides displacement of auto/taxi stands. Therefore it is necessary that, in addition to the generality of provisions in the bill, specific provisions be provided as below:

1. The issue of displacement due to urban development/infrastructure projects needs to be specifically acknowledged.
2. A specific provision need to be incorporated in regard to the definition of “project affected persons”, so as to include property owners, tenants, slum dwellers, pavement

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<sup>6</sup> Citizens Guide to the World Commission on Dams

- dwellers and those losing their livelihoods including street vendors, cobblers, etc.<sup>7</sup>
3. A specific provision needs to be incorporated requiring the concerned authorities to complete the process of notifying slums<sup>8</sup> that are slated to be affected by projects, before any process of land acquisition is begun.
  4. Further provisions must be made for providing compensation for acquisition of assets, but also for loss of livelihoods and shelter to all categories of persons affected including property owners, slum dwellers, pavement dwellers, street vendors, cobblers, etc. The Rehabilitation Package<sup>9</sup> of the Bangalore Metro Rail Project provides R&R entitlements including compensation, shifting allowance, inconvenience allowance, transitional allowance, rental (residential and commercial) income loss, business loss, business premises reestablishment allowance and right to salvage material.
  7. The proposed provision introducing the requirement of a Social Impact Assessment (SIA) needs to be mandated for all urban projects, given the unique way in which it impacts shelter and livelihoods in an urban setting.
  5. The central principles being incorporated in the bills including minimal displacement, alternatives, etc. would be applicable to all urban developmental projects, however in regard to prior informed consent' of affected communities before the acquisition could be undertaken, for urban areas, this would imply area/ward sabhas.
  6. In case of excess acquisition of land or failure to utilise the land for the acquired purpose, the same should be returned to the affected families and communities (including slum dwellers).
  8. The R&R plan for the urban displaced must include provision of monetary compensation, house/site and replacement/rehabilitation of livelihood.
  9. There must be a provision for an omnibus clause for provision of R&R entitlements to categories of persons not identified.<sup>10</sup>

### Land-for-land<sup>11</sup>:

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<sup>7</sup> "Resettlement Action Plan" for the Mumbai Urban Transport Project provides the following definition. "*Project Affected Households includes households, business units including their workers and owners of assets like land and buildings affected by MUDP and may include; non- resident land owners (including farmers and horticulturist); non-resident lessees; resident landlord (including farmers and horticulturists); resident lessees, tenants or sub- tenants of buildings; squatters (non-resident structure owners, resident structure owners, tenants); pavement dwellers.*" Household for this purpose means all the males/females, their family members and relatives staying in a house/tenement/hut.

Rehabilitation Package of the Bangalore Metro Rail Project provides a wider definition, being: "*Project Affected Person: Any individual who resides or has economic interest within the area being acquired and who may be directly affected by the project due to losing of commercial or residential structure in whole or part and as a result of the project*"

<sup>8</sup> While the Centre had enacted the The Slum Areas (Improvement and Clearance) Act, 1956 applicable to Union Territories, the states have specific legislations for the declaration/notifying of slums.

<sup>9</sup> Available at <http://www.bmrc.co.in/rrpackage.pdf>

<sup>10</sup> Similar to Clause VI(n) of the Rehabilitation Package of the Bangalore Metro Rail Project which provides that: "**Any other unidentified category:** Any category not identified, shall be documented and mitigated based on the principles agreed upon in this rehabilitation package". The Relief & Rehabilitation Policy Details for Project Affected Persons of the Chennai Metro Rail Limited provides that: "Unidentified Impacts: Unforeseen impacts will be documented and mitigated based on the governing principle as determined by the MD CMRL under the norms laid down in the R & R policy applicable for the project."

<sup>11</sup> Clause 2, Schedule II of draft Bill

Rehabilitation and resettlement implies the social, economic and cultural restitution and is possible only by the replacement of livelihood, which means that for agriculture-based communities, there is no alternative but land-for-land. In the draft Bill, affected families are entitled to a minimum of 1 acre land only in irrigation projects while adivasis are entitled to land in all projects. In other projects the affected families would be mandatorily entitled to one job per affected family or Rs 2 lakhs in lieu of such job.

This is a complete dilution of the principles of R&R including that the family should at least regain if not better their standard of living on resettlement. The bitter experience has been of inadequate compensation and frittering away of cash compensation leading to the pauperization and destitution of affected families. This, in fact, was the observation of the Supreme Court in the Sardar Sarovar dam case, where it held that: *“The displacement of the people due to major river valley projects has occurred in both developed and developing countries. In the past, there was no definite policy for rehabilitation of displaced persons associated with the river valley projects in India. There were certain project specific programmes for implementation under the provisions of Land Acquisition Act, 1894 used to be given to the project affected families. This payment in cash did not result in satisfactory resettlement of the displaced persons, the requirement of relief and rehabilitation of PAFs in the case of Sardar Sarovar Project was considered by the Narmada Water Disputes Tribunal and the decision and final order of the Tribunal given in 1979 contains detailed directions in regard to acquisition of land and properties, provision of land, house plots and civic amenities for the resettlement and rehabilitation of the affected families. The resettlement has thus emerged and developed along with Sardar Sarovar Project.”*

Hence, that every displaced family (in rural areas) where agricultural land is acquired, land-owning or landless, adivasis or dalit or any other community should be entitled to and provided land-based rehabilitation is non-negotiable. Further the minimum entitled must be atleast 5 acres of irrigated land of his/her choice. Further, the land that would be allotted should be on a unconditional and with permanent title.

#### **Multiple displacements:**

The reality of multiple displacements has not been dealt with in the draft Bill. It has been the experience that multiple displacements take place in atleast two ways. Firstly where people have been evicted due to two or more projects over a period of time and, secondly, that lands are acquired from oustees for two components of the same project (Eg. SSP lands acquired for submergence and for establishment of R&R sites from the same families).

The draft Bill has to incorporate a provision prohibiting multiple displacements of families.

#### **Repository of acquired and unutilized land:**

The Parliamentary Standing Committee on the Land Acquisition Bill 2007,<sup>12</sup> has made an important observation that large tracts of acquired land remain unutilised and hence it made

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<sup>12</sup> page 67 of the report

the recommendation that the appropriate Government should make a clear list and repository of land unutilized and before making notification for acquiring land in every case the respective Government should be required to certify that no acquired land at that particular time was available in that area for the particular project. The Committee further recommended that the different Departments of the Union Government as well as State Governments should maintain the data with regard to unused land and indicate the same on their website for transparency.

It is important to note that even previously the Standing Committee on Defence, in its 13<sup>th</sup> report, has taken note of the fact that lands that were acquired are actually lying unused, and hence recommended that a High Level Group be constituted by the Ministry of Defence to review the same and assess the possibilities of re-allocating the surplus land to the affected persons.

This reinforces the desperate need for the repository and review before any land is sought to be acquired hereinafter.

### **Social Impact Assessment (SIA)<sup>13</sup>:**

The draft Bill provides for a Social Impact Assessment study when the government intends to acquire more than 100 acres of land, in consultation with the Gram Sabha/equivalent body in urban areas. The Bill also provides for a public hearing<sup>14</sup> to ascertain the views of the affected families to be recorded and included in the SIA report.

While this is welcomed, it is necessary that the SIA be made mandatory for every instance of land acquisition by the government irrespective of quantum of land being sought for acquisition. Secondly, the study has to be finalized subject to the consent and approval of the Gram Sabha/equivalent body in urban areas. Thirdly, the SIA must also incorporate the aspect of assessing the availability of government land (including unutilized previously acquired lands) for the purposes of the project. Finally, for this process to be meaningful and transparent, it is imperative that all aspects of the project, including its DPR, mandatory and statutory clearances, repository of unutilized acquired land, records leading to the identification of the said land for the project and all other records must be made easily and readily available to all the affected families, free of cost, at their asking in the local language.

The Expert Group<sup>15</sup> to be constituted for appraisal of the SIA report and the Committee<sup>16</sup> to examine the proposals for land acquisition and SIA report, should also consist of members recommended by the affected families and representatives of the affected families including the organisations of the affected persons. Further, all their meetings and deliberations must be intimated to the affected families and their organisations and should be open to public.

### **No acquisition of irrigated multi-crop land<sup>17</sup>:**

Perhaps, one of the most important provisions of the draft Bill is that no irrigated multi-

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<sup>13</sup> section 3 of draft Bill

<sup>14</sup> section 4 of draft Bill

<sup>15</sup> section 5 of draft Bill

<sup>16</sup> section 7 of draft Bill

<sup>17</sup> proviso to section 7(2)

crop land will be proposed for acquisition under any circumstances. To actuate this provision, it would be necessary to ensure that the revenue records are up-to-date and the status of irrigation vis-à-vis lands are accurately entered in the records. However, given the paucity of the agricultural land and keeping in mind growing population and food security, single or multi all kinds of agricultural land must not be acquired.

**Process of land acquisition and R&R scheme:**

The draft Bill contemplates the acquisition and R&R process to proceed simultaneously and for the purpose has provided for the Collector to be the authority in regard to land acquisition and the Administrator<sup>18</sup> for R&R purposes.

**(a) Land acquisition:**

It is seen that the draft Bill has considerably simplified the provisions related to land acquisition. It envisages the, pursuant to the preparation of the SIA report there would be the publication of a preliminary notification<sup>19</sup> similar to section 4 of the LAA, 1894. However, it is provided that such notification shall not be issued unless the concerned Gram Sabha/ equivalent body in urban areas or Autonomous Councils in VI Schedule areas have been 'consulted' or given 'consent'.

It goes without saying that this must not be reduced to a formality and the 'consultations' must be conducted in the true and legal sense of the word. Further, prior to the consultations all the relevant records and information, as pointed above, must be made available easily, readily, for their asking and in the local language.

The draft Bill also provides that the updating of land records would be undertaken and completed after the issuance of the preliminary notification.

Similar to section 5A of the LAA, 1894, there is provision for the affected family to file objections within 60 days, in regard to the extent and choice of land, justification offered for public purpose and findings of SIA report and the same would be heard and the Collector would file a report to the government thereafter.<sup>20</sup>

It is necessary to include herein the provision that a copy of the report of the Collector and the record of the proceedings are also furnished to the concerned affected family when the same is being submitted to the government.

Moreover, it must be stipulated that the acquisition of land cannot commence until and unless all environmental clearances and other statutory permissions/approvals are received for the project.

**(b) R&R:**

The Administrator is mandated to conduct a baseline survey and undertake a census of the affected families once the preliminary notification has been issued.<sup>21</sup> Further, based on this

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<sup>18</sup> section 8 of the draft Bill

<sup>19</sup> section 9 of draft Bill

<sup>20</sup> section 11 of the draft bill

<sup>21</sup> section 12(1) of the draft Bill

the Administrator is required to prepare the R&R scheme<sup>22</sup>, which shall be made locally known and discussed in the concerned Gram Sabha/ equivalent body in urban areas and a public hearing<sup>23</sup> would be conducted in every concerned Gram Sabha/ equivalent body in urban areas, pursuant to which the R&R scheme shall be finalized and published in the official gazette with copies made available in the affected area. This report shall be submitted to the Collector, who after reviewing it with the R&R Committee at Project level shall submit the same with his comments to the Commissioner R&R.

In this regard the one glaring gap in the draft Bill is the linking up of the SIA with the process of preparation of the R&R scheme and this has to be rectified.

As pointed above in relation to land acquisition, this process must not be reduced to a formality and the 'consultations' or their consent must be conducted in the true and legal sense of the word. Further, prior to the consultations all the relevant records and information, as pointed above, must be made available easily, readily, for their asking and in the local language.

We welcome the provisions in section 29, which clearly lay down that possession of acquired land would only be taken after full payment of compensation and completion of all R&R process. However, it needs to be clarified that neither symbolic nor actual possession would be taken until and unless the full and complete rehabilitation of the affected family is carried out and all compensation due has been paid to him.

Further the provision of post-implementation social audit<sup>24</sup> is laudable except that the draft Bill is completely silent on the modalities, time-frame, process, etc. and it is preferable that these are laid down in the draft bill itself.

So it is seen that the draft Bill envisages the finalizing of the land acquisition proposal and the R&R scheme simultaneously resulting in the publication of the draft declaration<sup>25</sup>. Thereafter the Collector conducts the enquiry and passes an award in regard to the compensation and R&R entitlements.<sup>26</sup> The draft Bill provides that the said award<sup>27</sup> shall have to be passed within 2 years from the date of publication of the preliminary notification.

### **R&R entitlements:**

The draft Bill provides at Schedule II the list of R&R entitlements for all the affected families in addition to compensation. It is indeed a long due attempt to address the lack of a national legislation on rehabilitation and resettlement.

Provision is made for provision of housing units to house-owning affected families. While the same is extended to those without homestead land as well, it is qualified with the condition that the said family should have been residing in the area for a period of not less than 3 years preceding the date of notification. This needs to be reduced to a period of 1 year and it

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<sup>22</sup> section 12(2) of the draft Bill

<sup>23</sup> section 12(5) of the draft Bill

<sup>24</sup> according to section 32(3), the Commission for R&R is the responsible authority for this audit

<sup>25</sup> section 14 of the draft Bill

<sup>26</sup> section 18 of the draft Bill

<sup>27</sup> the award consists of the land acquisition award guided by section 21 and the R&R award whose framework is provided in section 22

must be clarified that the entitlement is extended to tenants and homeless persons as well (especially in urban contexts). Further the explanation that in urban areas the same may be provided in multi-storied building complexes needs to be removed and single house tenements should be the norm.

It is demanded that the fishing rights in the cases of irrigation or hydel projects “must” be allowed to the affected families and this change has to be incorporated in the draft Bill.

The special provisions in regard to adivasis affected communities is indeed necessary. It is demanded that similar provisions be made in regard to the affected families who are dalits (scheduled castes), especially in view of their disproportionate displacement due to existing projects and, due to their vulnerable social and economic conditions.

#### **Provision amenities in the resettlement area:**

Section 23 of the draft Bill provides that when more than 100 families are displaced then the Collector shall ensure provision of all infrastructural and basic amenities as listed in Schedule III of the draft Bill. This is a welcome provision since, as is stated in the Schedule, it is an attempt to secure the community life of the affected communities.

This section needs to specify several crucial aspects that are presently glaringly missing. It must be stated that the agricultural land would be provided within 2-3 kms of the resettlement area. Secondly, it is rural displacement -centric and it is necessary that a similar schedule be introduced in regard to the resettlement area in urban areas and the infrastructural and basic amenities to be therein. Lastly, and also importantly, the minimum of 100 affected families needs to be reduced in view of the fact that in urban areas, there is the every possibility that less than 100 families would be affected even by large infrastructural projects and in hilly areas too since size of the villages are small and social and economic life are very different .

#### **Urgency clause:<sup>28</sup>**

The draft Bill has watered down the urgency provisions existing in the LAA, 1894. Here, the urgency privilege is to be invoked only for defence of India or national security or for emergencies arising out of natural calamities and in anyway is to be used in the rarest of rare cases. However, defence and strategic purpose projects need not be exempted from the SIA provisions. Further the definitions and parameters of ‘for defence’ and ‘natural calamities’ needs to be clarified in the draft Bill.

#### **Monitoring authorities:**

The draft Bill provides for a National Monitoring Committee for R&R.<sup>29</sup> It must be stated that the draft Bill should provide for similar Committees at the taluk, district and state levels as well. We have earlier demanded the new Act must set up a National Rehabilitation Commission which will address the claims of not only those who will face voluntary displacement but also

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<sup>28</sup> section 30 of the draft Bill

<sup>29</sup> section 34 of the draft Bill

the R & R claims of those Project Affected Families which has not been settled by the project authorities or governments in ongoing projects or completed since independence and reiterate the same.

**Appellate authorities:**

The draft Bill establishes a Land Acquisition R&R Dispute Settlement Authority for State and Centre having jurisdiction over land acquired by the State and Centre respectively.<sup>30</sup> It further provides that a reference to the authorities can be made by the Collector on receiving a written application from the affected person.

It is important to note that the provisions restrict this reference solely on the compensation aspect, which needs to be corrected to also include grievances regarding the R&R entitlements. Further there is a very serious problem inasmuch as that when lands are acquired by the Centre then the appellate jurisdiction rests with the National Authority and there is no clarity as to where it would be seated. This is bound to cause very serious problems of access. Moreover, an appeal from an award of the National Authority would lie with the Supreme Court as per section 68 of the draft Bill. This denies the affected family the right to approach the High Courts and forces them to approach the Supreme Court, which will again cause the grave problem of access.

**Withdrawal from acquisition:**

Section 61 of the draft Bill stipulates that the government has the liberty to withdraw from acquisition of any land for which possession has not been taken and that the owner would be entitled to damages.

**Return of unutilized land:**<sup>31</sup>

The draft Bill has introduced an important provision in regard to the returning of acquired land to its erstwhile owner if it remains unutilized for a period of 5 years from the date of taking possession.

However, it also permits the transfer of land for another public purpose. This particular clause is not acceptable and has to be removed from the draft Bill.

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<sup>30</sup> sections 36 and 37 of the draft Bill

<sup>31</sup> section 69 of the draft Bill