

Land Reform Bill- Some general Comments from CUTS

The law relates to the acquisition of land for public purposes. The original Act of 1894 is inadequate in addressing certain issues related to the statutory powers of the State for involuntary acquisition of private land and property. In addition, because the issue potentially affects the livelihood and indeed whole way of life of the displaced people, it is also a very sensitive which also translates into politically sensitive.

1. A general point that needs to be taken into account before the enactment of this bill is how it can be subverted and made into an instrument of coercion rather than achieve the purpose it is stated to be intended for. This requires a much deeper analysis of the bill than is made in these very minor comments. The point here is simply whether the proposed form of the bill is more amenable to such manipulation than the preceding version of the bill. For instance rehabilitation and resettlement provisions will apply when private companies buy land for a project greater than 100 acres in rural areas and greater than 50 acres in urban areas. Yet a company may legitimately have several associates in whose names it can buy such land so as to avoid such payments. Associates are not subsidiaries and given the structure of family holdings in India, such loopholes need to be addressed.
2. The acquisition of land for public purpose is defined so that Govt intervention is limited to defense and certain developmental projects only. However, this law applies when govt requires land for its own use, hold and control or to transfer for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Given the existing limitations of our institutions in curbing corruption and the influence of some corporations on the state, the above needs to be treated with care. The acquisition of land for SEZ's for big companies who are increasingly becoming more powerful in India with liberalisation is a case in point. Therefore the original rehabilitation package should be seen as the starting point for negotiations through the political process rather than a final solution
3. There should be a chapeau (preamble) stating the purpose of this note. Land and Land Revenue is a state subject - yet our Constitution makers kept the 1894 Act under the centre's jurisdiction and asked the states to use that Act for land acquisition for public purpose. Why it was so? - this should be mentioned in the preamble.
4. Why the centre is coming up with a new law on this subject when it is under the State List? And other than that the centre is also allowing the states to come with their own law. There is precedence to such an approach - the Panchyati Raj Act. However, in this case there should be an uniform central law and state laws should follow the basic structure of the central law. Otherwise, there will be race to the bottom. This should be mentioned in the chapeau.
5. Land acquisition for large-scale manufacturing (even in case of private sector) should not be left entirely to the market. Independent regulators should play their role even in such cases - otherwise small and marginal landholders will lose. Other than the possibility that local

goondas will forcibly buy land from small and marginal farmers, there are several reasons for regulatory interventions – most important being information asymmetry. Utilisation of an asset like land (whether by public sector or by private sector) is public in nature.

6. Compensation to tenants (registered or unregistered - based on quasi-legal evidence in the latter case) and landless agricultural labourers should be made more attractive.
7. In case of acquisition for private investment and public-private partnership, at least one able person from the affected family should be provided with suitable employment in the manufacturing unit on that land (or whatever economic activity that will come up in that land) based on educational qualification. This provision cannot be made in case of public sector (including public sector undertakings) as that will go against the Indian Constitution. Only once such an attempt was made and it was quashed in the court of law (Kedar Nath Singh vs. the State of Rajasthan, 1983). A similar attempt is being made in the south western part of West Bengal (kind of a Salwa Judum) - I am sure that it will be challenged in the court of law. Compensation for land to be used for public sector should be made more attractive.
8. State governments should be suitably compensated by the centre for their involvement in acquiring land for central government projects. At present, state governments are only compensated with the actual cost of land acquisition but there is a huge opportunity cost, other than various types of revenue and capital expenditure on the part of state governments in acquiring land.
9. The character of land once acquired and changed cannot be changed further without taking written consent from affected families (not just the legal owner).
10. In certain cases, there should be special provision (of compensation) to affected families. For instance, government acquires a piece of land (even if it wasteland under private holding), do mining there and after some time sold its stake to private players. Its a capital asset that the government is selling - other than putting the proceedings from such sales to capital account (not for revenue expenditure by the government - having cake by selling family's gold) some substantial part of the proceeding should be provided to the affected families.

CUTS Comments by provision

Section	Provision of the Bill	Comments	Proposed Refinements
4(1) and 102 (2) (b)	...“in such manner and within such time as may be prescribed”	Social Impact Assessment (SIA) could be undertaken before a set time period	For instance, SIA should be undertaken at least <i>two years</i> prior to the envisaged acquisition

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11 (1)	Publication of Preliminary Notification	A time period should be prescribed here as well	For instance, the preliminary notification shall be issued at least <i>one year</i> prior to the intended time meant for acquisition of the land
12	Preliminary survey and power of officers to carry out survey	Any such survey should be done after duly informing the target populace	The word 'power' (connotes superfluous/discretionary) should be replaced with 'authority' (connotes just/legitimate)
12 (c)	...All acts...	This should be elaborated further.	For instance,...acts specified under such and such notification issued for the purpose by appropriate Government...
16 (3)	The decision of appropriate Government on the objections are final	There has to be a provision for appeal on this front.	This clause should be re-looked at and certain participatory mechanism for reviewing the stance taken by the appropriate Government should be devised.
31 (1)	Every displaced family shall be resettled in a resettlement area.	Some more elaboration is needed about such 'resettlement modality'	Provision should be made to provide 'resettlement counsellors' for the families undergoing resettlement to provide 'humane touch' to the whole process!

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31 (2)	Provision of infrastructural and basic amenities	No mention of timeline by which such resettlement area should be ready. Also, how would it be ascertained that the intended provisions have been made in the area?	Clear timelines should be prescribed here. For instance, the 'resettlement area' shall be fully developed at least <i>one month</i> before the actual migration of intended populace. Also, there should be organized a <i>Public Hearing</i> to ensure the preparedness of the 'resettlement area' before people are actually asked to move there!
43	National Monitoring Committee (NMC)	It would be imperative if the NMC should be preparing annual report of the work carried out under its purview, raising concerns and grey areas if any that require attention.	Clause 43 (5) could be added in this regard, specifying the format of such reporting so that due standardisation is maintained.
46 (1)	Establishment of Authority	Only one Presiding Officer would not be sufficient!	The Authority should have a Chief Presiding Officer and up to two Presiding Officers, as determined by the appropriate Government.
50	Salary and Allowances of Presiding Officer	No indication is given about the equivalent rank of such Presiding Officers	Some indication should be given. For instance, equivalent to Additional Secretary/ Divisional Commissioner or as appropriate.

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54 (4)	Powers of authority and procedure	The time of <i>six months</i> is somewhat large.	It could be changed to <i>four months</i>
58 (1)	Reference to Authority	What is the need for causing unnecessary delay of 15-45 days by routing the reference through Collector? Why should the aggrieved party not be making such reference directly to the Authority?	This clause should be relooked at. Even is the reference is routed through the Collector, due justification should be given by Collector for not being able to make reference to the Authority within 15 days. Also, such act of ‘non-action’ should be communicated to the aggrieved party on immediate basis.
95	Return of unutilised land	Due account should be made for the reasons for such non utilisation	Following sentence should be added in the end of the paragraph ... “while specifying the reason thereof for such non-utilisation”.
100	State legislature to enhance compensation benefits above what the proposed Act prescribes	There has to be caution over not making this Act a vehicle for populist policies of the states	This could be elaborated further to address such concerns
101	Availing of better compensation	Often, the target populace is unaware of such possibility. The duty of such communication (facilitation, if necessary) should be given to the compensating authority proposed under this Act	101 (3) could be added to give effect to such proposition